COMPANY LAW REVIEW GROUP
an grúpa athbhreithnithe dlí cuideachtaí

COMPANY LAW REVIEW GROUP

REPORT ON COMPANY LAW ISSUES ARISING UNDER DIRECTIVE (EU) 2017/828 OF 17 MAY 2017 (SRD II), CENTRAL SECURITIES DEPOSITORIES REGULATION (EU) 909/2014 (CSDR) AND THE COMPANIES ACT 2014

DECEMBER 2021

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Chairperson's Letter to the Minister for Business, Enterprise and Innovation

Mr Leo Varadkar T.D.,
Tánaiste and Minister for Enterprise, Trade and Employment
23 Kildare Street
Dublin 2 D02 TD30

Mr Robert Troy, T.D.
Minister of State for Trade Promotion, Digital and Company Regulation
23 Kildare Street
Dublin 2
D02 TD30

21 December 2021

Dear Tánaiste,

Dear Minister,

I am pleased to present to you a Report of the Company Law Review Group (**CLRG**) on certain company law issues arising for public companies further to the transposition of Directive (EU) 2017/828 of 17 May 2017 amending the Shareholders Rights Directive (**SRD II**) and the implementation Central Securities Depositories Regulation (EU) 909/2014 (**CSDR**). In addition, certain issues affecting public companies under the Companies Act are considered in this report.

The successful migration of Irish public companies to the intermediated system of share holding and dealing in March 2021 has left a number of issues to be addressed, some of which are alluded to in the CLRG's Annual Report for 2020. In that Report we noted that the CLRG's consideration of issues under CSDR and SRD II continued. This report should therefore be considered to be reflective of that continuance. This Report recommends a number of discrete amendments to the Companies Act, which will facilitate and assist the implementation of CSDR for Irish companies as well as addressing certain issues arising under SRD II. Some of these amendments necessarily address provisions in the companies Act primarily within the policy responsibility of the Minister for Finance.

I would like to extend my sincere thanks to the members of the CLRG's Public Company Committee for their engagement and input in examining these issues, including in particular the members of the Committee from outside the Review Group who gave generously of their time and expertise.

I would also like to thank the Department of Enterprise, Trade and Employment for their support, in particular, Secretary to the Group, Mr Stephen Walsh.

Yours sincerely,

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Paul Egan SC
Chairperson
Company Law Review Group

1. Introduction to the Report

1.1 The Company Law Review Group

The Company Law Review Group (CLRG) is a statutory advisory body charged with advising the Minister for Enterprise, Trade and Employment ("the Minister") on the review and development of company law in Ireland. It was accorded statutory advisory status by the Company Law Enforcement Act 2001, which was continued under Section 958 of the Companies Act 2014. The CLRG operates on a two-year work programme which is determined by the Minister, in consultation with the CLRG.

The CLRG consists of members who have expertise and an interest in the development of company law, including practitioners (the legal profession and accountants), users (business and trade unions), regulators (implementation and enforcement bodies) and representatives from government departments including the Department of Enterprise, Trade and Employment ("the Department") and Revenue. The Secretariat to the CLRG is provided by the Company Law Development Unit of the Department of Enterprise, Trade and Employment.

1.2 The Role of the CLRG

The CLRG is established to monitor, review and advise the Minister on matters pertaining to company law. In so doing, it is required to "seek to promote enterprise, facilitate commerce, simplify the operation of the Act, enhance corporate governance and encourage commercial probity" as per section 959(2) of the Companies Act 2014.

1.3 Policy Development

The CLRG submits its recommendations on matters in its work programme to the Minister. The Minister, in turn, reviews the recommendations and determines the policy direction to be adopted.

1.4 Contact information

The CLRG maintains a website www.clrg.org. In line with the requirements of the Regulation on Lobbying Act and accompanying Transparency Code, all CLRG reports, and the minutes of its meetings are routinely published on the website. It also lists the members and the current work programme.

The CLRG's Secretariat receives queries relating to the work of the Group and is happy to assist members of the public. Contact may be made either through the website or directly to:

Stephen Walsh
Secretary to the Company Law Review Group
Department of Enterprise, Trade and Employment
Earlsfort Centre
Lower Hatch Street
Dublin 2
D02 PW01

Email: stephen.walsh@enterprise.gov.ie

2. The Company Law Review Group Membership

2.1 Membership of the Company Law Review Group

The membership of the Company Law Review Group at [date] is set out in this table.

Paul Egan SC	Chairperson (Mason Hayes & Curran LLP)
Alan Carey	The Revenue Commissioners
Barry Conway	Ministerial Nominee (William Fry LLP)
Máire Cunningham	Law Society of Ireland (Beauchamps LLP)
Richard Curran	Ministerial Nominee (LK Shields LLP)
Marie Daly	Irish Business and Employers' Confederation (IBEC)
Emma Doherty	Ministerial Nominee (Matheson)
Ian Drennan	Director of Corporate Enforcement
Bernice Evoy	Banking and Payments Federation Ireland CLG
James Finn	The Courts Service
Michael Halpenny	Irish Congress of Trade Unions (ICTU)
Rosemary Hickey	Office of the Attorney General
Tanya Holly	Ministerial Nominee (DETE)
Shelley Horan	Bar Council of Ireland
Gillian Leeson	Euronext Dublin (The Irish Stock Exchange PLC)
Prof. Irene Lynch Fannon	Ministerial Nominee (Matheson and School of Law, University College Cork)
Vincent Madigan	Ministerial Nominee, formerly of the Department of Enterprise Trade and Employment
Kathryn Maybury	Small Firms Association Ltd (KomSec Limited)
Neil McDonnell	Irish Small and Medium Enterprises Association CLG (ISME)
Dr. David McFadden	Ministerial Nominee (Companies Registration Office)
Salvador Nash	The Chartered Governance Institute (KPMG)
Fiona O'Dea	Ministerial Nominee (DETE)

Ciara O'Leary	Irish Funds Industry Association CLG (Maples and Calder LLP)
Gillian O'Shaughnessy	Ministerial Nominee (ByrneWallace LLP)
Maureen O'Sullivan	Ministerial Nominee (Registrar of Companies)
Kevin Prendergast	Irish Auditing and Accounting Supervisory Authority
Maura Quinn	The Institute of Directors in Ireland
Eadaoin Rock	Central Bank of Ireland
Doug Smith	Restructuring and Insolvency Ireland (Eugene F Collins)
Tracey Sullivan	Consultative Committee of Accountancy Bodies – Ireland (CCAB-I)

2.2 Membership of the CLRG Public Company Committee

The membership of the Review Group's Public Company Committee at [date] is set out in this table.

Paul Egan SC	Chairperson
Andy Callow	Computershare LTD
Barry Conway	CLRG member
Neil Colgan	CRH PLC
Marie Daly	CLRG member
James Finn	CLRG member
David Hegarty	Office of the Director of Corporate Enforcement
Tanya Holly	CLRG member
Alan Kelly	Revenue Commissioners
Gillian Leeson	CLRG member
Vincent Madigan	CLRG member
Suzanne McMenamin	Matheson; Alternate of Emma Doherty
Dara McNulty	Central Bank of Ireland
Joe Molony	Computershare LTD

Therese Moore	Euronext Dublin; Alternate of Gillian Leeson
Aidan O'Caroll	J&E Davy
Pat O'Donoghue	Link Registrars LTD
Conor O'Mahony	Office of the Director of Corporate Enforcement
Fiachra Quinlan	Department of Enterprise Trade and Employment
Maura Quinn	CLRG member
Niels Watzeels	Euroclear Bank SA / NV

3. The Work Programme

3.1 Introduction to the Work Programme

In exercise of the powers under section 961(1) of the Companies Act 2014, the Minister, in consultation with the CLRG, determines the programme of work to be undertaken by the CLRG over the ensuing two-year period. The Minister may also add items of work to the programme as matters arise. The work for this report commenced under the work programme which began in June 2018 and ran until the end of May 2020. The work programme for June 2020 to May 2022 was adopted by the Review Group at its meeting on 24 June 2020. The statutory mandate of the CLRG to monitor, report and advise the Minister on matters concerning company law remains current at all times.

3.2 Company Law Review Group Work Programme 2020-2022

The Review Group's Work Programme during the currency of which this Report was prepared included the mandate to "[e]xamine and make recommendations on whether it will be necessary or desirable to amend company law in line with recent case law and submissions received regarding the Companies Act 2014." This Report is delivered in fulfilment of the Review Group's mandate under this heading.

3.3 Specific questions referred to the Review Group

On 19 March 2021, the Department referred three specific issues to the Review Group:

1. What recommendations can the CLRG make around defining the term 'shareholder' in Irish company law bearing in mind:
    - The requirement under CSDR that all newly issued securities of quoted companies admitted to trading in the EU hold all shares through a CSD from 1 January 2023 and all existing transferrable securities quoted companies admitted to trading in the EU must be represented in book entry from 1 January 2025;
    - An anticipated proposal from the Commission for a harmonised definition of shareholder in mid-2023;
    - In light of the context outlined above, particularly where UK and Ireland sought and secured clarity in the recital that *"the Directive does not affect the rights of beneficial owners who are not shareholders under national law"*.
2. If the CLRG concludes that it might be better to await the outcome of the European Commission's examination of the issue, what if any amendments to the Companies Act would it recommend in order to facilitate the exercise of rights by beneficial holders or by the participants in the Euroclear SA/NV intermediated shareholding structure, while minimising the impact on other areas of the Companies Act?
3. What are the CLRG's views on the draft proposed amendments inserting a new section 1110Q drafted by the migration project lawyers group and the potential wider implications of such amendments for the Companies Act, which generally operates on the basis of registered member?

3.4 Decision-making process of the Company Law Review Group

The CLRG meets in plenary session to discuss the progression of the work programme and to formally adopt its recommendations and publications.

3.5 Committees of the Company Law Review Group

The work of the CLRG is largely progressed by the work of its Committees. The Committees consider not only items determined by the work programme, but issues arising from the administration of the Companies Act 2014 and matters arising such as court judgements in relation to company law and developments at EU level. This Report is the product of work by the Public Company Committee (formerly called the Part 23 Committee) chaired by CLRG Chairperson Paul Egan SC.

In view of the interests of a wider group of stakeholders in the issues considered in this report, invitations to join the Committee were extended to:

- Euroclear Bank SA/NV, the central securities depository for the Irish equity market;
- Link Registrars Limited and Computershare Ltd, the registrars to most of the Irish registered public companies with equity securities listed in Dublin or London;
- the representative of the stockbroking firms on the Market Implementation Group, which inputted into the project to migrate the Irish equity market to the Euroclear CSD system;
- the representatives of listed issuers on the Market Implementation Group.

The Committee met on 6 occasions during 2021.

4. Introduction

4.1 Defined terms

In this Report:

"**1996 Regulations**" means the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. 68/1996);

"**2006 Regulations**" means European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255/2006);

"**2019 Act**" means the Migration of Participating Securities Act 2019;

"**2020 Regulations**" means the European Union (Shareholders' Rights) Regulations 2020 (S.I. No. 81/2020), which transpose SRD II;

"**Committee**" means the Review Group's Public Company Committee, the membership of which is set out in Section 2.2 of this Report;

"**Companies Act**" or "**2014 Act**" means the Companies Act 2014;

"**CSD**" means a central securities depository;

"**CSDR**" means the EU Central Securities Depositories Regulation 909/2014;

"**Department**" or "**DETE**" means the Department of Enterprise, Trade and Employment;

"**MiFID II**" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

"**MTF**" means a multilateral trading facility;

"**OTF**" means an organised trading facility;

"**SRD**" or "**Shareholders Rights Directive**" means the EU Shareholders' Rights Directive 2007/36/EC;

"**SRD II**" means Directive (EU) 2017/828 of 17 May 2017 which amends SRD.

References to sections of an Act are to sections of the Companies Act 2014, unless otherwise stated.

