

Explanatory Note

Date: 28 October 2009

Subject: Transposition of the Shareholders' Rights Directive (Directive 2007/36/EC)

The Malta Financial Services Authority invites comments, by 13 November 2009 on the draft Listing Rules which will transpose Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies. The attached document contains new Chapter 19 that will be introduced so as to implement the provisions of the said Directive and includes the input of the working committee that set up by the Listing Authority to review and amend the Listing Rules. Interested parties are invited to send their comments in writing addressed to The Deputy Director, Company Compliance Unit, MFSA or via e-mail on pmeilak@mfsa.com.mt.

[1.0 Background]

The Shareholders' Rights Directive ("SRD") was adopted on 11 July 2007 and published in the Official Journal on 14 July 2007. Its scope is to improve the corporate governance regimes of listed companies in the EU Member States by enabling shareholders to exercise their voting rights and rights to information across borders. In particular, it seeks to achieve this objective by overcoming obstacles that shareholders in companies registered in another Member State face when voting at general meetings. The SRD is a 'minimum harmonisation' Directive intended to establish a set of basic rules for the exercise of shareholder rights and the Member States may introduce further measures to facilitate the exercise by shareholders of the rights granted by the SRD.

[2.0 Shareholders' Rights Directive]

[2.1 Scope and application]

The rationale for the introduction of the SRD is that current EU legislation does not sufficiently address cross-border voting issues. The Prospectus Directive (2003/71/EC) focuses on the information issuers have to disclose to the market and, therefore, does not deal with the shareholder voting process itself, whilst the Transparency Directive (2004.109/EC) imposes on issuers an obligation to make available certain information and documents relevant to general meetings, but such information and documents must be made available in the issuer's home Member State.¹

The SRD applies to companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.² Article 1(2) of the SRD states, in fact, that the Member State competent to regulate matters covered by

¹ Recital (4) of the SRD.

² Article 1(1) of the SRD.

this Directive shall be the Member State in which the company has its registered office. Any reference throughout this explanatory note to a “company” or “issuer” shall be construed as referring to a company or companies falling within the scope of the SRD.

[2.2 Exemptions from the Shareholders’ Rights Directive]

Article 1(3) of the SRD allows the Member States to exempt any of the following entities from the provisions of the SRD:-

- (a) collective investment undertakings within the meaning of Article 1(2) of Directive 85/611/EEC relating to undertakings for collective investment in transferable securities (UCITS);
- b) undertakings the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC; and
- (c) cooperative societies.

[2.3 Main provisions of the SRD]

2.3.1 Sufficient advance notice and information prior to the general meeting

Shareholders should be able to cast informed votes at, or in advance of, the general meeting, no matter where they reside. All shareholders should have sufficient time to consider the documents intended to be submitted to the general meeting and to determine how they will exercise their voting rights.³ In view of this, article 5 of the SRD requires a minimum notice period of twenty one (21) days, except that meetings other than annual general meetings may be called at shorter notice – not less than fourteen (14) days – provided that the following conditions are met:-

- the company must offer the facility for shareholders to vote by electronic means accessible to all shareholders;
- the general meeting in relation to which the convocation is issued must not be an annual general meeting; and
- the decision to call a general meeting at shorter notice must 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.⁴

³ Recital (6) of the SRD.

⁴ Second paragraph of article 5(1) of the SRD.

Furthermore, the minimum notice periods established by article 5 of the SRD may be waived for the second or subsequent convocation of a general meeting issued for lack of a quorum, provided that such minimum notice periods were complied with for the first convocation of the meeting, no new item is added on the agenda and at least 10 days elapse from the last convocation and the general meeting.

Article 5 also sets out the minimum information that the notice convening a general meeting should contain and obliges issuers to publish specified information on their website at least twenty one (21) days prior to the general meeting.

In determining which method is to be used for the issuing of the notice, article 5(2) obliges issuers to “use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community.” The Member States may not impose an obligation to use only media whose operators are established on its territory. Member States may, however, exempt issuers from the use of such media if they are in a position to identify the names and addresses of their shareholders from a current register of shareholders, provided that the issuer is under an obligation to send the convocation to each of its registered shareholders.⁵

2.3.2 Right to put items on the agenda and to table draft resolutions

Recital (7) of the SRD provides that:

“Shareholders should, in principle, have the possibility to put items on the agenda of the general meeting and to table draft resolutions for items on the agenda.”

