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The International Comparative Legal Guide to:

Corporate Governance 2018

11th Edition

A practical cross-border insight into corporate governance

Published by Global Legal Group, with contributions from:

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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
Print Group
August 2018

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ISBN 978-1-912509-20-1
ISSN 1756-1035

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EDITORIAL

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

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

It is divided into two main sections:

One general chapter. This chapter provides an overview of Corporate Governance, Investor Stewardship and Engagement, particularly from a US perspective.

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 38 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 editor Sabastian V. Niles of Wachtell, Lipton, Rosen & Katz for his 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.com.

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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 Euronext Dublin (previously the Irish Stock Exchange) (the "Main Market", which is a regulated market) or listed on the Enterprise Securities Market ("ESM") of Euronext Dublin. Credit institutions and insurance undertakings are also referenced, given the focus of the Central Bank of Ireland ("CBI") in improving corporate governance standards.

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

The law is stated as of 9 May 2018. The primary corporate governance legislation is contained in the Companies Act 2014, as amended (the "Companies Act"). 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 ("Shareholder Rights Regulations"), the Transparency (Directive 2004/109/EC) Regulations 2007 and the EU Market Abuse Regulation (596/2014) ("MAR").

MAR took effect on 3 July 2016 and extended 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, to include issuers of securities traded on multilateral trading facilities, including the ESM.

An Irish incorporated company is also subject to its memorandum and articles of association. The memorandum of association sets out the principal objects of the company, whilst the articles of association set out the internal regulations regarding matters such as shareholder meetings, voting rights and powers and duties of directors. 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.

Companies listed on the Official List of Euronext Dublin 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 Euronext Dublin (together, the "Corporate Governance Code").

Irish companies listed on the ESM will generally seek voluntarily to comply insofar as possible, or disclose non-compliance, with the Corporate Governance Code or the Corporate Governance Guidelines for small quoted companies (a non-mandatory Code).

Financial institutions are also required to comply with the Corporate Governance Requirements published by the CBI. In the private sector, there are a significant number of companies which are State-owned, and these must comply with the Code of Practice for the Governance of State Bodies (last updated in 2016).

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 CBI has stringent corporate governance requirements for all Irish credit institutions, insurance undertakings and captive insurance/reinsurance undertakings, which were updated in 2015. Fitness and probity requirements apply in respect of the appointment of directors and senior managers. CBI approval is required prior to appointment to key roles.

The EU (Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups) Regulations 2017 were introduced on 21 August 2017. The obligations to provide the non-financial information and a diversity report are "comply or explain" in nature and apply to any company that is a "large company", has an average number of employees exceeding 500 and is an "ineligible entity". An "ineligible entity" includes a company traded on a regulated market or a credit institution or insurance undertaking. The Regulations require "large companies" traded on a regulated market to include in their financial statements a report on its diversity policy and apply to financial years beginning on or after 1 August 2017.

The Companies Act:

- defines a "large company" as a company fulfilling at least two of the three requirements (balance sheet total more than €20m, turnover more than €40m, average number of employees more than 250);
- requires "relevant companies" (balance sheet total more than €25m and turnover more than €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
- requires PLCs and certain other limited companies (balance sheet total more than €12.5m and turnover more than €25m) to include a directors' compliance statement in their annual report to confirm that the company has certain arrangements

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or structures in place to ensure compliance with tax law and significant company law obligations.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

Companies managed for the short-term make decisions almost exclusively with short-term shareholder value in mind. Ireland generally adopts a shareholder value approach to governance and this has led, in some companies, to directors seeking to maximise short-term profits. This can cause excessive risk taking by directors at the expense of other stakeholders and at the expense of long-term projects, strategies, investment and sustainability. Such behaviour has been blamed, in part, for the financial crisis.

However, with increased emphasis on corporate governance and transparency in the Companies Act, non-financial reporting discussed at question 1.3 and larger companies attempting to apply sustainability in relation to their business models, there is now increased engagement with shareholders and with other stakeholders. By complying with the UK Stewardship Code (mentioned in question 2.2 below) companies aim to protect the long-term success of companies but in such a way that means the ultimate providers of the capital also profit.

