Guide to Procedures at AGMs

A publication to complement Chartered Secretaries Australia’s publication

Effective AGMs
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INTRODUCTION

The purpose of this publication is to complement Chartered Secretaries Australia’s publication *Effective AGMs* by focusing on those areas, primarily aspects of the annual general meeting (AGM), that involve procedures that need to be considered and followed to achieve an effective, efficient and successful AGM.

It is not intended to cover all alternative procedures but rather to give readers ideas to consider and to assist companies in establishing procedures appropriate to their particular circumstance.

AGMs (and other general meetings) are heavily regulated and it is therefore essential to have a working knowledge of the necessary procedures to follow and the options open to the company.

A company’s procedures will need to take account of evolving and ethical best practice in addition to requirements imposed by:

- the *Corporations Act 2001*
- common law precedent
- the company’s constitution
- Australian Securities Exchange (ASX) Listing Rules and/or other regulators’ requirements.

It should be remembered that where listed companies have a provision in their constitutions that is inconsistent with the ASX Listing Rules, the Listing Rules prevail. Furthermore, if there are any inconsistencies between a company’s constitution or ASX Listing Rules with the binding provisions of the *Corporations Act 2001*, the Act will prevail.
A — FORMAL MATTERS

1. Chair’s script

Principles

• The AGM is an important institution with competing objectives. It is an occasion when formal business is required to be considered by shareholders and it is the primary, and only statutory, opportunity to engage in person with retail shareholders. To ensure that all formalities are met properly, it is important that the chair (and other speakers, if relevant) have a script which they can follow. Similar scripts would also be prepared for other general meetings that have a comparable level of formality. The company secretary would generally be the primary drafter of the procedural script.

• The procedural script should be in a type and format (including font type, size and line spacing) with which the chair is comfortable and suits their needs. The script should follow the notice of AGM or general meeting to ensure all formalities are complied with, and in the correct order.

• Separate from the formal script(s), anticipated questions and answers should be prepared and reviewed and understood by those who may answer questions, see page 19. Practical Q&A rehearsals may be helpful to flesh out how, and by whom, certain questions will be answered, particularly for any expected contentious issues.

• For listed companies, the chair’s address, CEO’s presentation, and other presentations that may contain information requiring disclosure to ASX, must be lodged with ASX immediately prior to the commencement of the meeting (and then to be consistent with good practice, be made available on the company’s website). Caution must be exercised with late adjustments to ensure that the ASX version and any hard copy/teleprompt version to be used by the chair contain all such amendments. Companies should also ensure that during the meeting, continuous disclosure obligations are front of mind, and there are no material deviations from script that cause price sensitive information about the company to be disclosed that has not first been given to ASX.

• Many chairs and managing directors use teleprompters to assist with the delivery of their presentations to shareholders. If using such devices, companies need to ensure that appropriate training on using such devices is carried out so that presenters are at ease when delivering the presentations. Companies should also ensure that hard copies of such presentations are available as a contingency if the technology fails.

• Each company will have to decide the most appropriate order of business for it and for each particular meeting. There will be a number of aspects that will affect that decision, including how the chair wishes to regulate discussion throughout the meeting. For example, if any matter before the meeting is particularly contentious and will require much debate, the chair may wish to either discuss it first to get it out of the way, or last, so that non-contentious matters may be dealt with quickly and the remainder of the time spent focusing on the contentious issue.

Examples

An example script for the chair of an AGM is attached as Appendix A.

Each company will have to decide the most appropriate order of business for it and for each particular meeting. There will be a number of aspects that will affect that decision, including how the chair wishes to regulate discussion throughout the meeting.
2. Ordinary and special resolutions

Principles

• Formal resolutions at AGMs and general meetings are either:
  – ordinary resolutions that require being passed by a majority of votes cast by members entitled to vote, or
  – special resolutions that require specific notice to be given (s 249L(1)(c)) and being passed by at least 75 per cent of votes cast by members entitled to vote.
  
  Companies should also review their constitutions to see if they require any other voting thresholds for particular items of business.

• In putting proposed resolutions (motions) to a meeting, the chair should ensure that, for any special resolutions, shareholders are informed that it is a special resolution and what the required majority is.

• There is no legal requirement for formal resolutions to be moved and seconded. This is an exception to procedural motions that obviously need moving. However the chair of the meeting may in their discretion also require a seconder to demonstrate that the motion has support.

• It is common practice that the chair moves the motions. This is usual where there is no contentious business on the agenda, or where it is a matter proposed by the board. There is no requirement for a seconder.

• However, if companies decide that motions are to be moved and seconded (which is rare), it is often appropriate to ensure that shareholders are present who would be agreeable to seconding motions. From the board's perspective it may be desirable for the seconder to speak in support of a motion, thus giving shareholders further information or an alternative point of view.

• At a listed company AGM, an ordinary resolution must be put to the vote that the remuneration report be adopted. The vote is advisory and does not bind the directors or the company. However, where 25 per cent or more of the votes cast by members entitled to vote are against the adoption of the remuneration report, this triggers the ‘two strikes’ mechanism in the Corporations Act 2001.
3. Director elections

**Principles**

- The company must have identified the directors who are required to retire at the AGM for any of the following reasons, and which of those directors wish to stand for election or re-election at the AGM:
  - appointed by directors since the last AGM
  - requirements of ASX Listing Rules (Listing Rule 14.4 — each director must stand for re-election at least every three years (or three AGMs, whichever is longer) and there must be an election of directors every year (Listing Rule 14.5)
  - any rotational requirements in a company's constitution (increasingly rare)
  - any other specific regulation applicable to the company. For example, companies that have a UK dual-listing and seek to comply with the recommendations of the UK Corporate Governance Code may hold annual elections of all company directors, including the managing director.

- For orderly board succession and renewal planning, if a large number of directors are due to retire in a particular year due to the operation of Listing Rule 14.4, companies may consider bringing forward elections for certain directors earlier than when due.

- Companies must be prepared to receive nominations of external board candidates other than those retiring as above, and ensure such nominations have been made validly in accordance with the constitution and ASX Listing Rules. To facilitate this, listed companies must ensure they comply with ASX Listing Rules regarding when they must announce the date of the AGM in order to allow external candidates to be nominated.

- The directors must determine where on the notice of meeting the election of directors will appear. Generally, this is after the financial statements and reports (and perhaps the remuneration report) have been considered but need not be so, if there is a good reason to change this order.

- The next step is for the directors to decide the order that the directors seeking election or re-election will show in the notice of meeting, bearing in mind that, where more than one position is to be filled, ASX requires a separate resolution for each director (for listed companies). For public companies, separate resolutions must be passed, unless all voting shareholders have approved otherwise. Where external nominations are involved, care should be taken to ensure that the way the nominations are set out in the notice is fair to all parties. For example, those standing for appointment may be listed alphabetically or in an order drawn at random by an independent party (for example, the external auditor). However, in those instances, companies should make clear in both the notice of meeting and the form of proxy what the recommendations of the directors are and how the chair will vote undirected proxies in relation to each candidate.

- In circumstances where there are more director nominations than director vacancies, the method of determining who is elected a director will usually be determined by the existing board. It is in the interests of transparency to disclose the method to be used to determine who is elected a director in the notice of meeting and/or proxy form.

