

That pesky audit motion

Have you been frustrated by that AGM audit motion that seems like a double negative designed to confuse? Of course anyone who has ever voted at the AGM will know what we mean but not necessarily know why this is so confusing!

The motion is about whether the body corporate financial accounts should be audited; but if you say yes, you mean no and vice versa. Why is it so?

In a previous article we have praised the BCCM Act as a good piece of legislation. This is because it seeks to be fair and also provides a degree of protection for stakeholders. The legislators believe that it is generally a good idea to have the BC accounts audited. An audit provides a degree of assurance that the financial statements are not mis-stated. However, it is also recognised that auditing the accounts comes at a cost to the BC and that may not be always be appropriate in particular circumstances. So which is best?

The regulation modules require an audit to be performed unless there is a special resolution of the body corporate to say an audit should not be performed. This means that an audit is required unless the body corporate votes not to have an audit. But you can't vote "no" if you don't want an audit because the motion is worded in the negative. That is, because the motion effectively says "do you want to over ride the default position of having an audit so that an audit is not undertaken?" then you must vote yes (or pass the motion) in order not to have an audit. Clear isn't it? But wait, there's more!

Because the default legislation is to have an audit and the implied recommendation is to do so, the motion is classified as a "special resolution" which requires a higher number of votes to be passed (that is, to not have an audit). To pass a special resolution the vote must:

- Be only one vote per lot;
- Have two-thirds of votes cast to be in favour;
- The number of votes against the motion must be no more than 25% of the lots;
- The total contribution schedule of lots attached to votes against the motion is not more than 25% of the total lot entitlements of the scheme.

It is clear this is a higher bar to jump to pass the motion or overturn the Act's default position. A simple majority will not indicate a successful resolution and the count may not be able to be finalised on the day of the AGM.

Remember, if you want the financial accounts audited, vote no to ensure the default position in the legislation is not voted down.

Why can't this be a little clearer? Well, our hands are tied really because the wording of the resolution is laid down by the Regulations.

Hopefully though, now that you know, you can pass on this good news to those lot owners who want an audit. Knowledge and understanding will calm the waves (hopefully).

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**The above refers to the BCCM Act but this reference and the contents of this paper are intended to include provisions in the various modules that are applicable.*

Disclaimer

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