



**european corporate governance institute**

## **Directors' Remuneration in Listed Companies**

### **IRELAND\***

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\* The information and opinions included in this document are not intended to provide legal advice, and should not be relied on or treated as a substitute for specific advice concerning individual situations. The law, regulation and best practices are stated as they stood at 30 June 2003.

# Questionnaire

Answers to this questionnaire should be given from the perspective of provisions included in national laws, regulations and exchange rules, and of best practices as recommended by either official reports or corporate governance codes.

## 1. General

**1.1 Please indicate, as a general reference, the laws, case law, regulations, exchange rules and best practices concerning directors' remuneration in your country with respect to listed companies. Please indicate where these provisions (such as, for example, exchange rules) apply only to domestically-incorporated companies.**

- Companies Acts 1963-2001.
- Listing Rules, adopted by the Financial Services Authority, available on <http://www.fsa.gov.uk> Note: Until 1995, when separation was required as a matter of practicality (although not legally) under the Investment Services Directive, the Irish Stock Exchange operated as the Irish Unit of the International Stock Exchange of the United Kingdom and Europe and was subject to the Listing Rules. Since then, it has, however, continued to apply the Listing Rules, with a supplement adapting the Listing Rules to Irish conditions and the Irish legal context. This supplement is known as the "Green Pages". Apart for some very minor amendments (some of these are non-material, for example, "City of London" to read as "at or near the centre of Dublin" and revision of "Companies Act 1985" references to refer to the equivalent Irish rules), the Listing Rules apply as in the UK and this questionnaire should be read to incorporate the UK Questionnaire.
- Combined Code: Principles of Good Governance and Code of Best Practice, Committee on Corporate Governance, May 2000, available on <http://www.fsa.gov.uk> The non-statutory Code sets the principles of good corporate governance for UK listed companies, and thus, as the Listing Rules are applied by the Irish Stock Exchange, to Irish listed companies.

Note: Some Questions are cross-referenced to Questions on the UK Questionnaire which discuss the UK case law or common law. With respect to case law, while UK law is not the national law, the Irish courts will refer to UK case law on UK statutory provisions which are similar to Irish provisions in interpreting the law: many Irish statutes are based on UK statutes, particularly in the corporate field. The courts will also refer to the common law rules on company law as developed by the UK courts where relevant.

There is some overlap between general company law and the Listing Rules: all listed companies incorporated in Ireland must comply with general company law, as set out in the Companies Acts 1963 -2001 and with the Listing Rules, as supplemented by the Green Pages. The two sets of rules are complementary but there are some overlaps.

Most Listing Rules concerning directors' remuneration apply only to companies incorporated in Ireland: (Listing Rules 17.12 and 17.14).

**1.2 As to best practices, please specify whether they are described in either a private (voluntary or non-statutory) code or other official report, and whether a "comply or explain" principle is applicable to compliance with the relevant provisions by listed**

companies. Where the “comply or explain” principle applies, please indicate, where such evidence is available, whether companies generally comply with best practices.

**(a) Best Practices and “Comply or Explain”**

See UK Questionnaire Q1.2(a).

**(b) Evidence of Compliance with Best Practice**

Not Available.

**1.3 Please describe in summary: the institutional structure for adopting executive remuneration rules or best practice codes; and any major proposals for reform concerning directors’ remuneration.**

**(a) Institutional Structure**

As for UK Questionnaire Q1.(3)(a).

In addition: The Listing Rules, supplemented by the Green Pages, are issued and applied by the Board of the Irish Stock Exchange Limited. The Board is the competent authority for listing, although certain of its functions are delegated to the Listing Committee, the Executive Committee, and the Specialist Products Listing Committee. The Irish Stock Exchange Limited is a company limited by guarantee and is regulated by the Interim Irish Financial Services Regulatory Authority. When the Central Bank and Financial Services Authority of Ireland Bill 2002 comes into force in early 2003, it will be regulated by the Irish Financial Services Regulatory Authority, which is a component of the Central Bank and Financial Services Authority.

