AUSTRALASIAN CENTRE FOR CORPORATE RESPONSIBILITY

APRIL 2015

A GUIDE TO **Shareholder Advocacy in Australia.**

Caroline Le Couteur
Howard Pender

CONTENTS

Quick Guide to Shareholder Advocacy

1. **Research** your issue and companies involved
2. **Engage with company** (letters, face to face etc). If your issue is not resolved, ask others to engage with the company by contacting other interested people, bodies and the media
3. If this does not resolve the issue, you could find like-minded shareholders in the company or become a shareholder yourself, **and start to ask questions at an AGM**. You could discuss next steps with the ACCR.
4. **Table a statement or resolution at an AGM**. To do this you will need to find 100+ shareholders, to word your statement or resolution in accordance with company law and lodge it before the due date.
5. **Communicate progress appropriately** with your shareholders, the media and ACCR.

Shareholder Advocacy in Australia

Australasian Centre for Corporate Responsibility

The Australasian Centre for Corporate Responsibility (ACCR) is a not for profit organisation established to empower shareholders who want to make the companies they invest in better. This report is the result of our research and experience in shareholder advocacy. We hope you find it useful. We would appreciate feedback on the report and any experiences you may have in shareholder advocacy.

You can find out more about ACCR at **www.accr.org.au**.

Why do shareholder advocacy?

Shareholder advocacy harnesses the power of shareholders as the ultimate owners of companies to change companies. It starts by researching the issue and then engaging with the company(s).

When this doesn't work then shareholder advocates can take their issue to all shareholders, the company and the world at the company AGM. You can ask questions, distribute statements or move resolutions. If you move a resolution then experience in the USA, UK and Australia shows that it is not necessary to get anything like a majority to have a significant impact, 3% of the shares voting in the first year is usually sufficient to get some change, a vote of 10 to 15% will likely result in the change sought being agreed.

Moving a resolution at an AGM also means that other shareholders will consider the issue. This is especially relevant for the large institutional shareholders such as super funds that own a large part of large Australian listed companies. These institutional investors all have members (for super funds) or investors and they are sensitive to their concerns. This means they will probably give your resolution serious consideration and while they may not vote for it, their concerns may mean that companies respond to your issues.

From the end of this (14/15) financial year institutional shareholders who are members of the Financial Services Council (http://www.fsc.org.au) have to disclose how they voted on resolutions at company AGMs. We expect that this will lead to increased importance for shareholder resolutions.

Shareholder Advocacy in Australia

Who is this report for?

This report is for individuals and groups (shareholders or not) who want to change Australian companies so their activities are more socially or environmentally sustainable.

Some shareholders choose to give priority to their financial concerns and to this end they may seek to install a new company management. They are often called activist shareholders.

This report focuses on a different sort of advocacy or activism: it focuses on assisting those who want to make companies' actions more sustainable and socially just. It is for shareholders who realise that, if they focus on broader issues, both their own finances and the broader community stand to profit in our shared future.

This report will help you to understand how to do shareholder advocacy and how it works.

It only deals with companies that are registered in Australia and listed in the Australian Stock Exchange (ASX). You can search the ASX website (www.asx.com.au) to see if your company is on it. There are many companies listed on the ASX which are not Australian-registered, in which case Australian corporations law does not apply. Other companies may be overseas-owned, they may be private companies (owned by less than 50 shareholders with a name ending with Pty Ltd.) or too small to be listed on the ASX.

If your company is not Australian-registered and ASX listed then it can still be worthwhile to engage with them, but some of the legal requirements could be different. If your company is NZ listed then moving resolutions and distributing a statement is a lot easier than for Australian companies. To start with, in NZ you only need one shareholder. For more information contact ACCR.

How companies work

Shareholders own companies and thus ultimately control them. However in Australia, and in other countries, they do not have a direct role in running a company.

Instead, shareholders meet once a year at their company's AGM to **elect the board of directors** who are entrusted with running the company. This is similar to how Australia is run: Australians elect politicians to run the country while shareholders elect directors to run the company. However, unlike in our parliamentary elections, voting is on the basis of one share one vote and not one shareholder one vote.

The board of directors have legal responsibility for running the company. They elect **a chair** from their members. The board will appoint a Chief Executive Officer (CEO) or a managing director (if the CEO is also a director) who will be responsible for running the company while the board will have the role of the oversight and strategy of the company. The CEO appoints staff and runs the company, subject to any directions from the board.

In both our federal system of **representative democracy** and in our corporate system of representative democracy, we are aware that the voters would sometimes like to see a shift toward a more **participatory democracy** in which they can have a say between elections. The ACCR could be seen as working toward a more participatory mode of democracy for the corporate world.

Who owns Australian companies?

In many major Australian companies the top 1% by number of shareholders will have around 50% of all the shares, by number of shares. Australian companies have to disclose their **top 20 shareholders** in their annual report but many of these shareholders are 'nominee' companies so it may not be possible to work out who the actual owners of the shareholdings are. The larger shareholders will generally be **institutional shareholders** (largely superannuation funds) or the founders of the company (and their families).

Most Australian superannuation funds are invested in most large, listed Australian companies. As a result of Australia's compulsory private superannuation system, most

Shareholder Advocacy in Australia

Australians have money in a superannuation fund. Thus, superannuation funds may be influenced by campaigns that are supported by many of their members. For example, the organisation called 'Market Forces' (http://www.marketforces.org.au/) **campaigns** on climate change and works with superannuation fund members.

One of the potentially most powerful effects of moving resolutions at company AGMs is that large institutional investors (such as super funds) will consider your resolution. They may not vote for it, but their concerns may influence the company. Increasingly institutional investors are being **forced to disclose** how they vote on resolutions so they will consider your resolution carefully.

Is my issue a good one for shareholder activism?

Shareholder activism is much more likely to succeed where you can make a good case that what you are advocating will either enhance **shareholder value**, reduce business or reputation risk, or both.

Shareholders have invested their money in companies. So for your issue to get shareholder support, what you are asking the company to do **should not harm** the company financially.

