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Briefing: Company Law: Changes are Enacted

The [Companies \(Corporate Governance, Enforcement and Regulatory Provisions\) Act 2024](#) has been signed into law and many parts were commenced on 3 December 2024¹. The Act is designed to enhance and strengthen governance, enforcement and regulatory provisions in the Companies Act 2014 (the "**2014 Act**").

Amendments made by the Act relate largely to four distinct areas of company law: corporate governance, company law enforcement and supervision, administration, and insolvency. The key changes introduced by this Act are set out below.

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, has been clarified to provide that one of the companies must be an LTD or a DAC (previously the 2014 Act specified 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 is able to take part in a merger by absorption in one transaction rather than (as previously) by way of several transactions.
3. A PLC can investigate the ownership of its shares 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 now provided that the person will be obliged to reply to such an enquiry within five days (rather than within a reasonable period, as was previously the case).

1. This Briefing assumes all provisions are in force. Some of the important provisions commenced on 3 December are those dealing with execution of instruments, virtual and hybrid general meetings, changes to domestic mergers, new strike-off grounds for companies, and disapplying the Probation Act for a failure to file an annual return. The welcome changes to the loss of a small company's audit exemption for the non-filing of annual returns have not yet been commenced.

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4. A company has the ability to conduct wholly virtual general meetings, with all attendees participating online without a physical meeting location, or otherwise by a hybrid meeting with participants participating both virtually and in-person. All such online participants are now to be deemed present at such meetings. A Chairperson also has the ability to adjourn the meeting if the failure of the electronic communication platform interferes with proceedings of the meeting. Resolutions can only be voted upon if the Chairperson can identify those entitled to vote and can verify the content of the voting instructions given by online participants.

Company Law Enforcement & Supervision

1. The Corporate Enforcement Authority ("CEA") has been given new information-gathering powers. These include:
 - a. powers to seek additional information from auditors following receipt of an indictable offence report,
 - b. ready access to court orders relating to the restriction and disqualification of directors,
 - c. a mandatory requirement that the CEA must be notified of any court application for the purpose of seeking relief from a restriction or disqualification order and to be provided with attested copies of court orders in proceedings to which the CEA is not a party, and
 - d. expansion of 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 is now permitted to share otherwise confidential information with additional statutory bodies including those listed above as well as the Competition and Consumer Protection Commission.
3. It is an offence for a person to obstruct or interfere with an officer of the CEA in the performance of their functions under the 2014 Act.
4. Amendments have been made to the CEA's obligations to apply to the High Court where material seized under an authorised search warrant) is believed to include legally privileged material. The amendments gave the CEA an expanded timeframe (14 days, as opposed to the 7 days previously provided) in which to make such an application, and that such an application can be made on an ex parte basis (as opposed to being made on notice).
5. The CEA has 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

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management of a company where, by virtue of being an undischarged bankrupt, the person otherwise would be prohibited from doing so.

6. 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 are amended so that the report must be made forthwith. There is an enhanced duty on auditors to provide the CEA with information and records where a report is made.
7. A liquidator's obligations in respect of bringing a restriction application have been extended to defending any appeal(s) against restriction by a director or former director.
8. The Probation of Offenders Act 1907 no longer applies to an offence where a company fails to file an annual return in accordance with the 2014 Act.
9. New grounds have been 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
 - d. These new grounds will not give rise to consequential disqualification of directors.
10. There is 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 have been introduced to cover those providing registered office facility to companies. A trust or company service provider, as defined in Anti Money Laundering legislation, will now be required to produce their authorisation under that legislation to the Registrar.
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. A copy of any of various declarations that must be made where a company is using

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the Summary Approval Procedure under the 2014 Act will have to be delivered to the Registrar in the prescribed form.

4. A company that qualifies as a small company is no longer 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. Previously the exemption was lost if any annual return was not filed on time.
5. A company may now 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 are imposed on receivers to provide information to the Registrar and the time limits for provision of such information and returns are shortened in several instances. Previous provisions dealing with the remuneration of receivers will now be aligned to those existing for liquidators.
2. Certain corrections and technical clarifications have been made to the rescue process for small companies (known as SCARP).
3. Certain returns made by liquidators to the Registrar will now be prescribed in legislation.
4. Shorter timescales are 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).

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