Polls, Proxies and Voting at General Meetings

Introduction

Traditionally, voting has taken place at general meetings on a show of hands but more companies are now routinely conducting voting by a poll. This Briefing examines the procedures relating to both methods as they stand under the Companies Act 2006 (the 2006 Act).

Voting on a show of hands

The default position under the model articles introduced by the 2006 Act (the Model Articles), is that voting is to be decided at a general meeting by a show of hands, unless a poll is demanded.

Every member present in person, or by proxy, has one vote on a show of hands, regardless of the number of shares held. Members may appoint multiple proxies, provided each proxy represents a different part of the holding, each of whom will have a vote on a show of hands. The potential for shareholder activists holding only a small number of shares to distort voting on a show of hands by appointing multiple proxies has encouraged the move by companies towards voting by poll.

A proxy has one vote for and one vote against a resolution on a show of hands where they have been appointed by more than one member and the proxy has been instructed to vote in different ways by the different members.

A duly authorised representative appointed by a corporation may also vote on a show of hands. Where a company appoints more than one representative, each representative can exercise the votes attached to the relevant shares in different ways, provided each representative is voting different shares. This position was clarified by the introduction of the Companies (Shareholders’ Rights) Regulations 2009 which came into effect on 3 August 2009.

It is the chairman’s responsibility to count the votes on a show of hands and his/her declaration of the result is conclusive without the need to announce votes for or against.

Even where voting is by a show of hands preparation should be made for the fact that a poll may be demanded at the meeting.

Proxy votes are usually displayed on a screen after the result on the show of hands for each resolution and also to be made available to shareholders at the end of the meeting in order to comply with the requirement for listed companies to declare proxy votes.
Who can demand a poll?

The company’s articles will set out the rules governing demanding of a poll. The 2006 Act prescribes that provisions in the articles for demanding a poll must not specify more than:

- Five members having the right to vote;
- A member or members representing at one-tenth of the total voting rights of all members having the right to vote on the resolution; or
- By a member or members holding shares on which an aggregate sum has been paid up equal to at one-tenth of the total sum paid on all such shares.

A company’s articles of association may allow for a more favourable position with respect to calling a poll. The Model Articles for both private and public companies allow for a poll to be called by:

- The chairman of the meeting;
- The directors;
- Two or more persons having the right to vote on the resolution; or
- A person or persons representing not less than one-tenth of the total voting rights of all the members having the right to vote on the resolutions.

It should be noted that proxies are able to participate in the demand for a poll.

The chairman may also call a poll if he/she has been appointed proxy by the requisite number of shareholders.

The chairman should demand a poll where voting on a show of hands is unclear or if he/she is aware that the outcome of the vote on a show of hands does not reflect the position of the proxy votes registered. The chairman should be provided with a draft script covering this eventuality should it arise.

If a poll is correctly requested by shareholders during the meeting the chairman is obliged to comply with the request. However, it is acceptable for the chairman to point out the number of proxy votes that he holds and ask whether they wish to withdraw their request. If the shareholders insist then the poll must proceed.

If a chairman improperly refuses to take a poll where it has been properly requested any resolution passed on a show of hands will be invalid and ineffective.
Holding a poll

It is usual for a company’s articles to stipulate that a poll on the election of a chairman or on adjournment of the meeting must be taken immediately but a poll on any other question can be taken either immediately or at any time, place and date within the next thirty days directed by the chairman.

It is now common, particularly in the case of companies with a large shareholder base, for it to be decided beforehand that the business at general meetings will be voted on by a poll.

Where it has been decided before the meeting to conduct voting by a poll steps can be taken to ensure voting is carried out smoothly:

1. **The notice of meeting:** Should clearly set out that voting will be by poll and explain the reasons for this.

2. **Scrutineers:** It is advisable to appoint scrutineers to assist with conducting the poll even where the articles do not oblige the company to do so. It is usual for the scrutineers to be either the company’s auditors or registrars, both of whom will be seen as having a measure of independence from the company. The scrutineers will be responsible for issuing poll cards, counting them and checking them against proxy forms lodged and against the register of members.

3. **Electronic or Manual:** A decision should be taken whether voting will be carried out electronically or manually. For small meetings manual voting will be easiest and most cost effective. Provision of electronic voting systems via the company’s registrars can run into many thousands of pounds, however, electronic voting may be preferable where a large number of shareholders are in attendance. Shareholders should be given an opportunity to ask questions on the resolutions regardless of the fact that voting will be by a poll.

