



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **GENERAL MEETINGS: CONDUCT OF A POLL**

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I understand the Board believes there may be a 'call for a poll' at the forthcoming AGM because of the contentious nature of some of the resolutions and/or a potential close vote. Also, on at least one resolution there are indications that some antagonistic shareholders may be present whereas it appears that the proxy votes will easily 'carry the day'.

As requested I set out hereunder some brief/simplified notes on the 'conduct of a poll'.

Generally, as set out in the Company's Constitution (and the Corporations Act), a resolution can be decided on a 'show of hands' on the basis of **one (1) vote for each shareholder** present (ie, in person or as an attorney or body corporate representative – but NOT proxies who ONLY get a vote if there's a poll). This is the usual way a resolution is decided BUT – as well or instead – there can be a poll. Once a poll is demanded/proceeded with any result from a 'show of hands' is abandoned.

When there is a poll, it is the **number of shares held** by both those present AND proxies that are counted.

A poll will be 'called' (ie, it must be undertaken) when 'demanded' by either:

- the Chairman

OR

- the shareholders (ie, at least 5 of those present/proxies OR any 1 or more holding 5% of the votes).

However, the Chairman can decide whether to proceed with the poll either at the time when it is demanded, after the completion of all other business or even at an adjourned time. Before the poll is conducted the Chairman needs to outline the procedure to the meeting

The object of the poll is to calculate/tabulate the number of votes for and against the resolution and abstentions. The Chairman has the general right to decide exactly how the poll is conducted, but normally it involves:



- passing out a voting form (ballot paper) on which each shareholder's voting intention (and discretionary proxy votes) are marked – separate papers if voting personally and as proxy-holder
- having voting papers collected, checked/verified against the Share Register, calculated, tabulated and certified correct
- the Chairman declare the results of the poll.

For expediency the Share Registry/Company Secretary should have proxy vote details calculated before the meeting showing the name of the proxy-holder and, for each resolution, the shareholder's voting intentions. On a poll the proxy-holder must decide how he will vote any discretionary votes HOWEVER under sec. 250A(4)(d) if the proxy-holder is not the Chairman he need not vote at all (even if the shareholder has directed that he vote a certain way)!

Also, just in case of need, voting forms would be pre-prepared for each resolution to hand out to shareholders/proxies. A voting paper must make provision for:

- shareholder's name
- voting right (ie, personally/attorney/corporate representative or by proxy)
- number of shares held (in practice usually ascertained during the count)
- details of resolutions – with provision to record votes (for/against/abstain)
- voters signature
- explicit instructions on completion of form.

A tabulation sheet (on which the known proxy votes could already be entered) would be pre-prepared too.

Any dispute as to the admission or rejection of a vote is normally the 'jurisdiction' of the Chairman and will be 'final and conclusive', although his determination must, of course, be made in good faith.

However, it might be more 'appropriate' for the Chairman to call on the Company's Auditor or Share Registry to either conduct the poll and/or count the votes, or undertake a scrutineer role to provide independence, and to act as Returning Officer. For a listed company the ASX may 'insist' on the Auditor being the scrutineer (L/R 14.8), or on request approve someone else.

As proxy votes 'count' when a poll is taken, it is common practice for details of proxy votes held to be announced to the meeting and/or entered into the minutes – but only **mandatory for listed companies** (sec. 251AA) to record for each resolution:

- if decided on a show of hands – the number of proxy votes received specifying those for/against/abstaining/discretionary

and, in addition

- if decided on a poll – the number of proxy votes (and total) cast in favour/against/abstaining.



Such numbers (and the results of every resolution) must also be announced to the stock exchange immediately after the meeting. Note: an unlisted Disclosing Entity could have a similar obligation under the Act.

Voting forms must be retained for 7 years after the meeting as they would be regarded as part of the 'meeting papers' and/or 'books' of the Company unless there was a procedural resolution passed at the meeting to destroy them (immediately or some time period) afterwards.

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