

Tax & Legal Alert

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NSC Regulation no. 6/2009 on the exercise of certain rights of shareholders in company general meetings

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The NSC Order approving Regulation no. 6/2009 on the exercise of certain shareholder rights in company general meetings was published on 25 August 2009.

The Regulation sets out requirements for exercising certain shareholder rights attached to shares carrying voting rights in company general meeting. It applies for companies with registered offices in Romania and shares listed on a regulated market situated or operating within a Member State (including Romania).

The Regulation also applies to investment companies (including financial investment companies admitted to trading on a regulated market) and to companies listed on RASDAQ or on the non-quoted securities market.

The Regulation repeals the special provisions of NSC Regulation no. 1/2006 on issuers and securities operations regarding the organisation of general meetings (art. 134 – 140 of the regulation). These provisions are replaced by those of Regulation no. 6/2009.

The main provisions of the Regulation relate to:

The convocation method of the shareholders general meeting must ensure fast and non-discriminatory access to it. The chosen method must permit the effective dissemination of information to the public throughout the European Union. Such methods have to include those regulated for the public dissemination of information sent by issuers used by the market operator. The calling period of at least 30 days prior to the general meeting is not applicable for the second or subsequent calling of the general meeting, necessary if the first one lacked the quorum required for the meeting, provided that the

requirements laid down in the Regulation are observed.

The Regulation supplements the Romanian legal provisions in force by setting out the minimum items to be included in the calling notice of the general meeting for companies admitted to trading on regulated markets.

Under the Regulation, issuers have to make certain minimum information on agenda items available to their shareholders on the company web sites for at least thirty days prior to, and including, the date of the general meeting. Similarly, issuers' web site have to make available to shareholders the special forms for proxy voting, or indicate where paper forms can be obtained, if they cannot be made available on the internet.

The Regulation gives special rights to shareholders representing individually or collectively at least 5% of the share capital. Such shareholders have the right to put new items on the general meeting agenda and to table draft resolutions for items included or proposed for inclusion on the agenda. These rights may only be exercised by the shareholders in writing.

Proof of qualification as shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving this objective.

Companies may allow shareholders to participate in general meetings through electronic means which should be prior approved by the company's Board of Directors. Such participation methods should meet the requirements necessary for ensuring the identification of shareholders and the security of the electronic communication (including the shareholders' votes cast) and should be proportionate to achieving such objectives.

Shareholders registered at the record date ("*dată de referință*" in Romanian) can appoint an individual or legal person, except directors of the company, through special proxy to attend and vote on their behalf at the general meeting. Proxy holders appointment may be made also through electronic means made available by the company. Proxy holders appointment must be notified in writing to the company. The Regulation provides the minimum requirements for the proxy granted by the shareholders.

Companies have to give shareholders the possibility of correspondence voting before the general meeting.

Companies listed on a regulated market have to publish the results of any general meetings votes on their websites within 15 days as of such meetings.

[Source: Romanian Official Gazette no. 588/25 August 2009, part I]

For more information please contact Sorin David, Dan Dascalu, Anda Rojanschi or Laura Toncescu.