



MEMO

To: Board of Directors
From: Company Secretary
Subject: **INCORPORATION OF A PTY LTD COMPANY**

Summarised hereunder are the actions and requirements to incorporate and register a new (Proprietary Limited) company subsidiary:

1. Form 201 needs to be completed and the incorporation fee paid to ASIC. Application can be processed on the spot at ASIC and Certificate of Registration obtained.
2. Decide on company name: my search shows the only similar name to the one being considered is the business name already registered to the group in Queensland.
3. To use a business name for a company the current proprietor/s must be identical to the initial member/s (shareholder/s) at the time of application to register the company. There is provision on the Form 201 to “sign off” on this and no letter from proprietor/s agreeing to use of the name is required. Apparently, either the proprietor/s or the member/s can be changed later without control!
4. Decide on type of company: presumably a “Pty Ltd”, limited by shares.
5. Will the company use the “Replaceable Rules” (in the Corporations Act) in lieu of a Constitution? If a Constitution is required (because, for example, the Replaceable Rules don’t suit) then one will have to be obtained (at extra cost). Initial member/s must agree in writing to the Constitution by each signing a copy (retained in company records). Pty Ltd companies do not lodge the Constitution with ASIC.
6. Note that the Replaceable Rules do not apply to single member/single Director companies so, if they do not have a Constitution, they effectively have no written document governing the internal management of the company – it’s simply subject to the CA and common law.
7. Registered Office: if the company is not the “occupier” of the premises, the occupier’s consent in writing is required (addressed to the company Director/s and just retained in the corporate records – not lodged with ASIC).
8. Details of initial Director/s and Company Secretary (if there is one): their consents are required in writing (also held in company records), setting out the necessary particulars. Note, by the way, that for a Pty Ltd company at least 1



Director and 1 Company Secretary (if there is one) must be Australian residents.

9. For the sake of good order, although apparently not technically necessary, a “formal” meeting of the initial member/s (held no later than the date of incorporation) should be minuted, resolving to appoint the initial director/s. This, of course, will not apply if it is to be a sole director/sole member company.
10. Names of initial member/s (shareholder/s) and details of shares to be issued on incorporation are required in writing (held in records).

There is a little more to go on the application form, but that is self-explanatory.

After incorporation, various matters need to be attended to, including:

- hold the first Directors’ meeting to deal with procedural and “housekeeping” matters
- establish the “books” of the company
- issue share certificates
- display the company’s name at the places of business
- obtain a common seal, if required.

I hope this assists.

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.