

Guidelines for
Notices of
meeting

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Guidelines for notices of meeting

The *Corporations Act 2001*, the common law and the ASX Listing Rules provide the framework for the drafting, preparation and dissemination of notices of meeting for members of a company. The notice must not mislead shareholders or the market as a whole. This might include, for example, omitting relevant information in an explanatory note appended to the notice.

It is **good governance**, therefore, for the notice of meeting to state clearly, concisely and effectively, and where necessary explain, the nature of the business of the meeting. A meeting of the company's members is required to be held for a 'proper purpose' for the administration of the company.

Identifying shareholders for the purpose of a general meeting

When organising a general meeting, the company is required to determine the persons who hold shares in the company at a specified time before the meeting, for the purpose of being entitled to attend and vote at the meeting. The specified time cannot be more than 48 hours before the meeting, and the notice of meeting should include particulars of the time and date determined by the company.

Giving notice of the timing and location of general meetings

Companies must usually give at least 21 days' notice to members about a general meeting. Listed companies are required to give at least 28 days' notice. Companies should consult their constitutions with respect to service time provisions, and also note ASIC Guidance Note 7 which provides guidance on calculating time periods.

The listing rules require listed companies to lodge various documents with ASX at particular times during the notification period. These might include companies:

- lodging their AGM notice, proxy form, and any other accompanying documents with the ASX at the same time they are sent to shareholders
- notifying ASX of the date of the AGM at least five business days before the closing date for receipt of director nominations
- providing to ASX in draft form, other documents requiring shareholder approval such as resolutions concerning the issue of securities.

Companies should consult the listing rules when considering the documents to be sent to the ASX.

It is good practice for listed companies to organise for their meetings to be held during normal business hours and at a place which provides the highest likelihood of attendance or to provide for special circumstances. The *Corporations Act* requires companies to hold general meetings of members 'at a reasonable time and place'. This place could often be in the city where the head office of the company is situated or where a majority of individual shareholders reside. Companies might also periodically hold meetings in other places where a significant number of shareholders reside.

It is good practice for companies to consider using relevant technology to enable the maximum number of shareholders to observe the meeting, for example, through webcasting.

Providing the notice of meeting to shareholders

Companies will also need to turn their minds to how notice will be provided to shareholders, such delivery might be undertaken:

- personally
- by post to the registered address of a member
- to a fax number or electronic address (if any) nominated by the member
- by notifying the member by electronic means (if any) that notices are available, and the appropriate electronic means by which the member may access the notice of meeting, or
- any other means permitted by the company's constitution.

Companies are able to send notices of meeting to shareholders by electronic means if requested, and should place the full text of notices and accompanying explanatory material on the company's website. Shareholders may request that notices of meeting be sent to them by electronic means on an 'opt-in' basis. Shareholders are also able to change that election at any time, and have the right to request a paper version of a document that has been sent electronically.

By allowing shareholders to receive notices of meeting and annual reports by electronic means and vote electronically, a company can provide shareholders with more immediate access to the documents and a more convenient method of voting. This can also reduce the company's printing and distribution costs. Companies might also consider distributing explanatory material by other means, so that shareholders who do not have access to the Internet and other forms of electronic communication are not disadvantaged.

Companies may also wish to consider placing any other materials submitted to the ASX in accordance with the listing rules on the company's website, or referring to the ability to download such information from the ASX's website.

Selecting a date for the general meeting of members, including the AGM

For many companies, meetings of members may occur infrequently or irregularly. However, often the AGM will be consistently conducted at a similar time every year. In selecting a date for the company's meeting of members; the company should have regard to the following requirements:

- the date should allow for adequate notice of the meeting to be given, preferably beyond the minimum required
- companies are required to hold their AGMs within five months of the end of their financial year
- the requirement to announce the date of the AGM at least five business days before the closing date for receipt of director nominations

- the day of the meeting should be a normal business day in the location where the board will physically meet
- the date should be set, advised to markets and placed on the website (especially the AGM) well in advance
- the date should not clash with major events that may restrict the members' opportunity to participate
- public holidays in other relevant locations should be avoided
- the availability of directors, the auditor and the company secretary to attend.

Selecting the time for the general meeting

The time will be set having regard to the following:

- the likely period of time required for the meeting, which will be determined by the number and complexity of the agenda items, and the likelihood of using polls as a voting mechanism
- a commencement time that provides adequate time for registration and travel, considering the member base
- whether or not members at other venues will be in different time zones
- the need to lodge the chairman's address with ASX before the meeting to enable its release to the market before the time of the address
- the need to advise ASX of the outcomes of the resolutions put to the meeting
- the company's decision as to what, if any, refreshments will be offered
- the degree to which media coverage is sought for the event — a morning AGM will allow for coverage more easily than an afternoon AGM.

