



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SHAREHOLDERS' RESOLUTIONS**

The shareholders (members) of a company can meet (or sign a document in a proprietary company) and decide on a matter by passing a resolution.

A resolution is the formal way that a decision is made by a company's shareholders.

The general requirements under the Corporations Act for the passing of any resolution are that:

- the resolution:
 1. is passed at a meeting, which is properly convened and satisfies the quorum requirements, and
 2. is entered in the company's minute book within one month after the meeting is held [sec.251A(1)]
- the minutes must be signed by the chairman of the meeting at which the resolution was passed or by the chairman of the next meeting [sec.251A(2)].

The minute book must be kept at the company's registered office, principal place of business, or elsewhere approved by ASIC [sec.251A(5)].

Under sec.251B shareholders must be allowed to inspect the minute book, free of charge, and obtain a copy.

Voting on Resolutions

Where a company has share capital, a member generally has one vote for each share held, subject to any rights or restrictions attached to any class of shares.

For a company without share capital, every member is entitled to only one vote.

All companies must allow voting by proxy, and a stock exchange listed company must send out proxy forms with the meeting notice.

In addition, a notice of meeting sent to shareholders of a listed public company:

- must specify a place and a fax number; and
- may specify an electronic address for the purposes of receipt of proxy appointments.



Listed companies are required to record the total number of valid proxy votes and how those votes were exercised in the minutes of the shareholders' meeting, in respect of each resolution in the notice of meeting – sec.251AA.

Decisions on resolutions are generally calculated only on the votes actually cast and do not include shareholders who:

- do not attend the meeting
- are not represented at the meeting
- do not lodge a proxy
- abstain from voting.

However, a company's constitution may stipulate that a decision on an ordinary resolution requires a majority of all shareholders present at a meeting and entitled to vote to pass the resolution.

Types of Resolutions

There are two types of shareholders' resolutions: ordinary and special.

The Act requires many decisions that affect a company to be made by shareholders' resolution; most are just by ordinary resolution, but some must be by special resolution. In addition, the constitution of a company may also require that other decisions (in addition to those covered by the Act) be made by either an ordinary or special resolution.

Ordinary Resolutions

An "ordinary resolution" is not specifically defined in the Act and requires only a simple majority to pass: ie, more than half (50%) of the shareholders present* at a meeting by show of hands – or, if there is a poll, more than half 50% of the total votes cast (including proxies).

Some of the items where an ordinary resolution is sufficient include:

- acceptance of financial reports
- election/re-election of directors
- appointment of an auditor.

Special Resolutions

A 'special resolution' is defined in sec.9 of the Act as one that is passed by at least three quarters (75%) of the votes cast by shareholders (either show of hands at the meeting* or by inclusion of proxies if on a poll) being in favour of the resolution.

Items requiring a special resolution include:



- amending or changing the constitution
- adopting a new company name
- changing the company type
- any change to share capital and/or shareholders' rights.

A notice of meeting which includes any special resolution must, under sec.249L(c), specifically set out the intention to propose the special resolution and state the actual words of the resolution. This is in addition to the other information required to be provided in a notice of a meeting including the place, date and time of the meeting, the general nature of the meeting's business and information about proxy votes where applicable – sec.249L(a), (b) & (d).

In most cases, the passing of a special resolution must be lodged with ASIC on Form 205 *Notification of Resolution* or Form 2205 *Notification of Resolutions Regarding Shares*.

Meeting Provisions

Generally, notice of a meeting to shareholders must be given at least 21 days before the meeting is to be held. A stock exchange listed company must give a least 28 days' notice.

Shorter notice can be given where members with at least 95% of the votes that may be cast at the meeting agree beforehand (all shareholders must agree to shorten notice for an AGM). However, the provision for shorter notice does not apply to a resolution to remove or appoint a director or to remove an auditor.

Also, it is not always necessary for shareholders to physically meet in order to consider a resolution. Under sec.249A a proprietary company can pass a resolution by circulating a document and having all shareholders entitled to vote sign a statement on the document that they are in favour of the resolution. Where two or more people hold shares together each shareholder must sign. The resolution is passed when the last shareholder signs. A 'circulating resolution' cannot be applied to a resolution to remove an auditor.

The 'circulating resolution' provision is not available to public companies where an actual shareholders' meeting must be held.

* shareholders voting 'on a show of hands' at a meeting may include those attending as proxy, attorney or corporate representative – if allowed by the constitution

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