Article 6(1) of the SRD grants the said rights to the shareholders but the Member States have the option to restrict the exercise to put items on the agenda 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.

An important principle in this regard is that any threshold imposed by Member States for the exercise of these rights should not exceed 5%.⁶ Moreover, article 6(3) of the SRD requires Member States to establish a single deadline, with reference to a specified number of days prior to the general meeting or the notice, within which shareholders may exercise their rights to put items on the agenda and to table draft resolutions.

⁵ Second paragraph of article 5(2) of the SRD.

⁶ Article 6(2) of the SRD.

2.3.3 The abolition of share-blocking

Share-blocking is a process where, on a specific date prior to a general meeting, shareholders are required to notify the company of their identity and intention to vote. After such date the shares involved cannot be traded and this affects the ability of equity markets to operate efficiently and increases financial risks. Thus, article 7 of the SRD requires Member States to establish a single record date for companies registered in their territory and whose shares are admitted to trading on a regulated market operating in their territory. Only those shareholders whose details are entered in the register of members on the record date are entitled to participate in the general meeting and to exercise their voting rights. The establishment of a record date does not prevent, however, trading in shares after the said date.

It is important to note that under article 7(3) of the SRD, the record date must not be more than thirty (30) days before the date of the general meeting to which it applies. Furthermore, in establishing the record date, each Member State must ensure that at least eight (8) days elapse between the latest permissible date for the convocation of the general meeting (i.e twenty one (21) days before the general meeting) and the record date. In calculating that number of days those two dates should not be included. In the case where the general meeting is adjourned due to a lack of a quorum, Member States have the option to allow at least six (6) days between the latest permissible date for the second or subsequent convocation of the general meeting and the record date.

2.3.4 Removal of legal obstacles to electronic participation

Recital (9) of the SRD states that:

“Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of electronic communications”.

In view of the above, article 8 of the SRD obliges Member States to allow companies to permit their shareholders to participate in the general meeting by electronic means and indicates some forms of electronic participation that companies may adopt.

2.3.5 Right to ask questions

Article 9 entitles every shareholder to ask questions related to items on the agenda of the general meeting and the company is obliged to answer the said questions. However, Member States may allow companies to introduce measures aimed at ensuring:-

- The identification of shareholders;
- The good order of general meetings and their preparation; and
- The protection of confidentiality and business interests of companies.

In addition to this, the SRD grants the option to Member States to allow companies to provide one overall answer to questions having the same content as well as to provide in their laws that an answer is deemed to be given if the relevant information is available on the company's website in a question and answer format.

2.3.6 Proxy voting

Under article 10 of the SRD, Member States have the option to limit the appointment of proxy holders to a single meeting or to such meetings as may be held during a specified period. Saving those cases where a shareholder is acting as a nominee for and on behalf of third parties, the said provision of the SRD also allows Member States to limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. This limitation does not apply, however, to a shareholder whose shares are held in more than one securities account. In such case, the said shareholder may appoint a separate proxy holder in respect of each securities account in relation to any one general meeting.

Apart from the above limitations, Member States may only restrict or allow companies to restrict the exercise of shareholders' rights through proxy holders for the purpose of addressing potential conflicts of interest between the proxy holder and the shareholder who appointed him. Article 10(3) specifies what requirements Member States may impose in order to address such conflicts of interest and lists some circumstances in which a conflict of interest between the proxy holder and the shareholder may arise.

Member States are also granted the option of requiring proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm, upon request, that the voting instructions have been carried out. However, recital (10) of the SRD provides that "this Directive does not impose any obligation on companies to verify that proxy holders cast votes in accordance with the voting instructions of the appointing shareholders".

2.3.7 Formalities for proxy holder appointment and notification

The SRD requires the appointment and removal of a proxy as well as the notification of such appointment or removal to the company to be made in writing. Furthermore, under article 11 of the SRD, shareholders are entitled to appoint and remove a proxy holder by electronic means and Member States shall allow companies to accept the notification of the proxy holder's appointment or removal by electronic means.

2.3.8 Voting by correspondence

Article 12 of the SRD obliges Member States to permit companies to offer their shareholders the possibility of voting by correspondence in advance of the general meeting.

2.3.9 Voting results

Under article 14 of the SRD companies have to 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;
- The number of votes cast in favour of and against each resolution; and
- Where applicable, the number of abstentions.

