



MEMO

To: Board of Directors
From: Company Secretary
Subject: **GENERAL MEETING - NOTICE PERIOD WHERE DIRECTOR ELECTION**

So, *it has recently been brought to my attention* that under the ASX Listing Rules (L/R) the proposed date of our Annual General Meeting must, for us, be advised to the market at least 35 business days – ie, at least 7 weeks (plus allowance for any non-business days in that period – of which there is at least one to my knowledge) – before the AGM date. For many companies this requirement is in fact for at least 40 business days' notice, but our Constitution allows a shorter period.

There is no ASX-prescribed reporting format, and for many companies it is appropriate to simply include the date in say the annual accounts release – provided that is at least 8 weeks (or 7 weeks in our case) before the AGM date. Otherwise, a separate simple announcement is required. As we plan to lodge our accounts by 26 August, and if our AGM is 20 October (board day), then that would suffice.

The key to this requirement is set out in L/R 3.13.1 which specifies that *the AGM date must be advised to the market at least 5 business days prior to the closing date for receipt of nominations for the election of directors* – and that closing date must be at least 30 business days before the AGM date under Rule 17.4 of our Constitution (and, for many companies, 35 business days before the AGM date – under L/R14.3). **The purpose of these provisions is to allow adequate time for 'anyone' else – outside of Board proposed directors – to nominate as a director.**

The rule in our Constitution says:

- 17.4 Nominations for election to the office of Director shall be accepted:
- (a) where the Company is Listed, up to thirty (30) Business Days; or
 - (a) otherwise, up to twenty-five (25) Business Days,
- before the date of a General Meeting at which Directors will be elected or re-elected.

And a different more restrictive constitution rule says:

47(f) No person, other than a Director retiring pursuant to Article **Error!** **Reference source not found.** or a Director appointed pursuant to Article **Error! Reference source not found.** or a person nominated by the Board, is eligible to be appointed as a Director at any meeting of Shareholders unless a nomination signed by a Shareholder accompanied by the consent of the nominee to act is given to the Company at least 35 Business Days before the



meeting (or, in the case of a meeting that Shareholders have requested Directors to call in accordance with the Corporations Act, 30 Business Days).

So, the main thing is, we will have to watch and make sure we don't overlook the ASX requirements.

By the way, at one time this requirement was a lot easier not to overlook, as the AGM date used to be required to be shown on the old Appendix 4B – but when it was replaced with an Appendix 4E there was no longer a box for the AGM date.

(Note: the reference here is only to an AGM, because under L/R14.5 all companies must hold an election of directors at each AGM – but the 7/8 weeks' notice period actually applies to any general meeting at which it is proposed that an election of directors will be held.)

Unlisted Companies

Such a provision – of a time-limit before a general meeting to nominate to be elected a director – is found in many company constitutions, not just ASX-listed companies.

If the company is an unlisted Disclosing Entity then the appropriate way to notify 'people' of the cut-off date is to lodge a disclosure notice with ASIC – say at least 5 business days in advance (as with listed companies).

For other companies they might announce it on their website, or do a mail-out to shareholders.

However, failure to give any notification by unlisted companies may amount to nothing in that it is not an offence under the Corporations Act (as the Act does not cover this provision).

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.