

Audax UK Ltd.

Proxy Voting – a note for Board Members

The purpose of this note is to:

- inform members of the general provisions of the Companies Act 2006 with regard to proxy voting;
- explain what is required of Audax UK in addition to, or instead of, current AGM practice in order to comply with the Act;
- highlight some of the issues which need to be considered in any implementation.

At this stage interpretation is entirely my own, aided by a good level of advice available on the internet, on which I've drawn extensively. It may be thought prudent to seek professional advice on any action we take, or on any changes to the Articles which may be proposed.

General

Proxy voting is a requirement of the Act. AUK's postal voting arrangements do not represent a fulfilment of our obligations, even though their provisions may be in the spirit of the Act. Allowing members not able to be present at a general meeting to have someone attend in their place was a measure designed to ensure that a (perhaps deliberately) inconvenient venue and time was not a barrier to member/shareholder democracy.

Paragraph 324 (1) of the Act states:

A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.

So at its simplest, a member appoints someone – who does not have themselves to be a member - to act on their behalf at a meeting, and that person has the same rights to speak, vote etc at the meeting as the member would have.

Of course, life is never that simple....

We can ignore the complications of people having a number of shares, as would be the case in a public company and/or one having a share capital, which leads to the possibility of multiple proxies per member.

However, there are a number of complicating possibilities:

- one person may be acting as proxy for a number of members;
- the member can rescind their decision to appoint a proxy right up to the start of the meeting, and attend in person anyway;
- proxies may be mandated to vote in a certain way on the proposals before the meeting, and may be proxy for a number of members who may have expressed different voting opinions.

(I haven't so far found mention of proxies being mandated within the act, but it's common practice. If a mandate is ignored by the proxy, there seems to be no comeback, but one assumes that the member has appointed a trustworthy person to act on their behalf.)

These variations cause potential administrative headaches, and need to be well understood.

Common practice is for the Chair to be appointed as a proxy and to vote in accordance with members' expressed wishes, which effectively give the member a postal vote on a ballot.

If a vote is taken on a show of hands, each proxy present at the meeting has one vote, irrespective of how many members have appointed them. However, this would only apply if the Chairman simply made a judgement on a show of hands, rather than ask for hands to be counted. It does raise the intriguing possibility of a matter being determined by the votes in the meeting alone, but it's rare for this to happen. When the Chair may hold hundreds of members' decisions, and others

in the meeting also representing a number of members, it would be a deliberate snub to those members who are not present. It's likely that there will be a call for a ballot anyway, and in practice the vast majority of company AGM's automatically use balloting for all business.

The net result is pretty close to what happens under our present system of postal voting – and arguably is a better arrangement for the member - but it will be necessary to put some new processes in place.

What's needed.

If we continue to use ERS to manage our AGM voting, they should be very familiar with the proxy system. Unlike our postal voting system, though, there are things we will need to do, particularly on the day of the AGM, if everything is to work smoothly.

In advance of introducing proxy voting, we need to consider how we give it effect. Given that it's a legal requirement, we don't actually need members approval, nor to change our Articles. Clearly the current postal voting sections are in conflict, however, and it would be advisable to have the Articles reflect reality, as well as to fully inform the membership.

Once we're clear to go ahead, the following things need to be addressed:

- Members must be told of their right to appoint a proxy in the calling notice for the meeting, to comply with the Companies Act 2006 paragraph 324 (1).
- We will need to have a process of registering those appointed as proxies (who may also be members in their own right), and how many votes they have. The Chair is likely to have a large number of mandates, which they will need to have been sorted out before the meeting.
- The process will also need to take into account that a member may still – having appointed a proxy – turn up in person, rescinding their authority to a proxy. This can be a bit complex, as any mandated vote given to the chairman, or the number of votes given to members acting as a proxy, will need to be adjusted prior to the meeting.
- We will need in practice to have paper ballots for decisions, counting hands will not work. Tellers will be needed, and will need to understand how the system works; not too difficult if we simply issue the requisite number of ballot papers to those acting as proxies, not forgetting they may also have a vote as a member themselves.

These are the practical steps. From experience of the first CTC AGM where proxy voting was instituted, many members may not understand the process and confusion may ensue. Taking the meeting through the process carefully will require some sympathetic, informed work from the Chair of the meeting. Of course many members may have already experienced proxy voting, but it would be unwise to assume that we're all totally familiar.

Explaining to the membership well in advance what's happening and what they can expect is, I think, a key component of implementing this change. If there's the opportunity for an informal session at a reunion in advance of the next AGM, we should take the opportunity for a session there. The potential for confusion between this and postal voting, and the opportunities thus to cry 'foul', could result in a very bad-tempered meeting if we don't approach this openly and head-on.

CRB

February 2016