Asking companies to totally change direction will probably not be successful as shareholder activism with tobacco companies has shown. However a group of Mobil Exxon shareholders is saying that profits should be returned to shareholders and not reinvested in more oil exploration. (http://www.theguardian.com/sustainable-business/2014/nov/28/exxon-mobil-profits-investors-fossil-fuel-reserves). This may well be an **effective** tactic used for more fossil fuel companies in the future.

Environmental, Social and Governance Risks

ESG (Environmental, Social and Governance) is a generic term for **non-financial performance** indicators such as managing the company's carbon footprint, employment diversity and ensuring there are systems in place for accountability. It is very likely that your issue could be seen as a possible ESG risk for the company.

Institutional investors have found that ESG issues are relevant to how well a company is managed long term, and thus of a company's long-term financial performance. Over a thousand investors, with more than $US 34 trillion invested, are now members of the UN-backed 'Principles for Responsible Investment' (UNPRI) which provides **a voluntary ESG** framework for companies and funds.

Shareholder activism - Banks and Climate change

Climate change has been on civil society's agenda for over 20 years and some progress is being made in putting it on companies' agendas as well.

In 2014 ACCR co-ordinated engagements with the **4 big Australian banks** (ANZ, NAB, CBA and WBC), including resolutions at ANZ and CBA's AGMs. Having an item on the AGM agenda, or the possibility of one, clearly caused the banks to **increase disclosure**. We moved resolutions at the CBA and ANZ AGMs which got about 3% of the vote. All banks agreed to make additional disclosure about how much carbon they finance, although none went as far as requested.

In the USA, in 2014, 24% of Bank of America's shareholders voted in favour of the bank reporting about their climate risk and many other financial institutions have agreed be more open to their shareholders on this issue. In 2015, there are **87 USA shareholder resolutions** about climate change –
see http://www.ceres.org/investor-network/resolutions
Together with the political and civil society actions on climate change, shareholders are making a difference.

Shareholder Advocacy in Australia

Company engagement

Campaigns to change companies normally start by **researching** your issue to find which companies are involved and possible solutions to the problem.

Once you have some basic information you should start by **writing** to the relevant companies, explaining the issue and asking for them to get back to you. Other people, including shareholders, are unlikely to listen to someone who has not already made a direct approach.

If you don't hear back within a couple of weeks then ring the company and ask for a reply. It is possible that you will get a satisfactory reply but, if you don't, the next step is to ask to **meet with the company**.

If you meet with the company and make a good case then it is possible the company will agree to your requests. If so it is still advisable to organise some contact in the future to ensure that all commitments are kept. If the company meets your demands then you should also write to thank them, and maybe write to the local paper or social media praising the company for its changes. It is possible that the company may make only token concessions, which do not meet your objectives.

Assuming that the company does not give you the response you want, or that they are refusing to give you any response (which is very likely), you may decide **to start a campaign** to enlist the concern of others about your issue. It is highly unlikely that you will be able to change a company that does not want to change without a broad campaign. Ways to campaign include:

- stakeholders (such as customers or shareholders) writing, emailing or ringing the company
- media articles about the issue
- social media campaigns
- commissioning and publishing of reports about the issue. (A report could show, for instance, the financial cost to the company of the issue, and its risk to the company's reputation.)
- political campaigns to change government action such that it will impact what the company is doing. An example which could have this effect could be a government ban on the use of certain chemicals.

Further discussion of how to run your broad campaign is outside the scope of this report.

Shareholder engagement

Your organisation may already have contacts with some shareholders: they may be your supporters and could be the start of your shareholder campaign.

Historically, Australian institutional shareholders have been reluctant to get engaged in any public discussion about the activities of the companies they invest in. However, if you are considering moving a resolution at an AGM, it is important that **institutional investors** feel that they have heard about your issue **in advance**. They may, of course, already be aware because of an ongoing public campaign that you are conducting.

Larger shareholders will have ongoing interaction with companies they invest in so it is possible that they may raise your issue with the company. If you can get some of the **larger shareholders onside** on your issue, then the company will almost certainly listen (at least) to your request.

Organisations for institutional shareholders include three in Australia and one UN-based as follows:.

- RIAA – **Responsible Investment Association of Australia** - http://responsibleinvestment.org/ . RIAA describes itself as the peak industry body representing responsible and ethical investors across Australia and New Zealand. RIAA has over 150 members who manage over $500 billion of assets.

Shareholder Advocacy in Australia

- FSC – **Financial Services Council** - http://www.fsc.org.au/. FSC describes itself as representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees.
- ACSI – **Association of Superannuation Investors** - http://www.acsi.org.au/ . Its website says that 'The Australian Council of Superannuation Investors (ACSI) provides independent research and advice to assist its member superannuation funds to manage environmental, social and corporate governance (ESG) investment risk.'
- UNPRI – **United Nations Principles of Responsible Investment** - http://www.unpri.org/. Its website says 'The United Nations-supported Principles for Responsible Investment (PRI) Initiative is an international network of investors working together to put the six Principles for Responsible Investment into practice.'

UNPRI members have to disclose summary information about how they vote on resolutions. From the 14/15 financial year onwards FSC members have to disclose detailed information about their votes at all company AGMs where they are members. This means that you will be able to tell if a FCS member voted for your resolution.

There are also organisations for small shareholders. They are:

ASA – **Australian Shareholder Association** - https://www.australianshareholders.com.au/. The Australian Shareholders Association (ASA) describes itself as 'the representative body for independent, free-thinking investors.'

AIA – **Australian Investors Association** – http://www.investors.asn.au/. It describes itself as 'a non-profit organisation devoted to educating investors'.

Why and how to become a shareholder

If you expect to have a lot of **interaction with the company** whose activities you wish to change, and especially if you need to have some formal interaction at an AGM, where you have to be a shareholder or be the representative of a shareholder in which case you are called a 'proxy', then it will be useful to be a shareholder. This means that you can attend AGMs in your own right, and you will receive the formal company communications to shareholders.

The easiest way to become a shareholder in Australia is to use one of the online, no-advice brokers. The major banks all have one and if you are a customer of the bank already it is quite easy as they already have your identification details. You can search for **'online broker'** to find a suitable broker. Normally the minimum parcel of shares you can buy is $500.

