
CSA's guide to implementing direct voting



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

A call to action

Following extensive industry consultation and research during 2006, Chartered Secretaries Australia (CSA) is calling on Australian listed companies to implement provisions in their constitutions that will enable their shareholders to exercise their voting rights through direct voting, in addition to exercising their existing right to appoint a proxy holder.

We have already seen Telstra, Australian Foundation Investment Company, Amcil Ltd, Djerrivarrh Investments Ltd and Mirrabooka Investments Ltd take this initiative at the end of last year's meeting season and we urge you to do the same.

Why introduce direct voting?

- Legislative change is not required.
- It can sit alongside the proxy system.
- It can be implemented, in most cases, with only minor changes to your constitution.
- It enables shareholders to exercise their voting rights without the need to attend meetings (which may not always be practicable).
- It is an additional option to shareholders appointing proxies or representatives (over whom shareholders may have no control). The process of appointing a proxy to register a vote has the potential for abuse, as shareholders temporarily transfer to another party some of the rights attached to their membership, especially their right to attend a meeting and vote, or choose not to vote.
- It improves the exercise of voting rights because it removes the intermediary between the shareholder and the company. Shareholders need no longer transfer some of their rights to another party.

CSA has prepared this *Guide to implementing direct voting* to assist you to enable your shareholders to exercise their voting rights.

Contents

Practical issues of implementation	3
Constitutional change.....	3
Voting form	3
Attendance at meetings.....	4
Amendments to voting instructions	5
Voting on additional resolutions.....	5
Procedural motions.....	5
Lodging and counting direct votes	5
Show of hands	5
Recording votes	6
Authentication of direct votes lodged by electronic means.....	6
Adjournment of meeting	6
Appendix A — Sample wording for constitutional change incorporating a right to use direct voting	7
Appendix B — Sample rules for votes of members at general meetings	8
Appendix C — Sample voting form.....	11

Practical issues of implementation

Constitutional change

Companies need to propose constitutional change to shareholders to enable direct voting. Any Notice of Meeting must include a resolution to this effect. Directors also need to consider the rules governing the exercise of direct voting, but such rules do not need to be included in the resolution proposing constitutional change.

What would a resolution to include with the Notice of Meeting look like?

CSA recommends that a simple provision enabling direct voting be proposed in a resolution put before shareholders proposing constitutional change.

Sample wording for a resolution to put with the Notice of Meeting concerning the changes a company needs to make to a standard constitution is provided in Appendix A.

What would the rules for the votes of shareholders that included direct voting look like?

CSA recommends that the rules governing direct voting not be included in the resolution put before shareholders proposing constitutional change. CSA recommends that the directors ensure such rules have been drafted before proposing direct voting to shareholders, to enable efficient implementation.

Sample Rules for the votes of shareholders at a general meeting, that could be adopted by a board of directors, are provided in Appendix B.

Voting form

A shareholder completes a voting form which is binding. Like all other types of voting, a shareholder completes a voting form which can be lodged by post, by fax or electronically and must be lodged, as for proxies, 48 hours before the meeting.

Direct voting need not dispense with the current system of voting by appointing a proxy or corporate representative. The two systems can operate concurrently.

Can we use one voting form for both direct voting and the appointment of proxies?

CSA recommends using two separate forms:

- one for direct voting, and
- one for proxy appointments.

Given that voting forms can contain multiple resolutions, it is impracticable to fit direct voting and the appointment of a proxy on the one form. Furthermore, the form needs to be laid out in such a way that it is legible to shareholders. This includes providing space for the barcode that is essential for registry processing.

It is not practicable to have the direct voting form on one side of the paper and the proxy appointment on the other, as barcoding that can be processed by the registries can only be utilised on one side of the form.

CSA suggests using coloured paper to differentiate the direct voting form from the proxy form.

A Sample Direct Voting Form is provided in Appendix C.

How does the voting form deal with abstaining votes?

