



<b><u>TECHNICAL CIRCULAR:</u></b>	<b>9/2021 [TC 9_2021]</b>
<b>To:</b>	<b>ALL MEMBERS OF THE INSTITUTE</b>
<b>From:</b>	<b>Listed Entities and PIE Auditors Committee</b>
<b>Date:</b>	<b>17 May 2021</b>
<b>Subject:</b>	<b>Encouragement of long-term shareholder engagement law</b>

The Institute of Certified Public Accountants of Cyprus with this circular wishes to inform its members about the main provisions introduced by the transposition of the Directive (EU) [2017/828](#) of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

The [Encouragement of long-term shareholder engagement law](#) (hereafter the 'law') is effective as of 12 May 2021, which is the date that the law was published in the Official Gazette of the Republic.

The following information is provided:

- 1. Scope of the law**
- 2. Objectives of the law**
- 3. Key Points of the law**
- 4. Entry into force**
- 5. Related Documents**

## **1. Scope of the law**

The requirements impact:

- Intermediaries as defined in the law includes investment firms that provide custodian services, asset management services and safekeeping of shareholdings on behalf of the beneficial shareholders.
- Proxy advisors to shareholders.
- Institutional investors.
- Asset managers.
- Issuers (companies which have their registered office in Cyprus and the shares of which are admitted to trading on a regulated market situated or operating within a Member State).

## **2. Objectives of the law**

- It establishes rules promoting the exercise of shareholder rights at general meetings of companies with registered office in Cyprus and the shares of which are admitted to trading on a regulated market in the EU.
- It aims to encourage long-term shareholder engagement to ensure that decisions are made for the long-term stability of a company and take into account environmental and social issues. The law:
  - facilitates shareholder identification and information flows between the shareholders and the company;
  - improves the oversight of directors' remuneration;
  - provides for rules regarding related party transactions<sup>1</sup>; and
  - introduces greater transparency for institutional investors, asset managers and proxy advisors.

## **3. Key Points of the law**

In accordance with 127A the Companies Law, Cap. 113, a company must give shareholders information on general meetings, including 21 days' notice, and the date, location, agenda, voting and participation procedures must be listed on its website.

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<sup>1</sup> 'Related Party' has the same meaning as in the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, i.e., IAS 24 *Related Party Disclosures*.

**Companies** must also provide other information such as:

- the total number of shares and voting rights;
- documents to be submitted;
- a draft resolution for each agenda item of the meeting; and
- forms to be used to vote by proxy (when a shareholder authorises another person or firm to represent them).

In accordance with Article 127B the Companies Law, Cap. 113, **shareholders** have the right to:

- put items on the agenda of general meetings;
- propose resolutions (if they have a 5% holding in the company's capital).

The main requirements provided in the enacted law are as follows:

### **Identification of shareholders**

- A company can request shareholder identification for those shareholders that have more than 0.5% holding of shares or voting rights (Article 4(1)).
- Companies have the right to identify their shareholders and obtain information on shareholder identity from any intermediary who holds that information. Intermediaries must transmit such information without delay (Article 4(2)).

### **Transmission of information**

- Intermediaries are required to transmit the information which the company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class (Article 5(1)).
- When there is a chain of intermediaries, the information needs to be transmitted between intermediaries without delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholder (Article 5(4)).

### **Facilitation of shareholder rights**

- New rules aim to make it easier for shareholders resident in another EU country to participate in general meetings and vote. They no longer need to be physically present and to physically attend a general meeting of the members of the company as they may now participate in the general meeting by electronic means and exercise their voting rights electronically (Article 6(2)).

- The exercise of shareholder rights, including the right to participate and vote in general meetings has to be facilitated by intermediaries (Article 6(1)).
- After the general meeting, and no more than three months after the vote, the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them (Article 6(3)).
- Intermediaries should disclose publicly any applicable charges for services provided for under article 4,5 and 6 separately for each service (Article 7(1)).

### **Transparency for institutional investors, asset managers and proxy advisors**

- Institutional investors and asset managers must publish a policy on shareholder engagement or explain why they have chosen not to do so. They also have to disclose information annually on how they have implemented this policy, in particular how they voted at significant votes (Article 8).
- Institutional investors are required to explain how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities and how those elements contribute to the medium to long-term performance of their assets (Article 9).
- Asset managers must disclose to institutional investors how their investment strategy and its implementation contribute to the medium to long-term performance of the assets of the institutional investor or of the fund (Article 10).
- Proxy advisors (providing research, advice and recommendation on how to vote) are subject to transparency requirements. They have to report on the application of the code of conduct which they apply or explain to the public why they do not apply such a code (Article 11).

