**The conduct of general meetings**

This element explains how general meetings are conducted.

AGMs are extremely important to listed companies, given the nature of the issues that are raised and resolved. They are also an important forum for shareholders.

The importance of AGMs – to both the company and its shareholders – means that there are many practical issues that must be considered. These include the following:

* The shareholders’ rights to ask questions at meetings
* Shareholder requisition rights
* Circulars
* Methods of communication
* Proxies
* Voting information services
* Persons nominated to enjoy information rights

These will each be considered in turn.

**Shareholders’ rights to ask questions at meetings**

Shareholders of a traded company have a statutory right to ask questions at meetings which the company must ‘cause to be answered’ (s.319A(1) CA 2006).

An answer need not be given in certain circumstances, including if answering the question would be undesirable in the interests of the company or good order of the meeting, would involve disclosure of confidential information or the answer has already been given on a website (in answer to a question) (s.319A(2) CA 2006).

**Shareholder requisition rights**

In certain situations, shareholders have the right to compel the company to take certain actions. These are referred to as ‘requisition rights’. The following shareholder requisition rights will each now be considered in turn:

* Shareholder requisition rights
  + Requisition of a general meeting
  + Requisition of a resolution
  + Requisition of a matter to be included in AGM business

Shareholders of all companies in all circumstances holding at least 5% of voting rights can require the board to call a GM (s.303 CA 2006).

Shareholders can require resolutions to be put before a general meeting that they have convened under s.303(4)-(5) CA 2006.

In addition to the s. 303 right to requisition a GM, ss.338-340 CA 2006 provide shareholders of **public companies** the power to require resolutions to be put before an AGM.

Under s.338(3), to qualify for the right to request a resolution to be put before an AGM, the request must be made by either:

* 1. a shareholder or shareholders holding at least 5% of the total voting rights; or
  2. at least 100 shareholders with the right to vote on the resolution at the AGM and holding, on average, per shareholder, at least £100 of paid-up share capital.

**Shareholders’ requisition of matter to be included in AGM business**

In addition to the right of public company shareholders to requisition an AGM resolution (s.338 CA 2006), shareholders of traded companies also have a requisition right to require the company to include any matter (other than a resolution) that may properly be included in the business to be dealt with at an AGM (s.338A CA 2006).

The qualification threshold to invoke s. 338A CA 2006 is the same as for s. 338 CA 2006.

On this basis, the request must be made by either:

* 1. a shareholder or shareholders holding at least 5% of the total voting rights; or
  2. at least 100 shareholders with the right to vote on the resolution at the AGM and holding, on average, per shareholder, at least £100 of paid-up share capital.

**Circulars to shareholders**

A circular is any document issued by a listed company to its shareholders, including notices of meetings but excluding (amongst other things) prospectuses, annual reports and accounts, interim reports and proxy cards (see the FCA Handbook Glossary for full definition).

If the company undertakes a transaction which requires shareholder approval, a circular will be sent to the shareholders which contains the information necessary to enable them to make an informed decision in respect of the matter. The general meeting notice will form part of the circular.

UKLR 10 contains the requirements relating to the content of circulars.

In a similar way to prospectuses, information may be incorporated in a circular by reference to information contained in that company’s approved prospectus or other document filed by that company with the FCA (UKLR 7.3.6 -7).

**Circulars to shareholders:**

**FCA approval**

Some circulars must be approved by the FCA before they are sent to shareholders (UKLR 10.2.1)

These include circulars relating to a reverse takeover, a cancellation of listing and a transfer of a listing.

**Methods of communication**

Sending out circulars in hard copy form can be a significant logistical exercise. As such, almost all shareholder communications are now undertaken electronically.

S.308 CA 2006 allows a company to give notice of a general meeting by:

* + hard copy;
  + electronic form; and
  + means of website.

The definitions of these different types of communication will each now be considered in turn.

**Methods of communication: Hard copy**

‘Hard copy’ is defined by s.1168(2) CA 2006 as information supplied in paper copy or similar form capable of being read.

Where a shareholder receives information other than in hard copy, s.1145 CA 2006 allows that shareholder to request a form in hard copy form (at no charge).

Most FTSE 100 companies have taken advantage of the electronic communication regime by changing their articles or passing a shareholder resolution to permit electronic communication, with most companies preferring to change their articles of association. This has the advantage that there is a permanent record embedded in the company’s articles of association of the procedure for communicating electronically with shareholders. The majority of shareholders of FTSE 100 companies have been defaulted (by deemed consent) to the website route.

**Methods of communication: Electronic form**

S.1168(3) CA 2006 provides that a document is sent in ‘electronic form’ if it is sent or supplied by electronic means, such as by email and fax, or by any other means while in electronic form (e.g. sending a disc by post). Under paragraph 6 of Part 3 of Schedule 5, CA 2006, a document or information may only be sent or supplied by a company in electronic form to a shareholder who has expressly opted in and agreed to receive communications in that way or is deemed to have so agreed by a provision of the CA 2006.

