COMPANY LAW REVIEW GROUP
an grúpa athbhreithnithe dlí cuideachtaí

COMPANY LAW REVIEW GROUP

REPORT ON CERTAIN COMPANY LAW ISSUES ARISING UNDER THE EU CENTRAL SECURITIES DEPOSITORIES REGULATION 909/2014 (CSDR)

JUNE 2020

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Chairperson's Letter to the Minister for Business, Enterprise and Innovation

Ms Heather Humphreys T.D.,

Minister for Business, Enterprise and Innovation

23 Kildare Street

Dublin 2 D02 TD30

25 June 2020

Dear Minister,

I am pleased to present to you a Special Report of the Company Law Review Group (**CLRG**) on certain company law issues arising under the EU Central Securities Depositories Regulation 909/2014 (**CSDR**).

In my letter to you of 31 March 2020 delivering the Review Group's Annual Report for 2019, I noted the work of Review Group's Part 23 Committee, which deals with company law as it affects publicly quoted companies. That Committee has continued to examine the potential company law amendments that may be required to facilitate the migration of participating securities from CREST, to the planned new intermediated model of share settlement through Euroclear Bank SA, pursuant to CSDR.

This Report recommends a number of discrete amendments to the Companies Act, which will facilitate and assist the implementation of CSDR for Irish companies.

The Report also sets out the extent of its examination to date of the interplay between CSDR and the amendments made by Directive (EU) 2017/828 of 17 May 2017 (**SRD II**) to Shareholders Rights Directive 2007/36/EC of 11 July 2007. The Review Group does not at this stage offer any recommendations, as its examination of the issues continues.

I would like to extend my sincere thanks to the Part 23 Committee members for their engagement and input in examining these issues and the significant contribution of the Department of Finance to our deliberations.

I would also like to thank the Department of Business, Enterprise and Innovation for their support, in particular, Secretary to the Group, Ms. Tara Keane.

Yours sincerely,

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Paul Egan

Chairperson

Company Law Review Group

1. Introduction to the Report

1.1 The Company Law Review Group

The Company Law Review Group ("CLRG") is a statutory advisory body charged with advising the Minister for Business, Enterprise and Innovation ("the Minister") on the review and development of company law in Ireland. It was accorded statutory advisory status by the Company Law Enforcement Act 2001, which was continued under Section 958 of the Companies Act 2014. The CLRG operates on a two-year work programme which is determined by the Minister, in consultation with the CLRG.

The CLRG consists of members who have expertise and an interest in the development of company law, including practitioners (the legal profession and accountants), users (business and trade unions), regulators (implementation and enforcement bodies) and representatives from government departments including the Department of Business, Enterprise and Innovation ("the Department") and Revenue. The Secretariat to the CLRG is provided by the Company Law Development and EU Unit of the Department of Business, Enterprise and Innovation.

1.2 The Role of the CLRG

The CLRG was established to "monitor, review and advise the Minister" on matters concerning company law. In so doing, it is required to "seek to promote enterprise, facilitate commerce, simplify the operation of the Act, enhance corporate governance and encourage commercial probity" (section 959 of the Companies Act 2014).

1.3 Policy Development

The CLRG submits its recommendations on matters in its work programme to the Minister. The Minister, in turn, reviews the recommendations and determines the policy direction to be adopted.

1.4 Contact information

The CLRG maintains a website www.clrg.org. In line with the requirements of the Regulation on Lobbying Act and accompanying Transparency Code, all CLRG reports and the minutes of its meetings are routinely published on the website. It also lists the members and the current work programme.

The CLRG's Secretariat receives queries relating to the work of the Group and is happy to assist members of the public. Contact may be made either through the website or directly to:

Tara Keane

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Department of Business, Enterprise and Innovation

Earlsfort Centre

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2. The Company Law Review Group Membership

2.1 Membership of the Company Law Review Group

The membership of the Company Law Review Group at the date of this report is provided below.

Paul Egan	Chairperson (Mason Hayes & Curran)
Barry Conway	Ministerial Nominee (William Fry)
Bernice Evoy	Banking and Payments Federation Ireland
Ciara O'Leary	Irish Funds Industry Association (Maples and Calder)
David McFadden	Ministerial Nominee (Companies Registration Office)
Doug Smith	Irish Society of Insolvency Practitioners (Eugene F Collins)
Eadaoin Rock	Central Bank
Emma Doherty	Ministerial Nominee (Matheson)
Gillian Leeson	Euronext Dublin
Gillian O'Shaughnessy	Ministerial Nominee (ByrneWallace)
Ian Drennan	Director of Corporate Enforcement
Irene Lynch Fannon	Ministerial Nominee (University College Cork)
James Finn	The Courts Service
Jeanette Doonan	Revenue Commissioners
John Loughlin	CCAB-I (PWC)
John Maher	Ministerial Nominee (DBEI)
Kathryn Maybury	Small Firms Association (KomSec Limited)
Kevin Prendergast	Irish Auditing and Accounting Supervisory Authority
Máire Cunningham	Law Society of Ireland (Beauchamps)
Marie Daly	Irish Business and Employers' Confederation (IBEC)
Maureen O'Sullivan	Ministerial Nominee (Companies Registration Office)
Michael Halpenny	Irish Congress of Trade Unions (ICTU)
Neil McDonnell	Irish Small and Medium Enterprises Association (ISME)
Ralph MacDarby	Institute of Directors in Ireland
Richard Curran	Ministerial Nominee (LK Shields)
Rosemary Hickey	Office of the Attorney General

Salvador Nash	The Chartered Governance Institute (KPMG)
Shelley Horan	Bar Council of Ireland
Tanya Holly	Ministerial Nominee (DBEI)
Vincent Madigan	Ministerial Nominee

3. The Work Programme

3.1 Introduction to the Work Programme

In exercise of the powers under section 961(1) of the Companies Act 2014, the Minister, in consultation with the CLRG, determines the programme of work to be undertaken by the CLRG over the ensuing two-year period. The Minister may also add items of work to the programme as matters arise. The most recent work programme began in June 2018 and ran until the end of May 2020. The work programme is focused on continuing to refine and modernise Irish company law, with a strong emphasis on the area of insolvency. The work programme for June 2020 to May 2022 is at present being formulated but the statutory mandate of the CLRG to monitor, report and advise the Minister on matters concerning company law remains current at all times.

3.2 Company Law Review Group Work Programme 2018-2020

The Review Group's Work Programme under which this Report was prepared was as follows:

1) Examine and make recommendations on whether it will be necessary or desirable to amend company law in line with recent case law and submissions received regarding the Companies Act 2014.

   This Report is delivered in fulfilment of the Review Group's mandate under this heading.

2) Review the enforcement of company law and, if appropriate, make recommendations for change.

