



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SMALL PROPRIETARY COMPANY - FINANCIAL REPORTING**

A proprietary (private) company is defined in Section 45A of the Corporations Act as one which:

- is limited by shares
- has no more than 50 non-employee shareholders
- does not engage in public fund-raising activities.

Proprietary companies are classified as either “Small” or “Large”; they must be one or the other.

Most proprietary companies are “Small” and most do not have any financial reporting obligations.

A “Small Proprietary Company” is one which satisfies 2 of the 3 criteria set out in sec. 45A(2); these are:

- (a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is less than \$25 million;
- (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than \$12.5 million;
- (c) the company and the entities it controls (if any) have fewer than 50 employees at the end of the financial year.

A Small Proprietary Company does not have any financial accounts and/or reporting obligations except as provided for in sec. 292(2); that is:

1. it is directed to do so under sec. 293 (shareholder direction) or sec. 294 (ASIC direction); or
2. it is controlled by a foreign company (i.e., is a subsidiary of a company registered in a jurisdiction outside Australia) and is not consolidated into accounts lodged with ASIC by a registered foreign company.

Notwithstanding this, as required by sec. 286 all companies, including a Small Proprietary Company, must keep adequate records of all accounting/financial transactions sufficient to



enable it to compile financial statements if required. All companies must also retain financial records for at least 7 years (after the end of each financial year).

In addition, it is essential business practice to prepare accounts regularly so that the company's directors are aware of how it is trading and performing financially, whether there are pending funding needs, etc. Also, it will need financial information for various other reasons such as to prepare tax returns and provide lenders with reports.

Shareholder Direction

Sec. 293 provides that shareholders controlling at least 5% of a company may direct that accounts (financial statements and reports) be prepared and sent to all shareholders.

The direction must be signed by the requisitioning shareholders and given no more than 12 months after the end of the company's financial year. Also, it may specify all or any of the following:

- that the financial report does not have to comply with accounting standards
- a directors' report need not be prepared
- the accounts must be audited.

Accounts prepared pursuant to shareholder direction are not lodged with ASIC.

Foreign Subsidiaries

A company which is foreign controlled must prepare annual accounts (financial statements) and reports – in statutory format as per secs. 295 & 298 – and have them audited (sec. 301), lodged with ASIC (sec. 319) using Form 388, and sent to shareholders within 4 months of annual balance date (sec. 314).

However, this requirement does not have to be met if the foreign controlling company itself lodges – because it is a registered foreign company in Australia, or for whatever other required reason – its consolidated group accounts with ASIC.

There is no half-yearly reporting requirement for a foreign subsidiary – or foreign companies (unless they are a disclosing entity as per sec. 111AC).

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.