The voting results have to be published on the issuer's website within a period to be specified by the law of the Member State in which the issuer is registered, which period cannot exceed fifteen (15) days following the general meeting. Article 14, however, permits the Member States to provide or allow companies to provide that if no shareholder requests a full account of the voting, it is sufficient for the company to establish the voting results only to the extent necessary to ensure that the required majority for each resolution was reached.

[3.0 Implementation of the SRD]

[3.1 Introduction of new Chapter 19 of the Listing Rules]

At the moment both the Companies Act and the Listing Rules contain provisions dealing with some of the matters governed by the SRD, such as the notice period and proxy voting. However, since EU Directives applying to listed companies have so far been transposed in the Listing Rules rather than the Companies Act, the members of the Working Committee (set up by the Listing Authority to review and amend the Listing Rules) agreed that the provisions of the SRD should be implemented by a new chapter 19 of the Listing Rules.

Furthermore, in view of the fact that certain provisions of the SRD are in conflict with some provisions of the Companies Act, an amendment is being proposed to Chapter 1 of the Listing Rules so as to clarify that in the case of a conflict between the provisions of the Companies Act on the one hand, and the provisions of the Financial Markets Act and/or the Listing Rules, the Financial Markets Act and the Listing Rules shall prevail.

3.1.1 Applicability of Chapter 19 of the Listing Rules

The Authority wishes to avail itself of the option granted by article 1(3) of the SRD so as to exempt the following entities from Chapter 19 of the Listing Rules:-

- (a) collective investment undertakings as defined by Article 1(2) of Directive 85/611/EEC;
- (b) collective investment undertakings that do not fall within paragraph (a), with the exception of closed-end collective investment undertakings which are set up as a Company; and
- (c) cooperative societies.

The reason for excluding closed-end collective investment undertakings set up as a company from the exemption contained in paragraph (b) above is that both the Prospectus Directive and the Transparency Directive apply to closed-end collective investment undertakings.

3.1.2 Transposition of article 5 of the SRD – Information prior to the general meeting

Draft Listing Rule 19.4 establishes the minimum notice period of twenty one (21) days prior to the general meeting but it is recommended that the Authority adopts the option of allowing a shorter notice period (not being less than fourteen (14) days before the general meeting) for a general meeting other than the annual general meeting upon satisfaction of the conditions prescribed by the second paragraph of article 5(1) of the SRD.

In addition to this, it is proposed that the Authority transposes the third paragraph of article 5(1) of the SRD which allows the minimum notice periods laid down by the first two subparagraphs of article 5(1) to be disregarded for the second or subsequent notice of a general meeting that is issued due to lack of a quorum required for the meeting convened by the first notice. This provision would, however, apply if the said minimum notice periods were complied with for first convocation of the meeting, no new item is put on the agenda and at least ten (10) days elapse between the final convocation and the date of the general meeting.

As regards the method to be used by listed companies for issuing the notice to shareholders, draft Listing Rule 19.8 establishes the general principle that issuers must send the notice of the general meeting to their shareholders by mail at their last known residential address. In order to encourage issuers to make use of electronic resources that ensure a fast and effective means of communication of information, draft Listing Rule 19.9 allows an issuer to publish the notice convening the general meeting either on its website or on the website of the regulated market on which its shares are listed. In order to avail itself of this option, the issuer must first send a notice by mail to its shareholders at their last known address requesting their consent to the publication of notices convening general meetings on the website indicated therein. Those shareholders who do not give their consent will be entitled to continue receiving the notice convening a general meeting of the issuer at their last known residential address.

Since currently most listed companies in Malta are able to identify the names and addresses of their shareholders, the Working Committee recommends that the Authority should not take the

option granted by the second subparagraph of article 5(2) as otherwise there would be no scope for introducing draft Listing Rule 19.9.

3.1.3 Transposition of article 6 of the SRD – Right to put items on the agenda of the general meeting and to table draft resolutions

The Working Committee is of the view that shareholders should be granted the right to put items on the agenda and to table draft resolutions for items included or to be included on the agenda without restricting the exercise of the right to add items on the agenda solely to the annual general meeting, as provided by the second subparagraph of article 6(1) of the SRD.

