



The Consultative Committee of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

“SHAREHOLDERS’ RIGHTS”

This Memorandum has been prepared by the Consultative Committee of Accountancy Bodies – Ireland (“CCAB-I”) to alert members of the profession to the enhancement of shareholders’ rights following promulgation of the Shareholders’ Rights (Directive 2007/36/EC) Regulations 2009.

This Memorandum is not a comprehensive guide to the Regulations’ detailed requirements. It should be read in conjunction with, and not as a substitute for, the Regulations. Members are advised that it may be appropriate, in considering the application of the Regulations’ provisions in particular circumstances, to seek legal advice.

No responsibility for loss occasioned to any person acting, or refraining from action, as a result of material in this publication can be accepted by the CCAB-I.

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INTRODUCTION

1. The Shareholders' Rights (Directive 2007/36/EC) Regulations 2009 ("the Regulations") – S.I. 316 of 2009 - implement in the Republic of Ireland the 2007 Directive on the Exercise of Certain Rights of Shareholders in Listed Companies.
2. A number of the Directive's provisions are already contained in Irish company law. Other provisions are addressed by these Regulations.
3. The provisions of these Regulations apply solely to those companies with shares admitted to trading on a regulated market situated or operating within a Member State, hereafter referred to as "traded companies". Companies traded on the Alternative Investment Market ("AIM") or the Irish Enterprise Exchange ("IEX") are not "traded companies".
4. The Regulations do not apply to collective investment undertakings nor to undertakings "...the sole object of which is the collective investment of capital provided by the public".

CONVENING MEETING

5. Shareholders holding not less than 5% (previously 10%) of total voting rights in a traded company can requisition an extraordinary general meeting of the company (*Regulation 4*).
6. Section 133, Companies Act, 1963 ("the 1963 Act"), is extended to specifically address the convening of meetings of traded companies. 21 days notice is required for the annual general meeting ("AGM"). For other general meetings of the company 14 days notice suffice provided:
 - (a) A special resolution to that effect was passed at the previous AGM (or a general meeting since that AGM); and
 - (b) Shareholders can vote by electronic means (*Regulation 6*).
7. *Regulation 7* requires that notice of a general meeting of a traded company include "...a clear and precise statement of any procedure a member must comply with in order to participate and vote in the meeting...".

Such company is obliged to publish on its website the notice of the meeting, documents to be submitted thereto, together with copies of any draft resolution.

PARTICIPATION

8. Provided notice is received at least 42 days prior to the relevant general meeting, a member of a traded company is entitled (*Regulation 7*) to:
 - (a) Put an item on the AGM agenda – provided it is accompanied by “stated grounds justifying its inclusion” or a draft resolution; and
 - (b) Table a draft resolution on the agenda of a general meeting.

To avail of this entitlement the member must hold shares representing at least 3% of the total voting rights of all members who are entitled to vote at that general meeting.

9. Trading a company’s shares is permitted between the “record date” – a date not more than 48 hours before the general meeting – and the general meeting (*Regulation 8*).
10. A traded company may provide for members’ participation in its general meetings by electronic means, including electronic voting, real time transmission of the meeting and real time two way communication (*Regulation 8*).
11. A member of a traded company is entitled to ask questions related to items on the general meeting agenda and to have such questions answered (*Regulation 8*).

An answer is not required if already given on the company’s website, or if the answer would “interfere unduly” with the confidentiality and business interests of the company, or it impairs “good order of the meeting”.

VOTING

12. Section 13 of the 1963 Act is extended to specify that, for a traded company, the sole restriction on a person appointed as a proxy is that this person has legal capacity (*Regulation 9*). The proxy can be appointed by written notification to the company or by electronic means.
13. Section 138 of the 1963 Act is extended to provide that, on a poll at the meeting, a traded company may include votes cast in advance by correspondence where such votes are received before the date and time specified by the company (*Regulation 10*).

14. If a member requires a full account of a vote, then for each resolution proposed at a general meeting a traded company shall determine (*Regulation 12*).
- (a) “The number of shares for which votes have been validly cast,
 - (b) the proportion of the company’s issued share capital at close of business on the day before the meeting represented by those votes,
 - (c) the total number of votes validly cast, and
 - (d) the number of votes cast in favour of and against each resolution and, if counted, the number of abstentions.”.

These details must be published on the company’s website within 15 days of the general meeting.

EFFECTIVE DATE

15. The Regulations came into force on Thursday, 6th August 2009

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