Selecting a venue for the general meeting

Alongside considerations about the location of the majority of shareholders of the company, the location or locations of the meeting will be determined by:

- where the shareholder base is spread widely over various areas, the potential for rotating the location of the meetings, holding simultaneous meetings at more than one venue, or, at a later date, holding members' communication meetings at appropriate venues
- the likely attendee numbers which will also determine the size of the specific venue required
- the facilities at the venue — they should be satisfactory to encourage the participation of members in the meeting. The ability to webcast from the venue should also be considered
- the convenience of the venue to transport, depending on the member base
- other special requirements — consideration may need to be given to display areas, wheelchair access, hearing aid loop, security, catering suitable for the shareholder demographic, first-aid provision and so on.

Adjournment

Companies may also wish to give consideration and make suitable alternative arrangements should the meeting be adjourned to a future date.

Companies should also be aware of the requirement to hold a second meeting within 90 days where the company receives a 'second strike' in relation to the resolution on its remuneration report. See Governance Institute's *Guidelines for managing the requirements of a second strike*.

Content of the notice of meeting

The notice of meeting will set out the general nature of the meeting's business and the resolutions to be put to the meeting.

Drafting methods for the notice of meeting

When drafting the notice of meeting, companies should be mindful of the way in which the notice is drafted. In order to ensure that the notice of meeting is clear, concise and effective, companies might consider some of the following drafting methods, including:

- using plain English to concisely communicate relevant information
- avoiding legal archaisms such as 'aforesaid', 'abovementioned', 'hereafter', 'hereinafter', 'hereunder', 'herewith', 'thereby' and 'pursuant'
- avoiding unnecessary repetition, and
- employing a structure and format that ensures readability and ease of understanding by shareholders; this includes using:
 - appropriate spacing, indenting, highlighting, headings and numbering
 - a uniform and easily legible font, and
 - correspondingly sequential treatment of resolutions in any explanatory statements.

Providing for shareholder voting and participation

The notice of meeting should include a clear reference to shareholders' rights to appoint a proxy, or where the constitution so provides, to cast a direct vote. Voting forms should be drafted to ensure shareholders clearly understand how the chairperson of the meeting intends to vote undirected proxies.

The shareholder is able to indicate whether they wish the proxy to vote 'for' or 'against', or abstain from voting on, each resolution, or whether they wish to leave the decision to the appointed proxy after discussion at the meeting. If the instruction is to abstain from voting, companies should state whether such votes will be counted in computing the required majority on a poll. While not obligatory, it is now common for companies to specify in the voting information that a proxy can be either an individual or a body corporate, and that, if a shareholder appoints a body corporate as proxy, the body corporate will need to appoint an individual as its corporate representative and provide satisfactory evidence of this appointment.

The notice should specify a place and fax number for the purpose of receipt of the proxy appointments. It is also good practice to specify an electronic address for receipt and other electronic means by which a member may give the company a proxy appointment.

Companies should consider allowing shareholders to lodge direct votes or proxies electronically, subject to the adoption of satisfactory authentication processes.

Resolutions

Business at the company's general meeting is usually effected through the passing of resolutions. Explanatory notes on each resolution should be provided to shareholders. Resolutions should also be drafted to be clear, concise and accurate. See Governance Institute of Australia's *Good Governance Guide: AGMs: explaining items of business, including special business* for more information.

The business of the company's AGM may include:

- consideration of the annual financial report, directors' report and auditor's report
- the election of directors
- the appointment of the auditor
- the adoption of the remuneration report, and/or
- the fixing of the auditor's remuneration

When drafting resolutions, companies are encouraged to only combine or 'bundle' resolutions in limited circumstances, for example, where the resolutions are interdependent and linked so as to form one significant proposal. An example of an appropriately bundled resolution is one that incorporates a number of uncontroversial changes to a company's constitution or the adoption of a new constitution, or approving a scheme of arrangement.

Where resolutions are 'bundled', the company should ensure the notice clearly explains the primary purpose of the bundled resolution and the material implications of each of its components.

The following non-exhaustive list of categories of resolutions that should not be bundled, but be dealt with as separate items of business, each with a distinct explanation provided, includes:

- the issue of options with participation rights, under Listing Rule 6.20.3
- the issue of unquoted options with exercise price variation terms not in accordance with Listing Rule 6.22.2, under Listing Rule 6.22.3
- changes to options under Listing Rules 6.23.2 or 6.23.4
- approval of an issue under an employee incentive scheme, under Listing Rule 7.2 exception 9(b), where directors have an interest
- approval of a transaction with, or issue of securities to, a person in a position of influence under Listing Rules 10.1

(acquisition and disposal of substantial assets), 10.11 (issues of securities to related parties), 10.14 (issues of securities to related parties under an employee incentive scheme), 10.15 and 10/15A (acquisition of securities by a director or associate under an employee incentive scheme), 10.17 (non-executive directors' remuneration) or 10.19 (termination benefits)

