



MEMO

To: Board of Directors
From: Company Secretary
Subject: **RESERVING A COMPANY NAME**

Ladies, as you have agreed to go ahead and register 'ZODIAC STAR SIGNS PTY LTD' as a company I suggest as a first step – whilst you are attending to other matters prior to actually registering/starting the company – that you reserve the name so that no-one else can take it from you.

This will be particularly important as you promote the business during this interim period just in case someone else recognises the full value of the name and goes and reserves or registers it first.

The process is easy and inexpensive. And I have already checked on the ASIC database and confirm that the name is available (as of the time of writing).

Name Reservation Application

Section 152 of the Corporations Act provides for reservation of a proposed company name using the prescribed Form.

So all you have to do is complete a Form 410 "Application for Reservation of a Name" and lodge it with ASIC (together with a cheque for the lodgement fee).

Note, if an existing company is reserving a new name (for itself), or extension of an already reserved name is requested, this may be done on-line. Otherwise a paper Form must be lodged with ASIC (over the counter or by post).

Information to be provided on the Form includes:

- A. Is the proposed name identical to a registered business name(s)? If yes, provide business name(s) registration details (Business Number and State/Territory of Registration) and declare that you make the application for the name as, or on behalf of and with the authority of, the registered owner(s) of the identical business name(s).
- B. Type and class of company.
- C. Purpose of reservation – new reservation / extension of reservation / change of name (and give current registered name).
- D. Details of applicant / signature (capacity) / date.



Once the application has been processed ASIC will confirm whether the name has been accepted for reservation, in writing to the lodging party or to the company's registered office, or on-line if the Form was lodged on-line. If the name is available, the notice will confirm name reservation for a period of 2 months. If the name is not available the notice will explain the reasons why.

Additional Information in Relation to Application

Reservation period: A name is reserved for a period of 2 months from the date of approval.

Extension of name reservation: An application for an extension of name reservation for a period of up to 2 months can be lodged prior to the reservation expiry date. Reasons for the extension must be provided in detail on the form or in an annexure. An application for extension will only be granted if reasons acceptable to ASIC exist. If insufficient reasons are provided the reservation extension will be rejected. Only in very exceptional/extenuating circumstances does ASIC allow more than 2 extensions to be granted.

Cancellation: A reservation can be cancelled prior to expiry by writing to ASIC.

Names: A name is available unless it is identical to a name that is currently reserved or registered under the Corporations Act for another body, or is identical to a name that is included on the national business names register in respect of another individual or body who is not the person applying to have the name, or is unacceptable to registration under the Regulations.

Restricted name: Where a name includes a restricted word/phrase then either an application for 'Ministerial consent', or if consent has already been given a copy of the consent or approval, must be attached.

Business name: If a name is identical to a registered business name(s), ASIC must be satisfied that the applicant/company/body is entitled to the use of the name under s.147 or s. 601DC (as applicable). To assess entitlement to the name, the questions regarding the business name(s) shown on the Form 410 must be completed. Alternatively, that information may be given in a statement attached to the Form 410 (as an annexure) under the heading 'Declaration Regarding Registered Business Name(s)' providing the same information as is required on the Form 410. The statement must also be dated and signed by the 'applicant' as being 'true and complete' as follows: "I declare that the information given in this statement is true and complete". However, note, that business names registration is a state matter, so if a business name is registered in another state, even if identical to your business name registered in your state, then you cannot register that as a company name.

New company registration: If you have indicated on the Form 410 that you are entitled to reserve a name which is identical to a business name, you will need to



restate the business name details on the Form 201 “Application for Registration as an Australian Company” when you come to actually register the company.

Change of name: If you have indicated on the Form 410 that you are entitled to reserve a name which is identical to a business name, you will need to restate the business name details on a Form 205 “Notification of Resolution” [Change of Company Name]. Note: a company must convene a meeting of members and pass a special resolution to change its name.

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.