3) Review the provisions in relation to winding up in the Companies Act 2014 and, if appropriate, make recommendations for change.

4) Provide ongoing advice to the Department of Business, Enterprise and Innovation on request for EU and international proposals, including proposals in relation to the harmonisation or convergence of national company insolvency laws.

5) Examine and make recommendations on whether it is necessary or desirable to adopt, in Irish company law, the UNCITRAL Model Law on Cross-Border Insolvency.

6) Review the operation of the Summary Approval Procedure introduced in the Companies Act 2014.

3.3 Additional item to the Work Programme

On 5 December 2018, the Minister wrote to the Chairperson requesting that the CLRG examine the regulation of receivers under specific terms of reference. This additional item was formally adopted as part of the CLRG's work programme 10 December 2018 and a special report delivered to the Minister in May 2019.

3.4 Decision-making process of the Company Law Review Group

The CLRG meets in plenary session to discuss the progression of the work programme and to formally adopt its recommendations and publications.

3.5 Committees of the Company Law Review Group

The work of the CLRG is largely progressed by the work of its Committees. The Committees consider not only items determined by the work programme, but issues arising from the administration of the Companies Act 2014 and matters arising such as court judgements in relation to company law and developments at E.U. level. This Report is the product of work by the Part 23 Committee chaired by CLRG Chairperson Paul Egan.

4. Company law issues arising from the implementation of the EU Central Securities Depositories Regulation 909/2014 (CSDR)

4.1 Introduction

4.1.1 Defined terms

In this Report:

"**1996 Regulations**" means the Companies Act 1990 (Uncertificated Securities) Regulations 1996 (SI 68/1996);

"**2006 Regulations**" means European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255/2006);

"**2019 Act**" means the Migration of Participating Securities Act 2019;

"**2020 Regulations**" means the European Union (Shareholders' Rights) Regulations 2020 (S.I. No. 81/2020), which transpose SRD II;

"**Committee**" means the Review Group's Part 23 Committee, the membership of which is set out in Appendix 1 of this Report;

"**Companies Act**" or "2014 Act" means the Companies Act 2014;

"**CSDR**" means the EU Central Securities Depositories Regulation 909/2014;

"**Department**" of "**DBEI**" means the Department of Business, Enterprise and Innovation;

"**SRD**" or "**Shareholders Rights Directive**" means the EU Shareholders' Rights Directive 2007/36/EC;

"**SRD II**" means Directive (EU) 2017/828 of 17 May 2017 which amends SRD.

References to sections of an Act are to sections of the Companies Act 2014, unless otherwise stated.

4.1.2 Background

The Migration of Participating Securities Act 2019, commenced by SI 26/2020 as of 29 January 2020, enables issuers of participating securities (largely, but not all, quoted companies) to opt into the new intermediated system of share holding and dealing that is required in order to comply with CSDR. A company can opt in by passing a special resolution and otherwise complying with the 2019 Act.

The Part 23 Committee met on 4 occasions in 2019 and twice in 2020 in order to consider issues arising from the intermediated system, which it approached under four broad headings:

1) Shareholders' rights to information;

2) Shareholders' rights to compel actions by a company

   (i) pursuant to the EU Shareholders' Rights Directive 2007/36/EC (**SRD**) and Directive (EU) 2017/828 of 17 May 2017 (**SRD II**); and

   (ii) pursuant to the Companies Act 2014;

3) Shareholders' rights to make applications to court pursuant to the Companies Act 2014;

4) Enforcement of company law.

An indicative list of the rights arising under the Companies Act, not based in EU law, is set out in Appendix 2 of this Report.

The CLRG and the Department have been in communication with Euroclear Bank, the depository that plans to service the Irish market for depository services for equity securities and exchange traded funds when the CREST system of share holding and transfer terminates in March 2021. The Review Group sought clarification from Euroclear as to how shareholders' rights at (1), (2) and (3) may be exercised under the new intermediated arrangements.

With the exception of rights at (2)(i) arising under the Shareholders Rights Directive, as amended by SRD II, the solution proposed by Euroclear it is for the underlying shareholder to exit the Euroclear intermediated system and become a registered shareholder in order to exercise those rights.

The precise steps to be undertaken by all relevant persons in order to enable the beneficial owner of a share to exit the intermediated system to become a registered shareholder and vice versa along with accompanying timescales continues to be examined by the Part 23 Committee.

Neither the Review Group nor the Part 23 Committee has examined item (4), the enforcement of company law, but that will be considered in due course, where the key input will be from the Office of the Director of Corporate Enforcement.

4.1.3 Submission seeking company law changes by Euroclear Bank

Euroclear Bank approached DBEI with a submission seeking a number of changes to company law in order to facilitate the implementation of the 2019 Act and CSDR, in the context of the design of Euroclear's service offering. These requests were referred to the Review Group's Part 23 Committee, which considered them at meetings held on 3 February 2020 and, by electronic means, on 9 April 2020. The ensuing recommendations of the Committee were adopted by the Review Group at its meeting on 24 June 2020.

4.1.4 Recommendations apply to traded companies

The Review Group's conclusions and recommendations are proposed to apply only to companies whose securities migrate to the new intermediated system of shareholding and dealing. That said, there may be merit in their being applied more broadly but the Review Group has not considered such broader application for the purposes of this report.

4.2. Share Certificates

4.2.1 Companies Act 2014

Section 99(2) provides:

> A company shall, within 2 months after the date—
>
> (a) of allotment of any of its shares or debentures; or
>
> (b) on which a transfer of any such shares or debentures is lodged with the company,
>
> complete and have ready for delivery the certificates of all shares and debentures allotted or, as the case may be, transferred, unless the conditions of issue of the shares or debentures otherwise provide.

4.2.2 Migration of Participating Securities Act 2019

Section 11(3)(b) of the 2019 Act provides:

> notwithstanding section 99(2) of the Act of 2014, the participating issuer is not required to issue share certificates to the nominated central securities depository (or, as the case may be, to the foregoing body nominated by that depository) on the migration taking effect under subsection (2) on the live date and title of the nominated central securities depository (or, as the case may be, of the foregoing body nominated by that depository) to the relevant participating securities shall be evidenced by the recording of the name and address of that depository or body, as appropriate, in the register of members of the participating issuer, and subsection (4) supplements this paragraph.

Section 11(4) of the 2019 Act adds:

> Paragraph (b) of subsection (3) operates to disapply section 99(2) of the Act of 2014, with respect to the matters referred to in that paragraph, both on the live date concerned and at all times thereafter.

4.2.3 Analysis

It appears that section 11(3)(b) of the 2019 Act disapplies the requirement to issue a share certificate only in respect of transfers on the live date, in March 2021 when participating securities are transferred en bloc to the Euroclear Bank nominee, rather than on an ongoing basis. There is a nuanced view which suggests that section 11(4) may operate to disapply the requirement following the live date but then only in respect of the tranche of shares that have transferred to the depository, i.e. excluding new issues of shares.

