Corporate Governance and Directors' Duties in Ireland: Overview

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A Q&A guide to corporate governance law in Ireland.

The Q&A gives a high-level overview of the main forms of corporate entity used; the corporate governance legal framework; board composition and restrictions; directors' remuneration; management rules and authority; directors' duties and liabilities; transactions with directors and conflicts; and internal controls, accounts and audits.

Corporate Entities

1. What are the main forms of corporate entity used?

Limited Liability Companies

The main form of corporate entity used in Ireland is the limited liability company. Limited liability companies can be private (limited by shares or by guarantee) or public.

Private companies limited by shares. These are the most common form of corporate entity in Ireland. In such companies, the:

- Liability of a shareholder is limited to the amount, if any, that is unpaid on the shares registered in the shareholder's name.
- Shares cannot be offered to the public.
- Number of members cannot be more than 149.

Under the *Companies Act 2014* (Companies Act), there are two distinct types of private company limited by shares:

- **Model private company (LTD)**, which:
  - has a one-document constitution;
  - has unlimited corporate capacity;

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  - must have a registered name ending in "limited", which can be abbreviated to LTD; and
  - can have only one director.

- **Designated activity company (DAC)**, which:
  - has a two-document constitution, including an objects clause;
  - must have at least two directors; and
  - must have a registered name ending in "designated activity company", which can be abbreviated to DAC.

Private company limited by guarantee (CLG). This type of company has no share capital and the liability of a member is limited to the amount which that member has agreed in the constitution to contribute to the company in the event of its winding up. A CLG must have at least two directors and at least one member. Such companies are typically used in the not-for-profit sector such as charities, social or sports clubs and property management. The registered name must end in "company limited by guarantee", which can be abbreviated to CLG.

Public limited liability company. A public company:

- Can offer its shares to the public.
- Can be incorporated with one shareholder.
- Must have an issued share capital of at least EUR25,000, of which 25% of the nominal value of each share and the entire share premium must be paid up.
- Can (but is not required to) have its shares admitted to trading on stock markets (in Ireland or elsewhere).

Unlimited Companies

The primary difference between unlimited and limited companies is the potential for their members to be held liable on an unlimited basis for the debts of the company if it enters insolvent liquidation. Unlimited liability companies do however have certain advantages. The rules on distributions are disapplied in relation to such companies. An exemption from the public filing of financial statements exists for certain unlimited companies, although designated unlimited companies whose ultimate shareholders have the benefit of limited liability or that have limited liability subsidiaries must file financial statements.

There are three types of unlimited company:

- Private unlimited company with a share capital (ULC).
- Public unlimited company with a share capital (PUC).
- Public unlimited company without a share capital (whose liabilities are guaranteed by its members) (PULC).

An unlimited company must have at least two directors. ULCs must not offer for sale or list any securities but a PUC and PULC can list debt securities. The registered name of all three company types must end in "unlimited company", which can be abbreviated to "UC".

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Legal Framework

2. What is the main corporate governance legislation? What are the authorities that enforce it?

Principal Sources of Regulation for Irish Companies

The following are the principal sources of regulation for Irish companies (both public and private):

- **The Companies Act.** This is the primary source of consolidated legislation for corporate governance in Ireland.
- **Constitutional documents.** Each company must have a constitution in a form prescribed by the Companies Act. The constitution contains the publicly registered internal rules of the company and binds the company and its members. The Companies Act contains default internal company rules, some of which are mandatory and some of which can be disapplied or modified in the constitution. A company's constitution could, in theory, be a one-page document adopting all the default provisions in the Companies Act. However, in practice, the constitution includes many supplemental regulations tailored to the company's requirements.
- **Generally applicable legal provisions.** For example, tax, employment and criminal legislation (and so on). Court decisions in relation to companies under the common law and previous company law are also relevant to Irish companies.
- **The *Corporate Enforcement Authority* (*CEA*) information booklets and guidance notes.** The CEA plays an important role in enforcing and encouraging compliance with Irish company law. Its predecessor, the Office of the Director of Corporate Enforcement, published a number of non-binding best practice guidelines that seek to promote transparency and accountability and a series of information booklets on the Companies Act which should continue to be complied with by Irish companies, in addition to compliance with any new CEA publications and guidance.
- **The Companies Registration Office (*CRO*) information leaflets and guidance notes.** The CRO is the statutory authority for registering companies in Ireland. It also plays an important role in the enforcement of Irish companies' filing obligations and has issued a number of useful information leaflets and guidance notes in that regard.
- **The Register of Beneficial Ownership of Companies (*RBO*).** The RBO is the central repository of statutory information also required to be held by companies in their own internal registers (in compliance with the *European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019)* (*SI 110/2019*) as amended, in relation to individuals who are their beneficial owners or controllers, including details of the beneficial interests held by them.
- **ESG legislation.** The Corporate Sustainability Reporting Directive (2022/2464/EU) *CSRD*, as transposed in Ireland by the European Union (Corporate Sustainability Reporting) Regulations 2024, expands the scope of companies required to report on sustainability matters and will catch certain public and private Irish companies. The Corporate Sustainability Due Diligence Directive (*CS3D*) imposes due diligence obligations on certain in scope public and private Irish companies (see below, *Additional Regulations for Listed Companies*).

