Department of Enterprise, Trade and Employment

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

March 2024

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

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An Act to provide for companies and industrial and provident societies to hold general meetings by the use of electronic communications technology; to provide additional powers, including surveillance powers, to the Corporate Enforcement Authority; for those and other purposes to amend the Companies Act 2014, the Industrial and Provident Societies Act 1893, the Registration of Business Names Act 1963, the Criminal Justice (Surveillance) Act 2009, the Communications (Retention of Data) Act 2011; and to provide for related matters.

PART 1

Preliminary and General

Head 1 Short title, collective citation and commencement

To provide that:

(1) This Bill may be cited as the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024.

(2) The Companies Act 2014 and the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 may be cited together as the Companies Act 2014.

(3) The Industrial and Provident Societies Act 1893 and head 83 may be cited together as the Industrial and Provident Societies Acts 1963 to 2024 and shall be construed together as one Act.

(4) The Registration of Business Names Act 1963 and head 84 may be cited together as the Registration of Business Names Act 1963 to 2024 and shall be construed together as one Act.

(5) The Criminal Justice (Surveillance) Act 2009 and head 85 may be cited together as the Criminal Justice (Surveillance) Act 2009 to 2024 and shall be construed together as one Act.

(6) The Communications (Retention of Data) Act 2011 and head 86 may be cited together as the Communications (Retention of Data) Acts 2011 to 2024 and shall be construed together as one Act.

(7) This Bill shall come into operation on such day or days as the Minister for Enterprise, Trade and Employment may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

EXPLANATORY NOTE

Head 1 is a standard provision. It provides that different provisions may be commenced and come into operation on different days as ordered by the Minister.

Head 2 Definitions

To provide that:

(1) In this Act, "Principal Act" means the Companies Act 2014.

EXPLANATORY NOTE

Head 2 provides that references to the Principal Act throughout are references to the Companies Act 2014.

Head 3 Repeals

To provide that:

The following are repealed:

(1) The Companies (Miscellaneous Provisions)(Covid-19) Act 2020 is repealed apart from section 17 of that Act which amends section 678 of the Principal Act.

(2) Section 1106 of the Principal Act

EXPLANATORY NOTE

The purpose of the Companies (Miscellaneous Provisions)(Covid-19) Act 2020 was to address operational issues in respect of compliance, arising under the Companies Act 2014 and Industrial and Provident Societies Acts 1893 - 2018 as a result of Covid-19. The Act also made amendments in respect of examinership and the threshold at which a company is deemed unable to pay its debts to help business to trade through the crisis, preserve employment and support economic recovery post-crisis. The provisions of this Act were intended to be operational until the expiration of the interim period. This period was extended to 31 December 2024 for certain provisions relating to the holding of virtual meetings. After this period has expired, the provisions of the 2020 Act will no longer have effect but will remain on the statute book unless repealed. Depending on the date of enactment of the provisions of this Bill and the extension of the interim period to the end of 2024, certain provisions may require different commencement dates.

Section 1106 transposes Article 8 of the first Shareholder Rights Directive and provides that a traded PLC may provide for participation in a general meeting by way of electronic means and its provisions reflect many of the elements of section 174A (introduced by the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, which was based on section 1106.) Section 174A is being placed on a permanent footing (head 8) and is intended will apply to Part 17 (PLCs) as it is not disapplied in the body of Part 17 or modified in section 1002. It is considered that his new section will obviate the need for section 1106.

PART 2

Amendment of Principal Act

Chapter 1

Incorporation and Registration

Head 4 Amendment of *section 35* of Principal Act

To provide that:

Section 35 of the Principal Act is amended by the insertion of the following subsection after subsection (7):

> "(8) A person shall apply to the Registrar in the prescribed form to act as an electronic filing agent and must be approved by the Registrar to act as an agent for the purposes of this section.".

EXPLANATORY NOTE

Head 4 amends *section 35* of the Principal Act by inserting a new *subsection (8)* which provides a person shall 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 for the purposes of *section 35*. Currently a person may apply to the Registrar using the administrative form J1A to act as an electronic filing agent for the purposes of *section 35*.

Head 5 Amendment of *section 43A* of Principal Act

To provide that:

The Principal Act is amended by the repeal of *section 43A* and insertion of the following after *section 43*:

"**43A**. (1) Subsections (2) to (4) apply to a company notwithstanding any provision of—

(a) section 43(2)(b) or (3), or
(b) the company's constitution.

(2) As respects an instrument to be made or executed by a company, other than an instrument to which subsection (3) applies, such an instrument may consist of several documents in like form if—

(a) one such document is signed by a person referred to in section 43(2)(b)(i),
(b) one such document is signed by a person referred to in section 43(2)(b)(ii), and
(c) one such document has the company's seal affixed to it.

(3) As respects an instrument to be made or executed by a registered person in exercise of the powers of a company, such an instrument may consist of several documents in like form if—

(a) one such document is signed by the registered person,
(b) one such document is signed by a person referred to in section 43(2)(b)(i),
(c) one such document is signed by a person referred to in section 43(2)(b)(ii), and
(d) one such document has the company's seal affixed to it.

(4) An instrument consisting of several documents that comply with subsection (2) or (3) shall be valid and effective for all purposes as if the documents were, taken together, one document.".

EXPLANATORY MEMORANDUM

Head 5 provides for repeal of the temporary *section 43A* inserted by *section 5* of the Companies (Miscellaneous Provisions)(Covid-19) Act 2020 and the insertion of a new provision which replicates *section 43A* apart from the reference to "interim period" which relates specifically to emergency changes that were relevant in the context of the pandemic.

This amendment provides for the multi-located execution of documents. It enables documents under seal to be executed in different counterparts, with the aggregate of the documents to be considered as the one instrument. It will address on a permanent basis those situations where the seal and the signatories are in different locations, and it would be difficult for the seal and the signatures to be placed on the same document in a timely manner.

Subsection (1) provides that *subsections (2) to (4)* will apply notwithstanding *section 43(2)(b) or (3)* or the company's constitution.

Subsection (2) provides that a document which is required to be executed under seal by a company may consist of several separate counter parts provided that:

(a) one such document is signed by a director of it or by some other person appointed for the purpose by its directors or by a committee of them;(a person referred to in *section 43(2)(b)(i)),*

(b) one such document is signed by the secretary or by a second director of it or by some other person appointed for the purpose by its directors or by a committee of them (a person referred to in *section 43(2)(b)(ii)),* and

(c) one such document has the company's seal affixed to it.

Subsection (3) provides for the same requirements in respect of a document to be made or executed by a registered person in exercise of the powers of a company.

Subsection (4) provides that any document executed in accordance with (2) or (3) shall be counted as one document and shall be valid and effective for all purposes as if it were one single document.

Head 6 Amendment of section 50 of Principal Act

To provide that:

Section 50 of the Principal Act is amended:

(a) in *subsection (4)* by the insertion of "(referred to in this section as a "registered office agent")" after "Registrar",

(b) by the insertion of the following subsection after *subsection (4):*

"(4A) A company shall apply to the Registrar in the prescribed form to act as a registered office agent and must be approved by the Registrar to act as an agent for the purposes of this section.",

(c) in *subsection (5)* by the substitution of "registered office agent of a company" for "agent approved for that purpose", and

(d) by the insertion of the following after *subsection (5):*

"(5A)(a) A registered office agent may deliver a notice in the prescribed form notifying both—

(i) the Registrar, and

(ii) the company

that the registered office of the company is no longer care of that agent.

(b) On receipt of a notification under *paragraph (a),* the Registrar shall send a notice to the directors and secretary or secretaries of the company, requiring the company to give notice of the situation of the registered office of the company in the prescribed form and within 14 days; the address to which a notice under this subsection is sent shall be the usual residential address, as recorded in the office of the Registrar, of the addressee concerned.

(c) The notice of the situation of the registered office of the company submitted to the Registrar on foot of a request under *paragraph (b)* may only state that the registered office is care of the registered office agent referred to in *paragraph (a)* if it is delivered to the Registrar together with a declaration by that agent in writing confirming the company is authorised to use the agent's address as its registered office.".

EXPLANATORY NOTE

Head 6 amends *section 50* of the Principal Act by amending *sections (4) and (5)* and inserting new *subsections 4A and 5A*.

Paragraph (a) amends *section (4)* to provide that a specified agent approved for the purpose *section 4* shall be referred to as a "registered office agent".

Paragraph (b) inserts a new *subsection 4A* which provides that a company shall apply in the prescribed form to the Registrar to act as a registered office agent and must be approved by the Registrar to act as an agent. Currently, a company may apply to the Registrar for approval using the administrative form B81.

Paragraph (c) substitutes registered office agent of a company" for "agent approved for that purpose".

Paragraph (d) inserts a new *subsection (5A)* to address the situation where a registered office agent is no longer providing a registered office address service to a company (for example, for non-payment of a bill for the service or expiration of a contract) and may not complete a form B2 to provide notice of a change to the registered office to the Registrar of Companies as it may only be signed by a director or secretary or secretaries of the company.

Subsection (5A)(a) provides that a registered office agent may notify both Registrar and the company that the agent will no longer provide a registered office address for the company. *Subsection (5A)(b)* provides that the Registrar will send a notice to the director(s) and secretary, to their residential address, requesting the company to give notice, in the prescribed form of the situation of registered office address. *Subsection (5A)(c)* provides that the notice in *subsection (5A)(b)* may state that the registered office address of the company is care of the registered office agent if it is accompanied by a declaration in writing by that agent confirming this is the case.

Chapter 2

Corporate Governance

Head 7 Amendment of *section 132* of Principal Act
[Prohibition of undischarged bankrupt being director or secretary or otherwise involved in company]

To provide that:

Section 132 of the Principal Act is amended as follows:

(1) in *subsection (1)* by substituting "(unless subject to *subsection (1A)* he or she does so with the leave of the court, and the CEA having been served with at least 14 days' notice of the application)" for "(unless he or she does so with the leave of the court)".

(2) by the insertion of the following new *subsection (1A)* after *subsection (1)* –

"(1A) A person being an undischarged bankrupt who intends to apply to the court for leave to act as set out in *subsection (1)* above shall give not less than 14 days' notice in writing to the Authority of his or her intention to make such application and the Authority shall be entitled to appear and be heard on the hearing of the application.".

EXPLANATORY NOTE

Section 132 of the Principal Act provides that it is an offence for a person who is an undischarged bankrupt to act as a director or secretary of a company, or to take part in or be concerned in, either directly or indirectly, the promotion, formation, or management of a company unless they have been given the prior permission of the court to do so.

Section 132 is silent on the process or form for the seeking of such leave of the court to act, Therefore, it can arise *ex parte* without notice to anyone. Further, such leave can be sought at any time and so, as it stands, it is possible for the leave application to be made ad hoc during or immediately upon an adjudication of bankruptcy. Equally, leave can be sought weeks or months after an adjudication of bankruptcy.

The purpose of *head 7* is to assist the Corporate Enforcement Authority (the Authority) in its enquiries and investigations where it is important that the Authority is aware that a person has been given leave to act as director etc. while bankrupt. This head provides that this leave must

now be sought on notice to the Authority. This will provide an opportunity for the Authority to consider the relevant circumstances and to take a position on whether it considers the bankrupt should be granted leave to act as a director etc. It is not intended that the Authority is a party to the bankruptcy proceedings itself but rather is concerned only with whether a bankrupt should receive a potential exclusion from the criminal law of acting as a director of other companies while bankrupt. As a notice party to the application, the Authority will have the opportunity to object, if it considers it appropriate to do so, and will receive the particulars of any decision made by the Court in relation to the application. This will lend further clarity and assist the Authority in its investigations.

For notice periods, the Authority would require 14 days from service of the pleading to the return date in court to consider the leave application.

A similar provision applies in the UK, at *section 11(3)* of the Company Directors Disqualification Act 1986.

Subhead (1) amends *section 132(1)* restating that it is an offence to act as the director or secretary or a company, or to be involved in the promotion, formation, or management of a company unless approval of the court has been expressly sought and granted and only where the Authority has been notified of the intention to seek approval.

Subhead (2) introduces a new *subsection (1A)* which provides that for any application for leave to act when an undischarged bankrupt, the Authority must be notified of the intention at least 14 days in advance of the return date to court. As a notice party to the application, the Authority will have the opportunity to object, if it considers it appropriate to do so, and will receive the particulars of any decision made by the Court in relation to the application. This will lend further clarity and assist the Authority in its investigations.

Head 8 Insertion of new section in Part 4, Chapter 6 of Principal Act
[Participation in general meetings by the use of electronic communications technology]

To provide that:

The Principal Act is amended by the insertion of a new section in *Part 4, Chapter 6* as follows:

"(1) Unless expressly prohibited by the company's constitution, a company need not hold a general meeting at a physical venue but may conduct the meeting wholly or partly by the use of electronic communications technology as long as all attendees have a reasonable opportunity to participate in the meeting in accordance with this section.

(2) This section is in addition to, and does not derogate from, the provisions of *subsection (3)* of *section 175*.

(3) (a) Where a company provides for participation in a general meeting by the use of electronic communications technology it shall provide or facilitate a mechanism for casting votes by a member, whether before or during the meeting.

(b) The mechanism referred to in paragraph (a) shall not require the member to be physically present at the general meeting or require the member to appoint a proxy who is physically present at the meeting.

(4) The use of electronic communications technology pursuant to *subsection (3)* may be made subject only to such requirements or restrictions put in place by the company as are necessary to ensure the identification of attendees and the security of the electronic communications technology, to the extent that such requirements or restrictions are proportionate to the achievement of those objectives.

(5) A company shall inform attendees, before the general meeting concerned, of any requirements or restrictions which it has put in place pursuant to *subsection (4).*

(6) A company that provides for the use of electronic communications technology for participation in a general meeting by an attendee shall ensure, as far as practicable, that—

(a) such technology—

(i) provides for the security of any electronic communications by the attendee,

(ii) minimises the risk of data corruption and unauthorised access, and

(iii)provides certainty as to the source of the electronic communications;

(b) in the case of any failure or disruption of such technology, that failure or disruption is remedied as soon as practicable; and

(c) such technology enables the attendee to—

(i) hear what is said by the chairperson of the meeting and any person introduced by the chairperson, and

(ii) speak and submit questions and comments during the meeting to the chairperson to the extent that the attendee is entitled to do so under the constitution of the company.

