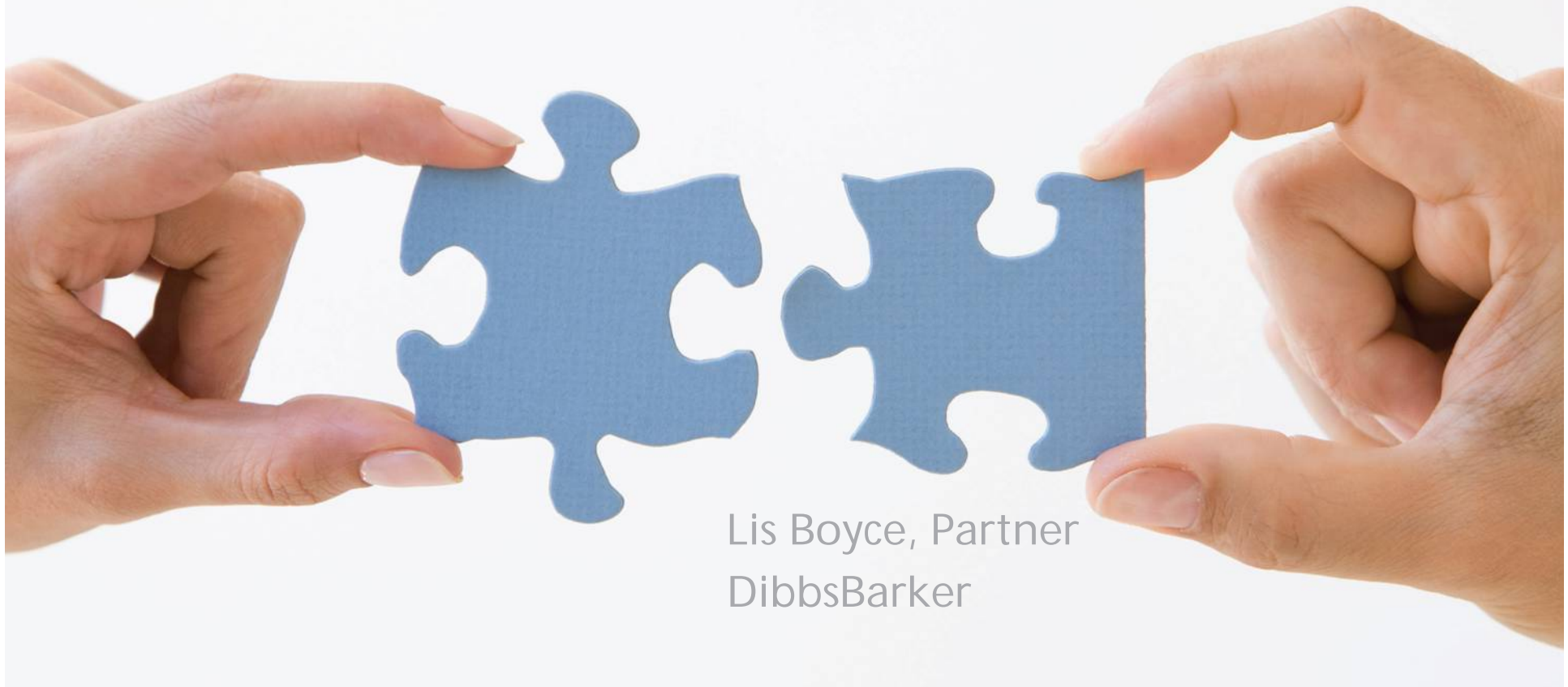


Remuneration, voting and tenure: How the rules have changed



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DibbsBarker

Key changes



-
- Remuneration consultants and recommendations (companies which are disclosing entities) ✓
 - 2 strikes rule (listed companies) ✓
 - No vacancy rule (all public companies) ✓
 - Ensuring that directed proxies count (all companies)
 - No hedging of unvested entitlements (companies which are disclosing entities)

Talking about remuneration



Dealing with remuneration consultants - what's it all about?