4.2 Issues considered in this report

The issues considered in this report fall under three headings:

4.2.1 SRD II

The SRD issues considered are these:

- the definition of "shareholder";
- possible amendments to company law to deal with issues arising from the transposition of SRD II; and
- a submission by the public companies' lawyers' drafting group, (solicitors advising issuers in relation to the migration of PLCs to the Euroclear Bank CSD system) to allow beneficial owners to exercise certain Companies Act rights of members.

4.2.2 CSDR

The CSDR issues considered are these:

- the implementation date for existing issuers under article 3 of CSDR;
- the methodology of amending the implementation date.

4.2.3 Companies Act

The Companies Act issues considered are these:

- the computation of time for the purposes of designating the record date for voting and the latest time for delivery of forms of proxy before a general meeting;
- the appropriate record date for adjourned meetings;
- the prescribed form of proxy for Irish PLCs admitted to USA securities markets;
- the "special majority" in a scheme of arrangement among PLC shareholders.

4.3 Context

The law specifically applying to PLCs is found in Parts 17 and 23 of the Companies Act[1] and in EU Regulations such as the Market Abuse Regulation (EU) 596/2014 and Prospectus Regulation (EU) 2017/1129. As a result, this means that the law is at the intersection of separate policy and enforcement regimes. The law applicable to governance of a PLC is within the policy remit of the Minister for Enterprise Trade and Employment and its primary enforcement agencies are the Director of Corporate Enforcement and Registrar of Companies. The law relating to the securities markets activity of PLCs, such as the issue and trading of shares and other securities, is within the policy remit of the Minister for Finance, with the Central Bank of Ireland as the primary enforcement agency. However, significant areas of relevant law – authority to issue securities, the Ministerial power to disapply the requirement for share transfers in writing – remain in parts of the Companies Act within the competence of the Minister for Enterprise Trade and Employment.

The Review Group notes that there is a DETE exercise under way in order to map out the respective responsibilities of the Ministers and enforcement agencies in these related and intersecting areas of law.

[1] In addition, the law affecting PLCs operating as collective investment schemes organized as authorized investment companies is set out in Part 24 of the Companies Act and in European Union (Undertakings for Collective Investment in Transferable Securities) Regulations (S.I. No. 352 of 2011).

5. Company law issues arising from the implementation of Directive (EU) 2017/828 of 17 May 2017 on shareholder rights (SRD II)

5.1 Introduction

5.1.1 Transposition of SRD II

SRD II came into full effect on 3 September 2020, having been transposed by the European Union (Shareholders' Rights) Regulations 2020 (S.I. No. 81/2020), which inserted four new chapters into Part 17 of the Companies Act:

- Chapter 8A: Rights of Shareholders

  This covers the identification of underlying shareholders and information flows between underlying shareholders and companies

- Chapter 8B: Transparency of institutional investors, asset managers and proxy advisors

  This introduced new transparency obligations for these sectors with the objective of encouraging shareholder engagement and the development of long-term investment strategies;

- Chapter 8C: Remuneration policy, remuneration report and transparency and approval of related party transactions

  This introduced requirements for shareholder approval of directors' remuneration and related party transactions

- Chapter 8D: Offences and Penalties.

SRD and SRD II aim to enhance the rights of shareholders by inter alia imposing certain minimum standards on the exercise of rights attaching to shares in companies. The aim is to ensure that an investor is empowered to exercise these rights by placing obligations on intermediaries to facilitate the exercise of these rights.

5.1.2 Definition of "Shareholder"

The definition of 'shareholder' under SRD and SRD II is "the natural or legal person that is recognised as shareholder under the applicable law". (The definition of 'shareholder' in SRD was not amended by SRD II.) The question has arisen as to whether "shareholder" should mean registered member or beneficial owner in national law.

The term "member" was used in Ireland's transposition of SRD in 2009[2] whereas the 2020 Regulations use the term 'shareholder'. Although the term is not defined in the 2020 Regulations or in the Companies Act, the expression "shareholder" and "member" are, in companies with a share capital, used interchangeably. Whereas there is no definition of "shareholder" in the Companies Act, there is a definition of "member" in Part 4, Chapter 5 of the Act. The meaning of 'shareholder' in the transposition of SRD II (i.e., registered member or beneficial owner) determines the extent to which SRD II rights apply for holders of shares/securities through the chain of intermediation in the market and the related compliance burden on market intermediaries.

[2] S.I. No. 316/2009 - Shareholders' Rights (Directive 2007/36/EC) Regulations 2009.

The UK-based CREST depositary system allows for direct holding of shares by beneficial owners. The Euroclear Bank (EB) depositary system in Belgium to which the Irish market migrated on 15 March 2021, does not allow for direct holding of shares.

Euroclear Bank's position is that SRD II as transposed in Irish law refers to registered member (as defined under the Companies Act). It however provides shareholder (i.e., beneficial holder) facilitation as part of its service offering to issuers, but not pursuant to, or at the level of, the obligations under SRD II i.e., Euroclear Bank SA/NV provides SRD II shareholder facilitation rights only as far as the Euroclear nominee and a lower level of facilitation to issuers / beneficial owners as part of their service offering.

5.1.3 EU context and background

An objective of SRD II is to facilitate long-term shareholder engagement. It aims to ensure that the investor is empowered to exercise rights by placing obligations on intermediaries to facilitate the exercise of these rights. As noted, this could be taken to imply engagement with the beneficial owner. However, as part of the negotiations on SRD II in 2014-15 at Council level, the UK with support from Ireland, sought and secured clarity in the recital of the Directive that "shareholder" was a term to be defined in national law. Accordingly, Recital (13) in SRD II states:

> "This Directive is without prejudice to national law regulating the holding and ownership of securities and arrangements maintaining the integrity of securities and does not affect the beneficial owners or other persons who are not shareholders under the applicable national law."

While the course of the negotiations of the text of SRD II and the text of Recital (13) do not change the legal effects of SRD II, it does provide a clear basis for a Member State approach to transposition that defines shareholder as registered member. This was the approach Ireland took in transposing SRD I and supports the definition of "shareholder" as "member".

Following the report and recommendations of the High-Level Forum on Capital Markets Union on 10 June 2020 - in which the Commission (DG FISMA) was heavily involved - a proposal from the Commission for a harmonised definition of shareholder can be anticipated mid-2023. The timing for such a proposal is clearly aligned with art. 3(f) of SRD II that Member States should inform the Commission and the Commission should report by June 2023 on "difficulties in practical application and enforcement while taking into account relevant market developments at Union and international level". This will be a centrally relevant process for Ireland to engage with and take account of as part of assessing SRD II and possible further harmonisation.

5.1.4 Law Commission's Scoping Paper on intermediated securities

This Scoping Paper, published by the Law Commission of England and Wales in November 2020,[3] suggests that while complex, the intermediated system of share holding and settlement provides many benefits, including efficiency and convenience, to investors. However, the Paper also acknowledges that the system has been the subject of criticism over issues of corporate governance and transparency. In particular, the Law Commission identifies two broad themes encompassing issues with intermediated securities:

- The effect on investors' rights and corporate governance
- Issues which affect legal certainty.

[3] *Intermediated Securities: who owns your shares? A Scoping Paper.* Law Commission, 11 November 2020.

The Law Commission's preferred approach would be to retain the current system, with further work into certain targeted changes which could alleviate some of the problems caused by intermediation while retaining its benefits. It sees this as a proportionate response to the issues identified.

This paper has aided the Committee's consideration of issues arising from the migration of the Irish equity market to the Euroclear CSD model.

5.1.5 Questions remitted to CLRG

In the light of the above, the Department referred three questions to the Review Group, which in summary are these:

1. What recommendations can the CLRG make around defining the term 'shareholder' in Irish company law?
2. If the CLRG concludes that it might be better to await the outcome of the European Commission's examination of the issue, what if any amendments to the Companies Act would it recommend in the interim?
3. What are the CLRG's views on amending the Companies Act by giving recognition to beneficial owners in particular contexts?

These questions are analysed in the following sections.

5.2 Should the term "shareholder" be defined?

5.2.1 Department's question

What recommendations can the CLRG make around defining the term 'shareholder' in Irish company law bearing in mind:

- the requirement under CSDR that all newly issued securities of quoted companies admitted to trading in the EU hold all shares through a CSD from 1 January 2023 and all existing transferrable securities quoted companies admitted to trading in the EU must be represented in book entry format from 1 January 2025;
- an anticipated proposal from the Commission for a harmonised definition of shareholder in mid-2023;
- in light of the context outlined above, particularly where UK and Ireland sought and secured clarity in the recital that "the Directive does not affect the rights of beneficial owners who are not shareholders under national law".

5.2.2 Committee analysis

The Committee noted its analysis of this issue in the Review Group's Report of 25 June 2020 (set out in Annex 2 of the 2020 Annual Report). The Committee noted in particular that the lack of uniformity in the definition of "shareholder" as recognised in the Final Report of the High-Level Forum on the Capital Markets Union published in June 2020,[4] led the Forum to recommend a change to the law:

4 https://ec.europa.eu/info/sites/default/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf

> "The Commission is invited to … put forward a proposal for a Shareholder Rights Regulation to provide a harmonised definition of a "shareholder' at EU level in order to improve the conditions for shareholder engagement."[5]

It justified this recommendation as follows:

> "'SRD2 relies on Member States' definitions of "shareholder", meaning that the entity entitled to receive and exercise the rights associated with a security will depend on the country of issuance (as defined in national laws). The lack of an EU definition of "shareholder" makes it more complex, risky and thus costly for issuers and intermediaries to identify who has to be informed and who is entitled to exercise the rights associated with the ownership of a security. As a result, shareholders continue to face significant difficulties in exercising their rights, especially in a cross-border context, making it a strong case for an EU harmonised definition of shareholder.'[6]

The Committee concluded that a change in the definition of "shareholder" in the short term under the Companies Act was not justified. The focus of the EU definition is likely to be confined to the elements of SRD II where the traditional interchangeability of the terms "member" and "shareholder" do not deliver the degree of transparency of beneficial ownership that might have been expected from SRD II. It would be more productive to await the outcome of the EU exercise and instead to focus on any discrete issues that ought to be addressed immediately.

5.2.3 Recommendation

The Review Group does not recommend the insertion in the Companies Act of a definition of "shareholder", pending the review at EU level.

5.3 What, if any, amendments to the Companies Act are merited in the interim?

5.3.1 Department's question

If the CLRG concludes that it might be better to await the outcome of the European Commission's examination of the issue, what if any amendments to the Companies Act would it recommend in order to facilitate the exercise of rights by beneficial holders or by the participants in the Euroclear SA/NV intermediated shareholding structure, while minimising the impact on other areas of the Companies Act?

5.3.2 Committee analysis

The Committee analysed the rights of shareholders under these headings:

- rights to information;
- rights pursuant to SRD and SRD II;
- rights pursuant to the Companies Act;

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5 https://ec.europa.eu/info/sites/default/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf, p 79.

6 https://ec.europa.eu/info/sites/default/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf, p 79.

- rights to make applications to court pursuant to the Companies Act.

The appendix to the above-mentioned Report of 25 June 2020 went some way to examine these and Appendix 2 to that Report identified in particular rights arising under the Companies Act. There was a general recognition that these rights continue to be available, notwithstanding the migration to the CSD system of share holding and settlement. For Companies Act rights, it does mean that the beneficial owner seeking to exercise the rights must have its shares transferred into its name and be entered as a member of the company. Whilst this is undeniably a burden on the shareholder, it can be characterised as an extra procedural step in what in many cases will involve many other procedural steps. The Committee was cognisant of the reality that any addition to the tasks to be undertaken by Euroclear Bank SA / NV would be very likely to increase costs.

5.3.3 Shareholder identification

The Committee did however focus on one area which the transposition of SRD has not improved – that of shareholder identification. It is in the interests of quoted companies, their shareholders and general legal compliance and transparency that there be full disclosure of the beneficial owners of their shares. The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019[7] transposes the Fourth Money Laundering Directive,[8] which *inter alia* requires companies to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.[9] This information must also be placed in a central register, which is operated by the Registrar of Companies.[10] The 2019 Regulations provide an exemption for listed companies subject to standards which ensure adequate transparency of ownership information.[11] That presupposes that those standards do ensure that transparency.

