

IMPORTANT CHANGES TO THE RULES ON GENERAL MEETINGS IN PRIVATE AND PUBLIC LIMITED LIABILITY COMPANIES – NEW REQUIREMENTS AND SIMPLIFICATIONS

With effect from 3 August 2009 new rules have been implemented in the Norwegian Private and Public Limited Liability Acts. The rules concern the calling and conducting of general meetings as well as additional requirements for shareholders wishing to put items on the agenda. Furthermore, the changes allow for simplifications regarding both the calling and conduction of general meetings, but this requires amendments to the company's articles of association or resolutions from the company's board of directors.

New rules applicable to public limited liability companies ("PLC") listed on a regulated market

Under the new rules of the Companies Act the minimum length of notice of the general meeting to be served on members of PLCs listed on a regulated market has been increased from 14 days to 21 days. The increased notice period was intended to apply to all PLCs, but following the hearing in which Wikborg Rein, amongst others, highlighted the inconveniences of an increased notice period, the proposal was limited to apply only to companies listed on a regulated market.

At present, there is a recommended minimum notice period of 21 days for publication of the notice on the internet, according to clause 6 of the Norwegian Code of Practice for Corporate Governance. As such, the main difference brought about by the amendment is that publication on the internet is no longer sufficient. Furthermore, to allow for any exceptions to the rules the companies must address the issue prior to the general meeting being summoned, see below.

Although the increased period of notice required to call a general meeting only applies to listed companies, the inconveniences will still be relevant. An increased notice period will, for instance, complicate the execution of a general meeting for an urgently required decision. This could result in an increase in the use of proxies to the board of directors.

There are two exceptions to the rules on an increased notice period. Firstly, the rules do not apply to the notification requirements of a general meeting for the consideration of take-over bids in accordance with the Securities Trading Act section 6-17, where the 14 days' deadline still applies. Secondly, the general meeting can resolve that the company shall be exempted from the increased notice period, see below for details.

Under the new rules, companies listed on a regulated market will also be subject to additional secondary legislation, which sets out in further detail the information to be provided in the notice, and requirements for information to be published on the company's website. For example, the notice must contain information regarding the shareholders' right to present questions and alternative resolution proposals, the procedures for the use of proxies, electronic voting and, if applicable, voting in advance, whether by electronic means or by post and details on how to access documents pertaining to the general meeting published on the company's website. The company shall also be required to publish the notice of general meeting on its website together with all other related documents, proposals for resolutions or statements from the board of directors with regards to items on the agenda, alternative resolutions submitted by shareholders and forms of proxy or forms required for voting in writing – if applicable.

Possibilities of simplifications by general meeting resolution (listed PLC)

In companies listed on a regulated market, the general meeting can resolve that during the period until the next annual general meeting the minimum notice period required to call an extraordinary general meeting shall be 14 days. Annual general meetings must in any event be called with at least 21 days' notice. A new resolution for the shorter notice period must be repeated in the form of a new resolution by the general meeting on every annual general meeting, if it is to have effect for the subsequent period.

A resolution for 14 days' notice period must be passed with the same majority requirements as is required to alter a company's articles of association and is also only applicable if electronic voting is allowed at the general meeting where the 14 days' notice shall be applied; see below for further information on this.

Electronic voting in general meetings (PLCs)

Under the new rules it is now possible for PLCs (irrespective of whether the company is listed on a regulated market or not) to allow for electronic participation and voting at a general meeting. The amendment does not apply to private limited companies ("LLCs"). The decision to allow for electronic participation lies with the board of directors, but the company's articles of association can restrict this entirely or set conditions for the procedure of electronic participation at general meetings.

If a company allows for electronic participation at a general meeting, it is required that the technical means used ensure that the rights of the individual shareholder are effective and also that the general legal requirements for the general meeting are complied with. The technical means that are used must also ensure the proper execution of the general meeting, including having adequate procedures related to authentication of the shareholders and control of votes cast.

Possibility to simplify notice to the general meeting (PLC and LLC)

The implementation of a new section 5-11 a in the two companies acts allows for a simplified notice of general meetings for both PLCs and LLCs. According to section 5-11, a company can include in its articles of association a provision stating that documents to be addressed at the general meeting can be published on the company's website, instead of being dispatched along with the notice.

Including this provision in the articles also implies that documents that are required by law to be distributed along with the notice of general meeting can be made available on the internet instead. For many companies the printing and dispatch of appendices to the notice can involve significant costs. Thus, the amendment allows for a possible significant reduction of these costs as well as environmental gains, especially if the company has a large number of shareholders. The individual shareholder will, however, retain the right to receive the documents by post, without any costs, should he so request.

