

Ireland

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Corporate Governance in Ireland

Because of the close political and business links between Ireland and Great Britain, the approach to corporate governance in Ireland closely reflects the British model. Consequently, Irish companies operate with a single-tier board structure and it is at this level in State-owned companies and agencies that employee representatives participate.

Having tried, unsuccessfully, to get the social partners to come to agreement on the most suitable model of employee participation for the Irish system of industrial relations, in the mid-1970s the Government took the view that if anything was to happen regarding worker participation that it would have to take the lead. Consequently, in 1977 legislation was enacted giving employees in seven State-sponsored commercial companies the right to elect a third (4 out of 12) of the membership of the boards of these organisations, known as 'worker directors', for a period of three years'. (Worker Participation (State Enterprises) Act, 1977).

Following a review of the workings of this legislation by an advisory committee in the mid-1980s, and recognising that the 1977 Act failed to provide any guidance on how worker directors should link with the work colleagues who had elected them, through some sort of reporting back process, the new legislation also provided for the establishment of sub-board consultative arrangements, not just in organisations with worker directors, but also in other organisations - in total thirty-six State companies and agencies. This aspect of the new Act was very flexible on the type of consultative forum which should be set up within each organisation, as the structure needed to reflect the objectives of the organisation, the size and location of its workforce, the employee/management relations, its culture, its national role or the business environment in which it functions.

There are, however, some basic provisions which must be provided for, such as:

- An exchange of views on information provided by the organisation to the participative forum;
- the giving of relevant information, in good time, on decisions which may affect the interests of employees;
- the dissemination of information to the full body of workers through agreed communications channels.

With regard to worker directors, the new legislation gave trade unions, staff associations or other designated bodies, recognised for the purpose of collective bargaining and with members in the company or agency, the sole right to nominate candidates for election. All employees, including certain part-time workers, are entitled to vote in the election of these board-level representatives. Elected directors are entitled to stand for re-election, following nomination by a designated body. Once elected, and appointed by the relevant Minister, worker directors have the same rights and duties as ordinary directors (who are generally appointed by the Minister or, in some

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organisations, interested sectoral organisations) and are entitled to the same privileges, expenses and remuneration as other directors. These are at the discretion of the board and varies from organisation to organisation. (Worker Participation (State Enterprises) Act, 1988)

As regards the private sector, the Government showed a reluctance to impose participation through legislation, if it was not acceptable to employers and managers. Its preference was for the social partners to reach a voluntary agreement on the future of employee involvement in private sector enterprises.

Experiences of Worker Directors

Following the introduction of these two Acts and the extension of the concept to other State-owned enterprises and agencies, there are now 54 employee representatives who are members of over 20 boards. There are also a few worker directors on the boards of former State companies which have now been privatised.

Representation ranges from five worker directors in An Post, the national postal service, to four, under the original Acts, on the boards of such companies as Aer Lingus (national airline), CIE (national transport) or ESB (national electricity company). Under separate legislation setting up a number of more recently established State-sponsored companies, for example, An Coillte (forestry company) or the Railway Procurement Agency, employees are entitled to just one representative on the boards of these bodies.

There have been some difficulties for worker directors in balancing their need to communicate with their fellow workers but, at the same time, respect the confidential nature of discussion and decisions taken at board meetings. This issue is an ongoing challenge to board-level representatives and is not easily resolved, as in most companies worker directors are required to sign a confidentiality clause. A second problem, which had to be overcome, was the hostility and suspicion of ordinary board members and of senior management in the companies and, initially, the exclusion of worker directors from key decision-making and from important sub-committees, such as finance. In a review of the operations of the system in 1989 it was considered to be 'broadly successful'. Employees in the companies expressed satisfaction with the process and management, though still having some reservations, has accepted the role of worker directors in the decision-making process. (Kelly, 1989)

A third difficulty for worker directors has been access to training to equip themselves for their role as board members – in particular on finance, legal responsibilities, marketing, corporate governance and other technical issues. In a small survey carried out by the Worker Directors' Group in 1996, 82% of the group said that finance was the topic in which they were least comfortable with in discussions at board meetings. Consequently, 40% considered financial issues as the most important training need to help them carry out their duties, while communications skills was second (30%)

The Training and Advisory Service of the ICTU has been addressing these issues for worker directors and a comprehensive and ongoing training programme is now in place to assist them in meeting their board responsibilities. The SIPTU College also provides training, support and a network for employee representatives, including worker directors, who are members of that union.

