



MEMO

To: Board of Directors
From: Company Secretary
Subject: **ANNOUNCING PROXY VOTES**

Further to our various email exchanges and telephone discussions, I confirm that as far as I can ascertain there is **no** stated legal requirement for XYZ Holdings Limited, as a listed company, to actually announce the details of proxy votes received at the Annual [or an Extraordinary] General Meeting (“AGM”).

Replaceable Rules

If a company has a specific requirement in its constitution to announce the proxy votes, then they must be stated [by the chairman] at the AGM. Also, if a company adopts the Replaceable Rules contained in the Corporations Act, then under section 250J(1A) the chairman must inform the meeting, before any vote is taken, whether any proxy votes have been received and how the proxy votes are to be cast. This section does not actually require details of the proxy votes to be recorded in the AGM minutes; nor do they in any other company – other than a listed company – have to be recorded in the minutes unless the constitution so requires.

Listed Company

For a company listed on an Australian stock exchange sec. 251AA(1) requires that proxy details be recorded in the minutes as follows:

“A company must record in the minutes of a meeting, in respect of each resolution in the notice of meeting, the total number of proxy votes exercisable by all proxies validly appointed and:

(a)if the resolution is decided by a show of hands—the total number of proxy votes in respect of which the appointments specified that:

- (i) the proxy is to vote for the resolution; and*
- (ii) the proxy is to vote against the resolution; and*
- (iii)the proxy is to abstain on the resolution; and*
- (iv)the proxy may vote at the proxy’s discretion; and*

(b)if the resolution is decided on a poll—the information specified in paragraph (a) and the total number of votes cast on the poll:

- (i) in favour of the resolution; and*
- (ii) against the resolution; and*
- (iii)abstaining on the resolution.”*



However, no section of the Act requires that the proxy vote details actually be announced at the meeting – other than where the Replaceable Rules are adopted. So, given that the proxy votes appear very close, in my opinion, if you do not want to divulge the numbers at the meeting, then you are not obliged to.

In fact, there is a view in some minds that the proxy details should not be announced so as not to influence or intimidate shareholders present at the meeting.

On the other hand, some commentators suggest that if the proxy votes are not announced – i.e., someone actually says what the numbers are – then they cannot be recorded into the minutes (because minutes should only reflect what was said at that meeting, nothing else).

Shareholders will, in due course, find out details of the proxy votes, because a listed company must announce to the market ‘immediately’ after the AGM the results of each resolution (ASX L/R 3.13.2) and, under sec. 251AA(2), the proxy vote details as per sec. 251AA(1) above.

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.