AGMs

The role of the AGM

The Annual General Meeting (AGM) is the time and place where corporate democracy and **shareholder voting** occurs. All shareholders can attend, either in person or via a proxy. Shareholders are also referred to as 'members' when discussing AGMs and companies, especially in a legal context. This report uses the term 'members' in Appendix A which refers to the Corporations Act.

Public companies are required by the **Corporations Act** to hold an AGM each year, within five months after the financial year end of the company (usually 30 June). Because of this, most companies hold their AGM in October or November. Most large company AGMs are covered by the Australian business media so they present an opportunity to get your message to a wider audience.

The normal or **'ordinary' business** at an AGM is:

1. Annual Report
The meeting will consider the Annual Report, Financial Report and the Reports of the Directors and of the Auditor. This consideration will usually include an address by the chair and the CEO. These are not voted on.

2. Adoption of the remuneration report
The vote on this resolution is advisory only. However, if voted against by more than 25% of the shareholders for 2 years running, there must be a motion to spill the entire board membership.

3. Election of Directors

Any other AGM business is called 'special' business. This would include any resolutions moved by shareholders.

How can you use an AGM to advance your issue?

As a non-shareholder you can do

- media work in the run up to and after the AGM
- a stunt with a photo opportunity, leafleting action or press conference outside the AGM

As a shareholder you can do more including

- Attend the AGM and question the company
- Nominate someone as a director

And with 100 or more other shareholders you can

- circulate a statement to all shareholders
- move a resolution to be considered at the AGM

Whatever you are doing at the AGM will have more impact if it comes from someone who is affected by the issue in question – whether it's a worker from the company, or a representative from a community adversely affected by the company's operations.

What you can do outside the AGM

You can meet and greet shareholders on their way in, usually starting an hour before the start of the meeting. A short leaflet outlining the issue you're concerned about from the point o f view of an investor could get you support from some of the AGM attendees.

Media for your AGM activities

As with other events, it is best to speak to supportive **media** beforehand, and also to business journalists who will cover major company AGMs as a matter of course.

You may be able to get media and shareholder attention with a stunt or banner **display outside** the meeting. If possible, have your own photographer and someone to film your AGM activities.

Someone with a **smart phone** can be invaluable at the meeting to Live Tweet and use Facebook. Tweets from AGMs maybe picked up by your supporters or interested journalists which can be a great way of creating exposure for your issue. Make sure you use a logical hash tag and @ relevant journalists and even the company itself.

Write the **basic press release** before the AGM so you can get it out quickly after the AGM. Hopefully you will just have to add a couple of quotes from the AGM, which your live tweeter inside the AGM may have already sent to your media person if you have one. If you have a media person, communicate with them during the AGM so they can put out anything of note as soon as it happens.

Even if you haven't done a stunt, take a few **photos** for your reference. If you are there by yourself you may find that a company representative will take a photo of you – particularly before the meeting.

Attending the AGM

Generally only shareholders can attend an AGM. A shareholder who cannot attend the AGM can nominate someone else to be their **proxy** who will attend the meeting in their place. Shareholders will receive a **form to nominate** proxies with their AGM papers and most share registries will allow this to be done online. Most large Australian companies move their AGMs between the main capital **cities** in Australia.

Shareholders can ask questions at an AGM, nominate a director or put forward a resolution. These are all covered below.

It is worthwhile attending the AGM as it gives you a chance to hear **the company's views**. You can also talk to board members and executive staff after the meeting when most companies have a light lunch or morning/afternoon tea.

You should aim to arrive 20 – 15 minutes early if you are speaking at the AGM to give time for any problems about getting into the meeting. Most AGMs provide tea and coffee for early attendees. You will find that **self-funded retirees** are over-represented in the audience of AGMs.

Questions at the AGM

The Corporations Act requires that the chair of an AGM allows a reasonable opportunity for the shareholders as a whole at the AGM to ask questions about or make comments on the management of the company. However the right to questions is limited. The Corporations Act does not require:

- the Board, management or the auditor to answer questions
- the chair of the AGM to continue to take more questions when shareholders have had a 'reasonable opportunity' to ask them.

Suggestions for asking questions

Asking a question or making a comment:
- ensures that the board knows there is an issue;
- puts the official view of the company on your issue on the public record.

It is worthwhile letting the company know what your question will be about. This way you are more likely to get an informed answer.

It is also worthwhile to research your question area. You should prepare and write out a question in advance and be prepared to change it on the day if the company makes an announcement you weren't expecting. You may be able to respond to the company's answer at the AGM.

Other shareholders and the chair may get frustrated if you make very long comments/questions or have a group of people making the same point. If the person who asks the questions is someone who has been directly affected by what the company has done, it will probably have more of an impact on other shareholders.

Otherwise (or as well) you should ask your question as a shareholder about 'our company'.

Statements by Shareholders

It is possible to **request that the company distribute** a statement to all shareholders with the AGM material.

The statement must be about either:

- **a resolution** to be moved at the AGM (see Appendix A Section 249N)
- **any other matter** that can be considered at an AGM. This is potentially a grey area legally (see Appendix A). It cannot cover things that are solely the responsibility of the board. However at the meeting shareholders must be given the opportunity to ask questions or make comment about the management of the company so your scope for statement is quite wide. The **Annual Report** is considered at the AGM so your statement could refer to it. For example it could say 'in our view the annual report should have included a discussion of issue X'. You will have to lodge your statement **before you see the Annual Reports** for that year so there will be an element of guess-work.

The statement must be less than 1,000 words and cannot be defamatory. You should write your statement as a shareholder and talk about 'our company'.

To request a statement be distributed you must have either **100 shareholders, or shareholders holding 5% of the company's shares,** supporting you. As long as the company receives the statement in time to send it out with the AGM material, the company will pay for it. While many shareholders don't read all the AGM material, this is a cost effective way of reaching a lot of shareholders.

For more about circulating a statement see appendix A section 249P

Nominating a Director

Nominating a sympathetic candidate for the board may give your candidate a hearing at the AGM with minimal effort. Most – but not all – companies will allow candidate directors to circulate some **brief information** about themselves, and the reason they are standing, to shareholders with the AGM papers. They may also be permitted to speak briefly at the AGM. Not all companies will do this and it is not legally required of them.

