

THE IRISH DEPARTMENT OF BUSINESS, ENTERPRISE & INNOVATION HAS ISSUED A CONSULTATION ON PART OF THE SHAREHOLDER RIGHTS DIRECTIVE



INDUSTRY UPDATE

The Irish Department of Business, Enterprise & Innovation (DBEI) has issued a consultation on a part of the amended Shareholder Rights Directive, and is asking for comments and extra questions by 17:00 on Friday 9 February 2018. [Read the full consultation here.](#)

■ WHAT IS THE SHAREHOLDER RIGHTS DIRECTIVE?

The Shareholder Rights Directive was passed in 2007 by the European Union with a view to enhancing shareholders' rights in listed companies. During the financial crisis, it was perceived that many shareholders supported the short-term risk taking of companies, so the EU Commission looked to revise the Directive to help improvements in the long-term shareholder engagement.

In June 2017, a revised Directive ([EU 2017/828](#)) was published in the EU's Official Journal. Whilst some of the Directive is subject to technical standards being defined (Implementing Acts in relation to Articles 3a, 3b and 3c), the rest must be transposed into member state law by 10 June 2019.

The Directive's scope includes issuers listed on a regulated market, their shareholders, intermediaries, institutional investors, certain asset managers and proxy advisors.

■ WHAT ARE THE KEY IMPACTS FOR ISSUERS AND SHAREHOLDERS?

The Directive contains a number of new measures:

Facilitating interaction between companies and shareholders

- › Right for companies to identify their shareholders (Article 3a)
- › Transmission of information between companies and shareholders (Article 3b)
- › Facilitating exercise of shareholders rights (Article 3c)
- › Proportionality and transparency of costs and non-discrimination (Article 3d)

Transparency of institutional investors, asset managers and proxy advisors

- › Disclosure of the engagement policy (Article 3g)
- › Disclosure of the investment strategy of institutional investors and arrangement with asset managers (Article 3h)
- › Transparency of asset managers (Article 3i)
- › Transparency of proxy advisors (Article 3j)

Remuneration and related party transactions

- › Right to vote on the remuneration policy (Article 9a)
- › Information to be provided in and right to vote on the remuneration report (Article 9b)
- › Transparency and approval of related party transactions (Article 9c)

This consultation is only considering the areas where Member States can or must make a choice (Articles 3 and 9).

It is important to note that the provisions of the Directive continue to be subject to Member States' definition of a 'shareholder'. For Irish issuers, this is the party named on the register of members so there is already full transparency of shareholders. Therefore, 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 already substantially in compliance with the requirements of Articles 3a - 3d and transposition could be deemed unnecessary. Indeed, Irish issuers already enjoy greater rights of transparency than the Directive provides for, with the ability to drill below the level of registered shareholders and require disclosure of beneficial owners under s.1062 of the Companies Act. If this fact is not reflected in the manner of the Directive's implementation generally, there could be implications for the rights and obligations of issuers, intermediaries and beneficial owners, and the interaction between those parties.

Yet, the consultation nonetheless seeks views on all optional elements without appearing to take into account the existing Irish law context. Implementation of any additional obligations has the potential to impact the status quo in relation to the obligations of issuers and intermediaries, which could in turn lead to discussions about how associated costs should be assigned.

WHAT'S NEXT?

We are developing a response to DBEI with our main focus being Articles 3a - 3d.

If after reviewing the consultation you have feedback you would like us to take into account, please contact your Client Manager or Joe Molony on +353 87 9895311 or joe.molony@computershare.ie.

