



**AN BILLE UM RIALACHAS CORPARÁIDEACH (CÓID
CHLEACHTAIS) 2009**
CORPORATE GOVERNANCE (CODES OF PRACTICE)
BILL 2009

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. “Good corporate governance”.
 3. Bank to draw up draft code of practice on good corporate governance.
 4. Submission of draft code to Minister and Joint Oireachtas Committee.
 5. Approval of draft code.
 6. Contents of code of practice.
 7. Enforcement of code of practice.
 8. Short title.
-



**AN BILLE UM RIALACHAS CORPARÁIDEACH (CÓID
CHLEACHTAIS) 2009**
CORPORATE GOVERNANCE (CODES OF PRACTICE)
BILL 2009

BILL

entitled

AN ACT TO PROVIDE FOR THE DRAWING UP BY THE
CENTRAL BANK AND FINANCIAL SERVICES AUTH-
ORITY OF IRELAND AND THE APPROVAL BY THE
MINISTER FOR FINANCE OF CODES OF PRACTICE IN
RELATION TO GOOD CORPORATE GOVERNANCE
FOR COMPANIES ADMITTED TO TRADING ON THE
OFFICIAL LIST OF THE IRISH STOCK EXCHANGE; TO
PROVIDE FOR THE ENFORCEMENT OF THOSE
CODES; AND TO PROVIDE FOR CONNECTED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Interpretation.

“Bank” means the Central Bank and Financial Services Authority
of Ireland;

“Exchange” means the Irish Stock Exchange;

“Joint Committee” means the Committee jointly appointed by both
Houses of the Oireachtas that is responsible for examining matters
relating to the Bank;

“Minister” means the Minister for Finance.

2.—For the purposes of this Act, “good corporate governance” “Good corporate
means policies and practices relating to the way in which a company governance”.
is directed, administered and controlled so as—

(a) to contribute to better company performance by helping a
board discharge its duties in the best interests of
shareholders,

(b) to facilitate efficient, effective and entrepreneurial man-
agement that can deliver shareholder value over the
longer term, and

(c) to promote ethical and responsible decision-making, com-
pliance with regulatory requirements and confidence in
corporate reporting and governance.

Bank to draw up draft code of practice on good corporate governance.

3.—(1) The Bank shall in accordance with *section 4* draw up, in relation to companies whose securities are admitted to trading on the official list of the Exchange, one or more than one code of practice concerning good corporate governance.

(2) Different codes of practice may be drawn up for companies of different size, measured by market capitalisation. 5

Submission of draft code to Minister and Joint Oireachtas Committee.

4.—(1) After consultation with the Minister and the Exchange, the Bank shall—

(a) submit a draft code of practice to the Minister for his or her approval, and 10

(b) send a copy of that draft to the Joint Committee.

(2) Whenever so requested, the chairperson and the chief executive of the Bank shall appear before the Joint Committee to discuss a draft code of practice.

(3) The Joint Committee may, within 4 weeks of its receipt of a draft code of practice, submit a report to the Minister containing recommendations on it. 15

Approval of draft code.

5.—(1) Following the expiry of the period of 4 weeks referred to in *section 4(3)*, the Minister may, having considered any report received under that subsection— 20

(a) approve the draft,

(b) approve it with modifications,

(c) instruct that it be resubmitted to him or her in a modified form for approval, or

(d) refuse to approve it. 25

(2) The Minister shall, as soon as practicable after he or she has approved (with or without modifications) a code of practice under *subsection (1)*, cause a copy of it to be laid before each House of the Oireachtas.

(3) As soon as practicable after the Minister has notified the Bank that he or she has approved a code of practice, the Bank shall publish it and every such code shall be observed by the companies to which it relates. 30

Contents of code of practice.

6.—(1) In drawing up codes of practice the Bank shall have regard, in addition to the considerations referred to in *section 2(a)* to (c), to— 35

(a) the interest of customers and the general public, and

(b) the promotion of fair competition in financial markets in the State.

(2) Without prejudice to the generality of *subsection (1)*, a code of practice under this section shall include— 40

- (a) a prohibition on the positions of chairman and chief executive of a company being held by the same person,
- (b) a prohibition on a former chief executive of a company being elected as its chairman,
- 5 (c) a prohibition on non-executive directors serving on a board for more than seven consecutive years,
- (d) a limit on the number of boards of listed companies on which a non-executive director may sit,
- 10 (e) a requirement that companies establish independent audit committees, naming the members with recent and relevant financial expertise,
- (f) a requirement that the chairman and chief executive assume direct responsibility for ensuring good corporate governance and transparency in corporate reporting,
- 15 (g) a requirement on the part of non-executive directors to demonstrate the time and skills necessary to contribute effectively to the board,
- (h) provisions regulating the appointment of non-executive directors who are connected to the company's bank or auditors, and
- 20 (i) a prohibition on directly reciprocal cross-directorships between companies (where, in relation to two companies, a non-executive director of the first is an executive director of the second and an executive director of the first is a non-executive director of the second).
- 25

7.—(1) A code of practice forms part of the listing rules of the Exchange and shall be enforced by the Exchange accordingly. Enforcement of code of practice.