(7) Any temporary failure or disruption of electronic communications technology shall not invalidate the general meeting or any proceedings relating to the meeting.

(8) Unless such failure or disruption is attributable to any wilful act of the company, a company shall not be liable in respect of any failure or disruption relating to the equipment used by an attendee to access a general meeting by electronic communications technology that occurs and which failure or disruption prevents or interferes with the attendee's participation, by way of such technology, in the meeting.

(9) The Minister may, if he or she considers it appropriate, by regulations make further provision for all or any of the following in relation to general meetings to be held by way of electronic communications technology:

(a) the convening and conduct of the meetings;

(b) attendance at the meetings;

(c) notice to be provided relating to meetings;

(d) access to and participation in, including voting in the meetings.

(10) In this section and *sections 181(5)(aa) and 182(2A)* —

'attendee', in relation to a general meeting of a company, means—

(a) a member of the company,

(b) a proxy of a member of the company,

(c) an authorised person representing a body corporate under *section 185*,

(d) the auditor, or

(e) a person entitled to attend the meeting by virtue of provisions in the constitution of the company or the terms of issue of debt securities issued by the company;

'electronic communications technology', in relation to a general meeting of a company, means technology that enables real time transmission and real time two-way audio-visual or audio communication enabling attendees as a whole with a reasonable opportunity to participate in the meeting using such technology from a remote location;

‘electronic platform’, in relation to a general meeting of a company, means an electronic system for the delivery of audio-visual or audio communication, including websites, access software and access telephone details or any other electronic technology that delivers such communication;

‘general meeting’, in relation to a company, means any of the following:

(a) an annual general meeting of the company;

(b) an extraordinary general meeting of the company;

(c) a general meeting of holders of shares in the company of a particular class;

and includes a meeting referred to in paragraph (a), (b), or (c) that has been adjourned.

EXPLANATORY NOTE

Head 8 is largely modelled on *section 174A* of the *Companies Act 2014* which was introduced for an “interim period” by the *Companies (Miscellaneous)(Covid-19) Act 2020* as a direct response to the pandemic. The “interim period” has been extended to 31st December 2024.

Section 174A incorporated parts of *section 1106* of *Part 17 of the Companies Act* on *Public Limited Companies* which provides for participation in general meetings by electronic means for PLCs and which was introduced by the *Shareholders Rights Directive.*

In addition to general meetings taking place by way of a fully physical meeting with all attendees physically present at a certain location, this head modifies existing legislation by making permanent provision giving companies the option to conduct general meetings wholly virtually, with all attendees participating online without requirement for a physical meeting location, or by a hybrid meeting with participants participating both virtually and in-person.

The choice to incorporate digital technology into this corporate governance structure should serve to enhance stakeholder experience. In providing for the holding of virtual or hybrid general meetings it is not intended that the rights of shareholders or members to participate in and be heard at meetings would be eroded in any way. Meetings are the cornerstone of corporate governance for a company and the voting by shareholders at these meetings gives the Board a mandate and gives legitimacy and validity to decisions made. Rather, it is intended that companies will now have the option to hold fully virtual or hybrid general meetings where it is not expressly prohibited by the constitution. *Section 32* provides an inbuilt safeguard where

the constitution can be amended to expressly prohibit virtual or hybrid meetings or to attach additional conditions to the holding of virtual or hybrid meetings, if this is what members want.

General meetings taking place either wholly virtually or as a hybrid meeting should not impact on any of the rights of those entitled to attend, and so all the rights of members at a general meeting held physically remain and are carried through to wholly virtual or hybrid general meetings. For instance, anyone participating online is to be counted in the quorum for that meeting (amendment to *section 182*). A members' right to demand a poll under *section 189* should not be impacted by the holding of a hybrid or wholly virtual meeting. The company must facilitate a mechanism for casting of votes in such a poll which does not require a member or a proxy to be physically present.

Public Limited Companies - It is intended that the legislation will also apply to PLCs clarifying that PLCs will also have the option to hold meetings in person, wholly virtually or by way of a hybrid of both.

Subhead (1) provides that, unless a company's constitution expressly states that a company cannot hold hybrid of fully virtual general meetings, then a company has the option of holding general meetings without a physical location.

Subhead (2) provides that this section is in addition to and not a derogation from the provisions of *section 175(3)* of the Companies Act. That section outlines the circumstances where a company may dispense with the holding of an AGM.

Subhead (3) is a restatement of *section 174A(6)(a) and (b)* also modelled on *section 1106(1)(a)* and sets out that where a company provides for participation in a general meeting by electronic communications, this must include a mechanism that facilitates votes being cast be attendees, before and during a meeting. The mechanism for voting adopted must not require a member or his/her proxy to be physically present at the meeting.

Subhead (4) states that the only restrictions or requirements placed on the use of electronic communications are those that are necessary to ensure the identification of participants and security of the communications. No disproportionate restrictions are allowed.

Subhead (5) requires that members are to be notified of the restrictions and requirements in place, if any, in advance of the meeting.

Subhead (6) sets out the responsibilities of the company, when providing for participation in meetings using electronic communication. These include ensuring that the technology used allows attendees to hear, to speak and to submit questions. A company must ensure (as far as practicable) the security of technology being used and the minimising of risk of data corruption or unauthorised access. Any failure or disruption in the electronic communications must be fixed as soon as possible.

Subhead (7) clarifies that temporary failures or disruption of the communications will not invalidate the general meeting or its proceedings.

Subhead (8) clarifies that the company is not responsible for any technological failure or disruption relating to the electronic equipment of the member unless this is attributable to wrongdoing by the company.

Subhead (9) provides that the Minister may make further provision for the convening and conduct of general meetings held by electronic communications, attendance at, access to and participation in such meetings.

Subhead (10) sets out definitions relevant to this section.

Head 9 Amendment of *section 181* of Principal Act
[Notice of general meetings]

To provide that:

Section 181(5) of the Principal Act is amended by the insertion of a new paragraph:

> "in the case of a meeting proposed to be held wholly or partly by the use of electronic communications technology—
>
> (i) the electronic platform to be used for the meeting,
>
> (ii) details for access to the electronic platform,
>
> (iii) the time and manner by which an attendee must confirm his or her intention to attend the meeting,
>
> (iv) any requirements or restrictions which the company has put in place in order to identify attendees who intend to attend the meeting,
>
> (v) the procedure for attendees to communicate questions and comments during the meeting, and
>
> (vi) the procedure to be adopted for voting on resolutions proposed to be passed at the meeting;"

EXPLANATORY NOTE

Head 9 is ancillary to the provision in head 8 permitting the holding of hybrid of wholly virtual meetings.

Section 181 of the Companies Act 2014 contains the provisions relating to the notice that must be provided in advance of general meetings. *Section181(5)* sets out the specific detail that must be contained in these notices.

Section 181(5)(1)(aa) was inserted by the *Companies (Miscellaneous Provisions)(Covid -19) Act 2020* for an "interim period" and addressed the specific details to be included in notice to attendees where the meeting was to be held as a hybrid or wholly virtual meeting during that period.

Section 181(5)(1)(aa) as introduced by the 2020 Act is repealed in *head 3*. It is substituted, and replicated, by the paragraph in this head. Head 9 provides that notice of wholly virtual/hybrid

meetings must specify, at a minimum, details on the electronic platform to be used and how to access it; the time and manner by which a member must confirm attendance at the meeting; any requirements and restrictions that are being put in place by the company to identify the members; the procedure to be followed for communicating questions and comments and the procedure for voting on resolutions.

Head 10 Amendment of *section 182* of Principal Act
[Quorum]

To provide that:

Section 182 is amended by the insertion of the following paragraph:

> "Save to the extent that the company's constitution provides otherwise, each member and proxy that participates in a general meeting shall be counted in the quorum where they attend that meeting by way of electronic communications technology in accordance with head 8".

EXPLANATORY NOTE

Head 10 amends *section 182* which provides for requirements in relation to the quorum of a meeting. This amendment is intended to clarify that where a meeting is held wholly or partly virtually, that virtual attendance/participation by either a member or a proxy at a general meeting, is to be counted in the quorum for that meeting.

Head 11 Amendment of *section 183* of Principal Act
[Proxies]

To provide that:

Section 183 of the Principal Act is amended by the substitution of the following for subsection (6) –

"(6) That time is—

(a) 48 hours (or such lesser period as the company's constitution may provide) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

(b) in the case of a poll, 48 hours (or such lesser period as the company's constitution may provide) before the time appointed for the taking of the poll,

and no part of a Saturday, Sunday or public holiday shall be taken into account for the purposes of the computation of the time of 48 hours so provided.".

EXPLANATORY NOTE

Section 183 governs the area of proxies, which provides for how a registered member of a company appoints another person (the proxy) to attend a meeting and vote on their behalf. Currently, the time for delivery of a form of proxy before a general meeting of shareholders under *section 183* is a maximum of 48 hours before the meeting and those 48 hours include weekend hours and hours on public holidays.

Head 11 amends *section 183(6)* – without prejudice to existing *section 3* of the Act – to ensure that weekends, and any public holidays are excluded from the time counted towards the minimum 48-hour notice required to appoint proxies.

This means, for example, that for a meeting to be held at 3.00 pm on a Tuesday after a bank holiday Monday, the cut-off point for proxy appointment will be 3.00 pm the previous Thursday, not 3.00 pm on Sunday per the current situation under the Principal Act.

This amendment implements a recommendation of the Company Law Review Group in its report of December 2021, *Company law issues arising under Directive (EU) 2017/828 of 17th*

May 2017 (SDRII), Central Securities Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014.

Head 12 Amendment of *section 187* of Principal Act
[Proceedings at meetings]

To provide that:

Section 187 of the Principal Act is amended by the inclusion of the following paragraph:

> "Where a general meeting is conducted by way of electronic communications technology in accordance with [*section inserted by head 8],* the chairperson of the meeting may conduct a vote to decide on a resolution by a show of hands of every member who is participating in the meeting by way of such technology where the chairperson is of the opinion that he or she can identify the members entitled to vote and verify the content of voting instructions relating to the resolution."

EXPLANATORY NOTE

Head 12 replicates *section 195A(2*) which was introduced by the *Companies (Miscellaneous Provisions)(Covid-19) Act 2020* and permitted the voting by way of show of hands where the chair is of the opinion that he/she can identify all the members entitled to vote and to verify the content of instructions relating to the resolution.

Head 195A is repealed in head 3 but the provision at *subsection (2)* is retained and incorporated into *section 187* which deals with the proceedings at meetings.

Voting at a general meeting is either by a show of hands or a poll. Unless a poll is demanded at a general meeting, a resolution put to the vote at the meeting shall be decided by a show of hands. Voting by a show of hands is where members/proxies raise their hands, and the general rule is one-member-one-vote.

This head amending *section 187* is intended to provide clarity that where a meeting is held wholly virtually, voting by a show of hands can done where the chairperson considers it is possible to identify all the members entitled to vote and which way they vote.

In the case of a hybrid meeting, it is intended that votes on a show or hands can be conducted where the chairperson considers it is possible to identify all members entitled to vote, and how they vote, including both those present in person at the physical location and those participating from a remote location using electronic communications technology.

Head 13 Amendment of *section 198* of Principal Act

[Registration of, and obligation of company to supply copies of, certain resolutions and agreements]

To provide that:

Section 198(1) of the Principal Act is amended by the insertion of ", in the prescribed form," after "resolution".

EXPLANATORY NOTE

Head 13 amends *section 198(1)* of the Principal Act to provide that a resolution delivered by a company to the Registrar is in the prescribed form. Currently, a company may submit a resolution to the Registrar for approval using the administrative Forms G1, G1-H15 and G1Q.

Head 14 Amendment of *section 203* of Principal Act

[Declaration to be made in the case of financial assistance for acquisition of shares or transaction with directors]

To provide that:

Section 203(3) of the Principal Act is amended by the insertion of ", in the prescribed form," after "Registrar".

EXPLANATORY NOTE

Head 14 amends *section 203(3)* of the Principal Act to provide that a copy of the declaration to be made in the case of financial assistance for acquisition of shares or transaction in accordance with the summary approval procedure is delivered to the Registrar in the prescribed form. Currently, a company may submit a copy of a declaration to the Registrar in this case using the administrative Form SAP 203.

Head 15 Amendment of *section 204* of Principal Act

[Declaration to be made in the case of a reduction in company capital or variation of company capital on reorganisation]

To provide that:

Section 204(2) of the Principal Act is amended by the insertion of ", in the prescribed form," after "Registrar".

EXPLANATORY NOTE

Head 15 amends *section 204(2)* of the Principal Act to provide that the declaration to be made in the case of a reduction in company capital or variation of company capital on reorganisation in accordance with the summary approval procedure is delivered to the Registrar in the prescribed form. Currently, a company may submit a copy of a declaration to the Registrar in this case using the administrative Form SAP 204.

Head 16 Amendment of *section 205* of Principal Act

[Declaration to be made in the case of treatment of pre-acquisition profits or losses in a manner otherwise prohibited by section 118(1)]

To provide that:

Section 205(4) of the Principal Act is amended by the insertion of ", in the prescribed form," after "Registrar".

EXPLANATORY NOTE

Head 16 amends *section 205(4)* of the Principal Act to provide that the declaration to be made in the case of treatment of pre-acquisition profits or losses in a manner otherwise prohibited by *section 118(1)* of that Act in accordance with the summary approval procedure is delivered to the Registrar in the prescribed form. Currently, a company may submit a copy of a declaration to the Registrar in this case using the administrative Form SAP 205.

Head 17 Amendment of *section 206* of Principal Act

[Declaration to be made in the case of merger of company]

To provide that:

Section 206(2) of the Principal Act is amended by the insertion of ", in the prescribed form," after "Registrar".

EXPLANATORY NOTE

Head 17 amends *section 206(2)* of the Principal Act to provide that the declaration to be made in the case of the merger of a company in accordance with the summary approval procedure is delivered to the Registrar in the prescribed form. Currently, companies may submit a copy of each declaration to the Registrar in this case using the administrative Form SAP 206.

