



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **BOARD MEETING WITHOUT QUORUM**

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With Mr L's sudden resignation from the Board we now have only 2 directors, which is 1 director less than the statutory minimum for a public company under Section 201A(2). of the Corporations Act.

So, the board is technically powerless until it brings the board back up to the statutory minimum number.

The same situation would apply if a director dies or for some other reason can no longer act as a director of the company (e.g., is declared a bankrupt).

There is also another problem in our case – that the quorum for valid board meeting under Rule 12 of our Constitution is a minimum of 3 directors, and we now only have 2 directors.

Of course, even if the quorum was only 2 directors, they could not validly act until the statutory minimum number of directors is reinstated.

Therefore, the company has two options:

- (i) either the board can meet for the sole purpose of appointing another director to bring the minimum back up to the statutory minimum; or
- (ii) the shareholders can meet to appoint another director.

### **Extract From Board Minutes**

The following words are an example of how to minute a meeting to appoint a director to return the numbers to the statutory minimum:

#### *Director Resignation/Appointment*

The Company Secretary tabled a letter of resignation received from Mr L dated 18 January 2010 and effective immediately.

It was agreed that as the 2 remaining Directors are below the statutory minimum number of 3 the purpose of this meeting is solely to appoint an additional Director.



Mr R was invited to become a Director and, after a brief explanation of the responsibilities and risks of being a director were given and he was advised that the Company does not hold D&O insurance cover, he signed a letter of consent stating that he had the utmost faith in his fellow Directors and was very confident about the Company's continuing financial strength and future prospects.

**RESOLVED** that Harold Malcolm R\_\_\_\_\_ be appointed as a Director of the Company pursuant to Rule 13.2 of the Constitution to fill the casual vacancy.

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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.*