



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **SOLVENCY RESOLUTION – PUBLIC COMPANY**

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I have sent out to each of you a copy of the annual Company Statement received from ASIC and, as required, asked you to check and confirm your personal details. I have checked the corporate details which appear to be correct.

The annual Company Statement is sent out by ASIC on the anniversary of the company's formation (or some other approved date), called its 'Review Date' (for us that is 10 November).

### **Check Statement / Make Changes**

As printed on the Statement, you are legally obligated to ensure that all your company details listed on this Company Statement are complete and correct. This is required under s346C(1) and/or s346B and s346C(2) of the Corporations Act.

You will note that the Statement also advises:

- You must check the Statement carefully and inform ASIC of any changes or corrections immediately; do not return the Statement to ASIC.
- You must notify ASIC within 28 days after the date of any change, and within 28 days after the date of issue of your annual Company Statement if not already advised to ASIC.
- Late lodgement of changes will result in late fees.
- Use Form 484 to make changes to company details or if any information is missing or incomplete.
- Use Form 492 to amend any incorrect information that you have previously lodged with ASIC.

### **Solvency Resolution**

Following receipt of an annual Company Statement the directors must, within 2 months of the company's Review Date, resolve that the company is solvent – unless exempted because the company has lodged a financial report with ASIC within the 12 months before the Review Date [Sec. 347A(2)].

Lodgment of a financial report/statements with ASIC is as required under Chapter 2M of the Act, annually for



- public companies
- disclosing entities (unlisted and Australian stock exchange listed)
- large proprietary companies
- most foreign-controlled small proprietary companies

and also half-yearly for all disclosing entities. So, if this requirement has been met the company is exempt from having to pass a solvency resolution (within 2 months).

Therefore, unless exempted, the company's directors are obliged to pass a solvency resolution (or otherwise notify ASIC that such could not be passed) in a form such as:

*“**RESOLVED** that, pursuant to Section 347A(1) of the Corporations Act with respect to the Annual Company Statement as at its Review Date of 10 November 2000, and having reviewed and considered the Company's current and projected financial position, in the Directors' opinion the Company is solvent and there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable.”*

### **Public Company Obligations**

As a 'general' public company then, because we have to lodge a financial report with ASIC annually, we would normally be exempt from having to pass a solvency resolution within 2 months of the Review Date.

However, this year as we all well know, the company has not yet completed/lodged its 30 June accounts with ASIC – and the previous financials were lodged on 29 September last year – some 13½ months ago now. Therefore, in my opinion, the company's directors will, by no later than 9 January next year (ie, *within* 2 months of 10 November), have to pass a board resolution that the company is solvent (with wording such as shown above). Perhaps this matter could be on the agenda for our 25 November board meeting and dealt with then.

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#### **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.*