



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **ANNUAL GENERAL MEETINGS**

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Now that we have had our public share issue we must hold an Annual General Meeting ('AGM') every year; we are no longer exempt from having to hold an AGM as we were when we only had 1 shareholder.

Section 250N of the Corporations Act requires every public company – other than a 1 shareholder company - ref s.250N(4) – to hold its first AGM within 18 months after incorporation, and thereafter at least once every calendar year within 5 months of the annual [financial year end] balance date.

### **Business of AGM**

Under s.250R the business of an AGM may cover any of the following:

- (a) consideration of the Annual Financial Report (to be laid before shareholders as required by s.317)
- (b) election of directors
- (c) appointment of auditor / affixing auditor's remuneration

and, for a stock exchange listed company it must also include a (non binding/ advisory) resolution covering the company's Remuneration Report – ss.250R(2) & (3).

Rule 5.3 of our constitution also refers to the business of the AGM in identical words to the Act (i.e., s.250R as above).

In addition to this general business, Rule 6.5 of our constitution provides that shareholder approval is necessary for any increase in the total aggregate remuneration paid to directors, and this matter would normally be included on the AGM agenda.

Apart from the above, the only other matter that requires AGM approval in many constitutions – but not ours – is the re-election of any directors appointed (by the board) during the year, or one-third of the directors being up for re-election on a rotational basis.

### **Notice Requirements**

S.250R and Rule 5.3 of our constitution both state that none of the above business matters need be referred to in the AGM Notice, but I have never seen a situation where all AGM matters are not detailed in the Notice.



The Act does not specifically cover what should be in a Notice, but Rule 5.4 of our constitution states it must:

- (i) set out the place, date and time of the AGM
- (ii) state the general nature of the business
- (iii) set out and/or include any other information or documents required by the Act

and be given to all shareholders, directors, alternate directors and the auditor of the company.

### **Notice Periods**

S.249H requires at least 21 days' notice to call an AGM, with some exceptions:

- a stock exchange listed (in Australia) company must give at least 28 days' notice – s.249HA
- a company's constitution may impose a longer minimum notice period – s.249H(1)
- a company (other than if listed) may call a meeting on shorter notice – s.249H(2) – if (by shares/voting power):
  - for an Annual General Meeting, all shareholders agree
  - for any other general meeting, 95% agree

except – for all companies – the resolutions include:

- to remove an auditor (see s.329)

or – for public companies:

- to remove a director; or
- appoint a director to replace one removed (see s.203D).

It is generally taken that the notice period is “clear days’ notice”, but definitely cannot include the day of the meeting – s.105. Rule 11.5 of our constitution deems postal delivery to be effected the next business day after posting (although some constitutions allow 2 or 3 days), so this too must be taken into account. In practice, therefore, at least 3 days is usually added to the statutory periods, making it 24 or 31 days’ minimum notice.

### **Extension of Time**

A public company may, under s.250P, apply to ASIC for an extension of time in which to hold the AGM – provided such application is made before the last date on which the meeting would otherwise have to be held – see Regulatory Guide 44 and Form 2501 “Application for Extension of Time to Hold AGM”.



## **Giving Notice**

S.249J provides that notice of the AGM may be given:

- (a) personally
- (b) by post
- (c) by fax
- (d) electronically; i.e., to the email address specified by the shareholder.

## **Attendance at an AGM**

Rule 5.5 of our constitution gives a right to every shareholder, director and the auditor to attend the AGM. The Rule also provides that any director is entitled to speak at an AGM.

With stock exchange listed companies the auditor is obliged to attend the AGM (s.250RA). If the auditor is present (at any company's AGM) then shareholders may ask him questions on the conduct of the audit, his report and the company's accounting policies and practices in relation to preparing the Annual Financial Report – s.250T.

Shareholders are also to be allowed to ask questions/make comments on the management of the company – s.250S.

Under Rule 5.7 of our constitution a quorum is 2 shareholders entitled to vote, and must include the holder of the Establishment Share. Generally, shareholders present can be in person or by proxy, attorney or representative.

## **Voting at an AGM**

Under Rule 5.10 of our constitution a resolution may be decided on a show of hands unless a poll is requested, in which case the decision will be based on the number of shares represented by those present and by proxies.

## **Voting Exclusions**

A shareholder who has an interest in an AGM resolution (of a public company) which could provide a financial benefit to a related party of the company (eg, a director), may not, under s.224(1), vote on that resolution, nor can any associate of his.

A 'voting exclusion statement' must be included in the Notice of Meeting with wording such as:



The Company will disregard any votes cast on Resolution 4 by:

- a Director; and/or
- any associate of a Director.

However, the Company *need not disregard* a vote if:

- it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.

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*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.*