



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **CHAIRMAN'S CASTING VOTE**

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As requested, I advise in relation to whether or not the Chairman has a casting [or additional] vote in board meetings if votes on a matter are equal (eg, 2 in favour and 2 against a resolution), particularly when we move to a board of 4 directors.

In most situations, of course, this is not an issue because there is consensus around the board table, or a clear majority view, on matters being considered. But a split vote certainly can happen.

### **No Casting Vote**

So, in summary, I can report that our constitution does **not** have a 'casting vote' provision, with Rule 18.3 simply saying: "*Questions arising at any meeting of the Board are decided by a majority of votes.*"

I have researched for any cases on the matter – eg where it might have been held unreasonable for there not to be a provision for the chairman to be able to break a deadlock on a matter, but in the only ones I have found (being relatively 'old' cases: *Chichester v. Harvard* and *Nell v. Longbottom*) the judges concluded that they could not rule in favour of a casting vote being allowed.

Accordingly, it appears that the only way a chairman can exercise any casting vote is where it is explicitly provided for in the constitution. And so if it is not allowed then, simply, no decision can be reached on the resolution being considered by the board – and that's that!

It is noted that for many years the ASX had a Listing Rule (14.10) which prohibited chairman's casting votes in listed company constitutions, but this was repealed in 2005.

### **Casting Vote Allowed**

On a review of several other constitutions I have found that in about half the cases there is a casting vote available to the chairman, in addition to his deliberative vote.

A typical provision might read:



*In case of an equality of votes the Chairman of the meeting shall, when more than two (2) Directors including the Chairman are present and competent to vote on the question at issue, have a second or casting vote.*

Section 248G of the Corporations Act, which is a 'replaceable rule' for companies that adopt such rules and/or do not have a constitution, also allows casting votes and reads as follows:

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- (2) The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

In a couple of constitutions I looked at they in fact used these exact words and, in addition stated:

- (3) The chair has a discretion, both as to whether or not to use the casting vote and as to the way in which it is used.
- (4) Where:
  - (a) 2 directors entitled to vote form a quorum, and at a meeting only that quorum is present; or
  - (b) only 2 of the directors who are present are entitled to vote on a question at a meeting;the chair does not have a casting vote.

Another common provision in a constitution states that a person who is an alternate director is entitled (in addition to their own vote if they are a director) to 1 vote on behalf of each director whom they represent as an alternate director at the meeting and who is not present at the meeting.

## **Usage Convention**

Of course, even where a chairman has a casting vote, it is suggested that he not use that provision lightly, rather try and influence an acceptable decision on a matter.

And when a casting vote is used, the 'convention' in many situations (eg, in parliament) is to vote against the resolution so that the matter remains open for later reconsideration.

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### **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.*