



MEMO

To: Board of Directors
From: Company Secretary
Subject: **DIVIDENDS: PAYMENT DEFERRAL TO SELECT SHAREHOLDERS**

You have asked me to consider whether we can defer payment of dividends to some of our shareholders, specifically the Founding Shareholders, in order to preserve cash (for the time being).

The Company only has one class of shares, being 'ordinary shares', and all are fully-paid, and all have the same dividend rights under our Constitution.

I have reviewed the relevant sections of the Company's Constitution and the Corporations Act, and as I see it:

1. Ordinarily, dividends can be declared by the Directors pursuant to Rule 26.1(a) of the Constitution which states that: "The Board may declare a dividend is payable in respect of shares in the Company and may fix an amount and time for payment."
2. However, if we want to pay a dividend to only some of the shareholders (ie, those other than the Founding Shareholders), then we are governed by Section 254W of the Act which states that: "Each share in a class of shares in a public company has the same dividend rights unless:
 - (a) the company has a constitution and it provides for shares to have different dividend rights; or
 - (b) different dividend rights are provided for by special resolution of the company.
3. Therefore, to exclude (or defer) one group of shareholders from a dividend payment we will be required to call a shareholders' Extraordinary General Meeting, so that shareholders can vote on the matter (ie, to declare a dividend and specify to which group it is paid and when) by passing a special resolution.
4. I understand the proposal is to declare a dividend of 4.5 cents per share (fully franked) for all shareholders, payable following the AGM to other than the Founding Shareholders, based on the profits earned during the 2007/08 financial year. (Note: Section 254T of the Act states that dividends may only be paid out of profits of the Company.)



5. The Directors also look to pay the declared dividend to the Founding Shareholders at some future date, for which the shareholders will be asked to give the Directors the authority to pay when appropriate taking into account cash reserves, working capital needs, organic growth, acquisition opportunities, forecasts and balance sheet requirements.
6. No further dividends will be paid to any shareholders until the Founding Shareholders' deferred dividend is paid.
7. In the EGM Notice/Explanatory Memorandum it should be clearly explained to shareholders that the reasons for the Company wanting to declare a dividend and make the specific payments in the suggested manner is as follows:
 - (a) The Directors wish to pay a dividend to the Company's shareholders, but the Company does not have sufficient cash resources at the present time to pay other than external shareholders.
 - (b) The Company needs to retain sufficient working capital to fund organic growth requirements and future acquisition opportunities.
 - (c) The Directors want the ability to pay the same dividend to the Company's Founding Shareholders at a later date, when funds are available, and seeks the authority for the Board to decide when this can happen.
 - (d) In order to achieve both outcomes, the Founding Shareholders have agreed to delay the timing of their dividend payment and to support the proposed resolution for shareholder approval.
 - (e) The Founding Shareholders consider it to be in the best interests of all shareholders for the Company to pay the dividends on the basis proposed.

Proposed Resolution

To consider and if in favour pass the following resolution as a special resolution:

"That

- (i) in accordance with Rule 26.1 of the Company's Constitution and Sections 254T and 254W(1)(b) of the Corporations Act 2001, the Company declare a dividend of 4.5 cents per share, fully franked, payable to all ordinary shareholders other than the Founding Shareholders, on _____;
- (ii) a future dividend is able to be declared by the Company's Board at a future date payable to the Founding Shareholders at 4.5 cents per share fully franked ("deferred dividend"), the timing of which will



take into account acquisition opportunities, organic growth requirements, forecasts and balance sheet requirements; and

- (iii) no future dividends will be declared by the Board of the Company to any shareholders until the 'deferred' dividend of 4.5 cents per share is declared and paid to the Founding Shareholders."

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.