

Ireland Update: Incoming Amendments to the Companies Act 2014

What You Need to Know

- Following a public consultation last year, new legislation has been initiated in Dáil Eireann.
- Changes to corporate governance, company law enforcement and supervision, company law administration and corporate insolvency are proposed.

Background

The Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 ("Bill") which sets out proposed amendments to the Companies Act 2014 (the "Act") arising from issues identified in a public consultation which took place last year has been initiated in Dáil Eireann. It is anticipated that the Bill will be enacted by the end of 2024.

The proposed changes relate to four broad areas of company law: corporate governance, company law enforcement and supervision, company law administration and corporate insolvency. A number of anomalies identified in the Act which have been raised by the Company Law Review Group and other stakeholders for some time have also been addressed.

We have set out below a summary of the most notable provisions of the Bill.

Virtual General Meetings

Temporary provisions inserted into the Act by the Companies (Miscellaneous Provisions) (COVID-19) Act 2020 (the "Covid Act") providing that a company may hold hybrid or wholly virtual

general meetings are due to expire on 31 December 2024.

The Bill proposes that these provisions be put on a permanent statutory footing. This will give companies the option to conduct AGMs and EGMs in fully virtual or hybrid format unless expressly prohibited by their constitutions.

The amendment also includes recognition that electronic attendance counts toward the quorum.

Execution in Counterpart

The Bill provides that there will be a permanent ability for companies to execute documents under seal in separate counterparts, with the aggregate of the documents being treated as one document.

This had been introduced on an interim basis by the Covid Act but was discontinued at the end of 2022.

Audit Exemption

The Bill provides that the small company audit exemption will no longer be lost upon a first failure to file an annual return on time.

Loss of exemption will only apply if a company fails to file its annual return for a second or subsequent time within a period of five consecutive years.

Mergers

The following important changes are proposed regarding mergers:

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- Inclusion of the ability for DACs to merge – the Act currently states that one of the companies must be an LTD; and
- In the case of private companies, a group of subsidiary companies that is wholly-owned by the same parent company will be able to merge into their common parent company by one merger by absorption rather than several mergers by absorption (as is currently the case).

New Grounds for Strike Off

The Bill proposes three new grounds for involuntary strike off:

- A failure to notify the Companies Registration Office ("CRO") of a change in registered office address;
- A failure to appoint and record a company secretary with the CRO; and
- A failure to file the beneficial ownership information with the Central Register of Beneficial Ownership.

These new grounds for strike off will not give rise to consequential disqualification of directors.

Enhanced Powers for the Corporate Enforcement Authority

The Corporate Enforcement Authority ("CEA") will be given new information-gathering powers which will include the ability to seek additional information from auditors following receipt of an indictable offence report and access to court orders relating to the restriction and disqualification of directors.

Certain additional powers of the CEA proposed in the General Scheme of the Bill have not been included in the Bill. These relate to the ability of the CEA to exercise surveillance functions in certain circumstances and to seek data relating to certain company law offences from service providers, similar to powers conferred on other enforcement agencies. It is understood that the

CEA will receive these additional powers in the future. It is possible that the Bill will be subject to further amendment prior to its enactment which will include these provisions.

CRO Submissions

Noteworthy changes regarding CRO submissions are as follows:

- Summary Approval Procedure Declarations will be required to be delivered to the CRO in the "prescribed form". Currently a copy of the various types of these declarations can be delivered using the administrative forms SAP 203 -207 rather than the relevant forms being prescribed by legislation;
- Corporate service providers will be required to apply to the CRO in order to be registered as the electronic filing agent and / or the registered office provider for their clients; and
- The CRO will be authorised to require "documents to verify the details of the address of a company's registered office" on receipt of incorporation or change of the registered office agent.

Insolvency and Restructuring

The following changes to the provisions of the Act regarding insolvency and restructuring have been proposed:

- Details regarding receiver's fees will be required to be made available to members and creditors. There will also be an obligation to file additional information with the CRO regarding the receiver's appointment and time limits for provision of such information will be shortened in certain instances;
- The obligation on liquidators to seek the restriction of directors shall endure to the end of the liquidation process, including to the end of all appeals proceedings; and

- Technical amendments to the Rescue Process for Small and Micro Companies.

How the Maples Group Can Help

If you require assistance or further information, please reach out to your usual Maples Group contract or any of the persons listed below.

Colm Rafferty

+353 1 619 2058

colm.rafferty@maples.com

Morgan Pierse

+353 1 619 2746

morgan.pierse@maples.com

Jordan O'Brien

+353 1 619 2710

jordan.o'brien@maples.com

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