- Where there are external candidates, experience has shown that the decision-making process will generally take the following path (there have been exceptions) and the matter will be dealt with by a poll to ensure certainty:
  - A separate resolution will be put for each candidate standing.
  - Only those candidates who receive more ‘For’ votes than ‘Against’ votes will be considered for election as a director, and will be elected if vacancies exist.
  - If the above process would result in there being a greater number of directors than the maximum number set under the company’s constitution, those candidates with the higher number of ‘For’ votes will be elected, such that the total number of directors does not exceed the maximum.
  - If there are candidates who have equal number of ‘For’ votes, then the one with fewer ‘Against’ votes will be elected.
• The directors will need to consider whether those directors standing for election or re-election (and any other nominees) will be given the opportunity to speak to the shareholders prior to voting taking place or to include a statement from directors subject to election, in the notice of meeting, on the contribution they believe they can make to the board. The directors will also need to consider whether those directors standing for election or re-election will answer questions addressed to them by shareholders. It is common practice that all directors standing for election will be given a short opportunity to address shareholders. It is important that external candidates be given a reasonable opportunity (judged by the chair) to address shareholders.

• It may arise that, just prior to the meeting, a director standing for reappointment decides to withdraw and not seek re-election. One reason for this could be that major shareholders have submitted proxies voting against that director’s reappointment. In this case, the chair should advise shareholders (and ASX) as soon as possible that the resolution is withdrawn.

• Where the chair is standing for election or re-election, another senior independent director should assume the position of chair of the meeting for that resolution (if the company has no deputy chair, the chair of the audit, nomination or remuneration committee may be appropriate). It should be made clear that all proxy votes applicable to the chair of the meeting for that resolution vest in the person chairing the meeting.

Examples

• A listed company has a managing director (exempt from retirement by rotation, although note that in the rare circumstance of two managing directors, only one is exempt under the Listing Rules), two directors appointed since the last AGM and four directors who have been on the board for more than four years — seven in total. Two external candidates have also nominated for election. The maximum number of directors allowed under the constitution is ten.

• Those to retire and stand for election would be determined as follows to be the two directors appointed since the last AGM.
  – Another consideration then has to be made to ensure that none of the remaining three directors, not standing for re-election, have been in office for three years or more since their last re-election. If any of them have, the ASX Listing Rules require them also to stand for re-election. Note: most companies have now amended their constitutions to align with the ASX Listing Rules.
  – For the increasingly rare instance of the company having a rotational requirement to retire, the relevant provisions must be followed closely. The constitution should state how to deal with fractions — the nearest whole number, rounded down to nearest whole number or rounded up to nearest whole number. If the constitution refers to ‘one-third’ but does not deal with fractions, it would be necessary to round up. Otherwise, the ‘one-third’ requirement will not be met. Assuming it is the ‘nearest whole number’, in our example, one director is to retire by rotation, and that should be the director longest in office. If more than one director was elected on the same day, those directors should determine by lot who is to stand (or as otherwise provided by the constitution).

• In any event, ASX listed companies must hold an election of directors each year.

• Example of notice of meeting wording:
  – The chair of the meeting intends to vote undirected proxies in favour of the election of W, X, Y and Z and against the election of the other candidates.
  – The board (other than the candidate standing for election) recommends that shareholders vote in favour of the election of W, X, Y and Z and against the election of the other candidates.

• Similar wording should also be repeated on the proxy form. Consideration should also be given to designing the proxy form so that any proposed resolutions not supported by the board are clearly distinguished from those that are.
4. Removal of a director

Principles

• Generally, under a company’s constitution, shareholders can remove a director by ordinary resolution.
• However, s 203D of the Corporations Act 2001 gives shareholders the right to remove a director, irrespective of what is in the company’s constitution.
• The Corporations Act 2001 requires certain steps to be followed.
  – Notice of intention to move a resolution to remove a director must be given at least two months before the meeting (consent to short notice provisions do not apply). However, if a meeting is called after the notice is given, the meeting may pass the resolution even if the meeting will be held less than two months after the notice is given.
  – The company must give the director concerned a copy of the notice as soon as practicable.
  – The director has a right to put their case to shareholders by forwarding a written statement and/or speaking to the motion (even if they are not a shareholder).
  – If there is time, the company must send the director’s statement to shareholders or, if there is not time, it must be distributed to those attending the meeting and the company must ensure that it is read out to the meeting — subject to the next point.
  – The directors need not send the director’s statement or copy the statement to shareholders at the meeting, if it is longer than 1,000 words or is defamatory.

Example

• An example resolution is:
  – It is proposed the following resolution be passed as an ordinary resolution:
    That Mr XY be removed as a director of the company.

Section 203D of the Corporations Act 2001 gives shareholders the right to remove a director, irrespective of what is in the company’s constitution.
5. Voting on a show of hands

Principles

- Shareholders and proxy holders attending the meeting will have a right to one vote on a show of hands.
- Voting by classes of shareholders may need to be considered.
- If coloured registration and voting cards are issued at registration to identify shareholders and proxy holders from visitors and non-voting shareholders — for example, joint shareholders or those who have appointed proxies and have decided not to revoke the proxy on attendance — the chair, when asking for a vote on a show of hands, should ask shareholders to ‘raise the [blue] voting card’.
- Account needs to be taken of directors/other key management personnel and their associates (ASX Listing Rules) and/or closely related parties (Corporations Act 2001) who are excluded from voting on particular resolutions (where they have an interest). Their obligation to refrain from voting should be confirmed with them prior to the meeting. In some instances they will also be excluded from voting undirected proxies. Refer also to CSA’s Guidelines on managing voting exclusions.
- The company secretary should have made any necessary arrangements to count or check the number of ‘For’ and ‘Against’ votes (for example, using company employees, the share registry or the company’s external auditors or other returning officer or scrutineer), if the result of a vote on a show of hands is uncertain. The company secretary should also be aware of the amount of share capital that is represented by shareholders in attendance.
- If the chair believes that, if a poll was held (based on the proxies to hand and any knowledge of significant shareholders in attendance) the result of the poll would be different from the result of the show of hands (including the calculation of the 25 per cent approval threshold (s 250U) on the resolution to adopt the remuneration report), they should immediately call for a poll. This is a requirement of the Corporations Act 2001 (s 250J) if the company uses the replaceable rules and in other cases necessary to ensure avoiding a breach of the chair’s common law duty to give effect to the real sense of the meeting.
- The company secretary should liaise with all directors so that they have the appropriate voting cards and proxy forms on stage. The directors may need to be instructed how to vote where they have received ‘For’ and ‘Against’ proxies and be reminded of any voting exclusions applicable to them, their associates, or their closely related parties.
- Where a director has multiple appointments as a proxy that specify different ways to vote on a resolution, they must not vote on a show of hands on that resolution. If, however, the director is also a shareholder in their own right, they can vote on a show of hands regardless of their proxy appointments (s 250BB Corporations Act 2001) if no voting exclusion applies to them.

Example

- If the chair wishes to call a poll, where the poll could change the vote on a show of hands, the words could be:

  As the results of a poll would likely provide a different result from the vote on a show of hands, I hereby call a poll. Furthermore, the poll will be held at the end of the meeting.
6. Poll procedures

