

CORPORATIONS LAW
SIMPLIFICATION PROGRAM

COMPANY MEETINGS

PROPOSAL FOR SIMPLIFICATION

TASK FORCE

DECEMBER 1994

Simplification Task Force
Attorney-General's Department
BARTON ACT 2600

Company Meetings Proposal for Simplification

This proposal sets out how the rules in the Corporations Law dealing with meetings (section 244-259 in Part 3.3) might be changed and how the relevant rules in Table A might be brought together with them.

Members' Right to Convene General Meetings and Circulate

The Law gives members a right to convene a general meeting of the company, subject to contrary provision in the company's articles (section 247(1)). However, this has been interpreted to mean that almost any provision in a company's articles about the members' power to convene a meeting displaces this right.

The Task Force considers that members should always be able to convene a general meeting. It therefore proposes that companies should not be able to displace this right with their articles.

The Law currently fixes the number of members who may requisition the directors to convene a meeting (section 246 (1)), or circulate a resolution to other members (252(1)), in several different ways:

- If the company has shares, 100 shareholders who have paid up an average of \$200 on their shares
- If the company does not have shares, 200 members
- In every case, members holding at least 5% of total voting rights.

There are a number of problems with the first 2 thresholds. Neither of them necessarily fixes a meaningful proportion of the company's members. For widely held companies, a relatively small number of members may take advantage of the provisions. The monetary threshold in the first test has long since been whittled away by inflation, and can be manipulated through nominee shareholdings.

It is therefore proposed that the first 2 thresholds be repealed, and that only members holding at least 5% of total voting rights be able to requisition the directors to convene a meeting or circulate a resolution to other members.

The directors must convene a general meeting to be held as soon as practicable but not later than 2 months after receiving a requisitioning. If the directors do not convene the meeting within 21 days after receiving the requisition, the requisitioning members may themselves convene a general meeting to one held within 3 months.

These provisions were considered by the House of Representatives Standing Committee on Legal and Constitutional Affairs in its report on 'Corporate Practices and the Rights of Shareholders'. The Committee expressed concern at the potential for directors to defer convening the meeting. It recommended that a shorter time period should apply, and that the ASC should be able to extend the period. The Task Force invites comment on this issue.

Allowing For Technological Developments

To remove any uncertainty under the general law, the Task Force considers that the Law should provide for companies to be able to:

- Hold general meetings using any technology that gives members a reasonable opportunity at the annual general meeting to ask questions about the management of the company to hear and be heard
- Hold directors' meetings using any technology that allows directors to hear and be heard.

Members' Right To Ask Questions At General Meetings

Members are usually given an opportunity at the annual general meeting to ask questions about the management of the company. However, members presently have no clear right to ask these questions. The companies legislation in both Ontario and New Zealand expressly allows members to ask questions about, discuss and comment on the management of the company at general meetings.

The Task Force proposal to require the chairperson to allow a reasonable opportunity for discussion of company management at general meetings will not interfere with the chairperson's role in exercising proper control over the meeting.

The Law also presently requires that auditors be given notice of general meetings, and allows them to attend and address those meetings. By virtue of section 331A of the Law, the auditor's report is made to members. The Task Force invites comment on whether members should have a right to questions auditors at the annual general meeting about their report.

Proxies

While the Law also does not require that proxy forms be witnessed to be valid, a company's articles may do so. This can be overlooked by members and lead to their votes not being counted. To remedy this problem, the Law will provide that a signed proxy form will be valid even if it is not witnessed.

The statutory right to appoint a proxy is currently limited to members of public companies. The members of a proprietary company may appoint a proxy if authorised by the company's articles, or with the leave of a court (section 250(4)). In practice, the articles of most proprietary companies permit members to appoint proxies (eg see Table A, article 49(a)). To ensure that this right is always available to members of proprietary companies, the Law will provide that the members of all companies may appoint a proxy.

Under the proposal, the rules about company meetings in Table A will be moved into the Law. Article 54(4) of Table A currently includes a model proxy form. The Task Force invites comment on whether the Law should contain a new model proxy form providing guidance to companies designing their own proxy form.

Statutory Meetings

Section 244 of the Law requires a company to hold a general meeting (called a 'statutory meeting') within 3 months of first allotting shares under a prospectus. It has been suggested that this meeting serves no useful purpose, especially having regard to the rules concerning continuous disclosure, while putting companies to considerable expense in time and money. The Task Force also notes that statutory meetings are no longer required in the UK. The requirement for companies to hold a statutory meeting will therefore be abolished.