A remuneration recommendation:

IS	ISN'T
A recommendation on amount / elements of remuneration of Key Management Personnel	<ul style="list-style-type: none">• legal (including tax) advice• advice on accounting eg option valuation• actuarial advice• factual information• general information relevant to all employees

Remuneration consultant = maker of remuneration recommendation about Company's KMP under contract for service with Company

-
- Whole Board / Remuneration Committee must approve consultant
 - Consultant must deliver recommendation to Whole Board / Remuneration Committee
 - Must include declaration of no undue influence

What must be reported by the Board?



-
- Who gave recommendation
 - What else they've done
 - What they've been paid
 - How the process was protected from undue influence

The "2 strikes" rule



“2 Strikes” Rule - when does the clock start?



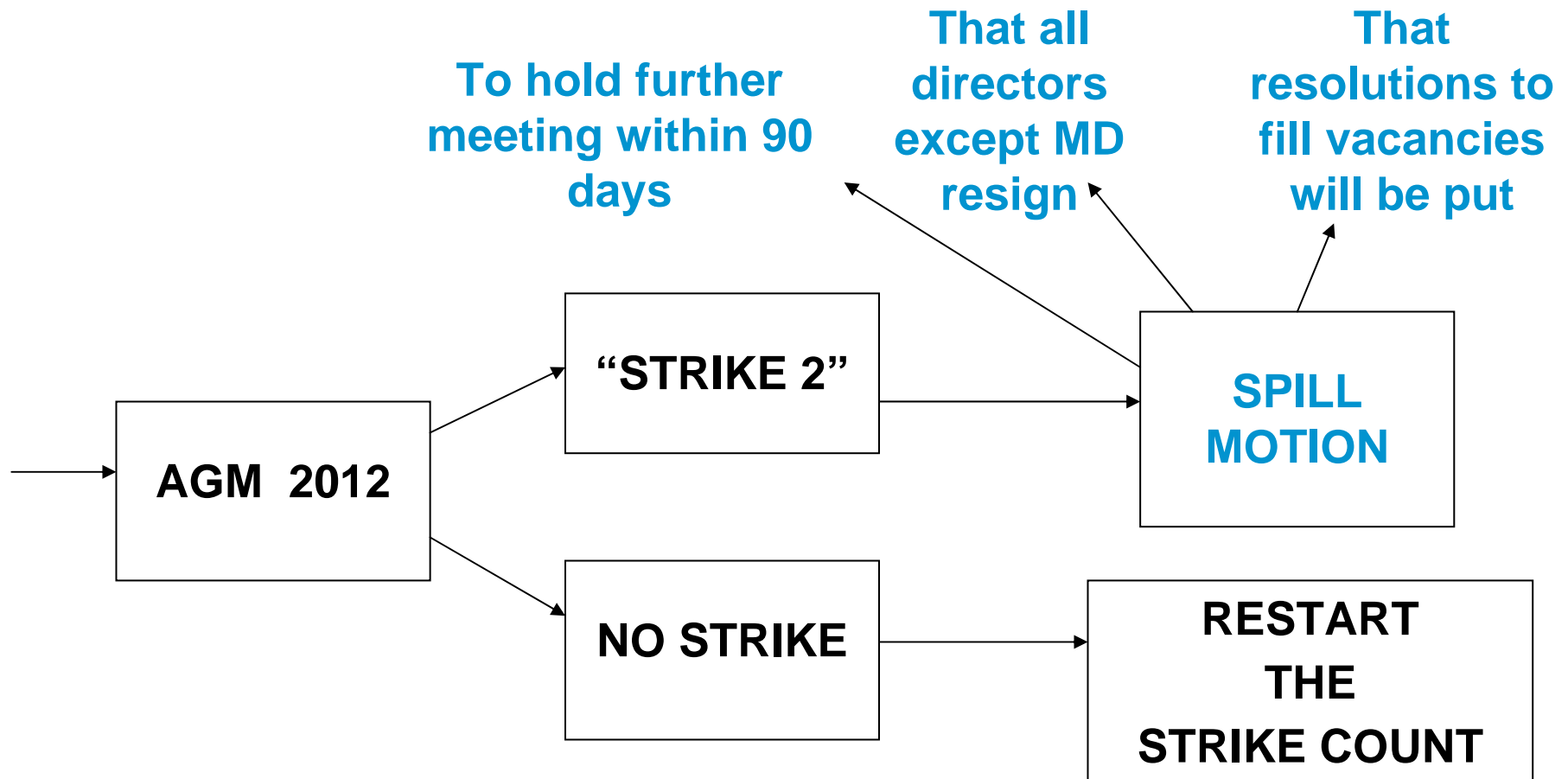
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- 25+% “No” vote only counts after 1 July 2011
 - If 25+% “No” vote in 2010; explain what would have happened if legislation already in force