Principles

- The Corporations Act 2001 sets out the rules related to the calling of a poll on a resolution, which generally can be instigated by:
  - the chair
  - five members who are entitled to vote or
  - holders of five per cent or more of the voting capital, taking account of any exclusions on voting.
- However, this may be varied by the company’s constitution and the chair must be aware of the rules that are relevant to that company.
- A poll can be called:
  - before a vote is taken
  - before the result on a show of hands is declared or immediately after the result on a show of hands is declared.
- A poll can be held immediately or at some other time. However, a poll on the election of a chair (if permitted) or an adjournment of the meeting must be taken immediately. Often polls are deferred until all other business has been dealt with (unless electronic voting devices are used, see below); this way, if there is more than one poll, they can all be dealt with at the one time at the conclusion of the meeting.
- Some companies, especially those with a large institutional shareholder base who do not attend the AGM, utilise voting by poll on each resolution, to ensure that the votes of those shareholders are counted.
- Where a company has amended their constitution to allow direct voting, this necessitates the calling of a poll on each resolution. More details on this can be found in CSA’s Guide to implementing direct voting.
- It is generally desirable to appoint poll scrutineers (it is common for it to be either the company’s or the share registry’s auditors) and they should have, prior to the commencement of the meeting, reviewed the proxies and the proxy process, enabling the chair (on legal advice, if necessary) to determine whether or not any proxies are to be rejected. The company should agree the verification process with the scrutineers in advance of the meeting.
- Corporate representatives wishing to vote on a poll should have been verified as having proper authority on registration. This may be in the form of a properly executed authority received by the company or share registry. These authorities can be lodged up until the commencement of the meeting and are not bound by the cut-off date for proxies.
- The registration cards should double up as the voting cards for a poll and cover the possibility of a poll on all resolutions (see also Appendix B).
- The results of the poll should be announced as soon as available which may be during the meeting or as soon as possible after the meeting. For listed companies, if the results will not be available until after the meeting is closed, shareholders should be advised that once the votes have been counted the results will be announced to ASX and displayed on the company’s website.
- A request for a poll can be withdrawn by the person(s) requesting the poll.
- Companies may elect to use electronic devices for poll voting. In this circumstance, when shareholders register their attendance at the meeting, they are handed a mobile device with the details of their shareholding registered to the device. When the chair opens the poll on a resolution, the shareholder presses the relevant voting button on the mobile device. The chair has access to a screen on stage that shows them the progress of shareholders voting on the poll and is therefore able to judge when to close the poll on each resolution. The two major benefits of this manner of poll voting are that it is much quicker to establish the results of the poll and there is an electronic audit trail of all votes cast at the meeting. In this instance, it may not be necessary to hold all polls at the end of the meeting. Technology has developed so that these mobile devices can now deal with split votes (where a proportion of a single holding is voting in favour of a matter and a proportion is voting against, for example nominee holdings). The benefits of using such devices should be balanced against their additional cost.

Examples

- Appendix B is a schedule of poll procedures to be read to the meeting at the time of taking a poll.
- It assumes that:
  - there is only one poll
  - the poll is held at the end of the meeting
  - electronic poll voting is not available.
7. Disclosure of proxy votes

Principles

- A replaceable rule (s 250J(1A)) governs obligations to disclose proxy votes before a resolution is put. Consequently, it is necessary to understand from the company’s constitution (and perhaps the Corporations Act 2001 if the replaceable rule applies) as to what obligations exist in relation to disclosing proxy votes at the meeting. Listed companies are required to announce to ASX proxy votes received to the ASX following the meeting (Listing Rule 3.13.2).

- If the company is not obligated to disclose the proxies at the meeting it should, nevertheless, decide whether or not it will disclose the proxies received prior to the meeting.

- If the company is to disclose the proxies, which CSA would encourage as good practice, it may have some or all of the following options (depending on its constitution).
  - Disclose the proxy votes before discussion — this is not common practice and is not recommended. Advising shareholders of the proxy votes before a discussion can intimidate shareholders or cause resentment. It may stifle discussion where the outcome of the vote is beyond question from the proxy votes received.
  - Disclose the proxy votes after discussion but before the vote is taken — this is the most common and accepted practice. Shareholders have the opportunity to discuss the proposed resolution without undue influence by prior disclosure of the proxies where proxies will clearly determine the outcome of the vote. Some shareholders may view disclosure of the proxy votes at this point of time as intimidatory, but others may view it as essential information that needs to be known before voting takes place.
  - Disclose the proxy votes after the vote on a show of hands has been taken. If the company is governed by s 250J of the Corporations Act 2001 — a replaceable rule — this is not an option, as the section requires disclosure before the vote is taken.

- The details shown on screen could be as follows:

<table>
<thead>
<tr>
<th>Votes for</th>
<th>xx,xxx,xxx (x.xx%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Votes against</td>
<td>xx,xxx (x.xx%)</td>
</tr>
<tr>
<td>Discretionary votes*</td>
<td>x,xxx,xxx (x.xx%)</td>
</tr>
<tr>
<td>Abstentions</td>
<td>x,xxx (x.xx%)</td>
</tr>
</tbody>
</table>

*Discretionary/open votes held by the chair of the meeting x,xxx,xxx (x.xx%)

- The disclosure can be either in the form of a verbal disclosure or the details can be shown on a screen visible to all shareholders, (preferable in the interests of transparency) or there can be a combination of these two options.

- These voting details should be replicated in the proxy vote disclosed to ASX, where resolutions have been passed on a show of hands.

Example

- Disclosure wording could be along the following lines.

  Discussion on proposed resolution X is now complete. Prior to putting the proposed resolution to the vote I will advise you of the proxy votes, which appear on screen now:
  - Votes for xx,xxx,xxx
  - Votes against xx,xxx
  - Discretionary votes x,xxx,xxx
  - Abstentions x,xxx
  - Discretionary votes totalling y,yyy,yyy in favour of the chair and directors, will be voted in favour of the resolution.
  - I will now put the resolution to the meeting…
8. Points of order

Principles

• A ‘point of order’ is not a motion, rather an acceptable interjection, the intention of which is to alert the chair to an apparent or alleged breach of proceedings.

• The chair or a speaker can be interrupted by the point of order at any time.

• The chair must rule on the matter immediately (does not need to put it to a vote) and may need the advice of the company secretary or lawyer on the appropriate action to take.

Examples

• Examples of points of order may be:
  – the absence of a quorum
  – breaches of requirements of the constitution or any standing orders adopted by the company
  – a speaker's subject matter not being relevant to, or beyond the scope of, the business being considered, or
  – offensive or abusive language or unwarranted accusations about a person’s behaviour or intentions.
9. Amendments to resolutions

Special resolutions
Principles
- As the Corporations Act 2001 requires a specific period of notice to shareholders for special resolutions together with the content of the resolution (s 249L), no amendments can be accepted other than the rectification of typographical or grammatical errors which do not change the intention of the resolution.

Example
- An acceptable amendment would be ‘John McKellar Thompson’ in the special resolution be changed to ‘John McKellar Thomson’, where it is only a correction of spelling.

Ordinary resolutions
Principles
- Proposed amendments to ordinary resolutions should not be accepted by the chair if the amendment has the effect of increasing a benefit to a person at the expense of shareholders.
- Proposed amendments which have the effect of reducing the benefit to a person, where it is absolutely clear that such an amendment would be to the benefit of the company, may be accepted by the chair. If no contradictory regulatory rules apply. However, caution needs to be exercised and all consequences of such an amendment assessed. Importantly, if there is uncertainty regarding how shareholders who submitted proxies would vote on such an amendment, the chair needs to carefully consider the position.
- In these circumstances it may be better to:
  - not accept the amending motion
  - put the original motion and those wishing an amendment can vote against the motion or
  - withdraw the motion and consult with shareholders with a view to submitting an amended motion to the next meeting.
- An amendment which would have the effect of negating the effect of a resolution cannot be accepted.
- Proposed amendments which correct typographical and grammatical errors, as for special resolutions, should be accepted.

Example
- A proposed amendment to a resolution to increase the aggregate non-executive directors’ fee cap has the effect of reducing the increase from, say, $500,000 to $400,000. Prima facie, this benefits the company financially. However, if the chair believes that such an amendment may result in the resignation of several highly regarded directors, the negative consequences could far outweigh the prima facie financial savings.
- Further discussion should take place and the chair would be within their rights to determine that such an amendment so substantially changes the original motion that it is
10. Withdrawal of a motion

unacceptable.

(See also procedural motions, on page 17.)

