

# Review



## 2009 General Meetings: update

**IN THE FIRST SUBSTANTIAL CHANGE TO THE COMPANIES ACT 2006 (THE 2006 ACT), THE COMPANIES (SHAREHOLDERS' RIGHTS) REGULATIONS 2009 AMEND CERTAIN PROVISIONS OF THE 2006 ACT RELATING TO GENERAL MEETINGS. THESE CHANGES CAME INTO FORCE ON 3 AUGUST 2009.**

**Why have changes been made so soon after the introduction of the relevant part of the 2006 Act?**

The reason for the revisions is two-fold:

- to implement the provisions of the EU Shareholder Rights Directive (227/36/EC) (the Directive). These provisions affect only "traded companies" (companies incorporated in the EU whose shares are traded on a regulated market such as the main market of the London Stock Exchange but not AIM) and aim to improve the corporate governance of such companies; and
- to address a number of issues that have come to light since the implementation in October 2007 of the 2006 Act's provisions on general meetings. This category of changes applies to all companies.

**What are the main changes?**

For traded companies, these include the following:

- **notice of general meetings:** the notice period for the annual general meeting (AGM) of traded companies will remain at 21 clear days. However, traded companies may rely on the provision in the 2006 Act which permits a notice period of 14 clear days for other general meetings if:
  - they have passed a shareholder resolution to this effect as a special resolution at the last AGM or at a general meeting held since then; and
  - they offer all members the facility to vote by electronic means. This condition is met if members are offered the facility to appoint a proxy by means of a website.

If these conditions are not met, a notice period of 21 clear days will apply to all meetings.

Accordingly, traded companies which have amended their articles to reduce the notice period for general meetings other than AGMs to 14 clear days will automatically be subject to a notice period of 21 clear days for such meetings, unless they take steps to preserve their position.

It should be noted that the provision of a voting system offered by CREST is not sufficient for the purposes of satisfying the requirement to offer members the facility to vote electronically, as the facility needs to be available to all members;

- **additional contents requirements for notice of meetings:** notices of meetings should now include: the address of a website where certain meeting information is available (see below); the record date for the meeting; details of the procedure to attend and vote at the meeting; details of proxy forms; and a statement of the right of members to ask questions. Where an AGM notice is given more than 6 weeks before the date of the AGM it should also include an explanation of the of members' right to requisition resolutions to be tabled at the meeting and the new right for members to include a matter in the business to be dealt with at the meeting (see below);

In this update to our article of May 2009, we review the changes made to the Companies Act 2006 to implement the Shareholder Rights Directive and remind companies of the steps to be taken at annual general meetings to preserve the right to call other general meetings on 14 clear days' notice.

- **Chairman's casting vote:** the saving provision that allows companies registered before 1 October 2007 to retain or re-instate provisions in their articles giving the Chairman a casting vote at shareholder meetings ceases to apply to traded companies. Accordingly, provisions in the articles giving the Chairman the right to a casting vote will be invalid;
- **participation of shareholders in general meetings:** members of traded companies have a statutory right to ask questions at general meetings relating to the business of the meeting and the company is under an obligation to answer such questions, unless the directors can demonstrate that to do so is, for example, undesirable in the interests of the company or the good order of the meeting. In addition, members have a new right to require the company to include a matter other than a resolution in AGM business. This right is subject to the same requirements as apply to the right to requisition a resolution. Any such requests must be received not later than 6 weeks before a meeting or, if later, the time of the giving of notice for the meeting. There are additional rules relating to the expenses of such requests;
- **voting record date:** the voting record date for a meeting must be determined by reference to the register of members not more than 48 hours before the time for holding the meeting, ignoring any part of a day that is not a working day. The relevant CREST regulations are to be amended with effect from 1 October 2009 to match this requirement;
- **facilitation of electronic communications:** traded companies must include an electronic address in every instrument of proxy sent out in relation to general meetings as well as in every invitation to appoint a proxy;
- **website requirements (prior to a meeting):** prior to a meeting a traded company must publish certain information on a website, including: the matters set out in the notice of the meeting; the total numbers of voting shares and classes of voting shares; and the total voting rights for each class of share (taken at the last practicable date before giving notice). This information must be available from the first date on which the notice is sent until the end of the meeting. Any members' statements or member-requisitioned resolutions or matters of business must be added as soon as reasonably practical; and
- **website requirements (following a meeting):** following a meeting a traded company is required (in addition to the current requirements relating to the publication of poll results) to publish the total number of votes validly cast; the proportion of the company's issued share capital as at the voting record time represented by those votes and the number of abstentions (if recorded).

For **all companies**, the changes include the following:

- **enhancement of shareholder rights:** members representing at least 5% of voting rights will be able to require directors to call a general meeting. At present, the threshold is generally 10% (subject to some exceptions);
- **proxies:** a proxy appointed by more than one member now has one vote if instructed to vote the same way by all those members but may, if instructed to vote in different ways, have one vote for and one vote against a resolution. This clarifies the position under the 2006 Act; and
- **corporate representatives:** the voting rights of multiple corporate representatives have been clarified: If a corporation appoints more than one representative, the representatives can validly vote in different ways (on a show of hands or a poll) providing that they each vote in respect of different shares.

#### **What steps should traded companies take to preserve the 14 day notice period for the company's general meetings?**

Traded companies which have adopted a notice period of 14 clear days for their general meetings and wish to retain this will need to pass a rolling resolution to this effect at each year's AGM and also ensure they meet the requirements as to electronic voting.

#### **Are there any other steps companies should be taking?**

**Yes:** companies, in particular traded companies, will also need to review their procedures in relation to general meetings given the other changes to the law in this area, in particular, the contents requirements for the notice of the meeting and pre and post meeting website requirements.

These changes came into force on 3 August this year and apply to any general meeting of which notice is given, or first given, on or after that date. The overriding aim of the EU Shareholder Rights Directive is to facilitate and encourage effective shareholder control of EU companies.

We would also recommend a review of companies' articles both in light of these changes and also in view of the provisions of the 2006 Act due to be implemented on 1 October this year. For companies that did not up-date their articles last year, this review should also take account of the other changes introduced by the 2006 Act.

Companies should review the ICSA "Guidance on the Implementation of the Shareholder Rights Directive" and also take into account the recent guidance documents published by the various investor bodies. These include: the revised guidance of the Association of British Insurers (ABI) on the authority to allot shares under s. 80 of the Companies Act 1985; the ABI's new guidelines on articles of association and AGMs; together with the updated voting guidelines published by the National Association of Pension Funds (NAPF) for the 2009 AGM season.

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