

CONSULTATION PAPER – 24-01

CONSULTATION ON THE LAUNCH OF THE IRISH CORPORATE GOVERNANCE CODE

INTRODUCTION

The proposed introduction of an Irish Corporate Governance Code (**Irish Code**), represents a significant step forward in the evolution of corporate oversight for listed companies in Ireland. Developed with an understanding of the local business context, the Irish Code seeks to provide a framework that balances the expectations of transparency and accountability with the practicalities of business operations. It reflects Ireland's ongoing efforts to align with international standards while supporting the sustainable growth of its corporate sector. With the introduction of the Irish Code, which is designed to fortify trust and transparency and to promote access to financing, we encourage Irish companies to consider the guidelines as a foundation for continuing to build robust governance structures that will serve their stakeholders and the wider community well into the future.

Companies that have a primary listing on Euronext Dublin will be subject to the Irish Code. However, if a company is dual-listed in both Ireland and the UK, it has the option to either follow the Irish Code or the UK Code.

It is expected that the Irish Code will apply to accounting years commencing on or after 1 January 2025. Companies that report on a calendar year basis will therefore be expected to comply with the new code for the year ending 31 December 2025.

RATIONALE FOR AN IRISH CORPORATE GOVERNANCE CODE

The Irish and UK stock exchanges have historically been very closely linked, and this proximity meant that there was a strong rationale for much of the Irish regulatory regime for public companies to closely mirror or complement that in the UK. As a result, the UK Corporate Governance Code (**UK Code**) was applied to Irish companies listed in Ireland (and the UK), supplemented by the Irish Corporate Governance Annex for certain categories of companies.

This rationale has weakened in recent years. As a member of the European Union, Ireland is part of the evolving Capital Markets Union, whereby the European public company regulatory infrastructure continues to be developed. Therefore, different imperatives and issues can, and may be expected to continue to influence corporate governance in Ireland, relative to the UK.

In addition, Ireland is one of only two jurisdictions in the 49 surveyed by the OECD in 2022 (including all OECD, G20 and Financial Stability Board members) which does not have its own national corporate governance code. An Irish Corporate Governance Code, developed within, and for the Irish market, will enable and provide greater clarity for issuers and investors and ensure that changes in corporate governance in the UK can be assessed for relevance and appropriateness before being automatically applicable to Irish companies.

A local code allows for greater flexibility to adapt and evolve as the corporate, legal and economic climate changes, ensuring that governance standards remain relevant and effective for the Irish market.

APPROACH TAKEN IN DEVELOPING THE DRAFT IRISH CORPORATE GOVERNANCE CODE

The approach taken in developing the draft Irish Code was comprehensive and collaborative, involving a wide range of industry participants.

Initially, a Working Group was formed and with the assistance of an external expert from Trinity College Dublin, corporate governance regimes applicable to public companies in 10 different jurisdictions with strong public markets were examined. These 10 regimes were selected to ensure that there was a wide consideration of international best practices from a variety of jurisdictions. The process included reviewing research on key governance issues to determine their continued value and completing environment scanning to identify any relevant policy initiatives to incorporate into an Irish Code. This evidence-led approach ensured that the review process was thorough, and that the resulting corporate governance code will be robust, relevant, and effective.

Following this exercise the UK Code was selected as the most appropriate base code from which to work and keeping with the “comply or explain” approach which currently applies. This is due to a number of factors, including:

- the degree of commonality between company law in Ireland and the UK;
- the longevity of the UK Code and the robustness of the review process operated by the UK’s Financial Reporting Council (“FRC”);
- the availability of additional detailed guidance with respect to certain key aspects of the UK Code; and
- the historic closeness of the Irish and UK capital markets with many Irish companies having been dual listed (though this is less a feature of the current market following BREXIT). As a result, both those companies and their institutional shareholders are familiar with the UK Code.

The UK Code is synonymous with best international practice. Research shows that when issuers are governed according to principles of good corporate governance, they find it easier to tap capital markets and attract investors. Maintaining a strong alignment between the Irish Code and the UK Code will allow Irish listed companies to retain the same high standards of governance and to meet this internationally recognised benchmark standard. Adapting it then to the needs of the Irish market will serve to enhance its relevance to in-scope companies. Maintaining a strong textual alignment with the UK Code will also reduce the compliance burden for companies with a dual listing. It will also make it easier for Irish companies to transition to the new Irish Code.

The FRC conducts an annual review of reporting in UK listed companies against the UK Code. Because of the intended alignment of the proposed Irish Code, these reviews will continue to provide an insight into the strengths and weaknesses of the reporting system and highlight what needs to be improved. Using the UK Code as a model will also ensure that the FRC’s *Corporate Governance Code Guidance* would continue to remain relevant. This Guidance sets out examples of good practice to support directors and their advisors in applying the UK Code.

In addition, research reports and thematic reviews provide useful suggestions for improved reporting on activities and outcomes. Maintaining an alignment with the UK Code means that this wealth of information and guidance will continue to benefit Irish companies in their attempts to implement and demonstrate effective corporate governance and to attract investment.