- approval of the terms of issue of preference shares not provided for in the company's constitution (s 254A (2) Corporations Act), or a change to the company's constitution that has the same effect
- issues of a new class of shares not already provided for in the company's constitution (s 246C (5) Corporations Act), or a change to the company's constitution that has the same effect
- approval of a buy-back (ss 257C or 257D Corporations Act)
- approval of the giving of financial assistance (s 260B Corporations Act)
- approval to appoint or remove directors — each candidate for appointment or removal will require a separate resolution (see below), and
- any other resolutions in relation to which a director or senior executive has an interest.

The election or removal of directors

Companies should give clear guidance in their notices of meeting on resolutions electing or removing directors, ensuring that each candidate is considered separately in a distinct resolution.

Where the number of candidate for election exceeds the number of available positions on the board, the notice of meeting should provide clear guidance on the voting method by which the successful candidates will be selected at the meeting.

The notice of meeting should also provide shareholders with enough information to enable them to make an informed decision about the resolution being put to the meeting. For example, this might include providing information about the candidate or their views.

Companies should be aware that they are required to circulate to all shareholders any written statement provided by a director named in a removal resolution under s 203D(4) of the Corporations Act representing his or her views on the proposal.

The adoption of the remuneration report

Shareholders must be provided with an opportunity to ask questions about or make comments on the company's remuneration report.

Companies should be mindful of the complexities of voting in relation to the remuneration report and further information can be found in Governance Institute's *Guidelines for managing the requirements of a second strike*, and Governance Institute's *Guidelines on managing voting exclusions on remuneration-related resolutions*.

Member resolutions

Members (constituting 100 in number or five per cent of the company's members) may give notice of a resolution to be put to members at a general meeting. The company must give all members of the company notice of the resolution to be put forward as soon as is practicable.

Companies are not required to give notice of the resolution put forward if the member resolution is more than 1,000 words long or defamatory, or if the members putting forward the resolution bear the expenses of sending out the notice of meeting.

Withdrawing resolutions prior to the meeting

Instances may arise where it is appropriate for a resolution in the notice of meeting to be withdrawn prior to the meeting. In those situations, the motion may be withdrawn by the company, and the reasons why the motion has been withdrawn put to the shareholders, if there is sufficient time, before the meeting. Where there is not sufficient time, the chair of the meeting should announce to the shareholders, at the start of the meeting, that the resolution has been withdrawn.

Listed entities are required to ensure that the withdrawal of the resolution is announced to the market as soon as it is known, and no later than when the information is communicated to shareholders.

Directors' recommendations on resolutions

Companies should ensure that the notice of meeting gives clear guidance on directors' recommendations on resolutions. Where recommendations are specifically required, notices should contain adequate representation of the views of all assenting and dissenting directors on specific resolutions.

Notices should make it clear whether represented views are those of an executive director, a non-executive director, an independent director, or unanimous.

Companies would not be expected to present the contrary view in a notice of meeting where directors unanimously support a resolution, but the notice of meeting should, nevertheless, present a balanced view and be forthcoming about any significant disadvantages.

Guidance on directors' recommendations should be placed at the end of the explanatory note on each resolution.

Complex resolutions

Companies should give particular attention to notices containing complex resolutions. For example, a complex resolution could include a resolution requiring an independent expert's report under the Corporations Act takeover provisions or ASX Listing Rule 10.1, a resolution seeking to amend companies' constitutions in respect of proportional takeovers, and resolutions seeking to alter companies' capital structures.

Notices containing such resolutions should always include a 'short-form' explanatory statement setting out concisely and clearly the nature of the meeting's business and its ramifications for the company.

Companies should encourage independent experts to preface their reports with a concise executive summary of their findings. Companies should not provide their own summaries of independent experts' findings in explanatory statements.

Conflicts of interest

Companies should ensure notices clearly state which shareholders will be excluded from voting or have their votes disregarded.

Conflicts of interest of directors and their associates and senior executives should be clearly outlined. The Corporations Act and ASX Listing Rules contain specific provisions outlining those shareholders who may be excluded from voting on a resolution in which they may have an interest or receive a benefit disproportionate to other shareholders.

The question of who may be excluded from voting or whose votes will be disregarded can be an important factor in a shareholder's determination as to whether to attend a meeting or appoint a proxy. Best practice requires voting exclusion statements to be contained in the notice itself and be located immediately adjacent to the relevant resolution. It is quite acceptable, but not essential, for voting exclusion information to be also contained in any explanatory statement. See Governance Institute of Australia's *Guidelines on managing voting exclusions on remuneration-related resolutions* for more information on procedures for managing 'voting exclusions'.