



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CONSTITUTION – KEY AREAS**

When putting together the Constitution of a company there are certain key areas/matters to be taken into consideration/reviewed.

The Constitution is a document which formalises the division of power between shareholders, directors and officers of a company and provides the operational framework/rules for the control, governance and management of the company.

So, the areas to be considered should include:

Shares

- Classes of shares – some of which may have restrictive rights (eg, to receive dividends only, but not vote)
- Power of directors (most usually) – or shareholders – to create new classes/issue more shares
- Pre-emptive rights – particularly relevant with a small number of shareholders; unworkable in a large public company
- Share certificates vs holding statements – the ‘modern’ way
- Control over share transfers – but impossible with a stock exchange listed company
- Should there be proportional takeover restrictions (need to refresh every 3 years)

Shareholders

- Direct voting – the ‘new’ way in lieu of proxies (well.....in addition to)
- Meetings – does the chairman get a casting vote
- Is 2 sufficient for a meeting quorum
- Notice period – 21 or 28 clear days minimum

Directors

- Shareholder ratification after board appointment
- 3 year rotation (mandatory for stock exchange listed companies)
- Quorum for meetings: 2 or ‘more than half’ the number of directors
- Does chairman get a casting vote
- Circulating resolutions – to be signed by all directors or only a majority



- Minimum period [before a shareholder meeting] of say 6~8 weeks for an 'outsider' to give notice to stand as a director
- Alternate director rules

Administration

- Dividends – declared by directors (most common) or shareholders – and not to be restricted to payment out of profits – needs wider 'positive net equity' provision
- Bank accounts – to be operated on by directors, with minimum 2 to sign, or whoever they empower

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.