



MEMO

To: Board of Directors
From: Company Secretary
Subject: **DIRECTORS' REMUNERATION**

You have asked what rules govern payments to directors.

A company's constitution will almost always have a section dealing with the remuneration of directors, by way of fees or other compensation, payment for work above the normal duties of a non-executive director, reimbursement of expenses and retirement benefits.

However, payments to directors often requires shareholder approval because they are "related party benefits" (ie, a director is 'related' to the company) – see below.

Statutory Provisions

The Corporations Act has a 'Replaceable Rule' – section 202A – governing remuneration of directors, which says:

- (1) The directors of a company are to be paid the remuneration that the company determines by resolution.
- (2) The company may also pay the directors' travelling and other expenses that they properly incur:
 - (a) in attending directors' meetings or any meetings of committees of directors; and
 - (b) in attending any general meetings of the company; and
 - (c) in connection with the company's business.

The fact that 'the company' determines the amount means shareholders must approve, not the directors themselves.

Also, sec 202B states that a company must disclose directors remuneration in the following situations:

- (1) A company must disclose the remuneration paid to each director of the company or a subsidiary (if any) by the company or by an entity controlled by the company if the company is directed to disclose the information by:
 - (a) members with at least 5% of the votes that may be cast at a general meeting of the company; or
 - (b) at least 100 members who are entitled to vote at a general meeting of the company.



The company must disclose all remuneration paid to the director, regardless of whether it is paid to the director in relation to their capacity as director or another capacity.

- (2) The company must comply with the direction as soon as practicable by:
 - (a) preparing a statement of the remuneration of each director of the company or subsidiary for the last financial year before the direction was given; and
 - (b) having the statement audited; and
 - (c) sending a copy of the audited statement to each person entitled to receive notice of general meetings of the company.

But if a proprietary limited company has a single director/shareholder, then under sec 202C:

A person who is the only director and the only shareholder of a proprietary company is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.

Public Companies

Chapter 2E of the Act makes special provision for payments to public company directors. In particular, sec 211 states that *shareholder approval must be obtained, unless*

- the payment is 'reasonable' remuneration

and that –

- remuneration should be considered whether or not reasonable in:
 - (i) the circumstances of the public company giving the remuneration; and
 - (ii) the related party's circumstances (including the responsibilities involved in the office or employment).

Similar reasonableness/shareholder approval provisions relate to giving retirement benefits – see Chapter 2D Division 2 of the Act.

Shareholder Approval

It is mandatory for stock exchange listed companies to obtain shareholder approval to pay/increase remuneration payable to Non-Executive Directors – see ASX Listing Rule 10.17 which says:

An entity must not increase the total amount of directors' fees payable by it without the approval of holders of its ordinary securities. This rule does not apply to the salary of an executive director. However, an executive director's salary or



director's fees must not include a commission on, or percentage of, operating revenue.

10.17.1 The notice of meeting must include the amount of the increase, the maximum amount that may be paid to the directors as a whole, and a voting exclusion statement.

10.17.2 If a non-executive director is paid, he or she must be paid a fixed sum.

AGM Resolution

A. Typical resolution for a Notice of Shareholders Meeting:

To consider and, if thought fit, pass the following resolution as an ordinary resolution, with or without modification:

"That in accordance with Listing Rule 10.17 of the Official Listing Rules of the ASX Limited and Rule 40.5 of the Company's Constitution, the total aggregate annual remuneration payable to non-executive Directors of the Company be increased by \$100,000 per annum, from \$200,000 per annum to a maximum of \$300,000 per annum."

Notes:

The Company will disregard any votes cast on this Resolution by:

- *a Director; and*
- *any associate of a Director.*

However, the Company need not disregard a vote if:

- *it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or*
- *it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.*

B. Typical explanatory notes to accompany a Notice of Meeting:

In order for the total aggregate annual remuneration payable to Non-Executive Directors of the Company to be increased, Listing Rule 10.17 of the ASX Listing Rules and Rule 40.5 of the Company's Constitution must be complied with. The ASX Listing Rules and the Constitution provide that the Company must not increase the amount of remuneration payable to Non-Executive Directors of the Company and its child entities unless Shareholders approve such an increase.



The Board considers that this increase in the total aggregate annual remuneration payable to Non-Executive Directors is necessary to provide an ability to increase the remuneration payable to the current Non-Executive Directors and any additional Non-Executive Directors who might join the Board. Further details on the remuneration paid to Non-Executive Directors are set forth in the Remuneration Report contained in the Directors' Report section of the Annual Report.

The Company believes that all relevant information concerning Resolution 5 required in respect of Listing Rule 10.17 is included in the text, and accompanying notes, of this resolution in the Notice of Meeting

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.