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The International Comparative Legal Guide to:

Corporate Governance 2016

9th Edition

A practical cross-border insight into corporate governance

Published by Global Legal Group, with contributions from:

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Published by
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London SE1 3PL, UK
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
May 2016

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ISBN 978-1-911367-00-0
ISSN 1756-1035

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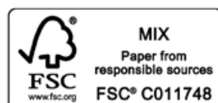

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This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Corporate Governance.*

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 30 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Bruce Hanton and Vanessa Marrison of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

This chapter deals primarily with Irish incorporated companies with shares admitted to trading on the Main Market of the Irish Stock Exchange (which is a regulated market) or listed on the Enterprise Securities Market ("ESM") of the Irish Stock Exchange. Credit institutions and insurance undertakings are also referenced, given the focus in recent years of the Central Bank of Ireland in improving corporate governance standards in such entities.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The law is stated as of 22 April 2016. The primary corporate governance legislation for companies is contained in the Companies Act 2014 (the "Companies Act") which became law on 1 June 2015 and modernised and consolidated much of the company law at the time. Irish incorporated companies with securities admitted to trading on a regulated market are subject to additional EU-based regulations, primarily the Shareholders' Rights (Directive 2007/36/EC) Regulations 2009, the Transparency (Directive 2004/109/EC) Regulations 2007 and the Market Abuse (Directive 2003/6/EC) Regulations 2005. These EU regulations have not been consolidated into the Companies Act.

From 3 July 2016, the EU Market Abuse Regulation (596/2014) ("MAR") takes effect in Member States across the EU, including Ireland, and will extend the application of the existing market abuse and inside information regime beyond issuers with shares admitted to trading on EU regulated markets, such as the Main Market of the Irish Stock Exchange, to include issuers of securities traded on multilateral trading facilities, including the Irish Stock Exchange's ESM.

An Irish incorporated company is also subject to its memorandum and articles of association (forming a contract between the company and its shareholders). The memorandum of association sets out the principal objects of the company, whilst the articles of association set out the internal regulations of the company regarding matters such as shareholder meetings, voting rights, powers and duties of directors, the composition of the board of directors and communications between the company and its shareholders. Under the Companies Act, a new type of private limited company has a one-document "constitution", whereas other companies continue to have a constitution comprising a memorandum and articles of association.

Court decisions under the former companies acts, under the Companies Act and common law (especially regarding the duties and responsibilities of directors), are also relevant.

Companies listed on the Official List of the Irish Stock Exchange must adhere, on a comply or explain basis, to the corporate governance principles set out in the UK Corporate Governance Code as supplemented by the Irish Corporate Governance Annex published by the Irish Stock Exchange (together, the "Corporate Governance Code").

Irish companies listed on the ESM will generally seek to comply insofar as possible, or disclose non-compliance, with the Corporate Governance Code.

Financial institutions are also required to comply with the Corporate Governance Requirements published by the Central Bank of Ireland in 2015 (relating to credit institutions, insurance undertakings, captive and non-captive insurance undertakings, respectively). In the private sector, there is a significant number of companies which are State-owned, and all of these must comply with the Corporate Governance Guidelines published by the Department of Public Expenditure and Reform.

Guidelines and pronouncements of shareholder representative organisations, such as the Irish Association of Investment Managers on corporate governance practices, while not having the force of law, are usually observed.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The Central Bank of Ireland has introduced stringent corporate governance requirements for all Irish credit institutions, insurance undertakings and captive insurance/reinsurance undertakings. The Requirements (previously called Codes) were updated in 2015. Fitness and probity requirements (involving the completion of detailed questionnaires by individuals) apply in respect of the appointment of directors and senior managers in such organisations. Central Bank approval is required prior to such appointment.

Irish companies are increasingly acknowledging the recent recommendations in respect of diversity on boards.

From the first financial year of a company commencing on or after 1 June 2015, the Companies Act requires:

- "large companies" (balance sheet total >€25m and turnover >€50m) to have an audit committee (although many of those companies have an audit committee, in any event, under the codes referred to above or to comply with best practice); and

- PLCs and certain other limited companies (balance sheet total >€12.5m and turnover >€25m) to include a directors' compliance statement in its annual report to confirm that the company has certain policies in place to ensure compliance with tax law and significant company law obligations.

