

# Ireland

## Summary of Current Shareowner Rights

*Percentages cited reflect information gathered by GMI on 19 companies as of 15 May 2010.*

The Irish legal framework for corporate governance is based on practices in the United Kingdom and is considered robust; shareowners have generally strong shareowner rights. Several bodies are involved in regulating listed entities. Although the country's governance policies generally follow U.K. policies, a new stand-alone Irish corporate governance code is under development.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	54%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	47%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	11%	
Is voting by proxy permitted?	Yes	Always allowed.
Must shares be deposited or blocked from trading in order to vote?	No	Never allowed.
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common but do apply in sensitive industries, such as media, telecommunications, and aviation.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Yes	This practice is standard.
Do companies allow for cumulative voting in the election of board members?	No	This practice is not standard.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or non-binding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	Mostly, no	This ability is not standard practice in Ireland, but two companies GMI covers offer shareowners an advisory vote on executive compensation.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans, or something comparable?	Yes	This practice is standard.
Are shareowners able to introduce dissident resolutions (binding or non-binding) at an annual meeting?	Yes	This ability is a standard right.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	This right is standard. Shareowners holding 5% or more of shares (or 100 members) may call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	0%	No Irish companies have golden shares.
Are shareholder rights plans (poison pills) allowed in this market?	No	No companies have poison pills.
If shareholder rights plans are in use, do they have to be approved by shareowners?	NA	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a legal requirement.
Do companies require a supermajority vote to approve a merger?	Yes	This practice is standard.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	This provision is a legal requirement.
Are class action suits commonly used in this market?	No	
Are derivative suits commonly used in this market?	No	

NA = not applicable.

## Current Engagement Practices and Shareowner Rights Developments

Until relatively recently, few companies in Ireland complied with corporate governance practices, which led to a government committee report on the matter in 1997 and ultimately to the enactment of Company Law Enforcement Act 2001. This act established the Office of the Director of Corporate Enforcement, which has responsibility for ensuring compliance with the Companies Acts (1963–2003) in Ireland. This government body has significant powers of investigation and prosecution.

In Irish incorporated companies, the overall management function vests in a board of directors, although the directors may delegate functions to certain executives or committees of the board.

In August 2009, Ireland implemented the EU (European Union) Directive on Shareholders' Rights, which dates from July 2007. This directive was designed to make it easier for shareowners of publicly traded companies to hold management accountable and allows shareholders to have input into the way companies are run. The EU Companies (Shareholders' Rights) Regulations 2009 introduced new rights for investors and provided for timely access to company information.

The main changes introduced by the Shareowners' Rights Regulations were as follows:

- providing for shareowner participation across borders without the need to physically attend meetings, notably through the exercising of voting rights electronically;
- requiring companies to answer shareowners' questions at general meetings;
- requiring companies to publish on their websites documents and information regarding a general meeting, including the result of votes taken;
- allowing shareowners representing at least 5 percent of the voting shares in a company the right to call a general meeting (previously a holding of 10 percent was required);
- allowing shareowners representing at least 3 percent of the voting shares in a company the right to put items on the agenda and table draft resolutions for a general meeting; and
- strengthening shareowners' rights in relation to the appointment of proxies at general meetings.

The regulations also abolished share blocking (a prohibition on trading in shares in advance of a meeting by shareowners intent on participating and voting at such a meeting) and replaced it with a simplified procedure whereby a shareowner's rights are based on the shares held on a specified date prior to the general meeting (known as the "record date"). The regulations apply to companies that have their registered offices in Ireland and whose shares are admitted to trading on a regulated market operating in an EU state.

Companies in Ireland often have a diverse shareowner base, with far more foreign investment than many other countries. The majority of companies are dual listed in Dublin and London, and many also have a U.S. listing—via either an American Depositary Receipt or full listing. According to the Irish Stock Exchange (ISE), about 60 percent of the share capital of Irish-listed companies is held by nonresidents. Some institutional foreign investors cite cost as the reason they do not take a more active role in Irish companies.

Section 2 of the (U.K) Combined Code on Corporate Governance defines the role institutional investors should play if they have concerns about noncompliance with the code's provisions by companies in which they have invested. It places specific responsibilities on institutional investors to engage with the boards of such companies to express their concerns.

The representative body of institutional investors in Ireland is the Irish Association of Investment Managers (IAIM). The association subscribes to the principles in “The Responsibilities of Institutional Shareowners and Agents: Statement of Principles,” devised by the European Corporate Governance Institute, which requires investors to engage with their investee companies when they have concerns about:

- a company’s strategy,
- independent nonexecutive directors failing to hold executive management properly to account,
- internal controls failing,
- inappropriate remuneration levels/incentive packages/severance packages, and
- unjustifiable company failure to comply with the Combined Code.

The public record contains little evidence, however, of these institutions intervening or engaging with boards of Irish companies when poor governance was evident. In 2010, IAIM said, “It is our view that institutional investors should be active but not routinely ‘activist’.” Irish institutional shareowners often prefer to deal directly with company directors rather than use public meetings.

The Irish Takeover Code is specific about how companies should address competing bids and bidders. Rule 20 of the code contains a general requirement for equality of information; that is, target companies must provide equal information access to all who make an offer. Rule 21.2 of the Takeover Code limits termination fees to 1 percent of a transaction’s value. Consistent with takeover practice in Ireland, an expenses reimbursement agreement requires that if a target company recommends a competing offer, the target company will pay “quantifiable third-party costs and expenses incurred by [the buyers] in connection with the acquisition” up to 1 percent of the target company’s equity value.

