



MEMO

To: Board of Directors
From: Company Secretary
Subject: **ANNUAL REPORT / AGM NOTICE PERIOD REQUIREMENTS**

Annual Report

I confirm that, under section 315 of the Corporations Act public companies, including listed companies, and large proprietary companies*, must “report to” members/ shareholders – ie, despatch the Annual Report – no later than 21 days prior to the Annual General Meeting or within 4 months of the annual balance date/financial year end at the latest (even if that is more than 21 days before the AGM date).

A small proprietary company only needs to prepare an Annual Report if the company is directed to by shareholders pursuant to the provisions of sec.293 – which requires despatch within 4 months of financial year end or as otherwise allowed under the Act.

By the way, some observers actually suggest that “report to” means the Annual Report must be 'in the hands of' shareholders within that timeframe, which would mean despatching sufficient days prior to ensure they 'report' in time.

Sec.314 specifies that the ‘Annual Report’ for a financial year comprises:

- financial report – under sec.295: the financial statements, notes thereto and directors’ declaration, as per the Accounting Standards (sec.334)
- directors’ report – under sec.298, to include information set out in sec. 299, 299A, 300, 300A & 307C
- auditor’s report – under sec.308.

Annual General Meeting

All public companies must hold an AGM within 5 months after the end of their financial year – sec.250N – unless, under sec.250P, an extension of time is applied for and granted.

Proprietary companies may also need to hold an AGM if required under their constitution.

Sec.249H requires companies to give at least 21 days’ notice of an AGM (and any general meeting, in fact).



However, under sec.249HA, a stock exchange listed company must give at least 28 days' notice of an AGM (or other general meeting).

The 28 days (and 21 days for other companies) must be 'clear days' and the day of the meeting or the day of despatch of the meeting notice cannot be counted, plus under the company's constitution (and, generally speaking, common law) the notice is deemed served the day after it is posted (some constitutions in fact say 2 or 3 days after). So that is why the policy is to allow 31 days from notice date/ mailing day to AGM day, because it is really impossible to have any less days and meet the requirements of the Act.

So, there may well be a situation where the AGM notice must be despatched even if the Annual Report is not ready to be mailed out – although that of course will incur extra mailing/postage costs and is not recommend it unless you have no option (it happens!).

* a large proprietary company is one which satisfies at least 2 of the following criteria:

- revenue of \$25m
- assets of \$12.5m
- 50 employees

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.