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

The day-to-day operation and management of an Irish company is usually entrusted to its board of directors by shareholders under the memorandum and articles of association. The ability of shareholders to remove and appoint directors is the principal power of shareholders to influence the operation and management of the company. Company law and various requirements in the Listing Rules of the Irish Stock Exchange, as well as the Corporate Governance Code, require certain rights and powers to be reserved to shareholders. For instance, under the Companies Act, directors require prior approval from shareholders to issue shares and for the dis-application of pre-emption rights on issues of shares for cash. Under Irish company law, shareholders also have the ability to control the buy-back and reissue of shares by a company.

The Listing Rules of the Irish Stock Exchange impose various requirements for shareholder approval in respect of significant corporate transactions for companies on its Main Market. These requirements for shareholder approval are more relaxed in the case of the ESM.

Company law also regulates potential conflicts of interests by requiring certain transactions between a company and its directors (and persons connected with them) to be approved by shareholders. Shareholders also have the right to convene shareholder meetings for the purpose of proposing resolutions which seek to direct the board to undertake certain actions. For companies listed on the Main Market, it is possible for a shareholder or a group of shareholders holding at least 5% of the issued share capital to convene such meetings. For other companies, the threshold is 10% of the issued share capital. Importantly, the ability of shareholders to direct the board to undertake certain actions is limited where that matter is already reserved for the exclusive determination of the board under the articles of association. Where this is the case, the shareholders cannot direct the board unless they first amend the relevant provision in the articles of association.

Shareholders may oppose management proposals (in the form of resolutions proposed at general meeting) by seeking to amend resolutions, as well as by speaking and voting against any particular resolution. Particular rules, to be found in the Companies Act, the articles of association and case law, regulate a shareholder's ability to put amendments to resolutions at a meeting.

Under the Shareholder Rights Regulations, members of a company traded on an EU regulated market, holding 3% of the voting share capital, are given a statutory right to put items on the agenda of the annual general meeting.

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

As corporate governance, at its simplest, is the system by which companies are directed and controlled, shareholders have a key role. However, there is no particular responsibility on any shareholder. In recent years, EU and domestic legislative and non-legislative initiatives have sought to encourage more active shareholder participation in corporate governance. The UK Stewardship Code for institutional investors is also applicable to Irish listed companies and seeks to encourage a more meaningful relationship between institutional investors and investee companies.

Various shareholder advisory services review corporate governance practices in companies prior to their annual general meetings each year. Increasingly, Irish listed companies consult on a private basis with one or more key shareholder advisory services with a view to ensuring that their corporate governance standards meet the relevant requirements.

2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

All Irish companies must hold an annual general meeting within 18 months of their incorporation, and thereafter, the gap between annual general meetings may not exceed 15 months. Additional meetings, known as extraordinary general meetings, are held as required, for example, to consider a matter requiring shareholder approval as mentioned at question 2.1 above. For companies traded on an EU regulated market, the standard notice period for general meetings is 21 clear days, save that the company may convene a general meeting (other than an annual general meeting or a meeting to consider a special resolution – a resolution which requires a 75% majority vote) on 14 days' clear notice if that flexibility has been granted by shareholders at a preceding general meeting.

The business of the annual general meeting is typically the consideration of the annual report and accounts, the declaration of dividends, the re-election of directors, and the fixing of the remuneration of the auditors and of the ordinary remuneration of the directors. The Companies Act introduced the requirement that the members at an annual general meeting review the company's affairs.

The notice of any meeting must describe the nature of the business and must be circulated to all shareholders at least 21 clear days prior to the meeting (for an annual general meeting or a resolution to pass a special resolution). Shareholders in companies traded on a regulated market who hold 3% or more of the issued share capital of the company have the right to put an item on the agenda of the annual general meeting. Such a request is to be received 42 days before the meeting to which it relates, in order to allow notice of the resolution to be sent to all shareholders before the meeting. For other companies, shareholders will not, generally speaking, have a right to propose resolutions at an annual general meeting, unless allowed by the articles of association.

