



MEMO

To: Board of Directors
From: Company Secretary
Subject: **APPOINTMENT OF AUDITOR: PTY LTD COMPANY**

Only a Public Company or a Large Proprietary Company is generally required under the Corporations Act to appoint an Auditor [section 327], prepare Annual Financial Statements [sec. 292], lodge with ASIC [sec. 319] (and, for listed companies, lodge with ASX) and send to members/shareholders [sec. 314].

In addition, Disclosing Entities (whether listed or not) must have their Half-Yearly Financial Statements either audited or audit-reviewed [sec. 302] and lodge with ASIC/ASX.

Proprietary Company Auditor

Under sec. 325 any other company (ie, a “small” Proprietary Company) may appoint an Auditor but is not obliged to unless:

(a) shareholders controlling 5% of the votes as per sec. 293 direct it (which would also require preparation of Financial Statements and may require them to be sent to shareholders); or

(b) the company is foreign controlled and is not part of a group which must otherwise lodge accounts with ASIC per sec. 292(2)(b).

Notwithstanding this, under sec. 286 all companies must keep accounting records such that they can explain transactions and the company’s financial position and so that an audit could be conducted.

For a [small] Proprietary Company the Auditor can be appointed – or changed – by resolution of the board of directors or by resolution of all shareholders – ref sec. 325. (Whereas for other companies the shareholders must ratify/approve the Auditor’s appointment and an Auditor can only resign with ASIC’s consent.)

An Auditor must consent in writing beforehand to being appointed [sec. 328A].

The resignation of an Auditor of a [small] Proprietary Company (other than a company that holds an Australian Financial Services Licence) does not require ASIC’s consent – sec. 329(9) – and takes effect on the later of any stated date of resignation or the day on which notice of resignation is received. A Form 315 “Notification of Resignation, Removal or Cessation of Auditor” must be lodged with ASIC within 14 days of receipt of such notice of resignation of Auditor.



Sample Board Minutes

Below are sample board minutes/resolution covering the appointment of a replacement Auditor:

Change of Auditor

Resignation of current auditor, Binder Hamlyn Accountants, has been received as this firm is no longer providing company audit services.

The Company Secretary advised that as the Company is a “proprietary limited” company there is no requirement (or mechanism) to seek ASIC’s consent to the resignation and shareholders’ approval to a new auditor is not required. Therefore, the Board may simply accept the resignation and appoint a replacement auditor.

He further advised that written consent to act as auditor has been received from BDO Kendalls Audit & Assurance (QLD) Pty Ltd.

RESOLVED that BDO Kendalls Audit & Assurance (QLD) Pty Ltd be appointed as auditor of the Company, effective for the 30 June 2009 audit.

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.