



MEMO

To: Board of Directors
From: Company Secretary
Subject: **DECEASED SHAREHOLDER**

We are guided in the procedures following the death of a shareholder by the Corporations Act [sec. 1072A Replaceable Rule] and the Company's Constitution.

Under the Act:

- a) If shares are held jointly the survivor is 'automatically' entitled to the deceased holder's interest by 'transmission' of the shares [sec. 1072A(5)]
- b) If shares are held in one name –
 - the Company should only recognize the personal representative of the deceased shareholder (ie, the executor, trustee or administrator of the deceased's estate), who must satisfy the Company that he is that person
 - the executor is entitled to deal with the deceased shareholder's interest in the shares as and to the extent that he has power to do so, including being registered as the holder of those shares [sec. 1072E(3)].

Our Constitution states in Rule 8.6 'Transmission by Death':

The trustee, executor or administrator of a deceased shareholder (who is not one of several joint holders) is the only person recognised by the Company as having any title to securities registered in the name of the deceased shareholder provided that the Board may, subject to compliance by the transferee with these rules, register any transfer signed by a shareholder prior to the shareholder's death notwithstanding that the Company has notice of the shareholder's death.

Documentation Requirements

Joint holdings –

The surviving shareholder should provide to the Company:

- a completed 'Request for Transmission' of the shares; and
- certified copies of the death certificate and the will; and/or
- if applicable, a certified copy of the grant of probate (of the will) – in which regard see sec.1071B of the Act.



Sole shareholdings –

The executor should provide to the Company:

- suitable evidence that he is the personal representative of the deceased
- certified copies of the death certificate and will and/or, if applicable, grant of probate (Note: sometimes seeking probate is not warranted; eg, due to the relatively small size of the estate – but the Company is still entitled to be satisfied in this regard)
- completed 'Request for Transmission' (into the name of the executor) or 'Standard Transfer Form' (into the name of the beneficiary/ies).

If the shareholder dies intestate (ie, without leaving a will), then an administrator will have to be appointed (by the court) who will have to provide to the Company 'letters of administration' of the estate authorizing him to act, as well as the above documents.

The Company should then note in the Share Register against the shareholder's name:

- date of death
- date documentation provided
- name and address of executor/administrator

Executor's Options

Once the Company is satisfied that it is dealing with the right party, the executor/administrator may give to the Company either:

- i) signed written notice requesting transmission of the shares into his name "as executor of the estate of _____"; or
- ii) a completed share transfer form – signed by him as trustee of the estate – transferring the shares into another name/s (ie, usually the beneficiary/ies);

following receipt of which the Company must register the shares as directed (ie, the directors cannot invoke any provision – eg in a constitution – which might otherwise restrict share transfers).

Note: if more than 1 executor all must sign forms/documents relating to the estate.

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.