Separately, any shareholder can ask any question at the annual general meeting, and the company is expected to answer unless there are valid reasons, such as trade secrecy or confidentiality obligations, which would preclude the company from responding to the question.

Items of business at the annual general meeting usually include resolutions to authorise the directors to allot shares, to disapply statutory pre-emption rights, to authorise the company to buy back its own shares and to authorise the company to re-issue treasury shares. All of these items (other than the first one) require the passing of a special resolution (i.e. the approval of 75% of the shareholders voting on the resolution whether in person or by proxy).

An extraordinary general meeting of the company will also be convened by the directors where a company is undertaking a transaction which requires shareholder approval. Shareholders

holding at least 5% of the issued share capital of the company, in the case of companies traded on a regulated market, or 10% of the issued share capital of the company in all other cases, can also requisition the convening of an extraordinary general meeting. Under the Companies Act, unless the company's constitution states otherwise, 50% of shareholders can convene a general meeting (this right is separate to the ability to requisition the convening of such a meeting).

Increasingly, Irish listed companies have arrangements whereby the company may communicate with their shareholders electronically (via their website or by email). Regulations implementing the EU Transparency Directive, applicable to companies with securities traded on an EU regulated market, facilitate electronic communication by providing that, unless a shareholder specifically requests written documentation, shareholder information can be distributed electronically by email or notice on the company's website. All Irish companies allow shareholders to attend their meetings by way of proxy (and in most cases, multiple proxies are allowed) and to instruct their proxy to vote for or against the resolution or instruct the proxy to withhold their votes.

To be passed, resolutions at general meeting either require approval as an ordinary resolution (requiring a simple majority of those voting in person or by proxy) or as a special resolution (requiring a majority of not less than 75% of those voting in person or by proxy).

Voting on a show of hands is permitted with members above a threshold having the right to demand a poll.

2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Companies listed on the Irish Stock Exchange will invariably be limited liability companies so that shareholders will usually have no liability for the acts or omissions of the company. Shareholders who are parties or beneficiaries in matters that constitute a breach of the Companies Act (for example, fraudulent trading by a company or knowingly receiving an unlawful distribution) can be liable to make good the company. Where a company has a significant shareholder (perhaps, a parent company) which can be shown to have exercised significant influence over the board of the company, it is possible under Irish law for the shareholder to be regarded as a shadow director. In those circumstances, the shareholder will have the same liability as a director on certain issues including potential personal liability.

In the context of takeovers, there are also provisions which can result in liability for shareholders where they are shown to be acting in concert with the company or its board in undertaking an activity in breach of the Rules of the Irish Takeover Panel.

Liability can also arise under the Market Abuse Regulations where a shareholder deals in the company's shares or related searches after receiving confidential price-sensitive information from the company – so-called inside information.

2.5 Can shareholders be disenfranchised?

Under Irish regulations implementing the EU Takeover Bids Directive, it is possible for shares of an Irish company traded on a regulated market to be compulsorily acquired by an offeror for the company where the offeror has received acceptances of a tender offer to shareholders from at least 90% of the shares to which the offer relates. These rights are frequently exercised in takeovers. The Companies Act contains similar "squeeze-out" rights which can apply to offers for listed companies, other than companies on a regulated market, and for unquoted companies. Where the Companies Act applies, the threshold is 80% acceptance, although additional thresholds can also apply to certain offerors.

Failure by a shareholder, where required, to disclose its interest in the company in compliance with Irish company law can result in the shareholder losing the ability to enforce rights attaching to its shares. It is possible for these rights to be restored by a court order or under the Companies Act (by resolution of the company). A similar loss of rights can arise under company law or the articles of association where a shareholder fails to respond to an enquiry from the company in respect of the beneficial ownership of the shares.

Where a company holds shares in itself as treasury shares, no rights can be exercised by the company in respect of those shares.

