



MEMO

To: Board of Directors
From: Company Secretary
Subject: **HALF – YEARLY ACCOUNTS**

Directors, as foreshadowed, now that we have completed our public prospectus offering, and have more than 100 shareholders, the company is now classed as a Disclosing Entity * – and as such now has half-yearly financial reporting requirements under the Corporations Act.

The principal requirement is that under Sec. 302 of the Act all Disclosing Entities (ie, including those listed on an Australian stock exchange) must each half-year:

- prepare a financial report and directors' report,
- have the financial report audited (or audit-reviewed), and
- lodge the half-yearly accounts with ASIC

unless the company has ceased to be a Disclosing Entity 'when lodgment is due'. I have seen varying explanations of what these words ('when lodgment is due') actually really mean – some say they mean as at the final lodgment due date (ie, as per Sec. 320) – which I consider most logical; but others say they mean as at the end of the half-yearly reporting period.

A half-year for a company covers, under Sec. 323D(5), the first 6 months of a financial year, which may be shortened or lengthen up to 7 days (eg, to finish at the end of a trading or calendar week) at the directors' discretion.

The half-yearly financial report must be prepared under Sec. 303 and include:

- balance sheet }
- profit & loss } – financial statements
- cash flow }
- notes to financial statements
- directors' declaration

together with a directors' report (Sec. 306) and an auditor's report or review [on the financial report]. The financial statements and reports requirements for half-yearly accounts are somewhat less onerous than for the full year.



Sec. 309 allows a slightly more limited form of audit on the first half financial year; ie, an “audit-review” – if a company so decides. If a full audit is conducted on the first half-year’s financial report, then the annual audit is largely only required in relation to the second half-year as the 2 halves are taken to be 2 discrete financial periods.

The half-yearly accounts must be lodged with ASIC under Sec. 320 within 75 days of half-year end using Form 1001 (except for listed companies in most circumstances). Failure to lodge in time is a contravention of the Act for which both the company and its officers may be held liable.

Companies listed on an Australian stock exchange are relieved from the Sec. 320 requirement and can benefit from relevant ASIC pronouncements (Class Order 98/104, CO 06/6 & RG28) if they lodge with the stock exchange. However, this provision is NOT available if accounts are lodged with the stock exchange outside of the Corporations Act time limits.

Stock exchange listed companies’ half-yearly accounts time limits are for lodgment:

- within 2 months of half-year end – for most companies (and note, this is a shorter time frame than provided under the Act)
- within 75 days (ie, as per the Act) – for mining exploration companies.

Whilst there is no requirement to send half-yearly accounts to shareholders and/or to call any shareholders’ meeting to review/consider them, shareholders may inspect the accounts and reports at any time (on giving reasonable notice).

* Under Sec. 111AC a Disclosing Entity (“DE”) is a public company that issues Enhanced Disclosure securities (“EDS”). The Sec. 111AF definition of EDS includes where:

- a prospectus (or other disclosure document requiring lodgment with ASIC) has been issued, and
- there are 100 or more shareholders

whether or not the company is listed on a stock exchange. As our company falls into this category it is regarded as an ‘unlisted DE’.

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.