



MEMO

To: Board of Directors
From: Company Secretary
Subject: **MOTION OR RESOLUTION**

The terms 'motion' and 'resolution' are often used interchangeably in relation a proposal which is to be – or has been – considered, voted or decided on at a meeting (of directors or shareholders, as the case may be).

The Corporations Act does not make the distinction clear either. It mainly uses the word 'resolution', but in varying contexts (gleaned from the words/wording preceding or following the word 'resolution') where in some usages it really means 'motion'. Also, the expression 'proposed resolution' is occasionally used. The word 'motion' (ie, as it relates to matters to be considered at meetings) is actually only used once in the entire Act – in section 203D(4)(b)*.

The Process

Strictly speaking, the process goes like this:

- ❖ a **motion** (i.e., the effect of something being moved) relates to a matter which it is proposed be put forward to a meeting and discussed, then voted on; and
- ❖ a **resolution** (i.e., the result of something being resolved) is the outcome of what is voted on when it is carried (passed) by those at the meeting.

Passed Resolution

A resolution that is passed, by directors or shareholders, must be recorded in minutes entered into the minute book and signed by the chairman of that meeting (or the next following meeting) within 1 month – as per section 251A of the Corporations Act.

Lost Motion

If a motion is not passed then it never becomes a resolution.

And some commentators say that only resolutions (ie, motions that have been passed) need to be recorded in the minutes of the meeting – because minutes are simply a record of resolutions. Some others say recording in the minutes is at the discretion of the chairman (or, indeed, the Company Secretary – although I would not think he has any say in the matter – they are not his minutes, they are the directors'



or shareholders' minutes of their meeting – he is merely the one who records the events/decisions).

In truth, the rationale for not recording a lost motion is probably because, until a resolution is passed, the meeting has not accomplished anything that has any real potency nor has any legally binding decision been made.

* section 203D(4)(b) relates to a director's right to speak to a motion at a shareholders' meeting where his removal is being considered

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.