If you are hoping to get support of shareholders, then your candidate must have **relevant knowledge and experience** so they can usefully serve on the company's board. A director has to be part of all board activities, not just those relating to your issue.

Normally you will only need to have one shareholder to nominate a candidate for election as director of a company. The candidate does not have to be a shareholder of the company. Nomination must be received by the company before the **cut-off time** for the AGM agenda – normally a little more than 2 months in advance of the AGM. There is no specific format for nominating as a director.

Resolutions

A resolution is a formal item of business that is considered and voted on at the AGM. Moving a resolution puts discussion of the issue into the public arena and means that it is easier to get publicity about it. There is a long tradition of shareholder resolutions about social, environmental and governance issues **in the USA and UK** but this kind of activity has been much less common in Australia. In the US, almost one-sixth of companies in the S&P 1500 have faced a public shareholder activism campaign since 2006. Some of these have experienced multiple campaigns (ref http://www.top-1000funds.com/opinion/2015/01/07/2015-could-be-watershed-year-for-esg-issues/).

A resolution does not have to be passed to change a company. Most companies will agree to a resolution's request if there is a **significant vote** for it. Such a vote is usually seen as an indication of widespread concern.

If you **successfully lodge a resolution** for consideration at an AGM then:

- there is a good chance that you will be asked to meet with a company representative – possibly the chair – to discuss your issue. This may lead to progress on the issue.
- it will come to the attention of the board
- the statement that you write to support it will be distributed to all shareholders
- shareholders, especially institutional shareholders, may consider how they should vote on your resolution
- it will be debated at the AGM so the company will be forced publically to defend their position on your issue.

If your resolution is on the AGM agenda, then **institutional shareholders** will be forced to consider the issue. Your organisation should try and contact institutional shareholders, either using the shareholder organisations mentioned above or using your own contacts. You need to brief them on the issues and seek their support. If you have any contacts with institutional investors then it is worthwhile asking their views on the wording of potential resolutions before you submit them. This will maximise the chances that they will vote for your resolution. The weight of their vote could be very valuable to your cause.

Many Australian institutional investors are members of either Financial Services Council (http://www.fsc.org.au/) or the United Nations Principles for Responsible Investment (http://www.unpri.org/). UNPRI members have already committed to voting at AGMs and to disclosing summary information about how they vote. From financial year 2014/2015 (first report September 2015) FSC members must also disclose their votes. This means that members of superannuation schemes or investors in managed funds can ask their institution why they voted the way they did on your resolution.

There are two types of resolutions:

- **Ordinary resolutions.** Australian common law is unclear about the capacity of shareholders to consider a resolution expressing a non-binding comment on a matter that is the responsibility of the board. The board has responsibility for the strategy and management of the company. The company may allow such a resolution to be placed on the AGM agenda as Santos did with the Wilderness Society motion re CSG in May 2014. In this case it appears that the company's motivation was to demonstrate that very few shareholders suppor ted the resolution.

  It is not clear whether shareholders may consider a resolution expressing a non-binding comment on a matter which is not exclusively the responsibility of the board, for example, the content of the annual report of the directors to the shareholders. The ACCR has a cour t case about these issues which is scheduled to be heard 1 June 2015.

- **Special or constitutional resolutions.** Companies must put resolutions to change the company constitution on the AGM agenda unless the company's own constitution has been altered so this is not required. However not all issues are suitable to be covered in the company constitution. Also it requires **75% of the vote to pass such a 'special' resolution**, and institutional shareholders are reluctant to vote for constitutional resolutions..

To put a resolution requires 100 plus shareholders or shareholders who own in excess of 5% of the shares to sponsor it. You must lodge the resolution more than **2 months before** the company AGM.

If any of your supporters cannot attend the meeting then they can vote for your resolution by appointing the meeting chair as a proxy and directing how he/she votes. You can either do this online with the share registry or on the form that will come with your AGM material.

For more details about how to lodge a resolution, see appendix A.

Withdrawing a resolution

If the company has done what you want, then you should withdraw the resolution. Given the printing deadlines for AGM notices then you should do this as soon as you decide the company has full filled your requests.

If you have power of attorney for all the shareholders involved then the attorney can write and withdraw the resolution. If however shareholders have signed individual letters proposing the resolution, then you will have to get enough of them to write and withdraw to resolution to make the number of resolution proposers less than 100 shareholders. The resolution will lapse if it does not have 100 shareholders to support it.

How to recruit your 100 shareholders to support your resolution or statement

Finding supportive shareholders can take many months. **Recruiting** 100 shareholders can be the most challenging part of lodging a resolution. Ways to find shareholder supporters include:

- your own organisation's membership. They are your most likely source of shareholders.
- supportive financial advisers. RIAA lists those of its members who are financial advisers. They may have shareholder clients who may be able to assist you.
- ACCR. We are happy to publicise your call for shareholder support via our mailing list.
- Other supportive organisations. They may also be prepared to publicise your call for shareholder support.

The other approach is to contact individual shareholders and see if they will become supporters. It is possible to get a copy of the **share register of your company** (see Appendix A) and use this to contact shareholders. This is an expensive option to use because you will only receive the snail mail address. This means you will have to pay for postage as well as printing of the letters.

Many shareholders who are supportive of your issue may nevertheless be **reluctant to sign** on to your resolution. From our experience there are a few reasons, which exaggerate the normal gap between support for an issue and action on an issue. They include:

- signing up must be done on paper. With more and more activism occurring electronically this is a real barrier.
- most people are not direct shareholders. Even if they are, they may not be a shareholder in your target company. Very few people will buy shares in a company they dislike just to support shareholder actions.
- shareholders may be concerned that their name will be publically linked to your issue because they sign. In fact, while the share registry knows who signs, the list of shareholders should not become public knowledge.
- shareholders are concerned that they may be liable for the company's expenses to distribute your statement/resolution. If the statement is given to the company on time, there will be no cost to the shareholders who sign. If the statement is lodged late, then the company won't put it on the AGM.
- shareholders may be concerned about identity theft based on the information they give you. All you can do is assure shareholders that you will guard their personal information and, in fact, this is your legal obligation.

