



MEMO

To: Board of Directors
From: Company Secretary
Subject: **ANNUAL COMPANY STATEMENTS**

ASIC no longer issues an Annual Return for each company, but instead (since July 2003) pursuant to Corporations Act Section 346A(1) issues a Company Statement ('extract of particulars'), annually on the anniversary of the company's formation – its 'annual Review Date' (unless the company requests a change to its Review Date to align with – or spread amongst – other group companies or common officeholders – Form 488 "Application to Change the Review Date of a Company"). An annual fee invoice is attached.

Following receipt of the Company Statement the company officers must action as follows:

- within 28 days, update any information (Form 484 "Change to Company Details") or correct any errors (Form 492 "Request for Correction")
- within 2 months, pay the annual fee
- within 2 months, the directors must resolve that the company is solvent, unless exempted because the company has lodged financial statements with ASIC within the 12 months before the Review Date [Sec. 347A(2)].

The company's officers are obliged to check that the Company Statement details are complete and correct, and advise ASIC of any updates or corrections under Sec. 346C. No action is necessary if there are no changes.

The most important areas to check are officers' and shareholders' names, addresses and other details, and the issued and paid-up share capital. In particular, the total paid-up amount must always equal the sum of the actual number of shares issued multiplied by the amount actually paid for each share (i.e., it does not necessarily equal the "paid-up capital" shown in the balance sheet as that could, for example, be adjusted for share issue costs, etc).

Solvency Resolution

Unless exempted, the company's directors are also obliged to pass a solvency resolution (or otherwise notify ASIC) in a form such as:

*"**RESOLVED** that, pursuant to Section 347A(1) of the Corporations Act with respect to the Annual Company Statement as at its Review Date of XX July 200X, in the Directors' opinion the Company is solvent (with the continued support of its immediate parent company, _____ Pty Ltd, and its Ultimate Holding Company, _____ Limited, in need*) and there are*



reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable.”

Under Sec. 347B, if the directors are unable to pass a solvency resolution, or resolve that the company is not solvent, they must within 7 days lodge a Form 485 “Statement in Relation to Company Solvency” with ASIC (signed by any company officer).

Corporate Key

Note: the Company Statement also has the company’s Corporate Key printed on it; this will remain unchanged until the company requests a new one (or an ASIC agent is appointed).

Reprints of Annual Company Statements

If the annual Company Statement package is not received, a company needs to contact ASIC. They will determine if the Company Statement package was issued and where/when it was issued. ASIC will also clarify the Registered Office location or contact address details to ensure that their records are correct. If it is determined that the annual Company Statement package was not received a reprint will be organised and re-sent to the contact or Registered Office address.

** suggested optional words in solvency resolution if applicable*

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.