**Methods of communication: Website communications**

Paragraphs 9 and 10 of Part 4 of Schedule 5 TO CA 2006 enable a shareholder to agree - or be deemed to have agreed - to receive information from the company by means of a **website**. A shareholder will be deemed to have agreed to communication by website where:

1. the company has resolved or its articles state the company may communicate by making documents available on a website;
2. the shareholder has in either case been asked individually by the company to agree to the use of website communication by the company; and
3. the shareholder has not responded within 28 days of the invitation to indicate that he would like to opt out of website communication.

Paragraph 13 of Part 4 of Schedule 5 requires notification to shareholders of the fact that information has been posted on a website and the way in which the information can be accessed.

Where a shareholder is deemed to have consented to receive information by means of a website (in other words, it has not responded negatively to the company’s invitation), the notification can be sent by post or electronic means, provided that the company has been supplied with an appropriate address. Where the shareholder has expressly agreed to receive communications in electronic form and has supplied an e-mail address, notification can be sent by email. In all other cases, however, the shareholder will need to be sent the notification in hard copy. Shareholders who have indicated that they do not want to access information by a website link have to be sent the information or document itself in hard copy.

**The FCA: Disclosure Guidance and Transparency Rules sourcebook (DTRs)**

The FCA’s DTRs impose further obligations on issuers with transferable securities admitted to trading on a regulated market (including the Main Market) and who use electronic means to communicate with shareholders.

In particular, a decision to use electronic means to convey information must be taken at a general meeting of the issuer; see DTR 6.1.8(1).

Note, however, that the procedure in DTR 6.1.8(4) for getting shareholder consent to electronic communications does **not** apply where Schedule 5 CA 2006 applies.

**Forms of Proxy**

Any notice in respect of a meeting of the company must notify the shareholder of their right to appoint a **proxy** to attend, speak and vote at a meeting of the company (ss. 324 to 326 CA 2006).

Forms of proxy typically allow the shareholder to direct how a proxy should vote (in other words, for or against a motion). This is a ‘**2-way**’ form of proxy.

Institutional shareholders are being increasingly pressured to vote their shares at general meetings and to make use of their proxy rights. A 2-way form of proxy does, however, limit the options for a shareholder who does not feel able to support a resolution but nevertheless does not wish to vote against a resolution (as it might alienate the company’s board and could even affect the company’s share price).

Given the above, UKLR 6.3.1 imposes an obligation on listed companies to include a third, ‘vote withheld’, option on forms of proxy. Such a ‘**3-way**’ form of proxy allows the shareholder to deliver a warning message to the company without voting against the resolution. It is not necessary to provide proxy forms with 3-way voting on procedural resolutions

Electronic proxy voting is now mostly used - this is a service provided by company registrars.

**Voting information services**

The Institutional Voting Information Service (‘**IVIS’**) (part of the Investment Association) is an example of a voting information service used by listed company shareholders. These service providers analyse the annual report and notice of AGM published by key listed companies each year.

As part of its service, IVIS produces a proxy report which provides commentary on the resolutions proposed at the company’s AGM. It attributes a colour-coded header to its report on the AGM notice. This rating highlights whether there are areas for concern in the resolutions being proposed. ‘Red Top’ denotes an area of strongest concern; ‘Amber Top’ indicates that there are areas to bring to investors’ attention; ‘Blue Top’ indicates no areas of major concern; and ‘Green Top’ indicates an issue which has been resolved.

Investors subscribe to services such as IVIS in order to help determine whether they should vote in favour of each of the resolutions at the AGM.

For a listed company, being the subject of a ‘Red Top’ report (or even an ‘Amber Top’) can cause major concern as there is a strong risk that investors will follow the guidance and vote against the resolutions which cause concern. In these circumstances, it would not be unusual for the problematic resolution(s) to be pulled from the AGM.

**Persons nominated to enjoy information rights**

Under s.146 (et seq.) CA 2006, a registered member (the legal owner of the shares) of a traded company can request that copies of all communications sent by the company to its members generally (or to any class of its members that includes the member) to be sent to one or more specified beneficial holders of the shares (s.146(3)(a) CA 2006).

The aim of these provisions is to foster engagement between traded companies and their indirect investors. The latter might, for example, hold their shares through intermediaries. This is often the case where uncertificated shares are held through CREST.

[*Information from diagram*]

Traded company - Registered member (legal owner) of shares - Beneficial owner of shares

**Summary**

* General meetings play an important role for both the company and its shareholders.
* Given their importance, there are legal and regulatory requirements governing how they are conducted.
* Key practical issues relating to the conduct of general meetings include: the shareholders’ rights to ask questions at meetings; shareholder requisition rights; circulars; methods of communication; proxies; voting information services; and persons nominated to enjoy information rights.
* Certain transactions involving listed companies require particular procedures to be followed.