



MEMO

To: Board of Directors
From: Company Secretary
Subject: **DIRECTOR'S CONSENT**

Before being appointed as a director of a company a person must give their prior written consent (section 201D of the Corporations Act) – by signed letter or other form of notification – and, ideally, provide personal details and inform the company of other relevant information.

The written consent must be retained by the company with the statutory records (i.e., in the Company Folder) – sec.201D(2).

It is an offence of 'strict liability' under the Act to not adhere to sec.201D. [Note: a strict liability offence is one which essentially means it is not necessary to prove intention, knowledge, recklessness or negligence (see Section 6.1 of Criminal Code); however, a "took all reasonable steps to comply" defence may be available (see Section 13.4 of Criminal Code)].

Personal Details

A company must lodge with ASIC the following personal details of directors using Form 484 "Change to Company Details" within 28 days of a director's appointment, as per sec.205B:

- a) *Given and family names*
- b) *Any former names*
- c) *Date and place of birth*
- d) *Residential address.*

Sec.205C requires that a new director must give the company his personal details within 7 days of appointment. However, in practice, it is most usual for the consent letter/notification to also include these details, so that they are given to the company before their actual appointment.

Not adhering to either sec.205B or sec.205C is also an offence of strict liability.



Disclosure of Interests

The other relevant information that is usually included in a director's consent letter/notification is that required for the director to comply with sec.191 – disclosure of material personal interests.

Such information may typically be asked for using a heading such as the following on the director's consent, immediately following the headings seeking the director's personal details (as above):

- e) *Matters in which I have, or may have, a relevant or material personal interest in relation to the Company (including details of other directorships, securities in the Company or any related body corporate, contracts relating to such securities, interests in contracts to which the Company is a party, actual or potential conflicts of duties or interests):*
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Alternatively, such information on material personal interests may be sought under the following headings set out in an attachment to a director's consent:

1. *Other directorships of public companies or their subsidiaries or related bodies corporate:*
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2. *I am an officer of or member of the undermentioned corporation/s and should be regarded as interested in any contract/s which may be made by the company with such corporation/s (include corporation name/s and nature and extent of interest):*
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3. *I possess the undermentioned property or hold the following offices whereby duties or interest might be created directly or indirectly in conflict with my duties as a director of the company:*
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4. *I hold personally and/or through a related party and/or have a relevant interest in, and/or have the power to acquire or dispose of, or to exercise control over the acquisition or disposal of, shares held in the company or a related body corporate as follows:*
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5. *Particulars of rights or options held by me alone or jointly with others in respect of the acquisition or disposal of shares in, debentures of, or participatory interests made available by, the company or a related body corporate, are as follows:*

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6. *Particulars of contracts to which I or a related entity are a party or under which I am entitled to a benefit, being contracts under which a person has a right to call for or to make an issue of shares in, debentures of, or participatory interests made available by, the company or a related body corporate, are as follows:*

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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.