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New Year, New Changes Proposed to the Companies Act 2014

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The General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018 (the “Scheme”) proposes a number of amendments to the Companies Act 2014 (the “Act”). The Scheme was published on the 4th of December 2018.

KEY CHANGES

Corporate Enforcement Agency

- Establishment of the Director of Corporate Enforcement as an Agency rather than its current form within the Department of Business, Enterprise and Innovation;
- The Agency will take the form of a commission structure and will be named “Corporate Enforcement Authority”;
- The Agency will be responsible for its own recruitment, budget and corporate governance;
- The Agency functions will be to investigate suspected offences under the Principal Act and enforce that Act;
- It will have no more than three members to be appointed by the Minister;
- Entry and search powers are to be enhanced to allow collection of evidence in a digital format;
- The Agency will, where required to do so, account to the Public Accounts Committee in terms of expenditure and its operations.

Share Capital

A number of changes have been proposed in relation to a Company’s share capital. These changes are to address issues that are arising in everyday practice, some of which were contained in the prior Companies Acts and omitted in the 2014 Act. The Scheme proposes;

- That a company can use its share premium account for various purposes such as writing off of a Company’s preliminary expenses or the expenses of, or commission paid on any issue of shares or debentures;
- Disapplying the requirement that an unlimited company requires profits available for distribution to acquire its own shares;
- Exempting company capital reductions (as permitted under the Act) from the requirement to comply with distribution rules by creating an exemption in Section 123 of the Act;
- Alterations to Section 91 of the Act to clarify certain reorganisations can take place where a company has adequate reserves.

New grounds for restriction of directors

A new ground is being proposed for a restriction order.

- It is proposed that a director may be restricted where the director has:
 - Failed to convene a general meeting of shareholders for the purpose of nominating a named liquidator;
 - At such a meeting, failed to table a motion to nominate a named liquidator; or
 - Failed to provide the required notice to employees in a winding up.

Directors to supply PPSN to the CRO

- A director who has a PPSN will be required to supply their PPSN (in data format only) to the Companies Registration Office

(CRO) when incorporating a company for the first time (Form A1), filing the Annual Return (Form B1) and notifying the CRO of a change in director or secretary (Form B10);

- We understand that the PPSN will not be available to view by the general public. This change is proposed to support the accuracy of the CRO Register and address the possibility of duplication. Duplication can occur where an individual uses variations of their names and addresses. Directors who are not entitled to a PPSN will be required to supply a copy of the photo page of their passport.

End of exemption from including particulars of directors on business letters

- The Act obliges a company to include particulars of directors on its letterheads;
- The Act also allows the Minister for Business, Enterprise and Innovation to grant an exemption from the requirement to disclose particulars of directors on a

company's letterhead. It was introduced to assist companies that had frequent changes in directors that gave rise to a corresponding need to print new company stationery;

- This exemption is no longer considered necessary given that company stationery can now be updated without large print runs;
- Any exemptions that are currently in effect will be allowed to run their course.

Timing

- Detailed drafting will now have to occur in respect of the Scheme. In addition, a number of recommendations proposed by the CLRG are not currently in the Scheme. It is hoped these will be addressed in the Bill;
- It is expected that the Bill will be introduced to (and pass through) the Houses of the Oireachtas at the end of quarter two of 2019.

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