An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Regulatory Impact Analysis

Companies (Corporate Governance, Enforcement and Regulatory Provisions Bill) 2024

March 2024

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Department: Enterprise, Trade and Employment	**Title of legislation:** Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024
Stage: Seeking Government approval to proceed to draft a General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions Bill) 2024 and publish the General Scheme.	**Date:** March 2024
Related Publications in chronological order: 1. Public Consultation on proposals to enhance the Companies Act 2014. Public consultation on proposals to enhance the Companies Act 2014 – DETE (enterprise.gov.ie) 2. CLRG May 2022 Report – On certain company law issues under the Companies Act 2014 relating to corporate governance. clrg-report-on-corporate-governance-issues-may-2022-final-report.pdf 3. CLRG Report on Company Law Issues Arising Under Directive (EU) 2017/828 of 17 May 2017 (SRD II), Central Securities Depositories Regulation (EU) 909/2014 (CSDR) and the Companies Act (December 2021) 2021-12-21-clrg-report-on-public-company-issues.pdf 4. CLRG Report on the Regulation of Receivers (2019) report-of-the-company-law-review-group-on-the-regulation-of-receivers.pdf (clrg.org) 5. Report of the Joint Oireachtas Committee on Enterprise, Trade and Employment Pre-legislative scrutiny of the General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018 2021-04-20_report-on-pre-legislative-scrutiny-of-the-companies-corporate-enforcement-authority-bill-2018_en.pdf (oireachtas.ie) 6. Measures to Enhance Ireland's Corporate, Economic and Regulatory Framework – Ireland combatting "white collar crime", Government of Ireland (November 2017) gov - Review Group Report on structures and strategies to prevent, investigate and penalise economic crime and corruption (www.gov.ie) 7. A review of structures and strategies to prevent, investigate and penalise economic crime and corruption Implementation Plan gov - Hamilton Review Group Implementation Plan (www.gov.ie)	
Available to view or download at: www.enterprise.gov.ie/en/legislation/	

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Policy objectives being pursued.

The Department's policy is to regularly review the Companies Act 2014 taking into consideration developments in relevant case law, advancements in the application of technology to company transactions, the recommendations of the expert Company Law Review Group (CLRG), and engagement and consultation with stakeholders including the bodies established under the Act.

The policy objective of this Bill is to enhance and amend the legislative framework provided by the Companies Act 2014 in the areas of governance, administration, insolvency, enforcement, and supervision.

It will do this by, among other things, making permanent the provisions giving companies and industrial and provident societies the option to hold fully virtual general meetings; amending the audit exemption regime for small and micro companies to remove automatic loss of exemption and by facilitating improved operational efficiencies and enhancing the powers of the CRO, IAASA and the CEA It also addresses recommendations of the CLRG in respect of enhanced transparency and accountability in receiverships, corporate governance, and administration around mergers in certain circumstances and certain technical and procedural matters relating to public limited companies. It also includes various technical and procedural amendments to improve the operation of the 'Small Companies Administrative Rescue Process' (SCARP).

Policy options considered:

1. Do nothing.
2. Amend the existing legislation in certain aspects.

Preferred option: Option 2. Amend the existing legislation in certain aspects.

OPTIONS			
	Costs	*Benefits*	*Impacts*
Option 1 **Do Nothing**	No additional direct costs.	No State intervention required.	The law remains static despite advancements and best practice recommendations which would enhance company law to provide for a well-regulated enterprise economy. Regression whereby after 31 December 2024, companies and industrial and provident societies will no longer be permitted to hold virtual general meetings. Small and micro companies will continue to lose the exemption from audit for a first failure to file on time. Failure to meet the commitment in the Programme for Government.
Option 2 **Amend the existing legislation in certain aspects and introduce new legislation.**	No additional direct costs for businesses associated with this option.	Seeks to further enhance the legislative protections afforded to businesses and shareholders. This option will enable companies and industrial and provident societies to hold virtual general meetings when the current interim legislation expires on 31 December 2024. Provides a proportionate approach to dealing with late filing by small / micro companies whilst not undermining the existing robust culture of compliance with filing obligations. The Bill will also satisfy commitments in the Programme for Government on the enhanced regulation of receivers. Requested amendments to company law will seek to strengthen the State's regulatory capacity in the interest of continuing to support a well-regulated enterprise economy.	The Bill, once enacted, should see enterprises avail of a more modern and flexible way of doing business – holding fully virtual general meetings. It will assist small and micro companies by removing the automatic loss of the audit exemption in respect of their first instance of late filing with the CRO and replace it with a graduated regime – saving time and money for thousands of Irish companies. The amendments proposed regarding enhanced regulation of receivers will increase accountability and transparency of fees and asset sales and codify established case law principles for elements for the court to consider when fixing the renumeration of a receiver. Overall, it should see the enhancement of the offices and agencies established under the Act to conduct their statutory functions in an efficient and effective manner to implement policy in the public interest.

