

# New Companies Bill 2024 Aims to Strengthen Irish Corporate Watchdog's Powers

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## The Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 (Bill) was published in July 2024 and is expected to be enacted before the end of 2024.

The Bill seeks to bolster and enhance the powers of the Corporate Enforcement Authority (CEA) as part of continued efforts to assist Ireland's corporate watchdog in carrying out its statutory functions. You can access our previous articles discussing the establishment of the CEA and details of the CEA's efforts to tackle white-collar crime in Ireland [here](#) and [here](#).

### Key Changes

The key changes proposed in the Bill include:

#### 1. Privilege

Under section 795 of the Act, where the CEA has seized legally privileged material, it must apply to the court for a determination on whether the impugned material is so privileged. The Bill extends the time-period in which the CEA must make this application from seven to 14 days, thus giving the CEA more time to assess the material. Indeed, the issue of the CEA seizing allegedly privileged material eminently arose in *CEA v The Football Association of Ireland and John Delaney* [2024] IESCDET 7. Our previous article on this case, available [here](#), discusses the Supreme Court's decision to refuse to grant John Delaney leave to appeal the Court of Appeal's upholding of the High Court's determination that over 1000 documents seized by the CEA from the FAI's offices were not subject to privilege.

#### 2. New offence relating to obstruction or intimidation of CEA staff

The Bill creates a new category 2 offence, where a person obstructs, interferes with or impedes an officer or staff member of the CEA exercising their statutory powers or duties under the Companies Act 2014 (**Act**). A person guilty of a category 2 offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both or, on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding five years or both. The offence seeks to protect the CEA's staff in carrying out their work and criminalise a broader range of intimidatory conduct.

#### 3. CEA to have greater access to documents

The Bill seeks to amend certain sections of the Act to ensure that the CEA has access to court orders relating to the restriction and disqualification of directors. The Bill provides that the CEA must be provided with the prescribed particulars of a restriction or disqualification declaration within 28 days of the

perfection of the court order. The CEA must also be notified of any court application seeking relief from a restriction or disqualification order and provided with attested copies of court orders in such proceedings to which it is not a party.

Where it emerges during a winding-up that a past or present officer/ member of the impugned company has seemingly committed an offence, the liquidator or process adviser must report the matter to the DPP and the CEA. The Bill amends the Act to ensure that the CEA receives this report immediately and as close in time to when the DPP receives it.

Likewise, where, while auditing a company, auditors encounter information from which they form the view that there are reasonable grounds for believing that a category 1 or 2 offence was committed, the auditor must notify the CEA (a person guilty of a category 1 offence shall be liable: on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both; or, on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding ten years or both). The Bill also amends the Act to enable the CEA to compel the auditors to furnish to it copies of relevant books and documents in their possession, alongside an assurance that the copies provided are exact copies: this removes the need for officers of the CEA to attend the auditors' offices to make their own copies of relevant books and documents.

#### **4. CEA to be on notice of certain court applications**

Under section 132 of the Act, an undischarged bankrupt may apply to the court for permission to act as a company director or secretary or to participate in the management of the company. The Bill proposes to require such an applicant to name the CEA as a notice party to the application and to provide the CEA with at least 14 days' notice of the application, giving the CEA an opportunity to object to such applications and to receive particulars of court decisions in respect of same.

#### **5. Sharing of information**

The Bill also proposes to expand the statutory gateway through which the CEA may share information with other competent authorities. Under the Bill, the CEA may disclose a company's books and documents, which it has obtained pursuant to its statutory powers under the Act, to an extended list of authorities, including the Registrar of Beneficial Ownership; the Registrar of Friendly Societies; the Charities Regulatory Authority; the Competition and Consumer Protection Commission; the Data Protection Commission; the Insolvency Service of Ireland; Office of the Protected Disclosures Commissioner; and the Criminal Assets Bureau.

Similarly, a proposed expansion of section 944Q of the Act will also extend the list of bodies that may provide information to the CEA where that information relates to the commission of an offence under or non-compliance with the Act or could assist a CEA's investigation into non-compliance with the Act. The additional bodies include the:

- (a) Registrar of Beneficial Ownership;
- (b) Charities Regulator;
- (c) Minister for Social Protection;
- (d) Pensions Authority;
- (e) Financial Services and Pensions Ombudsman;

- (f) Data Protection Commission; and
- (g) Protected Disclosures Commissioner.

## **Conclusion**

The Bill purports to further enhance the CEA's powers and introduce a number of administrative enhancements, thereby facilitating the carrying out of its statutory functions under the Act. It was included for priority publication in the government's Summer 2024 legislative programme. The Bill was initiated before the Dáil at the end of July 2024. It is anticipated that it will promptly progress through the legislative process when the Dáil returns in September 2024.

To discuss any of the matters raised in this article, please contact [Deirdre O'Donovan](#) or your usual William Fry LLP contact.

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