4.2.4 Euroclear Bank submission

Euroclear Bank requested a change in the law to disapply the section 99(2) requirement to issue share certificates for shares registered in the name of a CSDR-authorised / recognised depository or its nominee.

4.2.5 Recommendation

It is open to a company to provide in its articles of association that the conditions of issue of its shares are such as to exempt it from issuing share certificates in particular circumstances, in this case, where the allottee or transferee is a CSDR-authorised / recognised depository. It is however an open point as to whether the “conditions of issue” of existing shares can be amended in the same way as rights attaching to shares can be varied. Whereas rights attaching to shares are largely a matter between the company and the holder, the right to a share certificate is pursuant to a legal enactment.

Accordingly, the Review Group agrees that this change is merited and recommends that the law be amended accordingly.

4.3 Transfers by CSDR-authorised depositories

4.3.1 Companies Act 2014

Section 94 provides:

> (1) Subject to any restrictions in the company's constitution and this section, a member may transfer all or any of his or her shares in the company by instrument in writing in any usual or common form or any other form which the directors of the company may approve.
>
> (4) A company shall not register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.

4.3.2 Companies Act 1990 (Uncertificated Securities Regulations) 1996

These Regulations amend the Companies Act where the ownership of shares is operated through the CREST system. Regulations 4 and 5 provide:

> 4. (1) Notwithstanding section 79 or section 81 of the 1963 Act [the equivalent of section 94 of the 2014 Act] or section 2 (1) of the Stock Transfer Act, 1963 , title to securities may be evidenced and transferred without a written instrument provided that such title is evidenced and transferred in accordance with these regulations...
>
> 5. Section 6 of the Statute of Frauds Act (Ireland), 1695 and section 28 (6) of the Supreme Court of Judicature (Ireland) Act, 1877 and any other rule of law requiring the execution under hand or seal of a document in writing for the transfer of property, shall not apply (if they would otherwise do so) to any transfer of title to uncertificated units of a security through a relevant system.

4.3.3 Analysis

There are legal precedents for the disapplication of the requirement for a written instrument of transfer. The 1996 exception is made subject to the operator of the CREST system having an agreement with the Revenue Commissioners dealing with the imposition and payment of stamp duty on chargeable transfers.

A bespoke disapplication of the requirement was enacted in the Anglo Irish Bank Corporation Act 2009, under which shares in Anglo Irish Bank were acquired by the State.

4.3.4 Euroclear Bank submission

Euroclear Bank have requested that provision be made for transfers of shares out of a book entry system operated by a CSDR-authorised / recognised depository to be given effect to without the need for a written instrument in order to transfer legal title to the transferee (albeit that a share certificate will be issued to the transferee). In addition, in the event of there being more than one depository registered as holder of shares, transfers between those depositories should not require a written instrument.

4.3.5 Recommendation

In light of the precedents and logic for such a provision, the Review Group agrees that these changes are merited and recommends that the law be amended accordingly.

4.4. Scheme of Arrangement shareholder majorities

4.4.1 Companies Act 2014

A scheme of arrangement under Part 9, Chapter 1 of the Companies Act, whereby a shareholder's rights are varied or compromised, most notably by shares being cancelled in a takeover scheme, requires the passing of a shareholder resolution by a "special majority".[1]

Section 449(1) defines a "special majority" as

> "a majority in number representing at least 75 per cent in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the scheme meeting. "

4.4.2 Analysis

The requirement for there to be a majority in number of registered shareholders is already troublesome and illusory, and is viewed by many lawyers as being of no merit. A majority of shares in most quoted companies are held by financial intermediaries or their nominees. In the case of the "2009 companies"[2] that were formed to acquire North American companies then headquartered in offshore locations such as the British Virgin Islands, the Cayman Islands and Bermuda, all but a handful of shares are registered with The Depository Trust Company (**DTC**).

This has meant that whenever the special majority comes to be satisfied, in many cases, the votes of substantial shareholders – and in the case of all 2009 companies, the votes of DTC – do not count towards the satisfaction of the majority-in-number requirement, as votes for and against by the persons for whom those substantial shareholders or DTC hold shares cancel out their votes. This has resulted in artificial devices being employed to ensure that the majority-in-number requirement is satisfied e.g. by allotting or transferring shares to obedient nominees who will vote as required to get the scheme approved.

The important point is that a scheme of arrangement must be approved by the Court; this is a more significant requirement than there being a requirement for there to be a majority in number. Prior to the enactment of section 47 of the Company Law Enforcement Act 2001[3] there was a similar requirement under the winding-up provisions of the prior Companies Acts, whereby resolutions e.g. to dislodge a liquidator appointed by a company required a majority in number as well as in value.

Independently of the Euroclear Bank request, the CLRG's Corporate Governance Committee had considered a submission that there be an additional and alternative requirement to satisfy the definition of a "special majority". That is that the resolution be passed as a special resolution at a meeting at which the quorum is one-third of the class of shares whose holders' rights are affected by the scheme. This would be aligned with (i) the quorum requirement for a special resolution to vary class rights of shares under section 88 of the 2014 Act and (ii) the quorum requirement under section 8(a) of the 2019 Act.

[1] Part 9 Chapter 1 of the 2014 Act also provides for schemes of arrangement whereby creditors' rights may be varied or compromised. This Report is not considering any change to the law with respect to such schemes.
[2] Companies established under and availing of the provisions of the Companies (Miscellaneous Provisions) Act 2009 to use internationally recognised accounting standards other than that those generally accepted accounting principles and policies used in the State.
[3] This inserted a new section 267(3) into the Companies Act 1963, now section 588(6) of the Companies Act 2014.

4.4.3 Euroclear Bank submission

Euroclear Bank requested that the requirement for a scheme of arrangement to have approval by a majority in number be disapplied by amending the definition of "special majority" set out in section 449(1) of the 2014 Act, at least with respect to securities a portion of which is held through an authorised / recognised depository.

4.4.4 Recommendation

For the reasons set out above, the Review Group agrees that a change is merited, and recommends the creation of an alternative to the majority-in number requirement in the definition of "special majority", being that the special resolution is passed at a meeting at which the quorum is one-third of shares of the class affected.

4.5 Takeover offer acceptance majorities

4.5.1 Companies Act 2014

Section 457 gives the right to an offeror for a company to acquire all the shares in a company where its offer has been accepted by the holders of at least 80% of the shares not held by the offeror. Section 458 adds an additional requirement where the offeror (and its subsidiaries together) hold(s) 20% or more of the shares when making the offer. In those circumstances "[t]he additional requirement ... is that the assenting [i.e. accepting] shareholders, besides holding not less than 80 per cent in value of the shares affected, are not less than 50 per cent in number of the holders of those shares."

