



MEMO

To: Board of Directors
From: Company Secretary
Subject: **MINIMUM SHARE CAPITAL**

The Corporations Act requires, under section 114, that a company must have at least 1 shareholder – which presumes it must have at least 1 share issued – but it does not state a minimum paid-up amount.

Sec.117(2)(k) requires that on the application to register a new company (Form 201 “Application for Registration as an Australian Company”) the following must be inserted:

- (i) the number and class of shares each shareholder agrees in writing to take up;
- (ii) the amount (if any) each shareholder agrees in writing to pay for each share;
- (iii) whether the shares each shareholder agrees in writing to take up will be fully paid on registration;
- (iv) if that amount is not to be paid in full on registration—the amount (if any) each shareholder agrees in writing to be unpaid on each share;
- (v) whether or not the shares each shareholder agrees in writing to take up will be beneficially owned by the shareholder on registration.

Sec.117(2)(l) also requires for a public company, if shares will be issued for non-cash consideration, the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the Form 201.

The question remains: can shares actually be issued for no consideration whatsoever – and the answer is unclear to some?

However, whilst it appears clear that shares can be issued for a ‘nil’ cash amount, there is a suggestion, at least for a public company, that if there is ‘consideration’ given for the shares in any way then such needs to be explained. This is done through the lodgement of a Form 208 “Notification of Details of Shares Issued for Other Than Cash”, and if there is a contract involved a Form 207Z “Certification of Compliance with Stamp Duty Law” must also be lodged.



Similar provisions apply for the issue of additional shares for no cash consideration in the future, after the company is registered, when a Form 484 (Part C) "Change to Company Details" must be lodged (and Forms 207Z/208 if applicable).

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.

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