2. Description of Policy Context and Objectives

2.1. Context

The legislative framework provided for by the Companies Act 2014 (the Act) is regularly reviewed to ensure that the original objectives remain valid and are being achieved, and to consider developments arising from stakeholder engagement, developments in case law and the work of the Company Law Review Group (CLRG). The department is also committed to ensuring that the authorities established under the Act have the appropriate legislative tools to effectively undertake their statutory functions.

The department has discerned that the scope for reform currently broadly relates to four distinct areas of company law.

1. Corporate Governance

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 facilitated the holding of virtual general meetings during the period of the pandemic to enable companies and industrial and provident societies to fulfil their obligations in relation to meetings. These provisions were to endure for an interim period which, following extensions, is due to lapse on 31 December 2024. Informed by feedback from stakeholders, the Bill will provide this flexibility for companies and industrial and provident societies giving them the option, on a permanent basis, to hold fully virtual of hybrid general meetings.

In addition, some procedural and legislative changes to the Act that arise primarily from practical problems that have arisen in respect of transactional matters such as mergers are proposed.

2. Company Law Enforcement and Supervision

The Bill contains amendments to the Act enhancing the powers of the Corporate Enforcement Authority (CEA), the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Companies Registration Office (CRO), streamlining procedures, facilitating administrative efficiencies, and strengthening reporting requirements.

3. Company Law Administration

It is proposed to enhance certain administrative processes carried out by the Registrar of Companies to ensure the register is suitably equipped, as well as modernising certain administrative requirements for companies.

4. Corporate Insolvency including the enhanced Regulation of Receivers

Amendments are proposed to various insolvency related processes across the Act. The department intends to deliver on Programme for Government commitments in relation to enhanced regulation of receivers. In particular the amendments proposed will increase accountability and transparency of fees and asset sales and codify established case law principles for elements for the court to consider when fixing the renumeration of a receiver. It also provides for the inclusion of amendments to SCARP including technical refinements to improve the operation of the process.

Agencies of the Department

IAASA

The Irish Auditing and Accounting Supervisory Authority (IAASA) was established under Part 2 of the Companies (Auditing and Accounting) Act 2003. IAASA is the competent authority with ultimate responsibility for the oversight of statutory auditors in Ireland, including oversight of the three Recognised Accountancy Bodies (‘RABs’). The Authority is responsible for the supervision of the accounting profession in Ireland through oversight of the regulatory procedures of six Prescribed Accountancy Bodies (‘PABs’).The Authority’s functions which derive from the Companies Act 2014 include, to:

- grant recognition to bodies of accountants;
- adopt standards on auditing, professional ethics, and internal quality control;
- inspect audits of Public Interest Entities (PIEs);
- conduct investigations, including into issues arising from inspection of audits of PIEs;
- conduct enquiries into prescribed and recognised accountancy bodies compliance with approved procedures or provisions of Part 27 of the Companies Act;
- impose sanctions as necessary;
- provide specialist advice to the Minister on auditing and accounting matters.

Corporate Enforcement Authority

The Corporate Enforcement Authority (CEA) is an independent statutory body established on 7th July 2022 under the Act. The CEA's statutory mandate derives principally from the Act in accordance with which it performs a range of functions including:

- promoting compliance with company law,
- investigating instances of suspected breaches of company law,
- taking appropriate enforcement action in response to breaches of company law,
- supervising the activities of liquidators of insolvent companies,
- operating a regime of restriction and disqualification undertakings in respect of directors of insolvent companies.

