



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **SHAREHOLDER MEETINGS – QUESTIONS**

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You have asked me to advise on the ability of shareholders to speak and/or ask questions at the Annual General Meeting.

I think the first and foremost issue and thing to remember is: this is a meeting of shareholders – it is their meeting – and so, within reason, they can say/do what they like!

However, as with any meeting, it must be controlled and it is the chairman's job to do that – and in this regard a company's constitution is quite specific about who will chair a shareholders' meeting.

Our constitution says (and I have generally never seen anything much different in any other company) in Article 5.8 that the chairman of the board of directors must chair a shareholders' meeting, but if he is not present within 15 minutes the other directors present must elect a person to chair the meeting, and only if the directors are unable to find someone, the shareholders present may elect a chairman of the meeting from amongst themselves (either a shareholder or someone else).

The chairman must conduct the meeting for the benefit of 'shareholders as a whole', not favouring any particular one or group regardless of what shareholding percentage they might control. This is enshrined in Article 5.9 of our constitution

### **Attendance & Speaking at AGM**

Under Article 5.5(a) of our constitution every shareholder, director and the auditor is entitled to attend the AGM. Part (b) of that Article also provides that any director is entitled to speak at an AGM, but is silent on the rights of anyone else [who is entitled to attend] having any right to speak.

With stock exchange listed companies the auditor is obliged to attend the AGM (Section 250RA of the Corporations Act); with other companies he is entitled to attend under Section 249V (and must be sent the Notice of Meeting).

If the auditor is present (at any company's AGM) then the chairman must allow a *reasonable* opportunity for shareholders *as a whole* to ask him questions on the conduct of the audit, his report and the company's accounting policies and practices in relation to preparing the Annual Financial Report – Section 250T. However, there is no obligation on the auditor (or directors, for that matter) to answer questions from shareholders and the 'right to question' does not diminish the chairman's power to run an orderly meeting as he sees fit. But in practice the chairman must use



discretion appropriate to the situation and should not unreasonably try and stymie discussion on a fundamentally important or critical matter.

Article 5.13(j) of our constitution states that if a shareholder is present at the AGM the authority of any proxy he has appointed to speak (or vote) is suspended – mirroring Section 249Y(3). Again, there is nothing specific about the authority of a proxy to speak at other times in our constitution, but Section 249Y(1)(a) specifically provides for this.

### **Written Questions of Auditor**

In addition, for a listed company, Section 250PA allows shareholders to submit written questions to the auditor up to at least 5 business days before the AGM, and the company must make available to shareholders at the meeting a list of those questions. Under Section 250T(3) the auditor may, in turn, provide written answers to written questions and the chairman of the AGM may permit the auditor to table those written answers at the meeting which the company must then make available to shareholders as soon as practicable after the AGM.

### **Questions About Management**

Shareholders are also to be allowed to ask questions/make comments on the management of the company – Section 250S. More specifically, the Section states that ‘the chairman of an AGM must allow a *reasonable* opportunity for shareholders as a *whole* to ask questions about or make comments on the management of the company.’

This provision applies to shareholders as a *whole* and is not intended to allow each and every shareholder the opportunity to ask questions (ref: para 10.78 of Explanatory Memorandum to the Company Law Review Act 1998).

### **Remuneration Report**

Companies which are Disclosing Entities must produce a Remuneration Report as part of the annual Directors’ Report (on the financial statements).

For a stock exchange listed company, Section 250SA provides that the chairman of the AGM must allow a reasonable opportunity for shareholders as a whole to ask questions about or make comments on the Remuneration Report.

### **Sample Explanatory Notes / Question Form**

The following are extracts from comments/notes I’ve provided/received in various circumstances to/from the directors/advisers of other companies on aspects of shareholders asking questions at AGMs:

1. *In relation to questions from shareholders, we confirm there is no legal requirement to provide a 'Question Form' or create a section on the website to facilitate questions from shareholders. Rather the inclusion of the 'Question Form' addresses the right of shareholders under s250PA of the Corporations Act to*



submit questions to the auditor before the AGM. By extending it to questions to the Company it gives the Company time to prepare answers to potential shareholder questions. To this extent, we have left the reference to the 'Question Form' in the Notice of Meeting as well as prepared a draft 'Question Form' which is attached to the end of the NoM. However we have removed the reference to the Company's website.

2. I have spoken to management about the Question Form and they are inclined to not include it, simply because they believe it might encourage questions which, in turn, will add to the burden of management to prepare responses (to the management and remuneration report questions). Moreover, we note s250PA(9) will also require us to prepare a list of the written questions to the auditor and make it available to shareholders at the AGM. So, we will probably remove the form but I'll await comments from directors before formally advising on this.

3. I really thought the directors wouldn't want to leave in the questions form – and I tried to explain the potential added burden on management – but, as you know, the chairman wanted that left in.

Anyway, it's there. This is the first time ever I've included such a form. The Act says shareholders can send in questions, but there is no obligation to point that out, and occasionally – where the board or lawyer wants – I've included the invitation to submit questions, but no form, and very rarely has anyone in any companies I'm involved with submitted a question.

I have had, however, three or four situations where management (at the direction of the board) have had to consider what questions might be asked at the AGM, and prepare model answers – and in virtually every case that's been a waste of time and energy too. Bottom line is, no law requires that you must respond to a question at the meeting, and you can always just say you don't know the answer and take it on notice to respond later (by phone or email/letter).

4. In relation to the questions from the floor, I suggest you state upfront that there is a limit of time allocated for this process. Say 15 minutes tops. You should also reserve the right to defer a response in favour of a subsequent one-on-one with the questioner, or for inclusion in the next shareholder newsletter if it's of general interest. I also like the approach – "I'll take that as a comment" and move to the next questioner.

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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.