**(b) Reform**

Any reforms to the Listing Rules on the foot of the 2002 revisions to the Companies Act 1985, described in the UK Questionnaire and requiring the production of a Directors’ Remuneration Report, will apply to companies listed on the Irish Stock Exchange when and if the Listing Rules are revised.

Otherwise, the Company Law Review Group, the body set up in 2000 on a statutory basis to review company law and present proposals for its reform, has not, in its first work programme (First Report 2001), specifically addressed executive remuneration, although it has suggested reform of the declaration of interests regime (see Q2.5).

## **2. Disclosure**

**2.1 Are listed companies required to publish a remuneration report, indicating the details of the compensation paid to the members of the Board of Directors?**

**How often must it be published and where is it retrievable?**

**(a) Companies Act 1963-2001**

Unlike the UK regime, a specific remuneration report is not required under general company law, although the Listing Rules do require that the Board reports, in the annual report and accounts, to shareholders on remuneration (see Q2.1(b)).

Companies must under general company law include basic remuneration information in the annual accounts. It is, however, supplied on an aggregate basis only.

The annual report and accounts, including the Directors’ Report (which, as discussed in Q2.5(b), may contain disclosure on directors’ interests) must be distributed to every member

and debenture-holder of the company (Companies Act 1963 s159). The 2001 Act introduced the concept of the “annual return date”, being a specific date in each year within 28 days of which a company must file its annual return (s60).

Note: the option available in the UK to distribute summary financial statements does not apply as a matter of Irish company law, although the Company Law Review Group has recommended that this option be made available to companies.

**(b) Listing Rules/Combined Code**

As for UK Questionnaire Q2.1(b).

**2.2 Must these reports be submitted, or are recommended to be, to a Securities Market Regulator or to a public authority responsible for collecting these documents?**

**(a) Companies Act 1963-2001**

Outside of the obligation to deliver the report and accounts to the Registrar of Companies, no.

**(b) Listing Rules/Combined Code**

As for UK Questionnaire Q2.2(b).

**2.3 What information on directors’ remuneration, individually and collectively, and on the remuneration committee, must be included, or is recommended to be included as best practice, in the financial reports? Please include in your answer any specific requirements which apply to particular elements of remuneration, such as stock options, bonuses, and termination payments.**

**(a) Companies Act 1963-2001**

Basic, aggregate disclosure with respect to directors’ remuneration is required in the annual accounts under the Companies Act 1963. The information must be disclosed either in the accounts, or in a statement annexed to them. Under section 191(1) disclosure is required of: the aggregate amount of directors’ emoluments; the aggregate amount of directors’ and past directors’ pensions; and the aggregate amount of any compensation paid to directors or past directors for loss of office.

“Emoluments” is broadly defined in s191(2) as covering fees, salaries, commissions, pension contributions made by the company in respect of the director, an estimate of chargeable non-cash benefits, and chargeable expenses. Emoluments include any amounts paid to or receivable by any person in respect of his services as director of the company (as well as services as director of any subsidiary or otherwise in connection with the management of the affairs of the company or any subsidiary (s191(2)). The accounts must also distinguish between emoluments paid in respect of services rendered/holding office as a director and payments made in respect of other services and offices (s191(2)).

With respect to the pension disclosure, the disclosure required is not to include any pension paid or receivable under a pension scheme if the scheme is such that the contributions made are substantially adequate for the maintenance of the scheme (s191(3)): contributions made to such a scheme, made other than by the director, will be covered as “emoluments” (Ussher, *Company Law in Ireland* (1986) Sweet and Maxwell 349). Section 191(3) also provides that pension payments include any pension paid or receivable in respect of any services as director or past director (the scope of these activities tracking those outlined with respect to the payment of emoluments), whether to or by him, or, on his nomination or by virtue of dependence on or other connection with him, or to any other person.