Worker directors also have their own formal organisation, which meets once a month to exchange information and experience and to provide mutual support. It also co-ordinates relevant training programmes and other developmental projects.

A further problem which has been identified with the present system in that of continuity of representation. If in the case of all worker directors not seeking renewal of their mandate (which has happened, for example, in Aer Lingus), or are not re-elected, there is the difficulty of the newly elected worker directors taking time to learn the operations of the board and, at the beginning, to make an impact in representing the views of the workforce and in influencing company policies.

Originally there was concerns that worker directors might pose a challenge to the traditional collective bargaining and trade union structures. Kelly found that this had not happened as the unions have the sole right to nominate, thus giving them a dominant role in the process.

However, in a reviewed of industrial relations in the ESB, under the chairmanship of Peter Cassells, then General Secretary of the ICTU, found that there were concerns about the involvement of certain worker directors in industrial relations issues and their continued front line responsibilities for ongoing industrial relations issues. The report of this review group says that there appears to be a 'lack of clarity' on their role, which needed to be addressed. (Cassells, 1993)

Impact of Privatisation

In recent years, with the privatisation of State assets, the system of board level employee representation has come under threat. Of the eleven original companies covered by the Acts four have been privatised. In one, B&I Shipping Co., the new owners immediately terminated the system of worker directors. In two of the others, NET (fertiliser manufacturing) and CSE (sugar production), management and its advisors argued that stock market equity would not be forthcoming if worker directors remained on the boards of these companies. A compromise arrangement was arrived at in which the former boards were retained, including the worker directors, in a consultative role, but all commercial, operational and policy decisions are taken by a second board, representative of the private shareholders and from which the employee representatives are excluded, thus having little influence on company strategy or decision-making. (McCarthy, 1997)

In the fourth, Telecom Éireann (the national telecommunications company), 20% of the company was sold to a joint Swedish / Dutch consortium, in 1996. In a parallel development the company and Government also transferred 14.9% of the company equity to an ESOP trust fund owned by the coalition of unions, in exchange for changes in work practices and cost reductions. ⁴ In 1999 the Government decided to divest itself of the remainder of its shareholding in Telecom (now re-named Eircom). In preparation for the full privatisation of the company the then Minister for Public Enterprises removed the four worker directors from the board, so as not to discourage any possible international investment in the company, arguing that the equity holding gave the workforce adequate representation on the board.

⁴ As this company again changed ownership in 2001, the ESOP Trust now controls 29.9% of the shares of the company.

Labour Relations Commission Review

As part of its review of the worker director system, as agreed under the national tripartite Programme for Prosperity and Fairness (2000-2002), the Labour Relations Commission carried out a small survey of the worker directors in 2002. Some of the findings confirm the previous studies referred to above:

- 96% of the respondents had a positive experience as worker directors and the role gave them greater insights into the operations of their companies;
- 76% felt the system had helped to improve industrial relations;
- 83% felt their involvement had helped to improve communications;
- 62% believed the process had helped the development of partnership;
- 62% said it had helped the change process in their organisations.

The respondents were split 50-50 on the attitudes of management to the process, between ‘only tolerated by management’ and ‘fully accepted by management’.

In line with the 1996 survey carried out by the Worker Directors’ Group, this recent small study high-lighted similar concerns among worker directors, for example, the experience with privatisation; the confidentially restrictions and the consequential limits on communicating relevant information to the workforce; a lack of knowledge in technical issues, such as finance; and exclusion from key board sub-committees.

Bibliography

Cradden T, (1993) *The Tories and Employment Law in Northern Ireland: seeing unions in a different light?* in *Industrial Relations Journal*, No. 24:1.

Department of Labour (1980) *Worker Participation - A Discussion Paper*

____ (1986) *Report of the Advisory Committee on Worker Participation*

Electricity Supply Board *Final Report of the Joint Steering Committee – Review of Relationships within the ESB* (Cassells Report), 1993.

Government Stationary Office (GSO) *Programme for Prosperity and Fairness* (2000)

Kelly, A, *The Worker Director in Irish Industrial Relations* in *Industrial Relations in Ireland: Contemporary Issues and Developments* University College, Dublin (1989).

Labour Relations Commission, Advisory Development and Research Service, *Worker Participation (State Enterprises) Acts, 1977 and 1988 - A review of the Acts conducted under the Programme for Prosperity and Performance* (Draft – unpublished).

McCarthy, S, *Participation on Company Boards* in *The Role of Worker Directors in the European Union* Worker Directors' Group (editor K P O'Kelly), Dublin, 1997.