

News brief



Shareholder Rights Directive

All change for company meetings

Just as companies have got used to their documents and procedures for shareholder meetings under the Companies Act 2006 (2006 Act), they will need to change them again to deal with new amendments which came into force on 3 August 2009.

The Companies (Shareholders' Rights) Regulations 2009 (SI 2009/1632) (2009 Regulations) implement the Shareholder Rights Directive (2007/36/EC) (the Directive) in the UK.

The Directive's aim is to improve shareholder information and participation rights in company meetings, and the 2009 Regulations amend the provisions on company meetings in the 2006 Act accordingly.

Companies will need to ensure that they comply with all the new requirements when preparing for and running their general meetings. They are also likely to want to amend their articles of association to make them consistent with the new requirements.

Scope

The new requirements apply on top of the existing obligations in Part 13 of the 2006 Act on company meetings, and are scattered throughout Part 13.

The Directive only applies to "traded companies" (that is, companies with shares traded on an EEA regulated market). As a result, most of the provisions in the 2009 Regulations only affect general meetings of listed companies (and not AIM companies or private companies). However, a number of the changes will affect all companies.

Companies must comply with the new requirements for general meetings where the notice is given on or after 3 August 2009.

General meeting notice periods

A key change is that the minimum notice period for general meetings for traded companies (other than annual general meetings (AGMs)) (for both ordinary and special resolutions) is extended to 21 clear days instead of the 14 clear days that was previously permitted.

However, the notice period for a particular meeting can be reduced to 14 days if:

- Shareholders pass a special resolution every year at the AGM approving the shortening of the EGM notice period to 14 days; and
- The company allows shareholders to vote at that meeting "by electronic means accessible to all shareholders". This is stated to be met by the company providing a facility to all shareholders to appoint a proxy via a website; allowing CREST proxy appointment is not sufficient.

In anticipation of the longer notice period, many listed companies passed a resolution at their 2009 AGMs to reduce their notice period to 14 days, and the 2009 Regulations confirm that a resolution passed before 3 August 2009 satisfies that condition.

New information required

Traded companies must now include additional information in their notices of meeting. This includes details of a website where other information is available

(*see below*), details of how to attend and vote at the meeting, and details of a new right to ask questions at the meeting (*see "Right to ask questions" below*).

In addition, if an AGM notice is sent out more than six weeks before the meeting, it must contain a statement about the members' rights to requisition a resolution or other matter at the meeting (*see "Shareholder requisition rights" below*). Traded companies may include some of this information in their notices already, but will need to ensure that all of the new requirements are met.

Traded companies must also make additional information (for example, details of the company's share capital) available in advance of the meeting on a website. The information must be available from the date of the notice of meeting for two years. Traded companies are also required to include additional information about poll results on their website after the meeting (for example, the total number of votes validly cast and the number of abstentions).

Shareholder requisition rights

In relation to all companies, members holding at least 5% of voting rights can requisition a general meeting. This is a halving of the current threshold of 10%, and so is a significant change.

For traded companies only, in addition to the current right to requisition a resolution at an AGM, members will have a new requisition right (at the thresholds of 5% of voting rights or 100 members) to require the company to include "a matter" to be considered in the business of an AGM.

Right to ask questions

There is a new statutory right for shareholders of traded companies to ask questions at meetings, which the company must “cause to be answered” unless one of the stated exceptions applies (these include if answering the question would be undesirable in the interests of the company or good order of the meeting). This means that there will be less scope for the chairman to cut the debate short, although the concept of the “good order” of the meeting means that there will come a time when a halt can be called.

Appointment of proxies

Traded companies must now provide an electronic address for the return of proxies. This is different from the requirement to allow shareholders to vote by electronic means via a proxy website facility in order to reduce notice periods (see “General meeting notice periods” above). Providing CREST proxy voting will be sufficient to satisfy this requirement.

The appointment of a proxy (and termination of a proxy’s authority) by a traded company member must be “in writing” (this will include by electronic communication). In addition, traded companies can only require “reasonable evidence” of the identity of the proxy and the members’ instructions on voting.

Record dates for voting

Traded companies must specify a “record date” by which a person must be entered on the register of members in order to have the right to vote at a meeting. The record date cannot be set more than 48 hours before the time of the meeting, but non-working days can be excluded from the calculation.

Voting at meetings

The 2009 Regulations introduce a number of changes and clarifications regarding voting at meetings.

Proxies. The 2009 Regulations clarify for all companies how a proxy who has been appointed by more than one member can vote on a show of hands. The new position is that a proxy has one vote on a show of hands in all cases (including where one member has appointed multiple proxies), except when he is appointed by multiple members who instruct him to vote in different ways, in which case he has one vote for and one vote against the resolution.

Corporate representatives. Again for all companies, where a shareholder appoints multiple corporate representatives in respect of its shareholding, the 2009 Regulations now clarify that they can vote in different ways provided they are voting in respect of different shares.

On a show of hands, each corporate representative has the same voting entitlement as his appointor, however many multiple representatives there are for the same appointor.

Electronic meetings and advance voting.

All companies are allowed to conduct meetings in a way that facilitates electronic participation by persons who are not present in the meeting room. It remains to be seen how many companies will take up this option beyond the usual facility for satellite meetings via overflow meetings in the event of difficulties with room size.

All companies are also permitted to allow members to cast their votes in advance of a meeting without having to appoint a proxy. However, the established use of proxies, and the flexibility that the proxy system creates, mean that there is no need for the use of the voting in advance system in the UK, and ICSA is advising against using it.

Chairman’s casting vote. The chairman’s casting vote at shareholder meetings is no longer allowed for any traded companies.

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