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## STATUTORY INSTRUMENTS

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# 2009 No. 1632

## The Companies (Shareholders' Rights) Regulations 2009

### PART 3

#### AMENDMENTS RELATING TO TRADED COMPANIES

##### **Traded companies: notice of general meetings**

**9.—**(1) In section 307 of the Companies Act 2006 (notice required of a general meeting), before subsection (1) insert—

“(A1) This section applies to—

- (a) a general meeting of a company that is not a traded company; and
- (b) a general meeting of a traded company that is an opted-in company (as defined by section 971(1)), where—
  - (i) the meeting is held to decide whether to take any action that might result in the frustration of a takeover bid for the company; or
  - (ii) the meeting is held by virtue of section 969 (power of offeror to require general meeting to be held).

(A2) For corresponding provision(s) in relation to general meetings of traded companies (other than meetings within subsection (A1)(b)), see section 307A.”.

(2) After that section insert—

##### **“Notice required of general meeting: certain meetings of traded companies**

**307A.—**(1) A general meeting of a traded company must be called by notice of—

- (a) in a case where conditions A to C (set out below) are met, at least 14 days;
- (b) in any other case, at least 21 days.

(2) Condition A is that the general meeting is not an annual general meeting.

(3) Condition B is that 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. This condition is met if there is a facility, offered by the company and accessible to all such members, to appoint a proxy by means of a website.

(4) Condition C is that a special resolution reducing the period of notice to not less than 14 days has been passed—

- (a) at the immediately preceding annual general meeting, or
- (b) at a general meeting held since that annual general meeting.

(5) In the case of a company which has not yet held an annual general meeting, condition C is that a special resolution reducing the period of notice to not less than 14 days has been passed at a general meeting.

(6) The company's articles may require a longer period of notice than that specified in subsection (1).

(7) Where a general meeting is adjourned, the adjourned meeting may be called by shorter notice than required by subsection (1).

But in the case of an adjournment for lack of a quorum this subsection applies only if—

- (a) no business is to be dealt with at the adjourned meeting the general nature of which was not stated in the notice of the original meeting, and
- (b) the adjourned meeting is to be held at least 10 days after the original meeting.

(8) Nothing in this section applies in relation to a general meeting of a kind mentioned in section 307(A1)(b) (certain meetings regarding takeover of opted-in company).”.

(3) In section 360(1) of the Companies Act 2006 (computation of periods of notice etc: clear day rule), after the entry relating to section 307(1) and (2) of that Act, insert—

“section 307A(1), (4), (5) and (7)(b) (notice required of general meeting of traded company),

#### **Traded companies: contents of notice of meeting**

**10.**—(1) Section 311 of the Companies Act 2006 (contents of notices of meetings) is amended as follows.

(2) In subsection (2) (notice to state general nature of business to be dealt with), for the second sentence substitute “In relation to a company other than a traded company, this subsection has effect subject to any provision of the company's articles.”.

(3) After that subsection insert—

“(3) Notice of a general meeting of a traded company must also include—

- (a) a statement giving the address of the website on which the information required by section 311A (traded companies: publication of information in advance of general meeting) is published;
- (b) a statement—
  - (i) that the right to vote at the meeting is determined by reference to the register of members, and
  - (ii) of the time when that right will be determined in accordance with section 360B(2) (traded companies: share dealings before general meetings);
- (c) a statement of the procedures with which members must comply in order to be able to attend and vote at the meeting (including the date by which they must comply);
- (d) a statement giving details of any forms to be used for the appointment of a proxy;
- (e) where the company offers the facility for members to vote in advance (see section 322A) or by electronic means (see section 360A), a statement of the procedure for doing so (including the date by which it must be done, and details of any forms to be used); and
- (f) a statement of the right of members to ask questions in accordance with section 319A (traded companies: questions at meetings).”.

#### **Traded companies: publication of information in advance of general meeting**

**11.** After section 311 of the Companies Act 2006 insert—

**“Traded companies: publication of information in advance of general meeting**

**311A.**—(1) A traded company must ensure that the following information relating to a general meeting of the company is made available on a website—

- (a) the matters set out in the notice of the meeting;
- (b) the total numbers of—
  - (i) shares in the company, and
  - (ii) shares of each class,in respect of which members are entitled to exercise voting rights at the meeting;
- (c) the totals of the voting rights that members are entitled to exercise at the meeting in respect of the shares of each class;
- (d) members’ statements, members’ resolutions and members’ matters of business received by the company after the first date on which notice of the meeting is given.

(2) The information must be made available on a website that—

- (a) is maintained by or on behalf of the company, and
- (b) identifies the company.

(3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, must not be conditional on payment of a fee or otherwise restricted.