With respect to compensation for loss of office, this disclosure must include (under s191(4)) any sums paid to or receivable by a director or past director by way of compensation for loss of office as director of the company or for the loss, while director of the company, or on or in

connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any company subsidiary. The disclosure must also distinguish between compensation in respect of the office of director (of the company or a subsidiary) and compensation paid in respect of other offices. Compensation in this context includes payments made in consideration for or in connection with retirement

Section 191 disclosure must include all sums paid by or receivable from the company, its subsidiaries, and any other person (s191(5)) and, with respect to compensation for loss of office payments only, distinguish between the sums paid by or receivable from the company, its subsidiaries, and other persons. The reference to "other person" ensures that it not relevant whether or not the company carries the cost of remuneration.

Remuneration disclosure is further amplified by the Companies Amendment Act 1986, Sch, Part IV, which covers the notes to the annual accounts and duplicates, in part, s191. The notes must describe the company's pension scheme (para 36), and the aggregate amount of directors' emoluments and compensation for loss of office (para 39(6)). Para 39(6) simply states that disclosure be made of "the aggregate amounts of the emoluments of and compensation in respect of loss of office to, directors and compensation in respect of loss to past directors." The pension disclosure required is more detailed. Under para 36(4), particulars are to be given of any pension commitments included under any provision in the company's balance sheet, and any such commitments for which such provision has not been made. Where any such commitment relates wholly or partly to pensions payable to past directors of the company, separate particulars shall be given of that commitment insofar as it relates to pensions. More generally, under para 36(5), disclosure is also to be made as to: the nature of every pension scheme operated by or on behalf of the company, including information as to whether or not each scheme is a defined benefit scheme or a defined contribution scheme; whether each such scheme is externally or internally financed; whether any pensions cost and liabilities are assessed in accordance with the advice of a professionally qualified actuary and the date of the most recent relevant actuarial evaluation; and if so, whether the valuation is made available for public inspection.

Finally, under the Companies Act 1990 s63, disclosure is required of directors' interests in company shares in the notes to the accounts or in the Directors' Report (see Q2.5(b)).

### **(b) Listing Rules/Combined Code Requirements for Disclosure in Annual Report and Accounts**

As for UK Questionnaire Q2.3.

#### **2.4 Is timely disclosure required with respect to stock options, their vesting, exercise, and the sale of the relevant shares to third parties?**

Yes. For the disclosure required with respect to options, see Q2.5 and Q2.6.

#### **2.5 What are the rules on disclosure of share transactions executed by the company's insiders (such as directors, officers, auditors, etc)?**

##### **(a) Companies Act 1963-2001/Listing Rules**

The disclosure rules with respect to share and share option transactions arise from a combination of the disclosure required of directors for all companies under ss53-66 Companies Act 1990 (as strengthened by s66 of the Company Law Enforcement Act 2001 which sets out the enforcement regime) and the Listing Rules (16.3-16.17).

The rules are the same as apply to UK listed companies (see UK Questionnaire Q2.5 and Q2.6), as ss53-66 Companies Act 1990 have the same effect as ss324-329 Companies Act 1985. Section 53 sets out the basic obligation to notify interests in shares, this is extended by section

64 to spouses and children and by s76 of the Company Law Enforcement Act 2001 to connected body corporates, and the obligation to make certain entries in the company's register is covered under s59. The definition of interest covers, as in the UK, almost all possible legal or equitable interests.

Note: Notification is to the Company Announcement Office of the Irish Stock Exchange, rather than to a "Regulatory Information Services", as in the UK Questionnaire. Also, the Green Pages exclude from the definition of "connected persons", for the purposes of Listing Rule 16.13(b) and (c), the parents, brothers, sisters, or adult child of a director or secretary. Finally, unlike the UK position, company secretaries are explicitly brought within the range of the company law/Listing Rule disclosure obligation: sections 53-66 apply to persons who are a director or secretary of the company.