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Additional Regulations for Listed Companies

Public companies listed on Euronext Dublin. The following additional regulations apply to public companies listed on Euronext Dublin, which is a regulated market for the purposes of EU securities law (previously known as the Main Securities Market of the Irish Stock Exchange):

- The Euronext Dublin Listing Rules (Listing Rules). The Listing Rules set out the conditions for listing and the continuing obligations that apply to companies listed on Euronext Dublin. The Euronext Dublin website contains market and regulatory information applicable to listed companies. It also provides access to the Listing Rules and the Irish Corporate Governance Annex published by Euronext Dublin (Irish Annex).
- The *UK Corporate Governance Code* as supplemented by the *Irish Annex* (CG Code).
- Prospectus Regulation (*(EU) 2017/1129*), the European Union (Prospectus) Regulations 2019 (*SI 380/2019*) (Irish Prospectus Regulations) (as amended) and the Central Bank (Investment Market Conduct) Rules 2019 (*SI 336/2019*) are the main sources of Irish prospectus law and govern the preparation and publication of prospectuses. Since 1 January 2021, Irish companies with a UK listing are subject to the *UK retained prospectus regime*.
- *Transparency (Directive 2004/109/EC) Regulations 2007* as amended (Transparency Regulations) and the Central Bank (Investment Market Conduct) Rules 2019 (SI 336/2019) (together, the Transparency Rules). The Transparency Regulations and the Transparency Rules seek to enhance the transparency of information provided by issuers on a regulated market by containing certain disclosure requirements for public companies.
- Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) (*MAR*) which has direct effect in all EU member states, and the European Union (Market Abuse) Regulations 2016 (*SI 349/2016*), which transposed the Criminal Sanctions Directive (*2014/57/EU*) and elements of the MAR, and market abuse rules published by the Central Bank of Ireland under the Central Bank (Investment Market Conduct) Rules 2019 (SI 336/2019) (together, the Market Abuse Rules).

  The MAR and the Market Abuse Rules impose significant obligations on issuers and strengthened the rules in relation to insider trading and market manipulation. Since 1 January 2021, Irish companies with a UK listing are subject to the *UK retained version of MAR*.
- ESG and Non-financial reporting legislation. The CSRD replaces the Non-Financial Reporting Directive (*2014/95/EU*) (*NFRD*) under which certain listed companies were required to report on non-financial matters, including social, employee, human rights, environmental and anti-corruption matters (see also *Question 1*).

  The reporting rules under the NFRD were to remain applicable in Ireland until the transposition of the CSRD. The deadline for transposition of the CSRD into the national laws of EU member states was 6 July 2024 and Ireland met this deadline by bringing the European Union (Corporate Sustainability Reporting) Regulations 2024 into force with effect from 6 July 2024. The CSRD expands the scope of companies required to report on sustainability related matters.
- See also:

  EU sustainability reporting requirements under the Corporate Sustainability Reporting Directive: financial years starting on or after 1 January 2024.

  EU sustainability reporting requirements under the Non-Financial Reporting Directive: financial years preceding 1 January 2024.

  In addition, CS3D aims to promote sustainable and responsible corporate behaviour for in-scope companies by (among other things) requiring them to conduct due diligence in respect of the human rights impacts and adverse environmental

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impacts of operations, subsidiaries and chains of operations and to prevent, bring to an end or mitigate those impacts. CS3D came into force on 25 July 2024 and member states have two years to transpose it into national law. CS3D will apply to a range of companies, including:

- EU-incorporated companies with more than 1,000 employees on average and a net worldwide turnover of EUR450 million (including, for an ultimate parent undertaking, on a consolidated basis);
- non-EU incorporated companies with a turnover in the EU in excess of EUR450 million (including, for an ultimate parent undertaking, on a consolidated basis);
- certain companies that are involved in franchising or licensing agreements in return for royalties in excess of certain thresholds and meeting certain other conditions.

Companies listed on the Euronext Growth Market (Euronext Growth) (formerly the Enterprise Securities Market). The following regulations apply to companies listed on Euronext Growth, which is an unregulated market for the purposes of EU securities law:

- Euronext Growth Markets Rule Book effective from 18 October 2019, published by Euronext Dublin. Additional rules for the Euronext Growth are contained in Chapter 5 (*Euronext Growth Rules*).
- Euronext Growth-listed companies are encouraged to comply with an appropriate corporate governance code (such as the Quoted Companies Alliance's Code).
- The MAR and the European Union (Market Abuse) Regulations 2016.
- The Prospectus Regulation and the Irish Prospectus Regulation (though a listing prospectus is not required for admission to trading on Euronext Growth).

There are a number of Irish public listed companies listed on markets outside of Ireland such as the NASDAQ, NYSE and the London Stock Exchange (main and AIM markets) and these companies are subject to additional rules applicable to those markets.

In addition, the *Irish Takeover Panel Act 1997* (1997 Act), the Irish Takeover Panel Act, *1997 Takeover Rules 2022* (Takeover Rules) and the *Substantial Acquisition Rules* (SARs) also apply to Irish incorporated public companies listed on a stock exchange (in the EU, the UK, the US or elsewhere).

The Irish Takeover Panel monitors and supervises takeovers to ensure compliance with the 1997 Act and the Takeover Rules, which contain detailed rules on the conduct of takeovers. The Takeover Rules were recently significantly amended for the first time since 2013 and those changes came into effect on 22 July 2022.