(4) The information—

- (a) must be made available—
  - (i) in the case of information required by subsection (1)(a) to (c), on or before the first date on which notice of the meeting is given, and
  - (ii) in the case of information required by subsection (1)(d), as soon as reasonably practicable, and
- (b) must be kept available throughout the period of two years beginning with the date on which it is first made available on a website in accordance with this section.

(5) A failure to make information available throughout the period specified in subsection (4)(b) is disregarded if—

- (a) the information is made available on the website for part of that period, and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(6) The amounts mentioned in subsection (1)(b) and (c) must be ascertained at the latest practicable time before the first date on which notice of the meeting is given.

(7) Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting.

(8) If this section is not complied with as respects any meeting, an offence is committed by every officer of the company who is in default.

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

**Traded companies: questions at meetings**

**12.**—(1) After section 319 of the Companies Act 2006 insert—

**“Traded companies: questions at meetings**

**319A.**—(1) At a general meeting of a traded company, the company must cause to be answered any question relating to the business being dealt with at the meeting put by a member attending the meeting.

(2) No such answer need be given—

- (a) if to do so would—
  - (i) interfere unduly with the preparation for the meeting, or
  - (ii) involve the disclosure of confidential information;
- (b) if the answer has already been given on a website in the form of an answer to a question; or
- (c) if it is undesirable in the interests of the company or the good order of the meeting that the question be answered.”.

(2) In section 145(3) of the Companies Act 2006 (effect of provision of articles as to enjoyment or exercise of members’ rights), after paragraph (e) insert—

“(ea) section 319A (right to ask question at meeting of traded company);”.

**Traded companies: appointment of proxy and termination of proxy’s authority**

**13.**—(1) In section 327 of the Companies Act 2006 (notice required of appointment of proxy etc), before subsection (1) insert —

“(A1) In the case of a traded company —

- (a) the appointment of a person as proxy for a member must be notified to the company in writing;
- (b) where such an appointment is made, the company may require reasonable evidence of—
  - (i) the identity of the member and of the proxy,
  - (ii) the member’s instructions (if any) as to how the proxy is to vote, and
  - (iii) where the proxy is appointed by a person acting on behalf of the member, authority of that person to make the appointment;

but may not require to be provided with anything else relating to the appointment.

(2) In subsection (1) of that section, for “This section applies to” substitute “The following provisions apply in the case of traded companies and other companies as regards”.

(3) In section 330 of that Act (notice required of termination of proxy’s authority) —

(a) before subsection (1) insert—

“(A1) In the case of a traded company the termination of the authority of a person to act as proxy must be notified to the company in writing.”;

(b) in subsection (1) for “This section applies to” substitute “The following provisions apply in the case of traded companies and other companies as regards”.

(4) After section 333 of that Act insert—

**“Traded company: duty to provide electronic address for receipt of proxies etc**

**333A.**—(1) A traded company must provide an electronic address for the receipt of any document or information relating to proxies for a general meeting.

(2) The company must provide the address either—

- (a) by giving it when sending out an instrument of proxy for the purposes of the meeting or issuing an invitation to appoint a proxy for those purposes; or
  - (b) by ensuring that it is made available, throughout the period beginning with the first date on which notice of the meeting is given and ending with the conclusion of the meeting, on the website on which the information required by section 311A(1) is made available.
- (3) The company is deemed to have agreed that any document or information relating to proxies for the meeting may be sent by electronic means to the address provided (subject to any limitations specified by the company when providing the address).
- (4) In this section—
- (a) documents relating to proxies include—
    - (i) the appointment of a proxy for a meeting,
    - (ii) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and
    - (iii) notice of the termination of the authority of a proxy;
  - (b) “electronic address” has the meaning given by section 333(4).”.

#### **Traded companies: class meetings**

**14.—**(1) Section 334 of the Companies Act 2006 (application of provisions as to resolutions at general meetings in relation to class meetings) is amended as follows.

- (2) In subsection (1), for “(2) and (3)” substitute “(2) to (3)”.
- (3) In subsection (2)—
  - (a) omit the “and” at the end of paragraph (a);
  - (b) after paragraph (b) insert—

“, and
  - (c) sections 311(3), 311A, 319A, 327(A1), 330(A1) and 333A (additional requirements relating to traded companies).”.
- (4) After subsection (2) insert—

“(2A) Section 307(1) to (6) apply in relation to a meeting of holders of a class of shares in a traded company as they apply in relation to a meeting of holders of a class of shares in a company other than a traded company (and, accordingly, section 307A does not apply in relation to such a meeting).”.

