



MEMO

To: Board of Directors
From: Company Secretary
Subject: **ANNUAL ACCOUNTS APPROVAL**

The Corporations Act no longer provides for a resolution to adopt the annual accounts/financial statements of companies; it only requires that they be 'laid before' (ie, 'put in front of', 'present to') the shareholders at the Annual General Meeting.

However, the Act does allow the opportunity for shareholders to ask questions or make statements about the accounts, the audit and Company management.

Corporations Act Wording

Section 317 of the Act states:

Consideration of reports at AGM

(1) The directors of a public company that is required to hold an AGM must lay before the AGM:

- (a) the financial report; and
- (b) the directors' report; and
- (c) the auditor's report;

for the last financial year that ended before the AGM.

Note 1: If the company's first AGM is held before the end of its first financial year, there will be no reports to lay before the meeting.

Note 2: A public company that has only 1 member is not required to hold an AGM (see section 250N).

Note 3: Section 250RA imposes on the auditor of a listed public company an obligation to attend or be represented at the AGM.

(2) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Notwithstanding that the Act only requires that the accounts be laid before the shareholders at the AGM, there is nothing to stop a company putting a formal resolution to shareholders to vote to 'approve', 'accept' or 'receive' the accounts, if that is what they (ie, the board, when compiling the agenda/resolutions) want or it is required under the company's constitution.

AGM Notice / Explanatory Memorandum

Typical wording to include on the agenda of a Notice of AGM:



AGENDA

ORDINARY BUSINESS

1. FINANCIAL STATEMENTS & REPORTS

To receive and consider the Company's Annual Financial Report comprising the Directors' Report, Statements of Comprehensive Income, Financial Position, Changes in Equity and Cash Flows, Notes to the Financial Statements, Directors' Declaration and Auditor's Report for the Company and its controlled entities for the financial year ended 30 June 2011.

Note: A resolution of shareholders is not required for this item of business

and typical wording in the Explanatory Memorandum (attached to the Notice):

Item 1 - Financial Statements and Reports

The Corporations Act 2001 (Cth) requires that the report of the Directors, the report of the Auditor and the financial reports be presented to the Annual General Meeting. Apart from the matters involving remuneration which are required to be voted upon, the Corporations Act 2001 (Cth) does not require a vote of shareholders at the Annual General Meeting on such reports or statements, however shareholders will be given ample opportunity to make comments on or raise questions with respect to these reports and statements at the meeting.

The Annual Financial Report will be tabled and discussed at the Annual General Meeting and the Directors will be available to answer questions from shareholders. In addition, a representative of the Company's auditors, will be present to answer any questions about the conduct of the audit or the preparation and content of the auditor's report.

The Company's Annual Financial Report for the year ended 30 June 2011 has been sent to shareholders who requested a copy and is available on the Company's website at www.publiccompany.com.au.

A shareholder resolution is not required in respect to the Annual Financial Report.

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.