Act Implementing the Second Shareholders' Rights Directive (ARUG II)
Deloitte Legal, March 2020
Overview
Overview
From the EU Directive to the entry into force of the implementing act

2nd Shareholder Rights Directive (SRD II) - May 17, 2017

Date of implementation: June 10, 2019

Implementing Regulation: know-your-shareholder, transmission of information - September 3, 2018

Effective from: September 3, 2020

Implementing act of the 2nd ARRL ("ARUG II") - Draft Bill - October 11, 2018

ARUG II - Government Bill - March 20, 2019

Legislative process: Bundestag, Legal Affairs Committee, Bundesrat

Entry into force: January 1, 2020

- May 9, 2019: BT, 1st reading, referral to Legal Affairs Committee
- November 13, 2019: BT, Decision recommendation and report
- November 14, 2019: BT, 2nd/3rd reading
- November 29, 2019: BR, no objection
- Law of December 12, 2019; Announcement BGBI.: December 19, 2019
Overview
Objectives and topics of ARUG II

Key objective: promoting long-term shareholder participation; improving corporate governance

Addressees: listed companies (starting point), intermediaries and other capital market participants

Know-your-shareholder (issuer’s right to information)
- Obligations to provide information in proportion issuer-intermediary-shareholder

Vote of the GM on remuneration policy (say on pay) and remuneration report

Disclosure obligations for institutional investors, proxy advisors and asset managers regarding engagement policy and voting behavior
- (comply or explain)

Transactions with related parties (approval of the supervisory board and disclosure)
- Related Party Transactions ("RPT")

Measures to achieve the objectives:
- Greater involvement of shareholders in issuers' decision-making processes
- Transparency rules for certain capital market participants; stronger focus on the interests of shareholders
- Facilitating and improving communication between issuer and shareholder; facilitating the exercise of shareholder rights; digitalization
Overview

Transitional provisions

Material provisions:
sections 67, 67a to 67f, 118, 123, 125, 129 of the German Stock Corporations Act (AktG)

In effect: basically from September 9, 2020; convening of GMs after September 9, 2020

Material provisions:
sections 87a, 113, 120a, 124, 162 AktG

In particular: first resolution on remuneration policy in the first annual GM after December 31, 2020; first remuneration report for the first FY starting after December 31, 2020

Material provisions:
sections 134a to 134d AktG

Validity: when the law comes into force

Material provisions:
sections 111a to 111c AktG

Validity: when the law comes into force

Material provisions:
sections 111a to 111c AktG

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Legal consequences in case of violations of the law: Fines pursuant to section 405 AktG
Details
Details
Obligation to provide information: Overview of information flow

**Transmission of information to intermediaries**
- Without delay & no later than by the end of the same business day; if received on a business day after 4 p.m.: no later than by 10.00 of the next business day
- Electronic transmission to intermediaries
- Specified formats, contents and deadlines according to implementing regulation
- Transmission to company or along the chain
- Standardised electronic and machine-readable formats

**Information claim**
- The company's right to request information from an intermediary holding the company's shares regarding the identity of the shareholders and the next intermediary
- Transmission directly to the company or along the chain

**Processing and rectification of personal data**
- Guidelines for companies and intermediaries
- Purposes: identification, communication, exercising shareholders' rights, keeping the share register, cooperation with shareholders
- Maximum storage period if shareholder is no longer a shareholder of the company
- Right of rectification of the shareholders to the company and intermediary

**Shareholders**
- Proof of share ownership for the exercise of rights at the GM in text form upon request of the shareholder from the last intermediary
- Shareholder may give instructions for the transmission of information from the last intermediary to the company/intermediary in the chain
- Forwarding of instructions from the shareholder to the intermediary entered in the share register
Details
Transmission of information, know your shareholder

Section 67a AktG: Transmission of information regarding corporate events
- To those entered in the share register, insofar as the company has issued registered shares

Section 67b AktG: Transmission of information by intermediaries to shareholders
- Otherwise to the intermediaries holding the company’s shares in safe custody