The combined effect of Chapter 4 of Part 17 of the Companies Act, the Transparency (Directive 2004/109/EC) Regulations 2007[12] and Part 2 of the Central Bank (Investment Market Conduct) Rules 2019[13] requires the beneficial owners of voting shares in all PLCs to make known the extent of their interest in those shares to the PLC.

Where a PLC wishes to ascertain those with an interest in its voting shares, it has three options:

- It can initiate an investigation using provisions in its constitution. Typically, these will enable the company to serve a notice on a registered shareholder, seeking information as to the person for whom the registered member holds the shares, with the right of the company to serve a notice on persons identified. Where the registered member or person or persons identified fails to respond within a period of time, typically 7 to 14 days, then the rights attached to those shares are restricted, with their voting and dividend rights suspended.

[7] S.I. No. 366/2019110/2019.

[8] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L141, 5 June 2015, pp 73–117.

[9] Directive (EU) 2015/849, art 30(1).

[10] Directive (EU) 2015/849, art 30(3).

[11] S.I. No. 110/2019, reg 4(2), transposing Directive (EU) 2015/849, art 3(6)(a)(i).

[12] S.I. No. 277/2007

[13] S.I. No. 366/2019.

- It can initiate an investigation under s 1062 of the Companies Act into the ownership of its voting shares.[14] The PLC must do so if required to do so by holders of 10 per cent or more of those shares.[15] The PLC initiates the procedure by serving a notice on any person that 'the PLC knows or has reasonable cause to believe to be, or at any time during the 3 years immediately preceding the date on which the notice is issued, to have been, interested in [the PLC's voting] shares' to confirm whether that person has or had such an interest.[16] That notice may require the person to provide further information, including the interests of other persons in the shares.[17] No time limit is specified for production of the information: it must be furnished 'within such reasonable time as may be specified in the notice'.[18]

  Where a person does not provide the information, the company can apply to court for an order freezing all rights on the shares: in such event, any transfer of the shares will be void, no voting rights will be exercisable, no distributions can be paid or made and no new shares can be issued in respect of the frozen shares, whether by bonus or right of pre-emption.[19] A person that has failed to provide the information is also liable to a fine of up to €5,000 and imprisonment for up to six months.[20]

- In the case of a PLC admitted to trading on a regulated market (a "traded PLC") it can use the procedure in SRD II, as transposed. It is here however that the limitations of the law arise.

5.3.4 SRD II's provisions as to shareholder identification

SRD II in its recital (4) notes that shares of listed companies are held through complex chains of intermediaries. It states that "Companies are often unable to identify their shareholders. The identification of shareholders is a prerequisite to direct communication between the shareholders and the company and therefore essential to facilitating the exercise of shareholder rights and shareholder engagement … Listed companies should therefore have the right to identify their shareholders in order to be able to communicate with them directly. Intermediaries should be required, upon the request of the company, to communicate to the company the information regarding shareholder identity."

The mechanism for companies to ascertain the identity of beneficial owners is set out in Article 3a of SRD, (inserted by SRD II) and which is now set out in section 1110B of the Companies Act, inserted by S.I. No. 81/2020, the full text of which is set out in Appendix 1. Commission Implementing Regulation (EU) 2018/1212[21] sets out minimum requirements as regards the format of the request to disclose shareholder identity and of the response to such a request.[22] It also sets out deadlines to be complied with by issuers and intermediaries in shareholder identification processes. Article 9 of

[14] Companies Act 2014, s 1062.

[15] Companies Act 2014, s 1064.

[16] Companies Act 2014, s 1062(1).

[17] Companies Act 2014, s 1062(2), (3).

[18] Companies Act 2014, s 1062(4).

[19] Companies Act 2014, ss 768, 1066(1).

[20] Companies Act 2014, s 1066(3); Fines Act 2010, s 3.

[21] Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights, OJ L223, 4 September 2018, pp 1–18. See para [7.41].

[22] Regulation (EU) 2018/1212, art 3, Annex.

that Regulation is set out in Appendix 2. The information to be provided should be as set out in the Annex to that Commission Regulation, included in this Report as Appendix 3.

These SRD and related provisions are ineffective as the sole legal obligation of an intermediary is to identify the "shareholder" which in the case of shares held in the Euroclear Bank CSD system is its nominee, Euroclear Nominees Ltd. As described in the Review Group's report of 25 June 2020, Euroclear Bank's service description does provide for the provision of information as intended to be provided by SRD II but on the basis that it is being provided by contract rather than in compliance with a legal obligation.

> "[F]ollowing the Shareholders Rights Directive II (SRD II) process - pursuant to existing Irish corporate law and the implementation of SRD II into Irish law, Euroclear Bank's Nominee, as the person recorded in the register of members, is the 'shareholder' for the purposes of SRD II- in-scope Irish corporate securities held by Euroclear Bank Participants. However, we offer the service to issuers of Irish corporate securities, upon their request, to disclose the underlying Euroclear Bank Participants following the SRD II shareholder identification processing principles."[23]

Whilst the SRD legal architecture – the 2020 Regulations and Commission Regulation (EU) 2018/1212 – provide the basis for swift disclosure of beneficial ownership, their provisions (in particular those in Regulation (EU) 2018/1212) presume and rely upon all persons in an ownership chain having records and IT systems that are compatible with what is required.

The Committee concluded, pending further developments at EU level that what was desirable in the short term was clarity that information sought by an issuer or its agent under the Companies Act's provisions should, as a matter of law, be made available within a defined timetable, which is not provided for at present. The Committee did not decide on what a suitable timetable should be but a period of two working days was mentioned as being reasonable and practicable.

5.3.5 Recommendation

The Review Group recommends that section 1062 of the Companies Act be amended so as:

- **to require the recipient of a s 1062 notice to provide the information within a reasonable time, not to exceed a specified time, which may be set at a number of business days;**
- **to clarify that any person in a chain of ownership must respond to any request for s 1062 information from (i) the issuer (ii) any agent of the issuer and (iii) any other person in the chain.**

5.4 What are the CLRG's views on amending the Companies Act by giving recognition to beneficial owners in particular contexts?

5.4.1 Background to Department's question

The public companies' lawyers drafting group, composed of solicitors advising issuers in relation to the migration of PLCs to the Euroclear Bank CSD system, made a submission seeking the insertion of a new section in the Companies Act, a draft of which, with notes, is set out in Appendix 4.

The essence of the proposed insertion is as follows:

(1) Rights of shareholders could be exercised by a holder of an ownership interest in shares, intermediated by a CSD, where the holder swears an affidavit to the court to the effect that:

[23] CLRG Report of 25 June 2020, quoting from Euroclear Bank SA/NV service description, version 3.

- the holder/holders is/are and will remain the exclusive beneficiary/beneficiaries of the ownership interest in shares of the issuer and the shares are not subject to any encumbrance that prevents the owner from exercising such right;
- any stamp duty payable on the acquisition of such ownership interest by the holder has been discharged in full; and
- where applicable, such ownership interest was notified to the issuer within the required timeframe under the Companies Act 2014.

(2) For a number of substantive rights exercisable against the company which cannot be accommodated within the Euroclear Bank CSD system such rights could be exercised by a holder of an ownership interest in shares, intermediated by a CSD, where the holder swears an affidavit to the court in the same terms as in (1).

(3) For other primarily information related rights exercisable against the company, such as the right to receive documents or attend (but not vote) at general meetings etc., such rights could be exercised by a holder of an ownership interest in shares, intermediated by a CSD, where the holder notifies the relevant company of its ownership interest in shares of the issuer accompanied by such other evidence as the directors may reasonably require to confirm ownership of the relevant shares.

5.4.2 Department's question

What are the CLRG's views on the draft proposed amendments inserting a new section 1110Q drafted by the migration project lawyers group and the potential wider implications of such amendments for the Companies Act, which generally operates on the basis of registered member?

5.4.3 Committee analysis

The Committee noted that there were several aspects to what was proposed.

As to meetings, it is within the competence of PLCs to decide who can attend. The CSD system operates in practice so that beneficial owners of shares can be appointed proxy by Euroclear Bank to attend and vote at general meetings in respect of their shares. Rights of shareholders under SRD1 relevant to general meetings are similarly facilitated by Euroclear Bank. Participants in the CSD system make arrangements with their clients (i.e., the beneficial owners) to facilitate attendance at general meetings. The Committee did not come to any conclusions at this stage and noted that market practice was evolving.

The Committee also considered that the rights arising under the Companies Act to bring matters to Court which require that a shareholder be a member are, in the main, concerned with serious matters of concern and the extra step of requiring that the owner of the shares be registered as member would be just one extra procedural step in what was certain to be a considerably more complex process.

5.4.4 Recommendation

The Review Group decided to keep the matter under consideration but for now does not recommend the inclusion of a section as suggested by the lawyers' group.

6. Company law issues arising from the implementation of Central Securities Depositories Regulation (EU) 909/2014 (CSDR)

6.1 Background

The Review Group is cognisant of the fact that much of the law concerning securities law matters in the Companies Act is within the competence of the Minister for Finance whereas the Review Group reports and provides recommendations to the Minister for Enterprise Trade and Employment. It is therefore acknowledged that certain policy decisions in these securities law matters are primarily a matter for the Minister for Finance, although those policy decisions of course have consequences in areas of company law beyond those matters.

6.1.1 Shareholders in public companies

The 2019 Act was introduced in order to deal with the conjunction of Brexit, the consequent expiry of the authorisation of Euroclear UK and Ireland Ltd as operator of the CREST system, which operated under the 1996 Regulations and the provisions of CSDR as to settlement discipline. Under that Act, all Irish PLCs with shares admitted to the Dublin and London markets have migrated their shares that were previously held through the CREST system into the intermediated system of shareholding and settlement operated by Euroclear Bank SA / NV.

Although a majority, in most cases over 90% by value, of shares in those PLCs are held through the intermediated system, all PLCs continue to have significant numbers of shareholders holding their shares in certificated form, i.e., they are entered as a member in the PLC's register of members, and they hold certificates in respect of their shareholdings. The registrars who contributed to the Committee's deliberations estimated that there were up to 500,000 individual shareholders holding shares registered in their names in Irish publicly quoted companies.

6.1.2 Holders of listed and traded debt securities

Separate and distinct from the companies with listed shares are issuers with debt securities. A small number of issuers have debt securities admitted to the main market (Official List) of Euronext Dublin. However, the vast majority of debt securities listed in Dublin are admitted to the Global Exchange Market (GEM) of Euronext Dublin. GEM is an MTF but facilitates listing within the meaning of Consolidated Admissions and Reporting Directive 2001/34/EC (CARD) as transposed by the European Communities (Admissions to Listing and Miscellaneous Provisions) Regulations 2007[24] . This means that the debt securities on GEM are "listed" but it is not necessary for a prospectus to be prepared in respect of the admission; instead, the issuers must comply with the admission requirements laid down by Euronext Dublin for GEM.

Whilst GEM is a trading facility – an MTF – not all the debt securities admitted to GEM are in fact traded on any sense of the expression. They have been admitted to GEM so as to obtain the listing, which makes the debt securities eligible for purchase by particular investors whose investment criteria require that securities they acquire are "listed". Rather than being settled through CSDs such as Euroclear or Clearstream, they are in certificated form, with transactions being settled privately.

6.1.3 Dematerialisation

Article 3 of CSDR provides:

[24] Si No 286/2007.

"1. Without prejudice to paragraph 2, any issuer established in the Union that issues or has issued transferable securities which are admitted to trading or traded on trading venues, shall arrange for such securities to be represented in book-entry form as immobilisation or subsequent to a direct issuance in dematerialised form.

2. Where a transaction in transferable securities takes place on a trading venue the relevant securities shall be recorded in book-entry form in a CSD on or before the intended settlement date, unless they have already been so recorded.

Where transferable securities are transferred following a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC, those securities shall be recorded in book-entry form in a CSD on or before the intended settlement date, unless they have already been so recorded."