It is also conferred with statutory functions in respect of certain investment vehicles under the Irish Collective Asset-management Vehicles Act 2015. In addition, the CEA is the competent authority for the purpose of imposing sanctions on company directors under the Companies (Statutory Audits) Act 2018.

Offices of the Department

Companies Registration Office

The Companies Registration Office (CRO) operates under the aegis of the Department of Enterprise, Trade and Employment. It is the central repository of public statutory information on Irish companies and business names.

Statutory Advisory Expert Body

Company Law Review Group

The Company Law Review Group (CLRG) is a statutory advisory expert body charged with advising the Minister for Enterprise, Trade and Employment on the review and development of company law in Ireland. It was accorded statutory advisory status by the Company Law Enforcement Act 2001, which continues under section 958 of the Companies Act 2014.

2.2. Policy Objectives

1. Supporting a productive and competitive economy

Enhancing our business regulatory environment and Ireland's attractiveness as a place to do business is one of five strategic goals of the Department of Enterprise, Trade and Employment. This is done by ensuring that corporate and regulatory policy and legislation is responsive and reflects international best practice to facilitate entrepreneurship, while also protecting employees, members, creditors, and consumers with appropriate safeguards. It provides business certainty, enables entrepreneurs to take appropriate risks, supports the growth of enterprises, and assists in job creation. The Companies Act 2014 facilitates entrepreneurial activity primarily through the provision of separate corporate legal personality and limited liability, thereby limiting personal exposure to financial risk.

2. Maintaining a world-class company law code

Company law is dynamic and having established a world-class company law code in the Companies Act 2014 it is necessary to regularly review it in line with national and international developments. The Bill will provide, on a permanent basis, the option for companies, and industrial and provident societies, to hold general meetings either partially or wholly by use of electronic communications, (that is, with the option to hold hybrid or fully virtual meetings), as well as maintaining the option to hold fully physical meetings as already provided for the in the Act. Such an approach is consistent with ensuring Ireland's regulatory framework provides flexibility and is fit for modern business operating in an increasingly digital and virtual environment. Ensuring accountability, transparency and affording adequate opportunity for full engagement is essential at all meetings, whether in virtual, physical or hybrid form. Providing for fully virtual creditors meetings requires further policy consideration and is not provided for in this Bill.

Virtual meetings were introduced on an interim basis by the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 in direct response to the pandemic to allow companies to continue to meet their obligations under the Companies Act 2014. The interim period has been extended to 31 December 2024 and will not be extended further.

3. Ensuring that the statutory authorities established under the Act have appropriate legislative tools to effectively undertake their statutory functions.

Established under the Companies Act 2014, the Corporate Enforcement Authority (CEA), the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Companies Registration Office (CRO) have important roles in respect of company oversight, supervision, regulation, protection, and enforcement. The Department is committed to ensuring that these bodies have appropriate legislative tools to effectively undertake their statutory functions. This is crucial as these bodies effectively underpin and bolster the framework within which businesses operate and can rely upon to ensure a level playing field for all.

The registration and governance requirements provide transparency for stakeholders including investors and employees. A well-stocked enforcement toolbox is vital to ensuring that all statutory authorities, including the CEA can meet the challenges it faces in its investigation and prosecution of alleged breaches of company law. The Bill will bring forward proposals that will assist the CEA in carrying out its statutory functions on foot of recommendations in the Report of the Hamilton Review Group which was published in December 2020.

4. Enhance Administrative Processes

The Department proposes amending the Companies Act 2014 to enhance certain of the administrative processes carried out by the Registrar of Companies to ensure that the Register provides transparency and is accurate, up to date, and fit for purpose. Amendments are proposed aimed at modernising certain administrative requirements for companies as recommended by the CLRG in *its Report on Company Law Issues Arising Under Directive (EU) 2017/828 of 17 May 2017 (SRD II), Central Securities Depositories Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014*.

3. Identification and analysis of policy options

Option 1: Do nothing.

