



MEMO

To: Board of Directors
From: Company Secretary
Subject: **DIRECTOR'S RETIREMENT AGE / TENURE**

In response to the board's query about whether or not a director must retire at any particular time, I have investigated and advise hereunder.

It is noted that the director concerned will this year turn 72 and have served 10 years on the board. He is also the director scheduled to retire by rotation and shareholders will vote on his re-election at this year's AGM.

No Mandatory Retirement

I confirm that the provision in the Corporations Act mandating directors of public companies (and their subsidiaries) retiring at age 72 – unless shareholders annually re-elected them by special resolution – was repealed several years ago.

It was considered that such provision was discriminatory and anomalous, being contrary to modern equal opportunity thinking and practice. Plus, these days, business people remain in the work place longer and are usually quite capable of managing the affairs of a company until much older than they used to be.

Recommended Retirement

However, notwithstanding the legislative change, more recently the ASX through its Corporate Governance Principles, proclaimed a new recommendation [Recommendation 2.3] that if a director of a listed company has been in that position for more than 10 years the board must at least annually assess whether that length of service may have compromised his independence because, for example, he may have become too close to management having had such a long time involvement with the company.

Of course, the contrary may in fact be the case, that a long-serving director has gained a deep and invaluable understanding of the company and its business and operations, and so be of great value as a board member.

Shareholder Disclosure

For ASX listed companies which must comply with the Principles, if the relevant director does not retire after 10 years, they must address this issue in the annual Corporate Governance Statement which appears in the company's Annual Report and, when applicable (eg, tri-annual director rotation), in the AGM notice documents.



That is, the company must state and explain the board's reasons why, in its opinion, the director's continuation in office should not compromise the person's independence or influence (or reasonably be perceived to influence), in any material respect, or his capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the company and shareholders generally.

Summary

Having outlined the issues, in my opinion I would recommend that the board consider retaining the director on the basis that his competency and contribution to the board and the company are keenly valued, and are not necessarily related to age or length of tenure – and this should be explained in this year's Corporate Governance Statement and the AGM papers.

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.