



# MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **ALTERNATE DIRECTORS – ATTENTANCE & VOTING**

---

As a fundamental principle any company director may appoint an Alternate Director to act for him if he is not able to act himself, attend and vote at board meetings, etc.

The provisions of our constitution are similar to most and, amongst other things, do not prohibit an Alternate acting for more than 1 director (at any one time). Hence, Mr T has been duly appointed some time ago as Alternate for all 3 of the major shareholder's representative directors.

The purpose of this note, then, is to confirm why I, as Company Secretary, took the view the other day at the Board meeting that the meeting could be validly held even though representing the major shareholder only Mr T was present – but none of the 'full' directors (representing the major shareholder) were present – and that Mr T had, in fact, 3 votes and was therefore able to control the majority (required to pass any motions).

In addition to Mr T, the 2 minor shareholders' representative directors were present, so the requisite quorum of 3 was met.

Most importantly, I noted at the meeting that had only 1 of the minor shareholders' representatives been present, in my opinion the meeting could still have gone ahead because Mr T actually counted for 3 directors in the quorum, and had 3 votes. My rationale was based on our constitution which in Article 9.5(b) says:

In determining whether a quorum for a meeting of Directors is present:

- (i) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present;
- (ii) where a person is present as Director and an Alternate Director for another Director, that person is counted separately provided that there is at least one other Director or Alternate Director present; and
- (iii) where a person is present as an Alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.

So, with these words in our constitution I have no doubt that the Board meeting was valid and that any resolutions voted on were validly passed.



## **Signing Documents**

On the other hand, in my opinion, an Alternate Director cannot sign a document requiring 2 directors' signatures (eg, a contract or agreement being executed pursuant to Corporations Act section 127) twice as Alternate to 2 appointing directors. I note too that both the Act and our constitution are silent on this matter – and, in any case, it would not be wise corporate governance.

## **Multiple Alternates**

I also mention, for information, that there is nothing in the Act, nor in our constitution – but I consider there could be in some constitutions – to prohibit the appointment of multiple Alternate Directors. That is, 1 director might appoint 2 Alternates, just in case 1 is not available (although having 2 Alternates would no doubt require very clear rules on how/when they act as it may be 'awkward' if both turned up for a meeting).

---

### **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.*