Article 76(2) of CSDR provides that art.3(1) shall apply from 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all transferable securities.

By "book-entry form" is an electronic record of ownership such as an entry in an electronic register, without any further or other document. By "immobilisation" is meant "the act of concentrating the location of physical securities in a CSD in a way that enables subsequent transfers to be made by book entry".

6.1.4 Obligations imposed by CSDR

These provisions of CSDR therefore mean the following:

A On and from 1 January 2023, all new issues of securities – whether shares, debt securities or units in collective investment schemes – on a regulated market, MTF or OTF must be either:

(i) an issue of a physical document such as a global certificate to a CSD, with the securities comprised in it being subsequently represented in book-entry form with that CSD; or

(ii) an issue of the securities directly to the holder without any document.

B On and from 1 January 2025, all then existing securities admitted to any such market or facility must be either

(i) held by a CSD, with those securities being subsequently represented in book-entry form with that CSD; or

(ii) registered in the name of the holder without the requirement for there being any document.

6.1.5 Different perspectives of issuers of equity securities and debt securities

Since the migration of shares in March 2021, shares of quoted Irish PLCs are held in one of two ways:

- registered in the name of the nominee of Euroclear Bank SA / NV and represented in book-entry form – i.e., as in A(i) and B(i) in paragraph 6.1.4;
- registered in the PLC's register of members in the name of the holder, with a share certificate issued.

Accordingly, Article 3(1) of CSDR has already been implemented in relation to shares held through a CSD. What remains is to facilitate its implementation in relation to the shares outside the CSD registered in the name of the holder.

In the case of debt securities admitted to GEM, there are different methods of holding and settlement. Some debt issues are held in certificated form outside a CSD. Some are held inside a CSD.

6.2 Documented securities

There are two types of documented holdings of shares under the Companies Act, bearer shares and registered certificated shares.

6.2.1 Bearer shares and debt securities

The Companies Act has prohibited the issuance of any bearer instrument in respect of shares.[25] An exception is made by section 1019 for certain renounceable letters of allotment issued by a PLC. [26] Bearer shares in existence on 1 June 2015, the commencement date of the Companies Act, were permitted to be transferred by delivery only until 9 November 2016.[27] Companies with bearer shares in issue were required to enter the name of a holder no later than 30 November 2016, in default of which the Minister for Finance was to be entered as holder, who then became the beneficial owner of the shares comprised in the bearer instrument.[28]

The PLC's "permissible letter of allotment" is

> "a letter of allotment by a PLC to a member of it of—
>
> (a) bonus shares of the PLC, credited as fully paid;
>
> (b) shares of the PLC, in lieu of a dividend, credited as fully paid; or
>
> (c) shares of the PLC allotted provisionally, on which no amount has been paid or which are shares partly paid up, where the shares are allotted in connection with a rights issue or open offer in favour of members and the shares are issued proportionately (or as nearly as may be) to the respective number of shares held by the members of the PLC, there being disregarded for this purpose any exceptions to such proportionality, or arrangements for a deviation from such proportionality, as the directors of the PLC may deem necessary or expedient to make for the purposes of dealing with—
>
> (i) fractional entitlements; or
>
> (ii) problems of a legal or practical nature arising under the laws of any territory or requirements imposed by any recognised regulatory body in any territory,
>
> which letter is expressed to be transferable by delivery during a period expiring on its expiry date."[29]

The expiry date cannot be more than 30 days after the issue of the letter of allotment.[30]

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[25] Companies Act 2014 ss 66(8)–(10).

[26] Companies Act 2014, s 1019.

[27] Companies Act 2014, s 1019(8).

[28] Companies Act 2014, s 1019(7)(b).

[29] Companies Act 2014, s 1019(2).

[30] Companies Act 2014, s 1019(2).

The Companies prohibition on bearer instruments in respect of shares does not apply to debt securities.

6.2.2 Certificated shares and debt securities

Section 99(2) of the Companies Act provides:

> "A company shall, within 2 months after the date—
>
> (a) of allotment of any of its shares or debentures; or
>
> (b) on which a transfer of any such shares or debentures is lodged with the company,
>
> complete and have ready for delivery the certificates of all shares and debentures allotted or, as the case may be, transferred, unless the conditions of issue of the shares or debentures otherwise provide."

Section 11(3)(b) of the 2019 Act provided that no share certificate would be required in respect of the shares from time to time in the name of a CSD or its nominee:

> "notwithstanding section 99(2) of the Act of 2014, the participating issuer is not required to issue share certificates to the nominated central securities depository (or, as the case may be, to the foregoing body nominated by that depository) on the migration taking effect under subsection (2) on the live date and title of the nominated central securities depository (or, as the case may be, of the foregoing body nominated by that depository) to the relevant participating securities shall be evidenced by the recording of the name and address of that depository or body, as appropriate, in the register of members of the participating issuer, and subsection (4) supplements this paragraph."

Section 11(4) of the 2019 Act added:

> "Paragraph (b) of subsection (3) operates to disapply section 99(2) of the Act of 2014, with respect to the matters referred to in that paragraph, both on the live date concerned and at all times thereafter."

6.2.3 Mode of transfer of shares and debt securities

For completeness we note s 94(1), (2) and (4) which provide the default that transfers of shares and debt securities must be in writing:

> (1) Subject to any restrictions in the company's constitution and this section, a member may transfer all or any of his or her shares in the company by instrument in writing in any usual or common form or any other form which the directors of the company may approve.
>
> (2) The instrument of transfer of any share shall be executed by or on behalf of the transferor, save that if the share concerned (or one or more of the shares concerned) is not fully paid, the instrument shall be executed by or on behalf of the transferor and the transferee.
>
> (4) A company shall not register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.

This is disapplied by the amendments to the Companies Act made by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020, which inserted sections

1097A-1087G into the Companies Act in respect of "relevant issuers" i.e., PLCs whose shares are represented in a CSD's securities settlement system:

> "Notwithstanding section 94(4), section 2(1) of the Stock Transfer Act 1963 or any other enactment, a written instrument of transfer shall not be necessary to transfer title (which transfer may occur more than once) to—
>
> (a) relevant securities from a central securities depository (or, as the case may be, a body nominated by that depository) to any holder of the rights or interests in those securities,
>
> (b) relevant securities from one central securities depository (or, as the case may be, a body nominated by that depository) to another central securities depository (or, as the case may be, a body nominated by that depository), or
>
> (c) securities in the relevant issuer to the central securities depository (or, as the case may be, a body nominated by that depository) from any holder of the rights or interests in those securities."

6.3 Consequential points to be addressed

CSDR is directly applicable in Ireland and, to the extent that it conflicts with the Companies Act (or any other legislation) it will prevail. However, it will be necessary to address the following points:

- the different dates for implementation of CSDR as between new issues of securities and existing securities, in light of many existing listed PLCs routinely issuing new shares under company share option plans and similar schemes;
- provisions in the Companies Act which require the issue of share certificates and certificates in respect of debt securities;
- the methodology of implementing a rights issue without a "permissible letter of allotment".

6.3.1 Date for implementation of Article 3 of CSDR

Article 3 of CSDR distinguishes between existing issuances of securities and those that will be made in the future. For existing issuers, they can wait until 1 January 2025 before dematerialising their securities whereas issuers of new securities taking place from 1 January 2023 must be in dematerialised form.

6.3.2 Committee analysis

The Committee noted that a different approach required to be taken between PLCs with shares admitted to the Dublin or other EU markets on the one hand and on the other, debt securities, given that there were different considerations involved.

In the case of PLCs with shares admitted to the market, the unanimous analysis and conclusion of the Committee was that it was unworkable for there to be two separate dates. A significant proportion of PLCs with traded equity securities issue shares on an ongoing basis, whether under employee share schemes or similar plans or under scrip dividend arrangements. Moreover, the coexistence of two separate methods of share holding in the market would bring confusion and extra cost. For example if a PLC planned to make a new issue of shares in mid-2023 by way of rights issue or open offer, the new shares issued would be required to be in dematerialised form (without share certificates) while the pre-existing shares held outside the Euroclear system would continue to require share certificates. When shares would come to be dealt, they would be required to be

transferred into the Euroclear system, then requiring all those concerned with such a process to enter into a due diligence exercise so as to ascertain whether a share certificate was required to be presented or could be dispensed with.

The 2019 Act has given an example of quoted companies working together to a single, unified, timetable. To proceed with separate timetables would add cost. From a project management perspective, a piecemeal exercise has the potential to add uncertainty; addressing it as a single exercise optimises the likelihood of a successful outcome.

The Committee considered whether there was any legal reason for anticipating the implementation date ahead of the date set in the Regulation. It concluded that there was no EU law requiring the continuance of a certificated system until the stated implementation date and that Ireland was in a position to regulate the manner of documentation of shareholdings as it saw fit, subject to implementation of CSDR no later than the dates specified in CSDR.

The Committee noted also that there was precedent in EU law where the transposition date for Directives or the implementation date for Regulations was extended. On this account, although it concluded that a single date should be chosen, some latitude to allow the Minister to fix the date should be provided for, in order to deal with such an eventuality.

In the case of debt securities, the Committee concluded that a move to coerce debt issuers to dematerialise their debt securities and / or migrate their existing issues of debt securities into a CSD ahead of the 1 January 2025 date would be disruptive to procedures in the debt markets. If an issuer with debt securities wished to do so, that was a matter between it and the holders of the securities. The Committee decided to make no recommendation as to change of the respective dematerialisation dates with respect to debt securities.

6.3.3 Recommendation

The Review Group recommends that an amendment to the Companies Act be made so as to enable the Minister for Finance to designate 1 January 2023 as the dematerialisation implementation date for not only new issues of traded shares but also for existing issues of traded shares.

Consideration might be given to enable the Minister to amend this date by order if there were a deferral of the date of 1 January 2023 at EU level.

The Review Group observed that the methodology for giving effect to this proposal may be possible by Regulations under the European Communities Act 1972 or under the Companies Act, as well as by a straightforward amendment by primary legislation.

However, what was most urgent was that the Minister for Finance should in early course to signal to the market that such a change in the law would be effected, similar to how the 2019 Act's provisions were signalled by a series of Ministerial speeches and statements.

6.3.4 Companies Act provisions referring to share certificates and certificates as to debt securities

The Companies Act has provisions referring to share certificates in the following sections:

- Section 67(4): Where new shares are issued and do not within a 12 months, rank pari passu for all purposes with all the existing shares (or the existing shares of a particular class) "the share certificates of the new shares if not numbered, be appropriately worded or enfaced".

- Section 99, referred to above. As well as requiring the issue of share certificates, the section requires the issue of a certificate in relation to the issue of debt securities, (in each case unless the conditions of issue provide otherwise). It also entitles a member to request and to receive "one or more certificates for one or more shares held by the member upon payment, in respect of each certificate, of €10.00 or such lesser sum as the directors of the company think fit."

- Section 1017: This provides for a PLC to have an official seal (commonly called a securities seal" for sealing:

  "(a) securities issued by the company, and

  (b) documents creating or evidencing securities so issued".[31]

  Where a company has such a securities seal then the certificates (whether for shares or for debt securities) required to be issued under s 99(1 may be sealed with it,

- Section 1086: This empowers the Minister to "make provision by regulations for enabling or requiring title to securities or any class of securities to be evidenced and transferred without a written instrument". Such regulations:

  - "may make provision … for dispensing with the obligations of a company under section 99 to issue certificates and providing for alternative procedures."[32]

  - "shall contain such safeguards as appear to the Minister appropriate for the protection of investors …"[33]

  - "may … make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures." [34]

  - "shall be framed so as to secure that the rights and obligations in relation to securities dealt with under the new procedures correspond, so far as practicable, with those which would arise apart from any regulations under this section." [35]

  - may—

    (a) require the provision of statements by a company to holders of securities (at specified intervals or on specified occasions) of the securities held in their name;

    (b) make provision removing any requirement for the holders of securities to surrender existing share certificates to issuers; and

    (c) make provision that the requirements of the regulations supersede any existing requirements in the articles of association of a company which would be incompatible with the requirements of the regulations." [36]

[31] Companies Act 2014 s 1017(1).

