



Navigating compliance

The Shareholder Rights Directive II:
impact on non-EU intermediaries

Background

The second Shareholder Rights Directive 2017/828 ("**SRD II**"), amending the Shareholder Rights Directive 2007/36/EC, was ratified by the European Parliament on 17 May 2017. SRD II contains various provisions designed to help companies which have both their registered office in the EU and their shares listed on an exchange in the EU ("**Issuers**") identify and engage with their shareholders. The key provisions which affect intermediaries relate to enabling Issuers to identify their shareholders and facilitating the ability of shareholders to vote and participate in general meetings. These provisions will affect any 'intermediaries' sitting in the shareholding chain, even if they are located outside of the EU.

SRD II is supplemented by implementing regulation 2018/1212 (the "**Regulation**"), which sets out certain minimum requirements for compliance with SRD II. The Regulation is directly applicable to entities including intermediaries and Issuers. EU member states will also be required to implement SRD II through amendments to their national laws.

Impact on third country intermediaries

'Intermediaries' captures investment firms, banks, and central securities depositaries, or any other persons providing services of safekeeping or administration of shares or maintenance of securities accounts. As noted above, SRD II expressly extends to Intermediaries who are based in countries other than an EU member state, including in Asia Pacific. Therefore any asset manager, bank, depositary or other firm providing such services in relation to shares issued by an Issuer is required to comply with SRD II irrespective of their geographic location.

Scope and implications

The implications for Intermediaries are potentially significant. A summary of some of the key ways Intermediaries will be impacted is as follows:

1. Shareholder identification

Issuers are entitled to require Intermediaries to confirm the identity of the Issuer's shareholders. Intermediaries must transmit the requested information no later than the business day immediately following the date of receipt of the request.

Where an Intermediary is part of a chain of Intermediaries, the Issuer's request must be passed down the chain on the same business day it is received, except where the request is received after 4:00pm on a business day, in which case it must be passed on by 10:00am the next business day.

The first Intermediary receiving the request must verify that the request originates from the Issuer or their authorised agent and thereafter forward the request such that it may be cascaded through the chain.

2. Distribution of meeting announcements and facilitating shareholder participation

Intermediaries must make available meeting announcements or any other information which an Issuer is required to provide to shareholders to enable a shareholder to exercise its rights. As for shareholder identification requests, where an Intermediary is part of a chain of Intermediaries, the information must be passed down the chain on the same business day it is received, except where the information is received after 4:00pm on a business day, in which case it must be passed on by 10:00am the next business day. For certain types of information sharing, the Regulation specifies minimum requirements for content and method of transmission, and requires Intermediaries to implement appropriate technical and organisational measures to ensure the security, integrity and authentication of information.

In addition, Intermediaries will be required to facilitate the ability of shareholders to participate in meetings by passing on a shareholder's participation instructions (for example a vote or request to attend the meeting), without delay. Such participation instructions must include the identity of the shareholder.

3. Vote confirmation

Intermediaries must pass on any 'voting receipt' received from the Issuer through the chain of Intermediaries. Where requested by the shareholder, Intermediaries must also make available, upon receipt, any post-meeting vote confirmation issued by the Issuer.

Shareholder identification thresholds

SRD II allows individual member states to apply a de minimis threshold for shareholdings which can be the subject of shareholder identification requests. The maximum threshold cannot exceed 0.5% of an Issuer's shares. There is no requirement for member states to implement any threshold. At the time of this publication, many member states have not applied, or indicated that they will not apply, any de minimis threshold. Examples of EU member states which have not implemented a threshold or have indicated that they do not intend to implement a threshold include Germany, Norway, Denmark, Croatia, Finland, France, Lithuania, Poland, Portugal, Slovenia and Sweden.

Italy and Austria are examples of EU member states which have applied a de minimis threshold of 0.5%.

Fines and penalties

SRD II requires EU member states to impose effective, proportionate and dissuasive penalties for non-compliance with the requirements of SRD II. SRD II also requires EU member states to take all measures necessary to ensure that they are implemented.

Examples of fines or penalties imposed by EU member states in their implementing legislation include:

Country	Penalty
Italy	Between €30,000 and €5,000,000 for breach of the shareholder identification procedure and related provisions relating to the transmission of information. Between €30,000 and €150,000 for breach of other provisions.
Austria	€25,000 per breach. The fines will be levied by the Austrian Financial Market Authority.
France	If transmitted information is incomplete, incorrect or not provided within the relevant deadline: <ul style="list-style-type: none"> - a court order may be obtained to require the relevant entities to fulfil the disclosure obligation, including imposing a court-determined fine in the event of a delay in fulfilment; and/or - the relevant securities will cease to carry any voting rights and dividend payments will be withheld until the requirement is complied with. <p>If the registered holder (which may be an Intermediary) does not comply with any obligation, a court may (on the application of the relevant Issuer or a certain percentage of the Issuer's other shareholders) cancel the shareholder's voting rights and rights to receive dividends for a period of up to five years.</p>

It is expected that all EU member states will have published details of the penalties and fines which they will impose for breach of SRD II by 3 September 2020.

Implementation review

SRD II provides a framework for review of the implementation of the above aspects of the Directive.

Competent authorities are required to inform the European Commission of substantial practical difficulties in the enforcement of the provisions summarised above, and instances of non-compliance with those provisions by Intermediaries, including Intermediaries which are located outside the EU. The European Commission shall, in close cooperation with ESMA and the European Banking Authority, submit a report to the European Parliament (which must be provided by 10 June 2023) on the:

- a) effectiveness and difficulties in practical application and enforcement of the provisions summarised in this paper; and
- b) the appropriateness of the scope of application of such provisions in relation to third country Intermediaries.

Brexit

The United Kingdom left the European Union on 31 January 2020 but SRD II will continue to apply in relation to UK Issuers until the end of the transition period on 31 December 2020. After that date, the current expectation and common understanding is that the UK will apply similar rules in relation to

Issuers who have their registered office in the UK and whose shares are listed on an exchange in the UK. Therefore, at present we expect the summary set out above to apply to global Intermediaries handling shares issued by UK Issuers which are listed on a UK exchange. This would mean that, even following the end of any transition period, UK Issuers would be able to benefit from similar requirements and that similar fines and sanctions would apply for any breach of those UK rules.

Intermediaries located in the UK would also remain subject to SRD II insofar as they deal with shares of Issuers which have their registered office in the EU and which are listed on an EU exchange.

Key contacts

If you would like to talk to us about how we can support you with the implementation of SRD II and the impact on your firm, please contact:



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