



10 June 2019

Shareholder Rights Directive II: a reminder for listed companies

New rules implementing the Shareholder Rights Directive II ("SRD II") have come into force today. There are two key areas of change that are relevant to listed companies:

- changes to the regime relating to directors' remuneration; and
- changes to the related party regime.

The changes do not affect AIM companies. The final rules in relation to these changes were published last week.

CHANGES TO DIRECTORS' REMUNERATION REGIME

The key changes, which are set out in the government's [explanatory memorandum](#), relate to the scope of companies and officers caught by the regime and the content requirements for a company's remuneration report and remuneration policy. Companies preparing to put forward a new remuneration policy this year should note in particular the changes to content requirements. The changes are effected by The Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019 which amend provisions of the Companies Act 2006 and the Large and Medium-sized (Accounts and Reports) Regulations 2008. For further details of the changes, please see our April 2019 [client note](#).

NEW RELATED PARTY RULES

The [Listing and Disclosure Sourcebooks \(Shareholder Rights Directive\) Instrument 2019](#) introduces new rules on related party transactions in DTR 7.3 of the Disclosure Guidance and Transparency Rules. The new rules apply to all companies with securities admitted to trading on a regulated market and will operate as a parallel regime to Listing Rule 11 ("LR 11"), which continues to apply to premium listed companies. Key points to note include:

- The new regime applies to standard listed companies and those on the High Growth and Specialist Funds Segments, as well as premium listed companies, whereas LR 11 continues to apply to premium listed companies only.

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- DTR 7.3 requires an announcement and board approval of the transaction, as opposed to shareholder approval which is required under LR 11.
- If a premium listed company complies with the shareholder approval and announcement requirements of the LR 11 regime in respect of a related party transaction, it does not need to do anything additional under the new regime.
- As the new regime applies the [International Accounting Standards definition](#) of "related party", which differs from the Listing Rules definition, there may be a small number of instances when the DTR 7.3 regime applies to a premium listed company but LR 11 does not apply.
- The materiality threshold for related party transactions under DTR 7.3 is 5%, calculated with reference to any one of the profits, assets, market capitalisation or gross capital tests. This has been lowered from the proposed 25% and is now the same threshold as under LR 11, although LR 11 also contains a modified regime for smaller related parties which fall below the 5% threshold but where any percentage ratio exceeds 0.25%. The modified class tests for specialist premium listed companies do not apply for the purposes of the DTR 7.3 regime.
- Issuers that are not incorporated in an EU Member State but that comply with a similar overseas regime will be subject to a modified version of the new regime, under which: (i) a definition of "related party" under equivalent accounting standards may be used, and (ii) the issuer need not comply with the board approval requirements of DTR 7.3.
- Aggregation rules under SRD II mean that some smaller transactions may have to be announced, even if these would not have needed to be announced under LR11, as the board approval and disclosure requirements apply to all the aggregated transactions, not just the one which results in the materiality threshold being reached.
- The transitional provisions provide that an issuer is only required to comply with DTR 7.3 from the start of the financial year beginning on or after 10 June 2019 and only transactions or arrangements entered into on or after the start of the financial year beginning on or after 10 June 2019 must be aggregated.

Further details can be found in the FCA's [Policy Statement](#).

For details of the transparency and engagement rules being introduced by the SRD II, please see our February 2019 [client note](#) – these changes are being implemented as proposed.

FOR FURTHER INFORMATION, PLEASE CONTACT

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