Head 18 Amendment of *section 207* of Principal Act

[Declaration to be made in the case of members' winding up of solvent company]

To provide that:

Section 207(2) of the Principal Act is amended by the insertion of ", in the prescribed form," after "Registrar".

EXPLANATORY NOTE

Head 18 amends *section 207(2)* of the Principal Act to provide that the declaration to be made in the case of a members' voluntary winding up of a solvent company in accordance with the summary approval procedure is delivered to the Registrar in the prescribed form. Currently, a company may submit a copy of a declaration to the Registrar in this case using the administrative Form E1 - SAP.

Chapter 3

Financial Statements, Annual Return and Audit

Head 19 Amendment of *section 343* of Principal Act
[Obligation to make annual return]

To provide that:

Section 343 of the Principal Act is amended by the insertion of the following after *subsection (11):*

> **"**(11A) *Section 1(1)* of the Probation of Offenders Act 1907 does not apply to an offence under this section.".

EXPLANATORY NOTE

Section 1(1) of the Probation of Offenders Act 1907 allows a court of summary jurisdiction to release a person on probation, without proceeding to a conviction and make an order dismissing the charge or discharging the offender conditionally, where the court thinks the charge is proved but it is inexpedient to inflict any punishment.

Head 19 inserts a new *subsection (11A)* in *section 343* of the Principal Act which provides that *section 1(1)* of the Act of 1907 does not apply to an offence where a company fails to file an annual return in accordance with the Principal Act.

Head 20 Amendment of *section 363* of Principal Act

[Audit exemption (non-group situation) not available in certain circumstances]

To provide that:

Section 363(1) of the Principal Act is amended by the insertion of ", for the second or subsequent time within a period of 5 consecutive years," after "deliver".

EXPLANATORY NOTE

Head 20 amends *section 363(1)* of the Principal Act to provide that a company that qualifies as a small company will not be entitled to an audit exemption where it fails to deliver, for a second or subsequent time within a period of 5 consecutive years, an annual return in compliance with *section 343*, to which the statutory financial statements or (as appropriate) abridged financial statements for the relevant financial year are annexed. This will replace the current regime where a company will lose its audit exemption on the first occasion of its failure to deliver an annual return in compliance with *section 343*.

Head 21 Amendment of *section 393* of Principal Act
[Report to Registrar and Director: category 1 and 2 offences]

To provide that:

Section 393(2) of the Principal Act is amended by the inclusion of new paragraph (d):

> "(d) furnish the Authority with copies of books and documents, or such extracts from those books or documents as the Authority may require under *paragraph (b)*, and that when such copies are furnished to the Authority, that they are accompanied by a signed assurance from the audit partner responsible for the audit, that the copies are exact copies of the original books or extracts from those books."

EXPLANATORY NOTE

Section 393(1) of the Companies Act provides that where in the course of carrying out an audit of a company, the auditors come into possession of information that leads them to form the opinion that there are reasonable grounds for believing that a category 1 or 2 offence may have been committed, the auditor must then notify the Authority and provide the Authority with the particulars of the grounds on which they formed the opinion.

Section 393(2) places a further obligation on auditors, when requested by the Authority, to give to it -

- any further information in the auditor's possession or under their control as the Authority requires;
- access to books and documents in their possession or control as the Authority may require; and
- access to facilities for taking copies of or relevant extracts from books and documents as the Authority may require.

Head 21 amending *section 393* is intended to give rise to efficiencies both for the auditor and the Authority. It aims to expedite and simplify the gathering of such information by the Authority and the provision of such information by the auditors.

It provides further clarity in relation to how the Authority may obtain copies of the relevant books and documents or extracts therefrom by explicitly providing that auditors may make these copies themselves as requested by the Authority and send them to the Authority, rather

than requiring that officers of the Authority attend at the auditor's office to take possession of the relevant documents and to make copies at the auditor's office.

Head 21 is intended to provide for a mechanism that where copies of books, documents or extracts are made other than by the Authority, assurance is provided to the Authority that the copies are accurate and correspond to what is on the original file. Assurance as to the veracity of the contents of the books or documents is not what is intended here, but rather assurance that the copy made of a document is an exact copy of that document.

It is not intended that these copies and the accompanying assurance will be used as evidence but rather the amendment to *section 363* is to provide increased certainty around information gathering by the Authority.

Chapter 4

Receivers

Head 22 Amendment to *section 430* of Principal Act
[Information to be given when receiver is appointed in certain circumstance]

Provide that:

Section 430 of the Principal Act is amended as follows:

(1) In *subsection (1*) by –

(a) the deletion of "and" in *paragraph (a),*

(b) the substitution of "it, and" for "it." in *paragraph (c),* and

(c) the insertion of the following after paragraph (c) -

"(d) A person referred to in *paragraph (e)* may request the receiver in writing to deliver by electronic means information in the prescribed form stating:

(i) the terms agreed, fixed or otherwise set in the instrument under which he or she is appointed or otherwise agreed or fixed in the manner specified in *section 443A*; and

(ii) the

(I) actual fees or
(II) where the provision of particulars of the actual fees is not in the circumstances possible or practicable, an estimate (as near as may be) of the fees,

and the receiver shall comply with any such request not later than the expiry of 7 days after the date of request.

(e) The persons referred to in *paragraph (d)* are:

(i) the members of the company;
(ii) creditors of the company and whose names and addresses are provided by the company to the receiver under section 431; and
(iii) such other persons as may be prescribed."

(2) In *subsection (3)(b),* by the substitution of "within 7 days after" for "within 30 days after".

EXPLANATORY NOTE

Section 430 describes the information to be given when a receiver is appointed in respect of the whole, or substantially the whole, of the property of a company and obliges the receiver to provide the Registrar periodic abstracts showing receipts and payments, asset disposal and asset valuation.

Head 22 provides for two amendments to *section 430* of the Principal Act. First, to provide a legislative mechanism through which the company and creditors are provided with information referable to a receiver's fee. This is reasonable due to the nature of the agency relationship of a contractual receiver which means that the remuneration of the receiver is imposed on the creditor rather than the debenture holder. This is especially important in circumstances where the receiver has been appointed in respect of the whole, or substantially the whole, of the property of a company as there is an increased risk for the other creditors to be impacted. This amendment provides for greater transparency and safeguards for the company, its members and creditors. Secondly, to set a new time limit of seven days for delivering to the Registrar of Companies the final Form E9 upon cessation, in line with the proposed amendment to *sections 436(2) and 441(2)*.

This amendment arises from a recommendation of the CLRG 2019 *Report on the Regulation of Receivers* to provide for greater transparency in relation to receivers' fees.

Head 23 Amendment of *section 436* of the Principal Act
[Notice to Registrar of appointment of receiver, and of receiver ceasing to act]

Provide that:

Section 436 of the Principal Act is amended as follows:
–

(1) In *subsection (1)* by the insertion of the following after "a notice in the prescribed form" -

", specifying:

(a) Detail of the nature of the asset/s over which the receiver is appointed;
(b) The date of appointment of the receiver;
(c) The nature of the appointment over each asset;
(d) Information regarding future trading where practicable; and
(e) Such further or other information as may be prescribed."

(2) In *subsection (2)* by the substitution of "within 7 days after the date on which he or she ceases" for "on so ceasing".

EXPLANATORY NOTE

Section 436 provides that the Registrar of Companies must be notified of the appointment of a receiver and must also be notified when a receiver ceases to act.

Head 23 provides for amendments to *subsection (1)* requiring the provision of further information on Form E8 which is filed upon the receiver's appointment. The head also provides for an amendment to *subsection (2)* setting a time limit for delivering to the Registrar of Companies Form E11 upon cessation.

These amendments arise from a recommendation of the CLRG in its 2019 *Report on the Regulation of Receivers*.

Head 24 Amendment of *section 441* of the Principal Act
[Delivery to Registrar of accounts of receivers]

Provide that:

Section 441 of the Principal Act is amended in *subsection (2)(b),* by the substitution of "within 7 days after" for "within 30 days after".

EXPLANATORY NOTE

Section 441 concerns the delivery to the Registrar of Companies of the accounts of receivers. A receiver is obliged to send to the Registrar every 6 months, and within 30 days of ceasing to act as receiver, an abstract showing the assets of the company of which he or she has taken possession, their estimated value and the proceeds of sale of any such assets. The receiver must also provide details of his or her receipts and payments for the period of his or her appointment. Failure for a receiver to comply with this section will result in a category 4 offence.

Head 24 provides for amendments to *section 441* setting a new time limit of 7 days for delivering to the Registrar of Companies the final Form E9 upon cessation, in line with the proposed amendment to *sections 436(2) and 430(3*).

This amendment arises from a recommendation of the CLRG in its 2019 *Report on the Regulation of Receivers*.

Head 25 Insertion of new section in Part 8 Receivers
[Receiver's remuneration]

Provide that:

Part 8 of the Principal Act is amended by the insertion of the following section after s*ection 443* -

"**443A Receiver's remuneration**

A receiver has an entitlement to remuneration upon the terms agreed, fixed or otherwise set in the instrument under which he or she is appointed or otherwise agreed or fixed and such an entitlement may be expressed to be —

(a) by way of a relevant percentage,
(b) by reference to time expended in the conduct of the receivership, or
(c) otherwise by reference to any method or thing."

EXPLANATORY NOTE

Head 25 provides for the alignment of *section 646(1)* as it applies to liquidators, giving receivers an equivalent entitlement to remuneration.

This new *section 448A* is referenced in the new *paragraph (d)* inserted by head 22 (Amendment to *section 430)* requiring fee information to be provided within 7 days of request from members of the company, creditors or such other persons as may be prescribed.

This arises from a recommendation of the CLRG 2019 *Report on the Regulation of Receivers* which recommended that Part 8 of the Act should be amended to provide that a receiver has an entitlement to remuneration.

Head 26 Amendment of *section 444* of Principal Act
[Power of court to fix remuneration of receiver]

Provide that:

Section 444 of the Principal Act is amended by the insertion of the following after *subsection (2)* –

"(2A) In fixing the amount of a receiver's remuneration under *subsection (2),* the following shall be taken into account by the court:

(a) the time properly required to be given by the person as receiver and by his or her assistants in attending to the company's affairs;

(b) the complexity (or otherwise) of the case;

(c) any respects in which, in connection with the company's affairs, there falls on the receiver any responsibility of an exceptional kind or degree;

(d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his or her duties; and

(e) the value and nature of the property with which the receiver has to deal."

EXPLANATORY NOTE

Section 444 grants the court a power to fix the remuneration of the receiver.

Head 26 provides for an amendment to *section 444* to mirror the provisions in respect of remuneration for liquidators under *subsection 648(9).*

Subsection (9) provides that in fixing the amount of a liquidator's entitlement to remuneration, or the amount of a liquidator's remuneration, the following shall be taken into account by the court, the committee of inspection, the creditors or, as the case may be, the members:

(i) the time properly required to be given by the person as liquidator and by his or her assistants in attending to the company's affairs;
(ii) the complexity (or otherwise) of the case;
(iii) any respects in which, in connection with the company's affairs, there falls on the liquidator any responsibility of an exceptional kind or degree;
(iv) the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his or her duties; and

(v) the value and nature of the property with which the liquidator has to deal.

This amendment will codify already established principles established in case law in this area to further align corporate insolvency practitioners and provide greater transparency as to the remuneration of receivers for both the company and other creditors.

This arises from a recommendation of the CLRG 2019 *Report on the Regulation of Receivers* to provide for greater transparency in relation to receivers' fees. This is particularly relevant for preferential creditors as the receiver's costs and expenses take priority in the case of the company winding up.

Chapter 5

Reorganisations, Acquisitions, Mergers and Divisions

Head 27 Amendment of *section 462* of Principal Act
[Requirements for Chapter to apply]

To provide that:

> The Principal Act is amended in *paragraph (b)* of *section 462* by the insertion of "or a designated activity company limited by shares" after the words "private company limited by shares.".

EXPLANATORY NOTE

Chapter 3 of Part 9 of the Principal Act concerns mergers. It provides a statutory mechanism 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.

Section 462 specifies the circumstances in which the provisions of Chapter 3 apply – namely where none of the merging companies is a PLC and where at least one of the merging companies is a private company limited by shares (LTD).

While the Companies Act 2014 provides for two types of private limited company - LTD and Designated Activity Company (DAC) - only a LTD shall be one of the merging companies. Thus, a DAC is required to re-register as a LTD prior to a merger under *section 462*.

Head 27 amends *section 462(b)* to provide that in a merger under Chapter 3 of the Act, one of the companies shall be a LTD or a DAC.

Head 27 implements a recommendation made by the Company Law Review Group (CLRG) in their report of May 2022*, On certain company law issues under the Companies Act 2014 relating to corporate governance.*

Head 28 Amendment of *section 463* of Principal Act
[Mergers to which Chapter applies – definitions and supplementary provision]

To provide that:

The Principal Act is amended in *subsection (2)* of *section 463*, by the substitution of "one or more companies transfer all of their assets and liabilities to a company that is the holder of the shares representing the capital of the transferor companies." for "a company transfers all of its assets and liabilities to a company that is the holder of all the shares representing the capital of the first-mentioned company.".

EXPLANATORY NOTE

Section 463 describes the type of mergers to which *Chapter 3 of Part 9* applies - merger by acquisition, merger by absorption and merger by formation of a new company.

Section 463(2) appears to provide for only one company at a time to merge by absorption into the successor company. This means that, in a group restructuring scenario where several companies are to be absorbed into another group company, each transferring company is required to have its merger with the successor company approved separately as opposed to having them all approved together under one common draft merger agreement.

Head 28 provides that in the case of private companies, a group of subsidiary companies, wholly owned by the same parent company taking part in a merger by absorption, be facilitated in one transaction rather than in several transactions.

This amendment implements a recommendation made by the CLRG in their report of May 2022 *On certain company law issues under the Companies Act 2014 relating to corporate governance.*

Chapter 6

Rescue Process for Small and Micro Companies

Head 29 Amendment of Part 10A of Principal Act

To provide that:

(1) Each provision of the Principal Act specified in *column (2)* opposite a reference number specified in *column (1),* is amended by the substitution of the words specified in *column (4),* opposite that reference number, for the words specified in *column (3)* opposite that reference number.

(2) In *subsection (1),* a reference to a column is a reference to a column in the table set out in Schedule 1.

