



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **ASSIGNMENT – THROUGH BOARD RESOLUTIONS**

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You have requested that 'through board minutes' of the respective companies I 'create' the assignment of our recently acquired Mining Lease (over the Tasmanian gold mine) from the parent company to the new subsidiary, so that the ML is effectively 'owned' by the subsidiary.

I have drafted the undermentioned resolutions for the boards of the parent company and the subsidiary company to review, but I am not qualified to vouch for the legal effect of doing an assignment this way and, in fact, do not know that it will be effective.

In my past experience such an assignment has been effected through a Deed of Assignment or similar document.

### **Suggested Board Resolutions**

Parent (assignor)

*It was **RESOLVED** that all of the Company's rights, benefits, title, interests, liabilities and obligations in the Project (as assignor) be assigned to the subsidiary (as assignee), including in relation to and on the terms and conditions of the Tenement Acquisition Agreement between the original vendor and the Company.*

Subsidiary (assignee)

*Directors noted that the board of the parent company ('assignor') had resolved to assign all of that company's rights, benefits, title, interests, liabilities and obligations in the Project (being 2 mining tenements [ML80/4000 & ML90/5000] in North Western Tasmania which is prospective for precious metals) to the Company ('assignee'), including in relation to and on the terms and conditions of the Tenement Acquisition Agreement between the original vendor and the assignor.*

*Directors considered the whole matter and **RESOLVED** to accept the assignment on the basis that the assignor retains its obligations to the vendor under the Agreement should they not be fulfilled by the Company, so the Company has minimal concern in that regard.*



## Notice of Assignment

The Tenement Acquisition Agreement (pursuant to which the parent has acquired the ML from a vendor) allows the parent to assign the ML to a 'nominee' (a party nominated by the parent to which it may assign its rights and obligations under the Agreement) provided the parent retains its obligations to the vendor under the Agreement should they not be fulfilled by the nominee and that the parent gives 7 days' written notice of an assignment and details of the nominee to the vendor.

Can I leave it to the Managing Director to give the requisite notice after the resolutions are passed? Maybe that can even be achieved by him sending the vendor an email (and get their acknowledgement) which we would then have on file – which might help perfect the assignment.

I mention too, that stamp duty may also be payable on a ML assignment. For example, in Tasmania, it appears to be classed as a 'conveyance' so duty may be leviable on the consideration paid for the assignment or, if no consideration, the value of the assignment.

I also leave it to the Managing Director to check this out, which maybe he should address with our lawyers in Tasmania.

## Assignment Meaning / Limitations

'Assign' means 'transfer an interest in property'. It encompasses the transfer of rights held by one party—the **assignor**—to another party—the **assignee**.

It appears that 'consideration' is not essential for an assignment to be effective.

As a general rule liabilities under a contract cannot be assigned, except with the consent of the other party. Any agreement in this regard must demonstrate intent to transfer rights, but it may not necessarily be in writing, words will do, and the rights assigned must be clear – but it would certainly be preferable to be in writing.

A contract may contain a 'non-assignment' clause, which prohibits the assignment of specific rights, or of the entire contract, to another. However, such a clause does not necessarily destroy the power of either party to make an assignment. Instead, it merely gives the other party the ability to sue for breach of contract if such an assignment is made. However, an assignment of a contract containing such a clause will be ineffective if the assignee *knows* of the non-assignment clause, or if the non-assignment clause specifies that "all assignments are void".

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### 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.*