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Computershare Investor Services (Ireland) Limited
Heron House
Corrig Road
Sandyford Industrial Estate
Dublin 18
Telephone 353 1 4475566
Facsimile 353 1 4475571
DX 211019 Beacon Court
www.computershare.com

Thérèse Walsh
Department of Business, Enterprise and Innovation

By email to: Therese.Walsh@dbei.gov.ie

Ref: Public Consultation on the transposition of Shareholder Rights Directive

Dear Thérèse,

Response to DBEI Consultation on the Transposition of Directive (EU) 2017/828 of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement

We are pleased to enclose a response on behalf of Computershare Investor Services (Ireland) Limited (Computershare) to your consultation on the transposition of Directive (EU) 2017/828, which amends the provisions of the Shareholder Rights Directive (2007/36/EC).

Our response primarily focuses on the questions related to Articles 3a) to 3d) due to our role as registrar servicing shareholders (in an agency capacity) for Irish issuers. In this context, we observe that the provisions of Directive 2017/828 continue to be subject to member states' definition of 'shareholder', as provided in Directive 2007/36/EC. In Irish law, the 'shareholder' is deemed to be the party named on the register of members and consequently there is already full identification and transparency of shareholders. Furthermore, the Irish Companies Act already provides for direct shareholder engagement in relation to provision of information and exercise of rights. In our view, Irish law is therefore already substantially in compliance with (and often exceeds) the requirements of Articles 3a – 3d, with the exception of limited provisions in relation to vote confirmation. We do not therefore consider that additional action is required to transpose the majority of articles 3a-c.

Please contact me on +353 1216 3112 or at joe.molony@computershare.ie if you require any further information in relation to our response.

Yours sincerely

Joe Molony
Client Relationship Director

Response to the consultation questions
Detailed below are our responses to the specific questions raised in your consultation document.

- **Question 1: Should Ireland avail of this option? If so, should the percentage holding be set at 5% or lower? If lower, what percentage do you suggest? Please give reasons for your answers.**

  Under Irish law, shareholders are deemed to be those persons recorded directly on the company's register of members. Consequently all shareholders are already identified to the company, on an ongoing basis through the process of updating the share register for transactions. No transposition is therefore required in relation to this article.

  It is worth additionally noting the powers available to Irish companies under s1062 of the Companies Act, which exceed the provisions of article 3a of the Directive, and facilitate the identification of underlying interests in the company without any pre-set threshold being applied under the law. This allows companies to identify their beneficial owners, i.e. those investors that hold shares not in their own names but through an intermediary, where the intermediary is thus the 'shareholder' under Irish law. Companies do have the capacity to set their own thresholds when performing an identification exercise, and in the normal course of events typically only request identification of larger positions.

  However, the application of any pre-established threshold would be suboptimal for companies who may be required to identify small shareholders for specific purposes and we believe strongly that this should continue unchanged.

- **Question 2: Article 3a (3) subparagraphs two and three provided for Member State options. Do you consider either or both should be implemented? Please explain your reasons.**

  Related to our previous comment, there is no new requirement for Irish companies to collect the information regarding shareholder identity, as this is already required to be directly recorded on the register of members. Consequently we do not consider that this article is applicable to Ireland and no transposition action is required.

  We note in reference to companies' powers under s.1062 the company already has discretion to appoint an agent to facilitate the identification of persons holding interests on their behalf and a number of entities provide services to support companies in this manner. While we note that these provisions under Irish law are not directly impacted by the Directive as they exceed the requirements under Article 3a, it is important to note that this function is best left to open competition and there is no benefit to be gained by appointing a dedicated service provider for the whole of the Irish market. Further, existing provisions of s1062 also already provide for disclosure of the next intermediary in the chain and hence we also do not consider that any additional action is required in this respect.

- **Question 3: Do you consider this option should be implemented? Please explain the reasons for your answer. If your answer is in the affirmative, please specify "the other purposes" you consider the personal data of shareholders should be used for.**

  The text specifically relates to data collected under the relevant article, and consequently in our view it does not apply to shareholder data recorded on the register of members.

