

The Chairman's Obligations regarding Polls & Proxies

We have recently become aware of some disquiet about the way that some Chairmen seem reluctant to call a poll even when it has been properly proposed by the shareholders. There appears to be significant misunderstanding of several aspects of the Chairman's obligations in this and similar areas at General Meetings.

By way of background, most two-way proxy forms name the 'chairman of the meeting' as the default proxy. Accordingly most shareholders appoint the Chairman as their proxy. The Companies Act 1985 does not however specify the duties or obligations of the Chairman either in his capacity as proxy or as regards responding to a call for a poll from the shareholders.¹ Most company's Articles actually give the Chairman an unqualified power to demand a poll, although in many cases he will be able to satisfy the usual requirements for a valid demand. Articles may also contain specific clauses on the subject of proxies and polls but few will cover the Chairman's obligations. Some aspects have however been clarified by common law.

The Chairman of the meeting has a duty to ascertain the true sense of the meeting. Where the Chairman has been appointed as proxy for members and is aware that, if a poll were called, the result might be different to that reached on a show of hands then he has a duty to demand a poll, if able to do so under the company's Articles of Association. He must do this whether or not anyone else demands a poll and may also have a duty to join in a demand for a poll made by another member.

In a case in 1943² it was made clear that the Chairman of a meeting has a duty to ascertain the sense of the meeting as regards the matter before it. In this case the Chairman of a public company failed to call a poll, even though he had the power under the company's Articles to do so and held sufficient proxies to reverse a decision taken at a meeting on a show of hands. It was held that he had acted in breach of his duty to ascertain the sense of the meeting.

Where a poll is correctly called for by shareholders, the Chairman is obliged to comply with that request.

On the other hand, the Chairman will often be aware that the outcome of a vote on a show of hands would not be any different if a poll was called.

¹ S373 Companies Act 1985 does however specify that shareholders meeting specified criteria may call a poll and Regulations 46–52 of Table A provide further fall back provisions.

² Second Consolidated Trust Ltd v. Ceylon Amalgamated Tea & Rubber Estates Ltd [1943]

2 All E.R. 567

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In such circumstances, it is acceptable for the Chairman to inform anyone demanding a poll of the likely outcome by spelling out the number of proxies instructing him to vote for or against the resolution, and the number giving him discretion, and comparing these to the number of votes represented by those in attendance. In such circumstances, it is perfectly acceptable for the Chairman to ask the members demanding a poll whether they wish to persist with that demand. If, of course, the members do persist with their demand, and that demand is validly made, the Chairman must allow the meeting to proceed to a poll even though the sole objective of the members making the demand may be to disrupt the proceedings. It should be noted that members will sometimes wish to proceed with a poll in order to gauge the precise level of support for the resolution. They may, however, also be aware that certain members who appointed the Chairman as their proxy are present at the meeting and intend to vote in person, thereby revoking their proxy.

The Chairman should have a mind to the intentions of the shareholder that appointed him as their proxy.

It is for example unlikely that a proxy appointment will direct the Chairman what to do in the case of a proposal to adjourn. If such a proposal is put to the meeting, how the Chairman votes will depend on the circumstances. For instance, if the intention of the adjournment is to defeat a resolution, the Chairman should cast the votes of those proxies who gave instructions to vote against the resolution in favour of the proposal to adjourn.

Similarly the situation with regards to amendments can be confusing. It would be perfectly reasonable for the Chairman to assume that where a shareholder has instructed that votes be cast in favour of a resolution then the shareholder is in favour of it as it stands. Unless otherwise instructed the votes of such shareholders should normally be cast against an amendment (unless it is one which just seeks to correct a minor error in the resolution).

Where a shareholder has given directions to vote against a resolution then there is no way of knowing what the shareholder's attitude would be to the amendment and the Chairman will often abstain as regards those votes. Where the Chairman has been given discretion as to how to vote on a resolution that same discretion will carry over to any amendment. For the purpose of clarity companies may wish to highlight this in the notes to the proxy appointment form.

A note of caution!

A declaration made by the Chairman in good faith will normally be conclusive and will prevent the question being reopened in legal proceedings even where there is evidence that the declaration was wrong.

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Further details on this topic can be found in *The ICSA Minutes and Meetings Handbook* by Andrew Hamer and Andrew Robinson, ICSA Publishing Ltd ISBN 1-86072-139-7.

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