# Ireland

# Minority Shareholder Rights

# IBA Corporate and M&A Law Committee 2022

## Contact

Garry McSharry
*McCann Fitzgerald, Dublin*
Gary.McSharry@mccannfitzgerald.com

David Byers
*McCann Fitzgerald, Dublin*
David.Byers@mccannfitzgerald.com

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## SOURCES OF PROTECTION AND ENFORCEMENT

**Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?**

The laws of Ireland give protection to minority shareholders in several different ways. Many of the rights and protections are found in the Companies Act 2014 (as amended), which is the primary source of law for companies in Ireland. In a number of places, the protections are subject to modification in companies' constitutional documents, so the 2014 Act must always be considered alongside the constitution of the company in question.

Public companies (and listed companies in particular) are subject to even stricter requirements. These range from compulsory shareholder protections in the Listing Rules, Irish law implementing the European Union Transparency and Market Abuse Directives and (subject to the potential for derogations and waivers) the Irish Takeover Rules, to those where compliance is only recommended in the context of investor practice, such as with the Pre-Emption Group Statement of Principles.

Finally, minority shareholders may derive protection from a number of common law rules which often operate where statutory provisions are silent on a particular issue. Although it is less common to see case law as a primary source of minority shareholder rights, it should nonetheless be given due attention alongside the various statutory sources.

As might be expected with such a varied range of sources, the question of who enforces these rights will depend upon the nature and intended purpose of the right in question. For example, some of the protections under the 2014 Act are enforceable by the minority shareholder because they are intended to redress balance of power concerns; however, certain rules applying to public companies might provide protection to minority shareholders but they are enforceable by the Central Bank of Ireland or the relevant listing authority as the broader legislative purpose is to regulate market conduct.

## PROTECTION AGAINST DILUTION

**Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?**

Shareholders are afforded several different kinds of protections to ensure that the value of their shareholdings is maintained relative to other shareholders in the same company.

One such protection takes the form of the requirement under the Companies Act 2014 that directors must not allot shares in the company without being authorised to do so by resolution of the shareholders (or in the constitution of the company). In the case of public companies, this authority must be renewed at least every five years. Although not technically a protection specifically for minority shareholders (authorisation may be given by majority shareholder vote), it nonetheless brings the potential for dilution of shareholdings on an allotment to the attention of existing shareholders.

Generally, holders of shares also have a right of 'pre-emption' when shares are allotted for cash, effectively granting them first refusal over the new shares in question. These pre-emption rights operate in proportion to the existing shareholdings in the company, allowing minority shareholders the chance to purchase enough of the new shares to maintain their relative shareholdings in the company.

Companies may exclude pre-emption rights in their constitutional documents or by means of special resolution (requiring a 75 per cent majority). Statutory pre-emption rights do not apply to allotments of shares for non-cash consideration or where the allotments are in favour of employee shares schemes of the company or its subsidiaries.

Listed companies will also have to consider the Pre-Emption Group Statement of Principles. The Pre-Emption Group is a body representing the interests of listed companies, investors and intermediaries, and its Statement of Principles provides guidance on the likely position institutional investors will take when a listed company wishes to disapply pre-emption rights. Companies are encouraged to only issue shares non-pre-emptively up to a maximum of 10 per cent of the company's issued share capital in any one year. Disapplications above this threshold are not ruled out completely, but will be subject to scrutiny by institutional shareholders on a case-by-case basis.

Although the above rights and protections have general applicability to shareholders, they nonetheless operate to protect minority shareholders by requiring their input where their shareholdings are at risk of being diluted.

## RIGHTS TO APPOINT DIRECTORS

**Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?**

Unless provision has been made for the appointment of directors in a shareholders' agreement or constitution of a company, minority shareholders in Ireland have no specific rights to appoint directors.

Section 144 of the Companies Act 2014 grants the board a power to appoint directors, although companies may choose to revoke or amend this power in their constitutions.

Similarly, section 144 of the Companies Act 2014 provides that shareholders may appoint a director by an ordinary resolution requiring a simple majority (ie, more than 50 per cent must vote in favour).

Directors are also subject to general duties under Part 5 of the Companies Act 2014, which should help to ensure that directors appointed by majority shareholders do not act in such a way that favours their appointors at the expense of minority shareholders. For example, directors must act in good faith in what the director considers to be the interests of the company, and must avoid any conflict between the director's duties to the company and the director's other interests.

## PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

**Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?**

Where a takeover offer is made in relation to an Irish company whose shares are traded on an EU regulated market or on a recognised stock exchange (such as AIM in London, the Enterprise Securities Market in Dublin, the New York Stock Exchange or NASDAQ), the offeror and target company will be subject to the Irish Takeover Rules (the Takeover Rules). The Takeover Rules have a statutory basis in the European Directive on Takeover Bids (2004/25/EC) and are administered by an independent regulatory body – the Irish Takeover Panel.

At a basic level, General Principle 1 of the Takeover Rules mandates that all shareholders of the offeree company must be treated equally during a takeover bid, and if control is acquired by an offeror, the remaining shareholders 'must be protected'. This helps to ensure that certain shareholders do not receive preferential treatment and encourages the equal sharing of information about the bid amongst all shareholders.

A central protection for minority shareholders in the Irish Takeover Rules is the concept of 'mandatory offers' in Rule 9. Where any party (either alone or acting in concert) acquires 30 per cent or more of the voting rights in a company, or acquires more shares when their overall shareholding is between 30 per cent and 50 per cent, they must make an offer to purchase the remaining share capital of the company. This gives minority shareholders a chance to exit the company if they do not wish to remain involved post-takeover, with the Takeover Rules also providing rules on the minimum price that must be offered for these shares.

Minority shareholders have another means of exit in the form of the 'sell-out' procedure under Part 5 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (the 2006 Regulations, applicable to Irish companies with voting securities admitted to trading on an EU-regulated market) or under the Companies Act 2014 (which applies to all other Irish companies). Where an offeror manages to acquire 90 per cent or more in value of the shares in a company subject to the 2006 Regulations (or 80 per cent under the Companies Act 2014 regime) during a takeover bid, the holder of any of the remaining shares may require the offeror to purchase them on the same terms as the offer.

However, minority shareholders not wishing to exit the company in this situation may still be 'squeezed out' by the offer. Part 5 of the 2006 Regulations gives the offeror a right to buy out remaining minority shareholders once the 90 per cent threshold has been reached (or 80 per cent where the Companies Act 2014 regime applies). As with the sell-out procedure, the minority shareholder must be paid the same consideration and on the same terms as the original offer. A dissenting shareholder may apply to the court for an order that the offeror is not entitled to acquire the shares in this way, though it may be difficult for a dissenting shareholder to succeed as the onus falls on it to satisfy the court that it is appropriate to make such an order (*Re Fitzwilton plc; Duggan v Stoneworth Investment Limited* [2000] 2 ILRM 263).

More generally, compliance by public limited companies with the Irish regulations implementing the EU Transparency and Market Abuse Directives should help to keep minority shareholders informed of significant changes in the other shareholdings in the company. These rules provide that shareholders must notify the company where their shareholding exceeds or falls below 3 per cent (and every 1 per cent thereafter up to 100 per cent): if the company is a listed company, it must then notify the relevant market operator.

Under the European Communities (Cross-Border Mergers) Regulations, implementing an EU Directive of that name, a minority shareholder in a transferor company (who has voted against the merger) can require the successor company to purchase their shares at the price set out in the common terms of merger, which are approved by special resolution (ie, a 75 per cent majority) of the shareholders.

## ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

**Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?**

Generally speaking, direct shareholder suits are not permitted under Irish law. Shareholders can seek permission from the Irish courts to launch derivative actions on behalf of the company, but such actions are difficult to bring as stringent requirements for such proceedings are strictly enforced. The courts of Ireland are generally reluctant to interfere in the internal management of a company. Instead adhering to the principle that the proper claimant in an action in respect of a wrong done to the company is the company itself.

The Director of Corporate Enforcement in Ireland has significant powers under the Companies Act to enforce compliance with company law by the directors of a company. Shareholders may make complaints to the Director of Corporate Enforcement where they believe that the board of the company is not complying with its statutory obligations.

At present, any person (including minority shareholders) can request the Director of Corporate Enforcement to investigate allegations of impropriety (constituting breaches of company law) in the management of affairs of a company (and on occasion the Director has successfully had an inspector appointed by the Irish court to investigate the affairs of a company). The Companies (Corporate Enforcement Authority) Act 2021 (the 2021 Act) will establish a corporate enforcement authority to replace and perform the functions that are currently performed by the Director of Corporate Enforcement The 2021 Act was signed into law on 22 December 2021 and it is expected to be commenced in early 2022.

