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ADVOCATES AND LEGAL CONSULTANTS

The Shareholders Rights Directive II - Directive (EU) 2017/828 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (SRD II)

In 2007 the European Parliament and the European Council adopted Directive 2007/36/EC, the so-called “Shareholder Rights Directive” (SRD I) to ensure better protection of the shareholders’ rights in listed companies.

The financial crisis revealed that on many occasions, the shareholders supported the manager’s excessive short-term risk-taking. The monitoring of investee companies and engagement by institutional investors and asset managers was often inadequate and focused on short-term returns, often leading to suboptimal corporate governance and performance. Further, the complex chains of intermediaries rendered the exercise of shareholder rights more difficult, and this was considered an obstacle to shareholder engagement.

As a response to the abovementioned issues exposed by the financial crisis, the European Commission introduced SRD II, to improve the area of corporate governance, to encourage long-term shareholder engagement and to enhance transparency between companies and investors.

The SRD II is an amending directive and its core aims are to:

- Ensure investors are motivated to participate in the long-term running of companies in which they invest;
- Improve the ease with which a company can identify its own shareholders as a means of facilitating shareholder engagement;
- Encourage transparency between institutional investors and asset managers with regards to the investment strategy of the company;
- Influence the directors’ remuneration by granting shareholders the right to hold a binding or advisory vote on remuneration policy; and
- Formalize market practice through changes around the identification of shareholders, the transmission of information and facilitation of exercise of shareholder rights.

SRD II, apart from establishing requirements in relation to certain shareholders rights, also applies to:

- EU listed companies (listed in an EU member state or whose shares are traded on a regulated market in an EU member state);
- Intermediaries in the custody chain (e.g. credit institutions, central securities depository);
- Institutional investors;
- Asset Managers; and
- Proxy advisors.

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The main changes brought by SRD II are:

- Amending Article 3 of SRD I by permitting member states to set a minimum threshold of a 0.5 percent holding for identification of an individual shareholder.
- Requiring intermediaries to transmit all relevant information from the company to the shareholders to enable shareholders to exercise rights flowing from their shares.
- Intermediaries are required to publicly disclose what they charge for services provided, and costs must be non-discriminatory and proportionate.
- For institutional investors and asset managers, there are additional requirements to publish an engagement policy and disclose annually how the main elements of their investment strategy contribute to the long-term performance of their assets.
- Proxy advisors must adhere to a code of conduct and disclose information to show how their voting recommendations are accurate and reliable.

As a member state of the European Union, Cyprus is moving forward to transpose the directive into local law by amending the Companies Law Cap 113.