



# SHAREHOLDER RIGHTS DIRECTIVE - BRIEFING NOTE

Regulations have now been introduced to implement the EU Shareholder Rights Directive in the United Kingdom. The purpose of this briefing is to outline the key provisions as they apply to UK listed companies.

## Summary

The principal changes for quoted companies are:

- electronic appointment of proxies;
- wider rights for shareholders to force additional matters to be considered at AGMs;
- additional requirements for notices of general meetings which will necessitate changes to existing documentation;
- wider rights for shareholders to raise questions at general meetings.

## Implementation

The purpose of the EU Shareholder Rights Directive was to improve corporate governance by implementing minimum standards across the EU regarding shareholders' rights to vote at, and participate in, general meetings.

The regulations principally apply to 'traded companies' which means companies whose shares are listed on the Official List (not AIM). This note focuses only on traded companies.

## Implementation date

The regulations apply to all general meetings and class meetings of which notice is given or first given on or after 3 August 2009.

## Notice of General Meetings

The Companies Act 2006 permitted traded companies to convene all general meetings on not less than 14 clear days' notice, save for Annual General Meetings which continue to require 21 days' notice. However, under the regulations, traded companies will only be

permitted to give 14 clear days' notice of a general meeting if:

- the meeting is not an Annual General Meeting;
- the company offers the facility for shareholders to vote by electronic means accessible to all shareholders holding shares that carry the right to vote;
- there is an existing special resolution resolving that only 14 clear days' notice of a general meeting is required. Such a special resolution is only valid until the next AGM so must be renewed every year.



Traded companies that wish to have a flexibility to convene general meetings other than AGMs on less than 21 days' notice should seek the authorisation resolution at each AGM. The requirement for voting by electronic means will be met if there is a facility offered by the company and accessible to all members entitled to vote to appoint a proxy by means of a web-site. The facility accessible through CREST to appoint proxies will not satisfy this requirement as CREST is only available to CREST members.

Finally, traded companies should check that their Articles do not require a longer period than 14 days' notice for general meetings.

#### Electronic address for receipt of proxies

Traded companies must provide an electronic address for the receipt of instruments and supporting documentation relating to proxies, such as proxy forms. The ICSA has suggested that CREST proxy voting should be sufficient for this purpose. The electronic address should be detailed when the instrument of proxy or invitation to appoint a proxy is issued or by placing it on the web-site where details of the general meeting are published.

#### Additional matters at an AGM

The regulations permit shareholders in traded companies to request the company to include in the business to be dealt with at an AGM (not other general meetings) matters other than resolutions that may properly be included in the business of the meeting.

To exercise that right, shareholders making the request must hold at least 5% of the total voting rights or be at least 100 members.

The company is not required to include the requested matter in the business of the AGM if it is defamatory of any person or frivolous or vexatious.

The request must be received by the company not less than 6 clear weeks before the meeting or, if later, when the notice is given. As the company receiving the request must then give notice to all members on or in the same manner as for the notice of the AGM, it is preferable for traded companies to wait until not more than 6 weeks before the AGM before sending out the notice of AGM to avoid a second notice if the request to consider a matter is received after the notice of AGM has been issued.

The company must pay the expenses of circulating notice of the requested business if sufficient numbers of requests are received before the end of the financial year preceding the AGM. Otherwise, the company can require the requisitionists to pay the expenses and to deposit payment prior to the notice being sent out.

The regulations make no change to the rules on members requisitioning resolutions to be considered at an AGM.

#### Contents of notice of meeting

The regulations require the following additional matters to be included in the notice of general meeting of traded companies:

- ▮ details of the website containing information relating to the general meeting (see below);
- ▮ a statement that the right to vote is by reference to the Register of Members and the time when the right to vote will be determined;

- ▮ procedures for attending and voting, including deadlines;
- ▮ details of forms for appointing proxies;
- ▮ if the company is offering voting in advance or voting by electronic means, then the procedure for doing so;
- ▮ the right of members to ask questions at the general meeting (see below);
- ▮ if the traded company sends its AGM notice out more than 6 clear weeks before the meeting, it must also include statements of shareholders' rights to give notice of a resolution to be moved at the meeting and other matters to be added to the business to be dealt with at the meeting (see above).

Many companies will already include many of these items.

#### Publication of information on a website in advance of general meetings.

On or before the first date on which a notice of meeting is given, there must be published on a website:

- ▮ the matters set out in the notice (or a copy of the notice itself);
- ▮ the total numbers of shares in the company and the shares of each class in respect of which members are entitled to exercise voting rights at the meeting, ascertained at the last practicable time for the date of the notice of meeting;

- III total voting rights the members are entitled to exercise at the meeting, again as ascertained at the last practicable time before the first date on which the notice of meeting is given.

The final two items are often included in the notes to notices of general meetings so placing the notice of meeting with its notes on the website will probably satisfy these items.

The website itself must be maintained by or on behalf of the company, identify the company and access to the information, and the ability to take a copy of the information on the website must not be conditional on payment of a fee or be otherwise restricted.

If members' requisition statements, resolutions or other business is to be considered at the general meeting, then these must also be placed on the web-site as soon as reasonably practicable.

### Questions at meetings

A traded company is required to answer questions put to them by shareholders attending the general meeting regarding the business being dealt with at that meeting. The company is not obliged to give an answer if to do so would:

- III interfere unduly with the preparation of the meeting;
- III involve the disclosure of confidential information;
- III the answer has already been given on a website in the form of an answer to a question;
- III it is undesirable in the interests of the company or the good order of the

meeting that the question be answered.

The application of the exceptions to the obligation to provide answers could be quite difficult.

### Website publication of poll results

Traded companies will be required to publish certain information regarding a poll on a website. The information required in relation to a poll is:

- III number of votes validly cast;
- III proportion of the share capital by reference to the record date represented by those votes; and
- III the number of abstentions, if counted.

The information must be put on the website as soon as reasonably practicable and, in any event, within 16 days of the result of the poll being declared.

### Chairman's casting vote

Under the regulations the chairman of a general meeting will no longer be able to exercise a casting vote, even if the articles of association of the company purport to give the chairman a casting vote.

### Class meetings

In general, the provisions of the regulations concerning general meetings do not apply to class meetings with the exception of the requirement to publish poll results on a website.



Traded companies should check that their articles of association do not require class meetings to be convened and held in accordance with the Companies Act 2006 requirements for general meetings as this would have the effect of requiring class meetings to comply with the regulations.

**Please note that this briefing aims to introduce you to legal issues of concern or interest; it is not a substitute for taking appropriate specialist advice in individual cases.**

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