

July 2015

*"You are never too old to set another goal or to dream a new dream"
- S. Lewis*

HOW MANY VOTES DO I HAVE AS SHAREHOLDER?

The Companies Act states that voting by shareholders at a meeting of shareholders may either be by a show of hands or by polling. The difference between voting by show of hands and by way polling is not often correctly interpreted.

Generally voting takes place by a show of hands. Any person present at the meeting (either as a shareholder or as a proxy), and who is entitled to exercise voting rights, has one vote, irrespective of the number of shares held.

Shareholders holding at least 10 (ten) percent of the voting rights entitled to be voted, or at least five persons entitled to vote, may demand that voting takes place by way of polling. If a vote is to be decided by way of polling, any person present at the meeting (as shareholder or proxy) has the number of votes determined in accordance with the voting rights associated with the shares held by that shareholder. Therefore, if one share held equal one voting right, a shareholder holding 20 shares for example, will have 20 votes to exercise. Thus when voting by way of polling, a shareholder's full voting power is exercised.

The advantages for the one indicates the disadvantages for the other, and vice versa. A vote by show of hand is a fast and simple manner to determine uncontroversial matters, however it defies the point of having majority shares and can thus result in a different answer as to the support of the total shareholding.

Law & Laughter

Q: Have you heard about the lawyers word processor?

A: No matter what font you select, everything come out in fine print.

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YOUR FAMILY TRUST IS NOT THE SHAREHOLDER!

In the matter of Blue Square Advisory Services (Pty) Ltd v Pogiso the company required a resolution to be passed at a meeting of shareholders. The only shareholder in the company's share register was reflected as a trust. No trustees name appeared in the share register, except for the name of the family trust. The resolution was passed and signed by one of the trustees of the trust. The court held that the resolution so signed, was invalid.

The reason being that a Trust is described a 'legal relationship' between the founder and the trustees. A Trust is not recognised as a separate legal entity and is incapable of owning anything. All assets and property vests in the name of the trustees. If a trust obtains shares in a company, those shares will vest in the trustees. The important aspect when a trust obtains shares, is to ensure that the share register reflects the name of at least one of the trustees of the trust.

For each and every resolution to be signed, the trust must also provide a trustee resolution authorising the trustee whose name reflects in the share register, to sign resolutions on behalf of the remaining trustees. The chairman of a shareholders meeting will also require such trustees resolution authorising the trustee attending the shareholders meeting to vote on behalf of the remaining trustees.

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