



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CORPORATE DUE DILIGENCE CHECKLIST**

As the new Company Secretary I propose initially carrying out 'due diligence' on the Company's statutory registers and records using the following template:

ITEM	MATTERS TO CHECK
Shareholders Agreement	Is there an agreement between shareholders and is it being adhered to
Company Name	Is the company name being used properly – including "Limited" (or "Pty Ltd") – with ACN where applicable (eg, on stationery) Is any name change properly reflected in company records, stationery, cheques, etc Is the company's name displayed at business locations
Constitution	For public companies is the constitution/any changes lodged with ASIC Is the constitution copy in file updated for changes Is the constitution being adhered to, for example: <ul style="list-style-type: none">▪ Have new director appointments been ratified at next AGM▪ Are directors rotating at AGM▪ Have directors fees been approved by shareholders▪ Have dividends been approved by shareholders▪ Has the Board approved bank/cheque signatories▪ Has Common Seal been used correctly
Share Issues/Transfers	Do pre-emptive rights exist (in constitution or shareholders agreement) and are they being followed For a Pty Ltd company is there a maximum 50 shareholders excluding employees Are share applications signed (to create contract under constitution) If applicable, have Corporations Act fund raising requirements been adhered to (eg, eligibility certificates in need if no prospectus) Are allotment/transfer journals kept
Shares	Are capital raisings been undertaken within Corps Act provisions



	<p>Have share allotments been approved by Board</p> <p>Have Share Certificates (or Holding Statements) been issued</p> <p>Is there a Share Register and is it maintained as per the Corps Act</p>
Options	<p>Have they been properly granted (eg under an ESOP)</p> <p>Is ESOP being conducted properly</p> <p>Are there Options Agreements, if applicable</p> <p>Have options applications been completed</p> <p>Is there an Options Register</p>
Board Meetings	<p>Is there an appointed/elected Chairman</p> <p>Is quorum adhered to</p> <p>Have meetings been validly called</p> <p>Are minutes signed (in a timely fashion)</p> <p>Have personal interests been declared/noted in Board minutes (for public companies have interested directors left the meeting or stayed with all other directors agreeing)</p> <p>Does meeting agenda reasonably cover everything</p> <p>Are Board papers adequate (and distributed well enough in advance)</p> <p>Are financials/budgets adequate to confirm the company is trading solvent</p> <p>Is there a schedule of planned meetings</p>
Circulating Directors' Resolutions	<p>Are they [required to be] signed by all or a majority of directors</p> <p>Has the company waited for the last signature before actioning</p> <p>Have directors with a relevant interest abstained</p>
ACN / ABN	<p>Is it shown on documents, stationery, cheques, etc as required</p>
Directors	<p>Are written/signed consents held (dated no later than appointment date)</p> <p>Has the Board resolved to appoint</p> <p>Are directors names/details recorded in a register (not mandatory)</p> <p>Is there a letter of appointment (with terms)</p> <p>Is there at least 1 Australian resident director (and 2 for a public company)</p>
Related Party Interests	<p>Have they been adequately declared</p> <p>Have Corps Act provisions been adhered to</p>
Company Secretary	<p>Is signed written consents held (dated no later than appointment date)</p> <p>Is there a Board resolution to appoint</p>



	Is the name/details recorded in the register (not mandatory Is [at least 1] an Australian resident
Alternate Directors	Is there an appointment letter Is written consent held Have details (and terms) been lodged with ASIC Are the appointment terms as per the constitution Is the appointment properly minuted
Registers	Are all completed and up to date Are mandatory registers held Are registers held in an 'approved' location
Directors' Authorities	Have they been approved by the Board Are they being adhered to
Executives' Delegated Authorities	Have they been approved by the Board Are they being adhered to
Company Policies	Have they been approved by the Board Are they being adhered to
General Meetings	Are they properly called Is adequate notice given to shareholders When/where applicable, have Corporate Representatives been [properly] appointed When/where applicable, have Powers of Attorney been [properly] utilised Are meeting minutes recorded/signed Have decisions been actioned
Registered Office	Is written consent of the occupier held Is "Registered Office" properly displayed with the company name (for public companies) Is office open a minimum 4 hours each business day, or as otherwise approved by ASIC
Business Names	Are they registered (in relevant states)
Trade Marks	Are they adequately protected
ASIC	Are corporate filings up to date
Solvency Resolution	Has annual solvency resolution been passed by the Board Is it in the board minutes
Best Practice	Do Deeds of Access & Indemnity exist Have Confidentiality Agreements been signed
Loans	Have facilities been approved by the Board Has security (mortgage/charge) been approved by the



	Board Have documents been properly executed Is there a Charges Register/up-to-date
Property Leases	Have office/business/factory leases been approved by the Board Have documents been properly executed
Charges	Are they recorded in Charges Register Are the lodged with ASIC where required A register must be maintained even if blank
Debentures	Are they recorded in Debenture Register
Managing Director/Senior Executives	Have salaries been approved by the Board Is superannuation/payroll tax being paid where applicable
Trusts	Has any trustee appointment and/or unit(s) allotment been approved by the Board
Documents	Have key documents/agreements/contracts been approved by the Board Are documents correctly signed
Disaster Recovery	Is there an adequate plan in place
Risk Management	Have all relevant risks been identified and documented Is there appropriate strategy in place
Privacy	Is the company complying with the legislation
Occupational Health & Safety	Is the company compliant
Trade Practices	Is the company complying
Equipment Leasing/Hire Purchase	Are any arrangements approved by the Board Are documents properly executed
Acquisitions	Has adequate due diligence been undertaken Have proposal been assessed and approved by the Board Are they correctly documented
Filing	Is there an adequate corporate filing system, including: <ul style="list-style-type: none"> ▪ Copies of ASIC forms ▪ Shareholder correspondence
Board Committees	Are committees properly approved/constituted with: <ul style="list-style-type: none"> ▪ Charters/terms of reference ▪ Minutes Are minutes submitted to the Board for information and/or



	with recommendations Are committee recommendations being implemented/ adhered to
Policies	Are there formal corporate policies in place (eg, expenditure, travel) Have they been approved by Board
Corporate Governance	Does the company have a corporate governance statement Are relevant committees established – with charters
Insurances	Are appropriate covers/policies in place, eg: <ul style="list-style-type: none">▪ Directors' & Officers'▪ Professional Indemnity▪ Assets▪ Loss of profits▪ Public liability
Continuous Disclosure	For unlisted Disclosing Entities are they filing with ASIC as required
Legislation	Is all relevant legislation/regulation being adhered to
Subsidiaries	Are their records in order

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.