The sample direct voting form has only 'For' and 'Against' boxes. There is no 'Abstain' box. If an institution has a direction to abstain, it can insert its own box noting 'Abstain' on the form. While this will have no effect on the vote as counted, since abstentions will not be counted in computing the required majority, it will allow the institution to reflect any instruction it has received.

There is also no need for the 'Chairman's box' on a direct voting form. Listing Rule 14.3 has no application to a direct vote, as no one is voting in person on behalf of the shareholder.

What happens if the shareholder fills out both the direct voting form and the proxy appointment?

If the shareholder lodges both the direct voting form and the proxy appointment at the same time, CSA recommends that the direct vote prevails. Otherwise the form that is received last will prevail. This is the same as currently applies where more than one or successive proxies are lodged.

Attendance at meetings

If shareholders are unable to attend a meeting physically, they will not be required to transfer their voting rights to a third party in order to have their say.

Can shareholders who have voted directly still attend meetings?

CSA recommends that the constitution provide that a shareholder can attend the meeting and subsequently change his or her vote, whether lodged by proxy or a direct vote. Attendance prevails over the last received vote, whether lodged by proxy or a direct vote.

Shareholders who do not lodge a direct vote can still appoint a proxy or attend and vote at the meeting.

A direct vote can be withdrawn without the shareholder attending a meeting, as is the case with proxy forms.

The company's constitution will set out how the company wishes to proceed.

Amendments to voting instructions

The company constitution can deal with this. It does not need legislative amendment.

Voting on additional resolutions

A motion is put forward at the time of issuing the Notice of Meeting. Under the current legislation, with very limited exceptions, an existing motion cannot be changed or a new motion introduced. The chairman can only withdraw a motion.

There is only one means of putting a new item before the meeting, that is, by means of a Supplementary Notice of Meeting. Such a Supplementary Notice of Meeting would include a direct voting form and a proxy appointment form, either for that item or expanding the items included in the first Notice of Meeting.

If a new Notice of Meeting is issued and a shareholder returns the direct voting form in relation to both notices, CSA recommends that the last direct voting form takes precedence.

Procedural motions

Direct voting will not alter the current practice in relation to procedural motions, which are under the control of the chairman.

The existing proxy form does not give the shareholder the authority to vote on procedural motions.

If a proxy holder has an undirected proxy form, they can exercise their discretion and vote. If a proxy holder has a directed proxy form, they do not have the authority to vote on a procedural motion.

A direct vote also has no authority to vote on a procedural motion as the member is not present at the meeting. If the member is present at the meeting, then she or he can vote on a procedural motion.

Lodging and counting direct votes

The procedures for lodging, verifying and counting direct votes will be identical to the company's current system for proxies, with the company's share registry responsible for receiving and counting both the direct votes and those lodged by proxies.

Show of hands

CSA notes that there are two choices as to how direct voting may be counted. Both options are valid and both are included in Appendix B: Sample rules for votes of members at general meetings.

CSA recommends that Australian Securities Exchange (ASX) listed companies adopt Option 1, so that direct votes and proxies are recorded in the same manner.

Option 1: excluding direct votes from a show of hands

In this option, direct votes are not counted for the quorum and are not counted on a show of hands, as direct voters are not present or represented at the meeting, and neither are they deemed to be present. If the direct votes lodged and proxies received could result in a different outcome from the vote on a show of hands, the chairman should call for a poll.

Shareholders have certainty that their votes will be counted in a poll, as it is not open to the potential abuse that attaches to a proxy (other than the chairman) choosing not to vote or leaving the meeting before the vote is counted.

In such circumstances, a company may wish to note on the direct voting form that such votes will not be counted on a show of hands but will be counted on a poll.

CSA recommends that the direct votes and proxy results are announced by the chairman to a meeting of shareholders immediately before a vote is taken either by a show of hands or on a poll (refer *Corporations Act* section 250J (1A)).

Option 2: counting direct votes on a show of hands

In this option, a direct vote will be counted when determining votes on a show of hands. That is, direct votes are deemed to be present at the meeting. This option ensures that direct votes bring additional certainty to shareholders since a direct vote counts, regardless of the method of voting used at a meeting.

