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Briefing: IoD Company Law Review Webinar 24 January 2024: Material Company Law Developments in 2023 and outlook for 2024

Company Law and Corporate Governance

Acts of the Oireachtas

Screening of Third Country Transactions Act 2023

Enacted on 31 October 2023, this Act enables the Minister for Enterprise, Trade and Employment to review certain transactions as to the risks they pose to security and public order, where a non-EEA or non-Swiss undertaking (being a third country undertaking or a person connected with such an undertaking), acquires control of, or a prescribed shares in, an Irish asset or undertaking in certain sectors. Third country undertakings include those established in the US or UK.

Relevant transactions cannot be completed until a screening decision has been issued by the Minister.

Although the Act is pending commencement (anticipated to be Q2 2024), the Minister's call-in power for transactions completed up to the 15 months prior to the regime coming into force means that the Act needs to be considered for current transactions.

For more information, please see briefing [here](#).

Statutory Instruments

European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023¹

From 13 June 2023, persons seeking to inspect information on the central register of beneficial ownership of companies must first demonstrate that they have a "legitimate interest" in anti-money laundering and countering terrorist financing to justify that access. "Legitimate interest" is demonstrated to the Registrar through the making of a submission and, if required by the Registrar, the supplying of information or documents including those relating to the requester's previous activities, if any, in AML.

1. SI 308 of 2023.

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This development follows a significant November 2022 judgment of the Court of Justice of the European Union², which had the consequence that the public access rights under Regulation 25 of European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019³ were incompatible with EU law.

For more information, please see briefing [here](#).

European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023⁴; European Union (Cross-Border Conversions, Mergers and Divisions) (Amendment) Regulations 2023⁵

Directive (EU) 2019/2121 (commonly known as the "Mobility Directive") was transposed into Irish law on 24 May 2023 by the European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (the "**Regulations**"). The Regulations provide new procedural rules for cross-border mergers and the new concepts of cross-border conversions and divisions into Irish law. European Union (Cross-Border Conversions, Mergers and Divisions) (Amendment) Regulations 2023 made minor amendments to the Regulations and substituted various category 2 offences for a new category of offence with penalties prescribed therein.

The Regulations enable an Irish limited liability company (whether public or private) to carry out a cross-border conversion process pursuant to which, without being dissolved, wound-up or going into liquidation, it will be able to re-domicile or migrate to another EU Member State, thus changing its nationality and place of registration, without any change to, or interruption in, its legal personality. Certain companies in EU member states will likewise be able to migrate to Ireland. Although cross-border conversions are new to Ireland, the regime shares a common legal framework with that of cross-border mergers (available since 2008) and many features and requirements of the new regime are recognisable and familiar. It is expected that the Regulations will extend to EEA member states.

The Regulations also recast and update the existing cross-border mergers and divisions regimes, including by introducing enhanced creditor rights.

For further information, please see briefing [here](#).

Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2023⁶; Industrial and Provident Societies Act 1893 (Section 14A(1)) (Covid-19) Order 2023⁷

The interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 relating to the holding of virtual meetings, including AGMs, has been further extended to 31 December 2024.

The temporary increase in the amount at which a statutory demand can be issued to €50,000 was not further extended and lapsed on 31 December 2023, reverting to €10,000 for individual debts and €20,000 for aggregate debts.

2. The Sovim decision (C-37/20 and C-601/20).
3. SI 110 of 2019.
4. SI 233 of 2023.
5. SI 469 of 2023.
6. SI 646 of 2023.
7. SI 647 of 2023.

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EU Developments

Corporate Sustainability Reporting Directive (the "CSRD")⁸

The CSRD entered into force on 5 January 2023 and is required to be transposed into Irish law by 6 July 2024. The CSRD will amend the Non-Financial Reporting Directive⁹ to broaden the scope of the current non-financial disclosures regime and introduce more detailed reporting requirements in respect of sustainability issues such as environmental rights, social rights, human rights and governance factors. The CSRD will oblige in-scope companies to disclose information on their societal and environmental impact connected with their own operations and with their value chain, which will have to be certified by an independent auditor or certifier and included in the company management reports.

The information reported will have to conform to technical standards, known as the European Sustainability Reporting Standards ("ESRS") as adopted by the European Commission in July 2023, to increase consistency and comparability.

For more information on the CSRD, please see briefing [here](#).

Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures

This Directive aims to increase the representation of women among directors of listed companies and improve gender balance in their decision-making process. The Directive entered into force on 27 December 2022 and has a transposition deadline of 28 December 2024. The Directive applies to any company with a registered office in the EU and the shares of which are admitted to trading on an EU-regulated market.