EXPLANATORY NOTE

The purpose of *head 29* is to update references included in *Part 10A* of the Principal Act on the Rescue Process for Small and Micro Companies from the "Director" and "Director of Corporate Enforcement" to the "Authority" and "Corporate Enforcement Authority" following the Authority's establishment on 7th July 2022 on foot of the enactment of the Companies (Corporate Enforcement Authority) Act 2021.

The enactment of the Companies (Corporate Enforcement Authority Act) 2021 overlapped somewhat with the enactment of the Companies (Rescue Process for Small and Micro Companies) Act 2021 which was enacted in July of 2021 and so certain references were not updated.

[This head may not be required considering *section 944E* of the Principal Act (Transfer of functions of Director to Authority).]

Head 30 - Amendment of *section 558A* of Principal Act
[Interpretation (Part 10A)]

To provide that:

Section 558A of the Principal Act is amended in *subsection (1)* in the definition of 'rescue period' by substituting the following for *paragraph (b)(ii)* –

> "(ii) in the case where the process adviser ceases to act under *paragraphs (a), (b), (c) or (d)* of *section 558ZX(1)* and the directors of the eligible company do not appoint another process adviser under *section 558ZX*, the date on which notification is received by the Registrar in accordance with *section 558ZX(1A);".*

EXPLANATORY NOTE

Section 558A defines relevant terms for the purposes of the operation of the rescue process for small and micro companies, including the 'rescue period'.

Head 30 clarifies that the rescue period under *paragraph (b)(ii)* ends where the process adviser resigns, dies, becomes incapable or is no longer qualified to perform the functions in accordance with *section 558ZX(1) and* the directors confirm that a resolution appointing another process adviser is not proposed or passed in accordance with *section 558ZX(1A*); please also refer to head 45.

This amendment provides for greater clarity for stakeholders around the definition of the rescue period and its potential outcomes.

Head 31 Amendment of *section 558B* of Principal Act
[Requirements where eligible company wishes to avail of rescue plan]

To provide that:

Section 558B of the Principal Act is amended by inserting -

(1) In *subsection (1)(b)* "it" after "the directors of the eligible company wish", and

(2) In *subsection (2)(d)* "the directors of" after "a resolution be passed by".

EXPLANATORY NOTE

Section 558B provides for the requirements an eligible company must meet to avail of a rescue plan.

The proposed technical amendment to *subsection (1)(b)* corrects the reference to the *directors* availing of the rescue plan as it is in fact the *eligible company* that avails of the plan.

The proposed technical amendment to *subsection (2)(d)* corrects the reference to the *company* passing a resolution as it is the *directors* of the company that pass a resolution.

Head 32 Amendment of *section 558C* of Principal Act

[Process adviser to determine whether eligible company has reasonable prospect of survival]

To provide that:

Section 558C of the Principal Act is amended in *subsection (4)(h)* after "brand" by inserting ", social and cultural importance".

EXPLANATORY NOTE

Section 558C requires the process adviser to decide whether the company has a reasonable prospect of survival and is therefore eligible to avail of a rescue plan. *Subsection (4)* sets out factors the process adviser may consider in making his or her determination. The factors have been drawn from case law in examinership and are non-exhaustive.

Head 32 amends *section 558C* to require the process adviser consider the social and cultural importance of the company when making his or her determination in relation to its future viability.

This amendment was raised at the Committee Stage of the Companies (Rescue Process for Small and Micro Companies) Act 2021, and the then Minister gave a commitment to consider it at a future point.

Head 33 Amendment of *section 558I* of Principal Act
[Process adviser's duty to seek provision of email addresses]

To provide that:

Section 558I of the Principal Act is amended in *subsection (2)* by substituting "s*ubsection (4)*" for "*subsection (3)".*

EXPLANATORY NOTE

Section 558I requires the process adviser to secure email addresses for specified relevant parties, primarily the creditors of the company.

Head 33 provides a technical amendment to *section 558I(2)* to correct a cross referencing error to "*subsection (3)"* and which should reference the persons outlined in "*subsection (4)".*

Head 34 Amendment of *section 558K* of Principal Act
[Process adviser to give notice to employees, creditors etc.]

To provide that:

Section 558K of the Principal Act is amended in *subsection (2)(a)(iii)* by substituting "by the eligible company in accordance with *section 558ZAA*" for "by the process adviser".

EXPLANATORY NOTE

Section 558K provides that the process adviser shall as soon as practicable, but no later than 5 days after the passing of the resolution, give to the persons prescribed by the Act principally creditors of the company, a notice of the resolution of the appointment of the process adviser, a copy of the process adviser's report, a statement on the relevant court for any proceedings which may be brought and a request to each creditor for all relevant information concerning outstanding debts, securities held and obligations.

Head 34 makes a technical amendment to *subsection (2)(a)* to clarify that it is the *eligible company in accordance with section 558ZAA* and not the process adviser that incurs the liabilities during the rescue period.

Head 35 Amendment of *section 558R* of Principal Act
[Further provision with respect to leases]

Provide that:

Section 558R of the Principal Act is amended in *subsection (1)* by substituting "*subsection (2)"* for "*subsection (3)"*.

EXPLANATORY NOTE

Under *section 558R*, as concerns the leasing of land, the rescue plan or order of the court cannot contain proposals for a reduction in the amount of rent and/or the complete extinguishment of the right of the lessor to such payments.

Head 35 provides a technical amendment to *subsection (1)* to correct a cross-referencing error in the reference to "*subsection (3)"* and which should reference "*subsection (2)"*.

Head 36 Amendment of *section 558Y* of Principal Act
[Consideration by members and creditors of rescue plan]

To provide that:

Section 558Y of the Principal Act is amended in *subsection (5)* after "where" by deleting "eligible".

EXPLANATORY NOTE

Section 558Y concerns consideration by members and creditors of a rescue plan at an appropriate meeting, and the voting on same. *Subsection (5)* makes the rescue plan binding once adopted.

The proposed technical amendment removes "eligible" from *subsection (5)* as it is unnecessary in the passage and provides confusion for the intended reading of the provision.

Head 37 Amendment of *section 558Z* of Principal Act
[Notification of approval of rescue plan]

To provide that:

Section 558Z of the Principal Act is amended by inserting –

(1) In *subsection (5)* "in the prescribed form" after "notice of the approval", and

(2) In *subsection (6)* "in the prescribed form" after "notice of the approval".

EXPLANATORY NOTE

Section 558Z provides that notification of the approval of the rescue plan must be provided within 48 hours of the approval of the plan to all relevant parties as prescribed - principally the creditors of the company. This section also details the content and items to be supplied as part of the notification requirement. A notice of the acceptance of the rescue plan must also be provided to the Registrar of Companies and to the relevant court within 48 hours of the acceptance having been recorded.

This amendment makes provision for the notice in question being prescribed in statute.

Head 38 Amendment of *section 558ZC* of Principal Act
[Objection to rescue plan]

To provide that:

Section 558ZC is amended after *subsection (6)* by inserting the following subsections –

> "(7) Within 5 days of the process adviser receiving notification under section *558ZC(2)(a),* the process adviser shall notify the Registrar in the prescribed form of the filing of an objection to the rescue plan.
>
> (8) A person who fails to comply with *subsection (7)* shall be guilty of a category 3 offence."

EXPLANATORY NOTE

Section 558ZC provides that a creditor or member may file an objection to a rescue plan and that the objection be notified to the process adviser, and the office of the relevant court. This section also prescribes the grounds under which an objection may be made, including an objection made by contracting parties in respect of the repudiation of a contract.

This amendment provides that the process adviser shall notify the CRO within 5 days of being notified of an objection to the rescue plan being filed within the 21-day period following rescue plan approval. It also provides that failure to comply with this requirement constitutes a category 3 offence, in line with equivalent filing provisions in the Act. A person convicted of a category 3 offence shall be liable to a Class A fine (up to €5,000) and/or a maximum term of imprisonment of 6 months. This amendment facilitates the important collation of reliable data on the performance of the rescue process.

Head 39 Amendment of *section 558ZD* of Principal Act
[Court hearing in case of objection]

To provide that:

Section 558ZD of the Principal Act is amended in *subsection (3)(b)* by substituting "or" for "and".

EXPLANATORY NOTE

Section 558ZD provides for the court's role in the approval of a rescue plan where an objection is triggered and specifies those who may be heard by the court.

This amendment is a technical amendment which clarifies that all three conditions set out in *paragraphs (a) – (c)* need not be satisfied, any one of the conditions is sufficient which satisfies the policy intent of this section.

Head 40 Amendment of *section 558ZE* of Principal Act
[Supplemental provisions in relation to section 558ZD and section 558ZZ]

To provide that:

Section 558ZE of the Principal Act is amended in *subsection (4)* by inserting "with the prescribed form" after "court may direct,".

EXPLANATORY NOTE

Section 558ZE provides that where the court dismisses an objection or approves modified terms of a rescue plan, it may make such orders for the implementation of its decision as it deems fit. The process adviser is required to file all resultant orders of the court with the Registrar.

This amendment makes provision for the order in question to be delivered with the prescribed form to the Registrar.

Head 41 Amendment of *section 558ZK* of Principal Act
[Conclusion of rescue period and termination of appointment of process adviser]

To provide that:

Section 558ZK of the Principal Act is amended –

(1) By the designation of the section as *subsection (1),* and

(2) By the insertion of the following subsections after *subsection (1)* -

"(2) Where the appointment of the process adviser is terminated under *subsection (1)(b),* the process adviser shall deliver within 5 days of the date on which he or she gives a copy of his or her report to the eligible company under *section 558ZA(3)* a notice in the prescribed form confirming that his or her appointment is terminated in accordance with *subsection (1)(b)* to –

(a) the Registrar, and

(b) the office of the relevant court.

(3) A person who fails to comply with a requirement imposed by *subsection (2)* shall be guilty of a category 3 offence."

EXPLANATORY NOTE

Section 558ZK provides that the process adviser's appointment is terminated on conclusion of the process or such other events as provided for in the Act.

Section 558ZK(b) provides that where no rescue plan for the eligible company is approved at a meeting held under *section 558T*, the appointment of a process adviser shall be terminated on the date on which the process adviser gives a copy of his or her report to the eligible company under *section 558ZA(3).*

This amendment provides for the enumeration of a *subsection (1)* containing *paragraphs (a) through (d)*, and for the insertion of a new *subsection (2)* to provide that the process adviser shall notify the Registrar and office of the relevant court that his/her appointment is terminated in accordance with *subsection (1)(b).* It also provides that failure to comply with this requirement constitutes a category 3 offence, in line with equivalent filing provisions in the Act. A person convicted of a category 3 offence shall be liable to a Class A fine (up to €5,000) and/or a maximum term of imprisonment of 6 months. This amendment addresses a gap in the process and allows for the collation of reliable data on ongoing and completed rescue processes.

Head 42 Amendment of *section 558ZM* of Principal Act
[Power of relevant court to order the return of assets improperly transferred]

To provide that:

Section 558ZM of the Principal Act is amended in *subsection (4)* by deleting "a" after "the rights of persons who have ".

EXPLANATORY NOTE

Section 558ZM mirrors *section 557* of the Principal Act and allows the court to make an order to return assets which have been improperly transferred.

Head 42 provides for a technical amendment which corrects and error and brings the provision in line with *section 557*, as well as other provisions in the Principal Act which refer to "bona fide" rather than "a bona fide".

Head 43 Amendment of *section 558ZR* of Principal Act
[Prosecution of officers and members of company]

To provide that:

Section 558ZR of the Principal Act is amended as follows:

(1) In *subsection (4)* by the insertion of "forthwith" after "Director of Corporate Enforcement".

EXPLANATORY NOTE

Head 43 amends *section 558ZR* in order to streamline the referral process where, during the course of a rescue period under SCARP, it appears to the process adviser that a past or present officer or member of the company has been guilty of an offence in relation to the company, a process adviser must report both to the DPP and to the CEA.

The inclusion of "forthwith" is intended to ensure that CEA receives the report without delay and as close in time as possible to when the report is made to the DPP.

Head 29 will amend the reference to "Director of Corporate Enforcement."

Head 44 Amendment of *section 558ZW* of Principal Act

[Process adviser's duty to keep determination made under section 558C under review]

To provide that:

Section 558ZW of the Principal Act is amended in *subsection (4)(a)* by inserting "attached to the prescribed form" after "copy of the notice".

EXPLANATORY NOTE

Section 558ZW defines the general conditions that apply when a process adviser resigns from the position. It specifies the content of a statement which must be served on the company.

This amendment makes provision for the notice to be attached to the prescribed form in the case of a process adviser resigning, providing for the notification to the Registrar and the office relevant Court.

Head 45 Amendment of *section 558ZX* of Principal Act
[General provisions as to process advisers - resignation, filling of vacancy, etc.]

To provide that:

Section 558ZX of the Principal Act is amended –

(1) By inserting after *subsection (1)* the following subsection:

"(1A) The directors of the eligible company shall, as soon as practicable and in any case not later than 7 days after becoming aware of the fact of the process adviser ceasing to act as a result of *subsections (a), (b), (c) or (d)* of *subsection (1),* deliver a notice in the prescribed form confirming that a resolution appointing another process adviser is not proposed or has not passed to –

(a) the Registrar, and

(b) the office of the relevant court.",

(2) In *subsection (2)(a)* by inserting "in the prescribed form" after "notice of the appointment", and

(3) By inserting after *subsection (9)* the following subsection:

"(10) A person who fails to comply with a requirement imposed by this section shall be guilty of a category 3 offence."

EXPLANATORY NOTE

Section 558ZX defines the general provisions of a procedural and technical nature relating to the actions of the process adviser. Provision is made for the resignation, removal, replacement, title and validation of actions of process advisers.

The amendment introducing a new *subsection (1A)* makes provision for the notification to the Registrar and office of the relevant court in the event the process adviser ceases to act due to death, incapacity, resignation, or lack of qualification to perform their functions, and the directors of the company do not pass a resolution to appoint a new process adviser in their place.

The amendment in *subsection (2)(a)* makes provision for a 'prescribed' notice in the case of a new process adviser being appointed during the rescue process.