CSA recommends that it is up to the company to decide if it wishes to utilise a show of hands at general meetings. CSA notes that a concern has been expressed that knowledge of the outcome of resolutions via direct voting before a meeting could produce a fall in shareholder participation. CSA considers that this is no more likely than at present, given that the outcome of resolutions via proxy voting is known before a meeting.

Recording votes

In relation to including information in the minutes of direct votes cast, legislative change is not required. A company would include in the minutes of the meeting the details of direct votes, as it does the details of proxies.

In relation to releasing information concerning the direct votes to the ASX, the company would include the details of direct votes as it does the details of proxies. Companies currently provide details of proxies to ASX, and can simply add another line to the release, noting the direct votes received.

Authentication of direct votes lodged by electronic means

Under current practice, the *Corporations Act* permits an electronic address for the receipt of proxy appointments and proxy appointment authorities and other electronic means by which a member may give the company a proxy appointment or proxy appointment authority (Corporate Regulation 2G.2.01).

The company constitution can adopt the current wording in the Act, and institute the same authentication process for direct votes.

Adjournment of meeting

In CSA's experience, a shareholder vote on whether a meeting should be adjourned is rare in Australia. More commonly it is within the rights of the chairman to adjourn a meeting and should remain the prerogative of the chairman.

Appendix A

Sample wording for constitutional change incorporating a right to use direct voting

Decisions at general meetings

- (a) Except where a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. A decision made in this way is for all purposes a decision of the members.
- (b) If the votes are equal on a proposed resolution, the chairman of the meeting has a casting vote, in addition to any deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:
 - (1) before the show of hands is taken
 - (2) before the result of the show of hands is declared, or
 - (3) immediately after the result of the show of hands is declared.
- (d) A poll may be demanded by:
 - (1) the chairman of the meeting
 - (2) at least five members entitled to vote on the resolution, or
 - (3) members with at least 5 per cent of the votes that may be cast on the resolution on a poll.
- (e) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (f) Unless a poll is duly demanded, a declaration by the chairman of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (g) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the chairman of the meeting directs. The result of the poll as declared by the chairman is the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chairman of the meeting.
- (i) The demand for a poll may be withdrawn with the chairman's consent.
- (j) The directors may determine that at any general meeting or class meeting, a member who is entitled to attend that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the company by post, fax or other electronic means approved by the directors. The directors may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

Appendix B

Sample rules for votes of members at general meetings

These rules could be adopted by a board in order to implement direct voting.

1 Votes by members

1.1 *Means of voting*

Votes by members at a meeting may be given:

- (a) personally at the meeting
- (b) by proxy, representative or attorney at the meeting, or
- (c) by a valid notice of their voting intention (Direct Vote).

1.2 *One vote*

A member may only vote by one of the permitted methods in Rule 1.1 in respect of a share.

If a member casts a Direct Vote on a particular resolution they are taken to have revoked the authority of a previously authorised proxy to vote on their behalf on that resolution.

1.3 *Priority of votes*

If a member attempts to cast more than one vote on a particular resolution in respect of the same share, only the last vote received by the returning officer is to be taken to have been cast, irrespective of whether the vote is by way of Direct Vote or proxy.

2 Direct Votes

2.1 *Direct voting*

Pursuant to Rule 1.1 a member is entitled to cast a Direct Vote prior to the relevant general meeting.

Every member who is entitled to attend that general meeting is entitled to cast a Direct Vote.

2.2 *Direct voting instrument*

If sent by post or fax, the Direct Vote must be signed by the member or, if the member is a corporation, either under seal or by a duly authorised officer, attorney or representative.

If sent by electronic transmission the Direct Vote is to be taken to have been signed if it has been signed or authorised by the member in the manner approved by the directors or specified in the notice of meeting.¹

¹ This is intended to include online or telephone voting or similar use of PIN identification process or similar.

A Direct Vote includes any form of vote that the directors may prescribe or accept including by any electronic means.