Draft Listing Rule 19.14 establishes the threshold of 5% of the issued share capital in order for a shareholder or shareholders to be able to exercise the above rights. Article 6(3) of the SRD will be transposed by draft Listing Rule 19.15 which requires the request for the addition of items on the agenda or the draft resolution to be submitted to the issuer concerned in hard copy or electronic form at least forty six (46) days prior to the general meeting. The said period is being proposed by the Working Committee in view of the fact that the request by the shareholders to put items on the agenda might require an amendment to the agenda which would have already been sent to the shareholders together with the notice of the general meeting. Furthermore, article 6(4) of the SRD requires the revised agenda to be sent in advance of the applicable record date 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.

3.1.4 Transposition of article 7 of the SRD – Requirements for participation and voting in the general meeting

Currently, the Companies Act does not lay down any record date which determines who is entitled to participate in and to vote at general meetings. Each company in Malta is free to establish its own record date. When discussing the record date to be established for companies subject to Chapter 19 of the Listing Rules, the Working Committee took into account the fact that under article 7(3) of the SRD, the record date cannot be more than thirty days before the date of the general meeting to which it applies and that at least eight (8) days must elapse between the latest permissible date for issuing the notice of the general meeting (twenty one (21) days before the general meeting) and the record date (not including those two dates).

It is being proposed that the record date for all companies should be ten (10) days prior to the general meeting. The second subparagraph of article 7(2) of the SRD allows the Member States not to apply the record date if the companies are able to identify the names and addresses of their shareholders from a current register of members on the day of the general meeting. Notwithstanding this article, the Working Committee expressed preference for the establishment of a single record date applicable to all companies and, therefore, it is recommended that the option contained in the second subparagraph of article 7(2) of the SRD should not be adopted.

3.1.5 Transposition of article 8 of the SRD – Participation in the general meeting by electronic means

Draft Listing Rule 19.21 will now give companies the option to allow their shareholders to participate in the general meeting by electronic means.

3.1.6 Transposition of article 9 of the SRD – Right to ask questions

Draft Listing Rule 19.24 transposes article 9(1) of the SRD which will entitle shareholders to ask questions related to items on the agenda of a general meeting as well as to have such questions answered by the company subject to any reasonable measures that the company may take to ensure the identification of the shareholder. The right to ask questions is also applicable to proxy holders.

Furthermore, it is recommended that the Authority adopts the provisions of the first subparagraph of article 9(2) which are transposed in draft Listing Rules 19.25 and 19.26. Draft Listing Rule 19.25 allows companies to provide one overall answer to questions having the same content whilst draft Listing Rule 19.26 lists certain instances in which an answer to a question submitted by a shareholder is not required.

3.1.7 Transposition of article 10 of the SRD – Proxy voting

With reference to the number of proxy holders that a shareholder can appoint, it is being proposed that there can only be one proxy holder for each entry in the register of members. This is without prejudice, however, to the right of a person acting as a nominee shareholder to grant a proxy to each of his clients or to any third party designated by a client. Such nominee shareholder is also entitled to cast votes attaching to some of the shares differently from the others.⁷

On the other hand, the Authority is of the view that the Listing Rules should not limit the appointment of a proxy holder to a single meeting or to such meetings as may be held during a specified period as provided in the first subparagraph of article 10(2) of the SRD. In this case the provisions of article 133 of the Companies Act would apply.

Furthermore, it is proposed that the Authority should adopt the measures set out in subparagraphs (a) and (c) of article 10(3) of the SRD whose scope is to address potential conflicts of interest between the proxy holder and the appointing shareholder. Thus, draft Listing Rule 19.29 (which transposes subparagraph (a) of article 10(3)) requires a proxy holder to disclose, prior to a general meeting, to the shareholder who appointed him any facts of which he is aware and which may be relevant for the said shareholder in assessing any risk that the proxy holder might pursue any interest other than the interest of such shareholder. Draft Listing Rule 19.30 (which transposes subparagraphs (i) to (iv) of article 10(3) of the SRD) contains a non-exhaustive list of situations in which a conflict of interest between the proxy holder and the appointing shareholder may arise.

Subparagraph (c) of article 10(3) of the SRD which prohibits a proxy holder from transferring his proxy to another person is implemented by draft Listing Rule 19.31. This does not affect the right

⁷ Draft Listing Rule 19.28.

of a proxy holder which is a legal person to appoint a corporate representative to attend and vote on its behalf.