  Additionally, even in the event that the Article's provisions were considered to apply shareholder information, it would conflict with the Companies Act requirement under s269 for data in the register of interests to be held for 6 years after their interest has ceased.

  The reasons for the existing retention period include: -

- Investigations of alleged transaction fraud i.e. forged transfer and the duty to perform rectifications on the register
- Maintenance of records of unclaimed dividend entitlements
- The need to respond to enquiries from past shareholders
- Enquiries from current shareholders regarding the counterparty to historic transactions
- Reference database in respect of supporting documents that are required to be kept
- Share transactions are evidence of a contract between the shareholder and the company and need to be retained in case of any contractual disputes that may arise
- Share transactions form part of the company's accounting records and also have tax consequences that may need to be evidenced and are subject to longer retention periods

- **Question 4: Should (a) or (b) or both be available to intermediaries. Please explain your reasoning.**

  Under existing Irish law shareholders are deemed to be those persons directly registered on the register of members, and each shareholder is entitled to directly exercise their shareholder rights, including voting, without any intermediary involvement. We therefore consider that no choice is required in relation to facilitating the exercise of rights by the shareholder in order to transpose the provisions above into Irish law.

  There are also additional mechanisms under Irish law to facilitate enfranchisement of beneficial holders with regard to voting in general meetings. Under sections 183 & 185 of the Companies Act beneficial owners can be appointed as a proxy or corporate representative of the shareholder (i.e. the intermediary that is registered as owner of the shares but who acts on behalf of the investor), to exercise their voting rights directly, or they can (subject to their terms of contract) exercise rights through the chain of intermediaries. Consequently in our view there is no requirement for existing provisions to be amended, as in this regard again Irish law exceeds the requirements of the Directive.

- **Question 5: Should Ireland provide for a deadline that is shorter than three months? If so, please explain the reasons for the answer.**

  The requirements under Article 3c, with respect to confirmation of votes lodged are not currently addressed by Irish companies law. Drawing on our experience as tabulator of votes at general meetings for companies, and managing the retention of voting data thereafter, we propose a deadline of no greater than one month for vote confirmation requests. This will ensure that requests can be handled efficiently without imposing an undue burden in terms of administration and data archival arrangements.

- **Question 6: Should Ireland avail of the option to prohibit the charging of fees?**

  Although it is mandatory for Member States to ensure that costs are non- discriminatory and proportionate, your views on how best this might be achieved would be welcome. Please also provide examples of the cost differences in the delivery of services that may arise between domestic and cross-border exercises of rights?

  We consider that these provisions are not directly relevant in the context of Irish law, as 'shareholder' as defined for the purposes of the Directive is the person directly registered as owner of securities, and all rights flow directly to that shareholder. There is therefore no intermediation between company and shareholder and thus no services provided by intermediaries in relation to the matters considered by Articles 3a-c.

We also note that intermediary costs for servicing underlying investors are already included in the fees paid by such investors who choose to hold their securities in this manner. Further, with respect to the ability of Irish companies to seek disclosure of their beneficial owners, which exceeds the requirements of the Directive, it should be noted that companies are not charged for disclosures of interest made under s1062, or for arrangements related to the exercise of rights on behalf of underlying investors. We believe that such arrangements should continue to prevail and in our view there is no case for new opportunistic charging arrangements to be applied in relation to existing services. It may be appropriate to make a distinction between existing rights of transparency under s1062, and the theoretical power under Article 3a which need not be applied in Ireland, to avoid any potential for companies being charged in future for intermediaries responding to transparency requests which historically have been free and a right the issuer possesses under law.

As it relates to the obligation to disclose applicable charges, the explicit reference to shareholders means that in the majority of instances, this article may be deemed to be non-applicable in the context of Ireland, given that intermediaries will not be providing services to shareholders, but will be servicing underlying investors.

