



MEMO

To: Board of Directors
From: Company Secretary
Subject: **ASIC AGENT APPOINTMENT**

The Corporations Act requires that a company must file certain information with ASIC, and complete and lodge various forms with ASIC.

A company may choose to deal directly with ASIC, or may use the services of a registered agent. The registered agent does not need to be an appointed officeholder (Director or Secretary) of the company, but must be duly authorised.

A registered agent acts as an intermediary between companies and ASIC, to assist companies in meeting their filing/lodgement obligations under the Corporations Act. A registered agent does not operate on ASIC's behalf but instead operates on behalf of companies who need to lodge information with, or receive information from, ASIC.

Having a registered agent may help companies meet their lodgement obligations more efficiently and to check and change company details. Registered agents often lodge on behalf of a number of companies, so they are more familiar with the requirements companies need to meet under the Act and can help companies understand what information needs to be lodged with ASIC.

Registered agents lodge most information with ASIC electronically, which obviates the need for the company to complete manual forms or have one of their officeholders lodge on-line.

Benefits from having an agent lodge forms on-line include reduced levels of risk for late fees/fines, reduced chance of fraudulent activity, as well as increased convenience for those who need documents lodged after standard business hours.

Agent Appointment / Cancellation

A registered agent must link companies to their agent number by lodging a Form 362. This form needs to be authorised by an officeholder of the company and indicates that a company wishes to be represented by the agent.

If a company already has an appointed agent, the lodgement of a new Form 362 to advise ASIC of another agent appointment will automatically cancel the existing agent and replace him with the new one.

Appointment of a new agent will also cancel the existing corporate key for that company and, whilst a new corporate key will issue at the time of the company's next ASIC annual Company Statement, if one is required before the next annual Company



Statement issues it will have to be manually requested (i.e., on line by an officeholder, in which case it will be mailed to the company's registered office address, or by phone, in which case it will be mailed to either the registered office, an officeholder's residential address, or an agent's address).

If a company wishes to cancel an appointed agent they will need to lodge another Form 362. Conversely, if an agent no longer represents a company he must lodge a Form 361 with ASIC, then ASIC will no longer recognise that agent as representing the company. All ASIC correspondence will then be sent to the company's registered office unless/until another agent is appointed.

Agent Lodgement Duties / Obligations

Once linked to an agent, a company's annual Company Statement, most correspondence/documents and invoices will be sent directly to the registered agent.

The agent's other principal role is to lodge changes to company particulars and required information with ASIC. These include:

- change of address (company registered office/principal place of business, shareholder or officeholder)
- appointment/resignation of officeholders (including alternate directors)
- change of ultimate holding company
- share issues, cancellations, restructure and changes to shareholder details
- change of name
- amendments to constitution
- special resolutions
- annual/half-yearly accounts

However, even if a company appoints an agent to look after the company's affairs, the company (and its officeholders) – not the agent – will still be held primarily responsible for lodgement and legal obligations.

An agent's obligations include working with ASIC to ensure that the companies he represents meet their compliance requirements by:

- downloading company annual Company Statements within 28 days of the annual review date and passing it to the company;
- ensuring company officeholders are alerted as soon as possible after receipt of the annual Company Statement to review the details and pay their annual review fee; and
- encouraging quick notification if the details of a company change, so that the agent can lodge the change with ASIC within the required lodgement period.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.