



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **DIRECTORS - GOOD FAME & CHARACTER**

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The ASX requires that all directors of companies proposing to list on the stock exchange must be of 'good fame and character' and appropriate background checks (police, bankruptcy, etc) must be undertaken on them and provided to ASX - ref condition 17 to Listing Rule 1.1.

The rule also applies to companies required to re-apply for listing pursuant to Listing Rule 11.1.3.

The requirement adds support to the directors' duties of acting in good faith and for the proper purposes of the company, and aims to enhance integrity in the market.

### **Background Checks**

New companies must provide to ASX for each director or proposed director at the date of listing:

- a police/CrimTrac national criminal history check (or its overseas equivalent);
- an Insolvency & Trustee Service Australia bankruptcy check (or its overseas equivalent); and
- a completed statutory declaration from each director at the date of listing affirming, amongst other things, that they have not been the subject of relevant disciplinary or enforcement action by a stock exchange or securities market regulator.

ASX may also have regard to any other information it has or obtains about the directors or proposed directors and, in appropriate cases, may require a company applying for listing to provide additional specified information about them.

### **Market Reputation**

These requirements reflect a desire of ASX to maintain the reputation of the ASX market and also align with the 'good fame and character' requirement that applies to the directors of participants in ASX's licensed markets and clearing and settlement facilities. They also dovetail with the views expressed by ASIC in Consultation



Paper 155 as to the information that companies which access capital markets through a prospectus should be disclosing about their directors.

### **Existing Companies / New Directors**

These requirements do not directly apply to previously listed companies, or to new companies when appointing new directors – but the ASX has stated that they would expect that 'good fame and character' be addressed as part of the background information on directors being proposed for re-election (which is included in the Explanatory Memorandum to an AGM Notice) and that the board will undertake appropriate background checks on any new director.

This expectation is supported by ASX Good Governance Principle 1.2 which recommends that a listed company should:

- (a) undertake appropriate checks before appointing a person, or putting forward to security holders a candidate for election, as a director; and
- (b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.

### **Unlisted Companies**

Best practice suggests that all companies - not just stock exchange listed ones - should adopt and follow similar practices in relation to checking on new directors' backgrounds.

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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.*