

CORPORATE AND M&A

SRD II regulations: New obligations for Irish companies listed on a regulated market in the EU

25 March 2020

The Shareholder Rights Directive (“SRD”) was implemented in 2009 to enhance the rights of shareholders by imposing certain minimum standards on the exercise of voting rights attaching to shares in companies listed on EU regulated markets. SRD was amended by the Revised Shareholder Rights Directive (“SRD II”), which applies from 10 June 2019.

The Department of Business, Enterprise and Innovation has published the European Union (Shareholders’ Rights) Regulations 2020 (SI 81 of 2020) which amend and insert new provisions into Part 17 of the Companies Act 2014, transposing the obligations under SRD II into Irish law. This note sets out the commencement dates for the new obligations.

COMPANIES IN SCOPE

The new obligations apply to “traded PLCs”, that is PLCs whose shares are admitted to trading on an EU regulated market.

REMUNERATION REPORTING

The Regulations introduce new mandatory reporting obligations for in-scope companies on directors’ remuneration. Companies within scope must comply with new requirements regarding preparation and approval of a remuneration policy and remuneration report in respect of **financial years commencing on or after 10 June 2019**.

Remuneration Policy

The remuneration policy is required to

be put to an advisory vote at the AGM wherever there is a material change in the policy, and in any event at least once every four years. The legislation provides that regardless of the outcome of the vote, the company must apply either the new policy or a previously approved policy. In practice, this means that where a proposed policy is rejected at the AGM, the company will (in most instances unless the circumstances require otherwise) continue with its existing policy. Where a proposed policy is rejected at the AGM, the legislation requires the company to submit a revised policy to a vote at the next AGM.

Where a company has approved a policy at an AGM (regardless of whether it complies with the new requirements for such policies) prior to 30 March 2020 that company is not required to hold a remuneration vote until a period of 4 years has elapsed since that policy was approved.

Remuneration Report

The remuneration report must be put to an advisory vote at each AGM, and the company must explain in the next report how such vote was taken into account

in that report. Following the AGM, the company must display the remuneration report on its website for a period of ten years. If the report is available for longer than ten years after publication the company must remove the personal data of any director.

The statutory auditors will review the remuneration report in respect of the financial year immediately preceding the financial year that is the subject of their audit report, to ascertain whether the required information has been provided in the remuneration report.

MATERIAL RELATED PARTY TRANSACTIONS

New obligations for traded PLCs in relation to “material transactions” with “related parties” apply with effect from **30 March 2020**.

A “**material transaction**” is a transaction in which any percentage ratio, calculated in accordance with one or more class tests is 5% or more. The class tests are broadly similar to those applied by the Euronext Dublin Listing Rules. Where a traded PLC enters into more than one transaction or arrangement with the same related party in a 12-month period or

in the same financial year, they must be aggregated for the purposes of assessing whether the transaction is a material transaction.

Material transactions with a related party must be approved by general meeting prior to the conclusion of the transaction. Any shareholder involved in the transaction must not participate in the resolution approving it. A traded PLC must also publicly announce any material transaction with a related party, no later than the conclusion of the transaction.

There are exemptions from the requirements to announce and obtain approval, including where the transaction is entered into in the ordinary course of business, and the directors are required to **establish internal procedures** to assess whether transactions are entered into in the ordinary course of business and concluded on normal terms.

RIGHTS OF SHAREHOLDERS

New obligations affecting intermediaries (including investment firms, credit institutions and CSDs) and the transmission of information come into effect from **3 September 2020**, which also contain new obligations for traded PLCs.

PROXY ADVISORS

The legislation contains new obligations for proxy advisors that provide services to shareholders with respect to shares that are admitted to trading on an EU regulated market. These apply to the current AGM season as they take effect from **30 March 2020**.

Where a relevant proxy advisor applies a code of conduct, it is required to publicly disclose, on an annual basis: (1) a reference to the code of conduct; and (2) a report on its application of the code of conduct. Where a relevant proxy advisor does not apply a code of conduct it shall publicly disclose a clear and reasoned explanation for its failure to do so. Where a relevant proxy advisor applies a code of conduct, but departs from it, it is required to publicly disclose details of such departure.

Proxy advisors are also required to publicly disclose information in relation to the preparation of their research, advice and voting recommendations, which must remain publicly available on their website for at least three years from the date of publication.

Proxy advisors are required to identify and as soon as possible disclose to their clients, details of any actual or potential conflict of interest, or business

relationships that may influence the preparation of research, advice or voting recommendations together with the actions undertaken to eliminate, mitigate or manage the actual or potential conflict of interest.

ASSET MANAGERS AND INSTITUTIONAL INVESTORS

The legislation contains new obligations for asset managers and institutional investors which apply from **30 March 2020**. This will be detailed further in a separate briefing by our Funds Group.

For further information please contact your usual Arthur Cox contact.

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