The Authority does not intend to implement the option of requiring proxy holders to keep a record of the voting instructions for a prescribed minimum period of time and to confirm on request that the voting instructions have been complied with. Under Maltese company law, the shareholder is free to decide whether or not to grant voting instructions to the proxy holder.

3.1.8 Transposition of article 11 of the SRD – Formalities for proxy holder appointment and notification

The provisions of article 11 of the SRD are transposed in draft Listing Rules 19.34 to 19.37.

3.1.9 Transposition of article 12 of the SRD – Voting by correspondence

Draft Listing Rule 19.38 (which implements article 12 of the SRD) provides that the Memorandum and Articles of Association of a company may allow the casting of votes in advance of the general meeting.

3.1.10 Transposition of article 13 of the SRD – Removal of certain impediments to the effective exercise of voting rights

Paragraphs (4) and (5) of article 13 will be transposed in draft Listing Rule 19.28

3.1.11 Transposition of article 14 of the SRD – Voting results

The provisions of article 14 of the SRD are implemented by draft Listing Rules 19.40 and 19.41. The Authority intends to adopt the option contained in the second subparagraph of article 14(1) of the SRD which allows companies to establish the voting results only to the extent necessary to ensure that the required majority is reached for each resolution if no shareholder requests a full account of the voting.

[4.0 Transitory period]

It is being proposed that the necessary changes to comply with the requirements of Directive 2007/36/EC, including changes to the Memorandum and Articles of Association of issuers, should be put in place by the next annual general meeting to be held in 2010.

Chapter 19

Scope

- 19.1 This Chapter applies to Issuers whose registered office is in Malta and whose Shares are admitted to trading on a Regulated Market situated or operating within a Member State or EEA State.⁸
- 19.2 These Listing Rules shall not apply to:
- 19.2.1 collective investment undertakings as defined by Article 1(2) of Directive 85/611/EEC;
 - 19.2.2 collective investment undertakings that do not fall within Listing Rule 19.2.1, with the exception of closed-end collective investment undertakings which are set up as a Company.
 - 19.2.3 cooperative societies.⁹

General meetings of shareholders

- 19.3 Issuers 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.¹⁰

Notice of general meetings

- 19.4 Without prejudice to Listing Rules 18.36 and 18.56, the notice convening a general meeting shall be issued in the manner specified by Listing Rules 19.8 and 19.9 at least twenty one (21) days prior to the meeting.¹¹
- 19.5 Notwithstanding Listing Rule 19.4, the notice issued in the manner specified by Listing Rules 19.8 and 19.9 may be issued at least fourteen (14) days prior to meeting if the following conditions are met:
- 19.5.1 the general meeting must not be an annual general meeting;
 - 19.5.2 the Issuer must offer the facility for Shareholders to vote by Electronic Means accessible to all Shareholders;

⁸ Article 1(1) of the Shareholders' Rights Directive (SRD).

⁹ Article 1(3) of the SRD.

¹⁰ Article 4 of the SRD.

¹¹ Article 5(1) of the SRD.

- 19.5.3 a special resolution reducing the period of notice to not less than fourteen (14) days has been passed by a majority of not less than two thirds of the votes attaching to the Shares or the issued share capital represented at the meeting.¹²
- 19.6 The decision taken by the Shareholders in terms of Listing Rule 19.5 to reduce the notice period to not less than fourteen (14) days shall be valid until the next annual general meeting.¹³
- 19.7 Where a general meeting is adjourned due to lack of a quorum, the adjourned meeting may be convened by a shorter notice than that required by Listing Rules 19.4 and 19.5 provided that:
- 19.7.1 the notice period referred to in Listing Rule 19.4 or 19.5 was complied with by the first convocation of the meeting;
- 19.7.2 no new item is put on the agenda; and
- 19.7.3 the adjourned meeting is held at least 10 days after the final convocation is issued.¹⁴
- 19.8 The Issuer shall send to its Shareholders the notice referred to in Listing Rules 19.4, 19.5 or 19.7 by mail at their last known residential address.
- 19.9 Notwithstanding Listing Rule 19.8, the Issuer may publish the notice referred to in Listing Rules 19.4, 19.5 or 19.7 either on its website or on the website of the Regulated Market on which its Shares are listed, provided that it sends a notice by mail at the last known address of each Shareholder requesting his consent to the publication of notices convening the general meetings of the Issuer on the website designated therein. Those shareholders that do not give their consent shall continue receiving the notice convening a general meeting of the Issuer by mail at their last known residential address.

