

Group Five gives in on proxies deadline

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Group Five has said it will withdraw the time restriction it imposed on the submission of proxy votes for the coming extraordinary general meeting of shareholders.



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However, the move may not be sufficient to avoid a challenge to the validity of proxy votes, which means the outcome of the critical 24 July extraordinary meeting hangs in the balance.

Shareholders could be facing several months of value-destroying uncertainty if the validity of the proxies is not confirmed ahead of the meeting.

Because of recent legal developments, time restrictions on proxies could lead to the invalidation of all proxy votes, which generally account for about 75% of shareholders voting at a meeting.

Group Five told *Business Day* it would accept proxies submitted at any time, but by late on Tuesday it remained unclear what action the company would take to ensure all shareholders were made aware of the removal of the time restriction.

It declined to confirm whether it would issue a Sens announcement.

One leading academic lawyer said if the situation was not made clear ahead of the meeting, it could still result in a challenge to the validity of the proxies. Such a challenge seems inevitable, given the controversial circumstances surrounding the meeting.

On Friday, the company, which is in the midst of an acrimonious battle with its largest shareholder Allan Gray, issued the notice for the extraordinary general meeting.

The attached proxy form required shareholders voting by proxy to submit their proxies by no later than 11am on Thursday, 20 July.

However, in March 2017, the Supreme Court of Appeal confirmed that shareholders have a right to lodge their proxy right up to the time the voting takes place.

Piet Delpont, professor of law at Pretoria University, said the Supreme Court of Appeal ruling made it clear that a proxy that contained a requirement that it be lodged before a meeting could not be valid.

"The law is clear, a proxy with a time restriction is invalid," Delpont said.

In general, more than 75% of shareholders of JSE-listed companies vote by proxy at shareholder meetings.

Challenging the validity of the Group Five proxies could result in a long drawn-out legal battle that would have dire consequences for the oversight of the company.

The meeting was called at Allan Gray's instigation to elect five directors to replace the five who announced on Friday that they would resign ahead of the extraordinary general meeting.

On Tuesday, the fund manager said it no longer believed the board would act in the best interest of the company.

More than 10 executive and non-executive directors have resigned since February.

In May, Allan Gray, which owns 25% of the company, notified Group Five of its request to call an extraordinary general meeting to reconstitute the board following a disagreement with it on the future direction of the company.

Andrew Lapping, chief investment officer at Allan Gray, said that its proposal to appoint new directors was not related to differences over Group Five's strategy. "We want a board that is independent with the relevant skills to protect and grow value for all its stakeholders."

After Delpont initially raised the alarm following the Supreme Court of Appeal ruling in March, Computershare, which provides custodial services for listed companies including Group Five, sent a letter to its clients "strongly suggesting" they make no reference to a specific cut-off time for the submission of proxies ahead of shareholder meetings.

Delpont also said there was some concern about the implication that five of the directors were being voted as a bloc.

This would be a contravention of the Companies Act.

Source: Business Day