



STATUTORY INSTRUMENTS.

S.I. No. 316 of 2009



SHAREHOLDERS' RIGHTS (DIRECTIVE 2007/36/EC) REGULATIONS
2009

(Prn. A9/1103)

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I, MARY COUGHLAN, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 (amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007¹, hereby make the following regulations:

Citation, commencement and construction.

1. (1) These Regulations may be cited as the Shareholders' Rights (Directive 2007/36/EC) Regulations 2009.

(2) These Regulations shall come into operation on the date on which they are made and shall apply in relation to meetings of which notice is given, or first given, on or after that date.

(3) These Regulations shall be read as one with the Companies Acts.

Definition.

2. In these Regulations, "Act of 1963" means the Companies Act 1963 (No. 33 of 1963).

Amendment of section 2 (General provisions as to interpretation) of Act of 1963.

3. Section 2 of the Act of 1963 is amended—

(a) by inserting the following definitions:

“ ‘company traded on a regulated market’ means a company whose registered office is in the State and whose shares are admitted to trading on a regulated market situated or operating within a Member State and does not include—

(a) collective investment undertakings within the meaning of Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)², or

(b) undertakings the sole object of which is the collective investment of capital provided by the public within the meaning of Article 1(3)(b) of Directive 2007/36/EC of the European

¹ OJ L 184, 14.7.2007, p. 17

² OJ L 375, 31.12.1985, p. 3.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 11th August, 2009.*

Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies³;

‘Directive 2004/25/EC’ means Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004, on takeover bids⁴;

‘electronic means’ are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;”, and

- (b) by substituting the following definition for the definition of “regulated market”;

“ ‘regulated market’ has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;⁵”.

Amendment of section 132 (Convening of extraordinary general meeting on requisition) of Act of 1963.

4. Section 132 of the Act of 1963 is amended by inserting the following subsection after subsection (1):

“(1A) Notwithstanding subsection (1) or anything in its articles, the directors of a company traded on a regulated market, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than 5 per cent of such of the paid up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.”.

New section 132A in Act of 1963.

5. The Act of 1963 is amended by inserting the following section after section 132:

“Equal treatment of members.

132A. A company traded on a regulated market shall ensure equal treatment for all members who are in the same position with regard to the exercise of voting rights and participation in a general meeting.”.

Amendment of section 133 (Length of notice for calling meetings) of Act of 1963.

6. Section 133 of the Act of 1963 is amended—

- (a) in subsection (1)(b), by substituting “or an unlimited company, and” for “or an unlimited company.”,

- (b) in subsection (1), by inserting the following paragraph after paragraph (b):

³ OJ L 184, 14.07.2007, p. 17.

⁴ OJ L 142, 30.4.2004, p.1

⁵ OJ L 145, 30.4.2004

“(c) in the case of a company traded on a regulated market, without prejudice to Articles 9(4) and 11(4) of Directive 2004/25/EC—

(i) in the case of an annual general meeting, 21 days’ notice in writing, and

(ii) in the case of a general meeting (other than an annual general meeting or a meeting for the passing of a special resolution) 14 days’ notice in writing where—

(I) the company offers the facility for members to vote by electronic means accessible to all members who hold shares that carry rights to vote at general meetings, and

(II) a special resolution reducing the period of notice to 14 days has been passed at the immediately preceding annual general meeting, or at a general meeting held since that meeting.”,

(c) in subsection (2)(b), by substituting “or an unlimited company, and” for “or an unlimited company.”,

(d) in subsection (2), by inserting the following paragraph after paragraph (b):

“(c) in the case of a company traded on a regulated market, without prejudice to Articles 9(4) and 11(4) of Directive 2004/25/EC—

(i) in the case of an annual general meeting, 21 days’ notice in writing, and

(ii) in the case of a general meeting (other than an annual general meeting or a meeting for the passing of a special resolution) 14 days’ notice in writing where—

(I) the company offers the facility for members to vote by electronic means accessible to all members who hold shares that carry rights to vote at general meetings, and

(II) a special resolution reducing the period of notice to 14 days has been passed at the immediately preceding annual general meeting, or at a general meeting held since that meeting.”,

and

- (e) in subsection (3) by inserting “, other than a company traded on a regulated market,” after “A meeting of a company”.