Principles

• If the mover of a resolution wishes to withdraw a motion before the motion is voted on, the chair may in their discretion seek agreement of the meeting to the withdrawal, after explaining the situation and obtaining the seconder’s consent (if there is a seconder). This would be done by the chair advising shareholders that, if there were no objections, the motion would be withdrawn. If there were significant objections, the chair may have to put a withdrawal motion to the vote. However, this would depend on the nature of the business. It would be pointless putting a motion to withdraw a resolution which related to the appointment of a director who had since advised that they did not wish to be appointed. This decision is with the chair.

• Depending on the nature of the motion being withdrawn, it may be appropriate for a formal procedural motion to withdraw to be put to the meeting.

• If a listed company withdraws a motion prior to the AGM, it should announce this to the market via ASX in order to keep the market informed.

Examples

• A director standing for re-election at an AGM advises the chair immediately prior to the meeting that they no longer wish to stand for re-election and therefore the motion to re-elect them should be withdrawn.

• A motion to issue awards under long-term executive remuneration plans resulting in new shares being issued (pursuant to the Listing Rules) could be withdrawn where, prior to the meeting, major shareholders have advised that they will vote against the motion (such that it will be lost) due to, for example, the awards having performance hurdles that the shareholders do not agree with.

If the mover of a resolution wishes to withdraw a motion before the motion is voted on, the chair may in their discretion seek agreement of the meeting to the withdrawal, after explaining the situation and obtaining the seconder’s consent (if there is a seconder).
11. Adjournment of meeting

Principles

- Meetings may be adjourned:
  - by an ordinary resolution of the shareholder meeting
  - by the chair, if empowered under the company’s constitution or when necessary to keep order or to facilitate a poll or when a relocation of the meeting is necessary, for example, where the venue appears too small or an emergency arises or
  - automatically under the constitution if, for example, a quorum is not present within, say, 30 minutes of the time set for the meeting — look carefully at the constitution which may have specific rules, such as the same time and place one week later.

- If the situation arises that the booked venue may be inadequate or an adjournment is possible or likely, it would be prudent to make a second booking.

- If the chair does not have the power to adjourn, they must seek approval of the shareholders by putting a motion (that does not need to be seconded). The exceptions are to hold a poll, to keep order or if relocation of the meeting is necessary to accommodate all attendees.

- If a motion to adjourn is put to the meeting, it must be dealt with before any other business other than a procedural motion that ‘the meeting be closed’.

- The adjournment can either be indefinite or to a date, time and place set by the directors. If it is a public company and has to be adjourned to a time outside the five-month time limit for holding an AGM imposed by s 250N (2) of the Corporations Act 2001, relief from the Australian Securities & Investments Commission should be sought.

- A critical issue in deciding the length of any adjournment is the effect, if any, it will have on proxies being lodged for the meeting. For example, if a proxy has been rejected for being lodged too late, that proxy may be validated by an adjournment. This will generally depend on the wording in the constitution; if the wording for the deadline for receiving proxies uses words such as ‘48 hours prior to commencement of the meeting or any adjourned meeting’, ‘late’ proxies may be valid subject to complying with the rule. Legal advice should always be sought before any adjournment beyond the day of the meeting is approved.

- At every commencement of an adjourned meeting, only the business of the original meeting can be considered (unless proper notice has been given of further business).

- If shareholders of a listed company have voted to hold a ‘spill meeting’ under the Corporations Act 2001, then that meeting must be held within 90 days of the AGM at which the spill meeting is decided upon (s 250W(2)). There is no provision in the Corporations Act 2001 for any delays due to emergencies at the venue or other contingencies.

- For companies using the replaceable rules, if the meeting is adjourned for one month or more, new notice of the resumed meeting must be given.
12. Procedural motions

Principles

- Procedural motions are motions confined to procedures at or conduct of the meeting, which may be moved to interrupt debate for various reasons.
- Procedural motions comprise seven formal motions that are widely recognised (see Appendix C). There are other procedural motions, which include:
  - withdrawal or amendment of motions
  - the gag — ‘that the speaker no longer be heard’
  - ‘that [XY] be now heard’
  - refer to a committee and
  - refer back to a committee.
- Procedural motions cannot be moved (or seconded, where required) by a person who has moved, seconded or spoken on the substantive motion or on an amendment to it.
- Procedural motions may be varied by provisions in the constitution, which should be checked for any overriding rules.
- There is no formal right of reply to any formal motion.

- If a formal motion is lost and discussion is resumed on the substantive motion, the mover and seconder of the formal motion are taken to have made their speeches and cannot speak on the substantive motion.
- It will be necessary for the company secretary to assist the chair in keeping track of the status of procedural motions and their outcomes (won or lost) and the implications for the continuance or otherwise of the meeting. This may involve advising the chair of each step to ensure matters are dealt with in the appropriate order.
- Voting on procedural motions may be carried out via a show of hands (which is preferable) or via a poll. If a poll is called, it needs to be attended to immediately.
- The rules relating to the formal motions are set out in Appendix C.
- Also see further reading in Appendix D.

Procedural motions are motions confined to procedures at or conduct of the meeting, which may be moved to interrupt debate for various reasons.
13. Meeting attendees

Principles

• Once the business of the general meeting has been established, the chair and/or management must determine who (in addition to shareholders and proxies) should be allowed to attend a general meeting.

Examples

• Those attending the meeting (in addition to the chair, the CEO/managing director and company secretary) should include:
  – chair of the audit committee, who may be asked by the chair to address issues or questions related to the audited financial statements
  – chair of the remuneration committee, who may be asked by the chair to present the remuneration report and/or answer questions relating to remuneration
  – as many directors as possible
  – chief financial officer
  – corporate affairs/investor relations executive
  – other senior executives, as determined by the chair or management
  – external auditor — required to attend for listed companies, entitled to attend for other companies
  – representatives from the company’s lawyers and
  – other external experts employed by the company (for example, remuneration advisers), as determined by the chair or management.

• Outside of directors and the company secretary who are usually seated on stage, it is usual to reserve seats at the front of the meeting room for the above attendees. The chair should be briefed on who is attending and where they are sitting.

• In small companies, it may be necessary to arrange a number of shareholders to attend to ensure a quorum is present on each motion to pass a resolution being put to the meeting and shareholders who are prepared to second such motions (if desirable; this is rare).

• AGMs are private meetings. In addition to those set out above, the chair and/or management must decide if they will invite others to attend the meeting. This could include media, analysts, family members of shareholders and proxies, holders of non-voting company securities. In addition to deciding on who to allow to attend the meeting, they must also determine whether they will allow such attendees to ask questions at the meeting (recognising that it is not typical to allow media to speak at such meetings).
B — SHAREHOLDER AND MEDIA ENGAGEMENT

1. Addressing shareholder questions

Principles

• If the communication package, which includes the notice of meeting, has provision for shareholders to forward questions to be addressed at the AGM by the company or the auditors, the communication to shareholders should make it clear that each question submitted will not necessarily be individually addressed at the AGM or answered individually after the meeting.

• Such shareholder questions submitted prior to the meeting provide the board and management with an indication of the views of shareholders on various matters and help identify what issues may require the most discussion at the AGM.

• The company will need to decide how and when such questions will be addressed. Some alternatives are to:
  – incorporate answers into the chair’s and CEO’s addresses
  – provide a separate summary of answers at the beginning of question time, after the chair’s and CEO’s addresses or
  – include a selection of the more significant questions and answers on the company’s website.

• During the meeting, all questions from the floor should be addressed to the chair and the shareholders or proxy holders should be asked to identify themselves before making comment or asking questions.

• Meeting attendees should be advised that shareholders as a whole must be given a reasonable opportunity to speak and, therefore, comments and questions will be limited to one (or two) at a time and other shareholders will be given an opportunity to speak before a second (or third) question or comment is made.

• If it is known that any groups (for example, the Australian Shareholders’ Association, proxy advisory services, major shareholders) are going to ask questions, attempts should be made to obtain details of the questions (and voting intentions) so that full and complete answers can be given at the meeting. For further details, please refer to CSAs publication Better Communication Between Entities and Proxy Advisory Services.

