FACT SHEET

Australian Government
Office of the Registrar of Indigenous Corporations

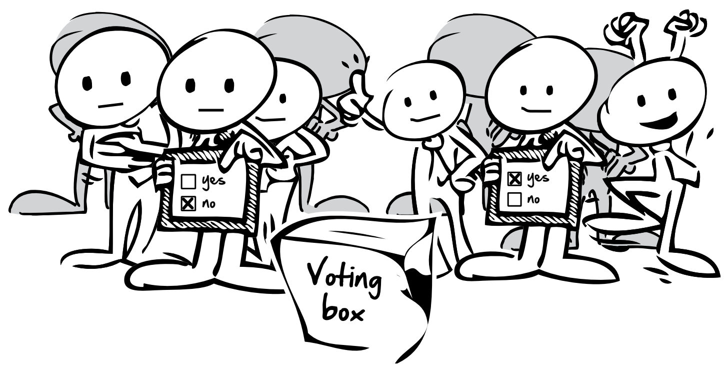
Related party financial benefits

A related party financial benefit is when a corporation gives a financial benefit to a person or organisation with a close relationship to the corporation.

A corporation can provide related party financial benefits but, unless the benefit falls within one of the exceptions in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), **corporations must first get the approval of members**.

This is because the nature of the relationship between the corporation and the related party creates a risk that the transaction may not be in the best interests of the corporation (for example, the corporation may not have negotiated the best deal) or may create a conflict of interest.

The requirement for members' approval makes sure corporations conduct their business in an open and transparent manner and for the best interests of the members.



Who is a 'related party' of a corporation?

A related party can be an individual or an entity (for example, a body corporate, a partnership, an unincorporated body, a trustee or a natural person). Related parties include directors, their immediate family members or corporations/entities that they control.

Any of the following **people** are related parties of a corporation:

a. directors of the corporation
b. directors of an entity that controls the corporation
c. each of the persons making up the controlling entity (in the case of a corporation controlled by an entity that is not a body corporate)
d. spouses including de facto spouses of the people above (a, b and c)
e. parents and children of all the people above (a, b, c and d).

The following **entities** are related parties of a corporation:

- an entity that controls the corporation
- an entity controlled by people who are related parties—referred to above—unless the entity is also controlled by the corporation
- any entity which was a related party of the corporation at any time during the previous six months
- an entity which believes or has reasonable grounds to believe that it will become a related party of the corporation in the future
- an entity which works together with a related party of the corporation on the understanding that if the corporation gives the entity a financial benefit the related party will get one too.

The description above is based on section 293–1 of the CATSI Act.

What is 'the explanatory statement'?

The explanatory statement says what the proposed financial benefit is and why the corporation should give it. The statement must be in writing and set out:

- the related parties who the proposed resolution says would get the financial benefit
- a description of what the financial benefit is
- for each director of the corporation, one of the following:
  - » a recommendation to members about the proposed resolution and the director's reasons for it **or**
  - » if the director does not want to make a recommendation—the reasons why not **or**
  - » if the director is not able to consider the proposed resolution—the reasons why not

  as well as:
  - » whether the director has an interest in the outcome of the proposed resolution, **and**
  - » if so, what that interest is.
- all other information that:
  - » is reasonably required by members to decide whether it is—or is not—in the corporation's interests to pass the proposed resolution, **and**
  - » is known to the corporation or any of its directors.

An example of 'all other information' could include providing the true potential costs and detriments of giving the financial benefit, such as:

