



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **RELATED PARTY BENEFITS**

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Chapter 2E of the Corporations Act covers 'related party benefits' – designed to protect the interests of a company's members/shareholders as a whole, by requiring member/shareholder approval before giving financial benefits which could otherwise endanger those interests (Section 207 of the Act).

Section 208 requires, for a public company, that:

- (a) member/shareholder approval must be obtained before giving a financial benefit to a director or related party; *or*
- (b) the benefit must fall within an exception set out in Sections 210 ~ 216.

### **Exceptions to Member/Shareholder Approval**

Most relevant, the exception in Section 210 provides that:

- (a) where any benefit would be reasonable in the circumstances if the public company and the director/related party were dealing at arm's length and/or on commercial terms; *or*
- (b) the terms are less favourable to the director/related party than the terms referred to in paragraph (a);

then member/shareholder approval is not required.

Other exceptions include reasonable remuneration payments to directors, director insurance, and small amounts given to directors/related parties.

Section 213 deals with 'small amounts'. Member/shareholder approval is not required for a financial benefit to a director/related party if the total amount(s)/value(s) in a financial year does not (for each director/related party) exceed, in aggregate, \$5,000 as prescribed by Regulation 2E.1.01.

'Related party' is defined in Section 228 to include:

- a director of the company and any controlling entity
- spouses
- parents and children (of both directors and/or spouses)
- an entity controlled by any of the above
- any other entity acting in concert with a related party.



'Giving a financial benefit' is also defined very broadly – in Section 229.

### **Members'/Shareholders' Meeting**

Sections 217 ~ 224 set out the procedures for obtaining member/shareholder approval at an Extraordinary General Meeting, which include:

- prepare meeting documents, including Notice of Meeting and an Explanatory Statement, and probably an Independent Expert's Report
- lodge meeting materials with ASIC at least 14 days before the Notice is despatched to members/shareholders
- at the EGM the related party, on any associate of that party, cannot vote.

The term 'associate' is discussed and defined in Sections 10 ~ 17.

For further guidance on the whole subject see also ASIC's Regulatory Guide 76 "Related Party Transactions".

### **Proprietary Companies**

Proprietary companies (unless subsidiaries of public companies) are not governed by the 'related party benefits' provisions of the Act, but nevertheless directors of such companies must be mindful of their fiduciary duties, obligations and restrictions in relation to pecuniary and other benefits that may be derived from their position.

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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.*