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Briefing: Company Law: Changes are Coming

The Government Legislation Programme for Spring 2024 includes a Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill that would be designed to enhance and strengthen enforcement and regulatory provisions in the Companies Act 2014 (the "2014 Act"). The General Scheme of the Bill, containing 86 heads and running to 138 pages, has now been published.

Amendments proposed by the General Scheme relate largely to four distinct areas of company law: corporate governance, company law enforcement and supervision, administration, and insolvency.

Corporate Governance

1. The process whereby two private Irish companies can merge so the assets and liabilities (and corporate identity) of one are transferred by operation of law to the other, before the former is dissolved, will be clarified to provide that one of the companies must be an LTD or a DAC (currently the 2014 Act specifies that one must be an LTD).
2. In the case of private companies, a group of subsidiary companies that is wholly-owned by the same parent company will be able to take part in a merger by absorption in one transaction rather than (at present) in several transactions.
3. A PLC can at present investigate the ownership of its shares over a period up to the three preceding years, by requiring information from any person that the company knows is, or has reasonable cause to believe to be, or to have been, interested in the shares of the company. It is proposed that the person will be obliged to reply to such an enquiry within five days (rather than within a reasonable period, as currently).
4. There will be an alternative method to determine a special majority that is required in order to approve a scheme of arrangement relating to a PLC. This would deal with circumstances in which securities are held in a securities settlement system operated by a Central Securities Depository (so there is only one (legal) member in

respect of all CSD securities). Currently under the 2014 Act the required majority is determined by a numerical majority of members.

5. The 2014 Act provides for at least a 72-hour period before a general meeting of a PLC that has issued securities registered in the name of a CSD to permit the instructions of investors at the meeting to be provided. The change is proposed in order to close off the possibility that, if the meeting is adjourned, new proxy forms can be submitted (under section 182 of the 2014 Act proxy forms can be delivered up to 48 hours before a meeting).

Company Law Enforcement & Supervision

1. The Corporate Enforcement Authority ("CEA") will be given new information-gathering powers. These will include:
 - a) amendment of the powers available to the CEA to seek additional information from auditors following receipt of an indictable offence report,
 - b) amendments for the purpose of ensuring that the CEA has ready access to court orders relating to the restriction and disqualification of directors,
 - c) a provision whereby 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, and
 - d) proposals to expand the cohort of statutory bodies that are permitted to disclose information to the CEA under specified circumstances. The additional statutory bodies listed 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.
2. The CEA will be permitted to share otherwise confidential information with additional statutory bodies including those just mentioned and the Competition and Consumer Protection Commission.
3. In line with Government policy for other similar enforcement bodies in the State, the CEA will be able to exercise surveillance functions in certain circumstances. Conferral of these powers will permit authorised CEA officers to monitor, observe, listen to or make recordings of persons or of their movements, activities, or communications in the context of company directors and company staff, when meeting or when discussing criminal activities/conspiracies at locations separate to company offices. The surveillance powers will be limited to apply only to Category 1 and Category 2 offences under the 2014 Act (ie the most serious offences under the 2014 Act).

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4. Certain CEA officers will be able to seek "data" relating to certain company law offences similar to powers conferred on other enforcement agencies for the purposes of their functions, like the Competition and Consumer Protection Commission.
5. It will be an offence for a person to delay, obstruct, impede, interfere with or resist CEA staff (including seconded members of An Garda Síochána) in the performance of their functions under the 2014 Act.
6. It will be an offence for a person to utter or send threats to, or in any way intimidate or menace, a CEA officer (or any member of the family or civil partner of a CEA officer).
7. Amendments are proposed to the CEA's current obligations to apply to the High Court where material seized under an authorised search warrant) is believed to include legally privileged material. The proposed amendments include giving the CEA an expanded timeframe (14 days as opposed to the current seven days) in which to make such an application, and that such an application will be made on an *ex parte* basis (as opposed to on notice).
8. 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 promotion, formation, or management of a company where, by virtue of being an undischarged bankrupt, the person otherwise would be prohibited from doing so.
9. The obligation on certain process advisers and liquidators to report to the CEA offences by a past or present officer or member of the company will be amended so that the report must be made forthwith. There will be an enhanced duty on auditors to provide the CEA with information and records where a report is made.
10. A liquidator's obligations in respect of bringing a restriction application will extend to defending any appeal(s) against restriction by a director or former director.
11. The Probation of Offenders Act 1907 will not apply to an offence where a company fails to file an annual return in accordance with the 2014 Act.
12. New grounds will be introduced for the involuntary strike-off of a company by the Registrar of Companies (the "Registrar"), namely on the grounds of:
 - a) failure to deliver notice of change of the situation of the company's registered office,
 - b) there not being any current company secretary of the company recorded in the Companies Registration Office, and
 - c) failure to notify the Registrar of Beneficial Ownership of certain information in relation to the beneficial owner of a company

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

13. There will be a new power of the Registrar to call for verified proof of a company's registered office in certain circumstances.

Administration

1. A person must apply to the Registrar in the prescribed form for approval to act as an electronic filing agent and that person must be approved by the Registrar to act as an agent. Similar provisions will be introduced to cover those providing registered office facility to companies.
2. Re-instatement on a permanent basis of a mechanism (first introduced under Covid-19-related legislation) to enable documents under seal to be executed in different counterparts, with the aggregate of the documents to be considered as one instrument.
3. legislating on a permanent basis for the ability of a company to conduct general meetings wholly virtually, with all attendees participating online without requirement for a physical meeting location, or by a hybrid meeting with participants participating both virtually and in-person.
4. Weekends, and any public holidays are to be excluded from the time counted towards the minimum 48-hour notice that is required to appoint a proxy.
5. A copy of any of various declarations that must be made where a company is using the summary approval procedure under the 2014 Act will have to be delivered to the Registrar in the prescribed form. Currently, a company may submit a copy of many types of such declarations to the Registrar using the administrative forms issued by the Registrar rather than relevant forms being prescribed by legislation.
6. A company that qualifies as a small company will not be entitled to an audit exemption where it fails to deliver, for a second or subsequent time within a period of five consecutive years, an annual return. Currently the exemption is lost if any annual return is not filed on time.
7. A company may provide information on the gender of its board of directors on a voluntary basis. The information requested will be prescribed by the Minister in the company's B1 Form annual return and is for statistical purposes only (including to feed into global assessments for the purposes of the gender-balance on boards legislation).

Insolvency and Restructuring

1. Details of receivers' fees will have to be made available to members and creditors. 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

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receivers will be aligned to those existing for liquidators.

2. Certain corrections and technical clarifications will be made to the rescue process for small companies (known as SCARP).
3. Certain returns made by liquidators to the Registrar are currently made using administrative forms. The relevant forms will instead be prescribed in legislation.
4. Shorter timescales will be imposed on certain persons to notify the CEA of suspected breaches of the 2014 Act by directors or past directors (See *Company Law Enforcement & Supervision*, above).

Next Steps

The General Scheme will now be converted into a formal Bill for the Houses of the Oireachtas and the detail of some proposals may change in that process (or later in the parliamentary debates). As the General Scheme was drafted on a priority basis it is expected that the Bill will be published in coming months and then will proceed quickly through the Houses of the Oireachtas with enactment later this year.

Separately, Ireland must implement the Corporate Sustainability Reporting Directive by 6 July 2024 so legislation to give effect to that is also expected shortly. The requirements of Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures must also be implemented by year-end 2024.

The Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Bill 2023 is nearing enactment and so 2024 is likely to involve numerous and significant changes to the 2014 Act.

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