Even if statutory meetings will no longer be required, the Task Force invites comment on whether companies should be required to prepare a statutory report, and if so, what that report should contain.

Moving The Rules From Table A into the Law

The Task Force outlines in its proposal on 'Forming a company' its general approach to transferring the Table A rules about meetings of members and directors. The table at page 9 summarises how the proposal addresses each of relevant Table A rules.

Companies will then be able to operate without recourse to articles. However, the rules in the Law may be able to adopt articles incorporating further rules which, in most cases, will have effect despite the provision in the Law.

The proposal suggests only a few changes to the rules on meetings of members and directors in the Law and Table A. In particular, it does not suggest that a comprehensive code for the conduct of these meetings be added to the Law. In the Task Force's view, a code could not cater for all companies in all circumstances, and it is desirable to allow companies the flexibility to run their meetings in the manner best suited to the company and its members.

Proposal	Issues For Consideration
<p><i>Members' right to question or comment on the management of the company</i></p> <p>5. The chairperson of a general meeting must allow a reasonable opportunity for members at the meeting to question, discuss, or comment on, the management of the company.</p> <p><i>Proxies</i></p> <p>6. A member of a company (whether public or proprietary) may be represented at a meeting by a proxy appointed in writing (article 54).</p> <p>7. A vote given by a proxy will be valid even if the proxy form has not been witnessed, despite anything in the company's articles.</p> <p><u>Displacement by articles</u></p> <p>8. A company will be able to displace the rule in paragraph 4 with its articles, but not any of the rules in paragraphs 1-3 and 5-7.</p> <p><u>Statutory meetings</u></p> <p>9. Public companies will no longer have to hold a statutory meeting, or prepare a statutory report, after allotting shares under their first prospectus (section 244).</p> <p><u>Moving rules from Table A into the Law</u></p> <p>10. The rules in paragraphs 13 and 14 (which are substantially based on Table A) will be included in the Law.</p> <p>11. Companies will be able to displace these rules by adopting appropriate articles.</p> <p>12. Existing articles dealing with meetings of members and directors will displace the rules to be taken up in the Law.</p>	<p>a. Should members be able to pass advisory resolutions concerning the management of the company, as in New Zealand and Ontario?</p> <p>b. Should members be able to ask questions of the auditors about their report to members?</p> <p>c. If so:</p> <ul style="list-style-type: none"> – Should the questions be restricted to any qualification in the report? – Should the auditor be required to attend annual general meetings? <p>Should the Law include a model proxy form?</p> <p>Should there be any changes to the rules concerning attendance at general meetings by company representatives?</p> <p>Should companies still be required to provide a statutory report to their members? If so, what should be the content of the report?</p> <p>Have you found any problems with the operation of the rules on meetings proposed to be taken up in the Law? If so, how should those rules be changed?</p> <p>Should any of the rules be mandatory and not be capable of being displaced? If so, which ones?</p>

General meetings

13. The rules about general meetings will cover the following matters:

- a. Any director may convene a general meeting of the company (article 40).
- b. A notice of a general meeting must include the time, date and place of the meeting and the general nature of the business that will be conducted (article 41).
- c. A meeting must begin within 30 minutes of the time specified in the notice of the meeting (article 43) and a quorum must be present at the beginning of the meeting (article 42(1)).
- d. The following persons may be counted to determine whether a quorum is present:
 - a representative appointed under section 249(3)
 - a person attending as a proxy (article 42(2)).
- e. A general meeting of the company must be chaired by the chairperson of the board, or in their absence, a person appointed by the members (article 44).
- f. With the consent of the meeting, the chairperson may adjourn the meeting for not more than 1 month (articles 45 and 47(2)).
- g. A resolution may be passed by a simple majority, with the chairperson having both a deliberative and casting vote (article 48).
- h. A resolution will be decided on a show of hands, unless a poll is demanded (article 46(1)).
- i. Subject to any rights attached to any class of shares:
 - on a show of hands, each person has 1 vote
 - on a poll, a person has 1 vote for each share held by them (article 49).
- j. If the resolution is decided on a show of hands, a declaration by the chairperson, or an entry in the minute book, is conclusive

