



March 2020

Shareholders' Rights Regulations

Introduction

The European Union (Shareholders' Rights) Regulations 2020 (the "Regulations") came into force in Ireland on 30 March 2020. They give effect to the Shareholders' Rights Directive (EU) 2017/828 of the European Parliament and of the Council (the "2017 Directive"), amending the previous EU Shareholders' Rights Directive 2007/36/EC (the "2007 Directive"). The Regulations also insert several Chapters into Part 17 of the Companies Act 2014 (the "2014 Act"). The objective of the Regulations is to increase corporate transparency and shareholder engagement in the long term.

The Regulations shall apply to companies who have their registered office in a Member State and whose shares are traded on a regulated market in or operating in a Member State ("traded PLCs"). However, undertakings for collective investment in transferable securities (UCITS) and Alternative Investment Funds (AIFs) are explicitly exempt in the Regulations.

The key changes brought about by the Regulations fall under 4 categories:

- company information rights / shareholder rights;
- shareholders' vote on pay;
- material related party transactions; and
- transparency obligations of institutional investors and asset managers.

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Company Information Rights / Shareholder Rights

Traded PLCs now have the right to identify and obtain details of their shareholders through intermediaries. 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.

The information must be transmitted to the company without delay and the obligation extends to third-country intermediaries who hold shares in EU companies for shareholders. Furthermore, intermediaries now also have to provide to shareholders all information from the company that will allow the appropriate exercise of their rights.

These obligations come into operation from 3 September 2020.

Shareholders' Vote on Pay

Remuneration Policy

The Regulations require that traded PLCs prepare a policy regarding remuneration of their directors in accordance with the provisions set out therein. The remuneration policy must:

- explain how the policy contributes to the company's business strategy and long-term interests and sustainability;
- describe the different components of fixed and variable remuneration, including all bonuses and other benefits awarded to directors, and indicate their relative proportion;
- set clear, comprehensive and varied criteria for the award of variable remuneration awarded by the company, if any;
- specify information on any deferral periods and on the possibility for the company to reclaim the variable remuneration;
- explain how the pay and employment conditions of the employees of the company were taken into account when establishing the policy;
- indicate financial and non-financial performance criteria, including, where appropriate, criteria relating to corporate social responsibility, and explain how they contribute to the company's business strategy and long-term interests and sustainability,
- indicate the methods applied, or to be applied, to determine the extent to which the performance criteria have been fulfilled;
- indicate the duration of the contracts or arrangements with directors and the applicable notice periods, the main characteristics of supplementary pension or early retirement schemes and the terms of the termination and payments linked to termination;

- explain the decision-making process followed for its determination, review and implementation, including measures to avoid or manage conflicts of interest and, where applicable, the role of a remuneration committee or other committees concerned,
- describe and explain all significant changes, if any, as against the company's previous remuneration policy,
- describe and explain how the remuneration policy takes into account:
 - the votes and views of shareholders on the policy, and
 - any remuneration reports since the most recent vote on the remuneration policy; and
- set out the elements, if any, of the policy from which the company may derogate.

This policy must be publicly disclosed and remain on the company's website for its duration.

Many traded PLCs will already be bound by listing rules and corporate governance codes which require the production of a remuneration policy. For example the Euronext Dublin Listing Rules (the "Listing Rules") require listed companies to provide a statement on their policy on directors' remuneration and Part 6 of the Irish Corporate Governance Annex (the "Annex"), requires the remuneration policy to include details of the variable components of remuneration and a description on how the recovery of such compensation is achieved. The requirements set out in the Annex are applied on a 'comply or explain' basis.

As well as the Listing Rules, Irish companies listed on Euronext Dublin are also bound by the UK Corporate Governance Code (the "UK Code") on a 'comply or explain' basis, similar to the Annex. Part 5 of the UK Code lays out the principles which a company should adhere to when considering the remuneration of directors. Similarly to the Regulations, the UK Code places emphasis on the policy being linked to the company's long-term strategy and on the director's performance. The UK Code also states that an explanation of the rationale behind the decisions made in the remuneration report must be given, specifically in relation to performance criteria.

Accordingly, while some of the areas of the incoming remuneration policy, including the disclosure of the variable components of the director's remuneration and the criteria in the relation to their performance, are already required by the current law found in the Listing Rules and the Irish and UK Corporate Governance Codes, the Regulations will now require a much more specific and far-reaching remuneration policy to be produced.