   Manual voting is carried out by the distribution of poll cards to those members present to complete and post in some form of ballot box. Instructions should be given that if the shareholder has already posted a proxy vote it is not necessary for them to complete a poll card unless they wish to change their vote. The registrars will check the poll cards, count the votes cast and total them with the proxy votes already received. If the meeting is small a poll can be conducted quickly and with minimum disruption with the results available shortly after the close of the meeting.

Disclosing results of a poll

The 2006 Act stipulates that if the company is a traded company (a company whose shares are admitted to trading on a regulated market in an EEA state) the following information must be made available on a website in respect of a poll held at a general meeting:
• The date of the meeting.
• The text of the resolution(s), or a description of the subject matter of the poll.
• The number of votes validly cast.
• The proportion of the company’s issued share capital (determined at the record date) represented by those votes.
• The number of votes cast in favour.
• The number of votes cast against.
• The number of abstentions.

Request for independent report on a poll

The 2006 Act introduced the right of members of quoted companies to request the directors obtain an independent report of a poll. The report may be demanded by members holding not less than 5% of the voting rights or by not less than 100 members who hold shares in the company. The request must be received by the company not less than one week after the poll was taken.

When a request is received, the directors must appoint an independent assessor within one week of the request being made. The identity of the independent assessor, a description of the subject matter of the poll and a copy of his report must be made available on an appropriate website.

Announcing results

Companies that are subject to the Listing Rules should remember to email a copy of resolutions passed, other than resolutions concerning ordinary business at an annual general meeting, to the National Storage Mechanism and announce via a regulatory information service that this has been done. In addition they should notify, via a regulatory information service, as soon as possible after a general meeting all the resolutions passed by the company (other than ordinary business passed at an annual general meeting).

Views on voting methods

Views amongst investor relation bodies and shareholder groups on which voting method should be used are mixed. The opposing views are represented by the quotes below from Pensions Investment Research Consultants (PIRC) and the UK Shareholders’ Association:
PIRC

“PIRC considers poll voting to be the most appropriate way for listed companies to undertake business at general meetings. It avoids the need for a chairman to call a poll in the event those present decide on a different voting outcome to that suggested by the proxy vote”.

“The use of technology to vote electronically enhances the status of the AGM and provides an immediate unambiguous record of shareholder sentiment in the meeting.”

UK Shareholders Association

“...most private shareholders want to retain show of hands voting”.

Show of hands voting “...provides a useful demonstration of shareholder views, and is one of the few ways that private shareholders can have an impact on the board”.

What needs to be done?

1. Ensure that the chairman is fully briefed on his duties and responsibilities in relation to voting at general meetings.
2. Decide whether voting is to be on a show of hands or by poll. Bear in mind the potential for distortion of voting on a show of hands by shareholders appointing multiple proxies.
3. If voting is to be on a show of hands prepare appropriate scripts for the chairman in the event that a poll is demanded.
4. Liaise with the company’s registrars on procedures for voting on a poll whether manually or electronically.
5. Ensure appropriate information on voting and appointment of proxies is contained in the notice of meeting.
6. Consider pre-booking an independent assessor should a report on a poll be requested by shareholders.
7. Ensure the appropriate proxy or poll voting information is posted on the company’s website after the meeting and the appropriate announcements are made.
Prism Perspective

It is useful to review the advantages and disadvantages of each method when considering which voting route to take. In addition it is important to consider the individual company’s own circumstances:

- Is there likely to be a large or small turnout of shareholders?
- Are there cost constraints?
- Will controversial matters be voted on?
- Will known shareholder pressure groups be attending the meeting?
- Is the meeting an annual general meeting or a general meeting focusing on just one topic?

In terms of risk management a decision to hold voting on a poll before the meeting may be seen as the most desirable option – taking away the possibility of unforeseen demands for a poll during the meeting and heading off action by pressure groups.

Whatever method is chosen it is important that the notice of meeting gives clear instructions in particular on how to cast proxy votes. Lastly, as anyone involved in organising a general meeting will testify, be prepared for any eventuality!

Useful Sources

Companies Act 2006
ICSA Guidance Note Voting at General Meetings
ICSA Guidance Note Disclosing Proxy Votes

Prism Cosec
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