



## MEMO

To: Board of Directors

From: Company Secretary

Subject: **CONSTITUTION: CHANGE OR AMENDMENT – PTY LTD COMPANY**

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Since 1 July 1998 a company's "Memorandum & Articles of Association" have, together, been called the "Constitution" and for Proprietary Limited companies there is no longer a requirement – or, indeed, the possibility – to lodge a copy of, or amendments to, the Constitution with ASIC.

Note: this lodgement requirement still applies to all other companies, and to Pty Ltd companies which are lodging application to become a public company type (ie, their new Constitution is to be lodged at the same time as the request to change type – ref final paragraph of Section 136(5) of Corporations Act).

To amend or replace an existing Constitution for all companies a Special Resolution must still be passed by the members/shareholders [Section 136(2)].

A Special Resolution requires at least 75% of the members (shareholders) to approve.

However, a Pty Ltd company does not have to (and, in fact, also cannot) lodge details of the Special Resolution with ASIC either [but other companies must – ref Section 136(5)].

Following shareholder approval then, the Company simply amends or replaces the Constitution in its records (usually held in the Company Folder – with the minutes and registers, etc) and, I would suggest, provides a copy of the new/amended Constitution to all Directors and the corporate lawyer and accountant, for their information, reference and use as necessary.

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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.*