• In answering questions (at any time) those responding must be careful to ensure that no new, price-sensitive information is released unless it has previously or concurrently been provided to ASX.

• Under s 250PA of the Corporations Act 2001, shareholders of listed companies are able to provide to the company questions for the external auditors on the content of their audit report or on the conduct of the audit of the financial report.

  The questions must be:
  – provided to the company no less than five business days before the meeting
  – provided to the auditor (by the company) as soon as possible, whether they are relevant or not and
  – documented in a list, with copies of the list made reasonably available to shareholders attending the AGM.

  The following points should be noted.
  – The auditors are not obliged to answer questions — the directors should have a position on their expectation on this matter.
  – This does not preclude shareholders from asking relevant questions of the auditors at the AGM related to the conduct of the audit, preparation and content of the auditor’s report, the accounting policies adopted by the company and the independence of the auditor in relation to the conduct of the audit.
  – The chair may permit the auditor to table written answers to written questions submitted to the company before the meeting.

• Generally, possible questions and appropriate answers should be prepared, circulated and practised by relevant company representatives to ensure accurate answers are provided at the meeting. The chair and CEO should ensure that before the AGM they are fully conversant, up-to-date and aligned on significant issues.

• A number of electronic web-based options may also be considered to address shareholders’ questions prior to the meeting (for example, emails, or preparing an AGM blog) and to present the chair’s and CEO’s addresses (for example, by webcast).
• Where a company has requested that shareholders submit written questions prior to the meeting (for example, by including a question sheet in the circulated meeting materials), they should avoid making any representation to guarantee a written response before the meeting.

• The company secretary should record any comments made on the remuneration report at the AGM, as if a company receives a ‘first strike’ (a no vote of 25 per cent or more on the adoption of the remuneration report), then there is an obligation in the next annual directors’ report to include an explanation of the board’s proposed action in response or, if no action is proposed, the board’s reason for inaction (s 300A(1)(g)).

• Companies should consider making provision for shareholders or proxy holders who are nervous about asking questions publicly in such a formal setting by having staff members on hand who will put the question to the chair on behalf of the shareholder.

• The AGM is the one statutory event where directors must physically address their shareholders and is often the only occasion where directors meet with retail shareholders. Companies should consider requiring directors and management to meet with shareholders informally over refreshments before and/or following the conclusion of the formal meeting.
2. Dealing with controversial issues

Principles

• Opinion will vary as to the best way to deal with controversial issues and it will be a matter for directors to consider and determine the most appropriate actions, depending on the circumstances.

• In many cases it will be appropriate for the company to manage such issues at the AGM and may involve actions such as:
  – meeting with the relevant parties before the meeting itself
  – allowing a reasonable time for those parties to speak at the meeting
  – advising the parties of the process and at what point they will be invited to speak
  – providing for further discussion with directors or officers after the AGM.

• If the above is not achievable and it is possible that the safety of attendees at the AGM may be at risk, directors may need to involve security resources which should be discreet (for example, doubling as seating attendants or first-aid officers). In rare cases, police may need to be involved.

• Under s 249P of the Corporations Act 2001 shareholders who hold five per cent of the shares or 100 shareholders who are entitled to vote, can lodge a statement regarding a resolution or other proper business of the meeting with the company and it should be dealt with as follows:
  – If the company receives it prior to dispatch of the notice of meeting, it must be included in the mailout to shareholders.
  – If not received in time, the company can send it to shareholders on receiving funds from the parties lodging the statement to cover distribution costs.
  – If the statement is more than 1,000 words or defamatory, the company does not have to send the statement to shareholders.

• Where shareholders requisition a general meeting or requisition a resolution to be put at an AGM of a listed company under the Corporations Act 2001, the company is required to announce the receipt of that requisition to ASX within two business days (Listing Rule 3.17A).

Examples

Examples of controversial issues could include:

• key risks involving company operations, such as environmental issues or health and safety matters

• wage disputes involving a major part of the company’s workforce with union threats to disrupt the AGM

• the CEO's remuneration arrangements

• a highly priced acquisition or large share placement involving a dilution of existing shareholders’ interests.
3. Managing shareholders who wish to speak or dominate question time

Principles

- Some companies may consider it inappropriate to adopt restrictive rules for comments or questions.
- It may be appropriate for the chair to rely on (and refer to) s 250S of the Corporations Act 2001 which requires the chair to ‘allow a reasonable opportunity for the members as a whole at the meeting to ask questions’, and thus restrict speakers in the number of questions or comments they can make and the amount of time that they can speak.
- While a number of questions from one shareholder may be permitted, the chair should consider the best way of managing this situation. One method which has been effective with an emotional activist is for the chair to stop the shareholder when they have asked their first question and to answer that question before they move on. This helps to avoid a possible build-up of undue emotion, which may result in a loss of focus by shareholders on informative answers to reasonable questions.
- If questions are of a detailed or personal nature on customer issues and best addressed by senior executives, the chair may, during the meeting, ask the relevant company executive to meet with the shareholder immediately after the meeting so that the shareholder’s concern can be addressed appropriately and to their satisfaction.
4. Media

Principles

One of the most effective methods of communicating with shareholders and other stakeholders is via some/all media channels: social, print, radio and television.

- The company must carefully plan the most appropriate method of dealing with and communicating via the media with shareholders, potential investors and other stakeholders.

  This could include:

  - whether to allow the media to film, take pictures or record the AGM proceedings (for privacy reasons, media are generally not permitted to film or photograph individual shareholders)
  
  - special briefings of media immediately following the AGM — this would generally be done (as opposed to or in addition to at the time of the results release) if there was a significant announcement made at the AGM by the chair and/or CEO, and perhaps may include one-on-one briefings
  
  - web-based live presentations available to all persons with internet access; for example, webcasting of AGM proceedings (including the Q&A session)
  
  - recordings of presentations being made available on the company's website or via social media outlets
  
  - press releases circulated to media outlets (via both traditional and social media outlets).

- At any briefing of the media and other stakeholders, additional representatives of the company other than those speaking should be present to monitor and ensure that only agreed information is released and no situations arise where special disclosures to ASX become necessary due to the inadvertent disclosure of price-sensitive information.

- There is increasing pressure from shareholder representative bodies to allow shareholders to attend media briefings that may follow the AGM. A feed can be provided to the media briefing at the close of the AGM, to ensure shareholders have access to the information provided to the media. This can dispel any suspicion that the media is granted access to information that is withheld from shareholders.

There is increasing pressure from shareholder representative bodies to allow shareholders to attend any media briefings that may follow the AGM. A feed can be provided to the media briefing at the close of the AGM, to ensure shareholders have access to the information provided to the media.
APPENDIX A

XXX LIMITED (ASX listed)

Chair’s procedural script for the AGM to be held on xx November 20xx at x:xx am/pm

Some assumptions were made in preparing this example.

• The order of business was as considered and agreed by the board when approving the notice of AGM.
• The appropriate process for resignation and appointment of auditor have been followed and is required to be considered at the AGM.
• The chair would move all motions and that no seconder would be required for any resolution. It should be noted that there is a move away from seeking seconders.
• No resolution would be put to the AGM in relation to the annual financial statements and reports.
• The board determined that proxy votes in relation to each resolution would be disclosed to shareholders after discussion on a resolution, but before the vote was taken.
• The chair determined that all polls would be held after the final item of business as set out in the notice of AGM.
• The chair is an independent non-executive director, and a member of the audit and remuneration committees.

1. Welcome
Chair: Good morning/afternoon, ladies and gentlemen.
I am AA, the Chair of XXX Limited. It is now x:xx am/pm.
I welcome you to the annual general meeting of the company.