2.6 Can shareholders seek enforcement action against members of the management body?

No direct shareholder suits are permitted. Shareholders can seek permission to launch derivative actions, but such actions are difficult to bring, as stringent requirements for such proceedings are strictly enforced. The courts are reluctant to interfere in the internal management of a company and adhere to the principle that the proper claimant in an action in respect of a wrong done to the company is the company itself. Shareholders will more likely bring a claim for minority oppression (that is, where the affairs of the company are being conducted in a manner oppressive to members, or in disregard of their interests).

The Director of Corporate Enforcement has significant powers under the Companies Act to enforce compliance with company law by the directors of a company. Shareholders may make complaints to the Director of Corporate Enforcement where they believe that the board of the company is not complying with its statutory obligations. It is then for the Director to decide whether or not to investigate the matter.

2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

In respect of a company traded on a regulated market, shareholders or other persons are required by regulations implementing the EU Transparency Directive to make a public disclosure where they acquire, directly or indirectly, control of voting rights equal to 3% or more of the total voting rights. Additional disclosures are required if the holder increases or reduces his/her interests in the voting rights by a further 1%. The Companies Act contains a separate statutory regime for disclosure of interests in companies listed on non-regulated markets or unlisted public limited companies. The disclosure threshold under this regime is also 3% (and each 1% thereafter), but the category of interests that are required to be disclosed is wider.

Irish company law and the articles of association of a company may require shareholders to disclose details of beneficial interests held in its shares.

Under the Rules of the Irish Takeover Panel, there are detailed restrictions and disclosure requirements regarding the acquisition of shares and interests in shares in a company while an offer for the company is underway or in contemplation.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

All Irish companies are managed by a board of directors (two-tier boards do not exist in Ireland). Typically, articles of association state that the business of the company shall be managed by the directors who may exercise all powers of the company which are not by the Companies Act or the articles required to be exercised by the company in general meeting. Most types of companies must have at least two directors (who must be individuals of at least 18 years of age) but there is no limit on the number of directors that may be appointed unless this is specified in the articles of association. The Companies Act allows a new type of private limited company to have one director (provided that a separate secretary is appointed).

Irish law provides that companies traded on a regulated market must have an audit committee, comprising at least one independent director with competence in auditing or accounting (as mentioned above, the Companies Act requires certain large companies to have such a committee). The Corporate Governance Code provides that such companies have an audit committee composed solely of persons who are regarded by the Code as independent non-executive directors and one of whom must have recent financial experience. Otherwise, there is no legal requirement for a board to be composed of persons with any particular background or skills. In practice, most listed companies will seek to have a majority of independent non-executive directors. These persons will in turn constitute the directors who are then appointed to the audit, remuneration and nomination committees of the board. The Irish Corporate Governance Annex published by the Irish Stock Exchange places additional emphasis on the requirement for a board and its committees to have an appropriate balance of skills, experience, independence and knowledge of the company to enable the directors to discharge their respective duties and responsibilities effectively. Similar requirements apply to the boards of banks and insurance institutions subject to the Irish Central Bank's requirements of corporate governance. Indeed, the latter requirement goes further by limiting the number of directorships a director of such an entity may have.

3.2 How are members of the management body appointed and removed?

The first directors will be appointed by the incorporators of the company and thereafter appointments are, generally speaking, made by shareholders. Most boards will have a nomination committee which will have responsibility for identifying and recommending to the board suitable candidates for appointment to fill any vacancies on the board from time to time. A board will usually have the power to fill vacancies; however, any director appointed by a board is required, under conventional articles of association, to retire at the next annual general meeting and, if willing, offer himself/herself for re-election by the shareholders. Shareholders can appoint directors to fill a vacancy by way of an ordinary resolution though this is, typically, subject to prescribed notice requirements in the articles of association (unless the person proposed for appointment has been recommended by the board). The Companies Act allows shareholders to remove any director by way of an ordinary resolution.

Increasingly, companies listed on the Main Market of the Irish Stock Exchange are adopting the practice of offering their entire boards for re-election at each annual general meeting (by separate resolution for each director). For companies listed on other markets, their articles of association will normally provide that one-third of the board will retire by rotation at each annual general meeting and will be eligible for re-election. Under the Corporate Governance Code, boards are expected to evaluate the performance of their directors on an annual basis and to confirm this to shareholders in their annual report.

