



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **SHAREHOLDERS' MEETINGS – NOTICE PERIOD**

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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 (other than if listed) may call a meeting on shorter notice – Sec.249H(2) – if:
  - for an Annual General Meeting, all<sup>1</sup> shareholders agree
  - for any other general meeting, 95%<sup>2</sup> agree

except – for all companies:

- to remove an auditor (see Sec.329)

or – for public companies:

- to remove a director; or
- appoint a director to replace one removed (see Sec.203D).

It is generally taken that the notice period is “clear days’ notice”, but definitely cannot include the day of the meeting – Sec.105. A company's Constitution will also probably nominate 2 or more days for postal delivery, so those too must be counted. In practice, therefore, at least 3 days should be added to the statutory periods, making it 24 or 31 days' minimum notice.

### Short Notice

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*
- But, for the sake of good order and certainty such notice should be in writing



- In *Jenashare v Lemrib* it was held shortened notice cannot be utilized to inhibit the auditor attending the meeting
- Also in the above case, no decision was reached as to whether an Authorised Representative under Sec.250D has the power to approve short notice.

NOTES:

- <sup>1</sup> That is, all members entitled to attend and vote
- <sup>2</sup> That is, members with at least 95% of the votes that may be cast at the meeting

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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.*