



MEMO

To: Board of Directors
From: Company Secretary
Subject: **COMPANIES LIMITED BY GUARANTEE**

Generally, companies comprise 2 main types: proprietary (private) and public companies – see section 112 of the Corporations Act – either of which may be limited or unlimited.

Limited public companies may be limited through the issue of shares or limited by guarantee – s.112(1).

A company limited by guarantee is most usually one formed as a non-profit entity, following the principle of having members' liability restricted to an amount they each personally guarantee.

Public Company Requirements

As a public company, one limited by guarantee must generally adhere to the Act's requirements for public companies, including requiring:

- A constitution
- At least 1 member
- At least 3 directors
- A Company Secretary
- Annual accounts audited*, lodged with ASIC and provided to members
- An Annual General Meeting.

Other sections of the Act also apply to such companies, such as s.254SA which prohibits paying a dividend to members.

Removal of “Limited” from Name

Under s.150 a guarantee company may apply to ASIC (using Form 432 “Application to Approve Registration of a Company Name Without the Word ‘Limited’”) for the word “Limited” to be omitted from its name – if its constitution:

- (a) Requires it to pursue charitable purposes only and to apply its income to those purposes; and
- (b) Prohibits the company paying fees to directors and making distributions to its members.



ASIC Regulatory Guide 50 provides more guidance on omitting the word “Limited” from company names.

Contributions in a Winding-up

Under s.518 in a liquidation of a company limited by guarantee a member need not contribute more than the amount the member has undertaken to contribute to the company’s assets if the company is wound up.

* an audit is no longer required for some small companies (s.45B), annual accounts may just be “reviewed” if annual revenue is less than \$1 million (s.301(3) and the review may be carried out by an unregistered auditor providing he is an accountant holding a public practising certificate (s.324BE)

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.