AGMs

Withdrawing your resolution

Companies generally contact resolution lodgers and may well be prepared to negotiate with you to avoid having a resolution on the AGM agenda. The negotiations may be on a tight deadline as they will want to avoid sending your resolution out with the AGM notice.

Generally you should consider withdrawing your motion if the company has committed to do what you asked, or substantially what you want. It is desirable that the company's action is public so your supporters can see what you and they have achieved.

If you withdraw your resolution then you will need to explain your action to your supporters, particularly if you have not achieved all the things your resolution asked for. You may need to issue a press release about it. You may still wish to attend the AGM and explain the situation to shareholders, company and media.

WHAT NEXT?

Most successful corporate campaigns take many years. There will be progress along the way but resilience will be required as it is likely that you will need to attend a number of company AGMs as well as your other campaigning.

However, with the publicity you gain from your AGM activities, you may join forces with other interested parties, and, even if you are not aware of it, you may well influence board members and other shareholders to consider your issue and take action. Your actions could lead to political or government interest and then government action.

ACCR believes that more involvement by shareholders and other stakeholders in their companies is one of the ways that Australian companies will become more sustainable. We want to encourage it and support you.

Research shows that involvement of citizens in the decisions that affect them is health-giving and the ACCR is committed to strengthening corporate democracy in Australia.

ACCR is happy to offer advice on your campaign and we would really like to know how it goes. Please let us know especially if you take any action at a company AGM.

Good luck!

Appendix A:
Corporations Act

This appendix is intended to assist proponents of a resolution (or a statement) seeking to lodge material for consideration at an AGM. Broadly, four sets of 'rules' apply:

- those set out in the Corporations Act (CA). The discussion below is structured in accordance with the relevant provisions of the Act. However, for 3 reasons the company secretary[1] of the target company will generally get away with interpreting the law in a manner that reduces minority shareholder rights and protects the interests of the board. Firstly, resolution activity has been fairly rare in Australia; as a consequence there is little common-law guidance on the meaning of the provisions discussed below. Secondly, the CA provides no penalty for breaches of these provisions. Thirdly, ASIC unlike the US SEC, has taken no interest in protecting minority shareholder rights in this area
- those set out in the Constitution of the relevant company. Though there is potential legal scope for companies to adopt a broad range of alternative constitutional provisions dealing with the division of powers between shareholders and boards, in fact, there is a high level of uniformity. The discussion below assumes a "plain vanilla" Constitution but it is essential that proponents check that this is the case for the company they are dealing with;
- those derived from common-law precedent. The most significant issue, in this context, is the definition of the extent of the set of permissible resolutions open to shareholders to propose. See the discussion under section 249O(1) below;
- those deriving from the ASX, particularly the listing rules, and from the practice of the outsourced share registry providers. Amongst the top few dozen ASX companies the level of observance of the listing rules is quite high. In contrast, for smaller companies, enforcement and observance of the listing rules can be fairly haphazard.

The discussion assumes the proponents seek to have a resolution considered which does not deal with the appointment or removal of directors or purely financial issues such as capital restructuring. Rather, the resolution proponents seek to raise some matter of corporate environmental, social or governance conduct or policy.
This activity, though not well-known in Australia, operates under a well-developed and supportive legal framework in other English-speaking jurisdictions such as the US, the UK[2] and Canada.

[1] Minority shareholders contemplating lodgement of a resolution do best to treat the term 'company secretary' as a misnomer. Because the board rather than the shareholders hire and fire company secretaries they are better thought of as board secretaries.

[2] Indeed, Australia is one of the more difficult jurisdictions for shareholders in this regard. See Shareholder resolutions at listed public companies in major English-speaking countries: comparative arrangements, March 2014, Pender, H & Sheppard, J at http://d3n8a8pro7vhmx.cloudfront.net/accr/pages/79/attachments/original/1395878540/ACCR_intl_cf_sh_res_final.pdf?1395878540

Appendix A:
Corporations Act

Section 249N

Per s 249N, members may give a company notice of a resolution that they propose to move at a general meeting if those members holdings total at least 5% of the votes that may be cast on the resolution, OR they number at least 100 members who are entitled to vote.

Section 249N - Members' resolutions

(1) The following members may give a company notice of a resolution that they propose to move at a general meeting:

(a) members with at least 5% of the votes that may be cast on the resolution; or

(b) at least 100 members who are entitled to vote at a general meeting.

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1) (b) to:

(a) a particular company; or

(b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

(2) The notice must:

(a) be in writing; and:

(b) set out the wording of the proposed resolution; and

(c) be signed by the members proposing to move the resolution.

(3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

(4) The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

Commentary

(1) (b) The following issues arise in regard collating, checking and asserting that proponents of a resolution have gathered the necessary 100 members:

i. is the reference to 'members' a reference to legal ownership or beneficial ownership? So, for example, if a single beneficial owner established 100 custodial accounts, each styled, "nominee's name ie the person who is the legal holder of the parcel <single beneficial holder>[3]" does that constitute 100 'members'? On the basis of practice the answer is yes. Though it can take some time full service share brokers will establish nominee accounts. It is not feasible to do this through discount brokers;

ii. a related question is whether the same legal holder holding parcels with different HIN's/SRN's is to be counted as one member for the purposes of this section of the CA? Section 231 deals with the definition of membership but doesn't clarify this issue much. It is best to assume the answer is Yes;

iii. note that the members must be members entitled to vote. This excludes:

- persons who hold ASX listed securities other than ordinary voting shares. For example, Australians will often think they are shareholders in a company though they may well hold preference shares or floating rate notes which are non – voting;
- persons who hold depositary interests in an ASX listed company's shares traded on a foreign exchange;

iv. There are two methods of checking that a person who thinks they are a shareholder of a company is actually a shareholder and so can genuinely be included in a list of 100 members.

[3] The use of the format < name > in the second field of a shareholding is the way a beneficial holding is generally denoted. Though note this stylisation encompasses a range of trust relationships from a custodian or nominee acting as a bare trustee to individual or corporate trustees of a superfund subject to the obligations of the SIS Act.

