

By e-mail: David.Styles@berr.gsi.gov.uk

Mr David Styles
Corporate Law and Governance Directive
Department for Business, Enterprise and
Regulatory Reform
1 Victoria Street
London, SW1H 0ET

UK Shareholders Association
BM UKSA
London
WC1N 3XX

Phone: 0870-70-60-600
Email: uksa@uksa.org.uk
Web: www.uksa.org.uk

19 November 2008

Dear Mr Styles,

**Directive 2007/36/EC
(Exercise of Certain Rights of Shareholders in Listed Companies)**

The subjects of voting rights, and shareholder democracy generally, are ones of great importance to the individual shareholders who make up our membership and we wish to put forward comments as set out below in relation to the consultation document on the implementation of above directive. We shall, of course, be pleased to enlarge on or discuss any points if we can be of further help:

Para 2.8: Although it does not affect the implementation of the directive, we would like to comment on the first two sentences of this paragraph. What you say may be true in theory but the effectiveness of shareholder rights in practice leaves a great deal to be desired. At the moment we have a perfect example of this in the crisis in the clearing banks which seem to have been operated against the real interests of the shareholders without the latter's knowledge and without their being able to have any influence on the situation. It is important that BERR appreciates that the present situation is far from perfect.

Regulation 3 (page 10)

It is not entirely clear to us how much of the proposed change is considered essential due to the wording of the Directive and how much is simply because the Department has found it desirable to change the existing wording. That said, our firm preference is for the legislation to avoid prescription as far as possible in relation to show of hands voting. In our experience voting on a show of hands is not handled rigorously. At most, cards are distributed to attendees indicating whether they are shareholders or proxies and voting takes place by raising the cards. No attempt is made to check how many votes a proxy, for example, might have.

We believe that any attempt to be more prescriptive will simply result in fewer votes by show of hands taking place. We are well aware of the current tendency to go direct to a poll which we regret. We believe that a show of hands gives those present at the meeting the chance to show their feelings direct to the Board related to what has actually happened at the meeting. This is something we wish to see remain as far as possible. If there is any dissatisfaction with the show of hands result a poll will immediately be called. We also note that the draft wording seems to have the result that the Chairman, since he

normally carries most of the proxies, will usually have one vote in favour and one against, i.e. effectively no vote.

We therefore request that the wording of this Regulation be reconsidered. Our preference would be to retain the existing wording.

It follows that our answer to Q.1 is 'NO' "

Regulation 6 (page 11)

We like the proposed amendments to s.323(4).

We find the proposed new s.323(5) unintelligible as it stands. The discussion says that it clarifies matters so as to enable different corporate representatives to vote in different ways, but this is far from clear. We would prefer a double negative if that made things clearer. Accordingly our answer to Q2 is "NO".

Regulation 5 (page 12): Our answer to Q.3 is "YES". We think that advance voting for all meetings should be available regardless of the Company's Articles.

Regulation 9 (page 14): It should be appreciated that if the UK is to give companies the ability to take advantage of this concession it is effectively obliging them to add yet another standard item to the agenda for every AGM.

We do not see where sub-para (3)(b)(i) derives from in the Directive. Although there is a precedent in relation to one person being able to block a vote in the election of a slate of directors, this simply means going to a show of hands for each individual director. As drafted this sub-para effectively means that one member can force a poll on this issue. Is this really the intention?

As regards Q.5 we consider that the phrase is sufficiently imprecise that it would be much better to define it. For example, as it stands a disabled shareholder who has no computer and cannot get to an internet café could claim that the qualification is not met whereas the intention must be simply that the Company's conditions make no restrictions as to accessibility.

Turning to Q.6, we note that if two-thirds is accepted, it will (we believe) be the only resolution in the whole of the Companies Act that is neither an ordinary or a special resolution. To avoid a third category we favour 75%.

Regulation 12 (page 16): The ability to have questions answered is very important to our members and we welcome the specific implementation of the Directive in this way. We note that reference to the chairman deciding appears only in (c). We think this is right because, although in practice the chairman will undoubtedly decide in all three cases, the wording forces him to justify his decision in (a) and (b). This is highly desirable given that often chairmen will be reluctant to answer.

Regulation 16 (page 19): We note that the Directive gives member states the right to choose the deadline for the rights in the Article. We are very happy with the 14-day limit for traded companies and we hope that BERR will hold to it even if Companies request a longer period. The 14-day limit means that there is, just, time after the Report and Accounts has been issued to act in response to anything in that report. A longer period makes the right of much less value.

Looking at Q.8, a requirement for members to pay the costs of circulation would be a major deterrent to the use of a reasonable right, especially bearing in mind our comments in regard to Para 2.8. We consider that the minimum requirements should be sufficient protection against abuse. We note that the Directive makes no mention of the possibility of a charge and we suggest that the Regulations should be put into force without it. If in practice companies find that the power is used unreasonably, they could then ask BERR to review the regulation at the next opportunity.

About the UK Shareholders Association (UKSA)

UKSA is the leading independent organisation which represents the interests of private shareholders in the United Kingdom. We campaign to protect the rights of shareholders in public companies, and to promote improved standards of corporate governance. Our educational activities, regular regional meetings, company "analyst" meetings and the resources of our web site, help to inform the public on investment management. UKSA is a "not for profit" organisation which is financially supported by its individual members.

Yours sincerely

Roy Colbran

Roy B. Colbran
Chairman UKSA Government Policy Group