Once a remuneration policy has been established, the shareholders will have the right to vote on it at a general meeting. Such a vote must occur at least once every 4 years. The remuneration vote shall 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 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 also be publicly disclosed on the company's website.

Remuneration Report

Traded PLCs are also required to prepare an annual report on the remuneration awarded to each of its directors in accordance with the remuneration policy. Where applicable, the report shall contain:

- the total remuneration broken down into its various components;
- the relative proportion of fixed and variable remuneration;
- an explanation of how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the company;
- information on the application of performance criteria;
- the annual change of -
 - remuneration,
 - the performance of the company, and
 - average remuneration, on a full-time equivalent basis, of employees of the company other than directors over the 5 most recent financial years since the coming into operation of the Regulations, or the 5 most recent financial years in respect of which such information is available;
- any remuneration from any undertaking belonging to the same group;
- the number of shares and share options granted or offered, as well as the main conditions for the exercise of the rights including the exercise price and date and any change thereof;
- information on the use of the possibility to reclaim variable remuneration;
- information on any deviations from the procedure for the implementation of the remuneration policy; and
- information on any derogations from the remuneration policy.

The company must also hold a vote in general meeting in relation to the report and must explain, in the first remuneration report which is prepared following the vote, how that vote was taken into account. In addition, companies are required to make the remuneration report on which the shareholders voted publicly available on its website for a period of 10 years.

Similar to the remuneration policy, the Listing Rules already require listed companies on Euronext Dublin to create a report for shareholders on the remuneration of their directors. The reporting requirements brought in by the Regulations are largely similar to those found in the Listing Rules, however the Regulations place a much greater emphasis on the performance of the company and of the directors. Companies should update their current remuneration report to reflect this, as well as adding any other changes brought about by these Regulations.

The requirements in relation to remuneration policies and remuneration reports apply in respect of a traded PLC's financial years commencing on or after 10 June 2019.

Material Related Party Transactions

Pursuant to the Regulations, all material party transactions must now be publicly announced by traded PLCs before the conclusion of such a transaction. The announcement must contain information on the nature of the related party relationship, provide the date and value of the transaction, identify the related party and give any other information that is necessary to assess the fairness of the transaction. A 'material transaction' is defined as a transaction in which any percentage ratio, calculated in accordance with one or more class tests (which are set out in Schedule 21 of the 2014 Act), is 5% or more and there is a requirement to aggregate prior transactions in assessing the relevant threshold.

A material transaction may not be entered into with a related party without first being approved by resolution in a general meeting. This shall provide protection for the interests of the company and of shareholders who are not a related party, including minority shareholders.

Transactions which are entered into in the ordinary course of business and concluded on normal market terms are not subject to these obligations. The directors of a traded PLC must, as soon as practicable, establish an internal procedure to assess whether or not transactions are entered into in the ordinary course of business and concluded on normal market terms for the purposes of availing of the exception for transactions carried out in the ordinary course of business. A related party may not take part in any such assessment.

These obligations are very similar to the requirements already placed on companies listed on Euronext Dublin. The requirements currently in place under the Listing Rules provide more onerous obligations to listed companies when they are involved in a transaction with a related party than the new Regulations. However the Regulations do require companies to ensure that the required approval is carried out in such a way that related parties are prevented from taking advantage of their positions and also that provides adequate protections for the interests of the company and of any shareholder who is a non-related party, including minority shareholders.

Traded PLCs are also required to publicly announce any transactions between subsidiaries of the traded PLC and any related party of the traded PLC no later than at the conclusion of the transaction.

Transparency Obligations of Institutional Investors and Asset Managers

The Regulations also impose a number of transparency obligations on asset managers and institutional investors in relation to their shareholder engagement policies. Where there is an investment arrangement between asset managers and institutional investors, they must also disclose the main elements of the arrangement.

Asset Managers

Asset managers who are acting on behalf of investors in relation to shares traded on a regulated market must develop a policy on shareholder engagement and publicly disclose this policy and how it was implemented. The policy shall describe how it integrates shareholder engagement in its investment strategy.

Institutional Investors

Institutional investors are under the same transparency obligations as asset managers to develop and publicly disclose an engagement policy and also to disclose how they have implemented their policy

Investment Arrangements between Asset Managers and Institutional Investors

Finally, the Regulations require asset managers who invest on behalf of institutional investors to annually disclose to the institutional investor the details of the investment arrangement in place between the parties.

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