Note: The Company Law Review Group has recommended that the obligation to make a notification be disapplied where the interest falls short of 1% of the company in which the interest is held and that the disclosure obligation be a general one, as, for example, with the disclosure of interests in company contracts (First Report, para 11.10.8). It has also suggested simplification of the rules concerning what is an "interest" in shares (First Report, para 11.10.8). The Group has, however, stated that this reform would operate "without prejudice" to the Listing Rules.

### **(b) Companies Act 1963-2001/Listing Rules and the Directors' Report**

Broadly as for UK Questionnaire Q2.5(b). Companies Act 1990 s63, requires that the Directors' Report, or the notes to the company's accounts, include disclosure as to the interests of directors. In particular, under s63(1) the Report, or the notes, must state whether or not the director was interested in shares in the company, in any of the company's subsidiaries or its holding company, or in any subsidiary of the company's holding company at the end of the year and, in each case, the number of shares involved. The disclosure must also state whether or not the director was, at the beginning of the year (or if he was not then a director, when he became a director) interested in shares in the company (as defined above) and, if he was, the number of shares in which he was interested.

This company law requirement is also reflected in the Listing Rules which require the issue of a report and accounts which comply with the issuer's national law. More specifically, Listing Rule 12.43(k), as amended by the Green Pages, requires that the report and accounts include, by way of note, any change in the interests of each director of the company disclosed to the company under Companies Act 1990 s53 as extended by s64, together with any right to subscribe for shares in the company, distinguishing between beneficial and non-beneficial interests, occurring between the end of the period under review and a date not more than one month prior to the date of the notice of the general meeting at which the annual accounts are to be laid before the company or, if there has been no such change, disclosure of that fact.

### **(c) Listing Particulars and Prospectuses**

Disclosure is also required in the listing particulars/prospectus. See Q2.6.

## **2.6 What information on directors' remuneration must be included in public offer prospectuses and listing particulars?**

Where a listing particulars has been approved by the Stock Exchange in conjunction with an offer to the public, a prospectus is not required. The approved listing particulars is deemed to be a prospectus (Statutory Instrument No. 282 of 1994, Regulation 12 (2) and 12(3)).

The disclosure for the listing particulars is as for UK Questionnaire Q2.6. References to the UK Companies Acts are revised by the Green Pages to reflect the parallel provisions in the Companies Act, 1990.

### **3. Remuneration of The Board of Directors**

#### **3.1 Who fixes the board of directors' remuneration? What are the relevant procedures? (In two-tier systems, please refer to the supervisory board.)**

As for UK Questionnaire Q3.1 The Irish equivalent of art 82 is art 76 of Table A (the statutory default form of Articles of Association) which provides that: "The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day."

#### **3.2 Are there provisions and/or practices as to the amount of the remuneration and its distribution (for example, as to whether distribution should be proportionate) among board members? What types of remuneration are allowed?**

As for UK Questionnaire Q3.2.

#### **3.3 Are personal loans to the company's directors and officers allowed?**

Originally, the Companies Act 1963 did not prohibit loans to directors from the company. Section 192 simply specified the disclosure which was to be made in the annual accounts in relation to any loans made to any director.

A much stricter regime now applies. As with UK Questionnaire Q3.3, detailed and complex rules are now applied to the provision of personal loans to directors under Companies Act 1990 ss31-38 in order to prevent abuse. In essence, under s31, companies cannot make a loan to a director, guarantee a loan to a director made by a third party, provide security for such a loan, or enter into a credit transaction with a director. The prohibition extends to the company's holding company and covers any transactions of a similar nature with persons "connected" with the director. As with the UK regime, some exemptions are provided which cover transactions below a certain value, intra-group loans and transactions, business transactions on a normal basis, and advances on directors' expenses. Part IX of the Company Law Enforcement Act 2001 provides further exceptions to the s31 rule. In particular, s78 permits a company to enter into guarantees or provide security in the context of loans, quasi-loans or credit transactions in favour of directors or persons connected with directors. Certain conditions must be met prior to entering into the arrangement.