- **Question 7: What 'other online means' apart, from the institutional investor's or asset manager's website, might be appropriate? Please provide specific examples.**

  No comments

- **Question 8: What 'other online means' might be appropriate? Please provide specific examples.**

  No comments

- **Question 9: Do you consider there is a benefit to linking the information to be disclosed with the referenced annual report publications and periodic communications? If so, please explain the reason for your answer?**

  No comments

- **Question 10: Do you consider this option should be implemented, and if so, please explain the reasons for your answer.**

  No comments

- **Question 11: Do you consider the vote should be binding or advisory? Please explain the reasons for your answer and give examples to support the position.**

  No comments

- **Question 12: Do you consider this option should be implemented, and if so, please explain the reasons for your answer. Please give examples of what you consider 'exceptional circumstances'?**

  No comments

Question 13: Do you consider this option should be implemented? Please explain the reasons for your answer. If your answer is in the affirmative, please specify "the other purposes" you consider the personal data of directors should be used for.

No comments

- **Question 14: Do you consider this option for SMEs should be implemented, and if so, please explain the reasons for your answer.**

No comments

- **Question 15: What is your understanding of 'material transaction'?**

What quantitative ratios may be appropriate to set?
Should different ratios be applied for the purposes of paragraph 4 below?
Should definitions be differentiated by company size?
Please give reasons for your answer(s).

No comments

- **Question 16: Do you consider this option should be implemented? Please explain the reasons for your answer.**

No comments

- **Question 17: Do you consider this option should be implemented? Please explain the reasons for your answer.**

We do not have any specific comments on the Directive provisions regarding related party transactions but we would like to highlight a concern with the existing Irish listing rules on the topic which go beyond the Directive limitation of shareholder. We are keen to participate in a discussion with Government and Exchanges to determine how best to reconcile the issue described below.

The listing rules for related party transactions place obligations on companies under LR 8.1.7(4) to ensure that the related party: -

a) does not vote on the relevant resolution; and
b) takes all reasonable steps to ensure that the related party's associates do not vote on the relevant resolution.

Our concern relates to the identification of the related party positions. A related party may not be a shareholder and may instead hold an underlying position through a custody or nominee arrangement. If the custodian of the related party utilises an omnibus arrangement (i.e. where assets of several underlying investors are commingled under a single shareholding) it may be difficult to differentiate the related party votes.

We therefore recommend that steps are taken to ensure that the company can readily differentiate related party positions from those of non-related parties e.g. via a segregated position on the register of members or alternative means such as a disclosure to the company on which they are entitled to

rely.

- **Question 18: Do you consider this option should be implemented? Please explain the reasons for your answer.**

  We do not have an opinion regarding the application of similar rules to other transactions, however if the listing rules are subject to change, our comments above should be taken into consideration.

- **Question 19: Should any or all the above transactions be excluded from the transparency requirements? Please give reasons for your answer. Please identify areas in national law that would result in the duplication of reporting requirements. Please provide specific examples.**

  We do not have an opinion regarding the exclusion of specific transactions, however if the listing rules are subject to change, our comments above should be taken into consideration.

- **Question 20: Do you consider there is added value in the publication of a report? Please explain the reasons for your answer.**

  No comments

- **General Observations**

  We understand that the Directive continues to be subject to the definitions of shareholder under national law and this has a considerable impact when assessing the requirements laid out under Articles 3a) to 3d) in particular.

  In the instance of Irish Companies law the shareholder is deemed to be the person entered on the register of members. Irish companies are required to maintain the register of members and consequently already know who their shareholders are. Equally, Irish companies, already have obligations relating to the transmission of information and facilitation of the exercise of rights in relation to such shareholders. Some investors however choose to utilise the services of an intermediary to hold their securities. In this circumstance, the intermediary is the party entered on the register of members, and the information sharing and asset servicing arrangements are subject to contractual arrangements between the investor and intermediary.

  The transposition of Articles 3a) to 3d) therefore requires minimal changes based on the Irish definition of shareholder.