The longer term viability statement set out in the Corporate Governance Code is also a key focus, as is the fact that remuneration policies should be designed to deliver long-term benefits to the company as opposed to short-term benefits to management.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

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 Euronext Dublin (the "Listing Rules"), as well as the Corporate Governance Code, require certain rights and powers to be reserved to shareholders.

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

Company law also regulates potential conflicts of interest by requiring certain transactions between a company and its directors (and connected persons) to be approved by shareholders. Shareholders also have the right to requisition the convening of 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, a shareholder or a group of shareholders holding at least 5% of the issued share capital may requisition the convening of 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.

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

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 ("AGM").

2.2 What responsibilities, if any, do shareholders have as regards to the corporate governance of the corporate entity/entities in which they are invested?

Shareholders have a key role in, but have no particular responsibility for, corporate governance. 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 (the "UK Stewardship Code") 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 AGMs. Increasingly, Irish listed companies consult on a private basis with one or more key shareholder advisory services to ensure that their corporate governance standards meet the relevant requirements.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have as regards to such meetings?

All Irish companies must hold an AGM within 18 months of their incorporation, and thereafter, the gap between AGMs may not exceed 15 months. Additional meetings, known as extraordinary general meetings ("EGMs"), are held as required. 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 AGM 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 AGM is typically the consideration of the annual report and financial statements, the declaration of dividends, the re-election of directors, the fixing of the remuneration of the auditors and of the ordinary remuneration of the directors and a review of 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 AGM 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 AGM. Such a request is to be received not less than 42 days before the meeting, in order to allow notice of the resolution to be sent to all shareholders before the meeting. For other companies, shareholders will not, generally, have a right to propose resolutions at an AGM, unless allowed by the articles of association.

An EGM 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

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also requisition the convening of an EGM. 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).

To be passed, resolutions at general meetings either require approval as an ordinary resolution (requiring a simple majority) or as a special resolution (requiring a majority of not less than 75%).

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

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities?

The main duty of a shareholder is to pay the company any amount which remains outstanding in respect of the price agreed for the share in the original allotment. This sum becomes payable when a call is made, or where the terms of issue provide for the payment in instalments, on the payment date. Shareholders in a company with unlimited liability are liable without limit for the debts of the company where it is insolvent i.e. unable to pay its debts. Shareholders' agreements may be used to impose duties and obligations on shareholders and may include obligations that could not be imposed by the company's constitution or obligations which would otherwise not arise under legislation.

Where a company has a significant shareholder and that shareholder can be shown to have exercised significant influence over the board, it is possible under Irish law for the shareholder to be regarded as a 'shadow director'. In those circumstances, the shareholder could have the same duties and liability as a director on certain issues including potential personal liability. The Companies Act provides that a body corporate is not to be regarded as a shadow director of any of its subsidiaries.

Companies listed on Euronext Dublin will 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) can be liable to make good the company.

For 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 MAR where a shareholder deals in the company's shares or related securities after receiving confidential price-sensitive information from the company – so-called inside information.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or 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 ("DCE") 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 DCE if they believe that the board is not complying with its statutory obligations. The DCE will decide whether to investigate the matter.

2.6 Are there any limitations on, or disclosures required, in relation to the 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. The EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 require most Irish companies to gather and maintain information on individuals described as their ultimate beneficial owners. Further regulations are expected mid-2018 to create publicly accessible national beneficial ownership registers.

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.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

The UK Stewardship Code (mentioned in question 2.2 above) sets out good practice for institutional investors on engaging with the companies in which they invest. This includes reporting periodically on their stewardship and voting activities, disclosure of their policies on how they will discharge their stewardship activities such as engaging with companies, and the principle that they should be willing to act collectively with other investors where appropriate.