In practice, a claim for minority oppression (that is, a claim that the affairs of the company are being conducted, or the powers of the directors of the company are being exercised, in a manner oppressive to members or in disregard of their interests) under section 212 of the Companies Act 2014 may present the best option for a shareholder seeking redress. An especially broad range of remedies is available to the court (directly for the benefit of the applicant shareholder) where a minority oppression claim is successfully established, although an aggrieved shareholder will have to consider whether these will be suitable, as they may not wish to risk the court ordering a sale of their shares (as is the most common remedy ordered to bring the oppression to an end).

## RIGHTS TO PARTICIPATE IN DECISION-MAKING

**To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?**

A key element of participation in the operation of a company is the ability of the shareholder to express their opinions and vote on matters at general meetings. Under the procedure in section 178 of the Companies Act 2014, shareholders representing at least 10 per cent of the paid-up voting capital in a company (or 5 per cent in the case of traded companies) may require the directors to call a general meeting. If the directors fail to do so within the prescribed time limits, these shareholders are given the right to convene the meeting themselves. This procedure is calculated to ensure that directors (potentially acting on the instruction of majority shareholders) are not able to prevent minority shareholders from tabling a resolution by refusing to call a general meeting.

As it may be difficult in such circumstances to hold a meeting in accordance with the company's usual rules and procedures, section 179 of the Companies Act 2014 provides that the court may require a meeting to be called and held in any manner deemed fit. This may be especially useful for minority shareholders where the non-attendance of directors or majority shareholders would otherwise result in the meeting not achieving the company's quorum requirements.

Minority shareholders are also given a say in some of the most important decisions in the life of a company by virtue of the special resolution procedure. Certain decisions of the company may only be made with the approval of at least 75 per cent of voting shareholders, potentially giving minority shareholders the ability to block decisions which would be harmful to their interests. Some of the decisions which must be approved by special resolution include changing a company's constitution or the rights attaching to shares, re-registering a private company as a public company and reducing the company's share capital.

The text or substance of every special resolution proposed by the directors must be sent to the shareholders entitled to vote on the resolution (section 181 of the Companies Act 2014). Similarly, if the shareholders propose a special resolution, the company is required under section 178 of the Companies Act 2018 to circulate a copy of the resolution to the shareholders.

All shareholders must be given notice of a general meeting, which should include details of the time and location of the meeting, as well as a statement of the nature of the business to be transacted at the meeting.

Notice of general meetings must be given between seven and 21 'clear days' before the meeting is due to be held, depending on a number of factors (ie, whether the company is private or public, whether the meeting is to be an annual general meeting or an extraordinary general meeting, and whether a special resolution is being proposed). With the exception of traded companies, shorter notice can be given of meetings under a procedure in section 181(2) of the Companies Act 2014. In order to prevent meetings being held quickly without the knowledge of minority shareholders, the auditors of the company and all of the shareholders entitled to attend and vote at the meeting must agree in order for the short notice procedure to be used.

## RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

**Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?**

Shareholders who have held their shares for at least six months of the previous 18 months may apply to court to have a company wound up on the grounds that it would be 'just and equitable' to do so (Chapter 2, Part 11 of the Companies Act 2014). However, this procedure requires some proof on the part of the applicant shareholder that they have a 'sufficient interest' in the winding up, such that (for example) a surplus of funds would remain in the company after meeting its debts, which would then be paid out to the shareholders.

The question of what is 'just and equitable' will depend upon the facts of the given case, though an example of a situation which could meet this threshold would be excluding a shareholder from participating in the management of the company where the company operated on the basis that there would be an entitlement to participate (*Re Murph's Restaurant Limited* [1979] ILRM 141).

Petitioning for a winding up could be useful for minority shareholders concerned that the value of their investment in the company will be eroded should it continue to operate and accumulate debts, but it relies upon careful analysis of the company's present financial situation to determine whether any value is likely to remain after the company's creditors have been satisfied.

## RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

**Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?**

As a general principle, insofar as a company's constitution confers right on a shareholder in their capacity as shareholder, the shareholders may enforce those rights against the company or directly against each other.

