



MEMO

To: Board of Directors

From: Company Secretary

Subject: **SHAREHOLDER MEETINGS – RIGHT TO SPEAK**

You have asked me to advise on the ability and rights of shareholders to speak at the forthcoming Annual General Meeting ("AGM"). My comments apply equally to any other general meeting of shareholders.

As this is a meeting of shareholders they can, within reason, speak and/or ask questions as they like. The shareholders own the company – it is their company – and they are generally entitled to enquire about its stewardship (by the Directors, on the shareholders' behalf), its management. Its operations, its performance and its future outlook and prospects.

Of course, as with any meeting, it must be controlled and it is the chairman's job to do that – which includes giving all shareholders a fair go and not allowing any particular one to 'vent his spleen' at the meeting.

If any shareholder has a particular grievance the right thing to do is to approach the Board and/or management about the matter. It is not appropriate to 'air dirty laundry' in front of all other shareholders and take up their valuable meeting time.

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.

Questions About Management

Shareholders are specifically allowed to ask questions/make comments on the management of the company – Section 250S of the Corporations Act. And importantly, 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, including ours, 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 - although other Disclosing Entities are not specifically included in this resolution, I would suggest the chairman should grant the same rights to shareholders.

Questions of Auditor

Apart from shareholders, by law the Directors are entitled to attend that AGM, as is the auditor. And for a listed company the auditor's attendance is mandatory (Section 250RA).

If the auditor is present 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 stop discussion on a fundamentally important or critical matter.

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.

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.