4.5.2 Analysis

As mentioned above, shares are at present frequently held through nominees, who hold shares for a great number of beneficial owners. In such cases, the nominees only count as one holder for the purpose of this majority.

In practice, offerors for a company are rarely existing shareholders of a company or a subsidiary of an existing shareholder. Frequently it will be a parent company of an existing shareholder or a fellow subsidiary of a holding company of an existing shareholder that makes the offer, thereby circumnavigating the objective of the additional requirement.

A navigation of the section using this structure was commented on in the case of *Duggan v Stoneworth Investment Ltd*[4] by the Supreme Court. Looking at the apparent anomaly that a subsidiary of a shareholder, when making a takeover offer is not considered to already hold shares held by its holding company, whereas a holding company is considered to hold shares held by a subsidiary, Murphy J stated:

> "In my view there is no ambiguity in the interpretation of the exclusionary provisions of subsections 1 and 2 of s.204 of the 1963 Act[5] nor was there any such ambiguity in relation to the comparable provisions contained in s.8 of the Companies Act, 1959. The legislature determined clearly and unequivocally to apply the relevant subsections to the beneficial ownership of shares of the transferor company other than shares "already in the beneficial ownership of the transferee company". Subsection 3[6] extended that exclusion by providing that shares in the beneficial ownership of a subsidiary of the transferee company should be deemed to be in the beneficial ownership of the

[4] [2000] 1 IR 563.
[5] See 2014 Act ss 457, 458.
[6] 2014 Act, s 460(2)(a).

> transferee company itself. It is curious, as Mr Lyndon McCann pointed out at page 201 of his book on the "Companies Acts, 1963-1990" that the deeming provisions were not extended to the case where shares in the transferor company were held by a holding company of the transferee company. However, it is the very fact that the particular exclusionary provisions are expressed to relate to shares in the beneficial ownership of the transferee company and that the legislature consciously extended that exclusion to capture only shares in a subsidiary which makes it impossible to infer an intention to exclude other categories of shareholdings."

The European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255/2006), regulates takeover offers of companies admitted to trading on an EU regulated market (i.e. the official list). These Regulations do not repeat the requirement for a 50% in number of the shareholders to accept where an offeror already holds 20% or more of the target company's shares.

Finally, section 459(5) of the 2014 Act and Regulation 27 of the 2006 Takeover Bids Regulations enables a shareholder to apply to the Court to retain its shares, such that there is redress available to a shareholder who has been wrongly disadvantaged.

4.5.3 Euroclear Bank submission

Euroclear Bank requested the removal of the requirement for assenting shareholders to constitute more than 50% in number of assenting shareholders where the offeror (and subsidiaries) hold(s) 20% or more of the shares subject to the offer.

4.5.4 Recommendation

For the reasons set out above, the Review Group agrees that a change is merited, and recommends the repeal of the requirement for assenting shareholders to constitute more than 50% in number of assenting shareholders.

4.6 Takeover offer acceptances

4.6.1 Existing Law

The interaction of the Companies Act 2014, the 1996 Regulations, the Powers of Attorney Act 1996 and the Takeover Rules made under the Irish Takeover Panel Act 1997 operate so as to require:

- paper documents of transfer in the case of takeovers of companies even when shares are dematerialised; and
- a power of attorney to be given by the registered shareholder to the acquirer of the company being taken over.

4.6.2 Analysis

The 1996 Regulations do not make provision for takeover notices under the EU Takeover Directive 2004/25/EC, otherwise transposed by the 2006 Regulations. Where shares are to be held and dealt in a paperless environment, it is anomalous for there to be a requirement for a depository to execute takeover acceptances.

Regulation 43 of the UK's Uncertificated Securities Regulations 2001 (broadly comparable to the 1996 Regulations) provides:

> (1) This regulation applies where the terms of an offer for all or any uncertificated units of a participating security provide that a person accepting the offer creates an

irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer.

(2) An acceptance communicated by properly authenticated dematerialised instruction in respect of uncertificated units of a security shall constitute a grant of an irrevocable power of attorney by the system-member accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer….

(4) A declaration in writing by the offeror stating the terms of a power of attorney and that it has been granted by virtue of this regulation and stating the name and address of the grantor shall be prima facie evidence … and any requirement in any enactment, rule of law, or instrument to produce a copy of the power of attorney, or such a copy certified in a particular manner, shall be satisfied by the production of the declaration or a copy of the declaration certified in that manner…

4.6.3 Euroclear Bank submission

Euroclear Bank requested where the terms of an offer for all or any shares of a participating security held through an authorised / recognised depository provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer, then acceptances communicated by instructions within or from an authorised / recognised depository should constitute a grant of an irrevocable power of attorney by the relevant participants in the depository accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer .

4.6.4 Recommendation

The Review Group agrees that the change is merited and recommends that the law be amended accordingly.

4.7. Change of Voting Record Time

4.7.1 Companies Act 2014

Section 183 subsections (5) and (6) provides:

(5) The instrument of proxy ... shall be deposited at the registered office of the company concerned or at such other place within the State as is specified for that purpose in the notice convening the meeting, and shall be so deposited not later than the following time.

(6) That time is—

(a) 48 hours (or such lesser period as the company's constitution may provide) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

b) in the case of a poll, 48 hours (or such lesser period as the company's constitution may provide) before the time appointed for the taking of the poll.

Section 185 provides:

(1) A body corporate may, if it is a member of a company, by resolution of its directors or other governing body authorise such person (in this section referred to as an "authorised person") as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company…

(3) An authorised person shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member of the company, creditor or holder of debentures of the company.

(4) The chairperson of a meeting may require a person claiming to be an authorised person within the meaning of this section to produce such evidence of the person's authority as such as the chairperson may reasonably specify and, if such evidence is not produced, the chairperson may exclude such person from the meeting.

4.7.2 Companies Act 1990 (Uncertificated Securities Regulations) 1996

Regulation 14 provides:

(1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Changes to entries on the relevant register of securities after the time specified by virtue of paragraph (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

4.7.3 Analysis: timing

There are several issues that arise under these provisions.

(a) Timing

Section 3(1) of the 2014 Act provides:

Where the time limited by any provision of this Act for the doing of anything expires on a Saturday, a Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, a Sunday or a public holiday.

This can be interpreted to mean that general meetings on Mondays and Tuesdays would be affected such as to extend the time for delivery of Forms of Proxy, in the case of Monday meetings, until the commencement of the meeting and for Tuesday meetings, until 23:59 on the Monday. Where there is a public holiday on the Monday, this would apply to Tuesday and Wednesday meetings mutatis mutandis.

