



MEMO

To: Board of Directors
From: Company Secretary
Subject: **AUDITOR REMOVAL & REPLACEMENT**

A company auditor remains in place until he resigns, is removed or otherwise ceases to act (eg, due to retirement, death, incapacity).

To be 'removed' shareholders must pass an **ordinary resolution** as required by section 329(1) of the Corporations Act following receipt by the company of a notice under s.329(1A).

A director, or shareholder(s) controlling at least 5%, may request on at least 2 months' prior notice ('Notice of Intention') that the company call a general meeting ('EGM') for shareholders to consider removing the current auditor. The company may actually call the meeting on less than 2 months' notice, provided it meets the notice periods of s.249H/249HA and noting that under s.249H(4) short notice is not allowed.

Such Notice could be worded like the following:

We hereby give Notice, as Directors of the Company, that we intend to propose an ordinary resolution to be considered at a General Meeting of the Company, for shareholders to consider, and if thought fit, remove PKF as Auditor of the Company.

We further advise that we will be proposing to shareholders that they pass a special resolution to appoint PricewaterhouseCoopers as replacement Auditor.

The company must then write 'as soon as possible' to both the auditor [being removed] and ASIC with a copy of the Notice of Intention – s.329(2). There is no prescribed ASIC form/format for such advice to them.

Such advice to ASIC could be worded like the following:

The Company has received the attached Notice, under Section 329(1A) of the Corporations Act, of the Directors' intention to propose a resolution at a General Meeting of the Company to remove PKF as Auditor of the Company and to recommend appointment of a new Auditor. A copy of this Notice is lodged with ASIC as required under Section 329(2). A copy has also been sent to the Auditor.

Under s.329(3), within 7 days of the outgoing auditor receiving a copy of the Notice of Intention he may make written representations and request that such be sent to the



shareholders at the company's expense. Under s.329(4) he may also request that the representations be read out at the EGM and that he be allowed to address the meeting.

The board of directors then needs to consider finding a replacement auditor, who should be appointed by the shareholders, by **special resolution**, at the EGM, immediately – and if – the removal resolution is passed (sec.327D). In order to put forward this appointment resolution the proposed auditor must provide his/its prior written/duly signed consent – sec.328A.

The auditors consent may be worded like the following:

In accordance with subsection 327(7) of the Corporations Act 2001, PricewaterhouseCoopers hereby consents to act as auditors of the Company, subject to shareholders resolving to remove PKF from the office of auditor, and approval by the shareholders of the Company.

EGM resolutions could be worded like the following:

(a) RESOLVED that PKF Chartered Accountants be removed as Auditor of the Company.

(b) RESOLVED, as a special resolution, that the firm of PricewaterhouseCoopers, having been duly nominated in accordance with Section 328B(1) of the Corporations Act, be appointed as Auditor of the Company.

Also, as required by s.328B, a proposed auditor must be nominated in writing by a shareholder ('Auditor Nomination') and that Nomination must be sent to all shareholders, the current and proposed auditors, and the directors, at least 7 days before the EGM date But, ideally, would be sent out with the EGM Notice.

Such Nomination could be worded like the following:

I, _____, being a shareholder of the Company, hereby nominate PricewaterhouseCoopers for appointment as Auditor of the Company as required by Section 328B(3) of the Corporations Act.

Following the EGM Form 315 "Notification of Resignation, Removal or Cessation of Auditor" must be lodged with ASIC within 14 days advising of the removal of the outgoing auditor. Note: ASIC is not advised of the replacement auditor until next annual accounts are lodged.

The company should also notify the new auditor with wording like the following:

We advise that the special resolution to appoint PricewaterhouseCoopers as auditors of the Company was passed at the general meeting held on _____ 200_



Stock Exchange listed companies must also advise the market of the auditor change under L/R 3.16.3.

ASIC Information Sheet 62 provides further details about the 'Removal of an Auditor'.

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.