

Operation Meetings of Company

Chapter 8: Member's Meetings

8-100. What is the annual general meeting?

Public companies are required under s250N CA to hold a meeting of members at least once every calendar year.

Convening meetings

8-200. How are members' meetings convened?

The board arranges for members' meetings to be held, but a specified min. number of members can either request the directors to call a meeting or convene one themselves.

Notice must be 21 days (28 for public) and must contain full and fair disclosure about the matters to be considered.

Meetings must be called for a proper purpose and that they must be held at a reasonable time and place, CA 249Q and 249R. *Smith v Sadler*

8-220. Who can request a members' meeting?

Board

249D CA, provides that the board must convene a meeting of members when requested to do so by members with at least 5% of the votes that may be cast at the meeting.

The meetings must be called in 21 days, and held within two months, after the request is given by the company. However directors can refuse to act on the request when the meeting is an improper one. *NRMA Ltd v Parker*

249E if the board has failed to convene the meeting within the required time, members with more than 50% of the votes can proceed to convene at the expense of the company.

Single director

249C allows a single director to convene a meeting of members

Members

249F members' holding at least 5% votes can call a meeting, if members convene meeting themselves, they must pay the expenses of calling and holding the meeting.

Court

249G, the court may convene a meeting if it is impractical to call the meeting any other way.

8-240. Who decides agenda?

The person who convenes the meeting will determine the agenda

Chapter 10: Company Directors and Other officers

10-410. Who can be appointed as a director?

- The person must:
- Consent to the appointment (s201D)
- Be an individual and not a company (s 201B(1))
- Be at least 18 years old (s 201B(1))
- Not be disqualified from being a director (s 201B(2))

When is a person disqualified from being a director?

- Being bankrupt
- Being convicted within the previous five years of an offence in relation to the promotion, formation or management of a company
- Being convicted within the previous five years of serious fraud or certain specified offences relating to the management of companies
- By court order:
 - For repeated contraventions of companies or securities industry legislation
 - Because of past management of failed companies
 - Because of a contravention of a civil penalty provision in the CA, or
- By ASIC, if the company is the subject of a liquidator's adverse report

Proceedings of the board

Who can call a director's meeting?

S248c Any of the directors can call a board meeting if rr applies to the company

What are the notice requirements?

S 248C reasonable notice must be given

What is the quorum requirement?

S248F quorum must be at least 2 directors

How are decisions made?

Decisions at board meetings are usually taken by majority vote

S 248D a meeting of directors may be held using any technology

10-540. Can boards delegate their powers?

S198D provide that directors may delegate any of their powers to a committee of directors unless the company's constitution prevents the delegation

10-560. What rights to information do directors have?

Under 198F CA a director of a company may inspect the books of the company for the purposes of a legal proceeding.

Chapter 24: External Administration

Receivership

24-100. What is a receiver?

Where a company is concerned, a receiver is appointed to take control of some or all of the company's assets. May be appointed by court or a secured creditor.

Where there are two or more receivers of property of the company, a function or power of a receiver may be performed or exercised by any one of them, or by any two or more of them together s 434D

A receiver may also be appointed

- ***As a remedy in an oppression action***

Re Enterprise Gold Mines NL

If a minority shareholder makes a successful application under the oppression provision, the court might make an order appointing a receiver if the facts show that the company's assets have been put at risk by the oppressive conduct.

- ***During ASIC investigation***

If ASIC wants to protect company's assets from fraudulent activity, they can apply to the court under s 1323 and request that a receiver be appointed

24-110. Who is allowed to be appointed as a receiver?

S 418 CA someone who has been registered by ASIC as a liquidator

Where a liquidator has appropriate academic and professional qualifications and experience in corporate insolvency s 1282

24-120. Who may appoint a receiver?

- A Supreme Court or the Federal court
- Secured creditor who wishes to enforce their security

24-140. What are the powers of a receiver?

S 420 Ca

The instrument of charge (or the court order) under which the receiver has been appointed

25-150. What are the duties of a receiver?