(b) Inclusion of weekend hours in computation of time

The purpose of the 48-hour cut-off is to facilitate administrative procedures in companies. The UK recognises this in their law. Section 327 (2) and (3) of the UK Companies Act 2006 provides as follows:

(2) (Any provision of the company's articles is void in so far as it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than the following time—

(a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;

(b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll;

(c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2) no account shall be taken of any part of a day that is not a working day.

(c) Time to address nationality conditions

The Euroclear Bank platform, as at present disclosed, does not provide for verification of nationality of beneficial ownership on proxy votes and is based on a "trust-us" tick-the-box procedure.

The nationality of beneficial owners is relevant for particular industries as the votes of shares of non-EEA beneficial owners may need to be disenfranchised for general meetings in order that a licence or authorisation in not revoked or conditions in it breached.

The mechanism for companies to ascertain the identity of beneficial owners is set out in Article 3a of the Shareholders Rights Directive as inserted by SRD II. This provides for intermediaries to identify the beneficial owners of shares, as follows:

1. Member States shall ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0,5 %.

2. Member States shall ensure that, on the request of the company or of a third party nominated by the company, the intermediaries communicate without delay to the company the information regarding shareholder identity.

3. Where there is more than one intermediary in a chain of intermediaries, Member States shall ensure that the request of the company, or of a third party nominated by the company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party nominated by the company without delay by the intermediary who holds the requested information. Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain that holds the information.

Member States may provide for the company to be allowed to request the central securities depository or another intermediary or service provider to collect the information regarding shareholder identity, including from the intermediaries in the chain of intermediaries and to transmit the information to the company.

Member States may additionally provide that, at the request of the company, or of a third party nominated by the company, the intermediary is to communicate to the company without delay the details of the next intermediary in the chain of intermediaries…

Article (6) of EU Commission Implementing Regulation 2018/1212 provides for the timeframe within which intermediaries must provide information as to ownership:

6. The request to disclose shareholder identity made by an issuer or third party nominated by the issuer shall be transmitted by intermediaries, in accordance with the scope of the request, to the next intermediary in the chain without delay and no later than by the close of the same business day as the receipt of the request. Where the intermediary receives the request after 16.00 during its business day, it shall transmit the information without delay and no later than by 10.00 of the next business day.

The response to the request to disclose shareholder identity shall be provided and transmitted by each intermediary to the addressee defined in the request without delay and no later than during the business day immediately following the record date or the date of receipt of the request by the responding intermediary, whichever occurs later.

The deadline referred to in the second subparagraph shall not apply to responses to requests or those parts of requests, as applicable, which cannot be processed as machine-readable and straight-through processing, as provided for in Article 2(3). It shall also not apply to responses to requests that are received by the intermediary more than seven business days after the record date. In such cases, the response shall be provided and transmitted by the intermediary without delay and in any event by the issuer deadline.

Where listed issuers e.g. air carriers registered in Ireland are seeking to verify the nationality of underlying shareholders for the purpose of establishing whether their shares can vote, even with the short timescales envisaged by this law, it will be necessary for some time before the meeting to be available when this is checked

4.7.4 Analysis: particular industries

(a) Air carriers

EU law requires airlines which are granted operating licences by Member State authorities to be majority owned and controlled by EEA nationals in order for them to benefit from the right to operate intra-EU air transport services. Air carriers registered in an EU member state will routinely have provisions in their constitutional documents which disapply voting rights for non-EEA shareholders and in some cases entitle the carrier to dispose of shares of shareholders whose non-EEA domicile would imperil its air carrier licence. The nationality of shareholders is therefore of great importance to any issuer that has an air carrier licence.

(b) Energy

Under rules governing the internal market of the electricity sector under EU Directive 2007/72 (transposed S.I 16/2015 - European Communities (Internal Market in Natural Gas and Electricity) (Amendment) Regulations 2015). Under Article 11(1) of the Directive, where a transmission system owner or operator is controlled by a person or persons, from a third country or countries, the national regulator is obliged to first decide if it is appropriate to grant them a certification and also subsequently to consult the European Commission on whether to grant a certification.

The regulator drafts a decision based on whether i) the applicant complies with the requirements outlined in Article 9 of the Directive and ii) Granting certification to the applicant would not put at risk the security of energy supply of the Member State or the community at large at risk. This decision is then submitted to the Commission for approval, where the Commission will analyse the decision in respect of the concerns i) and ii) above. This may in effect mean that the Member State Regulatory Authority will be required to refuse certification where it has not been certified that the

third country ownership of the operator will not put at risk the security of the energy supply of the Member State or the community.

The verification of nationality of shareholders is therefore of importance to any issuer in this sector, to ensure that conditions in any licence are not imperilled by non-compliance with conditions referable to nationality of beneficial owners.

(c) Hydrocarbons

Directive 94/22/EC-Conditions for Granting and Using Authorisation for the Prospection, Exploration and Production of Hydrocarbons (as amended by Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018)

Article 2(1) of the amending Regulation obliges Member States to ensure that when an area within their territory is made available for the exercise of the activities of prospecting, exploring for and producing hydrocarbons, they must ensure that no discrimination between entities as regards access to and exercise of these activities occurs. Despite this, Member States retain the ability to refuse, on the grounds on national security, to allow access to and exercise of the above activities to any entity which is effectively controlled by third countries or third country nationals.

The verification of nationality of shareholders is therefore of importance to any issuer in this sector, to ensure that conditions in any licence are not imperilled by non-compliance with conditions referable to nationality of beneficial owners.

(d) Foreign direct investment

On the 11 April 2019 Regulation 2019/452/EU on the screening of foreign direct investment into the European Union came into effect with provisions that will be effective from 11 October 2020. Member States are to establish a contact point between the Member State and the Commission to allow for the transfer of information in respect to Foreign Direct Investment. This information includes the following:

- the investor's identity and target company;
- the countries in which the investor and target company currently operate;
- the source of funding and;
- the value of investment.

The exchange of such information gives both the Commission and Member States the opportunity to highlight concerns where they see fit. In circumstances whereby an investment may affect a project of interest within the European Union or may act as a threat to either the security or public order of more than one Member State, the Commission is authorised to issue an opinion. The opinion of the Commission will be non-binding however, Member States are urged to give them "due consideration"

Commentary on this new law point to this being likely to affect investment in areas of critical infrastructure (e.g. telecoms, energy, and water), technology (e.g. AI, robotics, semiconductors), defence and food security.

The verification of nationality of shareholders is therefore of importance to any issuers affected by any Commission opinion to ensure that with conditions referable to nationality of beneficial owners are no breached.

(e) Restrictive provisions

Trade with and asset ownership by individuals and entities domiciled in particular countries are subject to Irish, EU and United Nations restrictive measures. Countries at present in focus are Iran, Russia, Venezuela and North Korea. In some cases, the verification of nationality of shareholders may be of importance to ensure compliance with such measures.

