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Briefing
Companies (Corporate Enforcement Authority) Act 2021: Welcome Updating of Companies Legislation

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The Companies (Corporate Enforcement Authority) Act 2021 (the "**Act**") was signed into law on 22 December 2021 and, although not yet commenced, it is expected that a commencement order or orders will be made in early 2022. The primary purpose of the Act is to transform the Office of the Director of Corporate Enforcement into a statutory and independent agency (to be known as the Corporate Enforcement Authority or "**CEA**") with additional resources to investigate and prosecute so-called white-collar crime. However, the Act also makes a range of changes to companies legislation generally, on which this briefing focusses.

The Act was preceded by a December 2018 General Scheme (the "**Scheme**"), the progress of which was interrupted by the 2020 General Election. The Act is modelled closely on the Scheme with some modifications although some proposals in the Scheme were omitted. As mentioned, apart from the creation of the CEA, the Act makes a number of welcome changes to the Companies Act 2014 (the "**2014 Act**"), designed to clarify certain matters and remove anomalies in the 2014 Act. In most part, the changes follow recommendations of the Company Law Review Group (the "**CLRG**"). Over a number of years the CLRG and others (such as the Business Law Committee of the Law Society of Ireland) have made submissions to the Department of Trade and Enterprise to correct anomalies in the Act. In some instances the change proposed is merely the re-insertion of text that was unintentionally not carried over from the Companies Act 1963 (as amended), the legislation the 2014 Act replaced through consolidation and reform. However, not every CLRG recommendation was reflected in the Act so it is expected that further legislation will be needed to give effect to more of the submissions made to date.

The amendments to the 2014 Act made by the Act are technical in nature but nonetheless are important. They include:

- clarification as to the uses to which a company's share premium account may be put;
- clarification that a commonly used structure in group reorganisations, in which a company transfers its undertaking to another company in consideration for a share issue to the transferring company's shareholders, is lawful where the transferring company has distributable reserves that are at least equal to the value of the undertaking transferred;
- where a company acquires its own shares through a merger or division, those shares can be treated as treasury shares and may be cancelled or re-issued;
- a reduction of capital effected in accordance with the Act is not to be a distribution under the Act and does not require the rules on distributions to be followed (in addition to the processes to effect the capital reduction);
- the acquisition by an unlimited company of its own shares will not require the use of distributable reserves;
- a company secretary, who is a natural person, must be at least 18 years old; and
- a director will be required to provide the Companies Registration Office (the "**CRO**") with the director's PPSN (or equivalent ID) when presenting certain documents. This is intended to ensure that there is no confusion as to the identify of a director where common names are frequently encountered by the CRO.

As mentioned, many additional submissions have been made to the Department to remove what are considered to be anomalies in the 2014 Act and it is hoped that many more of these as-yet-unimplemented changes will be addressed in future legislative measures. To take one example, a domestic merger of companies is possible under the 2014 Act (and is well-used in practice), provided one company is a company limited by shares so that (for example) two designated activity companies cannot merge under the process.

When the 2014 Act was being developed in 2012, the then Minister for Jobs, Enterprise and Innovation emphasised that the (then) Bill would "*make it easier for companies to know and understand their legal obligations … implement a series of major reforms to reduce red tape … make it easier and cheaper to run a company in Ireland and … make a real difference to our international competitiveness*." Broadly speaking the 2014 Act achieved those objectives and the changes discussed above, when commenced, will further those worthy and helpful aims, with the hope that future legislative measures will address the remaining anomalies.

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