#### **Traded companies: duty to hold AGM**

**15.—**(1) Section 336 of the Companies Act 2006 (public companies: annual general meeting) is amended as follows.

- (2) After subsection (1) insert—

“(1A) Every private company that is a traded company must hold a general meeting as its annual general meeting in each period of 9 months beginning with the day following its accounting reference date (in addition to any other meetings held during that period).”.
- (3) In subsections (2) and (3), after “subsection (1)” in each place in which it occurs insert “or (1A)”.
- (4) In the section heading, after “Public companies” insert “and traded companies”.

(5) In the heading to Chapter 4 of Part 13 of the Companies Act 2006 (public companies: additional requirements for AGMs), after “PUBLIC COMPANIES” insert “AND TRADED COMPANIES”.

### **Traded companies: notice of AGM**

**16.—**(1) Section 337 of the Companies Act 2006 (public companies: notice of AGM) is amended as follows.

(2) In subsection (1) (notice to state that meeting is AGM), after “public company” insert “or a private company that is a traded company”.

(3) In subsection (2), after “annual general meeting” insert “of a public company that is not a traded company”.

(4) After that subsection insert—

“(3) Where a notice calling an annual general meeting of a traded company is given more than 6 weeks before the meeting, the notice must include—

- (a) if the company is a public company, a statement of the right under section 338 to require the company to give notice of a resolution to be moved at the meeting, and
- (b) whether or not the company is a public company, a statement of the right under section 338A to require the company to include a matter in the business to be dealt with at the meeting.”.

(5) In the section heading, after “Public companies” insert “and traded companies”.

(6) In section 360 of the Companies Act 2006 (computation of periods of notice etc: clear day rule), after the entry relating to section 316(2)(b), insert—

“section 337(3) (contents of notice of AGM of traded company),”.

### **Traded companies: members’ power to include other matters in business dealt with at AGM**

**17.—**(1) After section 338 of the Companies Act 2006 insert—

#### **“Traded companies: members’ power to include other matters in business dealt with at AGM**

**338A.—**(1) The members of a traded company may request the company to include in the business to be dealt with at an annual general meeting any matter (other than a proposed resolution) which may properly be included in the business.

(2) A matter may properly be included in the business at an annual general meeting unless –

- (a) it is defamatory of any person, or
- (b) it is frivolous or vexatious.

(3) A company is required to include such a matter once it has received requests that it do so from—

- (a) members representing at least 5% of the total voting rights of all the members who have a right to vote at the meeting, or
- (b) at least 100 members who have a right to vote at the meeting and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

(4) A request—

- (a) may be in hard copy form or in electronic form,
  - (b) must identify the matter to be included in the business,
  - (c) must be accompanied by a statement setting out the grounds for the request, and
  - (d) must be authenticated by the person or persons making it.
- (5) A request must be received by the company not later than—
  - (a) 6 weeks before the meeting, or
  - (b) if later, the time at which notice is given of the meeting.”.
- (2) In section 145(3) of the Companies Act 2006 (effect of provision of articles as to enjoyment or exercise of members’ rights), after paragraph (g) insert—
  - “(ga) section 338A (traded companies: members’ power to include matters in business dealt with at AGM);”.
- (3) In section 153(1) of the Companies Act 2006 (exercise of rights where shares held on behalf of others: members’ requests), after paragraph (b) insert—
  - “(ba) section 338A (traded companies: members’ power to include matters in business dealt with at AGM);”.
- (4) In section 360(1) of the Companies Act 2006 (computation of periods of notice etc: clear day rule), after the entry relating to section 338(4)(d)(i) insert—
  - “section 338A(5) (request to include matter in the business to be dealt with at AGM of traded company);”.

### **Traded companies: company’s duty to circulate members’ matters for AGM**

**18.—**(1) After section 340 of the Companies Act 2006 insert—

#### **“Traded companies: duty to circulate members’ matters for AGM**

**340A.—**(1) A company that is required under section 338A to include any matter in the business to be dealt with at an annual general meeting must—

- (a) give notice of it to each member of the company entitled to receive notice of the annual general meeting—
    - (i) in the same manner as notice of the meeting, and
    - (ii) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting, and
  - (b) publish it on the same website as that on which the company published the information required by section 311A.
- (2) Subsection (1) has effect subject to section 340B(2) (deposit or tender of sum in respect of expenses of circulation).
- (3) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
- (4) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Traded companies: expenses of circulating members' matters to be dealt with at AGM**

**340B.**—(1) The expenses of the company in complying with section 340A need not be paid by the members who requested the inclusion of the matter in the business to be dealt with at the annual general meeting if requests sufficient to require the company to include the matter are received before the end of the financial year preceding the meeting.