## SUMMARY OF RIGHTS

**Below is a table providing a brief summary of the rights of minority shareholders in Ireland, organised according to the percentage threshold at which the various protections become available.**

| Shareholding (per cent) | Description | Reference |
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| 25 | A resolution at a general meeting to approve an amendment to the constitution of the company must be passed by a special resolution (which requires at least 75 per cent of the eligible shareholders present in person or by proxy and voting at the meeting to vote in favour).<br><br>Therefore, the amendment can be blocked by shareholders representing more than 25 per cent of the eligible shareholders present (in person or by proxy) and voting. | Section 191, Companies Act 2014 |
| | More generally, shareholders with at least 25 per cent of the company's voting rights can block special resolutions on issues such as disapplication of pre-emption rights and re-registering a private company as public. | Sections 191, 69, 1022 and 1285, Companies Act 2014 |
| 10 | Where a company has different classes of shares, if the rights attaching to a class are varied, shareholders holding at least 10 per cent of that class of shares may apply to the court to have the variation cancelled. | Section 89, Companies Act 2014 |
| | Shareholders holding at least 10 per cent of the paid-up voting rights in a company (other than a company whose shares are admitted to trading on an EU regulated market) (a traded company) can require the directors to call a general meeting.<br><br>The shareholders requesting a meeting may also request that a particular resolution is put before the meeting.<br><br>Directors are required under this procedure to call a general meeting within 21 days of the date of the request, with the meeting to be held no later than two months after the date of the request.<br><br>If the directors fail to comply with this, the shareholders who initially requested the meeting (or those holding more than half of the voting rights of those shareholders) may convene a general meeting themselves within three months of the date of the request.<br><br>If it is impracticable for a meeting to be called in the usual ways under the Companies Act 2014 or the company's articles, a | Section 178(3), Companies Act 2014<br><br>Section 178(4)<br><br>Section 178(5)<br><br>Section 178(5)<br><br>Section 179 |

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| | court may (on its own, or by application of a director or shareholder) order a meeting to be called and held. | |
| 5 | Shareholders holding at least 5 per cent of the paid-up voting rights in a traded company can require the directors to call a general meeting. | Section 1101, Companies Act 2014 |
| | Where a public company wishes to re-register as a private company, shareholders having not less than 5 per cent in nominal value of the company's share capital, or any class of the company's share capital (or at least 50 of the company's shareholders), may apply to court to cancel the resolution to re-register the company. | Section 1287, Companies Act 2014 |
| One share | A shareholder who has the right to vote at a particular meeting may object to short notice being given of that meeting. | Section 181(2)(a), Companies Act 2014 |
| | A shareholder (who has held their shares for at least six out of the last eighteen months) may apply to the court to seek a winding up of the company (ie, the dissolution of the company) where the court can be satisfied it would be 'just and equitable' to do so. This may include where:<br>• the company is unable to make decisions because it is in a deadlock situation;<br>• there has been mismanagement; or<br>• parties have been excluded from the management of the company.<br><br>Generally, the court will only make an order to wind up a company where the applicant shareholders have no other remedies available. | Section 569€, Companies Act 2014 |
| | The constitution of a company governs the rights of shareholders to inspect the company's statutory books, subject to certain minimum statutory rights of inspection.<br><br>Any shareholder has the right to inspect information such as the register of directors, records of shareholder resolutions and meetings, documents relating to share buy-backs, and the company's register of members.<br><br>Any shareholder may demand a copy of the company's latest annual accounts, directors' report and audit report. However, shareholders must be sent a copy of the company's annual accounts and reports for each financial year in any event. The annual return and statutory accounts and accompanying notes are publically available documents. | <br><br><br>Sections 216 and 112, Companies Act 2014<br><br><br>Sections 338–339, Companies Act 2014 |

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| | Shareholders may bring a claim (known as a derivative claim) on the company's behalf. These actions are very rare. | Common law |
| | Any shareholder may make a claim for oppression where the affairs of the company are being conducted, or the powers of the directors of the company are being exercised, in a manner oppressive to members or in disregard of their interests. The court has wide powers to grant a range of remedies. | Section 212, Companies Act 2014 |
| | Where a takeover offer is received in relation to all the shares in a traded company, and the shares acquired amount to 90 per cent or more of the value of the voting shares in the company (and have 90 per cent or more of the voting rights) or, in the case of all other Irish companies, where the shares acquired amount to 80 per cent or more of the value of the voting shares in such company, any shareholder who has not accepted the offer may require the offeror to acquire its shares. | Section 23 European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006; Section 457, Companies Act 2014 |
| | If a company has ceased to trade and been struck off the register, any shareholder may apply to the court for the company to be restored to the register. This must be done within twenty years of being struck off. | Section 738(1), Companies Act 2014 |
| | Where a special resolution has been passed to alter the company's articles of association, any shareholder may apply to the court to have the resolution set aside if it is not for the benefit of the company as a whole. | Common law |