



MEMO

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

The Chief Executive Officer of a company would usually be paid remuneration, unless, for example, the person is a director of a small family company.

This remuneration should be approved by the board and be whatever amount is agreed between the parties.

Shareholder Approval

However, for *public* companies *where that person is also a director* (or other related party as per Section 228 of the Corporations 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:

Member 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 give 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).

Continuous Disclosure

Additionally, for public 'transparency', stock exchange listed companies must announce the appointment of a new CEO and details of his remuneration to the ASX.

This requirement was promulgated 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"



In particular, the ASX expects companies to disclose the key terms and conditions of the relevant contract entered into. ASX may query any failure to release such information as to why such terms and conditions are not considered material and may ask companies to provide additional disclosure.

The disclosure should enhance investor understanding of key aspects of companies' remuneration framework and its link to performance, such as:

- what proportion is base pay;
- what proportion is performance-related and over what time frame;
- what proportion is tied to movements in the share price (and over what duration);
- whether there is an add-on for longevity;
- the nature of termination entitlements; and
- any other built-in components.

In fact, as they are governed by not dissimilar continuous disclosure requirements under Sec.675 of the Act, in my opinion unlisted Disclosing Entities should make similar disclosures to ASIC.

Remuneration Report

Furthermore, details of the CEO's contract and remuneration must be included in the Remuneration Report [being part of the Directors' Report] of stock exchange listed companies, under Sec.300A(1A).

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.