

Subsidiary Legislation made under s. 385.

**LISTED COMPANIES (MEMBERS' RIGHTS)
REGULATIONS 2011**

(LN. 2011/023)

Commencement **17.3.2011**

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:

Directive 2007/36/EC

ARRANGEMENT OF REGULATIONS.

Regulation

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In exercise of the powers conferred on him by regulation 385 of the Companies Act, and all other enabling powers, and in order to transpose into the law of Gibraltar Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of members in listed companies, the Minister responsible for finance has made the following Regulations—

LISTED COMPANIES (MEMBERS' RIGHTS) REGULATIONS 2011

Title and commencement.

1.(1) These Regulations may be cited as the Listed Companies (Members' Rights) Regulations 2011 and shall come into operation on the day of publication.

(2) These Regulations shall apply to general meetings of listed companies where notice of the general meeting is given, or first given, on or after the day on which these Regulations come into operation.

Interpretation.

2. In these Regulations, unless the context otherwise provides—

“electronic means” means the processing (including digital), storage and transmission of data, employing electronic equipment, wires, radio, or optical technologies or any other electro-magnetic means;

“listed company” means a company which has its registered office in Gibraltar and whose shares are admitted to trading on a regulated market situated or operating within the European Union;

“proxy” means the empowerment of a person by a member to exercise some or all rights of that member in the general meeting in his name;

“regulated market” means a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems and which is authorised and functions regularly and in accordance with the provisions of Part III of the Financial Services (Markets in Financial Instruments) Act 2006;

Applicability.

3.(1) These Regulations shall apply to the exercise of certain rights of members attaching to voting shares in relation to general meetings of listed companies.

(2) These Regulations shall not apply to—

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- (a) collective investment schemes which are UCITS within the meaning of sections 2(1) and 3 of the Financial Services (Collective Investment Schemes) Act 2005;
- (b) cooperative societies within the meaning of the Cooperative Societies (SCE) Act 2007.

Equal treatment of members.

4. A listed company shall ensure equal treatment for all members who are in the same position with regard to the exercise of voting rights and participation in general meetings.

Publication of information prior to general meeting.

5.(1) Without prejudice to any time limits for the convening of a general meeting at short notice which may be set out in regulations made under section 17(5) or pursuant to section 19(5)(c) of the Financial Services (Takeover Bids) Act 2006, a listed company shall give notice of a general meeting in accordance with sub-regulation (2).

(2) Notwithstanding anything contained in a listed company's articles, a general meeting shall be called by giving—

- (a) in the case of an annual general meeting, 21 days' notice in writing; and
- (b) in the case of a general meeting (other than an annual general meeting or a meeting for the passing of a special resolution) 14 days' notice in writing where—
 - (i) the company offers facilities for members to vote by electronic means accessible to all members who hold shares carrying rights to vote at general meetings; and
 - (ii) a special resolution reducing the period of notice to 14 days has been passed at the immediately preceding annual general meeting or at a general meeting held since that meeting.

(3) The special resolution under sub-regulation (2)(b)(ii) shall be taken by a majority of not less than two-thirds of the votes cast at a general meeting.

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

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(5) Notice of a general meeting of a listed company shall include—

- (a) clear and precise information on when and where the meeting is to take place and the proposed agenda for the meeting;
- (b) a clear and precise statement of any procedures a member must comply with in order to participate and vote in the meeting including—
 - (i) the right of a member to put items on the agenda, to table draft resolutions, to ask questions relating to items on the agenda and the time limits applicable to the exercise of any of those rights;
 - (ii) the right of a member entitled to attend, speak, ask questions and vote, to appoint a proxy by electronic means or otherwise or, where allowed, one or more proxies, to attend, speak, ask questions and vote instead of the member;
 - (iii) the procedure for voting by proxy including the forms to be used and the means by which the company is prepared to accept electronic notification of the appointment of a proxy; and
 - (iv) the procedure to be followed for voting electronically or by post;
- (c) the record date for eligibility for voting under regulation 7 and a statement that only members registered on the record date shall have the right to participate and vote in the meeting;
- (d) clear and precise information on where and how the full, unabridged text of the documents and draft resolutions mentioned in sub-regulation (6)(c) and (d) may be obtained; and
- (e) the address of the website at which the information contained in sub-regulation (6) is being made available.

(6) A listed company shall make available to its members on its website for a continuous period beginning not later than 21 days before a general meeting (inclusive of the day of the meeting)—

- (a) a notice of the general meeting;

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

(7) A listed company shall make available on its website as soon as possible following their receipt, draft resolutions tabled by members.

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

(9) Where notice of a general meeting is issued later than on the twenty-first day before the meeting, the period specified in sub-regulation (6) shall be reduced accordingly.

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

6.(1) A member of a listed company shall have the right, by electronic or postal means, at an address specified by the company, to—

- (a) put an item on the agenda of an annual general meeting, provided that such item is accompanied by the grounds put forward to justify its inclusion, or a draft resolution to be adopted at the general meeting;
- (b) call, as an alternative to putting an item on the agenda, a general meeting (other than an annual general meeting) the agenda for which shall include all the items requested under paragraph (a); and
- (c) if the tabling of a draft resolution for an item on or to be included in the agenda of a general meeting is subject to the member or members having a right to vote at the meeting to which the request for inclusion of the item relates is subject to

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a minimum holding in the company, such holding shall not exceed holding 5 per cent of the issued share capital.

(2) A request by a member of a listed company to put an item on the agenda or to table a draft resolution under sub-regulation (1)(a) must be received by the company in hardcopy or electronic form not later than 30 days before the meeting to which it relates.