Proposal	Issues For Consideration
<p>evidence of whether the resolution has been passed (article 4692)).</p> <p>k. If a poll is demanded, it must be carried out as the chairperson directs (article 47(1)).</p> <p>l. When a share is jointly held, the voting rights attached to the share may be exercised by the person whose name appears first on the register of members (article 50).</p> <p>m. A personal representative appointed to administer a member's affairs may exercise all rights attached to any shares held by the members (article 51).</p> <p>n. A challenge to the qualifications of a person to participate in a general meeting:</p> <ul style="list-style-type: none"> – may only be made at the meeting; and – must be determined by the chairperson, whose decision will be final (article 53). <p>o. A proxy form must be lodged with the company at least 48 hours before the beginning of the meeting (article 55).</p> <p>p. Unless the company has received notice of the matter, a vote given by a proxy will be valid despite:</p> <ul style="list-style-type: none"> – the death or incapacity of the appointor – the revocation of the appointment – the transfer of the share by the appointor (article 56). <p>q. Notice of a general meeting may be given to a member by:</p> <ul style="list-style-type: none"> – giving it to them personally – pre-paid post addressed to the member or any personal representative appointed to administer the member's affairs (article 95). <p>r. Notice of a general meeting of the company, or a meeting of a class of members, must be given to:</p> <ul style="list-style-type: none"> – every member eligible to vote at the meeting 	<p>Should any later proxy form lodged with a company revoke an earlier proxy form lodged in relation to the same shares?</p> <p>Should a company be able to give notice by any other means (eg by fax or email)?</p>

Proposal	Issues For Consideration
<p>any personal representative appointed to administer a member's affairs (article 96).</p> <p><i>Directors' meetings</i></p> <p>14. The rules about directors' meetings will cover the following matters:</p> <p>a. The directors may regulate their meetings as they think fit (article 6991)).</p> <p>b. Any director may convene a meeting of the directors. Notice of a directors' meeting may be given by any means agreed to by the directors (article 6992)).</p> <p>c. A resolution may be passed by a simple majority of the directors present and voting, with the chairperson having both a deliberative and casting vote (article 70).</p> <p>d. With the consent of the other directors, a director may appoint a person to exercise their powers in their absence (article 72).</p> <p>e. A directors' meeting may be held using any technology agreed to by the directors which allows every participating director to hear and be heard (eg telephone, video conference).</p> <p>f. Unless the directors determine otherwise the quorum for a meeting of directors is 2 (article 73).</p> <p>g. The directors may act despite a vacancy in the office of a director</p> <p>h. The directors must elect a director to chair their meetings (article 75).</p> <p>i. If all of the directors agree in writing to a resolution, it may be passed without a formal directors' meeting (article 77).</p> <p>j. A power exercised by the directors will be valid despite any defect subsequently discovered in the appointment of a director (article 78).</p>	<p>Does the general law adequately provide for this? If so, would it still be useful to include the rule in the Law?</p>

WHAT WILL HAPPENED TO TABLE A?

General Meetings			Directors' Meetings		
<i>Article</i>	<i>Description</i>	<i>Paragraph</i>	<i>Article</i>	<i>Description</i>	<i>Paragraph</i>
40	Director may convene meeting	13(a)	69(1)	Directors may regulate own affairs	14(a)
41	Contents of notice of meeting	13(b)	69(2)	Director may convene meetings	14(b)
42	Quorum	13(c) and (d)	70	Majority required	14(c)
43	Quorum	13(c)	71	Directors interested in contract	Not to be taken up in the Law – see sections 231, 232A & 232B
44	Chairperson	13(e)			
45	Adjournment	13(f)	72	Alternate directors	14(d)
46	How resolutions decided	13(h) and (j)	73	Quorum	14(f)
47	How poll taken	13(f) and (k)	74	Vacancy in office of director	14(g)
48	Majority required	13(g)	75	Chairperson	14(h)
49	Number of votes per share	13(i)	76	Committees	See proposal on 'Forming a company'
50	Joint holders of share	13(l)	77	Circulating resolution	14(i)
51	Incapacity of member	13(m)	78	Defect in appointment	14(j)
52	Partly paid shares	Not to be taken up in the Law			
53	Qualifications of member	13(n)			
54	Appointment of proxy	6			
55	Lodgement of proxy	13(o)			
56	Proxy valid despite members' incapacity	13(p)			
95	How notice may be given	13(q)			
96	To whom notice given	13(r)			