It is also common for the articles of association to provide that an individual director may be required to resign by the unanimous decision of all of the other directors.

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

The Companies Act provides, for all companies, that any director's service contract with a fixed term of over five years must be approved by shareholders. In practice, most companies tend to follow the recommendation in the Corporate Governance Code which suggests that notice periods be set at one year or less. While the Companies Act requires companies to disclose the aggregate remuneration and benefits payable to all directors, companies tend to go further and disclose, and the Listing Rules of the Irish Stock Exchange require disclosure by Main Market Listed Companies of, remuneration and benefits on an individual basis in respect of each director. A company's annual report will also frequently contain a report from the remuneration committee which will provide information on a historic basis in respect of the company's policy on directors' remuneration including performance related conditions and compensation received in the form of share options, share incentive schemes and pensions. It is now becoming increasingly common for Irish companies to ask shareholders to vote on an advisory non-binding say-on-pay resolution, although there is no legal obligation to do so.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Directors are permitted to own shares in their companies and frequently do so in the case of listed companies. Subject to obtaining prior shareholder approval for the relevant option or incentive scheme, directors can be granted options or other forms of equity based incentive awards. Directors may not, however, purchase or sell options over existing shares in their company. Under the Companies Act, directors are obliged to disclose to the company any "interest" (a term widely defined) which he/she or certain connected persons hold in shares or debentures in the company and relevant group companies. Disclosure is not required where the aggregate interest held is less than 1%.

All companies listed on the Main Market of the Irish Stock Exchange are required to adopt a share dealing code which is in accordance with the Model Code set out in the Listing Rules. This share dealing code imposes restrictions on, as well as consent requirements for, share dealings which directors may wish to undertake in their company shares. Share dealings by directors are also subject to the insider dealing prohibitions of the Market Abuse Regulations which apply to Irish companies traded on a regulated market. Irish companies listed on the ESM are subject to similar insider dealing restrictions contained in the Companies Act.

MAR will extend the application of the existing EU market abuse and inside information regime beyond issuers with shares admitted

to trading on EU regulated markets, such as the Main Market of the Irish Stock Exchange, to include issuers of securities traded on the ESM.

In a significant change, MAR will expressly prohibit trading by directors and other "persons discharging managerial responsibilities" (which includes directors and their connected persons and senior management, "PDMRs") in "closed periods", save in limited and specified circumstances. PDMRs may not conduct transactions on their own account or for the account of a third party during a closed period of 30 calendar days before the announcement of an interim financial report or end-of-year report (which the issuer is obliged to make public according to the rules of the trading venue on which the issuer's shares are admitted to trading or national law). As the new regime will materially cross over with the application of the Model Code, as annexed to the Listing Rules of the UK's FCA and applicable to premium listed companies, the FCA proposes to remove the Model Code from 3 July 2016. It is anticipated that the Irish Stock Exchange will do likewise with respect to the Model Code annexed to its Listing Rules.

Under Market Abuse Regulations, PDMRs of companies traded on a regulated market are required within four business days of any share dealing to notify the company of the dealing. The company must notify the market by way of a regulated announcement as soon as possible and no later than the end of the business day following receipt of the information. On implementation of MAR, this obligation will also apply to PDMRs of ESM listed companies, and all such notifications will be required to be made within three business days. Until implementation of MAR, for companies listed on the ESM, there is a similar obligation under company law requiring notification within five business days of the dealing. If a director has a large shareholding which is equal to or exceeds 3% of the issued share capital of the company, this must be notified to the company as well as any 1% change in such interest. The company must in turn notify this to the market.

3.5 What is the process for meetings of members of the management body?

The articles of association of a company invariably provide that a board meeting can be convened by reasonable notice by any director. An agenda and relevant board papers are circulated (increasingly, by secure electronic means). In practice, boards will agree at the start of each year the schedule for board meetings throughout the rest of the year, and additional board meetings may be convened by the chairman where particular issues arise which need to be dealt with at short notice. Listed companies will usually set out in their annual report the number of board meetings held during the year (and committee meetings) and indicate the attendance levels of each director. Participation by phone and other electronic means is usually permitted for board meetings.