Contents of notice of the general meeting

- 19.10 The notice convening a general meeting shall at least¹⁵:
- 19.10.1 indicate precisely the date and place of the general meeting and the proposed agenda for the general meeting;

¹² Article 5(1) 2nd par of SRD.

¹³ Article 5(1) 2nd par of SRD.

¹⁴ Article 5(1) 3rd par of SRD.

¹⁵ Article 5(3) of the SRD.

- 19.10.2 contain a clear and precise description of the procedures that Shareholders must comply with in order to be able to participate in and to vote at the general meeting, including information on:
- 19.10.2.1 the rights available to shareholders under Listing Rule 19.14 to the extent that those rights can be exercised after the notice of the meeting is issued, and under Listing Rule 19.24 and the periods within which those rights may be exercised;
 - 19.10.2.2 the procedure for voting by proxy, notably the proxy forms to be used and the means by which the Issuer is prepared to accept electronic notifications of the appointment of proxy holders pursuant to Listing Rule 19.35; and
 - 19.10.2.3 where the Issuer offers the facility for Shareholders to vote in advance in terms of Listing Rule 19.38 or by Electronic Means, the procedures for doing so (including the date by which it must be done and details of any forms to be used);
- 19.10.3 state the record date referred to in Listing Rule 19.17 and explain that only those who are Shareholders on that date shall have the right to participate and vote in the general meeting;
- 19.10.4 indicate where and how the full, unabridged text of the documents and draft resolutions referred to in Listing Rules 19.12.3 and 19.12.4 may be obtained; and
- 19.10.5 indicate the address of the internet site on which the information referred to in Listing Rule 19.12 will be made available.
- 19.11 For the purposes of Listing Rule 19.10.2.1, the Issuer may issue a notice stating only the deadlines within which the rights under Listing Rules 19.14 and 19.24 may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the website of the Issuer.¹⁶

Publication of information in advance of general meeting

- 19.12 An Issuer shall ensure that for at least a continuous period of twenty one (21) days prior to the day of the general meeting and including the day of the

¹⁶ Article 5(3)(b)(i) of the SRD.

meeting, the following minimum information is made available to its Shareholders on its website:

- 19.12.1 the notice referred to in Listing Rule 19.4;
 - 19.12.2 the total number of shares and voting rights at the date of the notice (including separate totals for each Class of Shares where the Issuer's capital is divided into two or more Classes of Shares);
 - 19.12.3 the documents to be submitted to the general meeting;
 - 19.12.4 a draft resolution or, where no resolution is proposed to be adopted, a comment from the Directors of the Issuer for each item on the proposed agenda of the meeting;
 - 19.12.5 draft resolutions tabled by Shareholders received by the Issuer after the first date on which notice of the meeting is given;
 - 19.12.6 where applicable, the proxy forms and the forms to vote by correspondence, unless such forms are sent directly to each Shareholder; and
 - 19.12.7 where the forms referred to in Listing Rule 19.12.6 cannot be made available on the Issuer's website for technical reasons, an indication of how a hard copy of the forms can be obtained and in such case, the Issuer shall send the forms by postal services and free of charge to every Shareholder who so requests.¹⁷
- 19.13 Where, pursuant to Listing Rule 19.5 above or Listing Rules 18.36 or 18.56, the notice of the general meeting is issued less than twenty one (21) days prior to the meeting, the period specified in Listing Rule 19.12 above shall be shortened accordingly.¹⁸

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

- 19.14 A Shareholder or Shareholders holding 5% of the issued share capital of the Issuer may:
- 19.14.1 request the Issuer to include items on the agenda of the general meeting, provided that each item is accompanied by a justification or a draft resolution to be adopted at the annual general meeting; and

¹⁷ Article 5(4) of the SRD.

¹⁸ Article 5(4) 3rd par of SRD.