It is common practice for listed companies to closely monitor and implement recommendations from the leading proxy advisors, such as Glass Lewis and Institutional Shareholder Services (ISS). Companies also tend to implement the recommendations of the Pre-Emption Group (which publishes non-binding guidelines on various shareholder matters).

Some sectors have special rules and additional regulators may be required to get involved. For example, regulated financial services businesses are subject to oversight from the Central Bank of Ireland.

Institutional Investors

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The Irish Association of Investment Managers (IAIM) is the representative body for institutional investment managers in Ireland. IAIM aims to ensure that the best standards are adopted throughout the industry and has issued guidelines for best practice in corporate governance. While these guidelines are not legally binding, they reflect the requirements of institutional investors in Ireland and, to that extent, are frequently observed by listed companies.

The *UK Stewardship Code* applies to Irish-listed companies, and aims to enhance the quality of engagement between investors and companies to help improve long-term risk-adjusted returns to shareholders.

3. Has your jurisdiction adopted a corporate governance code?

Public companies listed on Euronext Dublin (but not Euronext Growth) must adhere, on a comply-or-explain basis (which needs to be addressed in the company's annual report each year), to the corporate governance standards set out in the CG Code.

The CG Code sets out principles of good corporate governance under the following headings:

- Board leadership and company purpose.
- Division of responsibilities.
- Composition, succession and evaluation.
- Audit, risk and internal control.
- Remuneration.

In the event of non-compliance with the CG Code, the company must provide a clear rationale for its deviation in its annual report.

There are no prescribed governance requirements for Euronext Growth companies. However, many companies adopt at least some elements of the CG Code. Some Euronext growth companies also look to the corporate governance guidelines for smaller quoted companies, the Quoted Companies Alliance Code, which was last updated in 2023 (*QCA Code*). The QCA Code applies key elements of the CG Code and other relevant guidelines where, because of the cost or complexity, full compliance with the CG Code may not be appropriate. Observance of the QCA Code is voluntary.

Neither the CG Code nor the QCA Code are applicable to Irish companies listed on markets outside of Ireland or the UK such as the NASDAQ or the NYSE and these companies are subject to additional rules applicable to those markets.

Board Composition and Restrictions

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4. What is the management/board structure of a private company?

Structure

Irish companies are managed by a single-tier board of directors (board).

Management

Day-to-day management of the company is typically delegated to the board in the constitution with certain fundamental decisions relating to the company being reserved to the shareholders (for example, changes to the company's constitution).

Board Members

The directors of a company together constitute the board.

Irish company law restricts certain persons from being appointed as directors, such as minors, bodies corporate and unincorporated bodies, undischarged bankrupts and those disqualified from acting as director.

Employees' Representation

There is no general provision for employee representation on the boards of Irish companies (other than certain state bodies). However, a company's constitution or an agreement with a third party (such as a trade union) can provide for employee participation.

Number of Directors or Members

A model private company (that is, an LTD) can have one director but in that case must have a separate company secretary. Other company types must have a minimum of two directors.

There is no upper limit on the number of directors that can be appointed, unless provided for in a company's constitution.

5. Are there any general restrictions or requirements on the identity of directors?

General Restrictions

There are currently no relevant general restrictions. However, directors must now file their unique identifier personal public service number (PPSN) or verified identity number with the CRO on appointment and on certain other CRO filing forms.

Age

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Directors must be at least 18 years old.

Nationality

Every Irish company must have at least one director who is resident in the EEA, unless the company either:

- Has filed a non-resident bond to the value of EUR25,000 with the CRO.
- Holds a CRO certificate confirming that the company has a real and continuous link with one or more economic activities in Ireland.

The constitution of a company can specify additional nationality requirements.

Corporate Directors

Directors must be individuals and corporate directors are not permitted.

Diversity

Irish company law does not currently provide for gender quotas on boards. New proposed companies legislation however, expected to be enacted by the end of 2024, will provide that a company can disclose information on the gender balance of its board of directors on a voluntary basis within its annual return.

As noted in *Question 1*, the directive on the gender balance of boards of listed companies entered into force on 27 December 2022. Under the Women on Boards Directive (*2022/2381/EU*), companies listed on EU regulated markets should aim to have at least 40% of their non-executive director positions or 33% of all director positions held by the underrepresented gender by June 2026.

A corporate board of a listed company is deemed "balanced" when each gender makes up at least 40% of its composition. No draft Irish transposition measures have yet been published.

The Non-Financial Reporting Regulations introduced diversity reporting for certain large traded companies. The corporate governance statement of such companies required under the Companies Act must include a diversity report which describes the policy applied in relation to the company's board of directors with regard to aspects such as age, gender, educational and professional backgrounds. Where there is no diversity policy in place, the directors must explain why this is the case (see *Question 5*). CSRD also requires relevant companies to provide a description of the policy applied in relation to the diversity of their board members, focusing on aspects such as gender, age, and nationality.

For certain Irish listed companies, applicable listing rules and guidelines can establish additional requirements. For example, the CG Code states that board appointment and succession plans of applicable companies should be based on merit and objective criteria, and should promote diversity of gender, social and ethnic backgrounds, and cognitive and personal strengths.

6. Are non-executive, supervisory, or independent directors recognised or required?

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Recognition

Irish law recognises non-executive directors. However, they are subject to the same duties and obligations under Irish company law as executive directors.

Board Composition

The Companies Act requires large companies reaching prescribed balance sheet and turnover thresholds to either form an audit committee, with at least one independent non-executive director who has competence in accounting or auditing, or to state in their annual statutory directors' report that they have not done so and the reason for this. Otherwise, private companies can, but are not obliged to, appoint non-executive directors.