(2) Otherwise—

- (a) the expenses of the company in complying with that section must be paid by the members who requested the inclusion of the matter unless the company resolves otherwise, and
- (b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than—
  - (i) six weeks before the annual general meeting to which the requests relate, or
  - (ii) if later, the time at which notice is given of that meeting,

a sum reasonably sufficient to meet its expenses in complying with that section.”.

(2) In section 360(1) of the Companies Act 2006 (computation of periods of notice etc: clear day rule), omit the “and” before the entry relating to section 340(2)(b)(i) and after that entry insert—

“, and

section 340B(2)(b) (traded companies: duty to circulate members' matters for AGM).”.

### **Traded companies: website publication of poll results**

**19.**—(1) Section 341 of the Companies Act 2006 (quoted companies: results of polls to be made available on website) is amended as follows.

(2) In subsection (1), after “quoted company” insert “that is not a traded company”.

(3) After subsection (1) insert—

“(1A) Where a poll is taken at a general meeting of a traded company, the company must ensure that the following information is made available on a website—

- (a) the date of the meeting,
- (b) the text of the resolution or, as the case may be, a description of the subject matter of the poll,
- (c) the number of votes validly cast,
- (d) the proportion of the company's issued share capital (determined at the time at which the right to vote is determined under section 360B(2)) represented by those votes,
- (e) the number of votes cast in favour,
- (f) the number of votes cast against, and
- (g) the number of abstentions (if counted).

(1B) A traded company must comply with subsection (1A) by—

- (a) the end of 16 days beginning with the day of the meeting, or
- (b) if later, the end of the first working day after the day on which the result of the poll is declared.”.

(4) In section 352 of that Act (application of provisions to class meetings), for subsection (1) substitute—

“(1) The provisions of section 341 (results of poll to be made available on website) apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company or traded company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.

(1A) The provisions of section 342 to 351 (independent report on poll) apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.”.

(5) In the heading for Chapter 5 of Part 13, after “QUOTED COMPANIES” insert “AND TRADED COMPANIES”.

### **Traded companies: share dealings before general meetings**

20. After section 360A of the Companies Act 2006 insert—

#### **“Traded companies: requirements for participating in and voting at general meetings**

**360B.**—(1) Any provision of a traded company’s articles is void in so far as it would have the effect of—

- (a) imposing a restriction on a right of a member to participate in and vote at a general meeting of the company unless the member’s shares have (after having been acquired by the member and before the meeting) been deposited with, or transferred to, or registered in the name of another person, or
- (b) imposing a restriction on the right of a member to transfer shares in the company during the period of 48 hours before the time for the holding of a general meeting of the company if that right would not otherwise be subject to that restriction.

(2) A traded company must determine the right to vote at a general meeting of the company by reference to the register of members as at a time (determined by the company) that is not more than 48 hours before the time for the holding of the meeting.

(3) In calculating the period mentioned in subsection (1)(b) or (2), no account is to be taken of any part of a day that is not a working day.

(4) Nothing in this section affects—

- (a) the operation of—
  - (i) Part 22 of this Act (information about interests in a company’s shares),
  - (ii) Part 15 of the Companies Act 1985<sup>(1)</sup> (orders imposing restrictions on shares), or
  - (iii) any provision in a company’s articles relating to the application of any provision of either of those Parts; or
- (b) the validity of articles prescribed, or to the same effect as articles prescribed, under section 19 of this Act (power of Secretary of State to prescribe model articles).”.

### **Meaning of “traded company”**

21.—(1) After section 360B of the Companies Act 2006 insert—

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(1) 1985 c. 6.

### “Meaning of “traded company”

**360C.** In this Part, “traded company” means a company any shares of which—

- (a) carry rights to vote at general meetings, and
- (b) are admitted to trading on a regulated market in an EEA State by or with the consent of the company.”.

(2) In Schedule 8 to the Companies Act 2006 (index of defined expressions), at the appropriate place, insert—

“traded company (in Part 13)		section 360C”.
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### Traded companies: disapplication of saving for casting votes

**22.** In paragraph 23A of Schedule 3 to the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007<sup>(2)</sup> (saving for provisions of a company’s articles giving the chairman a second or casting vote in the event of an equality of votes on an ordinary resolution), at the end insert—

“(4) Nothing in this paragraph applies in relation to a traded company (as defined by section 360C of the Companies Act 2006).”.

### Transitional provisions

**23.** In section 307A(4) and (5) of the Companies Act 2006, references to annual general meetings and general meetings include ones held before 3 August 2009.

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(2) [S.I. 2007/2194 \(C. 84\)](#); paragraph 23A of Schedule 3 was inserted by [S.I. 2007/3495 \(C. 150\)](#), Schedule 5, paragraph 2(5).