- 19.14.2 table draft resolutions for items included in the agenda of a general meeting.¹⁹
- 19.15 The request to put items on the agenda of the general meeting or the draft resolution referred to in Listing Rule 19.14 shall be submitted to the Issuer in hard copy form or in electronic form at least forty six (46) days before the general meeting to which it relates and shall be authenticated by the person or persons making it.²⁰
- 19.16 Where the right referred to in Listing Rule 19.14.1 requires a modification of the agenda for the general meeting that has already been communicated to Shareholders, the Issuer shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date referred to in Listing Rule 19.17 or, if no such 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.²¹

Requirements for participation and voting in the general meeting

- 19.17 In this section ‘record date’ means ten (10) days before the general meeting to which it relates.
- 19.18 A person shall be entered on the register of Shareholders by the record date in order to exercise the right of a Shareholder to participate and vote at a general meeting and any change to an entry on the said register after the record date shall be disregarded in determining the right of any person to attend and vote at the meeting.²²
- 19.19 Any provision of the Articles of Association of the Issuer is void in so far as it would have the effect of –
- 19.19.1 imposing a restriction on a right of a Shareholder to participate in and vote at a general meeting of the Issuer unless his Shares are deposited with, or transferred to, or registered in the name of, another person before the meeting²³; or
- 19.19.2 imposing a restriction on the right of a Shareholder to sell or otherwise transfer Shares in the Issuer 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 a restriction²⁴.

¹⁹ Article 6(1)(a) and (b) & 6(2) of SRD.

²⁰ Article 6(1) & (3) of the SRD.

²¹ Article 6(4) of the SRD.

²² Draft Irish Regulation 134A(3).

²³ Article 7(1)(a) of the SRD.

²⁴ Article 7(1)(b) of the SRD.

- .19.20 Proof of qualification as a Shareholder may be required by an Issuer subject only to such requirements as are necessary to ensure the identification of Shareholders and only to the extent that they are proportionate to the achievement of that objective.²⁵

Participation in the general meeting by electronic means

- 19.21 Issuers may allow their Shareholders to participate in the general meeting by Electronic Means, including any or all of the following forms of participation:
- 19.21.1 real-time transmission of the general meeting;
 - 19.21.2 real-time two-way communication enabling Shareholders to address the general meeting from a remote location;
 - 19.21.3 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.²⁶
- 19.22 The use of Electronic Means pursuant to Listing Rule 19.21 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 the achievement of those objectives.²⁷
- 19.23 The Shareholders shall be informed of any requirements or restrictions which an Issuer puts in place pursuant to Listing Rule 19.22.²⁸

Right to ask questions

- 19.24 Every Shareholder shall have the right to ask questions related to items on the agenda of a general meeting and to have such questions answered by the Issuer subject to any reasonable measures that the Issuer may take to ensure the identification of the Shareholder.²⁹ The said right shall also be enjoyed by a proxy holder appointed by the Shareholder.³⁰

²⁵ Article 7(4) of the SRD.

²⁶ Article 8(1) of the SRD.

²⁷ Article 8(2) of the SRD.

²⁸ Draft Irish Regulation 134B(2)(b).

²⁹ Article 9(1) of the SRD and draft Irish Regulation 134C(1).

³⁰ Article 10(1) of the SRD.

- 19.25 The Issuer may provide one overall answer to questions having the same content.³¹
- 19.26 An answer to a question asked pursuant to Listing Rule 19.24 is not required where:
- 19.26.1 to give an answer would interfere unduly with the preparation for the meeting, involve the disclosure of confidential information or cause prejudice to the business interests of the Issuer;
 - 19.26.2 the answer has already been given on the Issuer's website in the form of an answer to a question;
 - 19.26.3 it is undesirable in the interests of good order of the meeting that the question be answered;³² or
 - 19.26.4 the Issuer is unable to provide an immediate reply, provided that such reply is subsequently posted on the website of the Issuer.

Proxy voting

- 19.27 Without prejudice to Listing Rule 19.28, every person entered into the register of members kept by the Issuer shall be entitled to appoint one person to act as proxy holder to attend and vote at a general meeting instead of him. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the member thus represented would be entitled.³³
- 19.28 Where a person whose details are entered into the register of members is holding the shares for and on behalf of third parties, such member is entitled to grant a proxy to each of his clients or to any third party designated by a client. The said member shall be entitled to cast votes attaching to some of the Shares differently from the others.³⁴
- 19.29 A proxy holder shall, prior to a general meeting, disclose to the Shareholder who appointed him any facts of which he is aware and which may be relevant for that Shareholder in assessing any risk that the proxy holder might pursue any interest other than the interest of such Shareholder.³⁵

³¹ Article 9(2) of the SRD.

³² Article 9(2) of the SRD.

³³ Article 10(1) and 2nd par of article 10(2) of the SRD.