### **Remuneration policy and report**

While a legal framework governing remuneration reports exists in Cyprus<sup>2</sup>, this Law strengthens the framework by introducing a binding shareholder vote on the remuneration policy (Article 12(2)) and requiring more granular disclosure in the remuneration report. It does not introduce any changes to the substantive rules on remuneration.

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<sup>2</sup> Refer to Cyprus Stock Exchange 'Corporate Governance Code', Available at: <https://www.cse.com.cy/CMSPages/GetFile.aspx?guid=b77dda20-8bfb-4ab6-86c7-84cdcc6dfo50>.

- Companies shall establish a remuneration policy as regards directors and shareholders have the right to vote on the remuneration policy at the general meeting (Article 12(1)).
- Shareholders will have the right to vote on director remuneration policy at least every 4 years (Article 12(6)).
- The policy should support the company's strategy. It should describe the fixed and variable components of directors' pay, including the main characteristics of pension and payments linked to the termination of a contract (Article 12(7a)).
- The annual general meeting has the right to hold an advisory vote on the remuneration report of the last financial year (Article 13(5a)).
- Shareholders will also have the right to vote on annual remuneration reports that provide information on individual directors' pay during the previous financial year. Small- and medium-sized enterprises are allowed to have a discussion at the general meeting as an alternative to a vote (Article 13(5b)).
- The remuneration policy and the report will also have to be publicly disclosed:
  - *Remuneration policy*: after the vote on the remuneration policy at the general meeting the policy together with the date and the results of the vote is made public without delay on the website of the company and remains publicly available, free of charge, at least as long as it is applicable (Article 12(12)).
  - *Remuneration report*: the companies shall make the remuneration report publicly available on their website, free of charge, for a period of 10 years, within 12 months from the closing of the balance sheet. The statutory auditor or audit firm will have to check that the information required has been provided (Article 13(6a)).
- The European Commission has published guidelines on the presentation of the remuneration report ("[Guidelines on the standardized presentation of the remuneration report under Directive 2007/36/EC](#)", March 1, 2019), providing guidance on the reporting of remuneration, including standardized detailed tables. Although these guidelines are non-binding, it is expected that they will set the standard of what is considered appropriate disclosure.

### **Related party transactions**

- For any material transaction (to be defined in a subsequent circular that will be issued by the Cyprus Securities and Exchange Commission as per Article 14(2)) between a listed company and a related party:
  - the transaction must be publicly announced (Article 14(3));

- a report must be published assessing whether the transaction is fair and reasonable from the company's perspective and for the other shareholders. The report shall be produced by one of the following: (a) an independent third party; (b) the administrative or supervisory body of the company; or (c) the audit committee or any committee the majority of which is composed of independent directors (Article 14(4a&b));
- the transaction with related parties is approved by the general meeting or by the administrative or supervisory body of the company (Article 14(5a)). Shareholders have the right in the general meeting to vote on material transactions with related parties which have been approved by the administrative or supervisory body of the company (Article 14(5b)).
- Certain exemptions apply such as Article 14 (3)(4) and (5) not applying to transactions entered into in the ordinary course of business and concluded on normal market terms.

#### 4. Entry into force

Directive 2007/36/EC has applied since 3 August 2007. The amended rules of Directive (EU) 2017/828 have applied since 9 June 2017 and had to become law in the EU countries by 10 June 2019.

In Cyprus, the Directive has been transposed into national law and voted in Parliament on 22 April 2021, therefore the provisions of the law have entered into force as of 12 May 2021 following the publication of the Law in the Cypriot Official Gazette.

For example, the revised remuneration policy must be submitted for the first time to the shareholders' meeting approving the annual accounts to be published in 2022. Most companies have a December 31st financial year end, such that for these companies, this will be the shareholders' meeting in the spring of 2022.

The law's provisions on related party transactions have also entered into force subject to issuance of a circular on the definition of material transactions by the Cyprus Securities and Exchange Commission as per Article 14(2)). Given the tight timeframe awarded to companies to comply with the new provisions, particular attention should be paid to revising, as soon as possible, internal policies on related party transactions.

#### 5. Related Documents

- [Commission Implementing Regulation \(EU\) 2018/1212](#) of the European Parliament and of the Council of 3 September 2018 lays 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.

- Directive [2007/36/EC](#) of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, pp. 17-24)

Successive amendments to Directive 2007/36/EC have been incorporated into the original document. This [consolidated version](#) is of documentary value only.

- [Shareholders' rights directive Q&A](#) (*European Commission*).
- [Company Law and Corporate Governance](#) (*European Commission*)