



MEMO

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

To get a clear understanding of the voting procedures for the AGM we need to look firstly at the rules in the company's constitution. Our constitution actually has basically the same provisions as the Corporations Act (Sections 250J ~ 250M).

Show of Hands

Rule 65(1) states that any resolution to be considered at a general meeting shall be decided on a show of hands unless a poll is demanded by the members present.

In other words, when a resolution is to be voted on the normal procedure is that the chairman will, after stating the resolution, put the motion to the vote by saying something like "*would those in favour please raise their hands*". He will then say something like "*would those against now please raise their hands*".

An appointed proxy can participate in the vote on a show of hands – as can an attorney or corporate representative – but if 2 or more proxies have been appointed by a shareholder then neither/none of them can vote on a show of hands.

For an ordinary resolution, if the number of hands in favour is greater than those against (i.e., more than 50%) – and it may need a specific count of the hands if it is not clear – then the chairman will announce that the resolution is passed/carried. Otherwise the motion is lost.

For a special resolution, the number of hands in favour must be at least 75% of the total number who vote (i.e., 75% of the aggregate of all hands raised) – which, again, may require a specific count – for the resolution to be passed.

Rule 67 states that in the case of an equality of votes on a show of hands the chairman has a casting vote in addition to any vote he may be entitled to himself.

Rule 65(2) states that a declaration by the chairman that a resolution has on a show of hands been carried or lost shall be taken as conclusive evidence of that fact.

Once the counting of hands is completed and the result is declared then the voting on that resolution is over – unless there is an immediate call for a poll.



Call for a Poll

A poll may be demanded before asking for a show of hands, before the result is declared or immediately on the declaration of the vote – Sec. 250L(3).

Rule 65(3) explains that a poll may be demanded by:

- (a) the chairman; or
- (b) at least 5 shareholders present (in person or by proxy, attorney or corporate representative - *unless their power is restricted by the appointor*) having the right to vote; or
- (c) shareholder/s present (in person or by proxy) controlling at least 10% of the total shares.

With regard to part (c) above, by my reading of Act shareholder/s need only control **5%** to call for a poll – Sec. 250L(1)(b) – which is reinforced by Sec. 250L(2) that states that if a company has a constitution, the constitution may provide that fewer shareholder numbers/percentage [than in part (1)] may demand a poll – but whilst that sub-section does not contemplate a constitution requiring a greater percentage than what's in the Act (as does ours), my understanding from other sources is that such a requirement (i.e., of a percentage greater than 5%) is void.

Note too: as per Sec. 250L(1), the 5 shareholders / 5% shares requirements only relate to shareholders entitled to vote on the relevant resolution.

If a poll is taken then the decision on a resolution is determined by counting the actual votes (i.e., number of shares) – for and against – held by shareholders physically present in person at the meeting and represented by proxies present at the meeting.

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.