Head 45 also provides that failure to comply with the requirement under s*ection 558ZX* constitutes a category 3 offence, in line with equivalent filing provisions in the Act. A person convicted of a category 3 offence shall be liable to a Class A fine (up to €5,000) and/or a maximum term of imprisonment of 6 months. This amendment serves to inform the Registrar and the courts of the outcome of the rescue process in the event the directors do not fill the process adviser vacancy. This amendment serves to better enable the Department to monitor the progress of the rescue process and to provide reliable data on ongoing and completed rescue processes.

Head 46 Amendment of *section 558ZY* of Principal Act
[Process adviser: remuneration, costs and expenses]

To provide that:

Section 558ZY of the Principal Act is amended in *subsection (5)* by inserting "and may request a written report from the process adviser where the process adviser has not made use of the services of the staff and facilities of the eligible company in accordance with *subsection (4)"* after "to *subsection (4)"*.

EXPLANATORY NOTE

Section 558ZY provides for the court to authorise the remuneration, costs, and expenses of the process adviser.

Head 46 requires the process adviser to provide written reasoning to the court for a decision made not to make use of the services of the staff and facilities of the company to which the process adviser has been appointed where the court is considering any matter relating to the costs, expenses and remuneration of said process adviser. This amendment will provide increased transparency around the process adviser's fees and expenses.

This amendment was raised at the Committee Stage of the Companies (Rescue Process for Small and Micro Companies) Act 2021, and the then Minister gave a commitment to consider it at a future point.

Chapter 7

Winding up

Head 47 Amendment of *section 592* of Principal Act

[Notice by voluntary liquidator of his or her appointment]

To provide that:

Section 592(1) of the Principal Act is amended by the insertion of ", in the prescribed form," after "notice".

EXPLANATORY NOTE

Head 47 amends *section 592(1)* of the Principal Act to provide that a liquidator shall deliver to the Registrar a notice of his or her appointment in the prescribed form. Currently, a liquidator may submit a notice of his or her appointment to the Registrar using the administrative Form E2.

Head 48 Amendment of *section 641* of Principal Act

[Resignation of liquidator]

To provide that:

Section 641(2) of the Principal Act is amended by the substitution of ", in the prescribed form," for "in writing".

EXPLANATORY NOTE

Head 48 amends *section 641(2)* of the Principal Act to provide that a liquidator shall deliver to the Registrar a notice of his or her resignation in the prescribed form. Currently, a liquidator may submit a notice of his or her appointment to the Registrar using the administrative form E2A.

Head 49 Amendment of *section 680* of Principal Act
[Duty of liquidator to call meeting at end of each year]

To provide that:

Section 680 of the Principal Act is amended:

(a) in *subsection (3)* by the insertion of ", in the prescribed form," after "account", and

(b) in *subsection (6)* by the insertion of ", in the prescribed form," after "account".

EXPLANATORY NOTE

Head 49 amends *subsections (3) and (6)* of *section 680* of the Principal Act to provide that a liquidator shall deliver a copy of his or her acts and dealing and of the conduct of the winding up to the Registrar in the prescribed form during a members' or creditors' voluntary winding up that continues for more than 12 months. Currently, a liquidator may submit the account to the Registrar using the administrative Form E3.

Head 50 Amendment of *section 683* of the Principal Act
[Obligation (unless relieved) of liquidator of insolvent company to apply for restriction of directors]

To provide that:

Section 683 of the Principal Act is amended to include a new *subsection (2A)* after *subsection (2)* as follows:

> "(2A) The liquidator's obligations under this section shall apply until the conclusion of all proceedings related to the restriction of the director or directors of the company, including until the end of any appeals brought by directors against restriction orders."

EXPLANATORY NOTE

Section 683 of the Principal Act places an obligation on a liquidator to apply to the Court for the restriction of a director or directors of an insolvent company. The liquidator may be relieved of this obligation by the CEA.

Head 50 amends *section 683* to make explicit that the obligation on liquidators endures all the way through to the end, which includes to the end of all appeals proceedings. This amendment is necessary to consider instances where a liquidator may be called on to defend an appeal brought by a director against the restriction order and to avoid the possibility that the liquidator will refuse to defend the appeal. The requirement for the clarity intended by this head is borne out of the practical experience of the Authority.

Head 51 Amendment of *section 705* of Principal Act

[Final meeting and dissolution in members' voluntary winding up]

To provide that:

Section 705(4) of the Principal Act is amended by the insertion of ", in the prescribed form" after "shall".

EXPLANATORY NOTE

Head 51 amends *section 705(4)* of the Principal Act to provide that a liquidator shall send a copy of his or her final statement of account of a winding up and make a return to the Registrar of the holding of a final general meeting in the prescribed form in a members' voluntary winding up. Currently, a liquidator may make these returns to the Registrar using the administrative Forms E5 and E6.

Head 52 Amendment of *section 706* of Principal Act

[Final meeting and dissolution in creditors' voluntary winding up]

To provide that:

Section 706(4) of the Principal Act is amended by the insertion of ", in the prescribed form" after "shall".

EXPLANATORY NOTE

Head 52 amends *section 706(4)* of the Principal Act to provide that a liquidator shall send a copy of his or her final statement of account of a winding up and make a return to the Registrar of the holding of a final general meeting in the prescribed form in a creditors' voluntary winding up. Currently, a liquidator may make these returns to the Registrar using the administrative Forms E5 and E7.

Head 53 Amendment of *section 723* of Principal Act
[Prosecution of offences committed by officers and members of company]

To provide that:

Section 723 of the Principal Act is amended:

(a) in *subsection (3)* by the insertion of "forthwith" after "Authority"

(b) in *subsection (7)* by the insertion of "forthwith" after "Authority"

EXPLANATORY NOTE

Head 53 amends *section 723* of the Principal Act to streamline the referral process under that section where, during the course of a winding up by the Court or a voluntary winding up, it appears that a past or present officer or member of the company has been guilty of an offence in relation to the company, a liquidator may be directed to refer matters to the DPP (*subsections (1), (5) and (9)*) and to the Authority (*subsections (3), (7) and (9))*

The inclusion of "forthwith" is intended to ensure that the referral is made to the Authority as close in time as possible as it made to the Director of Public Prosecutions. This will expedite the receipt of information by the CEA.

Chapter 8

Strike off and Restoration

Head 54 Insertion of new *section 724A* and *724B* in Principal Act

[Interpretation (Part 12) and disclosure of information by the Registrar of Beneficial Ownership to the Registrar of Companies]

To provide that:

The Principal Act is amended by the insertion of the following sections before *section 725*:

"**Interpretation (Part 12)**

724A**.** In this Part—

"RBO Regulations" means the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019);

"Registrar of Beneficial Ownership" means the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies."

Disclosure of Information by Registrar of Beneficial Ownership

724B. Notwithstanding any obligations as to secrecy or other restriction upon disclosure of information imposed by or under any statute or otherwise, for the purposes of this Part, the Registrar of Beneficial Ownership may give a notice in writing to the Registrar of Companies stating that the company has failed to deliver the information required under paragraphs (1) or (2) of Regulation 21 of the RBO Regulations.

EXPLANATORY NOTE

Head 54 provides for the insertion of two new sections specifically relevant to Part 12 of the Principal Act in relation to the additional strike off ground of failure to notify the Registrar of Beneficial Ownership of certain information in relation to the beneficial owner of a company. The new *section 724A* provides for the meaning of "RBO Regulations" and "Registrar of Beneficial Ownership". The new *section 724B* provides that the Registrar of Beneficial Ownership may notify the Registrar of Companies of the failure of a company to provide information required under *paragraphs (1) or (2)* of the RBO Regulations. The Registrar of

Companies may then initiate process that may lead to the company being struck off of the Register of Companies.

Head 55 Amendment of *section 726* of Principal Act
[Grounds for involuntary strike off]

To provide that:

Section 726 of the Principal Act is amended by the insertion of the following after paragraph (f):

> "(g) the company has failed to deliver a notice of change of the situation of the registered office of the company as required by *section 50(5A)(b);*
>
> (h) there is no current secretary of the company recorded in the office of the Registrar;
>
> (i) the Registrar of Beneficial Ownership has given a notice under section 724B to the Registrar of the company's failure to deliver the information required by paragraphs (1) or (2) of Regulation 20 of the RBO Regulations.".

EXPLANATORY NOTE

Head 55 amends *section 726* of the Principal Act by inserting *paragraphs (g) to (i)* to provide for three additional grounds for involuntary strike off of a company by the Registrar. *Paragraph (g)* provides for the ground of failure to notify the Registrar of the situation of the registered office of a company on receipt of a notice from a registered office agent that the registered office of the company is no longer care of that agent. *Paragraph (h)* provides for the ground of no secretary of the company recorded on the Register of Companies. *Paragraph (i)* provides for the ground of failure to notify the Registrar of Beneficial Ownership of the information in relation to the beneficial owner of a company in accordance with *paragraphs (1) and (2)* of the RBO Regulations.

Head 56 Amendment of *section 727* of Principal Act
[Registrar's notice to company of intention to strike it off register]

To provide that:

Section 727 of the Principal Act is amended—

(a) in *subsection (1)* by the substitution of "*paragraphs (a) to (i)"* for "*paragraphs (a) to (f)",*

(b) in *subsection (2)(a)* by the substitution of "*paragraph (b)* or *subsection (3A)*" for "*paragraph (b)*",

(c) in *subsection (3)* by the insertion of "and secretary or secretaries" after "directors", and

(d) by the insertion of the following subsection after *subsection (3)*:

"(3A) If the ground for striking off is that set out in *section 726(g),* the Registrar shall send the notice by pre-paid ordinary post, such persons, if any, as are recorded by the office of the Registrar as being current directors and secretary or secretaries of the company; the address to which a notice under this subsection is sent shall be the usual residential address, as recorded in the office of the Registrar, of the addressee concerned and *subsection (3)* shall not apply.".

EXPLANATORY NOTE

Head 56 amends *section 727* of the Principal Act to provide to provide for consequential amendments for the three additional grounds for involuntary strike off under *section 726*.

Paragraph (a) amends *section 727(1)* to provide that the Registrar may send a notice in accordance with *section 728* for the additional grounds.

Paragraph (b) amends *section 727(2)* to provide that the Registrar is not required to send the notice of intention to strike off by registered post if the ground is failure to notify the Registrar of the situation of the registered office of the company.

Paragraph (c) amends *section 727(3)* to provide the notice of strike off delivered by ordinary post shall also be delivered to the secretary or secretaries of a company.

Paragraph (d) inserts a new *section 727(3A)* which provides that the Registrar's notice of intention to strike off for the additional ground of failure to notify the Registrar of the change of situation of the registered office of a company will be sent to the director(s) and secretary or secretaries of the company (to their residential address or email address on Register of Companies).

Head 57 Amendment of *section 728* of Principal Act
[Contents of Registrar's notice to company]

To provide that:

Section 728(3) of the Principal Act is amended by the substitution of "*section 726(d), (e), (f), (g), (h) or (i*)," for "*section 726(d), (e) or (f)".*

EXPLANATORY NOTE

Head 57 amends *section 728(3)* of the Principal Act to provide to provide for consequential amendments for the three additional grounds for involuntary strike off under *section 726*. The head provides that the Registrars notice for intention to strike off shall not state that each director of the company is liable to be disqualified under *section 842(h)* of the Act if the company is eventually struck off the Register for the three additional grounds for involuntary strike off.

Head 58Amendment of *section 729* of Principal Act
[Meaning of remedial step]

To provide that:

Section 729(3) of the Principal Act is amended by the insertion of the following after *paragraph (e):*

> "(f) in the case of the ground for striking off set out in *section 726(g),* the notification to the Registrar under *section 50(5A)(b)* of the situation of the registered office of the company;
>
> (g) in the case of the ground for striking off set out in *section 726(h),* the notification to the Registrar under *section 149(8)* of the appointment of a secretary of the company;
>
> (h) in the case of the ground for striking off set out in *section 726(i),* the delivery of the information to the Registrar of Beneficial Ownership of the information that the company is required to deliver under *paragraphs (1) or (2)* of Regulation 20 of the RBO Regulations.".

EXPLANATORY NOTE

Head 58 amends *section 729* of the Principal Act to provide for the remedial step a company is required to take to avert the continuation of the strike off process by the Registrar for the three additional grounds for involuntary strike off.

Paragraph (f) provides for the delivery of the prescribed form required under *section 50(5A)(b)* by the company to the Registrar, to avoid strike off for failure to notify the Registrar of the situation of the registered office of the company.

Paragraph (g) provides for the delivery of the notification under *section 149(8)* by the company, where there is no person recorded as a secretary for the company on the register.
Paragraph (h) provides for the delivery of the information by the company to the Registrar of Beneficial Ownership under *paragraphs (1) and (2)* of Regulation 20 of the RBO Regulations, where that information was not previously delivered.

Head 59 Amendment of *section 737* of Principal Act
[Restoration on application to Registrar]

To provide that:

Section 737 of the Principal Act is amended:

(a) in *subsection (2)* by—

(i) the substitution of "*subsection (3)* and *(3A)"* for "*subsection (3)*", and

(ii) the insertion of the following paragraphs after paragraph (c):

"(d) the Registrar is satisfied that *section 50(1)* is being complied with in relation to the company; and

(e) the Registrar is satisfied that *section 129(1)* is being complied with in relation to the company.", and

(b) by inserting the following subsection after *subsection (3):*

"(3A) If the ground, or one of the grounds, on which the company had been struck off the register is that referred to in *section 726(i), subsection (2)* shall have effect as if the following paragraph were inserted after *paragraph (b)* of that subsection:

"(ba) the Registrar has received written confirmation from the Registrar of Beneficial Ownership that he or she has no objection to the company being restored under this section.".

EXPLANATORY NOTE

Head 59 amends *section 737* of the Principal Act to amend the requirements that must be met by a company in order for the Registrar to administratively restore a company to the Register of Companies. *Paragraph (a)* amends *section 737(2)* to provide that a company must also satisfy the Registrar that the company has a registered office and a secretary before she may administratively restore a struck off company. *Paragraph (b)* provides that in order for the Registrar to administratively restore the company to the Register where the strike off occurred for failure to deliver information to the Registrar of Beneficial Ownership, the Registrar must be in receipt of a letter of no objection from the Registrar of Beneficial Ownership before such a company may be administratively restored.