Criminal sanctions follow a breach of s31 (Companies Act 1990 s40): an officer of a relevant company who authorises or permits the company to enter into a prohibited transaction, knowing, or having reasonable cause to believe the company was breaching s31, is guilty of an offence. Under s38(1), the transaction is voidable by the company, unless restitution is impossible, a third party has acquired an interest, or the company has been indemnified. The director concerned and any director who authorised the transaction is liable to account to the company for any gain made directly or indirectly from the transaction, and to indemnify the company for any loss or damage (s38(2)).

### **4. Executive Directors' Remuneration**

**4.1 Who fixes the executive directors' remuneration? What are the relevant procedures? Are shareholders required to approve directors' remuneration, the remuneration policy, or the remuneration report (see question 2) on an annual or other basis? (In two-tier systems, please refer to the management board.)**

**(a) Procedures**

*(i) Company Law*

Note: The rules broadly track the UK position, although the Irish Table A (statutory default form of Articles of Association) does not provide for an equivalent of art 85 (the power of the board of directors to set remuneration with respect to particular executive functions). Such a power is granted under art 110, but only in respect of the managing director. Because of this, slightly more information is given here, than in the UK Questionnaire, on the procedures applicable to company resolutions on the fixing of remuneration.

As part of the company law rule that directors' may not make a profit from their activities as directors unless this has been expressly sanctioned by the company (the secret profit rule), the director of a company does not have a right to remuneration for services performed for the company, unless its payment has been provided for in the company's constitutional documents or approved by its members (*Hutton v West Cork Railway Co* (1883) 23 ChD 654).

In practice, however, it is standard for directors' remuneration to be covered in the articles of association. Where the statutory form is adopted (Table A), as noted in Q3 above, art. 76 provides that the directors are entitled to such remuneration as the company may, by ordinary resolution, determine.

Where the articles of association provide how remuneration is to be determined, the court will not usually make a determination of its own with respect to remuneration, by, for example, granting an "equitable allowance" (*Guinness plc v Saunders* [1990] 2 AC 663). As a result, where a company has adopted Table A, art. 76 and where the members do not determine remuneration, the directors are not entitled to receive any remuneration. In certain circumstances the courts may grant a *quantum meruit* payment on the basis of an implied obligation to pay arising from the performance and acceptance of services (*Craven-Ellis v Canons Ltd* [1936] 2 KB 403).

A company will usually also, however, adopt a provision in its articles providing that a director can be appointed to an executive office carrying particular executive responsibilities in excess of what would normally be expected of a director, and thus paid a salary in respect of those functions. Art. 110 of Table A provides that: "the directors may from time to time appoint one or more of themselves to the office of managing director for such period and on such terms as to remuneration and otherwise as they think fit...."

Therefore, where art. 76 and art 110, are adopted by the company (as would be common as they are the statutory form), the shareholders in general meeting determine the fees of directors as director but the board of directors determines the remuneration of the managing director. Where the company sets remuneration under art 76, it is usual for this business to be regarded as "ordinary business" of the annual general meeting, and thus not in need of disclosure under Table A art 51 as to its "general nature" in the notice convening the meeting (failure to make the disclosure renders resolutions concerned with special business invalid and ineffective *Roper v Ward* [1981] ILRM 408, 415). Art 53 lists the type of business covered at an annual general meeting which is to be regarded as ordinary (eg re-appointment of auditors) and is commonly amended by companies in Ireland to include, as ordinary business, directors' remuneration. Under s141(8) of the Companies Act 1963, a resolution in writing signed by all the members for the time being entitled to attend and vote on the resolution is valid and effective as if it had been passed at a general meeting. In the English case of *Re Duomatic* [1969] 2 Ch 365 however, directors paid themselves remuneration without obtaining the formal approval of the general meeting, as required by the articles. For one of the years in question, two directors, who were also the only shareholders with voting rights, signed the accounts which showed the



remuneration. This was regarded by the courts as a resolution in general meeting, but it is not clear whether this would suffice in Ireland, given s141(8). In a second year, the accounts were neither drawn up nor approved, but all the voting shareholders informally agreed on remuneration for a director. This was found to be sufficient authorisation but, again, the absence of a formal resolution suggests that it would not be sufficient in Ireland.

