

# NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

## *Expert Questionnaire*

Ireland

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### 1) Anti-abuse mechanisms - do any of these exist in this country? If so, how do they work?

#### a. Disqualified Directors

##### i. Is there an official definition of “disqualified directors”? If so, what are the grounds for disqualification? Where is this? (legal text and link)

The concept of disqualified directors exists in Ireland. The relevant rules are contained in Chapter 4 and 5 of Part 14 of the Companies Act 2014.

Where a person is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty, then during the period of five years from the date of conviction or such other period as the court, on the application of the prosecutor and having regard to all the circumstances of the case, may order-

(a) he shall not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or be in any way, whether directly or indirectly, concerned or take part in the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts, 1893 to 2018;

(b) he shall be deemed, for the purposes of this Act, to be subject to a disqualification order for that period.

##### *Foreign disqualification.*

If a person who is being appointed director of a company is a person who is currently disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or undertaking, that person is required by law to file Form B74.

If there is a failure to file Form B74 where a person being appointed director on the Form A1 is disqualified abroad, or if the Form B74 is false or misleading in a material respect, that person is deemed to be subject to a disqualification order pursuant to section 842 Companies Act 2014.

<https://www.cro.ie/Services/Disqualified-or-Restricted-Person-Search>

<https://www.cro.ie/Registration/Company/Incidental-Obligations/Company-Officers>

##### ii. Is there an official list of (current) disqualified directors? If so, where is it? (name and link)

There is an official list of disqualified directors.

<https://search.cro.ie/company/DisqualifiedSearch.aspx>

##### iii. Who has access to this list?

The list can be accessed by the public in the CRO website.

## **b. Beneficial Owners**

### **i. Where is the database of beneficial owners and who maintains it (link)**

*4<sup>th</sup> and 5<sup>th</sup> Anti-Money Laundering Directive.*

A Statutory Instrument, No 110 of 2019, to establish a Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (RBO) was signed into law (April 2019) by the Minister for Finance.

The central register of beneficial ownership of companies is a standalone Register which has been established under anti-money laundering legislation, not company law, and the Registrar of Beneficial Ownership is a separate legal entity.

It is the legal responsibility of the officers of a company/society (director(s) and secretary) to obtain and confirm beneficial ownership information, to keep the company/society's own beneficial ownership register current and accurate and to deliver the required beneficial ownership information to the central register of beneficial ownership of companies and industrial and provident societies within the prescribed time frames.

The company/society's internal register of beneficial owners must be available for inspection by any member of the Police, the Revenue Commissioners, a competent authority, the Criminal Assets Bureau, or an (ODCE) inspector appointed under section 764(1) of the Companies Act 2014.

### **ii. Are there any checks on the authenticity of beneficial owners?**

Information required for each beneficial owner includes company name, company number, surname, forename, date of birth, PPSN number, nationality, country of residence, statement of nature and extent of interest held, statement of nature and extent of control, date of entry date of cessation as beneficial owner, residential address, name of presenter, address, phone number, capacity in which the presenter is acting: (e.g. officer/employee of company/ society, person acting on behalf of the company/society etc).

The RBO Register is designed to accept and register submissions when all details entered are correct.

Personal details are verified against Department of Social Protection (DSP).

If a beneficial owner knowingly or wilfully provides the company/society and/or their presenter with incorrect details such as the wrong PPSN, date of birth, name etc, s/he may face prosecution or other sanctions for providing false information. Otherwise, if the error is genuine but the RBO Unit is unable to validate the Beneficial Owner because of the incorrect details, the particular submission for that company/society containing the incorrect data will be rejected in its entirety. The RBO unit will contact directly the beneficial owner.

### **iii. Updating of lists/databases**

There is an obligation on the company to keep list current, as mentioned above.

### **iv. Access to databases?**

There are two types of access to beneficial ownership in the central register – “unrestricted access” and “restricted access”.

