Ireland

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 18 companies in Ireland as of 31 August 2012.

Irish shareowners generally have strong shareowner rights. Most of Ireland's company law is adopted from the United Kingdom, with several oversight bodies involved in regulating listed entities. Although the country's governance rules generally follow U.K. policies, a new standalone 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)?	55%	
What percentage of companies have fully independent audit committees?	66.7%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	22.2%	
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?	No, mostly	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	
Do companies adhere to majority voting in the election of board members?	Yes	This practice is standard.
Do companies allow for cumulative voting in the election of board members?	No	

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	No, mostly	This ability is not standard practice in Ireland.
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 nonbinding) at an annual meeting?	Yes	This 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 or more shareowners) may call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	5.6%	
Are shareholder rights plans (poison pills) allowed in this market?	No	
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 best practices, which led to a government committee report in 1997 and ultimately to the enactment of the Company Law Enforcement Act 2001. This act established the Office of the Director of Corporate Enforcement, which is responsible for ensuring compliance with the Irish Companies Acts (1963–2003). This government body has significant powers of investigation and prosecution.

In Irish incorporated companies, the overall management function rests 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 was created in July 2007. This directive was designed to make it easier for shareowners of publicly traded companies to hold management accountable, and it 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 Shareholders' Rights Regulations are as follows:

- They provide for shareowner participation across borders without the need to physically attend meetings, notably through exercising voting rights electronically.
- They require companies to answer shareowners' questions at general meetings and require companies to publish on their websites documents and information regarding a general meeting, including the result of votes taken.
- They allow shareowners representing at least 5% of the voting shares in a company the right to call a general meeting (previously, a holding of 10% was required).
- They allow shareowners representing at least 3% of the voting shares in a company the right to put items on the agenda and table draft resolutions for a general meeting.
- They strengthen 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 trade on a regulated market operating in an EU member state.

Companies in Ireland often have a diverse shareowner base, with far more foreign investment than in many other countries. The majority of companies are dually listed in Dublin and London, and many also have a U.S. listing (via either an American Depositary Receipt or a full listing). According to the Irish Stock Exchange (ISE), about 60% 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). This organization 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 the following:

- a company's strategy,
- independent non-executive directors failing to properly hold executive management to account,
- internal controls,
- inappropriate remuneration levels, incentive packages, and severance packages, or
- unjustifiable company failure to comply with the Combined Code on Corporate Governance.

The public record contains little evidence, however, of these institutions intervening or engaging with boards of Irish companies in cases of poor governance.

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% of a transaction's value.

Legal and Regulatory Framework

Most corporate governance codes in Ireland are based on governance practices in the United Kingdom. The Companies Act 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 Companies Act of 1963 was based on a U.K. counterpart from 1948 and has been revised many times since the 1980s. The Companies Act governs the appointment and removal of directors, directors' duties, directors' disclosure requirements, director remuneration, reporting requirements, and annual general meetings. Other laws that supplement 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 strengthened and extended existing ISE rules relating to inside information.

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 (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 re-elections. Companies are required to either follow the code or explain how they are otherwise acting to promote good governance.

In 2010, the ISE and the Irish Association of Investment Managers commissioned a report on compliance with the Combined Code on Corporate Governance. At the time of publication, the ISE explored how best to implement the recommendations arising from this report, and the ISE ultimately issued a consultation paper that proposed that any code applicable to Irish listed companies should mirror all aspects of the U.K. Combined Code on Corporate Governance. The consultation paper proposed the introduction of a new, standalone Irish Corporate Governance Code, which eventually led to a new Irish Corporate Governance Annex.

The additional requirements of the annex focus on board composition, board appointments, board evaluation, board re-election, remuneration, and the work undertaken by the audit committee. The annex applies to companies with a primary equity listing on the main securities market of the ISE. The annex emphasizes that companies should provide meaningful descriptions of how they apply the provisions of the U.K. Combined Code on Corporate Governance. The annex states that companies should

- move away from the practice of recycling descriptions and replicating the wording of the U.K. Combined Code on Corporate Governance or the annex's provisions,
- provide informal disclosures that will provide shareholders with greater insight into the company and the environment in which it operates, and
- avoid the practice of copying wording contained in the corporate governance disclosures year over year because this practice does not reflect compliance with the spirit of the U.K. Combined Code on Corporate Governance or the annex.

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% 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.

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

Irish Stock Exchange (www.ise.ie)

Corporate Governance Association of Ireland (www.cgai.ie)

IDA Ireland (Industrial Development Agency) (www.idaireland.com)

Irish Association of Investment Managers (www.iaim.ie)

Institute of Directors in Ireland (www.iodireland.ie)

Companies Registration Office (www.cro.ie)

Office of the Director of Corporate Enforcement (www.odce.ie)

Irish Auditing and Accounting Supervisory Authority (www.iaasa.ie)

Competition Authority (www.tca.ie)

National Standards Authority (www.nsai.ie)

Company Law Review Group (www.clrg.org)