

Introduction

This year has seen numerous instances of activist shareholders and special interest groups disrupting general meetings through protests and civil disobedience measures.

One particularly concerning example of the tactics used by activists occurred at Shell PLC's annual general meeting in May 2022. According to one media report, about 40 climate protesters attended the event as shareholders. Having bought shares in Shell to gain access to the meeting, the activists continuously disrupted the meeting by chanting "Shell must fall", glued themselves to their seats and forced a three-hour adjournment of the meeting. Some protesters were even arrested.

Shareholder disruption of the annual meeting is obviously not new. As reported in *Re South British Insurance Co Ltd* (1981) 1 NZCLC 95-004, the chair of one meeting was confronted with a prolonged session of "pandemonium caused by something under one-quarter of those present chanting, shouting, singing and blowing whistles". However, public companies (particularly those operating in industries with environmental, social and governance (ESG) concerns) are increasingly likely to encounter shareholder unrest, as activists continue to seek and deploy strategies to promote their social or political agendas.

Unless carefully managed, annual meeting disruptions may seriously impact a company's reputation, particularly in today's world, where an incident can so easily be uploaded to social media and go viral almost instantly. Accordingly, with this year's annual meeting season on its way, ASX-listed entities should carefully consider their AGM plans and assess whether they adequately address the risk of disruption by shareholder activists – which could not only threaten the completion of the annual meeting, but also the company's brand and goodwill.

In this article, we outline the rights of Australian shareholders to participate in meetings, as well the role of the chairperson (Chair) in upholding the orderly conduct of those in attendance. We then suggest some practical steps companies can take to mitigate and address shareholder disruption, should it occur.

Duties and Functions of the Chair

The Chair of a shareholders meeting has the power and duty to preserve order at the meeting, and to take care that the proceedings and business of the meeting are conducted properly and in accordance with the company's constitution and the Corporations Act 2001 (Cth) (Corporations Act). In summary, the responsibilities of the Chair include:

- Preserving orderly conduct by those present
- Determining who has the right to attend and speak
- Ensuring that shareholders have a reasonable opportunity to ask questions and participate in the meeting

- Ascertaining the views of the meeting on the formal resolutions under consideration, and confining discussion to matters within the scope of the meeting and a reasonable time limit
- Closing the discussion and moving to the vote
- Adjourning the meeting when necessary and justified

It is important to note that the Chair's discretion as to the conduct of a meeting on matters may not always be prescribed by the Corporations Act or the company's constitution. However, they are still required to observe certain conventional standards to facilitate the meeting.

For instance, the Chair must always act in a way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole when exercising their discretion. The Chair must also act impartially, having regard to the wishes of the majority but ensuring that the minority is fairly treated.

Rights of Shareholders To Participate in the Meeting

Shareholders must be given reasonable opportunity to discuss and ask questions on the business of the meeting. This is a statutory obligation enshrined in the Corporations Act. Specifically, sections 250S and 250T of the Corporations Act entitle members to be given a reasonable opportunity to ask questions of company management and auditors in the context of an annual general meeting. Further, section 249S of the Corporations Act requires a company, at any meeting of its members, to give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting. We note that this provision applies to shareholders as a whole and is not intended to allow each and every shareholder the opportunity to ask questions.

Accordingly, the Chair may use their reasonable judgement to limit the questions asked or not answer a question if it has already been substantively answered. The Chair could, for example, limit questions on the ground of relevance to the resolutions being passed. The Chair is also authorised to curtail any discussion which might amount to an unnecessary delay of bringing the vote to shareholders.

The rights and limitations of shareholder participation in members meetings will usually also be covered in a well-drafted constitution. We encourage companies to review their constitutions and consider whether any changes are required to more effectively direct shareholder behaviour in this regard.