[32] Companies Act 2014 s 1086(4)(c).

[33] Companies Act 2014 s 1086(5).

[34] Companies Act 2014 s 1086(6).

[35] Companies Act 2014 s 1086(7).

[36] Companies Act 2014 s 1086(8).

- Section 1087B. This provides that a "relevant issuer" (i.e., a PLC with its securities represented in a CSD's securities settlement system) is not required to issue share certificates for securities registered in the name of a CSD or its nominee. Title of the CSD or its nominee to the securities is evidenced by the recording of their name and address in the register of members of the issuer.

6.3.5 Committee analysis

The Committee considered whether any amendment of these provisions was called for. On the face of it, certain amendments appear desirable. However, given that CSDR is directly applicable in Ireland, its provisions would override any conflicting provisions in the Companies Act.

The Committee discussed whether there were parallels to be drawn from the abolition of land certificates and certificates of charge effected by s 73 of the Registration of Deeds and Title Act 2006. The relevant provision provided for such certificates to cease to have validity after 3 years. The Committee noted the difference between a document issued by a State body like the Property Registration Authority on the one hand and, on the other, a document issued by a non-State entity like a company. When a share certificate is issued, it certifies a state of affairs as of the date of the certificate and nothing more. A company is at liberty to cancel such a certificate at any time or to issue a new certificate that supersedes a previously issued certificate. This has been a standard practice when for example shares were renominalised following the adoption of the Euro, when shares are consolidated into shares with a higher par value or when the par value is reduced. It is the case that certain lenders may take a deposit of share certificates as security by way of equitable mortgage for financial facilities. However, lenders do so in the full knowledge of the possibility of such certificates being superseded and cancelled by the issuing company. It is open to lenders in such circumstances to follow the procedure under Order 46 of the Rules of the Superior Courts to register their interests by way of a "Notice to restrain transfer of stock". [37] Accordingly, the Committee concluded that there was no legal impediment to the abolition of share certificates for existing certificated holdings ahead of the CSDR date of 1 January 2025.

The Committee noted the power of the Minister to make regulations under s 1086 (in addition to the power under s 3 of the European Communities Act 1972), which might be utilised in order to expressly disapply anomalous provisions of the Companies Act. The Committee concluded that it is an open point as to whether the Minister's power under s 1086 or that of the Minister for Finance under s 3 of the European Communities Act would be appropriate.

6.3.6 Recommendation

The Review Group therefore recommends that amendments be made to the Companies Act (whether by primary legislation or, subject to the advice of the Attorney General's office, by Regulations) to effect the following:

[37] RSC O. 46 Rule 6: "Any person claiming to be interested in any stock standing in the books or inscribed in the register (within the jurisdiction) of a company may, on an affidavit by himself or his solicitor in the Form No 27 in Appendix C, and on filing the same in the Central Office with a notice in the Form No 28 in Appendix C, and on procuring an attested copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the High Court, serve the attested copy and duplicate notice on the company. "Rule 10: "10. From and after the service of the attested copy of the affidavit and of the duplicate of the filed notice, it shall not be lawful for the company to permit the stock specified in the notice to be transferred, nor, if the notice is expressed to be intended to stop the receipt of dividends, to pay the dividends on the stock so specified, so long as the notice shall remain operative."

- **to provide that nothing in section 67(4) shall be construed as requiring the issue of a certificate in respect of securities to which Article 3 of CSDR applies;**
- **to disapply section 99 in relation to the securities of a company to which Article 3 of CSDR applies;**
- **to provide that nothing in section 1017 shall be construed as requiring the issue of a certificate in respect of securities to which Article 3 of CSDR applies;**

An exception to these provisions should be made for the issue of global certificates in respect of an issue of securities, whether shares or debt securities.

6.3.7 Rights issues

A rights issue is an issue of new shares in a company following an offer of those shares to existing members whereby the right to subscribe in the new issue is proportional to the shareholding of the member. A typical rights issue would entitle a shareholder to subscribe for ***x*** shares for every ***y*** shares held as of a certain date, at a subscription price that would be materially below the then prevailing share price. The usual immediate result of the rights issue is that the share price reduces to somewhere between the previous price and the rights issue price, such that the right to subscribe has a market value and can be sold in the market. Typically, fractional entitlements are rounded down and sold in the market. Shares otherwise destined to shareholders domiciled in jurisdictions with burdensome securities laws (notably the USA) are typically excluded, with their rights being sold in the market and the profit then remitted to the shareholder.

Historically, rights issues were effected by the issue of provisional letters of allotment, which had renunciation forms attached. If a member that received the letter chose not to subscribe, they would renounce their rights by signing the renunciation. This would be done "in blank" in that no transferee was named, and the document therefore became a bearer instrument. It is on this account that s 1019, mentioned above, made an exception for what it described as "permissible letters of allotment".

6.3.8 Committee analysis

The Committee noted that art. 3 of CSDR applies to "transferable securities" that are "issued". Strictly speaking, while the shares are in the stage of having been provisionally allotted pro rata to shareholders, the shares have not been issued, and it is the right to have the shares issued that is traded. However, given the wide definition of "transferable securities" in CSDR, it is clear that trading in those rights will constitute trading in transferable securities. The CSDR definition cross refers to art. 1(44) of MiFID II, which provides:

> "'transferable securities' means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
>
> (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
>
> (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
>
> (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures".

Although there is a difference between the allotment and issue of securities, for the purposes of art. 3 of CSDR, it appears that nil-paid rights in a rights issue, having been created by an issuer and being traded on a market, will be considered to be within its scope, meaning that transfers of those rights will require to be "represented in book-entry form as immobilisation or subsequent to a direct issuance in dematerialised form" and settled in the Euroclear CSD system. Documentation and procedures have already evolved to facilitate CSD settlement of rights issues, and the Committee is supportive of dematerialised representation of tradeable rights, in the same way as dematerialised securities.

6.3.9 Recommendation

As all transfers of nil-paid rights to securities of issuers admitted to a regulated market or MTF will require to be effected through a CSD, the Review Group recommends that s.1019 of the Act be disapplied to securities to which art.3 of CSDR applies.

7. Companies Act Issues for PLCs

7.1 Introduction

7.1.1 Public limited companies

There are approximately 4,000 PLCs on the register of companies, with less than 100 with equity securities traded on a market (EU regulated market or MTF, London Stock Exchange, NASDAQ, NYSE, or other public market). A significant number of the remaining companies are collective investment schemes regulated by the Central Bank under Part 24 of the Companies Act or as UCITS or AIFs under the relevant regulatory regimes. The issues considered in this section are (save for item 7.3) are in respect of all PLCs, quoted and unquoted.

7.1.2 Issues considered.

The issues addressed in this section of the report have arisen from individual CLRG members' own suggestions as well as matters referred from the Review Group's Corporate Governance Committee, where that Committee was of the opinion that the issue was more particularly of concern to PLCs.

7.2 Computation of periods of time

7.2.1 Time for delivery of forms of proxy

The time for delivery of a form of proxy before a general meeting of shareholders is a maximum of 48 hours before the meeting, but those 48 hours include weekend hours and hours on public holidays. Section 183 subsections (5) and (6) of the Companies Act provides

> "(5) The instrument of proxy ... shall be deposited at the registered office of the company concerned or at such other place within the State as is specified for that purpose in the notice convening the meeting, and shall be so deposited not later than the following time.
>
> (6) That time is—
>
> (a) 48 hours (or such lesser period as the company's constitution may provide) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
>
> b) in the case of a poll, 48 hours (or such lesser period as the company's constitution may provide) before the time appointed for the taking of the poll."

The Review Group has previously examined this issue and in its Report of 25 June 2020[38] concluded that "there is merit in amending section 183 of the 2014 Act to exclude hours at weekends and on public holidays from the computation of the 48-hour period, aligning the law with that of the UK and the Review Group accordingly recommends that the law be amended accordingly."[39] The Review Group remains of this view.

7.2.2 Determination of record date for the purposes of voting

In the amendments made to the Companies Act by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020, the record date for voting was, for reasons related to the practical operation of the Euroclear CSD system, set at "close of business on the day

[38] Report on certain Company Law Issues arising under the EU Central Securities Depositories Regulation 909/2014 (CSDR), 25 June 2020.

[39] Ibid., para 4.7.5(f).

before a date not more than 72 hours before the general meeting to which it relates".[40] In the same way that hours at weekends and on public holidays are included in the calculation of the 48 hour limit before a meeting for the purposes of delivery of forms of proxy, those hours are included also in the computation of the 72-hour period.

7.2.3 Committee analysis

The Committee approached the issue on the basis that the record date should be as close as operationally possible to the meeting date. That said, the Committee had the benefit of significant input from the leading registrars to PLCs, who were able to confirm that there were two principal consequences of the inclusion of weekend hours in the computation of the 48-hour limit and 72-hour period.

The first is that PLCs are tending to consider themselves compelled to hold their general meetings on a Friday of a week (not containing a public holiday) in order to work with a Monday close-of-business record date. Where this is not possible, it has resulted in a need to have relevant personnel work at weekend times, giving rise to inconvenience to the relevant personnel and extra cost to the PLCs.

The second arises from the fact that once shares are voted in the Euroclear CSD before a record date, they may be blocked for settlement until the record date. Where this record date falls at a weekend, this, for all practical purposes, extends the blocking period and is a disincentive to shareholders voting. Even where the general meeting takes place on a Friday, evidence provided to the Committee indicated typical shareholder voting percentages of 60% to 70% in 2020 reducing to an average of approximately 40% in 2021.

The Committee took notice of the fact that the exclusion of weekend hours was being examined by the Corporate Governance Committee in relation to the proxy time limit for all companies but nonetheless considered it appropriate to formulate its own conclusions for the purposes of PLCs, whether or not their securities are admitted to listing or trading on a market.

7.2.4 Recommendation

The Review Group recommends that, for PLCs, hours on a Saturday, Sunday and public holiday be excluded from the calculation of:

- **the 72 hours in section 1078H of the Companies Act; and**
- **the 48-hour limit in section 183 of the Companies Act.**

7.3 Record date for adjourned meetings of "relevant issuers"

7.3.1 Adjournments of general meetings

Where a company's general meeting is adjourned, the standard form of proxy (see below at 7.4.1) provides that the proxy is to be entitled to attend and vote at any adjournment of the meeting, as well as the meeting proper. Accordingly, a form of proxy delivered in time for the meeting proper continues in force for that meeting and any adjournment.

Section 183 of the Companies Act (see above at 7.2.1) provides that a form of proxy can be delivered up to a time no earlier than 48 hours before an adjournment of the meeting – in other words, if a meeting is adjourned for more than two days, that will reopen the opportunity for forms of proxy to be delivered.

[40] Companies Act 2014, s 1087H, inserted by Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020, s. 12

Subject to alternative provisions in a company's constitution, where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. In other cases, it is not necessary to give any notice of an adjourned meeting.[41]

7.3.2 Practical issue for Euroclear Bank

Where there is an adjournment, without the issue of a fresh notice of the meeting, the Euroclear system can accept new voting instructions, so as to enable it to execute a form of proxy in respect of those new instructions. However, it cannot accommodate a changed record date or a change in previously given voting instructions.

7.3.3 Committee analysis

The Committee concluded that the law should be amended to accommodate the practicalities of the intermediated system, so as to retain the record date for the original meeting for any adjourned meeting, save where a fresh notice of meeting is issued. It noted that to seek to accommodate an amended record date would put relevant issuers to expense. In the event of there being an adjourned meeting that warranted a fresh record date – for example where it appeared that there was a sudden change in shareholder profile – an adjourned meeting could be convened with notice, enabling a new record date.