It should be noted that excessive remuneration, where Table A is adopted, cannot be struck down as ultra vires the company (*Re Halt Garage 1964 Ltd* [1982] 3 All ER 1016). With respect to the power of the general meeting in this regard (as under art 76), it has been stated that: remuneration “whether it be mean or generous, must be a matter of management for the company to determine in accordance with its constitution which expressly authorises payment for directors’ services. Shareholders are required to be honest but...there is not a requirement that they must be wise and it is not for the court to manage the company” (*Re Halt Garage*, 1039). Similarly, with respect to the power of the Board of Directors in this area, the court found in *Guinness v Saunders*: “The shareholders...run the risk that the board may be too generous to an individual director at the expense of the shareholders but the shareholders have...chosen to run this risk and can protect themselves by the number, quality and impartiality of the members of the board who will consider whether an individual director deserves special reward” (*Guinness plc v Saunders* 686).

(ii) *Listing Rules/Combined Code*

As for UK Questionnaire Q4.1(a)(ii).

#### **(b) Approval**

As for UK Questionnaire Q4.1(b)(ii) (4.1(b)(i) does not apply).

#### **4.2 Is the board required, or recommended as best practice, to create a remuneration committee?**

As for UK Questionnaire Q4.2.

If yes, please specify:

(i) **the committee’s composition (if independent directors should be appointed to this committee, please give the relevant definition and indicate whether any special procedures apply to the appointment of independent non-executive directors)**

As for UK Questionnaire Q4.2(i).

(ii) **the committee’s competences and which company body it reports to**

See Q4.2.

(iii) **how the committee operates**

As for UK Questionnaire Q4.2(iii).

#### **4.3 Which types of remuneration are permitted?**

As for UK Questionnaire Q4.3, with reference to Companies Acts 1963-99, rather than Companies Act 1985, and to Table A, art 76 for Table A, art 83. Expenses are specifically excluded from the ban on loans to directors by Companies Act 1990, s36. The power of the Board of Directors to grant pensions is covered by Table A, art 90.

**In answering, please consider each of the following:**

- (a) **bonuses**  
As for UK Questionnaire Q4.3(a).
- (b) **stock options, including discounted stock options**  
As for UK Questionnaire Q4.3(b).
- (c) **stock grants**  
See Q4.3(b).
- (d) **profit sharing**  
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- (e) **benefits in kind**  
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**4.4 Are there specific rules, including shareholder approval requirements, as to these different types of remuneration?**

As for UK Questionnaire Q4.4.

Note: references to the City of London are to “at or near the Centre of the City of Dublin; references to the FSA are to the “Central Bank” (shortly to be revised to Irish Financial Services Regulatory Authority).

**4.5 Are there any restrictions on how payments are made?**

As in the UK, it is not lawful for a company to pay a director remuneration free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax (Companies Act 1963 s185). Companies are not, therefore, permitted to vary a director’s remuneration to track changes in income tax levels.

**4.6 Are there any specific requirements for termination payments made on loss of office, whether through dismissal, retirement, on a takeover, or otherwise?**

**(a) Companies Act 1963-2001**

As noted in Q4.3 above, where a company has adopted articles of association in the form of Table A (the statutory model) the directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any executive office or employment with the company and may contribute to any fund and pay premiums for the purchase or provision of any such benefit (art 90). This may be done without the approval of the shareholders in the general meeting, in spite of the potential conflicts of interest that may arise in some circumstances (for example, when the question of “golden parachutes” for directors is before the board).