3.6 What are the principal general legal duties and liabilities of members of the management body?

There are a large number of statutory requirements which must be complied with by directors. These include obligations under health and safety legislation, employment legislation, insolvency law and the Companies Act. Under the Companies Act, the principal duties of the directors include the obligation to maintain proper books and records that accurately record the affairs of the company, as well as the duty not to knowingly carry on the business of the company in a reckless manner in order that loss could be caused to creditors of the company. The Companies Act has codified certain duties of a director (which were previously common law fiduciary duties), namely:

- a duty to act in good faith;
- a duty to exercise powers of the company for a proper purpose;
- a duty to avoid conflicts of interests;
- a duty not to misuse company property;
- a duty to exercise reasonable care, skill and diligence; and
- a duty not to restrict the director's power to exercise an independent judgment.

The Companies Act also created a duty for a director to act honestly and responsibly in the conduct of the company's affairs and a duty to have regard to the interests of employees.

These duties are owed to the company, and ordinarily, a court will not seek to second-guess the exercise by a director of his/her power where it is shown that the director did so in way that he/she believed was in the best interests of the company. If it is shown that the director did not exercise the skill and care expected of a person with the director's qualifications, or where it is shown that the director failed to inform himself/herself about the affairs of the company and did not seek to supervise and control those affairs albeit in conjunction with other directors, the director can face liability. Directors can delegate, but not abdicate, responsibility. Any delegation must be monitored by the directors.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

A company's financial statements must correctly record its transactions and enable the financial position of the company to be determined at any time with reasonable accuracy. This is the primary statutory corporate governance duty of all directors and a director who deliberately or negligently fails to ensure compliance with this requirement can be guilty of an offence. The Director of Corporate Enforcement (mentioned at question 2.6 above) will investigate claims that proper books of account have not been maintained. For companies traded on a regulated market, directors are also under a statutory obligation to describe in their annual report the internal control and risk management systems which operate in the company. Furthermore, they must review the effectiveness of the company's risk management and internal controls and report to shareholders that this has been done.

The Corporate Governance Code, and equivalent codes applicable to such companies, expects all directors to be collectively responsible for the success of the company by providing entrepreneurial leadership within a framework of prudent and effective control. The Corporate Governance Code requires the directors to maintain dialog with shareholders based on the mutual understanding of objectives.

As Ireland has emerged from an economic recession, government, regulators and investors all seek to ensure that Irish companies are well-governed by competent, professional and ethical boards, in order that trust and confidence is restored to the Irish business community.

3.8 What public disclosures concerning management body practices are required?

Companies traded on a regulated market are required to state in

their annual report what governance code has been adopted by the company and how have they complied with the code. Most companies comply with this obligation by setting out a lengthy corporate governance report in their annual report. This report will deal with the structure and role of the board and the division of responsibilities between the board and its committees. Certain companies of a particular size are required to publish details of a directors' compliance statement in their annual report – see question 1.3 above.

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Companies are permitted to maintain insurance for directors and officers in respect of liability which they may incur as a consequence of being a director of the company. The cover usually applies on a "claims made" basis. This insurance can cover defence costs but may not cover any criminal fines or regulatory penalties which may be imposed on a director. The Companies Act prohibits indemnities to directors where they seek to cover breach of duty or default. Articles of association of Irish companies invariably provide an indemnity for directors of the company; however, this indemnity (provided that it forms part of the appointment terms for the director) may only be called upon where a judgment has been given in favour of a director which either exonerates, or relieves, the director from any liability in respect of his or her actions. Therefore, the indemnity does not, as a general principle, allow the company to pay defence costs while the director might still have potential liability.

4 Transparency and Reporting

4.1 Who is responsible for disclosure and transparency?

The board has a statutory obligation to ensure that the company complies with its transparency and disclosure obligations set out in the Companies Act, the Market Abuse Regulations and the Transparency Regulations. These obligations are less onerous for companies which are not traded on a regulated market. Both the annual report and the half-yearly report to shareholders will contain a responsibility statement on behalf of all of the directors of the company, confirming the company's compliance with its obligations under the Transparency Regulations.