7.3.4 Recommendation

The Review Group recommends that section 1087G of the Companies Act be amended to read as follows:

(1) The provisions of section 1105 shall apply to general meetings held by a relevant issuer with the modification that 'record date' (as that expression is used in that section) in relation to a relevant issuer shall be close of business on the day before a date not more than 72 hours before the general meeting to which it relates (in this section called "the original meeting")

(2) Save where subsection (3) applies, where the original meeting is adjourned, the 'record date' for the original meeting shall also be the record date of the adjourned meeting.

(3) Where notice is given to members of an adjourned meeting, to take place no earlier than 14 days following the date of the notice, the 'record date' for the adjourned meeting shall be close of business on the day before a date not more than 72 hours before the adjourned meeting to which it relates.

7.4 Format of forms of proxy

7.4.1 Format of a form of proxy

Section 184 of the Companies Act prescribes the format of a form of proxy in the following terms:

> "An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit—
>
> [name of company] ("the Company")

[41] Companies Act 2014, s 187(1), (6).

[name of member] ("the Member") of [address of member] being a member of the Company hereby appoint/s [name and address of proxy] or failing him or her

[name and address of alternative proxy] as the proxy of the Member to attend, speak and vote for the Member on behalf of the Member at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the [date of meeting] and at any adjournment of the meeting.

The proxy is to vote as follows:

Voting Instructions to Proxy (choice to be marked with an 'x'			
Number or description of resolution	In favour	Abstain	Against
1			
2			
3			
Unless otherwise instructed the proxy will vote as he or she thinks fit			
Signature of member: ..... Dated: (date)			

7.4.2 Submission

A submission from the Law Society Business Law Committee was received by the Review Group stating that certain issues had arisen from the introduction by the 2014 Act of the requirement to include an "abstain" option. Prior to the 2014 Act, the format of the form of proxy was a matter for the company to decide, with an optional format set out in Table A. In practice the form used in Table A was commonly used, often with some embellishments. However, section 184 now has statutory effect. The use of a different form of proxy from that prescribed by the section (e.g. one without an "abstention" box, or with any additional text) could, it was submitted, give rise to unprecedented questions as to whether, and if so what, or whose, "circumstances" did not permit the use of the set format, if that was justified, and, if not, whether the proxy, and any votes cast thereunder, are valid. Issues had, it was submitted, arisen in practice in particular for PLCs with overseas shareholders and overseas listings such as on the NYSE or NASDAQ, where different corporate governance procedures had evolved with regard to proxies and proxy votes, which in some cases differ from the rigid requirements of these sections of our Act.

7.4.3 Committee analysis

The amendments made by the Companies Act by the inclusion of an "Abstain" option were consciously made. It is considered good corporate governance. For example, the most recent Shareholder Voting Guidelines of PIRC, a leading proxy voting advisory firm state:

> "Proxy forms provided by companies should always offer a 'vote withheld' or abstain option. Institutional investors use such options to demonstrate concerns about a proposal.

PIRC accepts that such votes will not be counted in the calculation of the proportion of the votes 'For' and 'Against'."[42]

The most recent proxy voting guidelines of ISS, another proxy advisory firm state:

"Investors expect that information regarding the voting outcomes on the resolutions presented at the AGM will be made available as soon as reasonably practicable after the AGM. The information should include the number of votes for the resolution, the number of votes against the resolution and the number of shares in respect of which the vote was directed to be withheld, and the overall percentages for each group."[43]

Glass Lewis, another proxy advisory firm states the following:

"Adequate disclosure of vote results is particularly relevant in the UK as shareholders frequently utilise their right to "withhold" or "abstain" from certain proposals as a way to voice dissent, albeit in a non-binding fashion. Such votes, although often quite substantial, are not counted in the final tally of votes, and resolutions may be passed despite high levels of shareholder abstentions."[44]

Accordingly, the Committee was not convinced that there were reasons based on governance arguments that would justify the amendment of the law.

If, however, a PLC was subject to a regulatory requirement of a securities market to reformat its form of proxy, it was reasonable to permit such PLC to make such adjustments as would be so required

7.4.4 Recommendation

The Review Group recommends that the Companies Act be amended, by way of a provision in Part 17, to permit PLCs admitted to a securities market, which has requirements as to the format of a form of proxy that differ from that set out in the Companies Act, to use a form a proxy that complies with that market's requirements, notwithstanding that it is not in the format prescribed by the Companies Act.

7.5 Scheme of Arrangement "special majority"

7.5.1 Use of Part 9 Schemes of Arrangement

Part 9 of the Companies Act provides that a company may enter into a compromise or arrangement with its shareholders (or a class of shareholders) or its creditors (or a class of creditors). A scheme must be approved at a meeting of the relevant body of shareholders or creditors by way of a "special majority", as defined in section 449(1) of the Act, before the scheme is authorised (or "sanctioned" as the Act puts it) by the Court.

"'special majority' means a majority in number representing at least 75 per cent in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the scheme meeting."

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[42] *PIRC Shareholder Voting Guidelines 2021,* Pensions and Investment Research Consultants Limited, 2021, p 16.

[43] *ISS United Kingdom and Ireland Proxy Voting Guidelines*, Institutional Shareholder Services, Inc., 2021, p 5.

[44] *An overview of the Glass Lewis approach to proxy advice United Kingdom* (which applies to Ireland also), 2021, p 15.

For PLCs whose securities are in a CSD's securities settlement system, there is a substituted form of special majority in s 1087D of the Companies Act:

> "(1) In section 449(1), 'special majority' insofar as it applies to members of a relevant issuer, means a majority representing at least 75 per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the scheme meeting.
>
> (2) Where any part of the issued shares of a relevant issuer is held outside of a central securities depository (or, as the case may be, a body nominated by that depository), and the special majority referred to in subsection (1) applies, the quorum for a scheme meeting referred to in subsection (1) shall be at least two persons holding or representing by proxy at least one-third in nominal value of the issued shares, or class of shares, as the case may be, in the relevant issuer and section 182 shall, in relation to that meeting, be construed accordingly."

In the case of PLCs, schemes of arrangement are frequently used as a means of effecting a takeover. Under a takeover scheme, the existing shares are either cancelled, with new shares being issued to the acquirer or shares are transferred to the acquirer. Such schemes of arrangement are popular for a number of reasons:

- A scheme of arrangement delivers 100% control of the company at a single point in time, enabling immediate integration of the acquired company in the acquirer's group, whereas the acquisition of control by acquisition of shares requires first receiving 90% acceptances (for a company listed on an EU regulated market) or 80% (for other companies) acceptances and then the institution of a separate procedure to "squeeze out" minority shareholders.
- The requirement for Court consent means that any substantive opposition to a takeover can be flushed out and aired in a pre-determined Court process. If and when sanctioned by a Court the takeover has finality. In the case of a takeover by acquisition of shares, it is open to individual shareholders to contest the compulsory acquisition such as to exclude their own shares. There is a possibility of a multiplicity of proceedings.
- The requisite majority in a scheme of arrangement – the "special majority" as defined in s 449 of the Companies Act – of 75% by value and a majority in number of shareholders voting is an easier threshold than the 90% or 80% of all shareholders in a takeover by acquisition of shares.

However, the majority in number or "headcount" requirement has an air of unreality to it, in view of the progressive distancing of the beneficial owners from those registered on the register of members. This has been compounded by the migration of quoted companies' securities to the intermediated securities settlement system of Euroclear. It was in anticipation of this migration that the Review Group examined the headcount issue in its June 2021 Report, which proposed an alternative means of arriving at the "special majority" in a scheme of arrangement, where there was a 75% vote in favour and a quorum of at least one-third of the shares being represented at the meeting. That proposal was enacted in the above-mentioned section 1087D, which for "relevant issuers" is operates effectively as a substituted (rather than a supplemental alternative) requirement

7.5.2 Submission

It was submitted that it was appropriate for there to be a supplemental, alternative, form of "special majority" to available to all PLCs to approve a scheme of arrangement among holders of securities or a class of security holders, such that a resolution passed with a 75% majority at a meeting with a

one-third (in value of securities represented) or more in attendance would also constitute a special majority.

7.5.3 Committee analysis

The Committee noted that this issue had been separately discussed at the Review Group's Corporate Governance Committee, where there was little support for a change to apply to companies generally.

In the case of PLCs, different considerations applied. In the case of PLCs whose securities are in a CSD's securities settlement system, there is complete detachment of beneficial ownership from the holder of those securities and the 2020 amendments had recognised this. However, the experience of Committee members in relation to unlisted PLCs also was that there was a significant evidence of the register of members not giving a true representation of the profile of the beneficial owners. This being the case, it would make sense for there to be a supplemental, alternative to the "headcount" test for schemes of arrangement in such companies.

The Committee did not propose to recommend repeal the present requirement for there to be a majority in number of creditors for a Part 9 scheme of arrangement among creditors, as that would require a separate evaluation from an insolvency perspective.

It was noted that there was no particular disadvantage for dissenting shareholders as all schemes of arrangement require Court sanction.

7.5.4 Recommendation

The Review Group recommends that an amendment be made to the Companies Act providing that in any scheme of arrangement among holders of transferable securities of a PLC, a special majority may be constituted either as at present (by a majority in number and 75% in value) or as provided for "relevant issuers" (a majority of 75% in value at a meeting with a one-third quorum).

A draft section 1170A to give effect to this, to be inserted in a new Chapter 17A in part 17, is set out in Appendix 4.

It was noted that the implementation of this recommendation would supersede section 1087D of the Companies Act.

Appendix 1:

Companies Act 2014, sections 1110A-1110C

1110A. Interpretation, application, and commencement (Chapter 8A)

(1) In this Chapter—

'**General Data Protection Regulation**' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)[45];

'**intermediary**' means a person, whether situated in a Member State or elsewhere, that provides services, in relation to a traded PLC, of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons, and includes—

(a) an investment firm as defined in Regulation 3 of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017),

(b) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012[46], and

(c) a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012[47];

'**personal data**' has the meaning assigned to it in the General Data Protection Regulation;

'**traded PLC**' has the meaning assigned to it by section 1099(4).[48]

(2) A word or expression that is used in this Chapter and is also used in the Shareholders' Rights Directive has, unless the context otherwise requires, the same meaning in this Chapter as it has in that Directive.

[45] OJ No. L 119, 4.5.2016, p.1.

[46] OJ No. L 176, 27.6.2013, p. 1

[47] OJ No. L 257, 28.8.2014, p. 1

[48] Section 1099(4): In this section, and sections 1100 to 1110, 'traded PLC' means a PLC— (a) whose shares are admitted to trading on a regulated market in any Member State, and (b) that is neither— (i) an undertaking for collective investment in transferrable securities within the meaning of Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)5, nor (ii) a collective investment undertaking within the meaning of point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/20106.

(3) This Chapter shall be read in conjunction with any applicable provision of European Union law adopted by the European Commission as an implementing act in accordance with the Shareholders' Rights Directive, including Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights10[49].

(4) This section shall come into operation on 3 September 2020.

1110B. Identification of Shareholders

(1) (a) A traded PLC, or its nominee referred to in paragraph (c), may request, from an intermediary that provides services with respect to the shares of the traded PLC —

(i) information regarding shareholder identity that relates to shares held in that traded PLC, and

(ii) the details of the next intermediary, if any, in the chain of intermediaries.

(b) A requester may state, in a request, that the information to which the request relates is to be provided to the requester by the intermediary from whom it is requested.

(c) A traded PLC may nominate a third party to make a request on its behalf.

(d) In this section, '**request**' means a request under paragraph (a), and '**requester**' means the person making the request.

(2) (a) An intermediary that receives a request and is in possession or control of the information to which that request relates shall, as soon as practicable, provide the requester with that information.

(b) An intermediary that receives a request and is not in possession or control of the information to which that request relates shall, as soon as practicable—

(i) inform the requester that it is not in possession or control of the information,

(ii) where the intermediary is part of a chain of intermediaries, transmit the request to each other intermediary in the chain known to the first-mentioned intermediary as being part of the chain, and

(iii) provide the requester with the details of each intermediary, if any, to which the request has been transmitted under subparagraph (ii).