30 (2) The Exchange shall establish and maintain effective rules and all other necessary arrangements and procedures for the regular monitoring of the compliance by companies whose securities are admitted to trading with a code of practice under this section.

35 (3) The Bank may require the Exchange to provide all relevant information to the Bank to enable the Bank to satisfy itself as to the steps taken by the Exchange to secure observance and enforcement of a code of practice under this section.

8.—This Act may be cited as the Corporate Governance (Codes of Practice) Act 2009. Short title.



**AN BILLE UM RIALACHAS CORPARÁIDEACH (CÓID
CHLEACHTAIS) 2009**
CORPORATE GOVERNANCE (CODES OF PRACTICE) BILL
2009

EXPLANATORY MEMORANDUM

Purpose of Bill

It is a condition of the listing of a company on the main index of the Irish Stock Exchange (the ISEQ) that it complies with the disclosure provisions of the Combined Code on Corporate Governance of the Financial Reporting Council. However, compliance with the code is not enforced by legislation.

The Combined Code is based on the principle of “Comply or Explain”. In other words, a company may choose not to comply with the provisions of the Code but is not in breach of the Code if it makes that fact known in its annual report.

In a period of economic turmoil marked by company failures and financial scandals, it has become clear that serious reputational damage has been suffered, both by Irish business and by its regulators.

Equally, it has become clear that voluntary codes are no longer adequate in order to provide assurance to investors and others as to the maintenance of the necessary high standards of good corporate practice.

The purpose of this Bill is to enable the Central Bank and Financial Service Authority of Ireland, as regulator of the Irish Stock Exchange, to draw up for Ministerial approval a binding code of practice relating to corporate governance which can be enforced as part of the listing rules of the Exchange.

Provisions of Bill

Section 1 is a standard interpretation provision.

Section 2 defines “good corporate governance” as meaning policies and practices relating to the way in which a company is directed, administered and controlled so as—

- to contribute to better company performance by helping a board discharge its duties in the best interests of shareholders,
- to facilitate efficient, effective and entrepreneurial management that can deliver shareholder value over the longer term, and

- to promote ethical and responsible decision-making, compliance with regulatory requirements and confidence in corporate reporting and governance.

Section 3 provides that the Central Bank (“the Bank”) must draw up codes of practice concerning good corporate governance for companies whose securities are admitted to trading on the official list of the Irish Stock Exchange. Different codes of practice may be drawn up for companies of different size, measured by market capitalisation.

Section 4 sets out the procedure to be followed by the Bank in drawing up a code of practice. After consultation with the Minister for Finance and the Exchange, the Bank must submit a draft code of practice to the Minister for his or her approval and send a copy of that draft to the Joint Oireachtas Committee on Finance. If so requested, the chairperson and the chief executive of the Bank shall appear before the Joint Committee to discuss a draft code of practice. The Joint Committee may, within 4 weeks of its receipt of a draft code of practice, submit a report to the Minister containing recommendations on it.

Section 5 provides that, after that 4 week period has passed, the Minister may, having considered any report received from the joint Committee: approve the draft; approve it with modifications; instruct that it be resubmitted to him or her in a modified form for approval; or refuse to approve it.

As soon as practicable after he or she has approved (with or without modifications) a code of practice, the Minister must cause a copy of it to be laid before each House of the Oireachtas.

As soon as practicable after the Minister has notified the Bank that he or she has approved a code of practice, the Bank must publish it. Every code so published must be observed by the companies to which it relates.

Section 6 provides that, in drawing up codes of practice the Bank shall have regard, in addition to the matters referred to in the definition of good corporate practice, to the interest of customers and the general public and the promotion of fair competition in financial markets in the State. A code of practice shall also include—

- a prohibition on the positions of chairman and chief executive of a company being held by the same person,
- a prohibition on a former chief executive of a company being elected as its chairman,
- a prohibition on non-executive directors serving on a board for more than seven consecutive years,
- a limit on the number of boards of listed companies on which a non-executive director may sit,
- a requirement that companies establish independent audit committees, naming the members with recent and relevant financial expertise,
- a requirement that the chairman and chief executive assume direct responsibility for ensuring good corporate governance and transparency in corporate reporting,

- a requirement on the part of non-executive directors to demonstrate the time and skills necessary to contribute effectively to the board,
- provisions regulating the appointment of non-executive directors who are connected to the company's bank or auditors, and
- a prohibition on directly reciprocal cross-directorships between companies (where, in relation to two companies, a non-executive director of the first is an executive director of the second and an executive director of the first is a non-executive director of the second).

Section 7 provides that a code of practice forms part of the listing rules of the Exchange and must be enforced by the Exchange accordingly. The Exchange is required to establish and maintain effective rules and all other necessary arrangements and procedures for the regular monitoring of the compliance by companies with a code of practice. And the Bank may require the Exchange to provide all relevant information to the Bank to enable the Bank to satisfy itself as to the steps taken by the Exchange to secure observance and enforcement of a code of practice.

Section 8 provides for the short title of the Bill.

*An Teachta Éamon Mac Giollamóir,
Aibreán, 2009.*