



MEMO

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

When holding a general meeting of shareholders there must be a minimum number of shareholders present to validly conduct a formal meeting and make decisions. This minimum number is usually prescribed in the company's constitution and is referred to as a 'quorum'.

A 'meeting' itself implies at least 2 people gathered or assembled together in some way, either physically or by electronic means (where they can hear, and perhaps also see each other e.g., by telephone or videoconference) – usually to consider and/or discuss a matter or thing. In other words, 1 person cannot have a meeting on their own – because there is not at least 1 other person taking part.

For our company the minimum quorum number is 2, and the quorum provisions are set out in Rule 33:

Quorum

1. No business may be transacted at a general meeting unless a quorum of Members is present at the commencement of business.
2. A quorum of Members is 2 Members.
3. If a quorum is not present within 30 minutes after the time appointed for a meeting:
 - (a) the meeting is automatically dissolved if it was requested or called by Members under clause **Error! Reference source not found.**; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting the meeting is automatically dissolved.

Comments

I would suggest that the quorum should be present at all times throughout the meeting – or at least when decisions are being made – not just at the commencement of business.

"Members" for the purposes of this rule includes:



- shareholders actually present in person at the meeting
- people attending the meeting as the appointed proxy of shareholders
- people attending as the validly appointed attorney of a shareholder, who have exhibited their power (or a certified copy) to the company
- people attending as the authorised representative of a corporate shareholder.

Practicalities

As it is difficult for most, if any at all, shareholders to attend our Annual General Meeting – primarily because of their remoteness around the country – then we usually rely on the director shareholder(s)/representatives and proxies sent in to make the quorum (which, of course, is only 2).

Both directors C and S have share interests through their companies so, if they attend the AGM, they can be authorised corporate representatives. And our largest shareholder Exploration Limited can also appoint an authorised representative – or lodge a proxy.

In the past the Exploration Limited board has usually met the morning before our AGM, so it's 'formally' determined then who will be their representative at the AGM and how he should vote. On this occasion I understand that won't be happening (the Exploration Limited board meeting is not till next day), so I will arrange for them to pass a Circulating Directors' Resolution approving an authorised representative appointment, or to sign and lodge a proxy before the 48 hour deadline.

Corporations Act Provisions

Replaceable Rule section 249T(1) in the Act is similar – prescribing 2 shareholders for a quorum – but, interestingly, it then says “the quorum must be present at all times during the meeting”.

That section goes on to say that in determining whether a quorum is present, individuals attending as proxies or body corporate representatives are counted. However, if a shareholder has appointed more than 1 proxy or representative, only 1 of them is counted. If an individual is attending both as a member and as a proxy or body corporate representative, they are also counted only once.

Rights to appoint proxies are set out in section 249X. For the appointment of body corporate representatives, see section 250D.

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.