



MEMO

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

You have asked me to clarify the process for the appointment of replacement Club-nominee Directors.

Firstly, under Article 6.3(c)(v) of the Company's Constitution the existing Club nominees will 'automatically' cease to be Directors on 31 December, being the day that they resign/cease to hold positions on the Club committee. As I see it, they will not actually have to tender a written resignation in this case.

It is then intended that the new Club-nominee Directors will be appointed at the next Board meeting of the Company– scheduled for 28 January – although it could be read that they also 'automatically' become Directors on 31 December being the date that they will become part of the Club committee.

However, whatever the case (discussed further hereunder) before they become Directors they must consent in writing. This is required under Section 201D of the Corporations Act and I know of no way of waiving this requirement.

Note that Article 6.1(c)(iii) provides that “.....the Board may act unfettered even if there are no Club-nominee Directors on the Board.....”, so it is clearly envisaged under our Constitution that there could be some days' gap during the changeover of Club-nominee Directors.

Under the Club's Rule 7.2(c) there is a mirror-type provision which states that “.....the President and the Vice President shall be the Club's nominees who are *appointed* as Directors of the Company.....”.

The new Club committee was elected by the members at the Club AGM in early December to take over from the outgoing committee effective on 31 December.

However, in my opinion, the new Club-nominee Directors do not 'automatically' become Company Directors on 31 December because at that date the Board has not formally appointed them – and I believe this requirement is reinforced by the Club Rule 7.2(c) wherein it refers to the Club nominees being *appointed*.

So, in summary, the new Club-nominees will not become Company Directors until they are appointed at the 28 January Board meeting.



Draft Board Minutes

I propose the following wording for the Company's 22 January Board minutes:

New Directors

It was noted that Bob Smith and Mary Jones ceased to be Directors of the Company on 31 December 2010 at which date their Club committee appointments terminated.

RESOLVED that Harry Richards and Tom Lyons, who have consented in writing, be appointed as the Club-nominee Directors of the Company effective as at the date of this meeting.

The Company Secretary was instructed to notify these changes to ASIC.

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.