

Banking and Finance update – an overview of the Companies Bill 2024

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The Irish Department of Enterprise, Trade and Employment recently published the General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 (the **Bill**), as part of the Government Legislation Programme for Spring 2024. It is envisioned that the Bill will enhance and amend the legislative framework provided by the Companies Act 2014 (the **Act**).

Background to the Bill

The General Scheme of the Bill is wide-ranging, comprising of 86 heads of bill, and contains provisions amending the Act relating to corporate governance, company law enforcement and supervision, company law administration and corporate insolvency. The Bill has been designed to strike a "practical" balance between streamlining the everyday operations of a company, preserving essential safeguards for parties involved with businesses, such as creditors and investors, and establishing a robust corporate governance framework to ensure compliance.

Legislative changes

Within the proposed legislation, the most noteworthy amendments to be made to the Act are detailed below:

Hybrid and eAGMs: A permanent amendment is proposed, largely modelled on that which was introduced for the duration of the COVID-19 "interim period" (due to expire on 31 December 2024), which will provide the option to private companies and PLCs to conduct general meetings in fully virtual or in hybrid format, where it has not been expressly prohibited by the constitution.

Virtual Sealing: By reinstating temporary COVID-19 measures, it is proposed to facilitate the ability to execute instruments under seal on separate counterparts, incorporating the "Mercury"

virtual signing requirements.

Loss of Audit Exemption: The Bill will assist small and micro companies by removing the automatic audit exemption for failure to file on time annual returns with the Registrar. The Bill proposes to expand the exemption to the failure of filing on-time returns for a second or subsequent time within a period of 5 consecutive years.

Receivers: Further information will be required on filings regarding a receiver's appointment (Form E8), for example, details of the nature of assets, date and the nature of appointment, and information regarding future trading, where practicable. Moreover, deadlines regarding filings required to be made upon cessation of acting as receiver (Form E9) and notice of cessation of receiver (Form E11) will now be 7 days.

Summary Approval Procedure (SAP): It is proposed that SAP declarations, separate declarations/resolutions that are required to be made by each individual company in a SAP process, shall be required to be delivered to the Registrar in a "prescribed form", as opposed to the current system whereby many types of special resolution may be made using administrative forms as provided by the Registrar.

Involuntary Strike-Off: Three additional grounds are proposed for involuntary strike-off of a company, for (a) failure to deliver notice of change of registered office to the Registrar; (b) where no company secretary has been recorded to the Registrar; and (c) failure to file ultimate beneficial ownership information with the Register of Beneficial Ownership.

Gender Balance: In its annual report, a company will have the option to voluntarily disclose information about the gender balance of its board of directors. This data would solely be gathered for statistical analysis.

Corporate Enforcement: The Bill includes measures designed to equip the statutory agencies created by the Act, the Corporate Enforcement Authority, the Companies Registration Office, and the Irish Auditing and Accounting Supervisory Authority, with the necessary legislative instruments to tackle the difficulties encountered in investigating and prosecuting breaches and violations of corporate law.

Next steps

The next legislative phase involves drafting the General Scheme into a Bill, which will then progress through the Houses of the Oireachtas, undergoing multiple stages in the Dáil and Seanad. While a specific date has not been set, it is anticipated that the Bill will be signed into law by the end of 2024, with its commencement expected to follow shortly thereafter.

If you have any queries about the information contained in this article, please contact our team via their contact details below.

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Meet the Author



[Laura Holtham](#)

Partner

[Ireland](#)

E: laura.holtham@ogier.com

T: [+ 353 1 639 3000](tel:+35316393000)

Key Contacts



[Feidhlim Seoighe](#)

Trainee Solicitor

Ireland

E: feidhlim.seoighe@ogier.com

T: [+ 353 1 574 1392](tel:+35315741392)

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