



MEMO

To: Board of Directors
From: Company Secretary
Subject: **TRACING BENEFICIAL SHARE OWNERSHIP**

Shares in a company may be held in a name other than that of the beneficial owner.

However, the Corporations Act provides in Section 672A a mechanism for *stock exchange listed companies* [only] to have the ability to attempt to trace the underlying beneficial ownership of their shares. This provision is not available to any other companies. ASIC can also utilize this provision of its own volition or if so requested by a company or a member of that company.

Notice

Under these provisions a listed company (or ASIC) may at any time give Notice (sometimes referred to as a 'tracing notice') to a shareholder requiring that holder to disclose details of all persons who have a 'relevant interest' in, or who have given instructions in relation to, those shares.

Such a Notice is aimed at discovering the ultimate owners or controllers of the shares. So persons who are identified in a response to a Notice may themselves be given Notice, and so on.

ASIC's Regulatory Guide 86 covers policy and procedures in relation to this matter. And a company or member requesting ASIC to give Notice must do so on Form 6071A "Application Requesting Notice of Beneficial Ownership".

Relevant Interest

'Relevant interest' in shares is broadly defined. The basic rule is that a person has a relevant interest in securities if they:

- are the holder of the securities; or
- have power to exercise, or control the exercise of, a right to vote attached to the securities; or
- have power to dispose of, or control the exercise of a power to dispose of securities.

Disclosure



A person given a Notice must disclose (Sec. 672B):

- (a) full details of their own relevant interest in the shares and of the circumstances that give rise to that interest; and
- (b) the name and address of each other person who has a relevant interest in any of the shares together with full details of:
 - (i) the nature and extent of the interest; and
 - (ii) the circumstances that give rise to the other person's interest; and
- (c) the name and address of each person who has given the person instructions about:
 - (i) the acquisition or disposal of the shares; or
 - (ii) the exercise of any voting or other rights attached to the shares; or
 - (iii) any other matter relating to the shares;together with full details of those instructions (including the date or dates on which they were given);

to the extent to which it is known to the person required to make the disclosure.

Disclosure must be made within 2 business days of receipt of the Notice. There are penalties for non-compliance with this requirement. But enforcement in an overseas jurisdiction is usually not practical, even though such overseas holdings may well be the ones where companies are most interested in tracing ownership.

Register

Sec. 672DA requires that a company maintain a Register of Relevant Interests Disclosed pursuant to Sec. 672A and that it include all of the information required to be disclosed by a Notice – including the nature and extent of relevant interests, circumstances in which the relevant interest arose, identity of the interest holder and details of instructions about the exercise of power to vote or deal with share interests.

Such Register must be established at the time when the first disclosure is received by a company.

If the Register is kept at other than the Registered Office or Principal Place of Business a Form 909 "Notification of Office at which Register is Kept" must be lodged with ASIC within 7 days advising of the location.

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.