



FINANCIAL SERVICES

Second Shareholders' Rights Directive Implemented into Irish Law

by **David Naughton**

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The European Union (Shareholders' Rights) Regulations 2020 implemented Directive (EU) 2017/828 into Irish law.

Directive (EU) 2017/828 on the “encouragement of long-term shareholder engagement” is known as the second Shareholders' Rights Directive (SRD II). It aims to ensure increased transparency and accountability and to encourage long-term shareholder engagement in traded and listed companies.

The Irish Regulations came into force on 30 March 2020; apart from the provisions relating to the identification of shareholders, the transmission of information and the facilitation of the exercise of shareholder rights, which came into force on 3 September 2020.

The Irish Regulations are structured as a series of amendments and insertions to Part 17 of the Companies Act 2014, which sets out the rules applying to public limited companies.

The Irish Regulations apply to companies that have their registered office in an EU Member State and whose shares are traded on an EU/EEA regulated market (traded PLCs). They also apply to asset managers who invest on behalf of institutional investors into certain public companies that are traded on an EU/EEA regulated market, including UCITS management companies, UCITS self-managed funds, AIFMs, and MiFID firms.

The key changes brought about by the Irish Regulations are outlined below.

- Chain of intermediaries. Traded PLCs can request information about shareholders from an intermediary which provides services in respect of the company's shares. At the request of the company, intermediaries must provide to that company relevant information to facilitate the exercise of shareholders' rights, including voting at general meetings. Where shares are held through a chain of intermediaries, an intermediary must supply the name of the next intermediary in the chain to the company and must also transmit the request to the next intermediary in the chain. These obligations came into force on 3 September 2020.
- Transmission of information. Traded PLCs must transmit any information a shareholder requires for the purpose of exercising their rights to intermediaries for onward transmission to the shareholder directly.
- Transparency requirements. A new set of transparency rules has been imposed on institutional investors, asset managers and proxy advisors. Institutional investors and asset managers must develop and publish an engagement policy on a “comply or explain” basis. This policy must detail how shareholder input influences the investment strategy. Where a policy is not published, the asset manager must publicly disclose a clear and reasoned explanation for that position.
- Right to vote on remuneration policy. Shareholders in traded PLCs have the right to vote on the company's remuneration policy at least once every four years and otherwise when a material change to the approved policy is proposed. The remuneration vote will only be advisory unless there is a provision in the company's constitution making the vote binding. If the remuneration policy is not approved by an advisory vote, the company shall prepare a revised policy and hold another vote in respect of that revised policy at the following general meeting. The results of the vote should be

publicly disclosed on the company's website.

- Related party transactions. Material related party transactions will have to be publicly announced when concluded.
- Proxy advisors. Proxy advisors will have to disclose any code of conduct they comply with and explain any derogations from that code or explain why they do not comply with a code.

While the Irish Regulations are welcomed for providing for greater transparency and shareholder engagement, traded PLCs, relevant asset managers and proxy advisors should review their policies and procedures to ensure compliance.

If you require assistance in connection with any issue arising from the Irish Shareholders' Rights Regulations, please do not hesitate to contact a member of our team.

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