For certain listed companies, applicable listing rules and guidelines can establish additional requirements. For example, the CG Code recommends that the board of an applicable company should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors.

Independence

Listing rules and guidelines may establish additional requirements. For example, the CG Code recommends that at least half the board, excluding the chair, of applicable listed companies should comprise independent non-executive directors. Factors relevant to determining whether a particular director is independent include whether the director:

- Has been an employee of the company or group within the previous five years.
- Has, or has had within the previous three years, a material business relationship with the company either directly or as a partner, shareholder, director or senior employee of a body that has a relationship with the company.
- Has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme.
- Has close family ties with any of the company's advisers, directors or senior employees.
- Holds cross-directorships or has significant links with other directors through involvement in other companies or bodies.
- Represents a significant shareholder.
- Has served on the board for more than nine years from the date of their first election.

7. Are the roles of individual board members restricted?

For private companies, Irish company law does not restrict the same person from acting as both chair and chief executive officer (CEO) (or as managing director, which is the equivalent role referred to in the Companies Act).

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However, applicable listing rules or guidelines for certain listed companies may impose further restrictions. For example, the CG Code recommends that the chair and CEO of applicable companies should be separate individuals.

8. How are directors appointed and removed? Is shareholder approval required?

Appointment of Directors

The first directors of a company are determined by the subscribers to the constitution (that is, the members) on incorporation. The Companies Act contains default provisions in relation to the subsequent appointment of directors, which can be modified or disapplied in the constitution. Typically, the constitution allows for the appointment of directors by board resolution.

However, applicable listing rules or guidelines for certain listed companies may impose further requirements. For example, the CG Code recommends that there should be a formal, rigorous and transparent procedure for the appointment of new directors to the boards of applicable companies. It recommends the establishment of a nomination committee to lead the appointment process, of which a majority of the members should be independent non-executive directors.

Removal of Directors

Shareholders can remove directors using a statutory procedure set out in the Companies Act, which requires compliance with specific formalities and which may require observance of an extended notice period.

The constitution of a company can facilitate removal by the other directors in certain instances. This process must be used bona fide in the interests of the company and not for an improper purpose.

If a director of a company is also an employee of the company, that director's contract of employment may provide that if the director ceases to be an employee of the company, the director will also be deemed to resign as a director with immediate effect.

Where a director is involuntarily removed, this is without prejudice to any claim that the director may have against the company for compensation for termination of their position under the employment contract.

9. Are there any restrictions on a director's term of appointment?

Contracts of employment of directors with a term exceeding five years are subject to shareholder approval. The constitution can contain restrictions on the term of appointment of a director of a private company.

In addition, applicable listing rules or guidelines for certain listed companies may impose further requirements. For example, the CG Code recommends that contract and notice periods should not be longer than one year.

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Directors' Remuneration

10. Must directors be employees of the company? Can shareholders inspect directors' service contracts?

Directors Employed by the Company

Directors do not have to be employees of the company. In practice however, executive directors are frequently employed by the company, while non-executive directors are generally engaged under service contracts.

Shareholders' Inspection

Directors' service contracts must be made available for inspection by members without charge (see *Question 14*).

Applicable listing rules or guidelines for certain listed companies may impose further requirements. For example, the Guidance on Board Effectiveness supporting the CG Code refers to the requirement for the terms and conditions of appointment of the chair and the non-executive directors to be available for inspection.

11. Are directors allowed or required to own shares in the company?

Directors are allowed, but not statutorily required to own shares in the company. However, the company's constitution can specify a shareholding qualification for directors.

Where directors hold shares or interests in shares in the company or any company in the group, they are required to notify the company of these interests. This information will also be included in the company's annual financial statements which (subject to exemptions) must be publicly filed at the CRO. The Companies Act introduced de minimis thresholds for notification of interests in shares and share options which substantially reduced or eliminated disclosure requirements for many directors. No disclosure is required where shares held by a director (aggregated with those of connected persons) represent 1% or less of the nominal value of the company's issued voting share capital.

For listed companies, directors must disclose to the company transactions conducted on their own account, such as the acquisition or disposal of shares. There are also restrictions on a director dealing in options to buy or sell shares in a public company.

Under the Transparency Rules, which may apply depending on which market the company is listed, shareholders must make a disclosure to the issuer when the percentage of voting rights acquired by that shareholder reaches, exceeds or falls below 3%. Further disclosures must be made if the shareholder increases or reduces their interests in the voting rights by a further 1%.

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The Companies Act contains a separate disclosure regime for unlisted public companies or companies listed on unregulated markets. Under this regime, the disclosure threshold is 3% and each further 1% interest.

In addition, applicable listing rules or guidelines for certain listed companies can impose further requirements. For example, the CG Code recommends that for applicable listed companies, a non-executive director's remuneration package should not include the granting of share options or other performance-related elements. Remuneration schemes should promote long-term shareholdings by executive directors that support alignment with long-term shareholder interests. Share awards granted for this purpose should be released for sale on a phased basis and be subject to a total vesting and holding period of five years or more. The remuneration committee should develop a formal policy for post-employment shareholding requirements encompassing both unvested and vested shares.

12. How is directors' remuneration determined, and must it be disclosed? Is shareholder approval required?

Determination of Directors' Remuneration

The determination of directors' remuneration is generally a matter for the board, subject to any restrictions set out in the constitution.