2.3 *Deposit of instrument*

At least 48 hours before the time for holding the relevant general meeting, an adjourned meeting or a poll at which a person proposes to cast a notice of their voting intention, there must be received at the Office or such other place as is specified for that purpose in the notice of meeting, or be transmitted to a facsimile number at the Office or a facsimile number or electronic address specified for that purpose in the notice of meeting:

- (a) notice of their voting intention, and
- (b) any authority or power under which the Direct Vote was signed or a certified copy of that power or authority.

2.4 *Form of the Direct Vote*

A notice of a voting intention is valid if it contains the following information:

- (a) the member's name and address or any applicable identifying notations such as the holder identification number or similar approved by the directors or specified in the notice of meeting, and
- (b) the member's voting intention on any or all of the resolutions to be put before the meeting.

2.5 *Validity*

A vote cast in accordance with a Direct Vote is valid even if before the vote was cast the member:

- (a) died
- (b) became of unsound mind, or
- (c) wishes to change their vote,

unless written notification of the relevant event is received at the Office before the meeting, adjourned meeting or the taking of the poll in respect of which the Direct Vote was to have been cast.

2.6 *Chairman's decision*

The Chairman's decision as to whether a Direct Vote is valid is conclusive.

2.7 *Attendance by member who has cast a Direct Vote*

A person who has cast a Direct Vote is entitled to attend the meeting. The member's attendance cancels the direct vote, unless the member instructs the company or at its instruction the company's share registry otherwise.

3 Counting of direct votes

3.1 *Count*

If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the Chairman of the meeting must:

[Choose either Option 1 or Option 2]

Option 1

- (a) on a vote by show of hands, exclude each member who has submitted a Direct Vote for or against the resolution, and
- (b) on a poll, count the votes cast by each member who has submitted a Direct Vote directly for or against the resolution, by the number of shares held by each member.

Option 2

- (a) on a vote by show of hands, count each member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote, and
- (b) on a poll, count the votes cast by each member who has submitted a Direct Vote directly for or against the resolution, by the number of shares held by each member.

3.2 *Call for a poll*

The Chairman of a meeting should call for a poll on a resolution where he or she believes that, having regard to the Direct Votes cast or directed proxies received, the result may differ from that obtained on a show of hands.

3.3 *Certificate of direct votes cast*

The Chairman of a meeting must ensure that a certificate signed by the returning officer of Direct Votes received is available at the meeting ahead of any vote being taken.

Appendix C

Sample Voting Form

The Sample Company
ABN 00 000 000 000

All correspondence to:
Sample Company Limited
{address}
{address}
Enquiries (within Australia) XXXXXX
(outside Australia) XXXXXX
Facsimile XXXXXX
{website}

Mark this box with an 'X' if you have made any changes to your address details

MR_JOHN_SAMPLE
FLAT 123
123 SAMPLE STREET
THE SAMPLE HILL
SAMPLE ESTATE
SAMPLEVILLE VIC 3030

Securityholder Reference Number (SRN)

{insert barcode}

Direct Voting

Completing a Direct Vote ▼

Vote on the following Business Items (Use Black or Blue ink)

Place an "X" in the box corresponding to your wishes for each item. By marking the boxes you are directing the company and its registry to record your votes strictly in accordance with these instructions.

	For	Against
Item 1		
This is a test	<input type="checkbox"/>	<input type="checkbox"/>
Item 2		
This is a test	<input type="checkbox"/>	<input type="checkbox"/>

Please sign here ▼

This section *must* be signed in accordance with the instructions overleaf to enable your directions to be implemented.

Individual or Securityholder 1

Sole Director
Sole Company Secretary

Securityholder 2

Director

Securityholder 3

Director/Company Secretary

Contact Name

Contact Daytime Telephone

_____/_____/_____
Date

Documents may be lodged using the reply paid envelope or:

IN PERSON Registered Office – 123 Sample Street, SAMPLEVILLE NSW 0000 AUSTRALIA
BY MAIL Registered Office – 123 Sample Street, SAMPLEVILLE NSW 0000 AUSTRALIA
BY FAX XXXXX