

An overview of upcoming changes to Irish company law

Insights - 16/09/2024

In an article published in May 2024, we discussed the General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 (**the Scheme**) and the proposed changes that this Scheme outlined. The Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 (**the Bill**) has now been published and is expected to be enacted by year end. The Bill is designed to enhance and strengthen governance, enforcement and regulatory provisions in the Companies Act 2014 (**the Act**). The Bill contains most of the provisions contained in the Scheme, but not all. The Bill focuses on four main company law areas: corporate governance, company law enforcement and supervision, administration, and insolvency.

Corporate governance

Two designated activity companies will be able to merge under the Act's merger by absorption provisions. Currently, at least one of the companies must be a limited company.

Clarifying drafting makes it clear that where subsidiary companies are wholly owned by the same parent company, they will be able to take part in a merger by absorption in one composite transaction rather than several.

A company will be permitted to conduct general meetings wholly virtually without the need for a physical meeting location. The option to host hybrid meetings with people attending online and physically is also available. Resolutions can be passed if the Chairperson can identify those who are able to vote and can verify the content of the voting for the online participants.

It is proposed that the mechanism to enable documents under seal to be executed in different counterparts will be reinstated. This is a welcome amendment, and will reinstate the temporary measures introduced during the COVID-19 pandemic.

Company law enforcement and supervision

The Corporate Enforcement Authority (CEA) will be given new information gathering powers including:

- changes to the powers available to the CEA for seeking additional information from auditors following an indictable offence report
- changes to ensure that the CEA has ready access to court orders relating to the restriction and disqualification of directors
- a new provision where the CEA will be notified of any court application for the purpose of seeking relief from a restriction or disqualification order and will be provided with attested copies of court orders in proceedings, to which the CEA is not a party
- a broadening of the statutory bodies that are permitted to disclose information to the CEA. The additional statutory bodies are the Registrar of Beneficial Ownership, the Charities Regulator, the Minister for Social Protection, the Pensions Authority, the Financial Services and Pensions Ombudsman, the Data Protection Commission and the Protected Disclosures Commission.

The CEA will be permitted to share otherwise confidential information with further statutory bodies including those mentioned above as well as the Competition Consumer Protection Commission.

It will be an offence for a person to instruct or interfere with an officer of the CEA in the performance of their duties.

The CEA will have the right to appear and to be heard in any court application by an undischarged bankrupt for permission to take part in the formation, promotion or management of a company where, by virtue of being an undischarged bankrupt, the person would be prohibited from doing so.

The obligation on process advisors and liquidators to report to the CEA offences by a past or present officer will be amended so that the report must be made immediately. There will be an enhanced duty on auditors to provide the CEA with information and records where a report is made.

A liquidator's obligation in respect of bringing a restriction application against a company director will extend to defending any appeal(s) against restriction by a director or former director.

In circumstances where a company fails to file an annual return, the Probation of Offenders Act 1907 will not apply, meaning that the court cannot exercise its discretion to discharge an accused director on the basis that the offence is a minor offence or is a first time offender.

New grounds will be introduced for the involuntary strike off of a company by the Registrar of

Companies on grounds of:

- failure to deliver notice of change of the situation of the company's registered office
- there not being any current company secretary of the company recorded
- failure to notify the Registrar of Beneficial Ownership of its ultimate beneficial owners

The Registrar will now have the power to call for verified proof of a company's registered office.

Administration of companies

A person will be required to apply to the Registrar to act as an electronic filing agent.

Where a company is availing of the summary approval procedure, a copy of the declarations will need to be delivered to the Registrar.

If a small company fails to deliver an annual return for a second or subsequent time in 5 years, they will not be entitled to an audit exemption.

A company may provide statistics on the gender of their board of directors on a voluntary basis.

Insolvency and restructuring

Additional obligations will be imposed on receivers to provide information to the Registrar and the time limits for provision of such information and returns will be shortened in several instances. Current provisions dealing with the remuneration of receivers will be aligned to those existing for liquidators.

Shorter timeframes for notifying the CEA of suspected breaches by directors will be imposed.

Provisions in the Scheme not included in the Bill

The following are some provisions that have not been included in the Bill. It is understood that the CEA will receive additional powers in due course. The Bill may be subject to further amendments as it continues the enactment process.

- the ability of the CEA to exercise surveillance on company directors. This includes monitoring, observing, recording directors when meeting and discussing criminal offences outside of the office
- the ability of the CEA to seek "data" relating to certain company law offences from service providers

a proposed offence for a person to send threats to a CEA member or their family

- the proposal that weekends and any public holiday be excluded from the time counted towards the minimum 48-hour notice to appoint a proxy
- an alternative method was proposed to determine a special majority that is required to approve a scheme of arrangement for a PLC

Conclusion

The Bill still has to go through the remaining legislative changes and is expected to be enacted by the end of the year. For further information, contact our Corporate team via the details provided below.

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