



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SHAREHOLDER CHANGES**

Details of shareholders (members) of a company – and any changes thereto – must be recorded in a register (Register of Members/Shareholders, or Share Register) pursuant to Section 169 of the Corporations Act.

The register of members/shareholders must be held at the company's registered office or principal place of business (or other place approved by ASIC) – Sec.172. It contains the name and address of each shareholder (member), share class, the number of shares held, the amount paid and unpaid on the shares, and whether or not the shares are held beneficially or non-beneficially).

Under Sec.173 anyone has a right to inspect and/or obtain a copy of a company's share register (register of shareholders or members), provided they do not use the information in a manner or for uses prohibited by law (see Sec.177). A shareholder may inspect the register free of charge, however the company may charge other people to inspect the register. A company must provide a copy of the register within 7 days if a person asks for a copy. The fee for supplying a copy or inspecting the register by a non-member is prescribed by law.

Details of former shareholders must be retained in the register for 7 years after the date on which they cease to be a shareholder – Sec.169(7).

ASIC Lodgement

Details of the original shareholders in a company are lodged with ASIC on Form 201 “Application for Registration as an Australian Company” when a company is first formed. The same details must be entered into the share register.

Any changes to shareholder details advised to the company, or undertaken by the company following some corporate action (eg, share split or consolidation) must be recorded in the register. Therefore, a shareholder/member should inform the company of any change in address so that the company can update its register of shareholders (members). Additionally, a proprietary company is required under Sec.178A~178D to lodge any changes to the ‘top 20’ shareholders with ASIC. Such changes must be lodged with ASIC within 28 days using Form 484 (Section C) “Change to Company Details”.



Details of any new shareholder on allotment or transfer of shares must also be entered into the register pursuant to Sec.1071D and, if a proprietary company and the change affects the 'top 20' shareholders, be lodged with ASIC on Form 484.

Note, any contravention of Sec.178A is an *offence of strict liability* [ref. Sec.178A(2)], which means it is not necessary for ASIC to prove intention, knowledge, recklessness or negligence (see Section 6.1 of the Criminal Code). However, a "took all reasonable steps to comply" defence may be available (see Section 13.4 of Criminal Code).

Public companies are only required to advise ASIC of changes to share structure, including the issue or cancellation of shares, share conversion or division, not changes relating to individual shareholders. In fact, a public company is unable to advise ASIC of changes to shareholder (member) details. Of course, the share register must still be updated for all shareholders' changes.

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.