In addition to determining the policy for executive director remuneration and setting remuneration for the chair, executive directors and senior management, the remuneration committee should also review workforce remuneration and related policies. The CG Code includes a list of matters for the remuneration committee to address when determining executive director remuneration policy and practices, namely clarity, simplicity, risk, predictability, proportionality and alignment to culture.

Disclosure

Certain information in relation to directors' salaries and remuneration must be disclosed in the company's annual financial statements, which (subject to exemptions) must be publicly filed at the CRO. Additionally, directors' service contracts must be made available for inspection at a company's registered office, principal place of business or another place within Ireland, although the Companies Act permits the use of computers for the keeping of company records.

In addition, applicable listing rules or guidelines for certain listed companies may impose further requirements. For example, in respect of certain listed companies listed on Euronext Dublin, the Listing Rules also require a remuneration report to be sent to the shareholders annually, which contains a wide range of disclosures on executive directors' remuneration.

Shareholder Approval

Except for traded PLCs (defined below), a director's remuneration does not require shareholder approval unless the engagement is for more than five years or where the company's constitution provides otherwise.

Shareholders commonly have an advisory vote on directors' remuneration and must approve equity-based incentive schemes.

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The revised Shareholder Rights Directive (*SRD II*) introduced "say on pay" measures, allowing shareholders to vote on both the company's remuneration policy and remuneration report at least once every four years. The SRD II was transposed in Ireland by the European Union (Shareholders' Rights) Regulations 2020 (*SI 81/2020*) (SRD II Regulations).

The "say on pay" measures introduced by the SRD II Regulations apply to PLCs incorporated and registered in Ireland whose shares are admitted to trading on a regulated market in an EU member state (including those with shares that are admitted to trading on Euronext Dublin) (traded PLCs). The SRD II Regulations do not apply to public limited companies listed on Euronext Growth which is not a regulated market for the purposes of the SRD II Regulations.

Traded PLCs must prepare, in accordance with content requirements set out in the SRD II Regulations:

- A remuneration policy regarding the basis of remuneration to be paid to directors.
- A remuneration report concerning the application of the remuneration policy in practice.

Remuneration policy. The remuneration policy is subject to an advisory shareholder vote at least once every four years and otherwise when a material change to the approved policy is proposed. The remuneration policy and related shareholder vote must be published on the traded PLC's website.

Ireland exercised its member state's discretion to legislate for an advisory vote only on the remuneration policy, except where the traded PLC's constitution prescribes a binding vote.

The remuneration policy must, among other things:

- Explain how it contributes to the traded PLC's business strategy and long-term interests and sustainability.
- Be clear and understandable.
- Describe the different components of fixed and variable remuneration, including all bonuses and other benefits in whatever form, which can be awarded to directors, and indicate their relative proportion.
- Explain how, if at all, the pay and employment conditions of employees of the traded PLC were taken into account when establishing the remuneration policy.
- Set clear, comprehensive and varied criteria for the award of variable remuneration awarded by the traded PLC, if any.
- Specify information on any deferral periods and on the possibility for the traded PLC to reclaim any variable remuneration.
- Indicate financial and non-financial performance criteria, including, where appropriate, criteria relating to corporate social responsibility, and explain how they contribute to the traded PLC's business strategy and long-term interests and sustainability.

Where a remuneration policy is approved by a binding vote, the traded PLC must pay remuneration to its directors in accordance with the policy to which that vote related (unless a temporary derogation applies in extraordinary circumstances).

Where a binding vote is held on a remuneration policy, and the policy is not approved, the traded PLC must prepare a revised remuneration policy to be voted upon at the next general meeting, and subject to temporary derogations available in exceptional circumstances, until such time as the further remuneration vote is held:

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- Where the company has previously approved a remuneration policy, pay its directors in accordance with that remuneration policy.
- Where the company has not previously approved a remuneration policy, pay its directors in accordance with its existing practices.

Where an advisory vote is taken on a remuneration policy, the traded PLC must both:

- Regardless of the outcome of the vote, pay directors in accordance with either the remuneration policy to which that remuneration vote related or a remuneration policy that was previously approved by a remuneration vote.
- Where a remuneration policy is not approved, prepare a revised remuneration policy and hold a remuneration vote on the revised policy at the next general meeting.

Remuneration report. A traded PLC must prepare a clear and understandable remuneration report, in accordance with the requirements of the SRD II Regulations, which provides a comprehensive overview of the remuneration awarded or due, during the most recent financial year, to all of its directors in accordance with the remuneration policy.

A traded PLC must allow a vote to be held in general meeting on the remuneration report prepared in respect of the most recent financial year. The traded PLC must, in its subsequent remuneration report, explain how that shareholder vote has been taken into account. The remuneration report must be publicly available on the company's website for ten years. The Euronext Dublin Listing Rules also align with the SRD II Regulations, to the extent they provide that traded PLCs are required to include a "remuneration report" in the annual report that is sent to shareholders. It is also common for a traded PLC to comply with the non-binding Principles of Remuneration of the Investment Association.

In recent years, proxy advisors such as Glass Lewis and ISS have published guidance recommending a "no" vote on remuneration policies and reports. While this is non-binding guidance, a traded PLC should be cognisant of this trend and implement contingencies to deal with possible circumstances in which a large cohort of shareholders vote "no" on remuneration policies and reports based on such guidance.