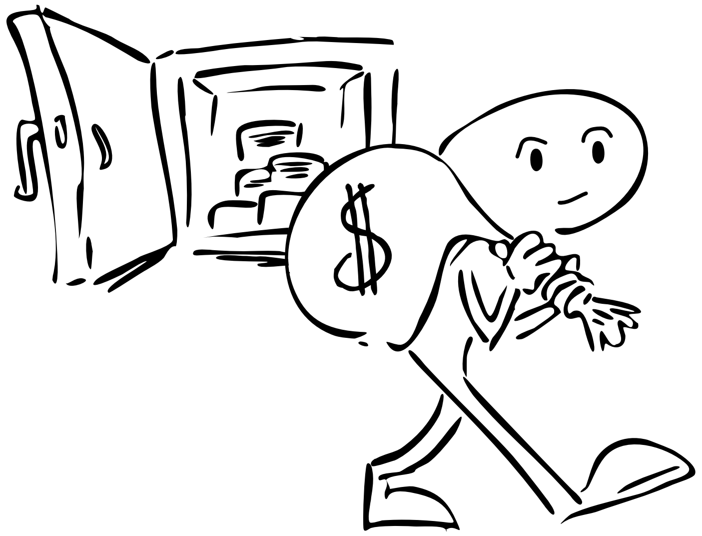
- opportunity costs (what other things the corporation might do with the benefit if it isn't given to the related party)
- taxation consequences (for instance, liability to pay fringe benefits tax)
- benefits given up by whoever gives the financial benefit (this is what the corporation would be giving up).

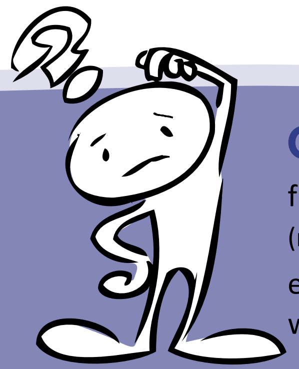
This description is based on section 290–10 of the CATSI Act.

Breaking the rules

A corporation that doesn't get members' approval for the giving of a related party financial benefit does not commit an offence under the CATSI Act. But a person who is involved in doing so could face a civil penalty of up to $200,000 and may also be ordered to pay money (compensation) to the corporation if they are found guilty by a court.

Also, if a person is found to have acted dishonestly in breaking the rules that person can be fined up to 2000 penalty units or imprisonment for up to five years, or both.





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NOTE: This fact sheet is not a substitute for legal advice.
It is intended as a quick overview of the topic.
For more detail see the CATSI Act and your rule book.

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What is a 'financial benefit'?

A financial benefit is an advantage, profit, reward or gain that has a monetary value. It could include getting money, goods, services, discounts, business contracts, jobs or loans.

Some examples of a corporation giving a financial benefit are:

- giving a director goods, such as money, a car, fuel or food
- giving a director or a director's family a corporation house without asking for rent
- buying a building from, or selling a building to, an organisation that controls the corporation
- loaning money to a director without asking for interest payments or if loans are not available to other members
- loaning money to a director's daughter without asking for interest payments
- giving a contract to provide professional advice, such as financial management, or services, such as repairing houses, to an organisation that is controlled by one of the directors
- giving a job to the wife or husband of a director
- not requiring payment of a debt owed to the corporation by an organisation that one of the director's controls.

Section 293–5 of the CATSI Act has other examples.

What is the main rule?

The main rule is this:
members must approve all related party financial benefits.

This is done at a general meeting or by a circulating resolution signed by all members.

If a corporation expects that it may need to regularly or quickly provide financial benefits to related parties it should set up a process to manage this. For example, obtaining member approval for an internal process under which a nominated staff member or the chair can approve financial benefits to a related party up to a certain amount in emergencies without needing further member approval.

Does this rule always have to be followed?

There are some cases where the members don't have to approve the transaction. Examples include when the financial benefit is:

- reasonable remuneration (salary) for the corporation's officers or employees
- paying the reasonable expenses of an officer or employee of the corporation
- given to a member of the corporation when all members are eligible for that same benefit
- given to meet a native title obligation
- given under a court order.

In some circumstances the corporation can apply to the Registrar for an exemption from the CATSI Act rules about related party transactions.

Members' approval is required in all other cases.