(3) (a) (i) Subparagraph (ii) applies to an intermediary that—

(I) receives a request transmitted to it under subsection (2)(b), and

(II) is in possession or control of the information to which that request relates.

(ii) An intermediary to which this subparagraph applies, shall, as soon as practicable, provide the information to which the request relates—

[49] OJ No. L 223, 4.9.2018, p. 1.

(I) where the requester has made a statement under subsection (1)(b), to the intermediary that transmitted the request in accordance with subsection (2)(b), or

(II) where a requester has not made a statement under subsection (1)(b), to the requester.

(b) An intermediary that receives information under subparagraph (a)(ii)(I) shall, as soon as practicable, provide the information to the requester.

(4) Subject to subsection (5), the personal data of shareholders may be processed by a requester, traded PLC or intermediary under this section, in so far as it is necessary to—

(a) enable a traded PLC to—

(i) identify its existing shareholders in accordance with this section, or

(ii) communicate with the shareholders directly, or

(b) facilitate the exercise of shareholder rights and shareholder engagement with the traded PLC.

(5) Without prejudice to any longer storage period laid down by European Union law, and subject to subsection (6), where a requester or intermediary receives or otherwise processes the personal data of a person who is a shareholder in accordance with this section, that personal data shall not be so processed for longer than 12 months after the requester or intermediary, as the case may be, has become aware that the person concerned has ceased to be a shareholder.

(6) Subject to compliance with the Data Protection Acts 1988 to 2018 and the General Data Protection Regulation, a traded PLC or intermediary may process the personal data of shareholders in so far as doing so is necessary for any of the following purposes:

(a) carrying out, or facilitating the carrying out of, an investigation into suspected or alleged offences in relation to the traded PLC;

(b) engaging in or facilitating litigation relating to the shareholder or shareholders to whom the personal data relates;

(c) maintaining records of, and otherwise dealing with, unclaimed dividend entitlements;

(d) disposing of, or otherwise dealing with, shares of untraced shareholders;

(e) dealing with queries from former or current shareholders relating to their shares, including queries regarding historic transactions;

(f) adducing evidence of transactions, changes in ownership or dispositions of shares having taken place;

(g) compliance with applicable accounting, regulatory or tax requirements;

(h) compliance with any direction, instruction or other request from a regulatory or supervisory body;

(i) compliance with any provision of this Act.

(7) An intermediary that discloses information regarding the identity of a shareholder in accordance with this section shall not be considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

(8) This section shall come into operation on 3 September 2020.

1110C. Transmission of information

(1) Subject to subsection (3), where a shareholder in a traded PLC requires information in order to exercise rights attaching to the shareholder's shares, the traded PLC shall, as soon as practicable after becoming aware of that requirement, provide an intermediary that provides services in relation to that shareholder's shares with—

(a) that information, or

(b) where the information is available on the traded PLC's website, a notice indicating where on the website the information can be found.

(2) (a) Subject to paragraph (b) and subsection (3), an intermediary (in this subsection referred to as a 'relevant intermediary') who is provided with the relevant information shall, as soon as practicable, transmit the relevant information to the shareholder to whom it relates.

(b) Where a relevant intermediary cannot transmit the relevant information directly to the shareholder to whom it relates, and the relevant intermediary is part of a chain of intermediaries, the relevant intermediary shall, as soon as practicable, transmit the relevant information to each other intermediary in the chain of intermediaries known to the relevant intermediary as being part of the chain.

(c) An intermediary to whom relevant information is transmitted under paragraph (b) and who can transmit the relevant information directly to the shareholder to whom it relates shall, as soon as practicable, transmit the information directly to that shareholder.

(3) Where a traded PLC transmits relevant information directly to the shareholder to whom it relates, subsections (1) and (2) shall not apply in so far as that information is concerned.

(4) (a) Subject to paragraphs (b) and (c), where a shareholder in a traded PLC has given to an intermediary (in this subsection referred to as a '**relevant intermediary'**) an instruction relating to the exercise of rights attaching to the shareholder's shares (in this subsection referred to as the '**relevant instruction**'), the intermediary shall, as soon as practicable and in accordance with the relevant instruction, transmit the information to which the relevant instruction relates to the traded PLC.

(b) Where the relevant intermediary cannot transmit the information to which the relevant instruction relates directly to the traded PLC in accordance with the relevant instruction, and the intermediary is part of a chain of intermediaries, the relevant intermediary shall, as soon as practicable, transmit the relevant instruction to each other intermediary in the chain of intermediaries known to the relevant intermediary as being part of the chain.

(c) An intermediary to whom the relevant instruction is transmitted under paragraph (b), and who can transmit the information to which the relevant instruction relates

directly to the traded PLC, shall, as soon as practicable and in accordance with the relevant instruction, transmit that information directly to the traded PLC.

(5) A shareholder in a traded PLC may nominate a third party to be the person to receive information or notifications under this section on the shareholder's behalf and, accordingly, references in this section to 'shareholder' shall be construed as including any such third party.

(6) In this section, '**relevant information**' means, as appropriate, the information referred to in paragraph (a), or the notice referred to in paragraph (b), of subsection (1).

(7) This section shall come into operation on 3 September 2020.

Appendix 2:

Commission Implementing Regulation (EU)2018/1212, Article 9

Deadlines to the be complied with by issuers and intermediaries in corporate events and in shareholder identification processes

1. The issuer who initiates the corporate event shall provide intermediaries the information about the corporate event in a timely manner, no later than on the same business day on which it announces the corporate event under applicable law.

2. When the intermediary processes and transmits information on corporate events, the intermediary shall ensure, where necessary, that the shareholders have sufficient time to react to the information received in order to comply with the issuer deadline or record date.

   The first intermediary and any other intermediary receiving the information regarding a corporate event shall transmit such information to the next intermediary in the chain without delay and no later than by the close of the same business day as it received the information. Where the intermediary receives the information after 16.00 during its business day, it shall transmit the information without delay and no later than by 10.00 of the next business day.

   Where the position in the relevant share changes after the first transmission, the first intermediary and any other intermediary in the chain shall additionally transmit the information to the new shareholders in its books, according to end of day positions on each business day, until the record date.

3. The last intermediary shall transmit to the shareholder the information about the corporate event without delay and no later than by the close of the same business day as it received the information. Where the intermediary receives the information after 16.00 during its business day, it shall transmit the information without delay and no later than by 10.00 of the next business day. In addition, it shall confirm the shareholder's entitlement to participate in the corporate event without undue delay and on such time as to comply with the issuer deadline or record date, as applicable.

4. Each intermediary shall transmit to the issuer any information regarding shareholder action without delay after it received the information, following a process allowing for compliance with the issuer deadline or record date.

   Any additional requirements pertaining to shareholder action, which the issuer requires the shareholder to provide under applicable law, and which cannot be processed as machine-readable or straight-through processing as provided for in Article 2(3), shall be transmitted by the intermediary without delay and in time as to comply with the issuer deadline or record date.

   The last intermediary shall not set a deadline requiring any shareholder action earlier than three business days prior to the issuer deadline or record date. The last intermediary may caution the shareholder as regards the risks attached to changes in the share position close to the record date.

5. The confirmation of the receipt of votes cast electronically as provided for in Article 7(1) shall be provided to the person that cast the vote immediately after the cast of the votes.

   The confirmation of recording and counting of votes as provided for in Article 7(2) shall be provided by the issuer in a timely manner and no later than 15 days after the request or general meeting, whichever occurs later, unless the information is already available.

6. The request to disclose shareholder identity made by an issuer or third party nominated by the issuer shall be transmitted by intermediaries, in accordance with the scope of the request, to the next intermediary in the chain without delay and no later than by the close of the same business day as the receipt of the request. Where the intermediary receives the request after 16.00 during its business day, it shall transmit the information without delay and no later than by 10.00 of the next business day.

   The response to the request to disclose shareholder identity shall be provided and transmitted by each intermediary to the addressee defined in the request without delay and no later than during the business day immediately following the record date or the date of receipt of the request by the responding intermediary, whichever occurs later.

   The deadline referred to in the second subparagraph shall not apply to responses to requests or those parts of requests, as applicable, which cannot be processed as machine-readable and straight-through processing, as provided for in Article 2(3). It shall also not apply to responses to requests that are received by the intermediary more than seven business days after the record date. In such cases, the response shall be provided and transmitted by the intermediary without delay and in any event by the issuer deadline.

7. The deadlines referred to in paragraphs 1 to 6 shall apply, to the extent necessary, to any cancellations or updates of the relevant information.

8. The intermediary shall time stamp all transmissions referred to in this Article.

Appendix 3:

Annex to Commission Implementing Regulation (EU) 2018/1212

Table 1 – Request to disclose information regarding shareholder identity

Type of Information	Description	Format	Originator of data
A. Specification of the request (separate request to be sent for each ISIN)			
1.Unique identifier of the request	Unique number specifying each disclosure request	[24 alpha numeric characters]	Issuer or third party nominated by it
2.Type of request	Type of request (request to disclose shareholder identity)	[4 alpha numeric characters]	Issuer or third party nominated by it
3. ISIN	Definition	[12 alpha numeric characters]	Issuer
4.Record Date	Definition	[Date (YYYYMMDD)]	Issuer
5.Issuer deadline	Definition. The Issuer deadline shall be set in compliance with Article 10 of this Regulation.	[Date (YYYYMMDD)]	Issuer
6.Threshold quantity limiting the request	If applicable. The threshold shall be expressed as an absolute number of shares (= no), or a percentage of shares or voting rights (= pc). The use of a percentage may affect the straight through processing of the request.	[Optional field. If applicable, then populated: no + 15 numeric characters Or pc + 5 numeric characters]	Issuer
7. Date from which the shares have been held	If applicable. The issuer shall indicate in its request how the initial date of shareholding is to be determined. Such request may affect the straight through processing of the request.	[Optional field. If applicable, then populated: YES]	Issuer

Type of Information	Description	Format	Originator of data
B. Specification regarding the recipient to whom the response must be sent			
1.Unique identifier of the recipient of the response	Unique national registration number preceded by the country code referring to the country of its registered office or LEI of issuer, or third party nominated by the issuer, issuer CSD, other intermediary or service provider, as the case may be, to whom the response shall be transmitted by the intermediary.	[20 alphanumeric characters. The country code is to be in the form of the 2 letter code as defined by ISO 3166—1 alpha-2 country code, or compatible methodology]	Issuer
2. Name of the recipient of the response		[35 alphanumeric characters. Format of Table 2, field C.2(a) or (b)]	Issuer
3. Address of the recipient of the response	BIC address, secured or certified e-mail address, URL for a secure web portal or other address details that ensure the security of the transmission	[alphanumeric field]	Issuer

Table 2 – Response to a request to disclose information regarding shareholder identity

Type of information	Description	Format	Originator of data
A. Specification of the original request by issuer			
1.Unique identifier of request	See Table 1, field A.1	[24 alphanumeric characters]	Issuer or third party nominated by it
2.Unique identifier of response	Unique number identifying each response.	[24 alphanumeric characters]	Responding Intermediary
3.Type of request	See Table 1, field A.2	[4 alpha numeric characters]	Issuer or third party nominated by it
4. ISIN	See Table 1, field A.3	[12 alpha numeric characters]	Issuer
5. Record date	See Table 1, field A.4	[Date (YYYYMMDD)]	Issuer
B. Information regarding shareholding by responding intermediary			
1.Unique identifier of the responding intermediary	Unique national registration number preceded by the country code referring to the country of its registered office or LEI	[20 alphanumeric characters. The country code is to be in the form determined in Table 1, field B.1]	Responding intermediary
2. Name of the responding intermediary		[35 alphanumeric characters]	Responding intermediary
3. Total number of shares held by the responding intermediary	The total number equals the sum of the numbers given in field B.4 and B.5	[15 numeric characters with, if applicable, a decimal separator '.' (full stop)]	Responding intermediary
4. Number of shares held by the responding intermediary on own account		[15 numeric characters with, if applicable, a decimal separator '.' (full stop)]	Responding intermediary
5. Number of shares held by the responding intermediary on account of someone else		[15 numeric characters with, if applicable, a decimal separator '.' (full stop)]	Responding intermediary