Management Rules and Authority

13. How is a company's internal management regulated?

The Companies Act contains default provisions concerning the internal management of the company but these can be disapplied or modified by the company's constitution. Directors are generally left considerable discretion to manage the company.

The constitution can address the following:

- **Quorum.** The statutory default of two is usually adopted, except in the case of a single director LTD.
- **Notice requirements.** The constitution is frequently silent on notice requirements for directors' meetings, in recognition of the fact that board meetings often need to take place on an ad hoc, last-minute basis. The statutory

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default position is that all directors are entitled to reasonable notice of meetings but that it is not necessary to give notice of a meeting to an Irish resident director who is absent from Ireland. This default position can be modified.

- **Voting requirements.** Directors generally have one vote and voting takes place by a show of hands. The statutory default position set down by the Companies Act is that questions arising are to be decided by a majority of votes and where there is an equality of votes, the chair has the casting vote. Directors can also vote by unanimous written resolution.

14. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

Directors' Powers

Managerial power is usually delegated to the directors. However, certain fundamental decisions relating to the company are reserved to the shareholders by law or under the constitution. There is no concept under Irish corporate law of a supervisory board.

Restrictions

Irish company law requires that certain fundamental decisions relating to the company must obtain shareholder approval, including but not limited to:

- Changing the company's constitution.
- Changing the company's name.
- Converting from a limited to an unlimited company or a private to a public company or vice versa.
- Providing financial assistance in connection with the acquisition of shares in the company or its holding company.
- Entry into substantial property transactions with directors.

The constitution can specify additional matters that require shareholders' approval.

In addition, applicable listing rules or guidelines for certain listed companies can impose further requirements. For example, the Listing Rules and Euronext Growth Rules require applicable listed companies to obtain the prior approval of its shareholders in respect of certain significant transactions.

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15. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

Subject to any restrictions in the company's constitution, the directors are generally entitled to delegate responsibility for specific issues to individual directors or committees of directors. However, this delegation does not relieve the directors of their own general duties to the company. In these circumstances, the directors continue to have a residual duty to ensure that the delegated powers are exercised by the relevant director or committee of directors competently and in the best interests of the company.

Public-interest entities, as defined by Part 27 of the Companies Act, are obliged to establish an audit committee. Public limited companies that do not fall within that definition, and large private companies, are required by different provisions of the Companies Act to establish an audit committee or explain why they have not done so. In addition, applicable listing rules or guidelines for certain listed companies may impose further requirements. For example, certain listed companies subject to the CG Code must establish an audit committee, nomination committee and remuneration committee.

Directors' Duties and Liabilities

16. What is the scope of a director's general duties and liability to the company, shareholders and third parties?

The Companies Act codified directors' common law fiduciary duties but the many other statutory duties of directors are unaffected by the Companies Act. A director's fiduciary duties under the Companies Act include (but are not limited to) the duty to:

- Act in good faith in what the directors consider to be the interests of the company.
- Act honestly and responsibly in relation to the conduct of the affairs of the company.
- Act in accordance with the company's constitution and to use their powers only for the purposes allowed by law.
- Avoid conflicts of interest between the director's duty to the company and their other interests (including personal interests) unless the director is released from this duty.
- Exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both the knowledge and experience that can reasonably be expected of a person in the same position as the director and with the knowledge and experience which the director possesses.

Additional statutory duties include various disclosure obligations, as well as duties to ensure that the company keeps adequate accounting records and meets company secretarial compliance obligations.

An additional duty to have regard to the interests of creditors now applies in certain cases.

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Directors' duties are owed to the following:

- **The company.** Directors primarily owe their duties to the company. Section 227(1) of the Companies Act provides that "a director of a company shall owe the duties set out in section 228 to the company (and the company alone)".
- **Shareholders.** The Companies Act provides that a director must have regard to the interests of its shareholders (but this is subject to the overriding obligation to act in the best interests of the company).
- **Employees.** The Companies Act provides that directors must have regard to the interests of employees in the performance of their functions.
- **Creditors.** New duties under section 224A of the Companies Act (as inserted by the European Union (Preventive Restructuring) Regulations 2022 (*SI 380/2022*)) apply when a director believes or has reasonable cause to believe that a company is unable, or likely to be unable, to pay its debts. This is if:
    - the company is unable to pay its debts as they fall due;
    - the value of the company's assets is less than the value of the company's liabilities (including contingent and prospective liabilities); or
    - the conditions set out in section 570(a), (b) or (c) apply (concerning unsatisfied statutory demands for payment or unsatisfied judgments or court orders in favour of creditors).

    Under section 224A, when a director believes or has reasonable cause to believe that a company is insolvent or that insolvency is likely, they must have regard to the:

    - interests of the creditors;
    - need to take steps to avoid insolvency; and
    - need to avoid deliberate or grossly negligent conduct that threatens the viability of the business of the company.

    Separately, when a director becomes aware of the actual insolvency of the company, the duty to have regard to the interests of creditors has been inserted into the list of fiduciary duties in section 228(1) of the Companies Act.

    The above duties are owed by directors to the company alone and are enforceable in the same way as other fiduciary duties owed to a company by its directors.
- **Appointing shareholder.** The Companies Act allows a "nominee" director who has been appointed by the company's shareholder to have regard to the interests of that appointing shareholder but this is without prejudice to the directors' general obligation to act in the best interests of the company.

