



MEMO

To: Board of Directors
From: Company Secretary
Subject: **AUDITOR RESIGNATION ON TAKEOVER OF AUDITOR**

As you are aware our auditors, Pitcher Partners, have closed down and their audit business has been taken over by Hacketts DFK.

Whilst perhaps somewhat technical, what has in fact happened is that the 3 audit partners of Pitchers – by virtue of Section 329(10) of the Corporations Act – automatically became “the auditors” (ie, all 3 of them jointly) as of 28 November 2008 being the day that Pitcher Partners were dissolved.

So that means that right now these 3 individuals are the Company’s auditors. However for a number of reasons, most particularly because they don’t want to carry the possible personal liability arising from being auditors, they now propose to resign.

Again, technically, it is not that simple because they first have to seek and obtain ASIC’s consent before they can resign. And ASIC usually only agree to auditor changes at the next AGM (ie after completion of annual accounts’ audit), except in exceptional circumstances.

The 3 individuals have therefore submitted to the Company that [in principle] they will resign – subject to ASIC consent – and have recommended that Hacketts DFK be appointed in their place. Hacketts DFF have formally consented in writing as per Sec. 328A(1). If this is acceptable to the Board you are requested to pass a suitable resolution to effect these changes. This will enable the 3 individuals to lodge a Form 342 to ASIC formally requesting consent to resign. Note that until ASIC formally consents, these 3 individuals continue to be the Company’s auditors.

Subject to ASIC consenting, the 3 individuals will then submit a formal resignation letter to the Company – in terms of Sec. 329(5) – and the Company will need to lodge a Form 315 with ASIC within 14 days of receipt (of such letter) as per Sec. 329(11).

This is all that is required at this stage. However, at next AGM the shareholders will have to ratify the new auditor appointment, and before convening the AGM (ie, prior to sending out the Notice) one shareholder will have to formally nominate the replacement auditor in writing as required by Sec. 328B(1) of the Act, with such nomination to accompany the Notice of Meeting – Sec. 328B(3).

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.
