

Shareholders' Rights Regulations 2009 – general meeting notice periods & other company law changes



August 2009

The Government has implemented the EU Shareholders' Rights Directive by means of The Companies (Shareholders' Rights) Regulations 2009. Although the changes introduced by the Regulations mainly affect traded companies, some are relevant to all companies, both public and private. This note looks at an important change in relation to notice periods of general meetings of traded companies, as well as other key changes.

Ability of traded companies to hold general meetings on 14 days' notice

As you will be aware, the Companies Act 2006 reduced the minimum notice period for general meetings of both private and public companies (other than public company AGMs) to 14 clear days. However, implementation of the EU Shareholders' Rights Directive has meant a tightening of the regime in relation to notice periods of meetings of "traded companies" (in the UK, in practice this means companies whose shares are listed on the Official List). For meetings of which notice is given on or after 3 August 2009, such companies will only be able to use the 14 clear days' notice period if:

- they offer the facility for shareholders to vote by electronic means accessible to all shareholders (see below); and
- a special resolution reducing the period of notice to not less than 14 days has been passed at the last AGM or at a general meeting since the last AGM.

In almost all other cases, general meetings will have to be called on at least 21 clear days' notice. The Government has said that a "facility for shareholders to vote by electronic means accessible to all shareholders" means a facility to appoint a proxy by means of a website. Enabling electronic appointments through CREST membership, on its own, is not sufficient. The company must offer voting to all members on its, or another, website. Companies only need offer the facility to appoint a proxy by electronic means for the general meeting which they intend to hold on 14 days' notice.

These provisions do not apply to AGMs which must be held on at least 21 clear days' notice as before.

Action to be taken

If you want to be able to convene general meetings on 14 days' notice and have not already passed the required resolution, you should pass this at your next AGM. This resolution is required even if your articles already provide for a 14 day notice period. (If your articles currently require a longer notice period and you would like to take advantage of the 2006 Act provisions, then you should pass this resolution and also amend your articles at the same time.) Such resolutions will only be valid until the next AGM and will, therefore, need to be renewed annually.

ICSA has published a guidance note on the implementation of the Directive, which includes some sample wording for this resolution. This is available at <http://www.icsa.org.uk>. The UKLA has indicated that, in the absence of any other unusual factors, the inclusion of such a resolution in a circular will not mean that the UKLA has to vet the circular.

If you wish to convene general meetings on 14 days' notice, you should pass a resolution to approve this at their next AGM. This resolution is required even if your articles already provide for a 14 day notice period.

Other issues arising from the Shareholders' Rights Regulations

The Companies (Shareholders' Rights) Regulations 2009 have amended some of the provisions of the 2006 Act (mainly those on meetings). The amended provisions apply to meetings of which notice is given on or after 3 August 2009. The Government has also taken the opportunity to resolve certain problems which came to light during the implementation of the 2006 Act. As mentioned above, ICSA has published a useful guidance note addressing the key issues. Points to note include the following:

All companies

Votes of proxies on a show of hands – In order to overcome the confusion which arose in relation to the number of votes of proxies on a show of hands, the amended 2006 Act provisions clarify that each proxy who has been appointed by more than one person (which is commonly the case where the chairman of a meeting is appointed proxy) shall: (i) if instructed by all those members to vote either for or against the resolution, have one vote on a show of hands; and (ii) if instructed to vote both for and against the resolution, have one vote for and one vote against the resolution on a show of hands. These provisions can be varied by the company's articles. If companies detect any unusual proxy activity or a vote on a show of hands appears likely to be anomalous, a poll should be called.

Multiple corporate representatives – In order to resolve the uncertainty which had surrounded the provisions of the 2006 Act relating to votes of multiple corporate representatives, the amended provisions provide that multiple corporate representatives can vote in different ways from one another in respect of different blocks of shares.

Members' power to requisition a general meeting – The threshold for members who can require the directors to call a general meeting has been lowered to 5% of a company's voting share capital in all cases (previously, this was 10% in most cases).

Advance voting on a poll – A company's articles can provide that, on a poll vote, the votes may include votes cast in advance. Since this right already exists in the UK in relation to the appointment of proxies, it is unlikely that companies will want to take advantage of this.

Traded companies

Other members' rights – The amended provisions codify a member's right to ask (and have answered) questions relating to the business of the meeting. They also give members the right to add items other than resolutions to the agenda of meetings.

AGM notices and website publication – There are additional content requirements for AGM notices, as well as a requirement for companies to publish specified information on a website from the date of the notice of the meeting. This information relates to the matters set out in the notice, the total numbers of shares in the company and in each class in respect of which members are entitled to exercise voting rights at the meeting, and details about voting rights. Companies are also required to publish on the website as soon as reasonably practicable any members' statements, resolutions or matters of business received by the company after notice of the meeting is sent out. All of this information must remain available on the website for two years. After the meeting, companies have to publish on their website additional matters relating to the results of a poll vote to those which were previously required.

Electronic communications – Previously, if an electronic address was included in an instrument of proxy, the company was deemed to agree that any documents or information relating to proxies for that meeting could be sent to that address. Under the amended provisions, a traded company has to give an electronic address in every instrument of proxy sent out in relation to a general meeting and every invitation to appoint a proxy. ICSA provides some guidance as to how this requirement may be fulfilled.

Record date – The amended provisions introduce a "record date" system under which traded companies must determine the right to vote at a general meeting by reference to the register of members not more than 48 hours before the time for holding the meeting, ignoring non-working days. This replicates for holders of certificated shares the arrangements which were already in place for holders of shares held in CREST.

Chairman's casting vote – The Government's view is that the use of a Chairman's casting vote in the event of equality of votes at a general meeting is inconsistent with the 2006 Act and the Regulations disapply for traded companies a limited saving provision which had been introduced in relation to companies incorporated pre-1 October 2007. If articles currently provide for a casting vote, they should be amended to remove such a provision.

If you would like more details on any of the issues mentioned in this note, please contact your usual contact at the firm.

We will be producing a separate note on further changes which will be taking effect from 1 October 2009 under the 2006 Act.

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