Type of information	Description	Format	Originator of data
C. Information regarding shareholder identity (repeating block, to be filled in separately for each shareholder known to the responding intermediary)			
1(a). Unique identifier of shareholder in case of a legal person	1) A unique national registration number preceded by the country code for its country of registration or LEI or 2) where neither a LEI nor a registration number is available, a Bank Identifier Code (BIC) preceded by the country code for its country of registration OR 3) or a client code, which uniquely identifies every legal entity or structure, in any jurisdiction, preceded by the country code regarding its country of registration	[20 alphanumeric characters] [11 alphanumeric characters] [50 alphanumeric characters. The country code is to be in the form determined in Table 1, field B.1	Responding intermediary
1(b). Unique identifier of shareholder in case of a natural person	The national identifier as determined in Article 6 of Commission Delegated Regulation (EU) 2017/590	[35 alphanumeric characters]	Responding intermediary
2(a). Name of shareholder in case of a legal person		[35 alphanumeric characters]	Responding intermediary

Type of information		Description	Format	Originator of data
2(b) Name of shareholder in case of a <u>natural person</u>		1) First name(s) of the shareholder. In case of more than one first name, all first names shall be separated by a comma 2) Surname(s) of the shareholder. In case of more than one surname, all surnames shall be separated by a comma	[35 alphanumeric characters] [35 alphanumeric characters]	Responding intermediary Responding intermediary
3. Street address			[35 alphanumeric characters]	Responding intermediary
4. Post code			[10 alphanumeric characters]	Responding intermediary
5. City			[35 alphanumeric characters]	Responding intermediary
6. Country		Country code	[2 letter country code in the form determined in Table 1, field B.1]	Responding intermediary
7. Post code post box			[10 alphanumeric characters]	Responding intermediary
8. Number of Post box			[10 alphanumeric characters]	Responding intermediary
9. E-mail address			[255 alphanumeric characters]	Responding intermediary
Repeating block (repeat for the different types of shareholding or dates of shareholding)	10. Type of shareholding	Indication of type of shareholding. Select: O = shareholding on own account; N = nominee shareholding; B = beneficial shareholding; U = unknown	[1 alphanumeric character]	Responding intermediary
	11. Number of shares held by the shareholder	Number of shares held by the shareholder	[15 numeric characters with, if applicable, a decimal separator '.' (full stop)	Responding intermediary

Type of information		Description	Format	Originator of data
	12. Initial date of shareholding	If applicable.	[Date (YYYYMMDD)]	Responding intermediary
13. Name of third party nominated by the shareholder		If applicable, this field shall identify the third party who is authorised to take the investment decisions on behalf of the shareholder	[Optional field. If applicable, format of fields C.2(a) or C.2(b) above].	Responding intermediary
14.Unique identifier of third party nominated by the shareholder		If applicable, this field shall identify the third party who is authorised to take the investment decisions on behalf of the shareholder	[Optional fields. If applicable, unique identifier in the format of fields C.1(a) or C.1(b) above]	Responding intermediary

Appendix 4

Section 1110Q of the Companies Act 2014

1110Q. Extension of rights to beneficial owners of shares

(1) This section shall only apply to shares in a PLC which are admitted to trading on any of a MTF, the Main Market of the London Stock Exchange, the Alternative Investment Market (AIM) of the London Stock Exchange or such other stock market as the Minister may designate for the purpose of this section.

(2) For the purpose of this section,

"**central securities depository**" means a central securities depository within the meaning of the CSD Regulation;

"**CSD Regulation**" means the Regulation 909/2014 of the European Parliament and of the Council of 23 July 20141 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012;

'**MTF**' means a multilateral system as defined in point (22) of Article 4(1) of Directive 2014/65/EU; and

"**owner of any share**" has the same meaning as in section 101;

(3) Nothing in this section shall require a central securities depository to do anything which it is not already required to do by the other provisions of the Act and/or by the CSD Regulation.

(4) The owner of any share which is recorded in book-entry form in a central securities depository can exercise all of the rights conferred on a member with respect to that share by:

(a) sections 37(1)[50],

105(8)[51],

112(2)[52],

146(6)[53],

178(2)[54],

178(3) [55],

180(1)[56],

[50] Copies of constitution to be given to members.

[51] Provision of contract of purchase of own shares to members.

[52] Members' right to inspect contract of purchase of own shares.

[53] Members' right to remove directors.

[54] Convening of extraordinary general meetings by members.

[55] Convening of extraordinary general meetings on requisition of members.

185(1)[57],

1101[58] and

1104[59] provided that such owner has notified the PLC in writing that it is the sole owner of such share and that the notification is accompanied by such other evidence as the directors may reasonably require to confirm ownership of that share; and

(b) sub-sections 89(1)[60],

99(4)[61],

100(2)[62],

173(1)[63],

179(1)[64],

210(1)[65],

211(3)[66],

212(1)[67],

459 (5) to (8)[68] and

section 1147[69]

provided that such owner has filed as part of its application to the court an affidavit which confirms:

(i) that it is the owner of such share;

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[56] Persons entitled to notice of general meetings.

[57] Representation of bodies corporate at meetings of companies.

[58] Requisitioning of general meeting by members — modification of section 178(3) (traded PLCs).

[59] Right to put items on the agenda of the general meeting and to table draft resolutions (traded PLCs).

[60] Rights of holders of special classes of shares (to apply to Court to conceal variation of rights).

[61] Right of member to apply to Court for share certificate.

[62] Rectification of dealings in shares (right of member to apply).

[63] Rectification of register (right of member to apply).

[64] Power of court to convene meeting (right of member to apply).

[65] Civil sanctions where opinion as to solvency stated in (SAP) declaration without reasonable grounds (right of member to apply).

[66] Moratorium on certain restricted activities being carried on and applications to court to cancel (SAP) special resolution (right of member to apply).

[67] Remedy in case of oppression (right of member to apply).

[68] Right of dissenting shareholder to apply to Court to retain its shares or to vary a takeover offer.

[69] Right of shareholder in merger of PLCs to have loss made good by directors or experts.

(ii) that any share which is the subject of the application will remain in the ownership of the applicant until the court has made a determination in respect of the application;

(iii) that the owner is the exclusive beneficiary of such right which is the subject matter of the application and the share is not subject to any encumbrance that prevents the owner from exercising such right;

(iv) that any stamp duty which was payable in respect of its acquisition of its ownership of the share has been discharged in full; and

(v) where applicable, that its interest was notified to the PLC within the period required by section 265 or 1053 and Regulation 21 of the Transparency (Directive 2004/109/EC) Regulations, 2007.

(5) The references to a member, a holder of a share or a shareholder in sections

69(4)(b)[70],

89(4)[71],

96(8)[72],

108(1)[73],

111(2)[74],

180[75],

182[76],

185(1)[77],

228(3)[78],

228(4) [79],

252(2)[80],

[70] Allotment of shares.

[71] Rights of holders of special classes of shares.

[72] Transmission of shares on a death.

[73] Power to redeem preference shares issued before 5 May 1959.

[74] Effect of company's failure to redeem or purchase.

[75] Persons entitled to notice of general meetings.

[76] Quorum (at general meetings).

[77] Representation of bodies corporate at meetings of companies.

[78] Statement of principal fiduciary duties of directors (recognising interests of person that has right to nominate a director).

[79] Statement of principal fiduciary duties of directors (recognising interests of person that has right to nominate a director).

338[81],

339[82],

374(3)[83],

392(6)[84],

417(1)[85],

427[86],

457[87],

459[88],

460(4)[89],

1137(4)[90],

1147[91] and

1159(4)[92]

shall be deemed also to refer to an owner of a share who has satisfied the requirements in subparagraph 4(a) or 4(b) above with respect to that share.

(6) All persons who were entitled to receive notice of a meeting by virtue of subparagraph 4(a) above at the date the notice was posted, shall also be entitled to attend at the meeting in respect of which the notice has been given and shall be entitled to speak at such meeting provided that such person remains an owner of a share at such time.

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[80] Approval of company necessary for payment to director of compensation in connection with transfer of property (provision of information to member).

[81] Circulation of statutory financial statements.

[82] Right to demand copies of financial statements and reports.

[83] Publication of revised financial statements and reports.

[84] Liability of auditors to third parties,

[85] Extension of time for registration of charges and rectification of register.

[86] Registration against company of certain matters prohibited.

[87] Right to buy out shareholders dissenting from scheme or contract approved by majority and right of such shareholders to be bought out.

[88] Supplementary provisions in relation to sections 457 and 458 (including provision for applications to court).

[89] Construction of certain references in Chapter to beneficial ownership, application of Chapter to classes of shares, etc.

[90] General meetings of merging companies.

[91] Right of shareholder in merger of PLCs to have loss made good by directors or experts.

[92] General meetings of companies involved in a division.

(7) Neither paragraph 6 above nor the reference to section 185(1) in subparagraph 5 above, shall entitle the person to vote at a meeting of the company or exercise any other right conferred by membership in relation to meetings of the company.

(8) Where two or more persons are the owner of a share, the rights conferred by this section shall not be exercisable unless all such persons have satisfied the requirements in subparagraph 4(a) or 4(b) above with respect to that share.

(9) In the case of the death of an owner of a share, the survivor or survivors where the deceased was a joint owner of the share, and the personal representatives of the deceased where he or she was a sole holder, shall be the only persons recognised by the company as the persons entitled to exercise any rights conferred by this section in respect of that share provided that they or the deceased owner have satisfied the requirements in subparagraph 4(a) or 4(b) above with respect to that share.

(10) Where a share has been registered in the name of a nominee of a central securities depository, that nominee shall be recognised by for all relevant purposes as holding such share in trust for such central securities depository.

Appendix 5

Proposed Part 17, Chapter 17A, section 1170A

Schemes of Arrangement

(1) In section 449(1), "special majority" insofar as it applies to an applicable class [NOTE 1] means, in any particular instance at the option of a PLC, ***either:***

(a) (i) in the case of an applicable class consisting of shares, a majority in number representing at least 75 per cent in value of the members of the applicable class present and voting either in person or by proxy at the scheme meeting;[NOTE 2]

(ii) in the case of an applicable class consisting of transferable securities other than shares, a majority in number representing at least 75 per cent in value of the holders of the applicable class present and voting either in person or by proxy at the scheme meeting;[NOTE 3]

or

(b) where a super-quorum[NOTE 4] is in attendance at a scheme meeting:

(i) in the case of an applicable class consisting of shares, a majority representing at least 75 per cent in value of the members of the applicable class present and voting either in person or by proxy at the scheme meeting;

(ii) in the case of an applicable class consisting of transferable securities other than shares, a majority representing at least 75 per cent in value of the holders of the applicable class present and voting either in person or by proxy at the scheme meeting.

(2) In this section:

"**applicable class**" means any class of securities (whether shares or securities other than shares) of a PLC (including where the relevant issuer has only one class of securities);

"**super-quorum**" means:

(i) in the case of an applicable class of securities consisting of shares, members present in person or by proxy representing at least one-third in value of the members of the applicable class;[NOTE 5]

[NOTE 1] Defined in subs. (2).

[NOTE 2] This is equivalent to the existing s.449(1) definition for shares

[NOTE 3] This is equivalent to the existing s.449(1) definition for securities other than shares.

[NOTE 4] Defined in subs. (2).

[NOTE 5] This implements for shares CLRG Recommendation 4.4.4 on page 15 of its June 2020 Report on certain Company Law Issues arising under the EU Central Securities Depositories Regulation 909/2014 (CSDR).

(ii) in the case of an applicable class of securities consisting of securities other than shares, holders present in person or by proxy representing at least one-third in value of the holders of the applicable class.[NOTE 6]

END

[NOTE 6] This implements for securities other than shares CLRG Recommendation 4.4.4 on page 15 of its June 2020 Report on certain Company Law Issues arising under the EU Central Securities Depositories Regulation 909/2014 (CSDR).