Section 67c AktG: Transmission of information by intermediaries to the company
(e.g. exercise of shareholder rights)

Section 67d AktG: Information claim of the company towards intermediaries
(know your shareholder)
Details
Disclosure requirements for institutional investors, proxy advisors and asset managers

**Engagement policy, engagement report, voting behavior, section 134b AktG**

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<tr>
<th>Action</th>
<th>Entity</th>
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<tr>
<td>Comply or explain para. 4</td>
<td>Asset managers</td>
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**Engagement policy para. 1**
- Publication of the policy describing their participation in the portfolio companies

**Engagement Report para. 2**
- Annual report on the implementation of the engagement policy

**Voting behavior para. 3**
- Publication of voting behavior

**Publication para. 5**

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**Disclosure requirements, sections 134c and 134d AktG**

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<td>Disclosure in accordance with section 134c AktG</td>
<td>Asset managers</td>
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- Disclosure of the extent to which key elements of the investment strategy correspond to the profile/term of the liabilities (Federal Gazette or website)

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- Annual declarations (declaration of compliance) and disclosures
- Immediate information in the event of conflicts of interest

**Agreement between institutional investor and asset manager**
- Disclosure of information on agreements with asset managers (Federal Gazette or website)

**Annual report to institutional investors or publication on how the investment strategy and its implementation are in line with the agreement with institutional investors**
Details

Vote of the GM on remuneration policy (say on pay) and remuneration report

**Significant changes (only affecting listed stock corporations)**

Remuneration system: supervisory board adopts a clear and comprehensible system for the remuneration of the members of the management board (section 87a para. 1 AktG)

Including: determination of a maximum compensation by the supervisory board (sections 87a para. 1 no. 1, para. 2 and 87 para. 4 AktG)

- The GM can reduce the maximum remuneration for the management board determined by the supervisory board by a binding vote
- Supervisory board may temporarily deviate from the remuneration system under certain conditions

Vote on the remuneration system and remuneration report (sections 120a para. 1, 162 AktG)

- Resolution of the GM approving the remuneration system in the event of significant changes, but at least every four years
- Resolution of the GM approving the remuneration report for the previous financial year

Publication of the remuneration system in the remuneration report (section 162 para. 1 sent. 2 and para. 4 AktG)
Details
Related party transactions (approval of supervisory board and disclosure)

**Approval of supervisory board, section 111b para. 1 AktG**

Prior approval of the supervisory board required for:
1. transactions
2. of a listed company
3. with related parties
4. whose economic value alone or together with transactions with the same related party within the current FY exceeds the threshold (1.5% of the sum of fixed and current assets according to the last financial statement or consolidated financial statement)

**Exceptions**

Transactions subject to an exception are not transactions with related parties within the meaning of section 111b AktG. Exceptions, section 111a para. 2 and para. 3 AktG:
- Transactions in the ordinary course of business and at normal market terms
- Transactions in which a special protection of the minority is not necessary or already ensured in some other way due to the specific circumstances, as well as transactions that serve an overriding objective:
  - Transactions with certain subsidiaries
  - Transactions requiring the approval or authorisation of the GM
  - All transactions and measure undertaken under the approval or authorisation of the GM, in particular the transactions and measures referred to in § 111a para. 3 no. 3 a) to f) AktG
  - Transactions relating to remuneration (members of the management board or supervisory board)
  - Transactions by credit institutions that are ordered or approved by the competent authority to ensure their stability
  - Transactions offered to all shareholders under the same conditions

**Disclosure, section 111c para. 1 AktG**

The listed company must publish details of such transactions with related parties that require approval in accordance with section 111b para. 1 AktG without delay. If a transaction requiring approval pursuant to section 111b para. 1 AktG is triggered by the aggregation of several transactions, all of these transactions must be published as well.
Exception: inside information
Publication may also be required for transactions of subsidiaries with a related party of the parent company.

Consent only for the transaction exceeding the threshold

If threshold is exceeded: publication of all businesses

RPT 1
RPT 2
RPT 3
RPT 4

threshold value

current fiscal year
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