In addition, applicable listing rules or guidelines for certain listed companies can impose further requirements on directors. For example, the CG Code sets out additional obligations for directors of applicable listed companies.

17. Can a director's liability be restricted or limited? Can the company indemnify a director against liabilities?

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The extent to which Irish companies can indemnify directors is limited. A company can only indemnify a director for:

- Liability that does not involve negligence, default, breach of duty or breach of trust.
- Costs incurred by a director in successfully defending criminal or civil proceedings against them.

Where the constitution of a company or a contract seeks to indemnify a director in relation to matters restricted by the Companies Act, the provisions will be void.

18. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

Companies are permitted to purchase insurance for the potential civil liability of directors for negligence, default, breach of duty or breach of trust. Typically, a Directors and Officers Liability Insurance policy will contain a wide range of exclusions and cover will not extend to criminal fines or regulatory penalties that can be imposed on a director for fraudulent, dishonest or illegal acts established by a court judgment.

19. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though they have not been formally appointed as a director)?

A person who is not formally appointed to the board but acts as a director and effectively occupies the position of director can be liable as a de facto director. A de facto director is bound by the same duties and obligations and is subject to the same liabilities as formally appointed directors.

Bodies corporate can be treated as "shadow directors" (that is, persons in accordance with whose directions or instructions the directors of a company are accustomed to act). For certain purposes, Irish company law treats these persons as directors and holds them to the same duties and liabilities. The Companies Act, however, provides that a holding company cannot be regarded as a shadow director of any of its subsidiaries. A person who gives directions or instructions to the directors of a company only in a professional capacity also cannot be regarded as a shadow director.

Transactions with Directors and Conflicts of Interest

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20. Are there general rules relating to conflicts of interest between a director and the company?

Under the Companies Act, directors must avoid any conflict between their duties to the company and other (including personal) interests unless the director is released from that duty by the constitution or by shareholder resolution. Directors must not use the company's property, information or opportunities for their own benefit unless expressly permitted by the constitution or approved by shareholder resolution. Directors may be liable to account to the company for any profit that they secretly derive from their position.

Directors also have specific duties of disclosure relating to conflicts of interests under the Companies Act. For example, directors must give notice to the board of directors of any interest they have in a contract or proposed contract involving the company.

However, this duty to disclose does not apply in relation to an interest that is reasonably considered not to give rise to a conflict of interest.

21. Are there restrictions on particular transactions between a company and its directors?

A company is prohibited from entering into certain transactions with its directors (and in some cases, persons connected with its directors), except in limited circumstances where the consent of shareholders has been obtained and/or a formal statutory validation procedure has been complied with.

Restricted transactions include:

- Making loans, quasi-loans, guarantees or credit transactions with directors outside the ordinary course of business of the company.
- Substantial property transactions with directors where the value of the arrangement is over 10% of the company's net assets or more than EUR65,000.
- Contracts of employment of directors with a term exceeding five years.

Where a company makes a loan to a director and its terms are not in writing or are ambiguous, it is presumed that the loan is repayable on demand and bears interest. Where a director claims to have made a loan to the company, and the terms are not in writing, there is a rebuttable presumption that the payment is not repayable.

In addition, applicable listing rules or guidelines for certain listed companies can impose further restrictions. For example, for directors of companies listed on Euronext Dublin, the Listing Rules require shareholder approval for certain additional related-party transactions. SRD II contains a requirement for material related party transactions to be approved by the shareholders of a traded PLC and announced publicly.

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22. Are there restrictions on the purchase or sale by a company director of the shares and other securities of the company?

The purchase or sale of shares in a company (public or private) by a director must be disclosed to the company.

The Listing Rules contain restrictions on the granting of discounted options to acquire shares in an applicable listed company or its subsidiary undertakings.

It is also unlawful for a director of a listed company to deal in the company's securities if, because of the director's connection, they have price-sensitive information not generally available. The Takeover Rules prohibit persons (including directors) who are privy to confidential price-sensitive information concerning an offer or contemplated offer, from dealing in the securities of the buyer, from the time the director has reason to believe that an offer is being made until the announcement of the offer or the termination of discussions.

The MAR prohibits trading by directors of applicable companies and other "persons discharging managerial responsibilities" in defined "closed periods" except in certain circumstances.

Internal Controls, Accounts and Audit

23. Are there any formal requirements or guidelines relating to the internal control of business risks?

The Companies Act requires the directors of all public limited companies and those private companies which reach prescribed thresholds to (on a comply or explain basis):

- Confirm that the company has prepared a statement of compliance with certain company and with tax law (this confirmation is to be included in the directors' report contained in the annual financial statements).
- Ensure that the company adopts appropriate compliance measures.

Companies listed on the MSM of Euronext Dublin are subject to certain risk management and internal control systems under the CG Code, including that the board must:

- Carry out a robust assessment of the principal and emerging risks facing the company, including those which threaten the business model, future performance, solvency, liquidity or reputation.
- At least annually, conduct a review of the effectiveness of the company's risk management and internal control systems. The review must cover all material controls, including financial, operational and compliance controls.
- Establish an audit committee that will review the company's internal financial controls and internal control and risk management systems.

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Companies subject to the Listing Rules must attach a statement to their annual report confirming whether or not the company has complied with the provisions of the CG Code and where it has not complied with all relevant conditions, it is required to set out the nature, extent and reasons for non-compliance. Under the Companies Act, a corporate governance statement must be included in the directors' report of a traded PLC or set out in a separate report.