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

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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, or perhaps their parent, 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 relevant 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 Euronext Dublin 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 CBI's requirements. 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, 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. 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 AGM and, if willing, offer himself/herself for re-election. 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 are adopting the practice of offering their entire boards for re-election at each AGM (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 AGM 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 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 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 pending the entry into force, for companies with securities admitted to trading on an EU-regulated market, of the Amended Shareholder Rights Directive in 2019.

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. 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%.

Companies listed on the Main Market or ESM will adopt a share dealing code which is in accordance with the requirements of MAR. Such share dealing codes impose restrictions on, as well as consent requirements for, share dealings which directors may wish to undertake in their company shares.

MAR expressly prohibits 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.

Under MAR, PDMRs of companies traded on a regulated market or ESM listed companies are required within three 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. 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.

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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 the duties:

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

The Companies Act also codified the 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.

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 accounting records 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 DCE (mentioned in question 2.5 above) will investigate claims that proper accounting records 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, and they confirm that the effectiveness of these controls and systems has been reviewed.

Directors have a duty to ensure that the auditors have all information relevant for the audit. PLCs and other companies of a certain size have an obligation to put in place arrangements designed to ensure compliance with company and tax law (see question 1.3 above).

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 dialogue with shareholders based on the mutual understanding of objectives.

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 in the Irish business community is maintained. Issues of cyber-security, data protection and the identification and monitoring by companies of risk (not least implications of Brexit) are topical challenges for many Irish entities.

3.8 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. 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.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

The Corporate Governance Requirements published by the CBI (mentioned in question 1.2) require that in credit institutions, insurance undertakings, captive and non-captive insurance undertakings, the role of the board should include the setting and overseeing of business strategy. The role should also include, in credit institutions and insurance undertakings, setting the strategy for the on-going management of material risks. Generally, strategy formulation and its implementation through policy making is a key component of the board's task in directing the company. In formulating and updating strategy, the board considers the future of the company and its risk appetite and looks to both the company's internal business and the business, legal and regulatory environment in which the company operates.

4 Other Stakeholders

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

With the exception of some 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 the internal audit have a key role to play in the corporate governance of all Irish companies.

Whistle-blowing legislation was enacted during 2014 and facilitates 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

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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.

4.2 What, if any, is the role of other stakeholders in corporate governance?

The role of employees is dealt with at question 4.1, investor advisory groups at question 2.2. The role of Government as owner of state entities is reflected in the relevant legislation and the Code for State entities mentioned at question 1.2. Earlier parts of this Chapter considered the role of various regulators (for example, the CBI and DCE). The influence of other stakeholders is less direct in that companies with strong corporate governance enjoy a better reputation (and trading opportunities) with customers and creditors.

4.3 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 Transparency and Reporting

5.1 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, MAR 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, confirming the company's compliance with its obligations under the Transparency Regulations.

5.2 What corporate governance-related disclosures are required?

All companies must prepare and publish annual financial statements in the Companies Registration 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. As described at question 1.3 above, the non-financial statement in the directors' report must include information necessary to understand the development, performance, position and impact of the company's activity on "required matters", which include environmental matters and social and employee matters. The diversity report on the company's diversity policy must be included in the corporate governance statement in the directors' report.

As described in question 3.7 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.

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 they have 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 (see question 1.3 above).

The Companies Act requires "large companies", large groups and public-interest companies involved in logging, exploration, mining or quarrying industries to prepare and file each year an "entity payment report" setting out details of payments of €100,000 or more made to governments.

5.3 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 financial statements. The Regulations referred to in question 1.3 above extend this obligation, on the statutory auditors, to the diversity report.

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 financial statements.

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 (under the Companies Act or a serious market abuse offence, a prospectus offence or a serious transparency offence) may have been committed, the auditor is obliged to report the matter to the DCE; failure to do so can lead to prosecution of the auditor.

EU Statutory Audit Regulations, applicable to certain public-interest entities, which first came into force and applied from 2010, came into effect in 2016 as did the more widely applicable provisions of the EU Statutory Audits Directive.

5.4 What corporate governance-related 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.

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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.

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