



## MEMO

To: Board of Directors

From: Company Secretary

Subject: **DIRECTOR APPOINTMENT BY SHAREHOLDERS**

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You have spoken to me about Mr A\_\_\_\_\_ joining the board and I note the Company has actually already indicated this possibility to the market and via an ASX announcement which said, in part: *“The Board has also invited Mr A\_\_\_\_\_, principal of \_\_\_\_\_ to join as an additional Director. Mr A\_\_\_\_\_ has indicated his intention to do so and is expected to join the Board before the AGM scheduled for the 26 October 200X.”*

I was advised the other day that the intention is to appoint him at the scheduled 25 October 200X board meeting. If this is to occur, for example, for commercial reasons, I need to point out to you the duplication of regulatory requirements if a new director is appointed between the despatch of the AGM Notice and the actual meeting.

So, my suggestion is to either appoint Mr A\_\_\_\_\_ no later than the date of the AGM Notice (to be 24 September 200X at the latest) – and hence include him in the Notice for AGM ratification – or hold a brief board meeting straight after the AGM and appoint him then.

You have also indicated that perhaps Mr A\_\_\_\_\_ can just be appointed at the AGM by the shareholders. Yes, our Constitution and the Corporations Act (see sec.201G Replaceable Rule which states: *“A company may appoint a person as a director by resolution passed in general meeting.”*) does allow shareholders to vote for a new director without him first having been appointed by the board. But, in my experience, that is most unusual where the board has in fact invited him to be a director. From my experience, this provision is usually only used where the proposed new director is nominating himself and/or certain shareholders want to put forward a candidate and/or the person does not have board support. Normally, if the board wants a new director they appoint him and then that appointment is just ratified at the next AGM – if nothing else, that makes it harder for shareholders to remove him simply because he is an incumbent director.

If you want we can certainly do it that way and I will include a resolution for Mr A\_\_\_\_\_’s appointment in the AGM Notice (draft to be circulated to the board later today). We will, however, need his written consent no later than the Notice date (ie, 24 September) and a nomination (either from a director, “the board”, or shareholder(s) with 5% of votes). If it is “the board” nominating then that can simply be included in the agenda of the board meeting where the AGM Notice will be formally approved – on or just before 24 September. Also, we will need to put a brief biography of Mr A\_\_\_\_\_ in the Notice [explanatory notes] so shareholders know



who they are being asked to vote for (normally shareholders can read about directors in the Annual Report or, if a more recent appointment, in the ASX announcement).

If we go this way – and include his appointment as an AGM resolution, have you got a brief bio – or should I email him for that and explain what is happening – or do you want to sort that part out yourself – plus who will arrange an appropriate consent letter from him?

I hope this assists. Although in my opinion the easiest is to just appoint Mr A \_\_\_\_\_ now (or by say 24 September, the AGM Notice day) – or straight after the AGM.

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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.*