³⁴ Article 13(4) & (5) of the SRD.

³⁵ Article 10(3) of the SRD.

- 19.30 Without prejudice to the generality of Listing Rule 19.29, the facts that a proxy holder is required to disclose include:
- 19.30.1 whether he is a controlling Shareholder of the Issuer, or is another entity controlled by such Shareholder;
 - 19.30.2 whether he is a Director of the Issuer, or of a controlling Shareholder or controlled entity referred to in Listing Rule 19.30.1;
 - 19.30.3 whether he is an employee or an auditor of the Issuer, or of a controlling Shareholder or controlled entity referred to in Listing Rule 19.30.1; and
 - 19.30.4 whether he has a family relationship with a natural person referred to in Listing Rules 19.30.1 to 19.30.3.
- 19.31 A proxy holder appointed in terms of Listing Rule 19.27 shall not transfer his proxy to another person. Where, however, the proxy holder is a legal person, it may exercise the powers conferred upon it through a duly appointed corporate representative.³⁶
- 19.32 A proxy holder shall vote in accordance with any instructions given by the appointing Shareholder.³⁷
- 19.33 Any 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, he may cast votes for a certain Shareholder differently from votes cast for another Shareholder.³⁸

Formalities for the appointment of proxy holders and notification

- 19.34 A Proxy shall be appointed by written notification to an Issuer or by Electronic Means.³⁹
- 19.35 A Shareholder shall be entitled to:

³⁶ Article 10(3)(b) of the SRD.

³⁷ Article 10(4) of the SRD.

³⁸ Article 10(5) of the SRD.

³⁹ Article 11(2) of the SRD.

- 19.35.1 appoint a Proxy by Electronic Means, to an address specified by the Issuer,
- 19.35.2 have the electronic notification of such appointment accepted by the Issuer; and
- 19.35.3 have at least one effective method of notification of a Proxy by Electronic Means offered to it by an Issuer.⁴⁰
- 19.36 Listing Rules 19.34 and 19.35 shall apply *mutatis mutandis* to the revocation of the appointment of a Proxy.
- 19.37 The provisions of the Articles of Association of an Issuer relating to the appointment of a Proxy and the notification of such appointment to an Issuer may only contain such formal requirements as are necessary to ensure the identification of a Shareholder, or the Proxy. Likewise, any provision of the Articles of Association of an Issuer dealing with the issuing of voting instructions to a Proxy may contain only such formal requirements as are necessary to ensure the possibility of verifying the content of such voting instructions. In both cases, the said formal requirements shall be proportionate to the achievement of those objectives.⁴¹

Voting by correspondence⁴²

- 19.38 An Issuer's Articles of Association may provide that on a vote on a resolution on a poll taken at a meeting, the votes may include votes cast in advance. Any such provision may be made subject only to such requirements and restrictions as are:
- 19.38.1 necessary to ensure the identification of the person voting; and
- 19.38.2 proportionate to the achievement of that objective.⁴³
- 19.39 Nothing in this section affects the power of an Issuer to require reasonable evidence of the entitlement of any person who is not a Shareholder to vote.⁴⁴

Voting results

- 19.40 Where a Shareholder 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 Issuer shall publish the following

⁴⁰ Article 11(1) of the SRD and draft Irish Regulation 136(1A)(d)

⁴¹ Article 11(2) of the SRD and draft Irish Regulation 136(!A)(e).

⁴² Article 12 of the SRD.

⁴³ UK draft regulations transposing SRD.

⁴⁴ UK draft regulations transposing SRD.

information on its website by not later than fifteen (15) days after the day of the general meeting at which the voting result was obtained.⁴⁵

19.40.1 the date of the meeting;

19.40.2 the text of the resolution or, as the case may be, a description of the subject matter of the poll;

19.40.3 the number of shares for which votes have been validly cast;

19.40.4 the proportion of the Issuer's issued share capital at close of business on the day before the meeting represented by those votes;

19.40.5 the total number of votes validly cast; and

19.40.6 the number of votes cast in favour of and against each resolution and, if counted, the number of abstentions.

19.41 Where no Shareholder 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 Issuer to establish the voting results only to the extent necessary to ensure that the required majority is reached for each resolution.⁴⁶

⁴⁵ Article 14 of the SRD and draft Irish Regulation 145A.

⁴⁶ Article 14(1) 2nd par of SRD.