New sections 133A and 133B in Act of 1963.

7. The Act of 1963 is amended by inserting the following sections after section 133:

“Further provisions on notice.

133A. (1) Notwithstanding section 13 or anything contained in its articles, this section applies to a company traded on a regulated market.

(2) Notice of a general meeting shall be issued, free of charge, in a manner ensuring fast access to the notice on a non-discriminatory basis, using such media as may reasonably be relied upon for the effective dissemination of information to the public throughout Member States.

(3) Notice of a general meeting under subsections (1)(c) and (2)(c) of section 133 shall set out:

- (a) when and where the meeting is to take place and the proposed agenda for the meeting;
- (b) a clear and precise statement of any procedures a member must comply with in order to participate and vote in the meeting, including—
 - (i) the right of a member to put items on the agenda of a general meeting and to table draft resolutions pursuant to section 133B and to ask questions relating to items on the agenda pursuant to section 134C, and the time limits applicable to the exercise of any of those rights,
 - (ii) the right of a member entitled to attend, speak, ask questions and vote, to appoint a proxy pursuant to section 136 (including a proxy who is not a member) by electronic means or otherwise or, where allowed, one or more proxies, to attend, speak, ask questions and vote instead of the member,
 - (iii) the procedure for voting by proxy pursuant to section 136, including the forms to be used and the means by which the company is prepared to accept electronic notification of the appointment of a proxy, and
 - (iv) the procedure (where applicable) to be followed pursuant to sections 134B and 138 for voting electronically or by correspondence respectively;

- (c) the record date for eligibility for voting as defined in section 134A and state that only members registered on the record date shall have the right to participate and vote in the general meeting;
- (d) where and how the full, unabridged text of the documents and draft resolutions referred to in subsection 4(c) and (d) may be obtained, and
- (e) the internet site at which the information contained in subsection (4) shall be made available.

(4) A company shall make available to its members on its internet site, for a continuous period beginning not later than 21 days before a general meeting (inclusive of the day of the meeting), the following—

- (a) a notice under section 133A(2),
- (b) the total number of shares and voting rights at the date of the giving of the notice (including separate totals for each class of shares where the company's capital is divided into 2 or more classes of shares),
- (c) the documents to be submitted to the meeting,
- (d) a copy of any draft resolution or, where no such resolution is proposed to be adopted, a comment from the board of directors on each item of the proposed agenda of the meeting,
- (e) a copy of forms to be used to vote by proxy and to vote by correspondence unless these forms are sent directly to each member.

(5) The company shall make available, on its internet site as soon as possible following their receipt, draft resolutions tabled by members.

(6) Where the forms referred to in subsection (4)(e) cannot be made available on the company's internet site for technical reasons, the company shall indicate on its internet site how the forms may be obtained in hard copy form and the company shall send the forms by post, free of charge, to every member who requests them.

(7) Where notice of a general meeting is issued later than on the twenty first day before the meeting pursuant to section 133(1)(c)(ii) or 133(2)(c)(ii) or Articles 9(4) or 11(4) of Directive 2004/25/EC, the period specified in subsection (4) shall be reduced accordingly.

Right to put items on the agenda of the general meeting and to table draft resolutions.

133B. (1) A member of a company traded on a regulated market, shall have the right, by electronic or postal means, at an address specified by the company, to—

- (a) put an item on the agenda of an annual general meeting, provided that each such item is accompanied by stated grounds justifying its inclusion or a draft resolution to be adopted at the general meeting, and
- (b) table a draft resolution for an item on the agenda of a general meeting,

subject to the member or members concerned holding 3 per cent of the issued share capital, representing at least 3 per cent of the total voting rights of all the members who have a right to vote at the meeting to which the request for inclusion of the item relates.