To avoid the requirement of distributing the documents by ordinary post, the new section of the act requires that the documents are published on the company's website for the shareholders. Full disclosure to anyone other than shareholders is not required. One possibility is to provide shareholders with an online system which may be accessed by a password, unless the company is listed on a regulated market. Further, a company that has a provision in the articles that allows for online publication of these documents, is

free to send the notice by ordinary post, should this solution be desirable.

The act further requires that the notice shall provide the address of the company's website and any other information required to ensure access to the information published on the company's website, together with information on where the shareholder can direct his request to receive the documents by ordinary post.

Possibility for simplification of registration of participants (PLC)

In the Public Limited Liability Companies Act section 4-2 (3), the amendment allows PLCs to insert a provision in the articles of association stating that the right to participate and vote at the general meeting only can be exercised if the acquisition of shares in the company has been registered in the shareholder's registry five days prior to the general meeting (the "registration date"). Prior to the new rules, companies have had the opportunity to set a deadline for notification of participation in the articles, but this has not remedied the problems relating to shares traded or registered with a trustee. The new section clearly gives the companies the authority to resolve a deadline for registration five days prior to the general meeting, and after the expiration of the deadline the general meeting (the person opening the meeting) can use the lists the company receives from the Central Securities Depository directly to resolve who can participate in the general meeting. For shareholders that acquire shares shortly before the general meeting, or have shares registered with a trustee, but can prove their holding, the new rules will be a disadvantage, if the company takes use of this new possibility for setting a "registration date".

Possibility to allow for written voting (PLC)

In the Public Limited Liability Companies Act, section 5-8 b, the amendment allows PLCs to insert a provision in the articles stating that the shareholders shall be allowed to cast their vote in writing, including by means of electronic communication, within a period preceding the general meeting. An adequate procedure of authentication of the shareholder shall be used for this method of voting. Additional requirements can be stipulated in the company's articles of association.

Change of shareholders' rights

Shareholders have a statutory right to have matters dealt with at the general meeting which are addressed to the company in writing. The new rules provide that the written request to the company must be made at least seven days prior to the commencement of the notice period to the general meeting. Furthermore, the reasons for placing the matters on the agenda or a proposed

resolution must also be disclosed. The shareholder may also propose a resolution for an item already on the agenda.

The amendment involves that, in order for a proposal by a shareholder to the general meeting to be addressed, the procedural requirements are increased. However, the board can, at its own discretion, approve the proposal by the shareholder, and make amendments to the proposed agenda or include alternative suggestions for proposals, even if the shareholder's proposal did not meet the legal requirements, provided that the deadline for the notice of general meeting has not expired.

The new legal provision allowing for regulation in the articles regarding the registration of the acquisition of shares in the shareholder registry before the "registration date" as a precondition to exercise meeting and voting rights at the general meeting, as described above, involves (should such a provision be included in the articles) that the purchaser of the shares can no longer exercise voting rights by proving ownership, unless the ownership is formally registered within the "registration date". Consequently, a purchaser wishing to exercise his voting rights must ensure that the acquisition is registered prior to the "registration date", or ensure that the seller has provided the purchaser with the necessary power of attorney for him to participate on behalf of the seller.

If the company allows for electronic participation to the general meeting and/or the right to written voting in advance, this might strengthen the shareholders' possibility to participate at the general meeting and therefore strengthen the shareholders' rights.

Final comments – reminders and tips

For the companies:

- Remember the increased notice period of the general meeting for companies listed on a regulated market – minimum 21 days.
- At every annual general meeting, resolve to decrease the period of notice of extraordinary general meetings to 14 days.
- Resolve the implementation of a new provision in the articles of association stating that documents to be dispatched to the shareholders in connection with general meetings, can be published on internet instead.

For the shareholders:

- Remember that an approach to the company regarding additional items to be placed on the agenda for the general meeting, must be made at least seven days before the

deadline of the notice period and the reasons for the proposal or a proposed resolution must be included.

- Remember to ensure that a proxy is received in the case of an acquisition of shares where the transfer will be registered in the shareholder's registry later than five days prior to the general meeting, for companies with a provision in the articles regarding "registration date".

We also highlight that any corporate governance questions that the changes in the Companies Acts might result in are likely to be assessed as part of the ongoing hearing related to proposed changes to the Norwegian Code of Practice for Corporate Governance by the Norwegian Corporate Governance Board.

Other amendments to the Public Limited Liability Companies Act - audit committee

We also emphasize that as of 1 July 2009, the Public Limited Liability Companies Act requires that companies listed on a regulated market shall have an audit committee. For many companies, a practical solution would be to amend the articles of association so that the board of directors is regarded as the audit committee as such, cf. Section 6-42(3) of the Act. If a company will propose amendments to the articles of association as a consequence of the changes mentioned above, it might be appropriate to propose a change related to audit committee at the same time.

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