Head 60 Amendment of *section 740* of Principal Act

[Terms of court order on application under section 738]

To provide that:

Section 740(2) of the Principal Act is amended in *subsection (2)* by the insertion of the following paragraph after *paragraph (c):*

"(d) if the ground, or one of the grounds, on which the company has been struck of the register is that referred to:

(i) in *section 726(g),* the delivery of the notice under *section 50(A)(b);*

(ii) in *section 726(h),* the company has appointed a secretary and delivers the notification required by *sections 149(8)* and *149(10);*

(iii) in *section 726(i),* all the outstanding information required by *paragraphs (1) or (2)* of Regulation 20 of the RBO Regulations in relation to the company is delivered to the Registrar of Beneficial Ownership.".

EXPLANATORY NOTE

Head 60 amends *section 740* of the Principal Act in relation to the terms of the court order on application by an office or a member for restoration of a company to the Register of Companies. The head provides for additional requirements to be addressed before the order of the court to restore the company may have effect following an application by an officer or a member. These include notification to the Registrar of the situation of the registered office of the company, the appointment of a secretary and if one of the grounds for strike off was failure to deliver returns to the Registrar of Beneficial Ownership, the delivery of those returns.

Chapter 9

Investigations

Head 61 Amendment of *section 792* of Principal Act
[Information, books or documents may be disclosed to competent authority]

To provide that:

Section 792(2) of the Principal Act is amended by inserting the following entities in the list of competent authorities:

a) the Registrar of Friendly Societies;
b) the Registrar of Beneficial Ownership;
c) the Insolvency Service of Ireland;
d) the Charities Regulator;
e) the Pensions Authority;
f) the Financial Services and Pensions Ombudsman;
g) the Data Protection Commission;
h) the Protected Disclosures Commission;
i) the Competition and Consumer Protection Commission.

EXPLANATORY NOTE

Head 61 amends *section 792* of the Principal Act extending the list of competent authorities to which the Authority may disclose information, books or documents. This head extends the statutory gateway for the sharing of information to assist the Authority, and other competent authorities, in carrying out their functions.

Head 62 Amendment of *section 795* of Principal Act
[Saving for privileged information]

To provide that:

Section 795 of the Principal Act is amended as follows:

(1) In *subsection (4)* by substituting "14 days" for "7 days.

(2) In *subsection (6)(b)* by substituting "person or persons" with "person"

(3) By substituting the following for subsection (7)

"An application under *subsection (4)* shall be by *ex parte* motion, applications under subsections (5) or (6) shall be by motion and applications under *subsection (4), (5), or (6*) may, if the court directs, be heard otherwise than in public".

EXPLANATORY NOTE

Section 795 deals with the Saving for privileged information and was inserted into the Companies Act by *section 6* of the *Companies (Amendment) Act 2009*.

Subhead (1) includes an amendment to extend the time within which the Authority must apply to the court for a determination as to whether the information it has seized is privileged legal material. Where information is disclosed or possession of it taken by the Authority and where it is apprehended that this material may include information which is privileged legal material, the Authority must maintain the confidentiality of this information until the court, on the application of the Authority, decides whether the material is privileged. Currently the Authority has 7 days from the date it took possession of the material, or the information was disclosed to it, within which to make such application to the court. The extension from 7 to 14 days provided for in this head is in consideration of commercial cases where thousands of documents may be at issue and where an examination of the documents to determine relevance may necessarily take some time.

Subhead (2) includes an amendment to *subsection (6)(b)* and provides that the court may appoint more than one independent person with suitable legal qualifications to examine material and prepare a report for the court. This amendment aims at reducing the time and cost

taken for production of a report to the court in circumstances where the material to be considered is voluminous.

Subhead (3) amends *section 795(7)* to provide that applications to the court by the Authority will be made *ex parte* rather than on notice. This amendment seeks to prevent the possible loss of evidence where a person is tipped off by virtue of their being on notice of the relevant motion. Where the Authority comes into possession of material from a third party in relation to an individual and which may possibly include material the subject of legal privilege, it is required to make an application to the court. This puts the individual the subject of the investigation on notice of it, essentially it "tips off" the individual. Such tipping off can hamper the Authority's investigation into that individual where, now having been tipped off to the investigation, that person either destroys or tampers with the material already held by the Authority (electronically for example), or by the deletion or destruction of material the existence of which the Authority is as yet unaware and has yet to seize, either from that individual or from another third party.

Chapter 10

Compliance and Enforcement

Head 63 Amendment of *section 819* of Principal Act.
[Declaration by court restricting director of insolvent company in being appointed or acting as director]

To provide that:

Section 819(7) of the Principal Act is amended by the insertion of "and the Authority" after "Registrar" and "within "28 days of the perfection of the Order" after "(if any)".

EXPLANATORY NOTE

Section 819 deals with the declaration by the court restricting a director of an insolvent company. Under *section 819* the court will make the declaration restricting the director upon application from either the Authority, the liquidator of the insolvent company, or a receiver of any property of the company. *Subsection (7)* ensures that the prescribed particulars of a restriction declaration are provided to the Registrar (S.I. 216 of 2015).

To ensure the more efficient investigation and prosecution of those directors breaching Restriction and Disqualification orders, this head amends *subsection (7)* to provide that the Authority will receive these orders directly from the prescribed officer of the court at the same time that they are being issued to the Registrar. Currently this is sent by the Registrar of the Court in hard copy by post to the Registrar.

Subsection (7) is further amended by the inclusion of a timeframe of 28 days within which the particulars are to be sent.

[S.I. 216 of 2015 needs to be amended to reflect this change.]

Head 64 Amendment of *section 823* of Principal Act
[Register of restricted persons]

To provide that:

Section 823 of the Principal Act is amended as follows:

(a) in *subsection (2)(a)* by the insertion of "and the Authority within 28 days of the perfection of the Order" after "Registrar", and

(b) in *subsection (3)(a)* by the insertion of "and the Authority are notified within 28 days of the perfection of the Order, and" after "Registrar".

EXPLANATORY NOTE

Section 823 relates to the keeping or a register of restricted persons by the Registrar. Under *section 823* a restricted person will be removed from the register 5 years after the date of the declaration of restriction.

Subsection 2(a) relates to the notification to the Registrar where the court grants partial relief to a restricted person under *section 822(1). Subsection 3(a)* relates to notification to the Registrar where the court grants full relief to a restricted person under *section 822 (1).*

To avoid any undue delays and to ensure efficient investigation and prosecution of directors that breach relevant orders, this head provides that the Authority it to be notified of any court application under these provisions and provided with attested copies of court orders in proceedings to which it is not a party and receive these orders directly from the officer of the court at the same time they are being issued to the Registrar. Currently this is sent by the Registrar of the Court in hard copy by post to the Registrar.

Amendment in this head also provide a timeframe of 28 days within which the particulars will be sent.

[S.I. 216 of 2015 will be amended to reflect this change.]

Head 65 Amendment of *section 863* of the Principal Act
[Information to be supplied to registrar and Corporate Enforcement Authority]

To provide that:

Section 863(2) of the Principal Act is amended by the insertion of "and the Authority" after "Registrar" and "within 28 days of the perfection of such orders." after "as may be prescribed".

EXPLANATORY NOTE

Section 863 of the Principal Act requires a prescribed officer of the court to send to the Registrar prescribed particulars of any disqualification order, any grant or variation of relief under *section 847*, or any conviction either under *section 855(1)* or *856(1)* or the effect of which is to make the person convicted subject to a disqualification order.

To avoid any undue delays and to ensure efficient investigation and prosecution of directors that breach relevant orders, this head amends *section 823* to provide that the Authority will receive these details directly from the officer of the court at the same time as they are being issued to the Registrar and that these are provided within 28 days.

The title of *section 863* may need to be amended to reflect that the information is now being provided directly to the Corporate Enforcement Authority also.

[S.I. 216 of 2015 will be amended to reflect this change.]

Chapter 11

Functions of Registrar

Head 66 Insertion of new *section 888B* in Principal Act
[Documents to verify registered office address]

To provide that:

The Principal Act is amended by the insertion of the following after *section 888A:*

"**Documents to verify registered office address**

888B. (1) The Registrar may by notice in writing require to be furnished to her or him documents to verify the details of the address of a company's registered office delivered in —

(a) a statement under section 22(1)(h);

(b)a notice of the situation of the registered office of the company under *subsections (3*) and (5A)(b) of section 50.

(2) The Registrar may refuse to register—

(a) a company, or

(b) a notice delivered under subsections (3) and (5A)(b) of section 50

where a company fails to deliver the documents requested under subsection (1) or where the documents delivered by the company fail to verify the address of a company's registered office to the satisfaction of the Registrar.".

EXPLANATORY NOTE
Head 66 inserts a new *section 888B* in the Principal Act to provide that the Registrar may require documents to verify a company's address. *Subsection (1)* provides that the Registrar may request documents where a statement is delivered under *section 22(1)(h)* which is included in the application to incorporate a company and where a company delivers a notice to the Registrar in relation to the situation of the registered office of the company under *subsections (3) and (5A)(b)* of *section 50. Subsection (2)* provides that the Registrar may refuse to register a company, or a notice delivered by a company under section 50 where the documents requested are not delivered to the Registrar or where the documents delivered, do not verify the address of the registered office of the company to the satisfaction of the Registrar.

Head 67 Insertion of new *section 888C* in Principal Act
[Statistics on gender balance]

To provide that:

The Principal Act is amended by the insertion of the following after *section 888A*—

> "**Statistics on gender balance**
> (1) A company may provide voluntary information in an annual return made under this Act on the gender balance of its board of directors.
>
> (2) The Minister shall prescribe the information required under *subsection (1)* in the form prescribed under *section 343(4)(b).*
>
> (3) The information collected by the Registrar under this section is for statistical purposes only.".

EXPLANATORY NOTE

Head 67 inserts a new *subhead 888C* in the Principal Act to provide for the collection of data on the gender balance of the board of directors of a company. *Subsection (1)* provides that a company may provide information on the gender of its board of directors on a voluntary basis. *Subsection (2)* provide that the information requested will be prescribed by the Minister in the company's B1 Form *annual return. Subsection (3)* provides that the information collected is for statistical purposes only.

Head 68 Amendment of *section 891* of Principal Act
[Inspection and production of documents kept by Registrar]

To provide that:

Section 891(1) of the Principal Act is amended by the insertion of the following after *paragraph (c):*

> "(d) enter a contract or a data licence agreement with the Registrar for the use, distribution and access to any document or data which has been registered by the Registrar in pursuance of this Act".

EXPLANATORY NOTE

The Registrar of Companies supplies, under a data licence agreement, daily updates of data, downloaded from the internet, in bulk format for high volume users of the Companies Registration Office (CRO) data. The data concerned is company information in respect of all companies and business names on the register. In addition, historic scanned documents that are associated with live CRO submissions may be purchased under licence. This head inserts a new *paragraph (d) in section 891* to clarify that the Minister may prescribe a fee for the provision of documents under a contract or data licence agreement.

Chapter 12

Irish Auditing and Accounting Supervisory Authority

Head 69 Amendments to *section 905* of Principal Act
[Functions of Supervisory Authority]

To provide for:

(1) *Section 905(2)(c*) of the Principal Act is amended by replacing 'require changes to and to approve' with 'require changes to', and by deleting 'approved' in (ii) below:

> (ii) any amendments to the constitution or bye laws of each prescribed accountancy body, including amendments to its investigation and disciplinary procedures and to its standards,

EXPLANATORY NOTE

Section 905(2)(c) currently provides that the functions of the Supervisory Authority are to require changes to and to approve the constitution and bye laws of each prescribed accountancy body. (PABs).

The purpose of *Head 69* is to ensure that all PABs (including all recognised accountancy bodies (RABs)) are well governed in relation to all members practicing in Ireland. Amendments to current law are necessary to ensure that the Supervisory Authority can continue to focus resources and expertise on high performing activities from an oversight, governance, supervisory and regulatory perspective.

Subhead (1) amends *section 905(2)(c)* of the Principal Act by removing the requirement for the Authority to 'approve' the constitution, bye laws and amendments of same, and instead provides that the Supervisory Authority may 'require changes' to the constitution and bye laws of each prescribed accountancy body, including its investigation and disciplinary procedures and its standards, and any amendments to them where the Supervisory Authority sees fit.

Section 900 defines a prescribed accountancy body as (a) a recognised accountancy body *section 930*; or (b) any other body of accountants that is prescribed. Current prescribed accountancy bodies are the:

- ACCA - Association of Chartered Certified Accountants;

- AIA - Association of International Accountants;
- CIMA - Chartered Institute of Management Accountants;
- CIPFA - Chartered Institute of Public Finance & Accountancy;
- CAI - Institute of Chartered Accountants in Ireland; and
- CPA - Institute of Certified Public Accountants in Ireland.

Head 70 Amendment of *section 915* of Principal Act
[Application of money received by Supervisory Authority]

To provide for:

(1) *Section 915(1)* of the Principal Act is amended as follows:

> by replacing "[Subject to *subsection (3),* the Supervisory Authority]", with "[The Supervisory Authority]".

(2) *Section 915(2)* of the Principal Act is amended as follows:

> "**915(2)** The Supervisory Authority may use money set aside for or paid into the reserve fund in accordance with *section 919* only for the purpose of meeting expenses incurred by it in performing its functions under *section 933 and section 934* and may not use any other money received by it for that purpose.

(3) *Section 915(3)* is removed.

EXPLANATORY NOTE

The amendments provided for by *head 70* seek to rectify a lacuna where the Supervisory Authority cannot expend certain monies it pays into the reserve fund. *Section 915* provides that the Supervisory Authority shall not use the money received by it, which must be paid into the reserve fund (*section 919*), except for the purpose of meeting expenses properly incurred by it in performing its functions.

Section 919 as amended by the transposition of the Audit Directive (as amended) provides that the Supervisory Authority pay into the reserve fund the amount set aside from the annual grant from the Government as the Supervisory Authority sees fit, and any monies paid to the Statutory Authority under *sections 933(6) and (7), 934(8) and (10)* and *section 934C(2)(g).*

Subhead (2) provides for the payment from the reserve fund of expenses incurred by the Supervisory Authority when performing all of its functions under *section 933* and *section 934* and not solely under *section 934C(2)(g).*

Head 71 Amendment to *section 930* of the Principal Act
[Recognition of body of accountants]

To provide that:

Section 930(2) of the Principal Act is amended by removing paragraphs (c), and (d).

