



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **CHANGE AUDITOR PROCESS**

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Certain directors have indicated that they are not 'happy' with our present audit firm, primarily because they think this firm (or maybe the partner) does not properly understand our business, and probably also because they think the auditors fees are too high.

So, as requested, below are the processes to change the auditor.

### **Options to Change Auditor**

Basically, there are 2 options:

A. Give notice to remove the auditor - by a director or shareholders (at least 100, or a number controlling at least 5% of the shares) - and call a shareholders' meeting to vote on the proposal to remove and replace the auditor.

This approach is usually only adopted where there is animosity - and the auditor will not voluntarily resign.

B. The better and more common approach is for the current auditor to 'resign' at the next Annual General Meeting, and for the board to appoint/shareholders approve a replacement.

### **Auditor Resignation**

To change auditor the incumbent must seek ASIC's consent to resign. Regulatory Guide 26 sets out the way in which ASIC applies the relevant provisions of the Corporations Act.

ASIC consent is sought by lodging Form 342 "Application for Consent to Resign as an Auditor" requesting approval to resign and stating the reasons therefor, to be effective at the next AGM of the company (ASIC will not normally agree to any other changeover date).

Specific reasons for resigning must be stated on the Form 342 and, I understand, ASIC will not accept simply that the fees are too high.

Under section 329(5)(a) of the Act the resigning auditor must advise the company in writing at about the same time that they have sought ASIC's consent.



The resigning auditor must advise the company in writing when they receive ASIC's consent - s.329(5)(b).

Then, within 14 days of receipt of the advice from the outgoing auditor, the company is required by s.329(11) to lodge a Form 315 "Notification of Resignation, Removal or Cessation of Auditor" with ASIC.

### **Replacement Process**

Relevant to the nomination and appointment of a new auditor are ss.328A & 328B.

The first step in replacing the auditor is for a shareholder to nominate by written notice a new auditor (not less than 21 days before the AGM - which, in practice, must be at least 28 days beforehand as the company is stock exchange listed) and a copy of that notice must be given to the outgoing auditor not less than 7 days before the AGM. Suggested wording of the notice:

*"I, \_\_\_\_\_, being a shareholder of \_\_\_\_\_ Limited ('the Company'), hereby give written notice pursuant to Section 328B(1) of the Corporations Act of the nomination of \_\_\_\_\_ for appointment as Auditor of the Company at the next Annual General Meeting."*

The proposed new auditor must then provide the company its consent in writing to be auditor with wording such as:

*"Pursuant to the provisions of Section 328A(1) of the Corporations Act we, \_\_\_\_\_ consent to act as auditors of your Company."*

The AGM Notice must include an ordinary resolution for shareholder consideration; for example:

*"That, subject to the consent of the Australian Securities & Investments Commission to the current auditor resigning, to appoint \_\_\_\_\_, having consented in writing and been duly nominated in accordance with Section 328B(1) of the Corporations Act 2001, as Auditor of the Company."*

and the Notice must be despatched accompanied by the shareholder's auditor nomination notice (referred to above).

Another example:

*"That, for the purposes of section 327B of the Corporations Act 2001 (Cth) and for all other purposes, KPMG, having been nominated by a Shareholder and consenting in writing to act in the capacity of Auditor of the Company, be appointed as Auditor of the Company and that the Directors be authorised to fix the remuneration of the Auditor."*

*Note: Further comments appear in the Explanatory Statement. Also, in accordance with section 328B(3) of the Corporations Act 2001 (Cth) a copy of the notice of nomination of Auditor accompanies this Notice of Meeting.*



Subject to the shareholders approving at the AGM, the company can then notify the new auditor of their appointment, and the change process is complete. There is no provision to advise ASIC of the new auditor's appointment - they find out when the next audited annual accounts are lodged.

### **Summary Steps**

In summary, the steps are:

1. Board to decide to ask current auditor to resign and agree on the name of the new auditor.
2. Have existing auditor resign by lodging Form 342 with ASIC, giving reasons and seeking consent.
3. When ASIC consent letter received from outgoing auditor, lodge Form 315 with ASIC within 14 days.
4. Obtain written nomination of a proposed new auditor from a shareholder.
5. Obtain the new auditor's written consent.
6. Include a resolution in the AGM Notice for shareholders to approve the new auditor (and the nomination notice must be despatched with the Notice).
7. When shareholders approve, the process is complete.

### **Resignation / Change at other than AGM**

ASIC does allow in 'exceptional circumstances' the resignation and replacement of auditors at a date other than the AGM, subject to slightly different processes being followed - see RG26.

See also ASIC Information Sheets 65 & 66 on changing auditors.

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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.*