

14 June 2019

## Draft Law to implement Shareholder Rights Directive II in Romania

On 5 June 2019, a draft law aiming to transposing in Romania, among others, the EU Directive 2017/828/EU as regards the encouragement of long-term shareholder engagement (the "Shareholder Rights Directive II") was published for consultations by the Ministry of Finance (the "Draft SRD Law").

The Shareholder Rights Directive II envisages to strengthen the position of shareholders, to ensure that decisions are made for the long-term stability of a company and establishes requirements in relation to the exercise of certain rights attached to voting shares in the general meetings of shareholders. The focus of our briefing is to highlight the main provisions transposed through the Draft SRD Law regarding remuneration of directors and related party transactions.

We note that the Draft SRD Law applies to companies which have issued financial instruments that are listed for trading on a regulated market ("Issuers").

### New Requirements for Remuneration of Directors

According to the Draft SRD Law, "director" refer to: (i) any member of the board of directors as well as any manager, in case of Issuers having one-tier management system; (ii) any member of the supervisory board as well as of the executive board, in case of Issuers having a two-tier management system; and (iii) the general manager and deputy-general manager, if such have been appointed.

Pursuant to the Draft SRD Law, Issuers must set up a **remuneration policy for its directors** which is subject to the shareholders vote in the ordinary general meeting of the shareholders - Romania has opted for a mandatory policy (with limited exceptions allowed), as follows:

- (a) if the shareholders approve a remuneration policy, then the Issuer must fully comply with it for payments / benefits to directors;
- (b) if there is no remuneration policy approved yet and the shareholders do not approve the proposed policy, the Issuer may continue to remunerate the directors based on existing practices;
- (c) if an approved remuneration policy exists and the shareholders do not approve the proposed new policy, the Issuer may continue to pay remuneration to its directors in accordance with the existing approved policy.

The remuneration policy must contribute to the company's business strategy and long-term interests and sustainability and needs to explain how it does so. The policy should include the decision-making process applied for its determination, review and implementation, measures to avoid or manage conflicts of interests and, where applicable, the role of the remuneration committee or other committees concerned. The remuneration policy must set out, among others:

- the different components of fixed and variable remuneration, including all bonuses and other benefits in whatever form;
- for variable remuneration, the policy must set clear, comprehensive and varied criteria for the award of the variable remuneration;
- for share-based remuneration, the policy must specify vesting periods and where applicable retention of shares after vesting;
- the duration of the contracts or arrangements with directors and the applicable notice periods, the main characteristics of supplementary pension or early retirement schemes and the terms of the termination and payments linked to termination.

Once approved by the shareholders, the policy together with the date and the results of the vote must be made public without delay on the Issuer's website at least as long as it is applicable.



In addition, the Issuer must prepare annually 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 individual directors.

The remuneration report must contain the following information regarding each individual director's remuneration:

- (a) the total remuneration split by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the company, and information on how the performance criteria were applied;
- (b) the annual change of remuneration, of the performance of the company, and of average remuneration on a full-time equivalent basis of employees of the company other than directors over at least for the five most recent financial years, presented together in a manner which permits comparison;
- (c) any remuneration from any undertaking belonging to the same group;
- (d) the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof;
- (e) information on the use of the possibility to reclaim variable remuneration;
- (f) information on any deviation from the procedure for the implementation of the remuneration policy, including explanations of the nature of the exceptional circumstances and indication of the specific elements from which the derogation was made.

The remuneration report is subject to advisory vote of the general meeting of shareholders. Once discussed by the shareholders, the Issuer must make the remuneration report publicly available on its website for a period of 10 years.

### **New Reporting Obligations for related party transactions**

Under the Draft SRD Law, Issuers have the obligation to **publicly announce (report) material transactions with related parties** at the latest at the time of the conclusion of the transaction. The Issuers must also publicly announce material transactions concluded between the related party of the Issuer and that Issuer's subsidiary.

The Draft SRD Law defines *material transactions* as any transfer of resources, services or obligations, irrespective of whether or not it involves the payment of a price, which has an individual or cumulated value representing more than 5% of the Issuer's total income, according to the most recent financial reports.

The report should contain at least the following information: (i) the nature of the relationship with the related party; (ii) the name of the related party; (iii) the date and nature of the transaction; (iv) the description of its object; (v) the amount of the transaction; (vi) the reciprocal debts and the guarantees lodged; (vii) the time limits and the payment arrangements, as the case may be; (viii) any other essential information required to determine the effects of that transaction on the financial position of the company, respectively to assess the economic correctness of the transaction from the issuer and the non-affiliated shareholders' point of view, including the minority shareholders.

At the end of each semester, the financial auditor / audit firm review the reported transactions to assess whether or not the transactions are fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders - this assessment is submitted to the Financial Supervisory Authority.

Romania has opted to impose that material transactions with related parties are subject to prior mandatory approval of the board of directors / supervisory board - no approval or vote from shareholders required.

Out of the 5 reporting exemptions provided by the Shareholder Rights Directive II, the Draft SRD Law has opted to transpose only the following 3 types of transactions for which reporting is not applicable: (i) transactions concerning the directors' remuneration or certain elements of their remuneration; (ii) transactions entered into by credit institutions on the basis of measures, aiming at safeguarding their stability, adopted by the competent authority in



charge of the prudential supervision; (iii) transactions offered to all shareholders under the same conditions, which ensure equal treatment of all shareholders and protection of the Issuer's interests.

#### **Next Steps**

After the public consultation is finalised by the Ministry of Finance, the Draft SRD Law is expected to be registered for normal legislative approval process with the Romanian Parliament.

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