EXPLANATORY NOTE

Section 930 provides the grounds on which the Supervisory Authority may grant recognition to a body of accountants (RAB), i.e. for standards relating to training, qualifications and repute applied for the purposes of approval as a statutory auditor; standards applied to members in the area of ethics etc.; effective enforcement of standards on members; and performance of Part 27 functions by the body.

A RAB is permitted to authorise its members and/or member firms to perform statutory audits and to register firms from other EU Member States to perform audits under the Companies Act, provided that they satisfy certain conditions.

Section 930(4) provides that a body granted recognition under section *930(1)* or *(2)* may make a request in writing to the Supervisory Authority to have its recognition revoked under *section. 931*.

Since the commencement of the Companies Act 2014 three bodies had their request for revocation granted: the Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants of Scotland; and the Institute of Incorporated Public Accountants. *Section 29* of the Companies (Corporate Enforcement Authority) Act 2021 provided for the removal of *section 930(2)(f)* of the Companies Act 2014 (the Institute of Incorporated Public Accountants).

The purpose of *head 71* is to update the Companies Act 2014 by removing the named bodies because their request for revocation has been granted.

Head 72 Insertion of new section after *section 934* of Principal Act
[Interim notice in the public interest]

To provide that:

(1) Where the Supervisory Authority has formed the view, during an ongoing:

(a) investigation under *section 934*; or
(b) quality assurance review under *section 1494;* or
(c) following a complaint received,

[and in the case of *subsection (b) and (c)* has decided to launch an investigation under *section 934*],

that a possible relevant contravention has been committed and it is appropriate in the public interest to impose temporary restrictions or conditions on a specified person pending the outcome of its investigation, the Supervisory Authority may issue an interim notice.

(2) Relevant contraventions which may justify the issue of an interim notice include but are not limited to:

(a) failure(s) to obtain sufficient evidence to support (an) issued audit opinion(s);
(b) repeated significant deficiencies in standards of audit work;
(c) significant breach(es) of independence or ethics rules.

(3) The restrictions or conditions which may be imposed by way of an interim notice may include but are not limited to the following:

(a) review by another statutory auditor of an audit file following sign-off of the audit opinion, by the specified person;

(b) review by another statutory auditor of an audit file before sign-off of the audit opinion, by the specified person;

(c) requirement to notify the Statutory Authority of any new audit engagement accepted by the specified person;

(d) restrictions on accepting new audit engagements or audit engagements of certain entities (e.g., Public Interest Entities or insurance companies);

e) suspension from carrying out statutory audits or signing statutory auditors' reports.

(4) An interim notice shall –

(a) be in writing;
(b) set out the grounds on which the Authority is issuing the interim notice;
(c) set out the restriction(s) or condition(s) which take effect upon service of the notice;

(d) invite submissions from the specified person;
(e) include such additional matters (if any) as the Authority considers appropriate;
(f) be served on the specified person by sending it by registered post and electronic means to:

(i) the specified persons registered addresses; or

(ii) any other addresses nominated in writing by the specified person for service of any notice and correspondence.

(5) The Supervisory Authority shall consider the submissions (if any) made to it pursuant to *section 4(d)* and any other relevant factual information and within 21 days of receipt of the submissions, do one of the following –

(a) confirm the interim notice;

(b) vary the restrictions and conditions proposed and issue a new interim notice and invite further submissions; or

(c) revoke the interim notice.

(6) The restrictions or conditions shall remain in place until the investigation by the Supervisory Authority is complete. The interim notice shall:

(a) be subject to review at intervals of no longer than 6 months after the date of the notice or such shorter period as the Authority may decide;

(b) automatically expire 18 months after the date of the notice unless the Authority issues a further interim notice.

(7) The specified person may request that an interim notice be reviewed before the scheduled date of the next review on the grounds that there is information which indicates that the notice should be varied or revoked.

(8) A specified person the subject of an interim notice may lodge an appeal to the court at any time during the imposition of the interim notice.

(9) Failure to comply with *sections 3 (a), (b), (c), or (d)* may result in suspension in accordance with *section 3(e).*

(10) Failure to comply with suspension in accordance with *section 3(e)* is a [category 2] offence and will be referred to the Corporate Enforcement Authority.

(11) The Supervisory Authority shall make regulations respecting the procedures to be followed under this head.

EXPLANATORY NOTE

Subhead (1) provides that the Supervisory Authority can take immediate action to impose temporary restrictions or conditions on a statutory auditor where the Supervisory Authority forms the view during: an investigation under *section 934*; or has decided to conduct a *section*

934 investigation as a result of findings during a quality assurance review under *section 1494*; or following receipt of a complaint, that a possible relevant contravention has been committed and that it is appropriate in the public interest to do so.

Subhead (2) provides the possible relevant contraventions that warrant the Supervisory Authority issuing an interim notice to include but not limited to: failure(s) to obtain sufficient evidence to support (an) issued audit opinion(s); repeated significant deficiencies in standards of audit work; and significant breach(es) of independence or ethics rules.

Subhead (3) provides for the temporary restrictions or conditions to include but not limited to, in order of severity: review by another statutory auditor of an audit file *following* sign-off of the audit opinion by the specified person; review by another statutory auditor of an audit file *before* sign-off of the audit opinion by the specified person; a requirement to notify the Authority of any new audit engagements accepted by the specified person; restrictions on accepting new audit engagement or engagements of certain entities (e.g., Public Interest Entities or insurance companies); and suspension from carrying out statutory audits or signing statutory audit reports.

Subhead (4) provides that an interim notice shall be in writing, sets out the grounds on which it is based, sets out the restrictions or conditions to be effective upon service, invites submissions from the specified person, includes such additional matters (if any) as the Supervisory Authority considers appropriate. The notice will be served on the specified person by registered post and electronic mail at addresses provided by them.

Subhead (5) provides that the Supervisory Authority shall consider the submissions made (if any) and decide to: confirm the interim notice; or vary the restrictions and conditions, issue a new interim notice and invite further submissions; or cancel the interim notice.

Subhead (6) provides that the restrictions or conditions shall remain in place until the investigation by the Supervisory Authority is completed. The notice shall be subject to review every six months after issue or in a shorter period if the Supervisory Authority decides and the interim notice will expire after 18 months. The Supervisory Authority may issue a further notice where it considers it is appropriate.

Subhead (7) provides that specified person may request that an interim notice be reviewed before the scheduled date of the next review on the grounds that there is information which indicates that the notice should be varied or revoked.

Subhead (8) provides that a specified person may lodge an appeal to the court at any time during the imposition of the interim notice, including when the notice is served, when the Authority reaches a decision following consideration of submissions made and when a decision is made on an application for a review (in accordance with *section 7).*

Subhead (9) provides that failure by a specified person to comply with *sections 3(a), (b), (c) or (d)* will result in the suspension from carrying out statutory audits or signing statutory auditors' reports.

Subhead (10) provides that failure to comply with a suspension from carrying out statutory audits or signing statutory auditors' reports is a [category 2] offence and will be referred to the Corporate Enforcement Authority.

Subhead (11) provides that the Supervisory Authority shall make regulations respecting the procedures to be followed under this head in accordance with *section 938(4).*

Section 934 provides the Supervisory Authority with powers to investigate a possible relevant contravention committed by a specified person, following a complaint or of on its own initiative.

Section 900 defines: "relevant contravention" as (a) a breach of the standards of a prescribed accountancy body (PAB) by a member of that body, or (b) a contravention by a statutory auditor of a provision of *sections 336* or *sections 337*, Part 27, or Regulation (EU) No 537/2014 (requirements regarding statutory auditors of public interest entities (PIEs).

A "specified person", in relation to a relevant contravention is defined as: where the relevant contravention falls within paragraph (a) of the definition of "relevant contravention", the member or former member concerned of the PAB, and (b) where the relevant contravention falls within paragraph (b) the statutory auditor or former statutory auditor concerned.

[This head will necessitate changes to cross-references in *section 934* and inclusion in *section 941*.]

Chapter 13

Corporate Enforcement Authority

Head 73 Amendment of *section 944F* of Principal Act
[Membership of Authority]

To provide that:

Section 944F of the Principal Act is amended by the insertion of the following subsection after *subsection (2):*

> "(2A)(a) Without prejudice to *section 944G(4)*, where one Member only stands appointed to the Authority, that sole appointed Member is to be known as Chief Executive Officer of the Corporate Enforcement Authority.
>
> (b) Where a further Member or Members are appointed to the Authority, the title of the former sole Member will revert to Member of the Authority, unless that person is appointed as Chairperson under the section 944G whereupon their title would be Chairperson of the Corporate Enforcement Authority."

EXPLANATORY NOTE

The Companies (Corporate Enforcement Authority) Act 2021 provided for the replacement of references to the ODCE and to the Director with the term "Authority". Whereas previously the Companies Act provided that the head of the ODCE was referred to as the Director, the 2021 Act did not specify any such title or term or a term to be used when referencing the head of the Corporate Enforcement Authority (CEA).

Head 73 provides that where only one Member is appointed to the Authority, that sole member, is to be known by the title of Chief Executive Officer of the Authority for as long as he/she is the sole member.

Should a further Member or Members be appointed, then the CEO's title shall revert to simply being "Member of the Authority", that is unless that person is appointed as Chairperson by the Minister under section 944G. In this event that person's title will become Chairman of the Corporate Enforcement Authority.

The title of Chief Executive Officer denotes that there is only one Member standing appointed to the CEA. Where further Members are appointed, the title Chief Executive Officer will not be used. Rather, in this scenario there will be a “Chairman of the Corporate Enforcement Authority” and “Member(s) of the Corporate Enforcement Authority.

Head 74 Amendment of *section 944Q* of Principal Act
[Disclosure of information to the Authority]

To provide that:

Section 944Q of the Principal Act is amended as follows:

(a) in *subsection (1)* by the inclusion of the following entities in the list of bodies that can disclose information to the Authority or an officer of the Authority.

(a) the Registrar of Beneficial Ownership;
(b) the Charities Regulator;
(c) the Minister for Social Protection;
(d) the Pensions Authority;
(e) the Financial Services and Pensions Ombudsman;
(f) the Data Protection Commission;
(g) the Protected Disclosures Commissioner;

and

(b) by amending *subsection (2)* by replacing "*paragraphs (a) to (m)"* with "*paragraphs (a) to* (-).

EXPLANATORY NOTE

Section 944Q of the Principal Act provides a list of persons or bodies that may provide information to the Corporate Enforcement Authority where that information relates to the commission of an offence or non-compliance with the Companies Act, or where it is considered that the information could assist the CEA or an officer of the CEA in investigating suspected non-compliance with the Companies Act or an offence under the Companies Act.

Head 74 expands and provides increased clarity in relation to the statutory gateway for sharing of information.

Head 75 Insertion of new section in Part 15, Chapter 3A of Principal Act

To provide that:

The Principal Act is amended at Part 15, Chapter 3A, Corporate Enforcement Authority by the insertion of the following new section:

"**Obstruction of officer or staff member of the Authority**

"(1) A person who delays, obstructs, impedes, interferes with or resists a Corporate Enforcement Authority officer who is a member of An Garda Síochána seconded to the Corporate Enforcement Authority in the exercise or performance of his or her powers or duties under Garda functions or the Companies Act 2014, or a member of the staff of the Authority in accompanying or assisting a CEA officer shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding €3,000, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £10,000, or to imprisonment for a term not exceeding 3 years, or to both."

EXPLANATORY NOTE

The purpose of *heads 75 and 76* is to introduce new criminal offences relating to the obstruction or intimidation, while they are performing their powers or duties, of any staff member of the Corporate Enforcement Authority, to include members of An Garda Síochána seconded to the CEA and all civil service staff of the Authority.

The CEA is staffed by a majority of civilians and while there are several offences of intimidating, assaulting or obstructing peace officers, members of An Garda Síochána or Criminal Assets Bureau Officers in the course of their duties on the statute books, it is considered that these do not adequately cover all of the staff of the CEA including the large majority of civil servants. In addition, it is suggested that the offence of intimidation relates to attempts to influence the outcome of a case (intimidation of witnesses, jurors, etc) and so didn't extend to intimidation during an investigation. The intention of *heads 75 and 76* is to criminalise actions at a lower level to deter intimidation of a staff member of the CEA from completing the performance of their functions to the fullest extent for fear that there may be consequences for him or her.

Examples of existing offences are included in the following Acts:

- Criminal Assets Bureau Act 1996.
- Criminal Justice (Public Order) Act 1994
- Non-Fatal Offences against the Person Act 1997 (NFOATP),
- Misuse of Drugs Act 1977 – 2017,

Criminal Assets Bureau Act 1996

Heads 75 and 76 are modelled on *sections 12 and 13* of the Criminal Assets Bureau Act 1996. This section in the 1996 Act is considered to be of sufficient clarity and breadth to be modelled for use in this head. They cover single instances of making threats with the intention of seeking to deter a CEA staff member from performing their function without risk of personal injury, bodily harm or other form of financial or reputational damage. Such instances would include threats of a non-physical nature, as well as obstructing an CEA staff member in the course of their duty.

Section 12 Criminal Assets Bureau Act 1996: Obstruction.

12.—(1) A person who delays, obstructs, impedes, interferes with or resists a bureau officer in the exercise or performance of his or her powers or duties under Garda functions, the Revenue Acts or the Social Welfare Acts or a member of the staff of the Bureau in accompanying or assisting a bureau officer shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding €3,000, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £10,000, or to imprisonment for a term not exceeding 3 years, or to both."

Section 13 Criminal Assets Bureau Act 1996: Intimidation

"13.—(1) A person who utters or sends threats to or, in any way, intimidates or menaces a bureau officer or a member of the staff of the Bureau or any member of the family or the civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of a bureau officer or of a member of the staff of the Bureau shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding F13**[**€3,000**]**, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 10 years, or to both.

Criminal Justice (Public Order) Act 1994

Staff members of the CEA are not "peace officers" and so *section 19* (Assault or obstruction of peace officer) of the 1994 Public Order Act would not protect CEA civilian staff, where "peace officers" means

"a member of the Garda Síochána, a prison officer or a member of the Defence Forces".

