



MEMO

To: Board of Directors
From: Company Secretary
Subject: **AUDITOR – IMPACT OF COMPANY TAKEOVER**

As we have now become a wholly-owned subsidiary of White the issue arises: what will happen in relation to our auditor (BDO) as White has a different auditor (PwC).

Section 327H of the Corporations Act provides that when a public company becomes a subsidiary of another company “.....[the] auditor of the public company that begins to be controlled by a corporation must retire at the AGM of the company next held after the company begins to be controlled by the corporation unless the auditor vacates that office before then.....”.

So, BDO must resign at the next Annual General Meeting or beforehand. Either way, ASIC’s prior written consent will be necessary.

Given that the half-yearly audit of White will begin soon, I understand BDO will want to resign sooner rather than later as, amongst other things, it would make the audit process very difficult to have 2 different auditors doing different parts of the group. Conversely, White’s current auditor, PwC, will no doubt be keen to have BDO resign now too.

Therefore, I have suggested to BDO that they lodge their application to resign as auditor with ASIC now, so that their request can be dealt with in due time.

Exceptional Circumstances

ASIC usually only agrees to an auditor change at the AGM unless ‘exceptional circumstances’ exist. Regulatory Guide 26 governs ‘Resignation of Auditors’ and in paragraph 26.5 it states:

“The appointment of an auditor is primarily a matter for the members. If the auditor last appointed by the members resigns, s327(3) requires the members to appoint a replacement auditor at the next annual general meeting (AGM). Although directors can appoint a replacement auditor to hold office until the AGM, the ASIC considers that in the absence of exceptional circumstances this should not occur.”

However, in this case, ‘exception circumstances’ do exist that are in fact included in a list in paragraph 26.16 as follows:

- (a) the failing health of the auditor;
- (b) loss of independence of the auditor;
- (c) the company is not audited by the auditor of its parent entity; or**



(d) a relocation of the company's or auditor's principal place of business resulting in circumstances where it would be impractical for the auditor to perform the audit.

So, ASIC should 'rubber stamp' BDO's request to resign. I will liaise with BDO on their resignation. But in the meantime I would also suggest that one of the common directors inform White of what is happening, so they can advise PwC.

Resignation Steps

BDO will have to complete a Form 342 "Application for Consent to Resign as Auditor", which will be accompanied by an explanation and:

- (i) a copy of a resolution of the directors appointing PwC as the replacement auditor 'subject to ASIC's approval to BDO's resignation'
- (ii) a copy of PwC's consent to act as auditor of the Company

all of which must be submitted to ASIC.

And, once this all happens and we receive ASIC's written consent, the Company will then need to lodge a Form 315 "Notification of Resignation, Removal or Cessation of Auditor" with ASIC within 14 days of receipt (of ASIC's letter) as per Sec. 329(11).

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.