2. Quorum
Chair: As we have a quorum, I now declare the annual general meeting open.

3. Directors
Chair: I will now introduce your directors, from your left:

  Mr BB, an independent non-executive director and Chair of the Audit Committee
  Ms CC, the Managing Director and CEO
  Mrs DD, an independent non-executive director, Chair of the Remuneration Committee and a member of the Audit Committee
  Mr EE, an independent non-executive director and a member of the Remuneration Committee
  Ms FF, our Company Secretary.

4. Auditors
Chair: Mr GG, a partner of ZZZZ, the company’s current auditor, is also present.

5. Voting
Chair: Each shareholder who registered today would have received a [blue] voting card. On a show of hands I will ask you to raise the voting card to assist the counting of votes. That card will also be used for the holding of a poll, if one eventuates.

6. Notice of meeting
Chair: The notice of meeting was dispatched to all shareholders. If there is no objection, I propose that the notice of meeting be taken as read.

[Alternative: I move that the notice of meeting be taken as read.]

Note: If you are asking for a shareholder to second the motion, which is increasingly rare and in any event not required by law, the words to use would be:
‘Could I ask a shareholder to please second the motion?’
Chair: Then I’ll put the motion. All those in favour of taking the notice of meeting as read, please raise your [blue] voting card. Against...
I declare the motion carried.

Comment:
Some chairs prefer to allow shareholders to exercise their rights to decide this matter by vote. If a shareholder wants the notice read for some reason, it will happen under either scenario.

7. Procedure for the meeting
Chair: The first item of ordinary business is the tabling of the financial reports and the directors’ and auditors’ reports.
As is common practice with most companies, the reports will be tabled, but will not be the subject of a resolution, as it is not required by the Corporations Act 2001. I will give a short address and I will then ask your CEO to address you. Shareholders and proxies will then have the opportunity to comment and ask questions. We will then go through the formal business of the AGM as per the notice of meeting. Shareholders and proxies will have the opportunity to ask questions or make comments on each resolution.
8. Financial reports

Chair: Before I present my chair’s address, it is appropriate for me to advise that, under the Corporations Act 2001, the company is obliged to lay before this meeting the last audited financial statements and reports, which were circulated, and which are dated 30 June 20xx.

I will now present my chair’s address.

[Chair’s address]

I will now ask your CEO to address you.

[CEO’s address]

Thank you, Mr CC.

Chair: No resolution is required, but I now invite shareholders and their proxies to comment or ask questions on the reports or the business of the company.

I would ask that questions on any of the other items of business be deferred until we come to that particular item.

[Alternative: Please limit your questions at this time to matters related to the financial and other reports — there will be time for general questions at the conclusion of the meeting. As the Corporations Act 2001 requires me to allow a reasonable opportunity for the members as a whole to ask questions about the management of the company, I ask shareholders and proxies, who may have more than one question or comment, to initially ask one question only and allow others to ask questions, before you ask further questions.]

Questions may also be asked of the auditors in relation to the conduct of the audit, content of the audit report, accounting policies adopted by the company and the independence of the auditor in carrying out the audit.

Could you please address all questions to the chair and, if you wish to speak, could you please move to a microphone so that all shareholders can hear your comment or question?

When I direct, please state your name before speaking and hold your [blue] voting card so that I can see that you are a shareholder or proxy.

Are there any comments or questions?

[Shareholder comments and questions]

As there are no further questions we will now move to the second item of business.

[Alternative: As we have now had [two] hours of comments and questions I am of the opinion that we have given shareholders reasonable opportunity to comment and, in view of the amount of business still to be considered, we will now move on to the second item of business.]

9. Remuneration report

Chair: Under the Corporations Act 2001, listed companies are required to include as part of their directors’ report a remuneration report, which includes specified information.

The directors have prepared a remuneration report to 30 June 20xx and it is included in the annual report on pages XX to XX that has been made available to shareholders.

The Act also requires companies to put to shareholders a non-binding vote to enable shareholders to voice their opinion on matters included in the report.

After the motion has been moved there will be time for comments and questions.

If appropriate, I will ask the Chair of the Remuneration Committee to respond on matters of detail.

[Alternative: I will now ask Mrs DD, Chair of the Remuneration Committee, to present the remuneration report to you and to move the adoption of the report.]

I now move that the remuneration report for the period ended 30 June 20xx be adopted by passing an ordinary resolution as set out in the notice of meeting. Chair: Are there any comments or discussion?

[Comments]

I will advise you of the proxy votes received, which are as follows:

For x,xxx,xxx
Against x
Abstain x,xxx
Open proxies xx,xxx

Changes to the Corporations Act 2001 also mean that there are consequences for the company should there be a vote of greater than 25 per cent vote by shareholders AGAINST the adoption of the remuneration report.

With this in mind, your board believes it appropriate that the voting on this item be conducted by poll rather than by a show of hands. I now call for a poll to be held on this resolution which will be held at the end of this meeting, together with any poll on any other resolution.

We will now move to Resolution 3(a).

[Where a company has already received a first vote above 25 per cent AGAINST the adoption of the remuneration report, it should refer to the CSA Guidelines for managing the requirements of a second strike].
10. Election of directors

Chair: We will now move to Item 3 on the agenda, the election of directors. As stated in the notice, two directors must retire at the AGM and are eligible for re-election. As required by ASX, separate resolutions will be put for each director. All directors’ details are set out in the directors’ report on pages XX and XX of the annual report, so I will not repeat those details.

[I will ask each of the directors standing to speak to you briefly. However, any questions or comments should be addressed to the chair.] I will now deal with each resolution separately, but I should tell you that each of the directors, other than the director standing for election or re-election, recommends the election or re-election of each of the other directors who are standing for election or re-election. As the first resolution relates to my re-election, I will step down from the chair and ask Mr BB to chair the meeting for Resolution 3(a).

Mr BB: Thank you, AA.

Resolution 3(a)

I have pleasure in moving that Mr AA, who retires by rotation under rule xx of the company’s constitution, and being eligible, is re-elected a director of the company. [I will ask Mr AA to speak briefly to you.] Are there any comments or questions? Before I put the resolution to the meeting, I will advise you of the proxy votes. The proxy votes received are as follows:

For x,xxx,xxx
Against x
Abstain x,xxx
Open proxies xx,xxx,xxx

Open proxies in favour of the chair of the meeting at the time of the meeting will be voted in favour – x,xxx,xxx.
I’ll now put the resolution to the meeting.

[Mr AA will not vote on this matter.] All those in favour of the ordinary resolution to re-elect Mr AA as a director, please raise your [blue] voting card.

Against … I declare the resolution carried. We will now move to Resolution 3(b) and I pass the chair back to Mr AA.

Chair: Thank you.

Resolution 3(b)

I have pleasure in moving that Mrs DD, who retires under rule xx of the company’s constitution, [having been appointed a director since that last AGM], and being eligible, is elected a director of the company. [I will ask Mrs DD to speak briefly to you.] Are there any comments or questions? Before I put the resolution to the meeting, I will advise you of the proxy votes. The proxy votes received are as follows:

For x,xxx,xxx
Against x
Abstain x,xxx
Open proxies xx,xxx,xxx

Open proxies in favour of the Chair of the meeting at the time of the meeting will be voted in favour – x,xxx,xxx. I’ll now put the resolution to the meeting.

[Mrs DD will not vote on this matter.] All those in favour of the ordinary resolution to elect Mrs DD as a director, please raise your [blue] voting card.

Against … I declare the resolution carried.
11. Appointment of auditors

Chair: We now move to Resolution 4 in the notice of meeting, the appointment of auditor.

The current auditors, ZZZZ, have been in place for [ten] years. This arrangement has been reviewed by the Audit Committee and as a result tenders were obtained from [four] firms including the existing auditor.

