

EU Shareholder Rights Directive: calling General Meetings on 14 days' notice after 3 August 2009

1. The deadline for implementing the EU Shareholder Rights Directive (2007/36/EC) is 3 August 2009. Its implementation in the UK is currently the subject of a public consultation by BERR which can be found at <http://www.berr.gov.uk/files/file48662.pdf> . The consultation closes on 30 January 2009.
2. Prior to 3 August 2009, there are steps which listed companies (those listed on the main market) might wish to take in order to continue to hold meetings at 14 days' notice – as they do now – pending the outcome of the consultation.
3. In order to implement the Shareholder Rights Directive, the minimum notice period for calling general meetings of listed companies will need to be amended. The Companies Act 2006 enables listed companies to call a general meeting (other than an AGM) on 14 clear days' notice. Article 5.1 of the Shareholder Rights Directive, however, requires listed companies to call such general meetings on at least 21 clear days' notice.
4. There is an option for EU Member States to permit listed companies to call meetings on shorter notice (minimum 14 days). The UK will be taking up this option. The option is subject to certain conditions. These are:
 - (a) that shareholders have approved the holding of general meetings on 14 clear days' notice by passing an appropriate resolution at an AGM; and
 - (b) that the company offers "the facility for shareholders to vote by electronic means accessible to all shareholders"

The above provisions only apply to general meetings of shareholders and not to class meetings.

(a) Approval by Resolution

5. The Shareholder Rights Directive requires the passing of a resolution of the type at 4(a) above by a two-thirds majority. BERR is consulting on whether this majority should instead be three-quarters so as to align better with the current UK regime for special resolutions. Pending the outcome of this consultation, listed companies should consider proposing such a

resolution as a special resolution. These resolutions may be passed by the required majority either on a show of hands or on a poll.

6. Listed companies wishing to be able to call a general meeting on 14 clear days' notice after 3 August 2009 will need to consider passing such a resolution at their next AGM. The resolution is valid up to the next AGM of the company and so would need to be renewed at each AGM.

(b) Electronic voting

7. BERR is consulting on how companies can satisfy the requirement for an electronic voting facility. This issue does not need to be resolved for an enabling resolution to be passed, but only when a meeting is held on fewer than 21 days' notice after 3 August 2009.