

SRD II Comes into Effect in Ireland

Regulations transposing the second [Shareholders' Rights Directive EU/2017/828](#) ("SRD II")¹ into Irish law have now been published and will come into effect on 30 March 2020.

The [European Union \(Shareholders' Rights\) Regulations 2020](#)², (the "SR Regulations") introduce into Irish law a range of new rules on investor engagement and investment strategy transparency for institutional investors and asset managers that invest on their behalf.

SRD II Objectives

The new measures aim to promote greater shareholder involvement in the corporate governance of public companies.

The stated objective is to help improve public companies' financial performance and non-financial performance, including the consideration of Environmental, Social and Governance ("ESG") factors.

This is to be achieved by requiring both institutional investors and asset managers that invest on their behalf to provide greater transparency on how they engage with companies they or their clients invest in.

Scope

The SR Regulations apply to: (a) institutional investors (EU life insurers and EU pension funds); and (b) asset managers.

The definition of asset manager captures the following types of entities where they invest on behalf of institutional investors³: (a) MiFID firms providing portfolio management services; (b) AIFMs; (c) UCITS management companies; and (d) self-managed UCITS.

On the investment side, the requirements apply in the context of investments made in companies which have a registered office in an EU/EEA member state and whose shares are admitted to trading on a regulated market in an EU/EEA member state.

Key Requirements for Asset Managers

Shareholder Engagement Policy

Asset managers are required to put in place a policy describing, among other things, how it integrates shareholder engagement into its investment strategy and how it monitors the companies it invests in on matters such as strategy, financial and non-financial performance, risk, exercise of voting and other rights attached to shares and conflicts.

This requirement is subject to a comply or explain condition, giving firms the option to publicly disclose a clear and reasoned explanation for their failure to comply.

However, it is generally expected that affected firms will comply and put this new policy in place.

Annual Reporting

¹ The Second Shareholders' Rights Directive EU/2017/828 amends the existing Shareholders' Rights Directive 2007/36/EC ("SRD").

² S.I. 81/2020.

³ There are requirements that apply to asset managers that invest on behalf of institutional investors through a collective investment scheme, so the regime's scope is not confined to segregated mandates.

Annually the asset manager must publicly disclose how the shareholder engagement policy has been implemented and give a general description of voting behaviour and how votes were cast (excluding insignificant votes due to size of holding or subject matter).

Additionally, asset managers must provide annual reporting to institutional investors disclosing how the investment has performed and addressing a range of specific reporting metrics. This reporting can be publicly available (so could be included in an investment fund's annual report) or can be disclosed to the institutional investors directly.

Timing and Next Steps

SRD II was due to be transposed into national law in all EU member states by 10 June 2019.

The SR Regulations are effective from 30 March 2020 and contain no transitional arrangements.

Asset managers will need to assess whether they are in scope for the new requirements. If so, they will need to determine whether they will either (a) comply with the requirements, proceed to put a shareholder engagement policy in place and start to consider the new annual reporting obligations; or (b) decide to opt-out and make a public non-compliance statement.

How the Maples Group can help

Maples Group can assist clients in assessing the scope of the SR Regulations and the impact on their business. Where relevant we can assist with the preparation of shareholder engagement policies and, in due course, with the relevant annual disclosures.

Further Information

If you would like further information, please liaise with your usual Maples Group contact or:

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The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2019).

March 2020

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Published by Maples and Calder LLP.