



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CONVERSION FROM LARGE PTY TO PUBLIC COMPANY**

A “Proprietary” company can convert to a “Public” company (Corporations Act - section 162) by directors calling a shareholders’ meeting (on minimum 21 days’ clear notice – secs 249H & 249L), passing a special resolution (by at least 75% of votes present in person or by proxy – sec 9), lodging an application with ASIC on the appropriate forms (205 & 206) – secs 162 & 163 - and payment of the applicable fee, then waiting the statutory 1 month gazettal period (sec 164).

In practice, the whole process can take up to about 10 weeks, depending on the timing of the Govt Gazette. The gazettal period allows time for creditors, shareholders, etc to lodge objections if they consider they’ll be adversely affected.

The key differences between a “Large Proprietary” company type – which the Company is now – and a “Public” company type are, in summary

MATTER	COMMENTS	SECTION
AGM	Mandatory for a public company – to be held by 30 November	250N
Annual Reporting	Some (relatively small) additional requirements for a public company in Directors’ Report	300
Annual Return	ASIC fee for a public company is higher	Reg. 7(a)
Board Meetings	In a public company directors:	
	- must declare at the next board meeting after they become aware, any “material personal interest” (eg, contract with a company in which they are a director/shareholder) in any matter that relates to the affairs of the company – except in some limited circumstances – which must be recorded in the minutes	191
	- cannot vote on, take part in discussion on, or be present in a board meeting whilst a matter in which they have a “material personal interest” is being considered WITHOUT the unanimous consent of the other directors present (or approval of ASIC in some cases – sec 196) and - if there are not enough directors to form a quorum to vote after excluding an interested director then that matter can only be approved at a shareholders’ meeting	195
Company Secretary	Mandatory for a public company	204A



Directors	A minimum of 3 directors is required in a public company	201A
Director Re-election	In a public company shareholders' meeting: - effectively, each director standing for re-election must be voted on by separate resolution	201E
Fund Raising	Only a public company can have more than 50 non-employee shareholders A company must be public to raise capital using a prospectus (or other disclosure document) – unless the capital raising is exempt under CA Sec 708	113
Half-yearly Report	31 December statutory accounts and at least an audit review is required for a public company <u>if it becomes a Disclosing Entity</u> – ie, issues a prospectus AND has at least 100 shareholders	302
	An unlisted DE also has, amongst other obligations, “continuous disclosure” requirements with ASIC (in relation to matters which might affect the company's share price) – somewhat akin to a listed company	111AP
Proxies	Mandatory to allow proxy voting at shareholders' meetings for a public company (up to 2 proxies may be appointed by any 1 shareholder)	249X
Registered Office	A public company must display a sign showing its name and the words “Registered Office”	144
Related Party Transactions	For a public company a shareholders' meeting may be required to approve giving a financial benefit (including loans) to a director or other related party (and the meeting documents must be lodged with ASIC before being sent to shareholders) UNLESS covered by the exemptions which include: - if the benefit is “reasonable” remuneration of a director	208 210
	- such transaction is on ordinary “arm's length” commercial terms	211
Shareholder Meetings	A public company with more than 1 shareholder CANNOT hold a shareholders' meeting by round robin (Circulating Resolution)	249B
Takeover Provisions	Certain restrictions/limitations may not be available to a public company in relation to the rules governing a shareholding exceeding the 20% “takeover” threshold (or increasing a shareholding that is already above 20% as at the date when change of company type occurs)	606
		611

A public company also must have an auditor – but as the Company has already reached “Large Pty” status this won't be a new requirement.

Some of the above requirements for a public company are already included in the Company's Constitution, so would not actually be an additional “burden”.



In fact, there is also no need to change the Constitution. The existing one can be retained except that any conflicting requirement in the Corporations Act for a public company would over-rule.

Obviously, if there is any future decision to list there would be more stringent Corporations Act and ASX Listing Rule requirements/compliance.

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.