

Talking Companies

Notice of Shareholders' Meetings in terms of the Companies Act 2008 ("the Act")

A company must deliver a written notice of the intention to hold a shareholders' meeting, to all the shareholders of the company as of the *record date*, at least:

- 15 business days before the meeting is to begin, in the case of a public company or a non-profit company that has voting members; or
- 10 business days before the meeting is to begin for any other company.

The company's Memorandum of Incorporation ("Mol") may provide for longer minimum notice periods for any meeting.

The *record date* is the date set by the board of directors ("the board") for determining *inter alia* which shareholders are entitled to:

- Receive notice of a shareholders' meeting;
- Participate in and vote at a shareholders' meeting;

If the board does not determine the *record date* for the meeting, the record date is the latest date the company is required to give shareholders notice of that meeting, unless the Mol or rules of the company provide otherwise.

A notice of a shareholders' meeting must include:

- The date, time, place and record date for the meeting;
- The purpose of the meeting;
- A copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
- A reasonably prominent statement specifying that –
 - A shareholder is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the shareholder;
 - A proxy need not also be a shareholder of the company;
 - All participants at a shareholders' meeting are required to provide satisfactory identification.
- A notice that the company provides for a shareholders' meeting to be conducted entirely by electronic



communication or for one or more shareholders to participate by electronic communication in all or part of a shareholders' meeting that is being held in person. (The Mol may prohibit electronic communication as a means of participation in a shareholders' meeting).

If a company fails to give the required notice of a shareholders' meeting, or if there was a material defect in the giving of the notice, the meeting may proceed if all the persons who are entitled to exercise voting rights in respect of each item on the agenda of the meeting:

- Acknowledge actual receipt of the notice;
- Are present at the meeting;
- Waive notice of the meeting or ratify the defective notice or sever any matters to which the defect relates from the agenda.

A shareholder who is present at a meeting is regarded to have received or waived notice of the meeting but has a right to allege a material defect in the form of notice for a particular item on the agenda for the meeting and to participate in the determination whether to waive the requirements for that notice or to ratify a defective notice.

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