

Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies

CHAPTER II

GENERAL MEETINGS OF SHAREHOLDERS

Article 4

Equal treatment of shareholders

The company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting.

Article 5

Information prior to the general meeting

1 Without prejudice to Articles 9(4) and 11(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids⁽¹⁾, Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 21st day before the day of the meeting.

Member States may provide that, where the company offers the facility for shareholders to vote by electronic means accessible to all shareholders, the general meeting of shareholders may decide that it shall issue the convocation of a general meeting which is not an annual general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 14th day before the day of the meeting. This decision is to be taken by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented and for a duration not later than the next annual general meeting.

Member States need not apply the minimum periods referred to in the first and second subparagraphs for the second or subsequent convocation of a general meeting issued for lack of a quorum required for the meeting convened by the first convocation, provided that this Article has been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.

2 Without prejudice to further requirements for notification or publication laid down by the competent Member State as defined in Article 1(2), the company shall be required to issue the convocation referred to in paragraph 1 of this Article in a manner ensuring fast access to it on a non-discriminatory basis. The Member State shall require the company to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The Member State may not impose an obligation to use only media whose operators are established on its territory.

The Member State need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of

shareholders, provided that the company is under an obligation to send the convocation to each of its registered shareholders.

In either case the company may not charge any specific cost for issuing the convocation in the prescribed manner.

- 3 The convocation referred to in paragraph 1 shall at least:
- a indicate precisely when and where the general meeting is to take place, and the proposed agenda for the general meeting;
 - b contain a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting. This includes information concerning:
 - (i) the rights available to shareholders under Article 6, to the extent that those rights can be exercised after the issuing of the convocation, and under Article 9, and the deadlines by which those rights may be exercised; the convocation may confine itself to stating only the deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company;
 - (ii) the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and
 - (iii) where applicable, the procedures for casting votes by correspondence or by electronic means;
 - c where applicable, state the record date as defined in Article 7(2) and explain that only those who are shareholders on that date shall have the right to participate and vote in the general meeting;
 - d indicate where and how the full, unabridged text of the documents and draft resolutions referred to in points (c) and (d) of paragraph 4 may be obtained;
 - e indicate the address of the Internet site on which the information referred to in paragraph 4 will be made available.
- 4 Member States shall ensure that, for a continuous period beginning not later than on the 21 day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information:
- a the convocation referred to in paragraph 1;
 - b the total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company's capital is divided into two or more classes of shares);
 - c the documents to be submitted to the general meeting;
 - d a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them;
 - e where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.

Where the forms referred to in point (e) cannot be made available on the Internet for technical reasons, the company shall indicate on its Internet site how the forms can be

obtained on paper. In this case the company shall be required to send the forms by postal services and free of charge to every shareholder who so requests.

Where, pursuant to Articles 9(4) or 11(4) of Directive 2004/25/EC, or to the second subparagraph of paragraph 1 of this Article, the convocation of the general meeting is issued later than on the 21st day before the meeting, the period specified in this paragraph shall be shortened accordingly.

Article 6

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

- 1 Member States shall ensure that shareholders, acting individually or collectively:
 - a have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting; and
 - b have the right to table draft resolutions for items included or to be included on the agenda of a general meeting.

Member States may provide that the right referred to in point (a) may be exercised only in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.

Member States may provide that those rights shall be exercised in writing (submitted by postal services or electronic means).

- 2 Where any of the rights specified in paragraph 1 is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the company, such minimum stake shall not exceed 5 % of the share capital.

- 3 Each Member State shall set a single deadline, with reference to a specified number of days prior to the general meeting or the convocation, by which shareholders may exercise the right referred to in paragraph 1, point (a). In the same manner each Member State may set a deadline for the exercise of the right referred to in paragraph 1, point (b).

- 4 Member States shall ensure that, where the exercise of the right referred to in paragraph 1, point (a) entails a modification of the agenda for the general meeting already communicated to shareholders, 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 Article 7(2) or, if no record date applies, sufficiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where applicable, to vote by correspondence.

Article 7

Requirements for participation and voting in the general meeting

- 1 Member States shall ensure:
 - a that the rights of a shareholder to participate in a general meeting and to vote in respect of any of his shares are not subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting; and

- b that the rights of a shareholder to sell or otherwise transfer his shares during the period between the record date, as defined in paragraph 2, and the general meeting to which it applies are not subject to any restriction to which they are not subject at other times.

2 Member States shall provide that the rights of a shareholder to participate in a general meeting and to vote in respect of his shares shall be determined with respect to the shares held by that shareholder on a specified date prior to the general meeting (the record date).

Member States need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders on the day of the general meeting.

3 Each Member State shall ensure that a single record date applies to all companies. However, a Member State may set one record date for companies which have issued bearer shares and another record date for companies which have issued registered shares, provided that a single record date applies to each company which has issued both types of shares. The record date shall not lie more than 30 days before the date of the general meeting to which it applies. In implementing this provision and Article 5(1), each Member State shall ensure that at least eight days elapse between the latest permissible date for the convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included. In the circumstances described in Article 5(1), third subparagraph, however, a Member State may require that at least six days elapse between the latest permissible date for the second or subsequent convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included.

