



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **DISCLOSURE – CEO REMUNERATION**

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For public 'transparency', stock exchange listed companies must announce the appointment of any new CEO (and/or Managing Director) and details of his/her remuneration/employment contract (key terms and conditions) to the ASX – following approval by the board (or shortly thereafter).

This requirement is set out in ASX Companies Update 03/03 and requires, inter alia, that "to the maximum extent practicable, the market should be made aware of the components of the CEO's pay package which might govern the actions of the CEO and drive levels of performance .....” – which would include his Total Fixed Remuneration (TFR), and any Short Term Incentive (STI) and Long Term Incentive (LTI).

The ASX Update is not so specific when it comes to any increase (or other change) to an existing CEO's remuneration. However, it does indicate that the normal 'continuous disclosure' requirements are relevant and would include a need for such to be announced to the market if it might have a material impact on the company's share value or price.

### **Unlisted Disclosing Entities**

Disclosing Entities\* which are not ASX listed are governed by similar continuous disclosure requirements under Section 675 of the Corporations Act. Therefore, in my opinion, unlisted Disclosing Entities should make similar disclosures to ASIC (as a listed company would to the ASX).

### **Shareholder Approval**

There is nothing in the ASX Listing Rules about shareholder approval of a CEO's remuneration.

However, in relation to a Managing Director, for public companies where that person is also a director (or other related party as per Sec.228 of the Act [being part of Chapter 2E 'Related Party Transactions']) they may be constrained by Sec.211(1) which requires member/shareholder approval for CEO remuneration (and, indeed, for any officer or employee who is a director/related party) except that shareholder approval is not needed to give a financial benefit if:



- (a) the benefit is remuneration to a related party as an officer or employee of the following:
  - (i) the public company;
  - (ii) an entity that the public company controls;
  - (iii) an entity that controls the public company;
  - (iv) an entity that is controlled by an entity that controls the public company; and
- (b) to provide the remuneration would be reasonable given:
  - (i) the circumstances of the public company or entity giving the remuneration; and
  - (ii) the related party's circumstances (including the responsibilities involved in the office or employment).

Note too, that a company's constitution may have provisions covering the need for shareholder approval of CEO/Managing Director remuneration.

### **Remuneration Report**

Details of the CEO's (and/or Managing Director's) contract and remuneration must also be included in the Remuneration Report [being part of the annual Directors' Report] of stock exchange listed companies, under Sec.300A(1A).

*\* Part 1.2A of the Corporations Act relates to Disclosing Entities.*

*Under Sec.111AC a Disclosing Entity is a corporation that issues Enhanced Disclosure securities ("EDS").*

*Briefly, Sec.111AF defines EDS as shares or other securities issued where:*

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

*whether or not the corporation is listed on an Australian stock exchange.*

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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.*