4.7.5 Euroclear Bank submission

At present the time usually fixed as the record time for voting is the close of business on the day that is 48 hours before the time of the meeting. E.g. if a meeting is being held on a Thursday at 11:00 a.m., the proxy cut-off time will be 48 hours before that – Tuesday at 11:00 am and the record time will be close of business – 6:30 pm on the Tuesday. This gives the registrars one clear day to verify that those who have delivered forms of proxy are indeed registered members.

Euroclear Bank requested that the record time for voting should be set up to 10 business days before the meeting.

The following illustration gives an overview of what would be proposed, where for example a meeting was taking place on a particular Thursday:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
			M-10 Proposed record time	M-9		
M-8	M-7	M-6	M-5	M-4		
M-3	M-2 Record time at COB	M-1	Meeting			

4.7.5 Recommendation

The Review Group's conclusions are these:

(a) The proposed increase from 48 hours to 10 business days – effectively 2 weeks – for all companies is unsatisfactory. The proposed change to voting entitlement qualification would affect the economic interest of shareholders and would impact both companies and investors alike. .

Companies would also be in the dark as to how votes were cast. At present, financial intermediaries e.g. brokers' firms typically send their forms of proxy with voting instructions to the proxy (usually the meeting's Chairperson) on the day, the close-of-business of which was the record time – i.e. at the last minute.

(b) An increase in time of up to 3 business days may be justified, subject to further explanation of the processes to be undertaken by companies, registrars intermediaries and depositories.

(c) An increase in time may be justified for any listed issuer whose continuance in business is contingent on ascertaining nationality thresholds, such as air carriers.

(d) At present, financial intermediaries routinely allow their clients, the beneficial owners, to attend meetings as representatives of the financial intermediaries' nominee companies in respect of the beneficial owner's shareholding, as provided by section 185 of the 2014 Act. Euroclear Bank should provide the same facility to its participants by way of a general proxy to a voting service provider.

(e) At present issuers are able to appoint a voting service provider in the manner set out in the CREST reference manual. The CREST system itself has functionality which enables CREST members to send the electronic equivalent of a proxy card to an agent acting for the issuer, which agent collects proxy instructions for the meeting where the entitlement to vote has arisen. The CREST voting service has other functionality such as announcements of meeting and of results. Euroclear Bank should either provide this service or facilitate another entity doing so.

(f) There is merit in amending section 183 of the 2014 Act to exclude hours at weekends and on public holidays from the computation of the 48-hour period, aligning the law with that of the UK and the Review Group accordingly recommends that the law be amended accordingly.

4.8 Voting by show of hands.

4.8.1 Companies Act 2014

Section 187 (7), a provision that applies save to the extent that the company's constitution provides otherwise, provides unless a poll is demanded in accordance with section 189, at any general meeting a resolution put to the vote of the meeting is to be decided on a show of hands.

The UK Governance Code (**UKGC**) requires that the Chairperson's proxy vote count be announced after a vote on a show of hands.

4.8.2 Analysis

Euroclear Bank did not make any submission on this point but the Committee noted that the Companies Act / UKGC model of:

- appointment of proxy;
- voting by proxy by a show of hands; and
- announcement of shares in respect of which the Chairperson holds forms of proxy;

is surreal, in that for practical purposes, the appointor of a proxy effectively definitively "votes" at the point of submitting its form of proxy to the company. It is routinely the case that the Chairperson will hold proxies for close to 99% of the shares in issue, with a tiny minority of shares legally passing the resolutions at general meetings. The Committee did not arrive at any particular conclusions but it will merit further discussion. Accordingly the Review Group does not at this stage make any recommendation.

4.9. Definition of the word "shareholder" in the European Union (Shareholders' Rights) Regulations 2020 SI 81/2020

4.9.1 Legal background

The European Union (Shareholders' Rights) Regulations 2020 (S.I. No. 81/2020) amend the Companies Act, transposing the amendments made by SRD II to the Shareholders Rights Directive. This is done by the insertion of four new Chapters into Part 17 of the 2014 Act:

Chapter 8A: Rights of shareholders

Chapter 8B: Transparency of institutional investors, asset managers and proxy advisors

Chapter 8C: Remuneration policy, remuneration report and transparency and approval of related party transactions

Chapter 8D: Offences and penalties

The legal environment is completed by Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 (the Commission Regulation), which lays down minimum requirements implementing the provisions of SRD and SRD II as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights.

4.9.2 Analysis

The set of amendments in the new Chapter 8A relating to rights of shareholders that gives rise to an interpretative issue. It not clear whether the term "shareholder" in the 2020 Regulations refers to:

- the ultimate beneficial owner of a share;

  or

- the registered holder of that share.

As a result, shareholding intermediaries, such as brokers and central securities depositaries can consider that they are not obliged to facilitate the exercise of share rights by any person other than a registered member as a matter of law, even if it is facilitated as part of the service offering, as is the case with Euroclear Banks service description.

The principal obligations under Chapter 8A that are addressed to intermediaries (MiFID investment firms, banks and central securities depositaries) are in summary:

- Section 1110B (Identification of shareholders):
  - Traded PLCs may request "information regarding shareholder identity" from intermediaries.
  - Intermediaries receiving such requests must respond, either with the requested information (if they have it) or with details of the next intermediary(ies) in the chain of intermediaries of which they are aware.

  These provisions are set out above in section 4.7 at pages 18-19.

- Section 1110C (Transmission of information)
  - Intermediaries must transmit to shareholders (or to the next intermediary(ies) in the chain of intermediaries) any information they receive from traded PLCs with respect to the exercise of share rights.

- Section 1110D (Facilitation of exercise of shareholder rights)
    - Intermediaries must "facilitate the exercise of the shareholder's rights" by either:
        - making necessary arrangements for the shareholder to exercise the rights directly; or
        - exercising the rights upon the shareholder's instruction.

Standardised formats and deadlines for each of the foregoing communications are set out on the Commission Regulation.

4.9.3 Meaning of "shareholder" in Irish law

If the term "shareholder" is interpreted as referring solely to registered members, then the above-mentioned obligations of an intermediary extend only to transmitting information and facilitating voting rights to the member appearing on the register in respect of those shares. In the case of a central securities depositary, e.g. Euroclear, this means that the transmission will go no further than the registered nominee of the central securities depositary.

In the original Irish transposition of the Shareholders Rights Directive, the term "member" was substituted for the term "shareholder" in the context of provisions that related to general meetings and notices, where a distinction as between registered member and beneficial owner was not perceived as relevant.

The 2014 Act does not itself provide a statutory definition of the term "shareholder". Definitions in SRD and SRD II are imported into Chapter 8A via Section 1110A(2). The imported definition of "shareholder" is as follows:

> "'shareholder' means the natural or legal person that is recognised as a shareholder under the applicable law"

The absence of a statutory definition in Irish company law creates an ambiguity as to whether the term "shareholder" refers to a registered shareholder/member only, or if it extends to a beneficial owner.