4 Proof of qualification as a shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

Article 8

Participation in the general meeting by electronic means

1 Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:

- a real-time transmission of the general meeting;
- b real-time two-way communication enabling shareholders to address the general meeting from a remote location;
- c a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.

2 The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.

This is without prejudice to any legal rules which Member States have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means.

Article 9

Right to ask questions

1 Every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders.

2 The right to ask questions and the obligation to answer are subject to the measures which Member States may take, or allow companies to take, to ensure the identification of shareholders, the good order of general meetings and their preparation and the protection of confidentiality and business interests of companies. Member States may allow companies to provide one overall answer to questions having the same content.

Member States may provide that an answer shall be deemed to be given if the relevant information is available on the company's Internet site in a question and answer format.

Article 10

Proxy voting

1 Every shareholder shall have the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his name. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the shareholder thus represented would be entitled.

Apart from the requirement that the proxy holder possess legal capacity, Member States shall abolish any legal rule which restricts, or allows companies to restrict, the eligibility of persons to be appointed as proxy holders.

2 Member States may limit the appointment of a proxy holder to a single meeting, or to such meetings as may be held during a specified period.

Without prejudice to Article 13(5), Member States may limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. However, if a shareholder has shares of a company held in more than one securities account, such limitation shall not prevent the shareholder from appointing a separate proxy holder as regards shares held in each securities account in relation to any one general meeting. This does not affect rules prescribed by the applicable law that prohibit the casting of votes differently in respect of shares held by one and the same shareholder.

3 Apart from the limitations expressly permitted in paragraphs 1 and 2, Member States shall not restrict or allow companies to restrict the exercise of shareholder rights through proxy holders for any purpose other than to address potential conflicts of interest between the proxy holder and the shareholder, in whose interest the proxy holder is bound to act, and in doing so Member States shall not impose any requirements other than the following:

- a Member States may prescribe that the proxy holder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder;
- b Member States may restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions for each resolution in respect of which the proxy holder is to vote on behalf of the shareholder;

- c Member States may restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxy holder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.

A conflict of interest within the meaning of this paragraph may in particular arise where the proxy holder:

- (i) is a controlling shareholder of the company, or is another entity controlled by such shareholder;
- (ii) is a member of the administrative, management or supervisory body of the company, or of a controlling shareholder or controlled entity referred to in point (i);
- (iii) is an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in (i);
- (iv) has a family relationship with a natural person referred to in points (i) to (iii).

4 The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder.

Member States may require proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm on request that the voting instructions have been carried out.

5 A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented. Where a proxy holder holds proxies from several shareholders, the applicable law shall enable him to cast votes for a certain shareholder differently from votes cast for another shareholder.

Article 11

Formalities for proxy holder appointment and notification

1 Member States shall permit shareholders to appoint a proxy holder by electronic means. Moreover, Member States shall permit companies to accept the notification of the appointment by electronic means, and shall ensure that every company offers to its shareholders at least one effective method of notification by electronic means.

2 Member States shall ensure that proxy holders may be appointed, and that such appointment be notified to the company, only in writing. Beyond this basic formal requirement, the appointment of a proxy holder, the notification of the appointment to the company and the issuance of voting instructions, if any, to the proxy holder may be made subject only to such formal requirements as are necessary to ensure the identification of the shareholder and of the proxy holder, or to ensure the possibility of verifying the content of voting instructions, respectively, and only to the extent that they are proportionate to achieving those objectives.

3 The provisions of this Article shall apply *mutatis mutandis* for the revocation of the appointment of a proxy holder.

Article 12

Voting by correspondence

Member States shall permit companies to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

Article 13

Removal of certain impediments to the effective exercise of voting rights

1 This Article applies where a natural or legal person who is recognised as a shareholder by the applicable law acts in the course of a business on behalf of another natural or legal person (the client).

2 Where the applicable law imposes disclosure requirements as a prerequisite for the exercise of voting rights by a shareholder referred to in paragraph 1, such requirements shall not go beyond a list disclosing to the company the identity of each client and the number of shares voted on his behalf.

3 Where the applicable law imposes formal requirements on the authorisation of a shareholder referred to in paragraph 1 to exercise voting rights, or on voting instructions, such formal requirements shall not go beyond what is necessary to ensure the identification of the client, or the possibility of verifying the content of voting instructions, respectively, and is proportionate to achieving those objectives.

4 A shareholder referred to in paragraph 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.

5 Where the applicable law limits the number of persons whom a shareholder may appoint as proxy holders in accordance with Article 10(2), such limitation shall not prevent a shareholder referred to in paragraph 1 of this Article from granting a proxy to each of his clients or to any third party designated by a client.

Article 14

Voting results

1 The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions.

However, Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.

Status: This is the original version (as it was originally adopted).

2 Within a period of time to be determined by the applicable law, which shall not exceed 15 days after the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph 1.

3 This Article is without prejudice to any legal rules that Member States have adopted or may adopt concerning the formalities required in order for a resolution to become valid or the possibility of a subsequent legal challenge to the voting result.

(1) [OJ L 142, 30.4.2004, p. 12.](#)