4.2 What corporate governance related disclosures are required?

All companies must prepare and publish annual accounts in the Companies Office in Dublin in accordance with the Companies Act. The annual report will also contain a detailed narrative which describes the business of the company and its subsidiaries during the financial year.

The directors' report must contain a fair review of the development and performance of the company's business and of its position during the financial year, together with a description of the principal risks and uncertainties that the company faces. This review must provide a balanced and understandable assessment of the company's position and prospects, as well as providing a balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the size and complexity of the business. If required in order to assist understanding of the company's development, performance or position, the review will include an analysis of financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relevant to environmental and employee matters.

The report must also contain references to, and additional explanations of: amounts included in the company's financial statements, where appropriate; particulars of any important events affecting the company or any of its subsidiaries, if any, which have occurred since the financial year end; an indication of likely future developments in the business of the company; an indication of the activities, if any, of the company, in the field of research and development; and an indication of the existence of branches of the company outside the State and the country in which each such branch is located. As mentioned above, the board should, at least annually, conduct a review of the effectiveness of the company's system of internal controls (i.e. all material controls, including financial, operational and compliance controls and risk management systems). The board should also report to shareholders that they have acted accordingly.

As described at question 3.8 above, companies traded on a regulated market must publish in their annual report a corporate governance statement including disclosures regarding the main features of the company's internal control and risk management systems.

Annual reports are required to contain details of directors' interests in shares and of transactions between the director and the company during the financial year.

4.3 What is the role of audit and auditors in such disclosures?

Companies traded on a regulated market must ensure that their auditors state in the annual audit report whether, in their opinion, the description in the corporate governance statement, of the main features of the internal control and risk management systems of the company, is consistent with the process for preparing the company's consolidated accounts.

Generally, an auditor is required by law to report to the audit committee (where relevant) on key matters arising from the statutory audit, and, in particular, on material weaknesses in internal control in relation to the financial reporting process.

The Corporate Governance Code also requires the company to ensure that the auditors review a number of issues before the annual report is published. This review includes the statement by the directors that the business is a going concern, as well as the board's corporate governance report insofar as it relates to the duty of directors to explain in the annual report their responsibility for preparing the accounts.

Auditors have specific duties under the Companies Act to check that directors comply with disclosure obligations concerning interests in shares and other matters. Where an auditor has reason to believe that a specified offence (for example, failure to maintain certain registers) has been committed, the auditor is obliged to report the matter to the Director of Corporate Enforcement; failure to do so can lead to prosecution of the auditor.

4.4 What corporate governance information should be published on websites?

Under the Shareholder Rights Regulations, companies listed on a regulated market are required to provide a summary of the rights of shareholders in respect of voting and attending shareholder meetings, as well as their rights to propose resolutions and ask questions at the meeting. Companies must also maintain on their website, for a period of five years, regulated disclosures which they may make from time to time.

As required by the Corporate Governance Code, relevant companies also publish on their website the terms of reference of their nomination, remuneration and audit committees.

After any shareholder meeting, it is a legal requirement for a company traded on a regulated market to publish on its website the results of any voting conducted at the meeting. Most listed companies will voluntarily provide other information such as a copy of the articles of association of the company, as well as notices issued in respect of shareholder meetings on other websites.

Non-listed companies tend to include some corporate-related information on their websites, but typically not information that is not otherwise publicly available or which is trade-sensitive.

5 Miscellaneous

5.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

This is not a legal requirement; however, many Irish companies voluntarily report to their shareholders on an annual basis on CSR issues.

5.2 What, if any, is the role of employees in corporate governance?

With the exception of a few companies which are or have been owned by the Irish Government, there is no requirement to have employee representatives on the boards of Irish companies. Senior executives and members of internal audit have a key role to play in the corporate governance of all Irish companies.

Whistle-blowing legislation was enacted during 2014 and will facilitate an employee making a (good faith) disclosure where he/she has certain concerns (such as concerns that a company is breaching the law). In the financial services sector, certain individuals (such as a director of a regulated company) have a mandatory reporting requirement to the Central Bank if he/she believes that their company is breaching financial services law.

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