COSTS

No additional direct costs.

BENEFITS

No State intervention required.

IMPACT

While the State already has robust legislation afforded to businesses under company law the status quo does not enhance the law. Accordingly, this option is not considered viable.

Option 2: Amend the existing legislation in certain aspects and introduce new legislation.

COSTS

There are no additional direct costs for companies associated with this option. There are minimal indirect/compliance costs for businesses associated with this option.

BENEFITS

The Companies Act 2014, if amended as proposed:

- It will provide businesses the option to hold fully virtual general meetings on a permanent basis.
- It will provide a pragmatic and proportionate approach to dealing with late filing by small / micro companies whilst not undermining the existing robust culture of compliance with filing obligations.
- It will deliver on Programme for Government commitments in relation to the enhanced regulation of receivers.
- It will facilitate operational and administrative efficiencies through the streamlining of processes ensuring that the CEA is in receipt of the most up-to-date information at the earliest possible time.
- It will extend the list of authorities with which the CEA can disclose and receive relevant information.

- It will see increased accountability and transparency of receiver fees for stakeholders affected,
- It will see recognition of the practicalities of the intermediated system for PLCs where shares are held by Central Security Depositories
- It will see anomalies in mergers addressed.
- It will reflect input from stakeholders, including a full public consultation; from consideration of recent company law developments and best practice, from recommendations made by the Company Law Review Group and from listening to the statutory bodies established under the Companies Act 2014 – the CEA, the CRO and IAASA.

IMPACT

Companies Act 2014 as amended.

- It will see the introduction of improvements on our company law regime that strike a balance between providing flexibility to companies to efficiently conduct their business on the one hand, and by also securing compliance with provisions designed to protect on the other.
- It will assist small and micro companies by removing the automatic loss of the audit exemption for late filing with the CRO – saving time and money for thousands of Irish companies.
- It will strengthen the State's capability to investigate company law breaches by equipping the CEA with increased powers to investigate evidence of corporate wrongdoing. This includes providing for targeted surveillance powers and bringing the CEA within scope of the Communications (Retention of Data) Act for the investigation of certain serious company law offences.
- It will confer additional powers on IAASA and the CRO. These measures will equip enforcement agencies to tackle incidences of white-collar crime and corruption and will further boost Ireland's reputation as a well-regulated and transparent economy.

Changes brought about by this Act will benefit businesses, companies, their members, and creditors operating in Ireland - a leading global business hub, at the very heart of European and global enterprise.

Significant engagement has occurred with the relevant stakeholders including CLRG, CEA, IAASA, CRO, Department of Justice, Courts Service, Department of Finance, and other Government Departments to reduce the risk of potential unintended consequences.

Conclusion

Option 2

Amend the existing legislation in certain aspects and introduce new legislation is the preferred option.

4. Impact Analysis

4.1. National Competitiveness (incl. employment)

Ireland is renowned for developing and nurturing talent and is an attractive destination for internationally mobile, highly skilled workers. The concentration of world-leading organisations in Ireland has positioned the country as a major European business centre and coupled with the quality of life in Ireland and Dublin, has attracted talented people from many other European countries and further afield. Ireland also has an attractive entrepreneurship ecosystem, and the Government provides a range of tailored supports for those wishing to start and scale their business. A thriving, well-regulated enterprise base is the cornerstone for a competitive economy and one where businesses can create and sustain jobs.

4.2. Socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities.

The Bill should not have any adverse impact on socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities.

4.3. The environment

No particular impacts have been identified. It is envisaged that adoption of the option to hold either hybrid or fully virtual meetings on behalf of a company could aid in decreasing carbon emissions.

4.4. Significant policy change in an economic market including impacts on competition and consumers.

No particular impacts have been identified.

4.5. North-South, East-West relations

No particular impacts have been identified.

4.6. The rights of citizens/human rights

The Bill will benefit employees, shareholders, directors, and business owners who will be able to benefit from a well-regulated company law framework which assists in compliance of the business leading to more successful businesses who continue to enjoy limited liability. The enactment of the legislation will ensure that company law remains fit for purpose and is updated to reflect international developments.