As a result, and on the recommendation of the Audit Committee, your directors are recommending to shareholders that XXXX be appointed auditor.

Mr BB, as a shareholder, and Chair of the Audit Committee, has nominated that XXXX be appointed auditors and they have agreed to act. A copy of the nomination is attached to the notice of meeting as Annexure A.

The Australian Securities & Investments Commission has consented to the resignation of Messrs ZZ, the existing auditor, in accordance with the requirements of the Corporations Act 2001.

I will now move that XXXX be appointed as auditors of the company.

Are there any comments or questions?

[Note: Retiring auditor may have the right to speak.]

Before I put the resolution to the meeting, I will advise you of the proxy votes.

The proxy votes received are as follows:

For x,xxx,xxx

Against x

Abstain x,xxx

Open proxies xx,xxx,xxx

Open proxies in favour of the chair of the meeting at the time of the meeting will be voted in favour – x,xxx,xxx

I’ll now put the resolution to the meeting.

All those in favour of the ordinary resolution to appoint XXXX as auditors of the company, please raise your [blue] voting card.

Against …

I declare the resolution carried.

12. Ratification of director deeds of access, indemnity and insurance

Note: Some companies take the view that it is not necessary to obtain shareholder approval/ratification for deeds of access, indemnity and insurance (see s 212 of the Corporations Act 2001). Some take the view that, regardless of the requirements of the Act, their shareholders should be given the opportunity to vote on the issue. If a company does decide to seek shareholder approval, there is no requirement in Listing Rule 14.11 to have a voting exclusion statement/chair’s box in relation to the resolution (unless ASX exercises its overall discretion to require one). Experience of many listed companies has been that many retail shareholders do not understand the significance of the chair’s box on a proxy form, and many votes in favour of a resolution have been lost when using one.

Resolution 5

Chair: As stated in the 20xx prospectus, deeds had been entered into with each of the directors and they now seek ratification by shareholders at this meeting.

A great majority of companies now provide directors with deeds of access, indemnity and insurance. These deeds provide indemnification against liability to the extent permitted by law, access to the company’s records for a proper purpose, and insurance.

The form of the deed is annexed to the notice of AGM.

I now move that Resolution 5 as set out in the notice of meeting, to approve and ratify the entry by the company into indemnity deeds with each of the directors (and for any future directors), be passed as an ordinary resolution.

Chair: Is there any comment or discussion?

Before I put the resolution to the meeting, I will advise you of the proxy votes.

The proxy votes received are as follows:

For x,xxx,xxx

Against x

Abstain x,xxx

Open proxies xx,xxx,xxx

Open proxies in favour of the chair of the meeting at the time of the meeting will be voted in favour — x,xxx,xxx

[where the chair’s ‘box’ has been ticked].

I would remind the directors, and any of their associates, that you must not vote on this resolution.

I will now put the resolution to the meeting.

All those in favour of Resolution 5, to approve and ratify the entry by the company into indemnity deeds with each of the directors, as set out in the notice of meeting, being passed as an ordinary resolution, please raise your [blue] voting card.

Against …

I declare the resolution carried.

We will now move to Resolution 6.
13. Issue of options to YY Pty Ltd

Resolution 6

Chair: The notice of meeting and explanatory statement set out in much detail relevant information regarding the options issued to YY Pty Ltd in relation to funds provided in August 20xx.

The purpose of this resolution is to seek shareholder approval and ratification of the issue of options, such that the options do not form part of the 15 per cent of issued capital that the company is restricted to issue in a 12-month period without prior shareholder approval.

I do not propose to go into any further detail as the arrangement is fully covered in the notice of meeting. Rather, I will move the resolution and allow comments and questions.

I now move that Resolution 6 as follows and as set out in the notice of meeting be passed as an ordinary resolution: That, for the purposes of ASX Listing Rule 7.1 and 7.4, and for all other purposes, the company approves the issue to YY Pty Ltd of XXX options to subscribe for fully paid ordinary shares in the capital of the company on the terms described in this notice of meeting and accompanying explanatory memorandum.

Chair: Is there any comment or discussion? (Comments) Before I put the resolution to the meeting, I will advise you of the proxy votes received, which are as follows:

For x,xxx,xxx
Against x
Abstain x,xxx
Open proxies xx,xxx,xxx

Open proxies in favour of the chair of the meeting at the time of the meeting will be voted in favour — x,xxx,xxx. I would remind YY Pty Ltd, and any of its associates, that they must not vote on this resolution.

I will now put the resolution to the meeting. All those in favour of Resolution 6 please raise your [blue] voting card. Against … It appears that this resolution does not have the necessary support of those present.

[Alternative: It appears that the result on a show of hands is inconclusive.]

In view of the proxies received, and my obligations as chair, I hereby exercise my powers under the constitution, and demand a poll. This poll, and any other poll, will be held at the end of the meeting. We will now move to Resolution 7.

14. Non-executive directors’ remuneration

Resolution 7

Chair: The constitution and the ASX Listing Rules require shareholder approval of changes to the maximum aggregate level of directors’ fees that may be payable to non-executive directors.

It is recommended that a level be set that would cover any likely changes in the board structure over at least the next three years.

The [notice of meeting] and [remuneration report] contains other details regarding the fees currently paid to non-executive directors.

I now move that Resolution 7 as follows, and as set out in the notice of meeting, be passed as an ordinary resolution: That shareholders approve the maximum total amount of fees payable to non-executive directors of the company as $xxx,xxx per annum, commencing from 1 July 20xx, and that amounts in aggregate up to that sum per annum may be paid to non-executive directors in such proportions and manner as the directors may agree.

[Alternative: That shareholders approve the maximum total amount of fees payable to non-executive directors of the company, be increased from $xxx,xxx to $yyy,yyy per annum, commencing from 1 July 20xx …]

Chair: Is there any comment or discussion?

(Comments)

Before I put the resolution to the meeting, I will advise you of the proxy votes received, which are as follows:

For x,xxx,xxx
Against x
Abstain xx,xxx
Open proxies x,xxx,xxx

Open proxies in favour of the Chair of the meeting at the time of the meeting will be voted in favour – x,xxx,xxx [where the chair’s ‘box’ has been ticked].

I would remind the directors, and any of their associates and closely related parties, that you must not vote on this resolution. [If there was a poll, you would be entitled to vote directed proxies only.]

I will now put the resolution to the meeting.

All those in favour of Resolution 7 being passed as an ordinary resolution, please raise your [blue] voting card. Against …

I declare the resolution carried.

We will now move to Resolution 8.
15. Amendment to the constitution — number of directors

Resolution 8
Chair: The constitution currently states that the number of directors be as determined by the directors but not be fewer than eight nor more than 16 (excluding the managing director and other executive directors).

Currently, the company has eight non-executive directors and one executive director — the minimum required.

The Corporations Act 2001 prescribes a minimum of three directors. [Note that other industry-specific regulators (for example, the Australian Prudential Regulation Authority) may have other requirements].

To give the company flexibility in the future over the number of directors, it is proposed that the constitution be amended so as to rely on the provisions of applicable laws and regulations for the minimum number of directors instead of eight currently in the constitution and to set a more manageable maximum number of directors. The board is also cognisant of recent changes to the Corporations Act 2001 which limit the ability for boards to set their own size.

At this time, your board does not intend to ask shareholders to provide it with the authority to set an annual board limit.

All the board recommends shareholders vote in favour of the amendment to the constitution.

I now move that Resolution 8 as follows, and as set out in the notice of meeting, be passed as a special resolution:

That the constitution be modified by replacing article F.1, Number of directors, with the following:

The number of directors must not be less than the minimum prescribed by the Corporations Act 2001 or other regulations and no more than 12.

Chair: Is there any comment or discussion?

