

CHAPTER 8: SHAREHOLDER PARTICIPATION

Overview

543. Schedule 9 of the Bill contains amendments that are intended to facilitate the exercise by members of companies of shareholder rights to be informed, to participate and to vote in general meetings. It contains proposed amendments to the Corporations Act that are designed to:

- encourage shorter, more comprehensible notices of meetings;
- facilitate distribution of notices of meeting and annual reports by electronic means;
- improve access to general meetings by facilitating voting by proxy; and
- require disclosure by directors of listed companies of other directorships held.

Notices of meetings

Content and presentation

544. Section 249L contains rules about the content of notices of general meetings. It is proposed to include a new subsection 249L(2) to also require that notices are worded and presented in a clear, concise and effective manner.

545. It would be open to ASIC or affected persons to pursue a remedy for an alleged breach of the new requirement under section 1324. That section permits a court to make orders, including injunctions and orders to pay damages, in relation to breaches of the Corporations Act. Section 1322 would operate so that a deficiency in the notice would not ordinarily result in the invalidity of a meeting or any proceeding at a meeting unless substantial injustice was caused that could not be remedied by an alternative order.

546. Proposed new section 249LA would permit regulations to be made that identify certain kinds of information that need not be included in a notice of meeting if conditions are met. Regulations under the proposed new section might, for example, permit some types of information to be incorporated in the notice 'by reference'. Such regulations could expressly allow notices of meeting

to exclude complex descriptions of a possible transaction for which member approval is sought, on condition that the full details are clearly referred to and made readily available to members who wish to examine them.

Electronic distribution

547. Section 249J of the Corporations Act contains requirements for distribution of notices of general meetings to members and directors. Subsection 249J(3) already permits members to request notices are sent to them by fax or e-mail.

548. It is proposed to amend section 249J by including a new subsection 249J(3A). Under the new subsection, companies would be able to offer members the option of accessing notices by a wider range of electronic facilities. Members would be able to nominate an electronic 'notification' and also an electronic 'access means', which a company could use to distribute notices as an alternative to traditional forms of distribution. Under this facility, companies would be able to distribute a notice of meeting by, example, sending a short e-mail to a member advising that a notice of general meeting is available for viewing or download from the company website.

549. A proposed new subsection 249J(5) will include a replaceable rule stating that a notice given under the new facility is taken to be given on the business day after the notice is made available. This is consistent with the current rule for fax or e-mail distributions in subsection 249J(4), which may also be replaced by an alternative rule in the company's own constitution.

550. Subsection 1322(2) deals with the consequences of non-receipt of a notice by a person, and provides that ordinarily it would not result in the invalidity of meeting proceedings. Proposed new subsection 1322(3) contains an equivalent rule in relation to the new distribution facility.

Electronic distribution of annual reports

551. Section 314 requires companies and certain other entities, to send annual reports to members. It is proposed to include new subsections 314(4) and (5), which will permit members to receive distribution of annual reports in the same manner as proposed in relation to notices of meetings for companies. If the facility is offered, members would be able to nominate an electronic 'notification means' (for example, e-mail) by which they would be advised a report is available, and an electronic 'access means' (for example access *via* website) by which they would access the report following notification.

552. The availability of the new facility will not affect the rules regarding full or concise reports.

Proxy voting

Appointing bodies corporate as proxies

553. Proposed new subsection 249X(1A) will permit a member to appoint an individual or a body corporate as a proxy.

554. Under proposed new paragraph 250D(1)(d), a body corporate appointed as a proxy for a member will be able to nominate an individual to exercise its powers at meetings.

Electronic authentication of proxy appointments

555. Proposed new subsection 250A(1) will permit regulations to prescribe authentication mechanisms for authentication of proxy appointments other than signature.

Electronic submission of proxy forms

556. It is proposed to replace subsections 250B(3), which deals with the receipt of proxy documents, with a revised subsection that will permit companies to offer a facility for electronic submission of proxy appointment forms and related appointment authorities. An appointment authority is a document such as a power of attorney by which a member has authorised another person to appoint a proxy on the member's behalf.

557. Subsection 250BA(1), dealing with the requirements for listed companies to specify how proxy documents are to be submitted, is proposed to be replaced to recognise the availability of the new facility.

Listed companies — notification of directorships

558. Subsection 300(11) includes special rules for listed companies regarding the inclusion of information in annual reports. It is proposed to include a new paragraph 300(11)(e) that will require, in respect of each director of a listed company, details of directorships of other listed companies held by the director in the three years before the end of the financial year to which the report relates.

Timing of application of new rules

559. It is proposed the new rules would apply as follows:

New rule	Application
Notices of meeting	Three months after new rule commences
Proxy appointments	Appointments made on or after new rule commences
Distribution of reports	Financial years starting on or after new rule commences
Disclosure of directorships	Financial years starting on or after new rule commences