What happens after the 1st “Strike”?



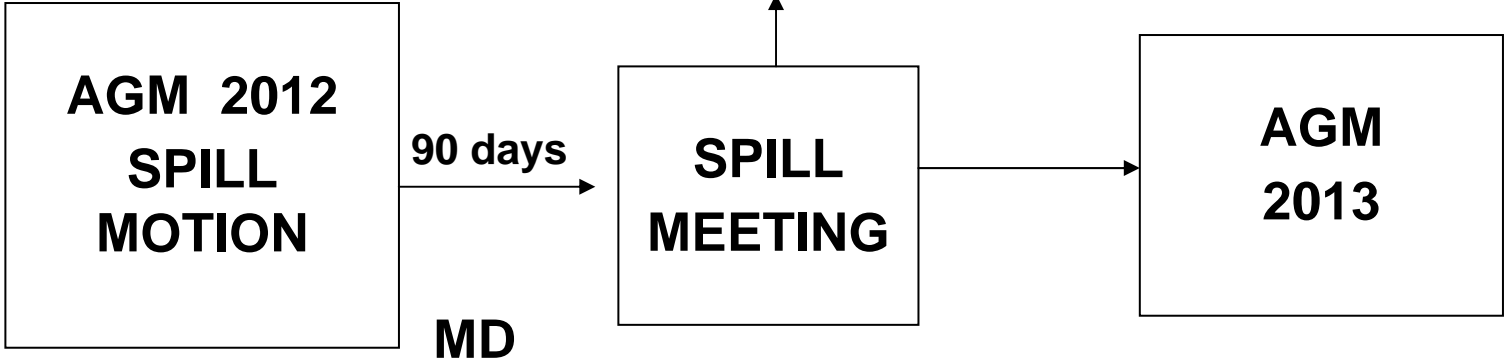
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- In next Annual Report: discuss responses to matters raised in previous AGM during discussion of Remuneration Report
 - Notice of next AGM: include spill resolution

What if there's a 2nd strike?



What happens at a "Spill" Meeting?

Normal notice and nomination deadlines apply



Other Directors

Directors elected at Spill Meeting

"Preserved" Directors*

"Preserved" Directors*

chosen by other Directors

***consented to act, "highest minorities"**

How might this play out?



Shareholder	%	Vote
Founder (Chair)	30%	–
Founder Junior (MD)	10%	–
Active Shareholder and Friends	16%	Against Rem Rept/for spill
Founder Fan Club	15%	For Rem Rept/against spill
Can't be bothered	29%	–

Limits on limiting board size



Board size: an end to “No vacancy” resolutions



-
- Where constitution sets maximum Board size and allows Board to reduce it.
 - Directors cannot reduce Board size without member approval.
 - EM must explain Board reasons and other information relevant to Company’s interests.
 - Resolution must be refreshed at each AGM.
 - Overrides constitution.

When do I need to consider this?



-
- LR 14.3 must accept nominations up to 35 business days before meeting
 - LR 3.13 must announce date of meeting at least 5 BD's before nominations close

What if a Board sets a limit in breach of the new provisions?



-
- Board limit ineffective.
 - If meeting could have voted on more directors, all appointments by meeting are invalid;
 - Willing candidate whose name not put forward can sue for loss.



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