



MEMO

To: Board of Directors
From: Company Secretary
Subject: **BENEFICIAL OWNERSHIP – UNLISTED COMPANIES**

A shareholder may, for various reasons, hold shares for the benefit of another party. In such case the shareholder must, under Corporations Act Section 1072H, advise the company that it is holding the shares non-beneficially and the company must, under Sec. 169(5A), 'indicate' in the share register any shares that are not held beneficially.

This provision applies to ALL companies other than those listed on an Australian stock exchange (for listed companies there are other provisions, under Part 6C.2 of the Act, for attempting to trace beneficial ownership of shares in need).

Non-beneficial Ownership

Generally, a person is taken to hold shares non-beneficially if the person holds shares in a capacity other than that of sole beneficial owner, or holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of another person.

Shareholder Obligations

The Act requires shareholders who have shares registered in their name but do not hold the beneficial title to those shares to notify the company in writing within 14 days from being issued new shares or registration of a share transfer. Such notice should also specify what number of shares – if not all – are held non-beneficially.

Furthermore, if the nature of a holding changes at any time (e.g., the shareholder begins to hold the shares non-beneficially or, conversely, shares previously held non-beneficially become beneficially owned) the shareholder must notify the company in writing of the change within 14 days (see Secs. 1072H(5) & (6) respectively).

Failure to comply with these obligations is an offence under Sec. 1311(1) and penalties may apply.

If all shares are held beneficially by the registered owner there is no requirement to comply with these provisions and no notice can be lodged with the company.

Form of Notice

As set out in Sec. 1072H the notice to advise the company of non-beneficially held shares must:



- (a) contain a statement to the effect that, upon registration of the transfer, the transferee holds/will hold the shares non-beneficially; and
- (b) set out particulars of the shares (type/number, etc); and
- (c) be signed by or on behalf of the transferee.

Company Becoming Unlisted

If a stock exchange listed company is de-listed (or otherwise becomes unlisted) it would need to write to all shareholders explaining their obligations under Sec. 1072H and provide a form of sample notice required under the provision if their shares are or become non-beneficially held.

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.