Appendix A:
Corporations Act

The first method is to obtain a copy of the share register for the company in accordance with section 173 (3) of the CA. The cost of obtaining a copy of the share register is set by regulation, see schedule 4 of the Corporations Regulations. The cost is reasonable for a small company $250 plus $0.05 per member for each member over 5000 members up to 20,000 then $0.01 per additional member, ie $1000 for a company with 20k members.

The alternative method is to inspect the register in person during business hours. Such an inspection is free to any shareholder. The share registries will often go to some trouble to endeavour to deter inspection and it may be necessary to insist the registry complies with the terms of section 173;

(1A) No different number has been prescribed by regulation.

(a) A template letter to a company secretary setting out a request for inclusion of a resolution on a forthcoming notice of meeting is attached at A.

(2) (b) For a discussion of obligations in regard resolution wording please see the commentary in regard section 249O below.

(2) (c) Each of the 100 legal persons who are members must be signatories to the letter requesting the inclusion of the resolution on the notice of meeting. In this context note that:

- an institutional owner holding shares in the name of a custodian must get their custodian to sign. There is no equivalent to the UK "custodian look through" provisions in Australian law;
- members can use an attorney to sign on their behalf. A template 'limited power of attorney' explicitly for this purpose is attached at B. Any member using an attorney to sign must have either previously provided a copy of the grant of the power of attorney to the share registry for noting or should include a certified copy of the document granting the power of attorney with the letter requesting inclusion of the resolution;

(3) A pro forma notice which can be served on the company secretary in multiple copies is attached at C.

It is often useful to lodge multiple resolution options with the intent of giving consideration to withdrawing some or all of them as a consequence of discussions with the company during the period after two months prior to the AGM but before the notice of meeting must be finalised.

Section 249O

Per s 249O, the company must give all members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting. It is responsible for the costs of giving members notice of the resolution.

Section 249O - Company giving notice of members' resolutions

(1) If a company has been given notice of a resolution under section 249N, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.

(2) The company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(3) The company is responsible for the cost of giving members notice of the resolution if the company receives the notice in time to send it out to members with the notice of meeting.

Appendix A:
Corporations Act

(4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving members notice of the resolution if the company does not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

(5) The company need not give notice of the resolution:

(a) if it is more than 1,000 words long or defamatory; or

(b) if the members making the request are to bear the expenses of sending the notice out—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

Commentary

(1) If the company has failed to announce its AGM date well in advance proponents should write to the company secretary referring to Listing Rules 14.3 & 3.13.1. The letter should seek an assurance the company will comply with these 2 listing rules. Together these rules require that the company to post an ASX notice 40 business days prior to the meeting informing shareholders of the date nominations close for candidates to fill vacancies on the board. Effectively, shareholders can then identify the date two months before the AGM.

If the resolution lodged would be invalid (and so a chairman could decline to allow a shareholder to put it to a meeting) the company is not obliged to distribute the resolution. Because it is explicitly provided for in the Corporations Act members can always frame a request as a special resolution to amend the Constitution. Resolutions which are not framed in this manner have a chequered history in Australia. In some cases they have been placed on the agenda but more often they have not.

It is clear that, unless the constitution specifically provides, Australian common law precludes the members considering a resolution expressing a non-binding comment on a matter exclusively vested in the board.

It is not clear whether members may consider a resolution expressing a non-binding comment on a matter which has not been exclusively vested in the board, for example, the content of the annual report of the directors to the shareholders. The ACCR sought to lodge a number of ordinary resolutions for consideration at the 2014 AGM of CBA. None were placed on the notice but a special resolution to change the Constitution was included on the notice. A case taken by the ACCR seeking a declaration the ordinary resolutions (which dealt with matters not exclusively vested in the board) are valid in Australia is scheduled for hearing in the Federal Court in the middle of 2015.

(2) Though, subsequent to receipt of a request for inclusion of a resolution a company is under no statutory obligation to inform the proposing shareholders of its intent, Listing Rule 3.17A requires the company to post an ASX announcement within two days of receipt of the request. Of course, a lodgement request, even though it has been announced to the market, can be withdrawn up to the date the company needs to finalise its notice of meeting material - which is a bit over one month prior to the AGM date.

(3) To avoid responsibility for costs of distribution of the resolution with the AGM material proponents should ensure both that their material is lodged well in excess of the two-month deadline, and that they have included wording withdrawing the resolution in the event the lodgement for some unexpected reason does not comply with the two-month deadline. See section 2 of the pro forma letter in attachment A.

(5)(a) This exclusion is interpreted by company secretaries to mean "prime facie defamatory"[4] rather than "actionably defamatory" so it is vital that proponents are careful to avoid any wording of a resolution or a statement which could be construed in any way to be defamatory. In particular, adverse references to named individuals should be avoided. If reference to individuals is necessary it should be framed as a reference to the relevant officer of the company.

[4] In Australia defamation law defines a large set of prose adverse to a person "prima facie defamatory" but then provides for a wide range of exclusions which deny that person grounds for action.

Appendix A:
Corporations Act

Section 249P

Per section 249P members can also seek distribution of a statement in regard a resolution they have lodged or some other resolution (for example, the resolution to approve the remuneration report) or in regard other matters.

Section 249P - Members' statements to be distributed

(1) Members may request a company to give to all its members a statement provided by the members making the request about:

(a) a resolution that is proposed to be moved at a general meeting; or

(b) any other matter that may be properly considered at a general meeting.

(2) The request must be made by:

(a) members with at least 5% of the votes that may be cast on the resolution; or

(b) at least 100 members who are entitled to vote at the meeting.

(2A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:

(a) a particular company; or

(b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

(3) The request must be:

(a) in writing; and

(b) signed by the members making the request; and

(c) given to the company.

(4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

(5) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.

(6) After receiving the request, the company must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

(7) The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to members with the notice of meeting.

(8) The members making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

(9) The company need not comply with the request:

(a) if the statement is more than 1,000 words long or defamatory; or

(b) if the members making the request are responsible for the expenses of the distribution—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

Commentary

(1)(a) There are a number of subtle but significant differences between the wording of this section and the previous sections which deal with resolutions. Firstly, the reference in (1)(a) is to "a resolution that is proposed to be moved". Suppose proponents lodge an ordinary resolution which the company secretary deems would be invalid under Australian common-law and so declines to comply with section 249O(1). The statement dealing with the resolution still satisfies this subsection so the obligations under subsection (6) still apply and the statement should still be distributed.