Practical Measures To Mitigate Disruption

Needless to say, a disruption script should be prepared and provided to the Chair in advance of the meeting, which covers the procedure in the event of a disruption. That said, Chair scripts may still be insufficient to address disruptive behaviour in practice. Accordingly, some additional practical measures may include:

1. **Briefing the Chair on the established disruption procedure** – It will be important to ensure a disruption procedure has been developed, and that the Chair is fully briefed on this procedure. For example, if the meeting is disrupted, the Chair can address this by:
 - a. Offering the shareholder the opportunity to air grievances in a separate discussion outside the meeting
 - b. Asking the shareholder to make their point briefly and, if there are several members, to appoint a representative to ask questions
 - c. As a last resort, adjourning the meeting to establish a basis for going forward or removal of the disruptive member.
 2. **Reviewing the procedures established by the company's constitution** – A well drafted constitution will usually set out rules relating to the conduct and procedure of a shareholder meeting. For example, it is common for a company's constitution to specify conduct that justifies the Chair's requiring a person to leave the meeting. For instance, if that person has a camera or video camera; has a placard or banner; has an article which the Chair considers to be dangerous, offensive or liable to cause disruption; and/or behaves or threatens to behave in a dangerous, offensive or disruptive manner. It will be important for the Chair to review and become familiarised with these procedures prior to the meeting.
 3. **Hiring security and establishing a separate check-in area** – Companies may wish to consider hiring security personnel and establishing security procedures for accessing the venue for the meeting. This could include establishing a registration desk separated from the actual meeting site. This could allow the company to identify potentially difficult shareholders before the meeting begins, and may also help the company limit access to the meeting to those legally entitled to attend (i.e. shareholders and proxies).
 4. **Covering the business of the meeting first** – Presentations by management may increase the potential window for disruption. Accordingly, the official business of the meeting (e.g. the voting on the resolutions in the notice of meeting) should be placed first on the agenda. To the extent that management does make a presentation, it should come after voting and the adjournment of the official meeting. With this ordering, the company may have a greater chance of completing the necessary business of the meeting before any disruption occurs.
 5. **Preparing and distributing rules of conduct** – Clear and concise rules of conduct for the meeting should be prepared and distributed before the meeting. These rules should be summarised by the Chair at the start of the meeting.
 6. **Exercising judgement when limiting questions** – It is common practice by companies to limit questions to a reasonable period. While some companies may employ the use of a timer, it may be more diplomatic to permit a shareholder to run over their allotted time than to cut them off midsentence or turn off the microphone. Doing so may assist in avoiding a disruptive scene or an ejection by security.
 7. **Preempting difficult questions** – It will be helpful to preempt difficult questions and request that shareholders ask questions in a calm, impartial manner. This could allow the Chair to respond thoughtfully or with a prepared answer.
 8. **Disallowing any "surprise" motions** – Under the Corporations Act, a shareholder holding at least 5% of the company's shares may requisition a meeting to propose a resolution on 28 days' notice. A shareholder is generally not entitled to make a surprise motion at a meeting. Accordingly, should this occur, the Chair will have the authority to rule it out of order.
- Notwithstanding the above, if the Chair is left with no other choice but to deal with the disruptive shareholder, the following actions may be taken:
9. **Ask the shareholder to stop the disruptive behaviour** – As a first step, the Chair should ask the shareholder to stop any behaviour that is in violation of the rules of conduct outlined at the start of the meeting.
 10. **Remind the shareholder that they may be removed from the meeting** – If the request to stop the disruptive behaviour is unsuccessful, the Chair should remind the shareholder that if the disruptions continue, they will be asked to leave the meeting.
 11. **Eject the shareholder from the meeting** – As a last resort, if the shareholder continues to be disruptive, the Chair should ask the person to leave the meeting. If they refuse to leave, the Chair will have to decide whether ejection from the meeting is appropriate, bearing in mind laws relating to excessive force.

Key Takeaways

Most annual general meetings are likely to occur without incident. However, the experience at the Shell AGM demonstrates that planning for and taking steps to mitigate potential disruption by activist shareholders is becoming an unavoidable necessity for some companies. While forcibly removing a disruptive or abusive shareholder from a meeting may be used as a last resort, the overarching goal should always be to prepare for the disruptive shareholder and implement strategies to extinguish tense situations before they get out of hand.

Authors



Sophie Davey

Associate
T +61 2 8248 7820
E sophie.davey@squirepb.com



Ashley Rose

Partner
T +61 2 8248 7879
E ashley.rose@squirepb.com



Michael Gajic

Partner
T +61 2 8248 7875
E michael.gajic@squirepb.com