



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CONVERSION TO PROPRIETARY COMPANY TYPE**

A public company (Limited or No Liability) can convert to a Proprietary Limited (“Pty Ltd”) company type if it meets ASIC’s requirements for such a company type – see NOTE ‘A’.

Note, for a No Liability (“NL”) company all shares must be fully paid before a company type conversion can be undertaken.

The main criteria for conversion to a Pty Ltd company type is shareholders’ approval by Special Resolution (ie, at least 75% of all votes cast) at an Extraordinary General Meeting (“EGM”).

The process requires the following:

- Board consideration and resolution to call an EGM and recommend shareholder approval

and

- Prepare explanatory letter }
- Prepare EGM Notice } and despatch to shareholders
- Prepare Proxy Form }

or, if there is only one shareholder:

- Sign a Shareholder Resolution, if preferred in lieu of calling a meeting.

Procedure

So, to progress this matter requires us to now proceed as follows:

1. Hold a Board meeting (or circulate a Resolution) for Directors to formally agree to change the company type [and accept the replacement Constitution, if that is to also happen – see NOTE ‘B’], recommend the proposal to shareholders, and approve the calling of an EGM and the Notice of Meeting/Proxy Form.
2. If there is a sole corporate shareholder, the Board needs to also appoint an Authorised Representative to attend and vote at the EGM or sign a Shareholder Resolution.
3. (a) Hold the EGM after at least 21 days’ notice – see NOTE ‘C’;



or, if appropriate

(b) Prepare a Shareholder Resolution and have it signed.

4. Lodge Forms 205 & 206 with ASIC.
5. Await the “gazettal period”; ie, one month after publication (which happens up to 13 days after lodging the forms) of the Company’s intention to change type in the Government Gazette. After the one month date – if there have been no objections (eg, by creditors) – ASIC automatically issues a new ‘Certificate of Registration on Conversion’. This is the date the change takes effect.

NOTES:

- A. To be a proprietary company there must be no more than 50 shareholders, other than current employees (of the Company and any subsidiary) or persons who were employees at the time of issuing/acquiring shares. Whilst “employee” is not defined in the Corporations Act in this context, in relation to employee share schemes, for example, it generally includes officers (directors and company secretary), casuals (employed for more than 1 year) and contractors (earning at least 80% of their income from the employer for more than 1 year). I assume that shareholding corporate entities “controlled” by employees would also count as “employees”, but I am not aware of a specific reference in the Corporations Act in this context either.
- B. It would seem appropriate to adopt a new Constitution at the same time or move to the “replaceable rules” in the Corporations Act. Our current Constitution is drafted as though we were listed and is not necessarily appropriate to a proprietary company in many respects.
- C. We are still a public company until this change takes effect so, in my opinion, even if “short notice” is planned (and 95% written consent is achievable relatively simply to allow that), the EGM date should be set at least sufficiently in the future to allow reasonable time for shareholders to receive the notice, lodge consents/proxies and attend – say a minimum of 7 days from posting.

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.