The Working Group was guided by the principle that the Irish Code should reflect best practice in corporate governance but not introduce unnecessary or potential conflicting obligations. It is important that the Irish Code complement Irish and EU regulations and promote and uphold the high standards currently applying in the Irish market, while recognising the features of the Irish market and incorporating contributions from its key stakeholders.

Having established the UK Code as the base, the following review process was then undertaken by the Working Group:

- identification of components in the UK Code which are UK specific (such as the provision dealing with s. 172 of the Companies Act 2000 of England and Wales) or which evolved in response to specific UK government/societal pressures or a particular UK domestic company crisis;
- consideration of each principle and provision in the UK Code through the lens of Irish company law and the Irish market landscape, as well as the broader EU regulatory regime;
- incorporation of items which were considered 'best in class' in the other codes reviewed and which the Working Group considered as appropriate to the Irish market;
- consideration of the G20/OECD Corporate Governance Principles 2023 which set a standard for policy makers to evaluate and improve their corporate governance codes;
- early stage canvassing of views regarding a standalone Irish code from a range of market participants; and
- a roundtable discussion in March 2024 of the proposed Irish Code with industry participants for initial feedback.

ONGOING EVOLUTION OF THE IRISH CORPORATE GOVERNANCE CODE

The principles of good governance are dynamic, evolving to meet the changing needs and expectations of the business environment. The adoption of the Irish Code is not the culmination but the commencement of an ongoing process to ensure that governance practices in Ireland remain robust, relevant, and attuned to the distinct characteristics of the local market. To facilitate this continuous evolution, it is essential to involve key stakeholders who have a vested interest in the Irish corporate landscape. In line with this, plans are in motion to establish a Corporate Governance Panel (the 'Panel') in the coming months. This Panel will be composed of a diverse group, including representatives of: Euronext Dublin; public companies; investor bodies; academics; proxy advisors, etc.

It is intended that the Corporate Governance Panel's composition will capture a broad spectrum of relevant perspectives on governance, ensuring that the Irish Code is well-rounded, inclusive, and forward-looking. The Panel will meet on a periodic basis and have responsibility for reviewing the Irish Code to ensure it remains effective and proportionate. It will also consider the Corporate Governance environment, including any changes to the UK Code to determine if amendments to the Irish Code are necessary.

It is worth highlighting that a similar approach was successfully adopted by the Irish Takeover Panel upon its establishment in 1997 in relation to takeovers of Irish listed companies. The

Irish Takeover Rules were based on the text of the UK Takeover Panel's Takeover Code and similarly structured. In its regular rule review exercises, the Irish Takeover Panel considers amendments made to the Takeover Code, and the proposed amendments to the Takeover Rules largely reflect changes that have been made to it but are adapted to suit the Irish market and the Irish legal environment. This has proven to be an effective approach. It is a model that demonstrates the value of taking a tried and tested framework as a base and adapting it over time to reflect evolving legislation and market developments.

It is proposed that Euronext Dublin, working with other market participants monitor compliance with the Irish Code on a biennial basis. In addition, as with any comply or explain code, including the UK Code, an element of self-policing by shareholders is expected. It is anticipated that the Irish Code will also be considered in such a way, and, as per the current rules, the Irish Code will be applied to issuers under the Euronext Dublin Listing Rules regime.

RESPONDING TO THE CONSULTATION

As we issue this consultation paper, we invite stakeholders to engage with us in a collaborative effort to shape the future of our industry. Your participation in this process is not just welcome—it is essential. We urge all stakeholders to examine the proposed text of the new Irish Corporate Governance Code and to contribute your valuable insights. Through your engagement, we can ensure that the code we adopt is not only robust and comprehensive but also truly representative of the Irish corporate ethos. We look forward to your thoughtful input and to working together towards a new standard of corporate excellence in Ireland.

If you wish to make general comments on the text of the Irish Code, please clearly state the Principle or Provision the comment relates to, so that these can be more effectively captured as part of the post consultation review (see Appendix 1).

In addition to general comments, your views on the following questions would be appreciated:

1. Are there any specific principles/provisions of the Irish Code which diverge from the UK Code which you think are not appropriate/should be revised. If yes, please give further detail.
2. Are there any areas of the Irish Code which retain parity with the UK Code which you think should not remain part of the Irish Code. If yes, please give further detail.
3. Are there any other issues which you feel should be addressed in the Irish Code?
4. Are you supportive of issuers dual listed on Euronext Dublin and in the UK having a choice as to whether to apply the Irish Code or the UK Code?
5. As a dual-listed company (with standard UK listing) if you do support a choice between the application of the Irish Code or the UK Code, which code do you think your company will apply?
6. Are there matters that you believe should be taken into consideration in establishing the Corporate Governance Panel?

For your convenience we have included the following with this consultation:

- A draft of the Irish Code;
- A mark-up of the Irish Code versus the UK Code for convenience of comparison; and
- A table of the main changes with a brief explanation of the reason for the deviation from the UK Code.

Comments on the questions set out above, and indeed general comments, are requested by 14 June 2024. Responses should be sent by email to IECorpGov@euronext.com.