

## **IMPLEMENTATION OF THE DIRECTIVE 2007/36/EC**

In July this year Cyprus has taken action to implement the Directive 2007/36/EC of the European Parliament by transporting it into the Cyprus Company Law, Cap 113, by virtue of the Amendment Law N.60(I)/2010. The new provisions in the law have introduced new rights for the shareholders of publicly listed companies for, inter alia, attending and voting at general meetings from a distance as well as having access to relevant information and raise questions. They also aim to facilitate the shareholders participation in general meetings of public listed companies and to ensure that the shareholders are provided on time and in efficient manner proper and complete information regarding the meetings.

The new provisions apply to companies which have their registered office in Cyprus and whose shares are admitted to trading on a regulated market situated or operating within a Member State. It does not apply though to companies dealing with collective investments schemes (as these are defined in the Open-Ended Undertakings for Collective Investments in Transferable Securities Law) and entities whose sole purpose it to invest collective capital gathered from the public and the operation of which is based on spread of risk without undertaking any legal or administrative control, being regulated by the relevant authorities and having a custodian as per the Open-Ended Undertakings for Collective Investments in Transferable Securities Law.

### **Equal Treatment of Shareholders**

A new provision in the law provides that publicly traded companies are now obliged to ensure that equal treatment is provided for all members in the same position regarding exercise of voting and participation of general meetings.

One of the first rights granted to the member of a publicly traded company is to for those members holding at least 20% of the issued share capital of the company to be able to force the directors to convene an extraordinary general meeting of the company.

### **Electronic attendance of the meetings and electronic voting**

In order to safeguard these rights that have been introduced by the new provisions the law now provides that the members of publicly traded companies no longer need to be physically present and to physically attend a general meeting of the members of the company as they may now participate in the general meeting by electronic means and exercise their voting rights electronically.

This entails an obligation on the publicly listed companies by law to put in place the required electronic mechanisms in order to offer these rights to their members. Certainly the standard and quality of the electronic means must meet the expectations as set out in the law despite how high the cost of their implementation and maintenance might be for the companies.

## **Proxies**

The new provisions also simplify the current proxy regime by facilitating the participation of the members of a publicly traded company in general meetings by means of proxies. And the amended law provides that a proxy can be appointed or be revoked by a member electronically. A member can appoint more than one proxy for attending and voting at a general meeting in relation to shares held in different operation accounts for different clients.

## **General Meetings and Notices**

The new law introduces new terms on the required statutory notice to convene general meetings as this may now vary depending on whether the members can have access and vote by electronic means and a special resolution has been taken at the previous general meeting approving the notification period to be fourteen days. However for calling an annual general meeting the notification is 21 days.

The company must have loaded on its website at least 21 days prior to the date of the general meeting information as the number of members and their voting rights, the documents that will be submitted to the meeting, copies of the proposed resolutions or any comments on any of the items of the proposed agenda as well as copies of the documentation for appointing a proxy unless these have been sent by mail to the members. Furthermore the company must load on its site, the earliest possible upon their receipt, the proposed resolutions submitted by its members. If for technical reasons these resolutions cannot be loaded on the website the company must have a notification therein informing the members that they will be sent by mail to each member.

## **Add items on the agenda and raise questions**

Those members who hold at least 5% of the share capital of the company which represents at least 5% of the voting rights of all the members entitled to vote at general meetings may add an item on the proposed agenda of the general meeting provided that the reasons justifying its addition in the agenda are provided or propose a resolution for its approval at the general meeting. These rights must be exercised at least 42 days prior to the meeting to which they relate to and the proposals must be received by the company either in a hard copy form or electronically within this time frame.

One of the most welcomed changes introduced by the new provisions is the right of the shareholders to ask questions relating to items on the agenda of a general meeting. However the right to have those questions answered are subject to certain reservations and are thus to a certain extent a qualified right. The new provisions of the law provide that this right is subject to any measures that can be taken by the government or by the company itself in order to safeguard the inspection of the identity of the members, the proper holding of the general meeting as well as the preparation and the protection of the confidentiality and the

business interests of the publicly traded companies. These companies trading on a regulated market can provide a general answer to questions with the same content.

To simplify matters the new provisions further provide that if the relevant information is already on the company's website then an answer is not required to be provided.

## **Conclusion**

It is expected that the new provisions will assist the members of publicly traded companies to have a clearer understanding of the activities of these companies and be able to better exercise their rights therein. It is also anticipated that this will further the corporate governance of these companies and increase transparency in their activities and business decisions and will be operating as a regulatory mechanism for the interests of their members.