The statement must include a reference to the corporate governance code to which the company is subject and all relevant information concerning corporate governance practices which are additional to any statutory requirements. It must also contain a description of the main features of the internal control and risk management systems of the company.

24. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

Directors have a duty under the Companies Act to ensure that the company keeps adequate accounting records that correctly record and explain the transactions of the company and enable, at any time, the assets, liabilities, financial position and profit or loss of the company to be determined with reasonable accuracy. Both civil and criminal penalties can be imposed on directors who fail to comply with their duties to keep adequate accounting records.

A director who fails to take all reasonable steps to secure compliance or is the cause of default is guilty of an offence and liable to a fine and/or imprisonment.

Where the company is insolvent and the failure to keep adequate accounting records contributed to the company's insolvency or substantially impeded its winding up, a director can be held personally liable and can also be restricted or disqualified from acting as a director for a period of up to five years.

It is also an offence to destroy, mutilate or falsify any company documents.

Directors of companies whose financial statements must be audited must confirm in their directors' report that:

- As far as the directors are aware, the company's auditors are aware of all "relevant audit information"
- Each director has proactively taken steps to be aware, and to make the auditors aware, of any relevant audit information.

25. Do a company's accounts have to be audited?

Under the Companies Act, companies must arrange for their statutory financial statements to be audited annually by the statutory auditors unless the company is entitled to and chooses to use one of the following audit exemptions:

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- Where a company satisfies certain conditions in respect of turnover, balance sheet total and number of employees in the relevant financial year and the preceding one.
- Where a dormant company has had no significant accounting transactions in the relevant financial year and the company only has permitted assets and liabilities.

A company currently cannot use an audit exemption unless the annual return, along with any required financial statements, has been filed on time. However, new proposed companies legislation (see *Diversity*) will provide that a company may lose its exemption if it fails to file an annual return to the CRO for a second or subsequent time within a five year period.

26. How are the company's auditors appointed? Is there a limit on the length of their appointment?

The directors of the company usually appoint the first statutory auditors at the first board meeting. The statutory auditors will automatically be re-appointed at every AGM after the initial appointment unless the shareholders pass a resolution either objecting to the re-appointment or proposing the appointment of another statutory auditor or if the existing statutory auditor is not qualified for reappointment or has given notice in writing of their unwillingness to be reappointed.

Under Regulation (EU) 537/2014 on specific requirements regarding statutory audit of public-interest entities) and Part 27 of the Companies Act, a public interest entity (PIE) must appoint a statutory auditor for an initial engagement of at least one year (which can be renewed). Mandatory rotation of statutory audit firms must take place after ten years. In addition, the key audit partner (that is an auditor designated responsibility of the audit by the statutory audit firm) of a PIE must cease participation in the statutory audit not later than five years from the date of their first appointment. Following rotation, a statutory auditor or key audit partner cannot be re-appointed to that PIE for at least two years. In exceptional circumstances, a competent authority can grant an extension of time to reappoint for up to two years.

PIEs are:

- Entities whose transferable securities are listed on an EEA regulated market.
- Credit institutions regardless of listed status.
- Insurance undertakings regardless of listed status.
- Undertakings that are otherwise designated, by or under any other enactment, to be PIEs.

27. Are there restrictions on who can be the company's auditors?

The Companies Act sets out who is and is not eligible to be appointed as a statutory auditor and a statutory auditor firm.

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The auditors must be a member of a body of accountants recognised by the Irish Auditing and Accounting Supervisory Authority (IAASA) (or have an equivalent qualification) and hold a valid practising certificate from that recognised body. Auditors who qualify in other EU member states can carry out audits in Ireland if they pass an aptitude test. Auditors who qualify in non-EU member states can also obtain approval from the IAASA. The Companies Act also requires certain standards of continuing education, professional ethics, integrity and objectivity.

The general principle is that the statutory auditor should be independent of the entity it is representing and therefore certain individuals are not permitted to be auditors of the company. Restricted individuals include:

- Officers and employees of the company, their partners and close family members.
- Undischarged bankrupts.
- Individuals who have been disqualified from acting as auditors.

28. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

The EU Audit Regulation and the Companies Act regulate non-audit services that can be provided by the statutory auditor to a PIE once they have no direct, or have immaterial, effect on the audited financial services of the PIE and principles of independence are adhered to. Non-audit services include certain tax and valuation services.

A limit on fees for non-audit work is contained in the EU Audit Regulation so that total fees for such services cannot exceed 70% of the average audit fee in the last three consecutive financial years for the PIE group. Under CSRD, the assurance of sustainability reporting must be excluded from the calculation of the limit concerning the fees for other services that the statutory auditor can obtain.

Where non-audit work is carried out, it must be recorded in the financial statements of the company. The CG Code provides that if the statutory auditor provides non-audit services, the annual report of an applicable company must contain an explanation of how auditor objectivity and independence are safeguarded.

29.What is the potential liability of auditors to the company, its shareholders, and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

The statutory auditors of the company are under a general duty to carry out the audit with professional integrity and must exercise such duties as a diligent, skilled and cautious statutory auditor would exercise according to professional practice. If the statutory auditors do not comply with this duty, they can be liable for damages to the company, the shareholders and any third parties that suffer loss as a result of the inaccurately audited accounts. This liability cannot typically be limited or excluded.

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