Before I put the resolution to the meeting, I will advise you of the proxy votes.

The proxy votes received are as follows:

For x,xxx,xxx
Against x
Abstain xx,xxx
Open proxies x,xxx,xxx

Open proxies in favour of the chairman of the meeting at the time of the meeting will be voted in favour – x,xxx,xxx

I will now put the resolution to the meeting and remind shareholders that, as this is a special resolution it requires a majority of at least 75 per cent in favour for the motion to be passed.

All those in favour of Resolution 8, to approve an amendment to the constitution, as set out in the notice of meeting, being passed as a special resolution, please raise your [blue] voting card.

Against …

I declare the resolution carried.

We will now move to the polls on Resolutions 2 and 6.

16. Polls
Chair: As determined earlier in the meeting, a poll would be held on Resolutions 2 and 6 at the conclusion of all other business of the AGM.

We will now hold the poll on that resolution.

[See poll procedures — Appendix B]

17. Closure
Chair: That ends the meeting which I now declare closed.

[Alternative: That ends the formal part of the annual general meeting.

I now invite shareholders who may have questions or comments not related to the specific business of the meeting to speak.

Shareholder comments and questions.]

Thank you all for your attendance and interest and we look forward to your continued support in the coming year.

[Please join us [in the foyer] for light refreshments.]

[Note: If direct voting is utilised, the chair will call a poll on each resolution at the start of the meeting. Proxy votes together with direct votes received prior to the meeting may be displayed on screen. Unless electronic voting devices are used, the poll on each resolution will be held at the end of the meeting. Where electronic voting devices are used, the chair will be able to finalise the poll on each resolution and announce the results before moving to the next resolution.]
APPENDIX B

XXX LIMITED

POLL PROCEDURES (presented by the chair or company secretary)

- Shareholders and proxy holders would have received, on registration, a [blue] voting paper, that provides for the holding of a poll on any of the resolutions put to shareholders.

- A poll has been called by [the chair] [by (five) shareholders holding five per cent or more of the voting capital of the company] on Resolution [2] in relation to the adoption of the Remuneration Report and Resolution [6] in relation to the issue of options.

- We will now hold the poll on Resolutions [2] and [6] and the Company’s new external auditors, XXXX, have been engaged to conduct a review of the poll papers and procedures before a determination of the results is made.

- We will announce the results of the poll and advise ASX as soon as the results are determined.

- I will firstly refer to shareholders and then proxy holders.

  - First, shareholders — if you wish to vote FOR the resolutions numbered [2] or [6], please mark against that Resolution, the FOR box on your voting paper. If you wish to vote against mark the AGAINST box on your voting paper next to the relevant resolution. If you wish to abstain from voting please mark the ABSTAIN box on your voting paper next to the relevant resolution.

  - There is no need to mark any other resolution as they were all passed on a show of hands and a poll is not being held on those resolutions. If you mark any other resolutions, those marks will not be valid.

  - Second, if you are a proxy holder you must comply with the direction of the shareholder if you wish to lodge a valid vote. The FOR and AGAINST votes are shown on the schedule attached to the poll paper. If the shareholder has given you the discretion how to vote you should include that number of votes in the number you write in the FOR or AGAINST boxes. Alternatively, you may wish to write those discretionary numbers separately in the FOR or AGAINST box.

  - If you are a proxy holder and you do not lodge a vote on Resolutions [2] and [6], the votes on those resolutions will pass to [me/the chair of the meeting] to exercise, pursuant to the Corporations Act 2001. [I/The chair] must comply with the direction of the shareholder. Where no instructions have been given to the chair how to vote, as set out in the proxy form circulated to holders, the chair has been expressly authorised to exercise those votes and intends to vote those shares in favour of both resolutions. [Note: check that the wording of the proxy form allows for this, some do not].

  - If you have any questions, please ask one of the company’s officers at the conclusion of the meeting before lodging your voting paper in the poll boxes located at the exits.

  - After the votes have been counted and reviewed by the external auditor, the results of the poll will be released to ASX and will be displayed on the company’s website.

  - I will now pass back to the chair to close the meeting.

Note: if handheld electronic devices are used to pre-register shareholders’ details to facilitate electronic poll voting, the above procedures will need to be varied. In this instance, before the formal business of the meeting gets under way, the chair may start off with a fictional motion to be voted on, to ensure that all shareholders are comfortable with the voting process. For proxy holders, directed proxies will have been uploaded into the devices on registration. The chair may be able to finalise the poll on each resolution and announce the results before moving to the next resolution.

If handheld electronic devices are not used on a poll, the chair may decide to open a poll at the beginning of the meeting or on each resolution and close the poll at the end of the meeting rather than opening, holding and closing the poll at the end of the meeting. This may assist those shareholders who cannot stay until the end of the meeting and so can submit their completed poll cards before leaving.
APPENDIX C

Formal procedural motions

Developed over a lengthy period of time, there are seven generally accepted formal procedural motions which are as follows:

1. The closure — that the question be now put
   - speaker may be interrupted
   - chair may reject
   - no seconder required
   - no discussion allowed
   - can be moved on amendments
   - if passed, vote on original motion or amendment, subject to right of reply of mover of main motion
   - if lost, discussion continues on substantive motion from point of interruption

2. The previous question — that the question be NOT now put
   - speaker cannot be interrupted
   - chair may reject
   - seconder required
   - discussion allowed on this motion
   - cannot be moved on amendments
   - if passed, the matter is disposed of and cannot be brought forward until a later meeting
   - if lost, vote is taken on the main motion immediately, subject only to the right of reply of the mover

3. Proceed to next business — that the meeting proceed to the next business
   - speaker cannot be interrupted
   - cannot be rejected by the chair
   - no seconder required
   - no discussion allowed
   - can be moved on amendments
   - if passed, the matter is disposed of and cannot be brought forward until a later meeting. Proceed to the next item of business, if the motion related to an amendment, the next business is the original motion
   - if lost, discussion resumes at the point of interruption. This formal motion may be moved again after a suitable interval, determined by the chair’s discretion

4. Matter lie on the table — that the question lies on the table
   - speaker cannot be interrupted
   - cannot be rejected by the chair
   - no seconder required
   - no discussion allowed
   - can be moved on amendments
   - if passed, the first consideration of the question until at this or a later meeting, it is resolved that it ‘be taken from the table’
   - if lost, discussion resumes at the point of interruption
5. Debate be adjourned

- speaker cannot be interrupted
- cannot be rejected by the chair, if the motion has been seconded
- no seconder required, but see previous point
- discussion allowed on this motion
- amendment only allowed as to time, date and place of resumed meeting
- if passed, meeting proceeds to next item of business or, if none, closes the meeting
- if lost, debate is resumed where it ceased. This formal motion may be moved again after a suitable interval (as determined by the chair)

6. Meeting be adjourned

- speaker cannot be interrupted
- cannot be rejected by the chair
- seconder required unless moved by the chair
- discussion allowed on this motion
- amendment only allowed as to time, date and place of resumed meeting
- if passed, the meeting is adjourned, subject only to the chair advising arrangements for the resumption
- if lost, debate is resumed where it ceased. This formal motion may be moved again after a suitable interval (as determined by the chair)

7. The chair of the meeting leave the chair

- speaker cannot be interrupted
- cannot be rejected by the chair
- no seconder required
- no discussion allowed
- no amendment to this motion is permitted
- if passed, the meeting is instantly adjourned (chair should explain this before putting the motion)
- if lost, debate is resumed where it ceased
APPENDIX D

Further reading

Chartered Secretaries Australia, 2007, Effective AGMs. Note: a second edition is in development and is to be published in 2014.

ASX Corporate Governance Council, 2010, Corporate Governance Principles and Recommendations (2nd edition with 2010 amendments)