Unrestricted access to the Police, Financial Intelligence Unit, Central Bank, Criminal Assets Bureau, Revenue Commissioners, Law Society Ireland, Department of Justice, Legal Services Regulatory Authority, General Council of the Bar of Ireland.

Restricted access to the public and financial institutions, accountants, auditors, tax advisers, legal professionals.

Members of the public and designated persons can access RBO data through an on-line portal. They can purchase a "RBO Report of Beneficial Owners/Controllers". The Report will include a list of the current beneficial owners of the company/society and the following data in respect of each one: Forename and Surname. Month and Year of birth, Nationality. Country of residence and a statement of the nature and extent of the beneficial interest held or control exercised.

**c. Electronic identity (eID) scheme**

Ireland has no EU-notified eID scheme.

**2) Company registry – transparency, access, cost**

**a. Identity and location**

The Register of Companies at the Companies Registration Office <https://www.cro.ie/en-ie/>

**b. To what extent is it digitalized?**

Digital tools already widely used for company incorporation and company reporting. There are three schemes for incorporating companies: a) ordinary, incorporation in 15 working days, b) Fé Phráinn incorporation in ten working days and c) Online A1 incorporation in five working days.

There is mandatory e-filing for annual returns (including financial statements and electronic payment), Change of registered office, Change of director and/or secretary, or a change in their particulars, Nomination of a new annual return date. There is an online portal called CORE: Companies Online Registration Environment.

Certificates of Incorporation of a Company Name are issued as "digitally certified" documents. The format of the Certificate of Incorporation hasn't changed and the Digital Certificates contain all of the information previously displayed in the paper Certificates. The signature of the officer registering the company on behalf of the Registrar appears on the Digital Certificate.

**c. Are bulk downloads of the entire list of registered companies possible?**

No.

**d. Does the registry have search features beyond the name of the company or person (e.g. by sector or employee size)**

There is a Company Search facility in the CRO website. The only search features are number or Company Name. In order to search better you can also include address after you have included the number of the Company or Company Name.

**e. What is the typical cost of downloading a document from the registry?**

Information that is free of charge: Company name, Company number, Company Type, Address of registered office, Date of incorporation, Status of company, Date of last annual return filed and then a list of submitted documents.

Company submissions and company printouts are available for purchase. The cost for a PDF and Tiff is 2.50 Euro. The cost of a Company Printout is 3.50 euro. A signed print-out costs 12 euro.

**f. Is there information on employment levels beyond what is contained in annual accounts?**

There is no specific information regarding employees above and beyond what is supplied in annual accounts.

**g. Information on European company forms and EU reorganizations (CBM)**

There is no separate registry regarding cross-border mergers or European company forms. Searches can be done via the Company name or Number. For instance, in case of a company involved in a CBM, material relating to the CBM, such as the CMB order, the draft terms of the merger, notice of proposed cross-border merger are available for purchase along with all the other company filings.

**3) Firm foundations**

**a. What authority or organization is responsible for registering new companies?**

The CRO (Companies Registration Office) is the statutory authority for registering new companies in the Republic of Ireland. The Office also registers business names. The CRO is the central repository of public statutory information on Irish companies and business names. The CRO operates under the aegis of the Department of Business, Enterprise and Innovation. Other functions include the receipt and registration of post incorporation documents/The enforcement of the Companies Act 2014 in relation to the filing obligations of companies/Making information available to the public. It has enforcement powers for companies who fail to file annual returns.

**b. What are the steps needed to found and register a new company? To what extent can these happen digitally?**

The steps required are the preparation and submission of Form A1 together with the constitutions. Can be done fully online through CORE (<https://core.cro.ie/>) Form A1 includes information such as company name, address, director details, company capital.

**c. What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners**

**i. By registration authority**

1. CRO checks the identity of directors, beneficial owners and record of founders.
2. All company types must have one secretary and a minimum of two directors.
3. All company directors and secretaries (where applicable) must be over the age of 18 years.
4. An undischarged bankrupt cannot be an officer of a company.