With respect to migration of the settlement of Irish securities, Euroclear Bank has communicated to the Department that it interprets the term "shareholder" to refer to a registered shareholder/member. As a result, Euroclear Bank considers that its future SRD II obligations will extend only to enabling its nominee (Euroclear Nominees Limited) to exercise share rights on Euroclear Bank's behalf. Euroclear Bank has stated that it does not consider that the latter obligation extends to beneficial holders in the Euroclear Bank system.

In the Euroclear Bank service description version 3 in relation to shareholder identification it is stated:

> [F]ollowing the Shareholders Right Directive II (SRD II) process - pursuant to existing Irish corporate law and the implementation of SRD II into Irish law, Euroclear Bank's Nominee, as the person recorded in the register of members, is the 'shareholder' for the purposes of SRD II- in-scope Irish corporate securities held by Euroclear Bank Participants. However, we offer the service to issuers of Irish corporate securities, upon their request, to disclose the underlying Euroclear Bank Participants following the SRD II shareholder identification processing principles.

4.9.4 Meaning of "shareholder" under European law

The reasoning for and intentions of SRD II are set out in its Recital 4

> Shares of listed companies are often held through complex chains of intermediaries which render the exercise of shareholder rights more difficult and may act as an obstacle to shareholder engagement. Companies are often unable to identify their shareholders. The identification of shareholders is a prerequisite to direct communication between the shareholders and the company and therefore essential to facilitating the exercise of shareholder rights and shareholder engagement. This is particularly relevant in cross-border situations and when using electronic means. Listed companies should therefore have the right to identify their shareholders in order to be able to communicate with them directly. Intermediaries should be required, upon the request of the company, to communicate to the company the information regarding shareholder identity. However, Member States should be allowed to exclude from the identification requirement shareholders holding only a small number of shares."

In this light, it is difficult to dispute that the Commission's intention in adopting SRD II was to facilitate engagement between listed companies and their ultimate beneficial shareholders. It is also difficult to maintain that a definition of the term "shareholder" that encompasses only registered members would achieve this result.

The lack of clarity in the definition of "shareholder" has been recognised in the Final Report of the High Level Forum on the Capital Markets Union published in June 2020. At page 79 it recommends a change to the law:

> "The Commission is invited to … put forward a proposal for a Shareholder Rights Regulation to provide a harmonised definition of a 'shareholder' at EU level in order to improve the conditions for shareholder engagement;"

It justifies this recommendation as follows:

> .. SRD2 relies on Member States' definitions of "shareholder", meaning that the entity entitled to receive and exercise the rights associated with a security will depend on the country of issuance (as defined in national laws). The lack of an EU definition of "shareholder" makes it more complex, risky and thus costly for issuers and intermediaries to identify who has to be informed and who is entitled to exercise the rights associated with the ownership of a security. As a result, shareholders continue to face significant difficulties in exercising their rights, especially in a cross-border context, making it a strong case for an EU harmonised definition of shareholder.

4.9.5 Conclusion

The Review Group notes that this issue will require further examination and proposes to liaise with DBEI and with the Department of Finance to establish the frame of reference of such further examination in the context of possible EU law developments.

Appendix 1

Part 23 Committee of the Review Group

Membership as at June 2020

Paul Egan	Chairperson
George Brady	Matheson
Neil Colgan	CRH
Helen Curley	DBEI
David Fitzgibbon	Matheson
David Hegarty	ODCE
Rosemary Hickey	Office of the Attorney General
Tanya Holly	DBEI
Will Joyce	Dept. of Finance
Alan Kelly	Revenue Commissioners
Gillian Leeson	Euronext Dublin
Vincent Madigan	Ministerial Nominee
Dara McNulty	Central Bank of Ireland
Joe Molony	Computershare
Pat O'Donoghue	Link
Kevin O'Neill	The Courts Service
Mark Talbot	William Fry
Therese Walsh	DBEI

Appendix 2

Indicative list of shareholder rights under Irish company law not directly exercisable by a member under an intermediated system of shareholding

No.	Irish legal right	Section of the Companies Act 2014	Person(s) entitled to exercise
1.	To have a copy of the constitution sent to the member	37(1)	"any member"
2.	To apply to Court to have a variation of share rights cancelled	89(1)	"not less than 10 per cent of the issued shares of that class, being members who did not consent to or vote in favour of the resolution for the variation"
3.	To apply to Court to have overdue share certificates issued	99(4)	"the person entitled to have the certificates"
4.	To apply to Court to have an invalid creation, allotment, acquisition or cancellation of shares received	100(2)	"any member or former member"
5.	To inspect a contract of purchase of the company's own shares	105(8); 112(2)	"the members"
6.	To be sent copies of representations from directors the subject of a resolution to be removed	146(6)	"every member of the company to whom notice of the meeting is sent"
7.	To apply to Court to rectify the register of members	173(1)	"any member"
8.	To object to the holding of a general meeting outside the State	176(2)	"unless all of the members entitled to attend and vote at such meeting consent in writing"
9.	To convene an EGM	178(2)	"not less than 50 per cent (or such other percentage as may be specified in the constitution) of the paid up share capital of the company as, at that time, carries the right of voting at general meetings of the company"
10.	To require the directors to convene an EGM	178(3) (as modified by 1101 in the case of a regulated market PLC)	"not less than 5 per cent [10 per cent for non-regulated market PLCs] of the paid up share capital of the company, as at the date of the deposit [of the requisition] carries the right of voting at general meetings of the company"

Appendix 2 – Shareholder Rights under Irish Company Law

No.	Irish legal right	Section of the Companies Act 2014	Person(s) entitled to exercise
11.	To apply to court for an order requiring a general meeting to be called	179(1)	"a member of the company who would be entitled to vote at a general meeting of it"
12.	To receive notice of every general meeting	180(1)	"every member"
13.	To object to the holding of a meeting on short notice	181(2)	"if it is so agreed by ... all the members entitled to attend and vote at the meeting"
14.	To vote at general meetings	188(2)	"every member"
15.	To demand a poll at a general meeting	189(2)	"(c) any member or members present in person or by proxy and representing not less than 10 per cent of the total voting rights of all the members of the company concerned having the right to vote at the meeting; or (d) a member or members holding shares in the company concerned conferring the right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10 per cent of the total sum paid up on all the shares conferring that right"
16.	To apply to court for a declaration that a director is personally responsible for the company's liabilities where a solvency declaration is given without reasonable grounds	210(1)	"a ... member"
17.	To apply to court to cancel certain special resolutions	211(3)	"one or more members who held, or together held, not less than 10 per cent in nominal value of the company's issued share capital, or any class thereof, at the date of the passing of the special resolution and hold, or together hold, not less than that percentage in nominal value of the foregoing on the date of the making of the application"
18.	To apply to Court to complain that the affairs of the company are being conducted or that the powers of the directors of the company are being exercised (a) in a manner oppressive to him or her or any of the members (including himself or herself), or (b) in disregard of his or her or their interests as members,	Section 212(1)	"Any member of a company"