(1)(b) The breadth of issues which might be properly considered at a general meeting is considerably broader than the set of issues which can we can be dealt with by resolution. As a consequence it is possible to successfully request distribution of statements on matters which could not be dealt with by resolution.

The most relevant sections of the CA are:

- s 250R which sets out business, for example, consideration of the annual report, that may be dealt with whether or not it is on the notice;
- s 250S which requires the chair to ensure members at the meeting have an opportunity to make comment on the management of the company;
- s 250SA which requires the chair to allow members to ask questions or make comments on the remuneration report;
- s 250T which deals with the members right to query the auditor.

Despite this breadth of relevant matters it is still advisable for proponents to:

- draft their statement in a manner which makes it abundantly clear how the statement constitutes a matter which may properly be considered at the general meeting. For example, use language such as "in our view the annual report should have included a discussion of …";
- include in their request in letter some reference as to the reason they are of the view the statement deals with a matter which may be properly considered. In the absence of such justification there is a fair chance the company secretary will seek to claim the company is not under an obligation to distribute the statement.

(2), (2A), (3) & (4) See the discussion above in regard near identically worded subsections of 249N.

(6) It is not uncommon for company secretaries to make minor amendments to the statement contrary to the wording of this subsection.

The timing of this law is poorly framed for the purposes of assisting shareholders to comment on resolutions other than ones they propose. In that situation, shareholders are obliged to provide the company with their statement prior to knowing the resolutions the board will propose on the notice of meeting.

In regard statements initiated by proponents to avoid responsibility for costs it is advisable to establish well in advance the date of the AGM and if possible the date on which the company proposes to distribute its notice of meeting and to include prose withdrawing the request in the event there has been some confusion about dates.

(9) See the discussion above in regard section 249O(5) in regard defamation.

Attachment A:

pro forma letter to company secretary requesting inclusion of a resolution on the notice of meeting

Company Secretary, X

For delivery by hand to the registered office

Dear Y,

1. Notice of proposed resolution

We the undersigned and attached comprise in excess of 100 members of the company entitled to vote at a general meeting (collectively known as the X concerned shareholders group).

We are writing to give the company notice that we propose to move a resolution as set out in section 4 of this letter below at the next general meeting of the company, which we assume will be the forthcoming AGM.

2. Company to give notice to all members

Could you please confirm the company has received this notice in time for the AGM scheduled for Q (ie more than two months from the date this notice was given). Please note it is our preference to put this resolution to the AGM. In the event an EGM is planned or called in the intervening period please contact us to let us know.

Could you please also confirm that in accordance with section 249O(2) of the Corporations Act the company will give all members notice of this proposed resolution? We note that the company dispatched the notice of the last AGM a little over one month prior to the meeting. Could you please confirm that the company has received this letter in time to include notice of our resolutions with the notice of meeting for the forthcoming AGM? If the company has received this letter within 2 months of the annual general meeting there has been some mistake or misunderstanding as to dates, in that event please treat this letter as withdrawn and contact us immediately.

3. Distribution of our statement

We are also writing to request that the company give all members the statement set out in Attachment A. Could you please:

- ensure this statement (which both deals with a resolution proposed to be moved and deals with matters that may be properly considered at the meeting) is included in the notice of meeting without any editing or amendment. Let us know if you would like us to provide an electronic version if that assists you; and
- immediately inform us if the statement contains any factual inaccuracy. We will endeavour to take corrective steps in that event.

We further note that in accordance with ss 249P(6) and (7) of the Corporations Act the statement is required to be distributed together with the notice of meeting and the company will be responsible for the cost of the distribution.

4. Resolutions

Please include the following resolutions we propose to move on the notice of meeting.

INSERT wording of resolution, note that it may be desirable to have preferences if there is some uncertainty about the validity of particular wording options.

4.4 For noting (in the event a preference ordering has been used)

Please note:

- in the event, for whatever reason, it is proposed by the board that our preferred options should not be included in the notice of meeting we may seek an urgent court injunction dealing with this matter;
- to avoid unnecessary cost for all shareholders, the necessity for a revised notice, confusion amongst shareholders etc please advise us immediately of any issue or concern the board has with the validity of our preferred options.

Attachment A:

pro forma letter to company secretary requesting inclusion of a resolution on the notice of meeting

5. Corporations Regulation 5.6.31A

We refer also to the Corporations Regulations 2001. In particular we refer to regulation 5.6.31A. Certified copies of Powers of Attorney granted by the requisitioning shareholders identified in the attachments have in some but not all cases been lodged with the company's share registrar. Could you please ensure: that all of these POA's are lodged; that the registry understands it is an explicit term of these POA's they need make no further inquiry to assure themselves each POA has come into effect (see excerpt below); and also that each of these instruments is produced to the Chair of the forthcoming AGM in accordance with reg 5.6.31A(2)? Please confirm, in your capacity as Company Secretary, you will ensure this will occur.

6. Lodgement

We have endeavoured to ensure all the persons comprising the X concerned shareholders group (as listed in the attachments) are noted below so they can readily be identified in the register as members. We have done this purely in order to assist you. Similarly, we have endeavoured to provide HIN or SRN details for each member. However we take no responsibility for the accuracy of: our transcription into these summary lists; nor the HIN/SRN numbers. The agents of the company who we dealt with when attempting to search the register appeared to be unaware of, and/or disinterested in complying with and/or non-compliant with, a number of relevant strict liability provisions of the Corporations Act including ss 169(1)(b) & (2), 169(3)(a) & (b) , 173(2), 174(1) and 1300(1,(2) & (3) and this caused a significant hindrance to our capacity to exercise our lawful rights. Please contact us if you have any queries. Please also note we may take future action in regard this apparent failure to observe these strict liability provisions of the Corporations Act.

