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2 October 2025

Mr Julian Atkinson
By Email : julian@atkinsonlaw.com.au

Dear Mr Atkinson

Re: Biotron Ltd

I refer to your letter dated 1 October 2025.

Resolution for new directors

I thank you for the agreement to include resolutions for the nomination of Peter Scott, Jeremy Fisher and David Castellano as directors in the notice of annual general meeting.

Constructive discussion

Ever since I have been involved in the current issues, I have been seeking a meeting with the directors.

On 20 August 2025 , Michael Hoy emailed me, stating, "I shall be back in Australia in two weeks. Happy to meet after that." On 23 August 2025, I replied, agreeing to the meeting, but he chose not to reply.

In the letter from Marcelo Mora of 25 September 2025, he stated that the company "remains open to constructive discussion". I replied the following day, stating that "The Shareholders Advisory Committee continues to be prepared to meet with the directors,", but did not receive the courtesy of a reply.

Our position is that we remain willing to have a meeting, provided that this does is not used simply as a further delaying tactic.

Removal of Mr Hoy

Mr Hoy previously informed me that he was prepared to leave his position, once the current project on which he is working is complete. I understand that the forthcoming AGM will mark the completion of that project. However, your letter implies that this is untrue. Please clarify this.

You have stated that a resolution for Mr Hoy's removal will be included in the notice of meeting "in the event that the Corporations Act is complied with". Please inform me of the compliance to which you are referring.

Section 203D contains the following.

> *... if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.*

Accordingly, there is no reason why a motion removing Michael Hoy cannot be put before the forthcoming AGM, other than a wish by the directors to postpone the shareholders having the opportunity to vote on the issue.

You claim that, "any resolution to remove Mr Hoy would simply be invalid. Proceeding on an invalid basis would expose BIT to unnecessary litigation." The provision quoted above contradicts this.

Validity of the requisition

If the resolutions we are seeking will be included in the notice of the AGM, the question of the validity of the requisition becomes irrelevant. However, I make the following observations in relation to your allegations as to the invalidity of the requisition.

You raise an issue as to the execution of the requisition, and the only authority on which you rely is the decision of a single judge in *Khan v Khan*.

However, that case is very different from the current circumstances, as it involved the question of whether a requisition had been signed in accordance with clause 26(3) of the Constitution of an association incorporated under the Associations Incorporation Act 1984 (NSW). The *Khan* case made no reference documents signed pursuant to section 249D of the Corporations Act. The notice, in the *Khan* case, stated as follows:

> *"take notice that we the undersigned Foundation Members ... in compliance with the provisions stipulated in clause 26 of the Constitution of the Association, hereby ask that you call a Special General Meeting…".*

In that case, there were numerous deficiencies in the requisition and related petition. Without enumerating them in detail, it is clear that those deficiencies do not arise in our case. The only similarity is that the requisition signed by one person. However, in the *Khan* case there was insufficient evidence to show that the person who signed the requisition had been authorised by the requisite number of members of the association. In our case, there is clear

written evidence of my authorisation to sign the requisition on behalf of each of the shareholders listed in the schedules to the requisition.

In our case, the requisition was signed by me pursuant to express authorisation from shareholders holding more than 5% of the shares of the company. In my letter to the company secretary on 26 September 2025, I offered to email him a spreadsheet setting out details relating to those members, which would have facilitated verification of the 5% requirement. I did not receive the courtesy of a reply. It would have saved a lot of time for both sides had that offer been accepted. Accordingly, I printed out and personally served at the Biotron office on Monday 29 September 2025 a copy of each of the instruments by which I was appointed.

Both the Corporations Act and the Constitution of the company refer to signing of documents by an attorney. These, of course, did not apply in the *Khan* case. Relevant provisions of section 52A of the Act are as follows:

> *Signing*
>
> *Without affecting the law on agency, if this Act requires that something be signed, it can be signed by an individual using a power of attorney from the person required to sign.*

The Constitution contains article 29 relating to a member acting through an attorney.

> *If a Member executes or proposes to execute any document or do any act by or through an attorney which is relevant to the Company or the Member's shareholding in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.*

In compliance with that article, the instruments by which I was appointed as attorney were delivered to the registered office of the company on Monday 29 September 2025.

The courts have always shown a reluctance to deprive shareholders of a right to call a meeting. The case to which you referred contains the following.

> *In NRMA Ltd v Snodgrass [2001] NSWCA 312; (2001) 52 NSWLR 383 at [22], the Court of Appeal referred to Isle of Wight Railway Co v Tahourdink and emphasised the need for "curial restraint in construing notices of meeting and in precluding members from exercising such limited powers as they possess as regards company governance", and referred to the possibility that ambiguities in a requisitionist's notice of meeting can be debated and modified.*

In any case, even if you claim that my signature constitutes an irregularity, it would not have caused any substantial injustice. Accordingly, if the signing of the requisition were deficient (which is denied) it would be cured by section 1322(2) of the Corporations Act if the matter went to court.

Summary

I look forward to clarification of your request relating to a motion for the removal of Michael Hoy. Subject to that, it appears that we have agreement that the motions we are seeking will be included in the agenda for the forthcoming AGM. If not, the company will be required to comply with its obligations pursuant to the service of the requisition.

Yours faithfully

Somerville Legal

Per : 

Email: tsomerville@somervillelegal.com.au