(2) A request by a member to put an item on the agenda or to table a draft resolution under subsection (1)(a) shall be received by the company in hardcopy form or in electronic form at least 42 days before the meeting to which it relates.

(3) Where the exercise of the right conferred by subsection (1)(a) involves a modification of the agenda for the annual general meeting, in situations where the agenda has already been communicated to the members, and only in such situations, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date (as defined in section 134A) of share-ownership for purposes of entitlement to vote, or, if no such record date applies, sufficiently in advance of the date of the annual general meeting so as to enable other members to appoint a proxy or, where applicable, to vote by correspondence.

(4) In order to facilitate a member to avail of subsection (1)(a), the company shall ensure that the date of the next annual general meeting is placed on its internet site by—

- (a) the end of the previous financial year, or
- (b) not later than 70 days prior to the annual general meeting,

whichever is the earlier.”.

New sections 134A, 134B and 134C in Act of 1963.

8. The Act of 1963 is amended by inserting the following sections after section 134:

“Requirements for participation and voting in general meeting.

134A. (1) This section applies to a company traded on a regulated market.

(2) In this section—

‘record date’ means a date not more than 48 hours before the general meeting to which it relates;

‘register of securities’ has the same meaning as it has in Regulation 3 of the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996).

(3) A person shall be entered on the relevant register of securities by the record date in order to exercise the right of a member to participate and vote at a general meeting and any change to an entry on the relevant register of securities after the record date shall be disregarded in determining the right of any person to attend and vote at the meeting.

(4) The right of a member to participate in a general meeting and to vote in respect of his shares shall not be subject to any requirement that the shares be deposited with, or transferred to, or registered in the name of another person before the general meeting.

(5) A member is free to sell or otherwise transfer shares in a company at any time between the record date and the general meeting to which it applies if the right to sell would not otherwise be subject to such a restriction.

(6) Proof of qualification as a member may be made subject only to such requirements as are necessary to ensure the identification of the member and only to the extent that such requirements are proportionate to the achievement of that objective.

Participation in general meeting by electronic means.

134B. (1) A company traded on a regulated market may provide for participation in a general meeting by electronic means including—

- (a) a mechanism for casting votes, whether before or during the meeting, and the mechanism adopted shall not require the member to be physically present at the meeting or require the member to appoint a proxy who is physically present at the meeting,
- (b) real time transmission of the meeting,
- (c) real time two way communication enabling members to address the meeting from a remote location.

(2) (a) The use of electronic means pursuant to subsection (1) may be made subject only to such requirements and restrictions as are necessary to ensure the identification of those taking part and the security of the electronic communication, to the extent that such requirements and restrictions are proportionate to the achievement of those objectives.

- (b) Members shall be informed of any requirements or restrictions which a company puts in place pursuant to paragraph (a).
- (c) A company that provides electronic means for participation at a general meeting by a member shall ensure, as far as practicable, such means—
 - (i) guarantee the security of any electronic communication by the member,
 - (ii) minimise the risk of data corruption and unauthorised access,
 - (iii) provide certainty as to the source of the electronic communication, and
 - (iv) are remedied as soon as practicable, in the case of any failure or disruption.

Right to ask questions.

134C. (1) A member of a company traded on a regulated market has the right to ask questions related to items on the agenda of a general meeting and to have such questions answered by the company subject to any reasonable measures the company may take to ensure the identification of the member.

(2) An answer to a question asked pursuant to subsection (1) is not required where—

- (a) to give an answer would interfere unduly with the preparation for the meeting or the confidentiality and business interests of the company,
- (b) the answer has already been given on the company's internet site in a question and answer forum, or
- (c) it appears to the Chairman of the meeting that it is undesirable in the interests of good order of the meeting that the question be answered.”.

Amendment of section 136 (Proxies) of Act of 1963.

9. Section 136 of the Act of 1963 is amended by—

- (a) inserting the following subsections after subsection (1):

“(1A) (a) This subsection applies to a company traded on a regulated market.

