
Briefing

COVID-19:

New Changes to Company Law



INSTITUTE OF DIRECTORS
IN IRELAND

This briefing was produced by the Institute of Directors in association with McCann FitzGerald for use in Ireland. McCann FitzGerald is one of Ireland's premier law firms, providing a full range of legal services to many of Ireland's leading businesses. Clients include international organisations, major domestic concerns, emerging Irish companies and clients in the State and semi-State sectors.

As part of its response to difficulties faced by businesses during the COVID-19 crisis, the Government has enacted the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (the “Act”).

The Act will, for the most part, temporarily amend the Companies Act 2014 (the “2014 Act”) and the Industrial and Provident Societies Act 1893 (the “1893 Act”) so that, notwithstanding challenges posed by the pandemic, entities can continue to operate in compliance with relevant provisions of those Acts. The Act has been signed into law as of 1 August 2020, and therefore enacted, but not yet commenced. For ease of reading only, this briefing assumes that the Act is fully in effect.

Nature of the Proposed Amendments

The impact of the COVID-19 crisis on entities varies depending on the nature of any particular business. Nonetheless, directors, shareholders and other stakeholders must continue to be able to communicate with each other and take decisions, maintain filings and execute documentation despite restrictions on travel, physical meetings and attendance at workplaces. The Act seeks to facilitate this by modifying the law relating to companies' annual general meetings (“AGMs”), extraordinary general meetings (“EGMs”) and creditors' meetings. It also makes certain amendments to examinership and winding up.

For the most part, these provisions will apply for an interim period beginning from the commencement by Ministerial Order of section 3 of the Act, and expiring on 31 December 2020. It is proposed that this period could be extended, from time to time, at the request of the Minister for Business, Enterprise and Innovation the “**Minister**”), having consulted with the Minister for Health, if they are satisfied that such an extension is in the public interest.

Execution of Instruments

Currently, the management of some companies may be dislocated. Also, it may sometimes be that the company seal is in one location and the directors, secretary and registered persons are in another. To address this, the Act allows, during the interim period, documents under seal to be executed in counterparts and then to be regarded as a single document.

General Meetings

The Act eases some of the legal requirements in respect of convening and conducting “general meetings”. For these purposes, these include AGMs, EGMs, meetings of a particular class of shareholder and scheme of arrangement meetings.

During the interim period:

- a company that is due to hold its AGM this year may postpone it to a date up to 31 December 2020;
- a company need not hold a general meeting at a physical venue but may conduct it wholly or partly by electronic means, provided all attendees have a reasonable opportunity to participate;
- the company directors can, where they deem it necessary to do so in order to comply with public health guidance, cancel, change venue or change the means of holding the general meeting or may cancel such meeting due to exceptional and unexpected circumstances;
- where a general meeting is conducted by electronic means, the chairperson may conduct a vote to decide on a resolution by a show of hands of participating members by way of such technology where the chairperson is of the opinion that he or she can identify the members entitled to vote and verify the content of voting instructions relating to the resolution;
- notwithstanding anything in the company’s constitution, each member and proxy who participates in a general meeting by electronic means will be counted in the quorum; and
- that directors may withdraw a resolution to approve a dividend or propose an amendment to that resolution to provide for a dividend less than originally recommended, due to the actual or perceived consequences of Covid-19 on the affairs of the company.

The Act further sets out requirements, for cases in which a general meeting is to be held wholly or partly by electronic means, for matters such as the required content of notices (for example, details of the electronic platform and procedures for attendance, communication and voting), identification of attendees, the security of electronic platforms and the consequences of failure or disruption of the electronic technology use.

Winding Up

The Act permits the debt threshold for the commencement of a winding up by the court to be extended, for an interim period, from €10,000 for individual debts and €20,000 for aggregate debts to €50,000 (a single threshold).

In respect of creditors meetings, the Act sets out similar measures (as those made in respect of general meetings) for creditors' meetings which are summoned, convened or called during the interim period.

Examinership

The Act allows an examiner of a company that goes into examinership during the interim period to seek an extended period of 50 days in which to make a report to the court under the 2014 Act.

At present, an examiner has up to 70 days in which to present a report to the court and the Act allows for the extension of that period by a further 30 days on application to the court. This amendment will mean a maximum period of examinership of 150 days in exceptional circumstances (which the Act states include, but are not limited to, the nature and impact of COVID-19 on the company).

Amendments to the 1893 Act

The Act makes changes to the 1893 Act to provide more flexibility to registered societies when holding an AGM and general meetings of the society during the interim period (the same period as for companies under the Act). These changes to the 1893 Act are very similar to those made to the 2014 Act in respect of companies' general meetings.

Commencement of the Act

This Act will be welcomed by entities as it contains measures that will provide them with some flexibility in relation to operational and governance matters during this uncertain time. It is likely that the Act will be commenced with reasonable speed so the provisions can be availed of at an early date.

Civil Law and Criminal Law (Miscellaneous Provisions) Bill 2020

The recently published Civil Law and Criminal Law (Miscellaneous Provisions) Bill 2020 provides for remote meetings of State bodies where some or all of the members of that body are not in the one place. This proposed legislation also provides for remote meetings of unincorporated bodies (such as clubs and charitable organisations) for an interim period of three months with a power to extend this, from time to time, at the request of the Minister, having consulted with the Minister for Health, if they are satisfied that such an extension is in the public interest. This Bill is expected to be signed into law, and therefore enacted, during the first week of August 2020.

Further information is available from



Garreth O'Brien
Partner
+353 1 607 1489
garreth.obrien
@mccannfitzgerald.com



Gill Lohan
Partner
+353 1 607 1760
gill.lohan
@mccannfitzgerald.com



Lisa Smyh
Partner
+353 1 607 1730
lisa.smyth
@mccannfitzgerald.com

Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.



INSTITUTE OF DIRECTORS
IN IRELAND

© McCann FitzGerald and Institute of Directors in Ireland 2020. All rights reserved. August 2020

Institute of Directors in Ireland, Europa House, Harcourt Street, Dublin 2
01 411 0010 | info@iodireland.ie | www.iodireland.ie

This document is for general guidance only and should not be regarded as a substitute for professional advice.
Such advice should always be taken before acting on any of the matters discussed.