Member States must subject listed companies either to the objective of having boards on which members of the under-represented sex hold at least 40% of non-executive director positions, or 33% of all director positions (including both executive and non-executive), by 30 June 2026. Listed companies which do not achieve these objectives will have to adjust their selection process for appointment or election to director positions. Clear, neutrally formulated and unambiguous criteria will have to be applied in a non-discriminatory manner throughout the entire selection process. There will be an element of positive discrimination: when choosing between candidates that are equally qualified in terms of suitability, competence and professional performance, priority will have to be given to the candidate of the under-represented sex unless there are reasons of greater legal weight such as the pursuit of other diversity policies.

Under the Directive, upon the request of a candidate during selection for appointment as a director, listed companies will have to inform the candidate of the qualification criteria that are being applied, the objective comparative assessment of the candidates and, where relevant, specific considerations that tip the balance in favour of a candidate who is not of the under-represented sex.

8. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.
9. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

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Other Developments

Verification of directors' identities through PPSN or VIN

With effect from 11 June 2023, the Companies Registration Office ("**CRO**") have required that Personal Public Service Numbers ("**PPSN**") or an Identified Person Numbers ("**IPN**") of directors of Irish companies be provided when a company is being incorporated, when an annual return is being filed, on the appointment of a director, or a change in directors' details.

If an RBO Transaction Number was previously issued to a director for the purpose of filings with the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the "**RBO**") where a director did not hold a PPSN, this RBO Transaction Number will automatically be reclassified as an IPN by the CRO and it will not be necessary to obtain a separate number in such cases.

If a director does not presently hold either a PPSN or RBO Transaction Number, it is necessary for such director to apply to the CRO to have an IPN issued to them, by means of a Form VIF (Declaration as to Verification of Identity).

CRO have introduced a process (VIFa) whereby a company can obtain an IPN, which is valid for 30 days, for a past director where that director does not provide one but such a number is required to file an annual return.

For more information, please see briefing [here](#).

Anticipated Developments

Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Bill 2023

The company law amendments in this Bill will improve the availability of information to employees and creditors in corporate insolvencies.

This Bill provides for a new obligation for directors to notify employees and employees' representatives of the winding up petition at the time it is presented to court. The proposed amendments provide that the court direct the appointed provisional liquidator to inform employees and employees' representatives of their appointment within seven days of being served the Statement of Affairs, explain the process and invite them to provide information they have and which they deem would provide a complete overview of the company's affairs.

Further, where s599 Companies Act 2014 regarding contributions by a related company to the debts of a company being wound up is invoked, the court is required to consider the extent to which the related company contributed to the circumstances leading to the winding up as one of the factors among others as it considers fit in exercising its discretion to make a contribution order. The Bill also provides for amendments to sections relating to unfair preference and reckless trading, and a specific exclusion to ensure that payments made in the ordinary course of business are not captured by the power of the court to order the return of assets which have been improperly transferred. Notably, the proposed amendment to s604 Companies Act 2014 would allow the court to examine a transaction outside the time periods of 6 months prior to winding-up with

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unconnected parties and 2 years with connected parties, provided that it is just and equitable to do so.

Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2023

This Bill proposes to enhance and strengthen enforcement and regulatory provisions in the Companies Act 2014. Proposed amendments largely relate to four distinct areas of company law, namely, corporate governance, company law enforcement and supervision, administration, and corporate insolvency.

A consultation on the proposed Bill launched by the Department of Enterprise, Trade and Employment ended on 9 June 2023 and the consultation document is available [here](#). This Bill is included in the Spring 2024 Government Legislation Programme where it is indicated that the Heads are in preparation.

Proposal for a Corporate Sustainability Due Diligence Directive (the "CS3D")

This Commission proposal aims to foster sustainable and responsible corporate behaviour through due diligence obligations. On 14 December 2023, the Council of the European Union and the European Parliament reached a provisional agreement on the CS3D¹⁰. Once adopted, the CS3D will require transposition by Member States within two years (i.e. 2026).

The proposed Directive would impose a due diligence duty on large companies to identify – and, where necessary, prevent, end or mitigate – adverse impacts on human rights and on the environment, with respect to of their own activities, those of their subsidiaries and those carried out by their business partners in the value chain. It also requires certain larger in-scope companies to adopt climate transition plans to ensure that their business model and strategy are compatible with the Paris Agreement's objectives in limiting global warming.

The proposal would require directors to set up and oversee the implementation of due diligence systems and to integrate due diligence into corporate strategy. Directors will also be required take into account the human rights, climate change and environmental consequences of their decisions while fulfilling their duty to act in what each director considers to be the interests of the company. The Directive would impose penalties and civil liabilities for violating the obligations that it would create.

This proposed Directive will first apply to large EU limited liability companies and to non-EU companies that meet certain employee headcount and turnover thresholds. Two year later, the rules will apply to companies in high-impact sectors such as textiles, agriculture and mineral extraction which will be subject to lower employee and turnover thresholds.

For more information on the CS3D, please see briefing [here](#).

10. The agreed text has not yet been published.

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