(3) Where the exercise of the right conferred by sub-regulation (1)(a) involves a modification of the agenda for an annual general meeting where the agenda has already been communicated to members, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date or if no such record date applies, sufficiently in advance of the date of the annual general meeting so as to enable other members to appoint a proxy or, where applicable, to vote by post or by electronic means.

(4) In this regulation, "record date" means a date not more than 48 hours before the time for the holding of the general meeting to which it relates.

Requirements for participation and voting in general meeting.

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

(2) The right of a member to sell or otherwise transfer shares in a listed company at any time between the record date and the general meeting to which it applies shall not be subject to any restriction to which they would not otherwise be subject at other times.

(3) The right of a member to participate in a general meeting of a listed company shall be determined by reference to the register of members on the record date.

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

(5) In this regulation, "record date" shall have the same meaning as in regulation 6(4).

Participation in general meeting by electronic means.

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8.(1) A listed company may provide for participation in a general meeting by electronic means including—

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

(2) The use of electronic means under sub-regulation (1) may be made subject only to such requirements and restrictions as are necessary to ensure the identification of members or proxies and the security of the electronic communication and only to the extent that such requirements and restrictions are proportionate to the achievement of those objectives.

Right to ask questions.

9.(1) A member of a listed company 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 company subject to any reasonable measures the company may impose to ensure the identification of the member.

(2) An answer to a question under sub-regulation (1) shall not be required where—

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

Proxy Voting.

10.(1) A member of a listed company shall have the right to appoint any other person (whether an individual or a body corporate) as a proxy to attend, speak and vote at a general meeting in his name and the proxy shall act in accordance with any instructions given by the member by whom the proxy is appointed.

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(2) A proxy shall be appointed by written notification to a listed company.

(3) A member shall also be entitled to—

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

(4) The notification of an appointment of a proxy to a company and the issuing of voting instructions to a proxy may be made subject only to such formal requirements as are necessary to ensure—

- (a) the identification of the member and the proxy; or
- (b) the possibility of verifying the content of voting instructions,

and only to the extent that those requirements are proportionate to achieving those objectives.

(5) Sub-regulation (1) shall also apply to the revocation of the appointment of a proxy.

(6) Notwithstanding anything in a listed company's articles—

- (a) no limitation shall be placed on the right of a member to appoint more than one proxy to attend and vote at a general meeting in respect of shares held in different securities accounts; and
- (b) subject to paragraph (a), a member shall not be entitled to appoint more than one proxy to attend and vote on the same occasion.

(7) Any provision contained in the articles of a listed company shall be void in so far as it would have the effect of restricting the eligibility of a person to be appointed as a proxy.

(8) A listed company shall not restrict the exercise of rights of members through their proxies except to address potential conflicts of interest between the proxy and the member in whose interest the proxy is bound to act.

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(9) A conflict of interest under sub-regulation (8) may in particular arise where the proxy—

- (a) is a controller of the listed company or is another company controlled by the member;
- (b) is a director, officer or manager of the listed company or of a controller of the listed company or of a company controlled by the member;
- (c) is an employee or an auditor of the listed company, or of a controller of the listed company or of a company controlled by the member;
- (d) has a family relationship with any individual referred to in paragraphs (a) to (c).

(10) A proxy shall be bound to disclose to a member who intends to appoint him, any facts which may be relevant for the member in assessing any risk that the proxy might pursue any interest other than the interest of the member.

(11) A proxy shall—

- (a) be bound to cast votes in accordance with the instructions issued by the member who has appointed him;
- (b) for a period of 18 months, keep a record of the voting instructions given to him by that member; and
- (c) confirm on request that the voting instructions have been carried out.

(12) A proxy may hold a proxy from more than one member without limitation as to the number of members so represented and where this is so, the proxy shall be able to cast votes for a certain member differently from votes cast for another member.

(13) For the purposes of this regulation, “controller” means a person who—

- (a) holds a majority of the voting rights in the listed company;
- (b) is a member of the listed company and has the right to appoint or remove a majority of the members of the board of directors of the company;

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- (c) is a member of the listed company and controls alone, pursuant to an agreement with other members, a majority of the voting rights in the company; or
- (d) has the right to exercise, or actually exercises, dominant influence or control over the listed company,

and the term “company controlled by the member” shall be construed accordingly.

(14) For the purposes of sub-regulation (13)(b)–

- (a) any rights of a person controlled by another person who is a controller; and
- (b) any rights of a person acting on behalf of a person who is a controller or a person controlled by a person who is a controller;

shall be treated as held by the person who is the controller.

Voting by post.

11. The articles of a listed company may contain provision to the effect that on a vote on a resolution taken at a general meeting, the votes may include votes cast in advance by post or electronic means subject to such requirements and restrictions as are necessary to ensure the identification of the member or of the proxy.

Removal of impediments to effective voting.

12.(1) Votes may be cast by a member of a listed company as an intermediary for a client, (whether an individual or a body corporate) subject only to such requirements and constraints as are necessary to ensure the identification of the client and the number of shares the subject of the vote on that client's behalf.

(2) A listed company shall not prevent a member acting as an intermediary on behalf of a client from granting a proxy to each of his clients or to any third party designated by a client and such intermediary shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.

Voting Results.

13.(1) Where a member requests a full account of a vote before or on the declaration of the result of a vote at a general meeting, then with respect to

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each resolution proposed at a general meeting a listed company shall establish—

- (a) the number of shares for which votes have been validly cast;
- (b) the proportion of the company's issued share capital at close of business on the day before the meeting represented by those votes;
- (c) the total number of votes validly cast; and
- (d) the number of votes cast in favour of and against each resolution and, if counted, the number of abstentions.

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

(3) A listed company shall ensure that a voting result established in accordance with this regulation is published on its website not later than the end of the fifteenth day after the date of the meeting at which the voting result was obtained.