4.7. Compliance burden on third parties e.g., citizens and business

The compliance burden of the proposed changes for relevant businesses is expected to be very low.

4.8. SME Test

The SME test is a regulatory impact assessment tool which seeks to help policymakers consider the perspective of SMEs when developing legislation / regulations. It also helps to identify any disproportionate impacts on SMEs and consider alternative policy options or mitigating measures to minimise such impacts.

The SME test has been conducted on the draft General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024.

1. *Company Law Enforcement and Regulation*

The proposed amendments aim to enhance the powers of the CEA, IAASA and the CRO, streamline procedures, deliver administrative efficiencies, and strengthen reporting requirements.

2. *Company Law Administration*

It is proposed to enhance certain administrative processes carried out by the Registrar of Companies to ensure the Register is suitably equipped, as well as modernising certain administrative requirements for companies.

3. *Corporate Insolvency including the enhanced Regulation of Receivers*

Amendments are proposed to various insolvency related processes across the Act. The Department intends to deliver on Programme for Government commitments in relation to enhanced regulation of receivers. It also provides for the inclusion of SCARP amendments which will provide for technical refinements to improve the operation of the process.

The steps conducted by the Department to apply the Test were.

1. Consultation of SME stakeholders.
2. Identification of affected businesses.
3. Measurement of the impact on SMEs.
4. Assessment of alternative mechanisms and mitigating measures.

5. Consultation

In May 2023, the Minister for Trade Promotion, Digital and Company Regulation launched a public consultation on specific proposals to enhance the Companies Act 2014. 35 submissions were received from a range of stakeholders including accountants, legal professionals, company directors and secretaries and several representative bodies. The outcome of the public consultation process has informed the development of the General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024. The General Scheme view Group (CLRG), a statutory body made up of representatives from a wide range of stakeholders including representatives from the trade unions, business associations, banking, and auditing bodies, as well as academics, legal practitioners, and insolvency experts.

Identification of affected businesses

The Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 provides no additional regulatory requirement on SMEs.

Measurement of the impact on SMEs

While the measures proposed do not convey any additional regulatory requirement on SMEs, the intent of the Bill is to decrease the burden on SMEs. The availability of timely financial information provides significant protection for stakeholders including company member, employees and third parties doing business with the company. Therefore, on time filing is a key imperative for all businesses including SMEs. Currently, where a small or micro company is late in filing its annual return, it automatically loses its audit exemption. The loss of audit exemption can have a significant impact on small and micro-sized companies and is a significant burden in terms of cost and resources. The Bill will now introduce a two-step, graduated regime which will incur a late filing fee. If, however, within 5 years of the first late filing, the company is again late in making its returns, then the company will incur a late filing fee and will be required to submit audited accounts for the subsequent two-year period. Further by encouraging better governance of business and increased efficiency of State agencies this should see improvements for SMEs and enable greater ease of doing business.

Assessment of alternative mechanisms and mitigating measures

Summary

Overall, the amendments to the Companies Act 2014 proposed by the General Scheme should not have any adverse impact on SMEs. Continued monitoring and updating of the Companies Act 2014 as provided for by the General Scheme should impact positively on SMEs. Government continues to identify further possibilities to reduce the administrative burden for SMEs. The introduction of the proportionate regime for the small and micro company audit exemption is a clear example of this. Additionally, the introduction of virtual meetings on a permanent basis should reduce costs for SMEs, aid them in their efforts to decrease carbon emissions and provide greater flexibility in how the business conducts its business. It is considered that the benefits associated with a modern, consolidated and fit for purpose legislative framework and the greater assurance provided for all stakeholders justify any envisaged compliance costs.

6. Enforcement and Compliance

The proposal involves the use of primary legislation. Incorporated in this is a requirement for Oireachtas approval for both the Bill and any future amendments to the Act thereafter.

7. Review

The Department will prepare a post-enactment report, as referenced in Standing Orders of both Houses of the Oireachtas, to review the functioning of an Act 12 months subject to, and following, enactment of the Bill.

The Bill if enacted will also be periodically reviewed in line with submissions received by the Department.