

## IMPLEMENTATION OF THE SRD II IN ROMANIA

The Romanian law no. 158/2020 which implements Directive (EU) 2017/828 amending Directive 2007/36/EC (the "Shareholder Rights Directive II" or "SRD II") as regards the encouragement of long-term shareholder engagement (the "SRD II Law") was published in the Official Gazette of Romania no. 673 on 29 July 2020.

The principal objectives of the newly adopted law are to establish requirements in relation to enabling listed companies identification of their shareholders and the exercise of certain shareholder rights attached to voting shares in general meetings of such issuers.

The SRD II Law also establishes specific requirements to encourage shareholder engagement, in particular for the long-term, as well as certain requirements in relation to remuneration policies to be established as regards the directors.

### PRINCIPAL PROVISIONS

The newly adopted law amends, among others, the main legal framework in the field, i.e. Law no. 24/2017 on issuers of financial instruments and market operations, implementing all the provisions of the SRD II. Please note that certain provisions of the law will become applicable starting 3 September 2020, in accordance with the deadlines imposed by the SRD II.

Among the principal provisions of the law implementing the SRD II in Romania, we would like to mention the following:

#### The right of the issuers to identify their shareholders

- The intermediaries are bound to communicate without delay following the request of the issuer or its representative the information regarding the shareholder identity.

#### Key Points

- Detailed requirements referring to the identification of the shareholders and transmission of information from/to intermediaries.
- New requirements in relation to institutional investors/asset managers and proxy advisors.
- New requirements regarding the remuneration policy/remuneration report which are presented in the general meetings of the companies, as well as reporting of transactions with related parties.

- The intermediaries have certain information obligations, such as to:
  - transmit, without delay, from the issuer to the shareholder or to a third party nominated by the shareholder, or from the shareholders to the issuer, as the case may be, certain information in relation to the exercise of rights flowing from the shares;
  - facilitate the exercise of rights by the shareholder, including the right to participate and vote in the general meetings.
- When shareholders cast their votes electronically, the issuer has the obligation to take all measures necessary in order to transmit an electronic confirmation of receipt of the votes to the person that casts the vote.
- The shareholders or their representatives can obtain on request confirmation that their votes in the general meeting have been validly recorded and counted by the issuer, unless the information is already available to them. Such a request may be transmitted no later than one month from the date of the vote.

#### **Obligations of institutional investors, asset managers and proxy advisors**

- Institutional investors and asset managers are bound to develop and publicly disclose an engagement policy which describes how they integrate shareholder engagement in their investment strategy or, in the case they decide not to disclose such a policy, to publish a justification in this regard.
- Institutional investors and asset managers have certain public disclosure obligations e.g. to publicly disclose annually certain information such as: information regarding the implementation of the engagement policy (including a general description of voting behaviour), an explanation of the most significant votes and the use of the services of proxy advisors, information on the manner they have cast votes in the general meetings of issuers in which they hold shares etc.
- Institutional investors have the obligation to publicly disclose in the annual report how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets.
- When an asset manager invests on behalf of an institutional investor, the institutional investor is bound to publicly disclose certain information regarding its arrangement with the asset manager. Asset managers have the obligation, in this case, to disclose to the institutional investor, on an annual basis, how their investment strategy and implementation thereof complies with that arrangement and contributes to the medium to long-term performance of the assets of the institutional investor or of the fund.
- Proxy advisors have the obligation to publicly disclose information regarding the code of conduct they apply and report on the application of the code of conduct. In cases in which the proxy advisors do not apply any code of conduct, they shall provide a clear and reasoned explanation of such a decision.

#### **Remuneration policy**

- According to the newly adopted law, issuers are obligated to establish a remuneration policy as regards directors, which shall be submitted for

approval by the general meeting of shareholders; the remuneration policy is also submitted to a vote by the general meeting at every material change and in any case at least once every four years.

- The remuneration of the directors shall be made in accordance with the remuneration policy which was approved at the general meeting of the shareholders; if the remuneration policy has not been yet approved, the issuer may continue to pay the remuneration of its directors in accordance with the existing practices.
- In exceptional circumstances, issuers may temporarily derogate from the remuneration policy, given that the remuneration policy contains provisions regarding the procedure under which the derogation can be applied and specifies the elements of the policy from which a derogation is possible.
- The remuneration policy shall include:
  - descriptions of the different components of the fixed remuneration and variable remuneration, if the case;
  - if the issuer awards variable remuneration, the remuneration policy shall set clear, comprehensive and varied criteria for the award of the variable remuneration;
  - if share-based remuneration is awarded, the remuneration policy shall specify the vesting periods and, if the case, retention of shares after vesting;
  - the duration of the contracts or arrangements with the directors;
  - the applicable notice periods;
  - the main characteristics of supplementary pension or early retirement schemes;
  - the terms of the termination and payments linked to termination.
- Following its approval by the general meeting of shareholders, the remuneration policy and the information regarding the results of the vote are made public without delay on the website of the issuer, free of charge, at least as long as it is applicable.
- Additionally, the issuer has the obligation to draw up a remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due during the most recent financial year to the relevant directors, in accordance with the remuneration policy.
- The general meeting has a right to hold an advisory vote on the remuneration report and the issuer has the obligation to explain how the vote of the general meeting has been taken into account.
- The remuneration report shall be made publicly available on the website of the issuer, free of charge, for a period of at least 10 years.

#### **Related parties material transactions**

- The issuers are bound to publicly disclose through a report all material transactions with related parties. Material transactions are defined as any transfer of resources, services or obligations, regardless if such a transfer implies the payment of a price, which has an individual or cumulative value of more than 5% of the net assets of the issuer.

- Material transactions with related parties are approved by the board of directors or the supervisory board of the issuer, in accordance with procedures which prevent the related party from taking advantage of its position and provide adequate protection for the interests of the issuer and of the shareholders who are not a related party, including minority shareholders. The related party may not participate in the approval or in the voting of the material transaction, respectively.

## **NEXT STEPS**

The law shall come into force 30 days after its publication in the Official Gazette, with the exception of, among others, the provisions referring to the right of the issuers to identify their shareholders (mentioned above) which shall come into force on 3 September 2020.

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