Appendix 2 – Shareholder Rights under Irish Company Law

No.	Irish legal right	Section of the Companies Act 2014	Person(s) entitled to exercise
19.	To inspect and obtain copies of documents and registers: (a) the copies of directors' service contracts and memoranda; (b) the copies of instruments creating charges; (c) the directors' and secretaries' register; (d) the disclosable interests register; (e) the members' register; and (f) the minutes of meetings.	Section 216	"a member"
20.	To receive (a) the statutory financial statements of a company for the financial year concerned, (b) the directors' report in relation to it, including any group directors' report, for that financial year, (c) the statutory auditors' report on those financial statements and that directors' report.	Section 338(1) See also s 1119	"every member of the company (whether that person is or is not entitled to receive notices of general meetings of the company),"
21.	To be sent copies of representations from auditor to be displaced by a resolution to appoint another	Section 397(2)	"every member of the company to whom notice of the meeting is sent"
22.	To be sent copies of representations from auditor the subject of a resolution to be removed	Section 398(2)	"every member of the company to whom notice of the meeting is sent"
23.	To apply to Court for directions in relation to any matter in connection with the performance or otherwise by a receiver of property of the company	Section 438(1)	"a member of the company"
24.	To drag along dissenting shareholders in a scheme contract or offer to acquire the company or a class of share in the company	Section 457(3)	"not less than 80 per cent in value of the shares affected"
25.	To drag along dissenting shareholders in a scheme contract or offer to acquire the company or a class of share in the company, where offeror has 20% or more of target company	Section 458(3)	"the assenting shareholders, besides holding not less than 80 per cent in value of the shares affected, are not less than 50 per cent in number of the holders of those shares"

Appendix 2 – Shareholder Rights under Irish Company Law

No.	Irish legal right	Section of the Companies Act 2014	Person(s) entitled to exercise
26.	To petition the Court for the appointment of an examiner	Section 510(1)(d)	"a member or members of the company holding at the date of the presentation of the petition not less than one tenth of such of the paid-up share capital of the company as carries at that date the right of voting at general meetings of the company"
27.	To apply to Court for an order requiring the directors to co-operate in the preparation of the report of the independent expert	Section 513(5)	"a member or members of the company holding at the date of the presentation of the petition not less than one tenth of such of the paid-up share capital of the company as carries at that date the right of voting at general meetings of the company"
28.	To apply to Court to determine any question arising in the winding up of a company (including any question in relation to any exercise or proposed exercise of any of the powers of the liquidator).	Section 631(1)	"(b) any contributory or creditor of the company;"
29.	To convene a meeting of members in a winding up to (a) remove the liquidator, (b) appoint a liquidator to replace or act with the existing liquidator, or (c) appoint a liquidator to fill a vacancy in the office of liquidator.	Section 636(1)	"any member of it with the written authority of not less than one-tenth in number of the members"
30.	To apply to Court in relation to the remuneration of a liquidator	Section 648	"any member or creditor of a company"
31.	To apply to Court for the appointment of inspectors	Section 747(2), as amended by s 1126	"(b) not less than 100 members of the company; (c) a member or members holding one-tenth or more of the paid up share capital of the company (but shares held as treasury shares shall be excluded for the purposes of this paragraph);"
32.	To apply to Court for the whole or part of the proceeds of sale of following court-ordered sale of shares	Section 774(1)	"any person interested in the shares"
33.	To apply to Court for a determination as to whether information sought in an inspection is privileged legal material	Section 795(5)	"a person compelled to disclose information" [including a shareholder]

Appendix 2 – Shareholder Rights under Irish Company Law

No.	Irish legal right	Section of the Companies Act 2014	Person(s) entitled to exercise
34.	To apply to Court for relief from all or any conditions or restrictions imposed on shares	Section 811(4)	"Any person whose interests are affected by any conditions or restrictions imposed on shares or debentures"
35.	To apply to Court to cancel a special resolution abandoning, restricting or amending any existing object or adopting a new object	Section 1013(3)	"(a) by the holders of not less, in the aggregate, than 15 per cent in nominal value of the PLC's issued share capital or any class thereof, or (b) by the holders of not less than 15 per cent of the PLC's debentures, entitling the holders to object to alterations of its objects"
36.	To request the directors to conduct a valuation of relevant assets being consideration for the allotment of shares	Section 1032(6)	"One or more members who hold, or together hold, not less than 5 per cent of the issued shares of the PLC"
37.	To apply to Court for relief against the restriction of enforceability of rights or interests in PLC shares by reason of non-notification of interests	Section 1060(4)	"any person in default as is mentioned in that subsection or any other person affected by such restriction"
38.	To require a PLC to exercise its powers under section 1062 to make an investigation into persons who are or have been interested in shares comprised in the PLC's relevant share capital	Section 1064(1)	"not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company"
39.	To apply to Court for an order directing that shares shall cease to be subject to a restriction order, for failure to respond to a section 1052 notice seeking disclosure	Section 1066	"any person aggrieved by the [restriction] order"
40.	To apply to Court to direct a PLC to remove an entry from the register of individual and group acquisitions	Section 1067(6)	"a person who is identified in the register as being a party to a share acquisition agreement"
41.	To receive forms of proxy by post	Section 1103(5)	"every member"
42.	To receive summary financial statements	Section 1119(4)	"every member"
43.	To require a PLC to convene a general meeting to consider the common draft terms of merger	Section 1137(9)	"One or more members of the successor company who hold or together hold not less than 5 per cent of the paid-up capital of the company which carries the right to vote at general meetings of the company (excluding any shares held as treasury shares)"

Appendix 2 – Shareholder Rights under Irish Company Law

No.	Irish legal right	Section of the Companies Act 2014	Person(s) entitled to exercise
44.	To require a PLC to convene a general meeting to consider the common draft terms of division	Section 1159(9)	"One or more members of the successor company who hold or together hold not less than 5 per cent of the paid-up capital of the company which carries the right to vote at general meetings of the company (excluding any shares held as treasury shares)"
45.	To apply to Court to cancel a resolution to re-register as a LTD or DAC	Section 1287(1)	"(a) the holders of not less in the aggregate than 5 per cent in nominal value of the PLC's issued share capital or any class of the PLC's issued share capital (disregarding any shares held by the PLC as treasury shares), or (b) not less than 50 of the PLC's members."