(b) A proxy appointed may be any natural or legal person (whether a member or not) and shall act in accordance with any instructions given by the member by whom the proxy is appointed.

(c) A proxy shall be appointed by written notification to a company or by electronic means.

(d) A member shall be entitled to—

- (i) appoint a proxy by electronic means, to an address specified by the company,
- (ii) have the electronic notification of such appointment accepted by the company, and
- (iii) have at least one effective method of notification of a proxy by electronic means offered to it by a company.

(e) The appointment and notification of appointment of a proxy to a company and the issuing of voting instructions to a proxy may be subject only to such formal requirements as are necessary to ensure identification of a member, or the proxy, or the possibility of verifying the content of voting instructions, if any, and only to the extent that those requirements are proportionate to achieving those objectives.

(IB) Subsection (IA) shall apply *mutatis mutandis* to the revocation of the appointment of a proxy.”, and

(b) by inserting the following subsection after subsection (2):

“(2A) Notwithstanding subsection (2) or anything in its articles, in the case of a company traded on a regulated market—

- (a) no limitation may be placed on the right of a member to appoint more than one proxy to attend and vote at a general meeting in respect of shares held in different securities accounts, and
- (b) subject to paragraph (a), a member shall not be entitled to appoint more than one proxy to attend and vote on the same occasion, provided however that a member (being a natural or legal person) acting as an intermediary on behalf of a client, shall not be prohibited from granting a proxy to each of his clients or to any third party designated by a client. Such intermediary shall be permitted to cast votes attaching to some of the shares differently from others.”, and

(c) by inserting the following subsection after subsection (4):

“(4A) Any provision contained in the articles of a company traded on a regulated market (other than a requirement that a person appointed as a proxy shall possess legal capacity) shall be void in so far as it would have the effect of restricting the eligibility of a person to be appointed as a proxy.”.

Substitution of section 138 of Act of 1963.

10. The Act of 1963 is amended by substituting the following section for section 138:

“Voting on a poll.

138. (1) On a poll taken at a meeting of a company or a meeting of any class of members of a company, a member, whether present in person or by proxy, entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(2) A company traded on a regulated market, may provide for a vote exercised under subsection (1) to include a vote cast in advance by correspondence, subject only to such requirements and restrictions as are necessary to ensure the identification of the person voting, and as are proportionate to the achievement of that objective.

(3) A company traded on a regulated market shall only be required to count votes cast in advance by correspondence pursuant to subsection (2), where such votes are received before the date and time specified by the company, provided the date and time is no more than 24 hours before the time at which the vote is to be concluded.”.

Amendment of section 139 of Act of 1963.

11. Section 139(1) of the Act of 1963 is amended-

- (a) in paragraph (a) by deleting “and”,
- (b) in paragraph (b) by substituting “may be, and” for “may be.”, and
- (c) by inserting the following paragraph after paragraph (b):

“(c) if it has been appointed as the proxy to attend and vote at a general meeting of a company traded on a regulated market on behalf of a member of the company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company for the purpose of such appointment.”.

New section 145A of Act of 1963.

12. The Act of 1963 is amended by inserting the following section after section 145:

“Voting Results.

145A. (1) This section applies to a company traded on a regulated market.

(2) Where a member requests a full account of a vote before or on the declaration of the result of a vote at a general meeting, then with respect to each resolution proposed at a general meeting the company shall establish—

- (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.

(3) Where no member requests a full account of the voting before or on the declaration of the result of a vote at a general meeting, it shall be sufficient for the company to establish the voting results only to the extent necessary to ensure that the required majority is reached for each resolution.

(4) A company shall ensure that a voting result established in accordance with this section is published on its internet site not later than the end of the fifteenth day after the date of the meeting at which the voting result was obtained.”.



GIVEN under my Official Seal,
6 August 2009.

MARY COUGHLAN,
Minister for Enterprise, Trade and Employment.

BAILE ÁTHA CLIATH
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