



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SHARES: OFF-MARKET TRANSFERS**

Shares in companies listed on the stock exchange are usually traded (sold/bought) through a stockbroker.

However, there are situations where private sales/transfers take place, deceased estates, etc, where a stockbroker is not involved and the share transfer form is sent directly to the Share Registry for processing.

Charging for Processing OMT's

Formerly, companies and/or their share registry could not charge for processing off market transfers (OMT's) under the ASX's Listing Rules. But following lobbying from the professional Share Registries about the cost of processing OMT's, and the risks – fraud, possibility of error, etc – and attendant insurance cost, the ASX relented and amended L/R 8.14 to allow a 'reasonable' fee to be charged. A new Guidance Note 28 "Transfers and Registration: Fees for Registering Paper-based Transfers in Registrable Form" has been issued to accompany the amended rule.

However, before a listed company and/or their Registry can start charging a fee, they must notify ASX of the amount(s) which they propose to charge, and sufficient evidence to enable ASX to determine if the fee proposed is reasonable.

The professional Share Registries charge \$50 per OMT charged to the shareholder (although the company can pick up the fee if they want to). Exemptions to the fee apply in some cases, such as for deceased estates and employee share plans.

Certified Documentation

In addition, all OMT documentation now has to be accompanied by:

- (a) if the seller/transferor is an individual(s) – a certified copy(ies) of the current driver's license or passport
- (b) if the seller/transferor is a company – a certified copy of the most recent annual Company Statement issued by ASIC and a certified copy of the current driver's licence or passport for each signatory to the transfer form.



Constitution

The other matter companies have to check is their constitution, to ensure that fees for transfers are not prohibited – otherwise it will need to be changed.

In our case Rule 17.3(c) of our constitution says:

“No fee shall be charged by the Company for the registration of a transfer of a share.”

So, it looks like we will need to amend the constitution – and, until it is changed the Company may have to pick up the fee.

I am having this aspect checked – and suggest that if a change is necessary [ie, by deleting Rule 17.3(c)] it be put to the forthcoming AGM for shareholders' consideration. However, I also note that many constitutions have an over-riding rule which says something like “if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency” so I suggest that, in need, we also have such a rule approved by shareholders at the AGM for incorporation into our constitution.

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.