## Legal and Regulatory Framework

Most corporate governance codes in Ireland are self-regulating and based on governance practices in the United Kingdom. A body of Company Law regulates how companies should be structured, governed, and managed. The Central Bank and Financial Services Authority of Ireland Act of 2003 charges the Irish Financial Services Regulatory Authority (now the Financial Regulator) with securities regulation. Regulatory agencies include the ISE, the Companies Registration Office, the Office of the Director of Corporate Enforcement, the Irish Auditing and Accounting Supervisory Authority, and the Competition Authority. The National Standards Authority of Ireland and the Institute of Directors are working together with regulators and business representatives to further develop corporate governance standards in Ireland.

Ireland’s original Company Law Act of 1963 was based on a U.K. counterpart of 1948 and has been revised many times since the 1980s. The Company Law governs the appointment and removal of directors, directors’ duties, directors’ disclosure requirements, director remuneration, reporting requirements, and annual general meetings. Other laws supplementing the legal framework include the Mergers, Takeovers and Monopolies (Control) Act of 1978, which sets out rules governing mergers and takeovers by foreign and domestic companies, and the Competition Act of 2002, which sets out the rules governing competitive behavior. The EU Market Abuse Directive, implemented in Ireland in July 2005, imposes obligations on all listed issuers (both Irish and non-Irish) whose securities or instruments are listed on the ISE. These regulations strengthen and extend existing ISE rules relating to inside information. The Company Law is currently the subject of a major revision, and a new Companies Bill is expected in 2011.

Irish companies that have their ordinary shares listed on the main market of the ISE are required under the exchange's listing rules to state whether they have complied with the U.K. Corporate Governance Code (the Code; formerly known as the "Combined Code on Corporate Governance") issued by the Financial Reporting Council and if not, to explain why. The Code sets out standards of governance for listed companies with a "comply or explain" approach. The Code was revised in May 2010 to include measures for improving investors' understanding of business models and risk management, aligning performance-related pay with long-term performance, and providing greater accountability of directors through annual reelections. Companies are required either to follow the Code or explain how else they are acting to promote good governance.

In a comprehensive review of Irish companies performed by Grant Thornton LLP and released in early 2010, 50 percent of Irish companies were found to be noncompliant with the Code. This finding led some governance advocates to call for legislation in Ireland for better enforcement of the Code. In the April 2009 issue of *Accountancy* magazine (published by the Institute of Chartered Accountants in Ireland), Cian Blackwell of Grant Thornton pointed out certain shortcomings in Irish corporate governance that have been exposed by the financial crisis. For instance, Blackwell noted that Irish legislation provides little with regard to good corporate governance at the board level.

In July 2010, the ISE issued a consultation paper on the implementation of a revised corporate governance code for Irish listed companies. The consultation paper proposes a new stand-alone Irish Corporate Governance Code that would mirror all aspects of the U.K. Code and incorporate recommendations of the report "Compliance with the Combined Code on Corporate Governance by Irish Listed Companies." This new Irish Code is expected to be announced by autumn 2010, and the requirements are proposed to apply to all credit institutions and insurers licensed or authorized by the Financial Regulator, including Irish licensed and authorized subsidiaries of international financial services groups. Among the proposals is clear separation of the roles of chair of the board of directors and CEO.

Directors at Irish companies are generally elected for terms of three years. Companies in Ireland generally apply the one-vote-per-share principle; that is, each shareowner with voting shares in an Irish company has one vote for each share held. General meetings can be convened by a decision of the board of directors or by shareowners holding not less than 5 percent of the company's voting share capital. Shareowners are generally not entitled to initiate litigation on behalf of the company; such litigation is usually undertaken by the board of directors. Shareowner approval is required for directors' reports and annual accounts. Shareowners also have decision-making power with regard to dividends, director elections, auditor appointments, auditor compensation, authorization of share repurchases, dividend reinvestment plans, amending the articles of association, stock issues, authorized capital increases, amending stock option plans, director remuneration, and stock repurchase. Shareowners can remove directors without cause and must approve all changes to the company's bylaws.

Listed companies in Ireland are not required by legislation or stock exchange listing rules to provide shareowners with an advisory vote on the company's remuneration report. Two companies that currently do provide shareowners with such a vote are United Drug PLC and FBD Holdings PLC.

**Key organizations with information relevant to shareowner rights in Ireland include the following:**

Irish Stock Exchange ([www.ise.ie](http://www.ise.ie))

Corporate Governance Association of Ireland ([www.cgai.ie](http://www.cgai.ie))

IDA Ireland (Industrial Development Agency) ([www.idaireland.com](http://www.idaireland.com))

Irish Association of Investment Managers ([www.iaim.ie](http://www.iaim.ie))

Institute of Directors in Ireland ([www.iodireland.ie](http://www.iodireland.ie))

Companies Registration Office ([www.cro.ie](http://www.cro.ie))

Office of the Director of Corporate Enforcement ([www.odce.ie](http://www.odce.ie))

Irish Auditing and Accounting Supervisory Authority ([www.iaasa.ie](http://www.iaasa.ie))

The Competition Authority ([www.tca.ie](http://www.tca.ie))

National Standards Authority ([www.nsai.ie](http://www.nsai.ie))

Company Law Review Group ([www.clrg.org](http://www.clrg.org))