5. at least one of the directors for the time being of a company which is being incorporated is required to be resident in a member State of the EEA.
6. A person shall not at particular time be a director of more than 25 companies.
7. The secretary may be one of the directors of the company.
8. A company secretary must be over the age of 18 years.
  - Disqualification list and registry of beneficial owners.
  - Companies Act 2014 section 19(2)(c)
  - The constitution shall either
    - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature; or
    - (ii) be authenticated in the manner referred to in section 888.
      - Section 888: A requirement of this Act that a document shall be signed or sealed shall be satisfied if the document is authenticated in the prescribed manner.
      - A notary public is an officer who can administer oaths and statutory declarations, witness and authenticate documents. They also check that legal requirements are fulfilled, such as the requirement that a company must have at least one secretary and a minimum of two directors, before registering the company.

## ii. By notaries

Notaries play a role in the authentication of the constitution. According to Companies Act 2014 section 19(2)(c) The constitution shall (c) either—(i) be signed by each subscriber in the presence of at least one witness who shall attest the signature; or (ii) be authenticated in the manner referred to in section 888. According to Section 888: A requirement of this Act that a document shall be signed or sealed shall be satisfied if the document is authenticated in the prescribed manner. A notary public is an officer who can administer oaths and statutory declarations, witness and authenticate documents. Thus, notaries are used in the authentication of the constitution or in serving as witnesses for attesting the signature of each subscriber while signing the constitution. They do not engage in any sort of anti-abuse checks.

## iii. By “facilitator” companies (foundation agents)

Facilitator companies play a role, but not under statutory authority, just under market practice. They are used to incorporate companies and they offer additional services such as providing nominee company secretaries and registered addresses.

## 4) Cross-border Mergers (CBMs)

### a. Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)?

The High Court of Ireland is responsible.

The Irish company must apply to the High Court for a certificate of compliance with the pre-merger requirements required of that company. This certificate, if obtained, will be conclusive evidence that the Irish company has properly completed the pre-merger requirements.

Where the successor company is an Irish company, the parties must seek High Court approval in respect of the proposed CMB.

The High Court will not approve the CBM unless it is satisfied that:

- (a) where the merger falls under the jurisdiction of the Competition Authority, the Competition Authority has either authorised or been deemed to have authorised the merger;
- (b) where the merger is a concentration with a Community dimension within the meaning of Council Regulation (EC) No 139/2004 of 20 January 2004 (the “Merger Control Regulation”), it has been declared compatible with the common market or approved by the Competition Authority, as appropriate; and
- (c) where the successor company is a regulated entity, that all requirements under an enactment for any other authorisation, approval, consent, waiver, licence, permission or agreement that affects the merger are satisfied.
- In addition, before granting an order approving of a merger, the High Court must have regard to any powers exercised by the Takeover Panel.

**b. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?**

High Court of Ireland: The High Court has full jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. Its jurisdiction also extends to the question of the validity of any law having regard to the Constitution.

The High Court consists of the President and thirty-six ordinary judges. The Chief Justice, the President of the Court of Appeal, and the President of the Circuit Court are, by virtue of their office, additional judges of the High Court. Matters coming before the High Court are normally heard and determined by one judge but the President of the High Court may decide that any cause or matter or any part thereof may be heard by three judges in what is known as a divisional court.

CBMs are dealt with by the Commercial Court, which is a division of the High Court which deals solely with significant commercial cases.

The Commercial Court deals with all types of business dispute including breach of contract, tort, property, trust and probate, IT disputes, judicial review, corporate mergers, global restructuring, insurance portfolio transfers, International Swaps and Derivatives or other investment disputes, and intellectual property disputes. The Commercial Court has a number of judges specifically allocated to its list and trials are heard by this panel of judges, all of whom have extensive commercial and trial expertise.

**c. What (if any) anti-abuse checks are made?**

- i. Purpose of reorganization**
- ii. Background check on directors**
- iii. Identity of beneficial owners**
- iv. Worker I/C/P arrangements**

There are few checks on anti-abuse – not above and beyond pro forma checks that proper documentation has been supplied and that worker participation arrangements have been made.