
Briefing

Shareholder ‘Say on Pay’

Now Mandatory in Ireland



INSTITUTE OF DIRECTORS
IN IRELAND

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The Shareholder Rights Directive 2017/828 (“**SRD II**”), which amends the Shareholder Rights Directive 2007/36 (“**SRD I**”), has finally been transposed into Irish law by the long awaited EU (Shareholders’ Rights) Regulations 2020 (the “**SRD II Regulations**”).

The SRD II Regulations, which had a transposition deadline of 10 June 2019, came into effect on 30 March 2020 and amend and supplement the Companies Act 2014 (the “Act”). The SRD II Regulations provide clarity to Irish public limited companies (“PLCs”) on, among other things, the contents of their remuneration policies and remuneration reports and the nature of remuneration votes that should be put to shareholders in general meeting going forward as a consequence of SRD II. This factsheet considers the key remuneration aspects of the SRD II Regulations transposing SRD II into Irish law.

Which companies are covered by the SRD II Regulations?

The changes introduced by the SRD II Regulations apply to PLCs incorporated and registered in Ireland whose shares are admitted to trading on a regulated market in an EU member state (“**Member State**”), (a “**traded PLC**”). This means any Irish PLC whose shares are admitted to trading on Euronext Dublin or, for example, the main market of the London Stock Exchange.

For the avoidance of doubt, the SRD II Regulations do not apply to (i) PLCs listed on Euronext Growth which is not a regulated market within the meaning of SRD II (ii) PLCs incorporated and registered elsewhere in the European Union (even if listed on Euronext Dublin) who fall within the remit of the Member State of its incorporation. Further, the remuneration policy and reporting requirements set out in this factsheet do not apply to either corporate UCITS or AIFs which are expressly excluded from the definition of a “traded PLC” for these purposes.

What's new?

While many Irish companies listed on Euronext Dublin, and particularly those with a dual listing on the main market of the London Stock Exchange, already hold an annual vote on the company's remuneration report and a vote (normally every three years) on the company's remuneration policy, the SRD II Regulations now make it mandatory for traded PLCs to give shareholders a 'say on pay' under Irish law. The SRD II Regulations require traded PLCs to prepare (i) a remuneration policy regarding the basis of remuneration to be paid to directors and (ii) a remuneration report reporting on how this remuneration policy has been applied in practice. The SRD II Regulations prescribe clear content requirements for both the policy and report. Shareholders must then be given the opportunity to directly engage with directors' remuneration through voting on the policy and the report at general meeting.

Who falls within scope?

The new requirements address any remuneration to be paid to 'directors', which definition includes newly recruited and former directors. In line with SRD II, the SRD II Regulations extend the definition of 'director' further for the purpose of remuneration reporting to persons carrying out the functions of chief executive officer and, if the function exists, deputy chief executive officer (whatever their respective titles) and regardless of whether such individuals sit on the board of the traded PLC. No other senior management functions are covered by the SRD II Regulations.

Right to vote on Remuneration Policy

The SRD II Regulations provide that traded PLCs must submit their remuneration policy to a shareholder vote at least once every four years and otherwise when a material change to the approved policy is proposed. Importantly, the SRD II Regulations contain a grandfathering provision whereby a traded PLC that has put a remuneration policy to its shareholders which has been approved on or before 30 March 2020, will not be required to put another remuneration policy to its shareholders for four years from the date the existing remuneration policy was approved. This will apply whether or not the existing remuneration policy complies with the content requirements prescribed by the SRD II Regulations.

Under SRD II, Member States were given discretion as to whether the vote to be put to shareholders would be binding or advisory. Ireland, taking a different approach to the UK, has adopted a minimalist approach in requiring an advisory vote on the remuneration policy, save where the company's constitution requires the vote to be binding.

Traded PLCs may temporarily derogate from the remuneration policy in exceptional circumstances where such derogation is in accordance with the procedural conditions and other provisions on derogation contemplated by the remuneration policy. The term "exceptional circumstances" extends only to circumstances where the derogation is necessary to serve the long-term interests and sustainability of the company as a whole or to assure its viability.

Right to vote on the Remuneration Report

The remuneration report of a traded PLC must now be put to shareholder vote at general meeting each year. The SRD II Regulations do not describe the nature of the vote as being either advisory or binding. However, SRD II provides that the shareholder vote on the remuneration report is of an advisory nature. The nature of this vote allows shareholders to express their potential dissatisfaction at the implementation of the remuneration policy (as outlined in the relevant remuneration report) by voting against the remuneration report. Companies are required to explain in subsequent remuneration reports how the previous year's vote has been taken into account in formulating director remuneration for the subsequent financial year.

SRD II allowed Member States to exempt small and medium sized companies from holding a yearly vote on the remuneration report and instead to submit the remuneration report for discussion only at the general meeting. The SRD II Regulations have not availed of this exemption and, therefore, impose a uniform approach across all traded PLCs.

Website disclosures

The SRD II Regulations require a traded PLC to publish its remuneration policy, along with the date and result of the shareholder vote on the policy, on the traded PLC's website as soon as practicable after the general meeting at which it was voted on and for as long as the policy remains applicable. The remuneration report should be made available on the website for a period of ten years following the general meeting at which it was voted on, and may be made available for longer if it does not contain personal details of any director.

Next steps - Implementation and Transitional Provisions

The provisions in relation to the remuneration policy and remuneration report apply for financial years beginning on or after 10 June 2019, which for most traded PLCs with a financial year end of 31 December, means for financial years beginning 1 January 2020.

This means that under the SRD II Regulations, a traded PLC that:

- does not have a shareholder approved remuneration policy already in place, will need to prepare a directors remuneration policy which satisfies the new content requirements and put this to shareholder vote as soon as possible, presumably at its 2020 AGM or a specially convened EGM;
- has a shareholder approved remuneration policy already in place, it can continue to rely on that remuneration policy until the end of the four year period from the date on which that policy was approved; and
- wishes to make any material amendment to its existing policy, or put a new policy in place, it must prepare the amended or new policy and put this to shareholder vote in general meeting in advance of adoption.

The requirement to put the remuneration report to shareholder vote at general meeting and satisfy the new content requirements for the report under the SRD II Regulations will need to be addressed by all traded PLCs at their respective AGMs and annual reports for the first time in 2021. The remuneration report to be published in that year will address the application of the remuneration policy in the *prior* financial year being, for most traded PLCs, the financial year beginning 1 January 2020.

Further information is available from



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