



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **VOTING AT GENERAL MEETINGS - ALTERNATIVE APPROACH**

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Directors, with regard to voting by shareholders at our forthcoming Annual General Meeting, the undermentioned approach is apparently followed in some companies, but I am firmly of the belief, based on my [non-legal] knowledge of corporate law and practice, that it is not the correct way of deciding on a resolution at a shareholders' meeting.

### **Alternative Voting Scenario**

There is a school of thought which suggests that we can run the voting at the AGM as the Chairman has indicated - as extracted from recent emails wherein he states:

- *I am wondering why we can't simply count all the votes of those at the meeting (who haven't sent in a proxy or open vote) and if the total, irrespective of how they intend to vote, is less than the number required to achieve the 50% / 75% level majority given the state of proxies plus open votes for and against, simply declare that the resolution is passed.*
- *I have seen advice in other companies where the approach I suggest was given a tick by independent legal review – i.e. the chair declared the resolution carried on the weight of proxies he held versus the available uncounted votes in the room. If the chair of the meeting were to be challenged from the floor on that approach, he/she would have to resort to a poll, but if not the chair's ruling would stand as I understand it.*
- *I am told by our lawyer that their view is that the constitution allows me the discretion to deal with matters on resolutions as I previously indicated, so that is the approach I am going to adopt, in need, rather than go through a time-consuming votes/proxies count exercise where the outcome is already obvious.*

This view is apparently based on Rule 33(c) of our Constitution where it states:

"The chairperson of a meeting of shareholders may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting."

notwithstanding Rule 37(a) which states (as is the usual approach to voting) that:



"A resolution put to the vote at a meeting of Shareholders must be decided on a show of hands, unless a poll is demanded in accordance with Rule **Error! Reference source not found.** and that demand is not withdrawn."

I have subsequently discussed this alternative approach myself with our lawyer and he advised that he does not support this approach and has told the Chairman that.

### **Usual Voting Procedure**

As noted above, the usual approach to voting is on a 'show of hands' - in which case every shareholder who is present and entitled to vote gets 1 vote only. By the way, if any shareholder present has sent in a proxy or direct voted, then that is nullified by their presence.

Someone can vote as a proxy (or attorney or corporate representative) and count as 1 vote - but if they are also a shareholder they still only get 1 vote. And if they hold proxies for and against they get no vote.

As an alternative, the chairman or any 5 shareholders, or any 1 or more shareholders controlling 5% of the shares/votes, can 'call for a poll' - which is when we actually add up the number of votes of all proxies/direct votes plus those of shareholders present (and suitably adjust if they are already in the proxy/direct vote tally).

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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.*