As with UK Questionnaire Q4.6, the equitable principle of shareholder approval is, however, partly restored by the Companies Act 1963 which provides that it is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company (s186). A similar provision applies under s187 to payments made on loss of office where the company is wound up or sold off: shareholder approval is required for any payment made to a director in connection with the transfer of the whole or any part of the undertaking of a company by way of compensation for loss of office

or as consideration or in connection with his retirement from office. Takeovers are addressed by s188(1) which provides that shareholder approval is required for payments made as compensation/consideration in connection with a “transfer” of all or any of the company’s shares, as defined in section 188(1). Under s188(1), the director is subject to a duty to take all reasonable steps to secure that information relating to the payment is included with any notice of the offer sent to shareholders. The ss186-188 requirements do not apply, however, to any bona fide payments by way of damages for breach of contract or by way of pension for past services (s189(3)). As s186 thus applies only to voluntary payments, controversially, the section does not apply to payments which the company is contractually bound to make. Thus, in *Taupo Totara Timber Co. Ltd v. Rowe*, [1987] AC 537, the contract of employment of a managing director which allowed him to terminate his contract in the event of a takeover of the company and to claim a lump sum payment was found to escape the section’s protection of shareholder approval.

Section 182 of the Companies Act 1963 governs the removal of directors by shareholders. Under section 182(7), the shareholders’ power of removal cannot deprive a director of a claim for damages in respect of the termination (the Irish Supreme Court confirmed in *Carvill v Irish Industrial Bank Ltd* [1968] IR 325) that dismissal under s182 was without prejudice to any rights the director may have had to damages for breach of contract of employment). The terms of the director’s service contract may provide a basis for such a claim. Where these terms are set by the directors, if the company’s Articles of Association so provide, they can entrench their position and make their removal potentially financially onerous for the company. The five year limit on the term of directors’ service contracts (without shareholder approval) (see Q4.7), acts as a restriction, however, on the quantum of damages payable.

**(b) Listing Rules/Combined Code**

As for UK Questionnaire Q4.6(b)

**(c) Listing Particulars/Prospectuses**

Disclosure as to termination payments is required in listing particulars and prospectuses. See Q2.6.

**4.7 Are there any specific requirements concerning directors’ service contracts with respect to, for example, their duration and disclosure?**

**(a) Companies Act 1963-2001**

As in UK Questionnaire Q4.7(a), directors’ contracts of employment of more than five years which contain a term providing that during its term the contract cannot be terminated by the company or can only be terminated in specified circumstances, must receive prior approval from the general meeting via a resolution (Companies Act 1990 s28). Approval must be given on a case-by-case basis: the board may not be given a general consent from the shareholders to appoint directors beyond five years. Approval must be received before the contract is made (*Atlas Wright (Europe) Ltd v Wright* [1999] BCC 163). If approval is sought, a memorandum setting out the proposed agreement must be made available for inspection by company members not less than 15 days before the meeting and at the meeting itself (s28(4)). Any such term is void unless approval is received and the appointment can then be terminated by the company giving reasonable notice (s28(5)).

Service contracts (ie, contracts covering services as an employee, such as, as a managing director, but not contracts for services, such as contracts covering service as a director) for each director must be made available for inspection by the members of the company (Companies Act 1990 s50) in an “appropriate place”, such as the company’s registered office, the place where the register of members’ is kept, or its principal place of business (s50(3)). All copies or memoranda must be kept in the same place and the company must notify the Registrar of

Companies where the contracts are kept (s50(4)). Where the contract is not in writing, a memorandum of its terms must be made available. The copies and memorandum must be open to inspection to members of the company without charge.

**(b) Listing Rules/Combined Code**

As for UK Remuneration Questionnaire Q4.7(b).

**(c) Listing Particulars/Prospectuses**

Disclosure as to service contracts is required in listing particulars and prospectuses. See Q2.6.

## **5. Non-executive Directors' Remuneration**

**5.1 Are non-executive directors separately paid for their participation in committees of the board of directors? Do any restrictions apply to the payment of non-executive directors' *via* stock options?**

As for UK Questionnaire Q5.1.

**5.2 May a company make payments to non-executive directors, additional to their directors' fees, for services, such as legal or brokerage services, outside the usual scope of directors' duties?**

The statutory form of Articles of Association (Table A) provides in art 87 that: "Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director."