In regard to the Powers of Attorney please note it is a term of each and every one of these grants that you are:

"(a) entitled to rely on execution of any document by that person [the attorney] as conclusive evidence that:

i. the power of attorney has come into effect;

ii. the power of attorney has not been revoked; and

iii. the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and

(b) are not required to make any enquiries in respect of any of the above matters."

Please treat my execution of this letter and the execution of the statutory declarations attached as conclusive evidence that all the attached Powers of Attorney have come into effect, that none have been revoked and that all the rights referred to in this letter are being properly exercised.

7. Preference to avoid any dispute

It is our very strong preference to avoid the need for any legal dispute in regard these matters. We would be very happy to meet with any representative of the company to discuss any matter raised in this letter with a view to avoiding the need for dispute.

If I can assist you in any manner please do not hesitate to contact me.

Yours sincerely

Attachment list

A: Statement for distribution to all shareholders

B: Statutory declaration as to currency of Powers of Attorney

C: Listing of members who have signed notices of intent to put resolutions/request distribution of statement

D. Originals of these signed notices

Attachment B:

pro forma limited power of attorney for use by a natural person

POWER OF ATTORNEY LIMITED TO CORPORATE GOVERNANCE RIGHTS

I, we [name]..... (shareholder)

of ..... [residential address]

& ..... [postal address]

identified by the Holder Identification Number (HIN) or SRN .....[HIN or SRN]

appoint **X,Y & Z**, each an "**attorney**", each with contact address Q to be my/our attorney on the terms and conditions set out in this deed.

In respect of each and every holding of the shareholder's of shares in company **A, B & C with tickers**… (together the 'Listed Securities') the shareholder appoints each of the attorneys severally to do and execute any of the following corporate governance related acts, deeds and things on their behalf.

1.To attend meetings etc To:

(a) sign resolutions or statements;

(b) lodge or vary previously lodged resolutions or statements;

(c) attend, vote at or otherwise take part in all meetings held in connection with listed securities;

(d) appoint proxies and direct proxies how to vote or for any other purpose connected with such appointment as freely as I myself could do.

2. Generally to exercise corporate governance rights and privileges. Generally, to exercise rights, powers and privileges and formal duties which, from the date of commencement of this document until the date of termination of this document in respect of an attorney's appointment, may appertain to the shareholder in relation to corporate governance rights held as legal owner of the Listed Securities. For the avoidance of doubt, the attorney has no right to deal, purchase, sell, assign, pledge nor transfer Listed Securities by virtue of this document.

3. To appoint substitutes. To appoint any substitute for or agent **(sub-attorney)** to do anything that the attorney may do under this document (other than under this paragraph 3) upon whatever terms my attorney shall think fit, and at the attorney's discretion remove any sub-attorney that the attorney has appointed.

4. To have the power registered and to identify relevant securities. To cause this power of attorney to be registered or recorded:

(a) in the register of members, and in the books, of any company, corporation, managed investment scheme; or

(b) elsewhere,

as may be necessary or desirable, and to conclusively identify to any concerned parties those securities or other financial instruments or products which are Listed Securities.

5. Incidental. To do anything, which, in the attorney's opinion, is contemplated by, incidental to otherwise necessary or desirable in connection with anything described in paragraphs 1 to 4 above.

The shareholder acknowledges that they are bound by, and agree to ratify, anything done by an attorney in the exercise of an authority under this document or under any document appointing a sub-attorney.

This power of attorney commences immediately an attorney accepts (or as each of my attorneys accept) the appointment.

An attorney's appointment under this document terminates when that attorney receives notice of revocation from me or in the event the attorney ceases to be an employee or officer of the ACCR. A person may rely in good faith on a statement in writing by an

Attachment B:

pro forma limited power of attorney for use by a natural person

attorney that the attorney's appointment has not been revoked as conclusive evidence of that fact.

Each reference in this document (other than in this paragraph) applies as if it were also a reference to each sub-attorney appointed by that attorney. Without limiting this, the appointment of a sub-attorney appointed by the attorney terminates when the attorney's own appointment terminates under this document or by law.

Any person (including without limitation any registration authority in Australia or elsewhere) dealing with the attorney or a person purporting to be an attorney under this document, is:

(a) entitled to rely on execution of any document by that person as conclusive evidence that:

iv. the power of attorney has come into effect;

v. the power of attorney has not been revoked; and

vi. the right or power being exercised or being purported to be exercised is properly exercised and that the circumstance that have arisen to authorise the exercise of that right and power; and

(b) not required to make any enquiries in respect of any of the above matters.

An attorney may do anything contemplated by this document or permitted by law even if this constitutes an actual or potential conflict of interest or duty or benefits the attorney.

EXECUTED as a deed poll.

This power of attorney is made under the laws of New South Wales on the …….day of ……..of insert year, and is governed by the laws of New South Wales.

SIGNED, SEALED AND DELIVERED by

.....

(Signature of Shareholder)

.....

(Name(s) of Shareholder)

in the presence of:

.....

(Signature of Witness)

.....

(Name of Witness)

.....

(Address of Witness)

Attachment C:
pro forma notice to company secretary

Notice to company pursuant to ss 249N & P of the Corporations Act 2001 (Cth)

I/we …….....(name of 'shareholder')

of …….

[address]

…….

identified by the Holder Identification Number (HIN) or SRN

…… [HIN or SRN]

in respect of any holding of the shareholder's of:

☐ **X** ('X's ticker' or 'the company') ordinary fully paid shares;

hereby give notices (in accordance with section 249N of the Corporations Act 2001 (Cth)) to the company of the following ordinary and/or special resolutions the shareholder proposes to move at a general meeting of the company and request (in accordance with section 249P) that the company give to all members the statement attached at A.

Insert wording of proposed resolution(s)

In the event that an insufficient number of members support putting any of the above resolutions I give notices that I intend to put (in accordance with section 249N of the Corporations Act 2001 (Cth)) to the company only those resolution/s as set out above that achieve the requisite support required for the resolution to be put to the annual general meeting.

SIGNED

……..... ……

(Signature of individual Shareholder[5]/company director)

(If applicable signature of second shareholder in a joint holding/for a company second director or company secretary)

Attachment A: statement

[5] Or sole company director and sole company secretary. JOINT HOLDING: For a holding in more than one name all shareholders must sign)