



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **REGISTER OF MEMBERS**

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The Corporations Act (sec. 114) requires a company to have at least one member – which for a company that issues shares (i.e., most companies, whether proprietary/private or public) is generally termed a ‘shareholder’ – but for other companies, that are mainly those limited by guarantee, the term ‘member’ is used in practice.

Members are either:

- those who form/incorporate a new company [section120]; or
- those who become members after company incorporation.

Only real persons (who can be minors – it’s up to the company as to whether or not they accept minors) and corporate entities can be members. Unincorporated bodies, trusts, etc, cannot be members in their name – the membership must be recorded in the name/s of the officer/s, trustee/s, etc.

### **Members Register**

All companies must keep a Register of Members – sec.168 – in which is recorded (pursuant to sec.169):

- The member’s name and address and the date on which the entry of the member’s name in the Register is made.
- Date of becoming a member.
- If the company has more than 50 members, the company must include in the Register an up-to-date index of members’ names. The index must be convenient to use and allow a member’s entry in the Register to be readily found. A separate index need not be included if the Register itself is kept in a form that operates effectively as an index.



- The Register of Members must also show (which can be in a separate record):
  - (a) the name and details of each person who stopped being a member of the company within the last 7 years; and
  - (b) the date on which the person stopped being a member.The company may keep these entries separately from the rest of the Register.
- 2 or more persons who are registered as joint members of the company are taken to be a single member of the company in relation to that membership (eg, any guarantee given). They may also be separate members of the company because of any individual membership that they hold in their own right or jointly with others.

### **New Members**

The names and other details of all new members must be entered into the Register of Members – sec.231.

A new member should sign an application or transfer form, because that confirms the contract which exists under the company's constitution between the member and the company and between the members themselves – sec.140.

### **Changes to Register**

Changes to the Members Register of companies limited by guarantee do not generally have to be filed with ASIC because they are generally public companies.

However, for proprietary companies key information in the Members Register for the 'top 20' members, and any changes, is required to be lodged with ASIC within 28 days using Form 484 "Change to Company Details".

### **Additional Information in Register**

As a matter of 'best practice' (but not required under the Act) the Members Register could also include:

- Member reference number
- Date/place of birth
- Account reference designation (e.g., <super fund>)
- Power of Attorney or Authorised Representative notation
- Corporate member ACN, date/place of incorporation, officers' names, etc
- Contact person, phone number, email address.



## **Availability of Members Register**

The Register of Members must be located (sec.172) at:

- the company's Registered Office or Principal Place of Business (in Australia)
- or other place as approved by ASIC.

Pursuant to sec.173 anyone may inspect the Register and request a copy. However, the use of information from the Register is restricted under sec.177 and it must not generally be used to contact or send material to members.

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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.*