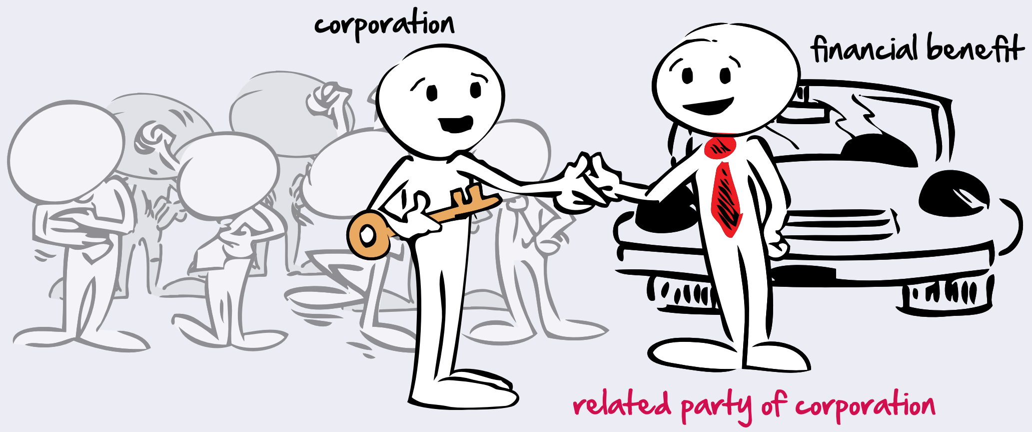
Scenario:

After 15 years as a director Uncle Bob is retiring to spend more time with his grandkids.

The other directors would like to give Uncle Bob a gift from the corporation, given his long years of unpaid service to the corporation and his community.

The corporation is about to buy two new cars to replace their old ones. The directors are considering giving one of their old cars to Uncle Bob instead of selling it. The car has been valued at around $10,000. They've checked the corporation's financial position and believe the corporation can afford to give the car to Uncle Bob.

This is a **related party financial benefit** and requires members' approval.



How to get members' approval

The approval of members can be sought at a general meeting or annual general meeting of the corporation. Members' approval can also be sought by a circulating resolution signed by all the members (in which case a meeting does not have to be held).

These are the steps for holding a meeting:

Prepare the proposed documents

The corporation has to prepare the documents to be given to the members before the meeting. These are:

- the proposed notice for the meeting, which needs to include:
  - the place, date and time for the meeting
  - the proposed resolution
  - a proposed explanatory statement (see more about this on the next page)
- any documents that may help the members decide on their vote.

Lodge the proposed documents with the Registrar and wait for feedback

At least 14 days before the notice and documents (including the explanatory statement) are to be given to the members, the corporation needs to lodge them with the Registrar—although the Registrar can approve a period of less than 14 days.

From the time the documents are lodged, the Registrar has up to 14 days to give the corporation written comments.

If the Registrar does this, the corporation must give a copy of the Registrar's written comments to the members with the notice of the meeting.

At least 14 days

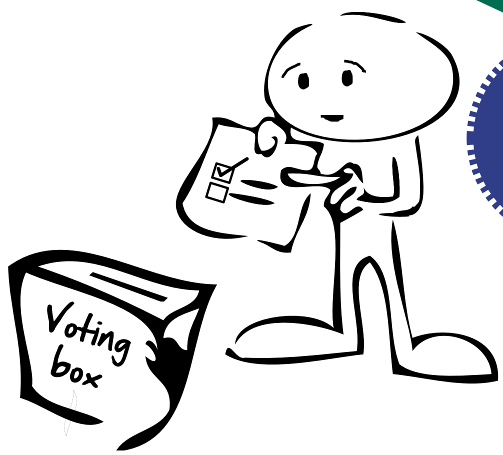
Give notice of the meeting to members

The corporation can't change any of the documents.

The notice, including the proposed resolution and any documents given to members, must have the same information as the documents lodged with the Registrar.

At least 21 days

Check your rule book to see if you have a longer time period for giving notice of general meetings.



Hold the meeting

The chairperson asks the members at the meeting to vote on the proposed resolution.

Remember—a related party, or an associate of a related party, can't vote on a proposed resolution to approve giving a financial benefit to that related party—the civil penalty for doing this is 2000 penalty units or imprisonment for five years, or both.

More than half of the members' votes must agree to the resolution for it to be passed.

Make sure the minutes of the meeting record how many votes were in favour of the resolution and how many were against it, as well as who was ineligible to vote as they were a related party or an associate of a related party.