



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **SHAREHOLDERS' MEETING WITH SHORTENED NOTICE PERIOD**

---

In response to your query my brief answer is 'yes' in my opinion we can hold an Extraordinary General Meeting on less than the requisite 21 days' notice on the basis discussed below.

### Standard Notice Period

Section 249H of the Corporations Act requires at least 21 days' notice to call a general meeting of shareholders for both proprietary and public companies, with some exceptions:

- a stock exchange listed (in Australia) company must give at least 28 days' notice – Sec. 249HA
- a company's constitution may impose a longer minimum notice period – Sec. 249H(1)
- a company may, except as noted below, call a meeting on shorter notice – Sec.249H(2).

### Shortened Notice Period

The ability to call a shareholders' meeting in a shorter notice period – of less than 21 days – is available to all companies other than stock exchange listed [Sec.249HA(1)] provided:

- (a) for an Annual General Meeting, all shareholders (i.e., all shareholders entitled to attend and vote) agree beforehand; or
- (b) for any other general meeting, shareholders with at least 95% of the votes that may be cast at the meeting agree beforehand.

There is no requirement for such agreement to be in writing – although that is probably the best approach for the sake of good order and certainty, especially if the requisite minimum number/percentage of shareholders/votes is unlikely to be present at the meeting – otherwise it should [legally] suffice, to simply record in the minutes as the first item that the requisite number/percent did agree beforehand.

Note too that despite the fact that adequate numbers may provide approval to holding the EGM on short notice, the necessary quorum must still be present at the meeting for it to be validly held. In our case, the constitution provides that a quorum is 2 shareholders in person or by proxy, attorney or corporate representative.



## Exceptions

The short notice provision, however, is not allowed:

1. Under Sec.249H(3) – for public companies:
  - to remove a director under Sec.203D; or
  - appoint a director in place of a director removed.
2. Under Sec.249H(4) – for all companies:
  - to remove an auditor under Sec.329.

## Precedents

There have been a number of cases in relation to 'short notice' and related issues:

- Short notice need only be agreed before the meeting starts, not before notice is given – *ASIC v Aprais*
- In *Jenashare v Lemrib*
  - (i) it was held that shortened notice cannot be utilized to inhibit the auditor attending the meeting;
  - (ii) but, strangely, no decision was reached as to whether an Authorised Representative under Sec.250D has the power to approve short notice.

In a similar vein, I would suggest that a shortened notice period cannot be applied without giving the notice of meeting to all shareholders and allowing them reasonable time to receive it and respond. Again, our constitution provides that notice is deemed served on the day after it is posted – so I would think a reasonable minimum time should be say 3 business days (before the EGM could be held – subject, of course, to obtaining adequate consent to short notice).

---

### **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.*