Non-Fatal Offences against the Person Act 1997 (NFOATP)

Sections 9 and 10 of the Non-Fatal Offences Against the Person Act 1997 provide for coercion or harassment but do not provide for criminalisation of actions at a lower level.

A threat to kill is intimidation at its most serious level and is criminalised by section 5 of the Non- Fatal Offences against the Person Act, 1997. An instance of intimidation may be a single incident, which would mean that the offence of harassment, as provided for by section 10 of NFOATP Act 1997 would not apply as harassment for the purposes of that section is defined as *"persistently following, watching, pestering, besetting or communicating with him or her*."

Therefore, while there is a suite of legislative protections available to the citizen, in the absence of a special offence of intimidation of a member of staff of the CEA (be that a member of An Garda Síochána, or a civilian staff member), then the protections afforded to the citizen are the only protections afforded to the CEA civilian staff member. In terms of protection for persons and the functions they perform, this does not provide adequate protection, especially when they will encounter these threats during, and by reason of, their duty.

Head 76 Insertion of new section in Part 15, Chapter 3A of Principal Act

To provide that:

The Principal Act is amended at Part 15, Chapter 3A, Corporate Enforcement Authority by the insertion of the following new section:

> **"Intimidation of officer or staff member of the Authority**
>
> (1) A person who utters or sends threats to or, in any way, intimidates or menaces a CEA officer who is a member of An Garda Síochána seconded to the Corporate Enforcement Authority or a member of the staff of the Authority or any member of the family or the civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of a CEA officer or of a member of the staff of the Authority shall be guilty of an offence.
>
> (2) A person guilty of an offence under this section shall be liable—
>
> (*a*) on summary conviction, to a fine not exceeding €3,000, or to imprisonment for a term not exceeding 12 months, or to both, or
>
> (*b*) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 10 years, or to both.

EXPLANATORY NOTE

The purpose of *heads 75 and 76* is to introduce a new criminal offence relating to the obstruction or intimidation, while they are performing their powers or duties, of any staff member of the Corporate Enforcement Authority, to include members of An Garda Síochána seconded to the CEA and all civil service staff of the Authority.

The CEA is staffed by a majority of civilians and while there are several offences of intimidating, assaulting or obstructing peace officers, members of An Garda Síochána or Criminal Assets Bureau Officers in the course of their duties on the statute books, it is considered that these do not adequately cover all of the staff of the CEA including the large majority of civil servants. In addition, it is suggested that the offence of intimidation relates to attempts to influence the outcome of a case (intimidation of witnesses, jurors, etc) and so didn't extend to intimidation during an investigation. The intention of *heads 75 and 76* is to criminalise actions at a lower level to deter intimidation of a staff member of the CEA from completing the performance of their functions to the fullest extent for fear that there may be consequences for him or her.

Examples of existing offences are included in the following Acts:

- Criminal Assets Bureau Act 1996.
- Criminal Justice (Public Order) Act 1994
- Non-Fatal Offences against the Person Act 1997 (NFOATP),
- Misuse of Drugs Act 1977 – 2017,

Criminal Assets Bureau Act 1996

Heads 75 and 76 are modelled on *sections 12 and 13* of the Criminal Assets Bureau Act 1996. This section in the 1996 Act is considered to be of sufficient clarity and breadth to be modelled for use in this head. They cover single instances of making threats with the intention of seeking to deter a CEA staff member from performing their function without risk of personal injury, bodily harm or other form of financial or reputational damage. Such instances would include threats of a non-physical nature, as well as obstructing an CEA staff member in the course of their duty.

Section 12 Criminal Assets Bureau Act 1996: Obstruction.

12.—(1) A person who delays, obstructs, impedes, interferes with or resists a bureau officer in the exercise or performance of his or her powers or duties under Garda functions, the Revenue Acts or the Social Welfare Acts or a member of the staff of the Bureau in accompanying or assisting a bureau officer shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding €3,000, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £10,000, or to imprisonment for a term not exceeding 3 years, or to both."

Section 13 Criminal Assets Bureau Act 1996: Intimidation

"13.—(1) A person who utters or sends threats to or, in any way, intimidates or menaces a bureau officer or a member of the staff of the Bureau or any member of the family or the civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of a bureau officer or of a member of the staff of the Bureau shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding F13**[**€3,000**]**, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 10 years, or to both.

Criminal Justice (Public Order) Act 1994

Staff members of the CEA are not "peace officers" and so section 19 (Assault or obstruction of peace officer) of the 1994 Public Order Act would not protect CEA civilian staff, where "peace officers" means

> *"a member of the Garda Síochána, a prison officer or a member of the Defence Forces".*

Non-Fatal Offences against the Person Act 1997 (NFOATP)

Sections 9 and 10 of the Non-Fatal Offences Against the Person Act 1997 provide for coercion or harassment but do not provide for criminalisation of actions at a lower level.

A threat to kill is intimidation at its most serious level and is criminalised by section 5 of the Non- Fatal Offences against the Person Act, 1997. An instance of intimidation may be a single incident, which would mean that the offence of harassment, as provided for by section 10 of NFOATP Act 1997 would not apply as harassment for the purposes of that section is defined as *"persistently following, watching, pestering, besetting or communicating with him or her*."

Therefore, while there is a suite of legislative protections available to the citizen, in the absence of a special offence of intimidation of a member of staff of the CEA (be that a member of An Garda Síochána, or a civilian staff member), then the protections afforded to the citizen are the only protections afforded to the CEA civilian staff member. In terms of protection for persons and the functions they perform, this does not provide adequate protection, especially when they will encounter these threats during, and by reason of, their duty.

Chapter 14

Public Limited Companies

Head 77 Amendment of *section 1062* of Principal Act
[Company investigations concerning interests in shares]

To provide that:

Section 1062 of the Principal Act is amended by the substitution of the following for *subsection (4)* –

> "(4) A notice under this section shall require any information given in response to the notice to be given in writing within such reasonable time not exceeding 5 days as may be specified in the notice.".

EXPLANATORY NOTE

The purpose of *section 1062* is to provide a PLC with the power to investigate the ownership of its shares over a period up to the three preceding years, by requiring information from any person whom the company knows or has reasonable cause to believe to be or have been interested in the shares of the company. A PLC may request this information from a person by written notice. *Subsection (4)* currently provides that the recipient of a notice shall reply in writing within a reasonable time that the notice specifies.

The purpose of *head 77* is to provide that a person in receipt of such a notice has an obligation to the recipient to respond within a maximum time period (i.e. 5 days). This head reflects the policy position that the information to be given be furnished within a prescribed timeframe.
This head implements a recommendation of the Company Law Review Group in its December 2021 report, *Company law issues arising under Directive (EU) 2017/828 of 17th May 2017 (SDRII), Central Securities Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014.*

Head 78 Amendment of *section 1087D* of Principal Act
[Alternative special majority for Schemes of Arrangement]

To provide for:

The substitution of the following for *section 1087D* in the Principal Act:

'**1087D Alternative special majority for Schemes of Arrangement**

(1) In *section 449(1)*, "special majority" insofar as it applies to the securities of a relevant issuer means either**,**

(i) shares, or holders in the case of securities other than shares, of the applicable class present and voting either in person or by proxy at the scheme meeting, or at the option of the relevant issuer

(ii) a majority representing at least 75 per cent in value of the members in the case of shares, or holders in the case of securities other than shares, of the applicable class present and voting either in person or by proxy at the scheme meeting provided that a super quorum is present.

(2) In this section:

"applicable class" means any class of securities (whether shares or securities other than shares) of a relevant issuer;

"super-quorum" means:

(i) in the case of an applicable class of securities consisting of shares, members present in person or by proxy representing at least one-third in value of the members of the applicable class;

(ii) in the case of an applicable class of securities consisting of securities other than shares, holders present in person or by proxy representing at least one-third in value of the holders of the applicable class.'

EXPLANATORY NOTE

Head 78 provides that when a *relevant issuer* as defined at *section 1087A* is organising a vote on a scheme of arrangement, they can either reach a majority (*special majority*) by counting votes in a similar way to *section 449(1)* or in an adjusted way if there is a *super quorum* at the scheme meeting.

A scheme of arrangement is a process used by a company to provide a reorganisation of the share capital of the company. Such an action under law requires an increased or "special

majority" of company members or of a particular class of members. A scheme of arrangement must be sanctioned by an order of the court under *section 453*.

Section 449(1) interprets "special majority" for the purposes of a scheme of arrangement as a *majority in number* representing at least *75% in value* of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the scheme meeting. Settlement of securities trades - whereby securities are transferred by the seller to the buyer and funds are transferred from the buyer to the seller - are typically made in a securities settlement system operated by a Central Securities Depository (CSD).

Because of its intermediated system of shareholding, a CSD may hold legal title to *95%* or more of the securities of the relevant issuer. Thus, the existing majority in number requirement under section 449(1) would be disproportionate as a CSD would count as only one shareholder. In effect, despite holding 95% of the securities, this single shareholder could be defeated in a vote by three shareholders holding the remaining 5% of the securities because of the *majority in number* provision. Thus, *section 1087D* was inserted into the Companies Act 2014 by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (No 23 of 2020) to address this issue.

The Company Law Review Group (CLRG) referred to the "headcount" requirement of *section 1087D* as having "an air of unreality" to it, in view of the progressive distancing of the beneficial owners from those registered on the register of members in the intermediated CSD system.

Thus, it recommended that an amendment be made providing that in any scheme of arrangement among holders of transferable securities of a PLC, a special majority may be constituted either as at present under *section 449(1)* or in the way that is currently provided for under section 1087D.

Having considered the CLRG's report, the policy intent is to provide a PLC that is a *relevant issuer* with a choice to arrive at a special majority of members, in the case of shares, or holders of other securities that are not shares (debentures/debt securities). That choice is a special majority calculated in the same way provided for under existing *section 449(1)* or as is currently

calculated for PLCs that are *relevant issuers* under existing *section 1087D(1)* - subject to the presence of a *super-quorum*.

Subsection (1) provides a *relevant issuer* with the choice between (i) a *special majority* in *section 449(1)* for a vote on a scheme of arrangement or (ii) an alternative way of reaching a majority.

Subsection (2) provides for definitions of terms used in *subsection (1).*

Head 78 implements the CLRG recommendation in its December 2021 report (*Company law issues arising under Directive (EU) 2017/828 of 17th May 2017 (SDRII), Central Securities Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014)*insofar as it applies to PLCs that are *relevant issuers*

Head 79 Amendment of *section 1087G* of Principal Act
[Record date for participation and voting in a general meeting]

To provide that:

Section 1087G of the Principal Act is amended by the substitution of the following for *section 1087G* –

"(1) The provisions of *section 1105* shall apply to general meetings held by a relevant issuer with the modification that 'record date' (as that expression is used in that section) in relation to a relevant issuer shall be close of business on the day before a date not more than 72 hours before the general meeting to which it relates (in this section called the 'original meeting').

(2)Save where *subsection (3)* applies, where the original meeting is adjourned, the 'record date' for the original meeting shall also be the record date of the adjourned meeting.

(3)Where notice is given to members of an adjourned meeting, to take place no earlier than 14 days following the date of the notice, the 'record date' for the adjourned meeting shall be close of business on the day before a date not more than 72 hours before the adjourned meeting to which it relates.

(4) No part of a Saturday, Sunday or public holiday shall be taken into account for the purposes of the computation of the time of 72 hours provided for in *subsections (1), (2) and (3)* of this section.".

EXPLANATORY NOTE

Section 1087G of the Principal Act currently provides for at least a 72-hour period before a general meeting for a PLC that has issued securities registered in the name of a Central Securities Depository (CSD)[1] (*relevant issuer*[2]) to permit investors' voting instructions in a general meeting to be provided.

The *form of proxy* is the means by which a registered member of a company appoints another person (the proxy) to attend a meeting and vote on their behalf. *Section 183* provides that a form of proxy must be delivered 48 hours before an adjourned meeting (see first head as per proposed amendment).

[1] A CSD is an institution that operates the infrastructure (the so-called 'securities settlement systems') that enables settlement. CSDs are the institutions that materialise the transactions concluded on the markets. It is with them that settlement is either finalised or fails. They ensure the maintenance of securities accounts that record how many securities have been issued, by whom, and each change in the holding of those securities.

[2] 'Relevant issuer' is defined at section 1087A of the Companies Act 2014.

In the case of a PLC that is a *relevant issuer*, if a meeting is adjourned for more than 48 hours, the opportunity for submitting another form of proxy is reopened. This occurs because *section 1002* does not disapply the 48-hour rule in *section 183* to a PLC that is a *relevant issuer*. The Company Law Review Group (CLRG) reported that this has practical challenges for a CSD because it cannot accommodate a changed *record date* or a change in previously submitted voting instructions.

The purpose of *head 79* is to implement a policy to close off this opportunity to submit another form of proxy. It achieves this by fixing the *record date* for an adjourned meeting to that which prevailed for the original meeting subject to the adjourned meeting occurring within 14 days of the original meeting.

Subsection (1) is the designation of the section as *subsection (1)* with minor modification. *Subsection (2)* provides that the *record date* for the original meeting shall also be the *record date* for any future adjourned meeting where, subject to *subsection (3)*, an adjourned meeting is held within 14-days of the notice given to members. *Subsection (4)* provides that weekends and any public holidays are excluded from the time counting towards the minimum 72-hour notice required.

This amendment implements a recommendation of the CLRG in its December 2021 report, *Company law issues arising under Directive (EU) 2017/828 of 17th May 2017 (SDRII), Central Securities Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014*.

Head 80 Amendment of section 1103 of Principal Act

To provide that:

Section 1103(2) of the Principal Act is amended as follows:

(1) By the insertion of the following paragraph (aa) after subsection (2)(a)

"in the case of a meeting proposed to be held wholly or partly by the use of electronic communications technology—

(i) the electronic platform to be used for the meeting,

(ii) details for access to the electronic platform,

(iii) the time and manner by which an attendee must confirm his or her intention to attend the meeting,

(iv) any requirements or restrictions which the company has put in place in order to identify attendees who intend to attend the meeting,

(v) the procedure for attendees to communicate questions and comments during the meeting, and

(vi) the procedure to be adopted for voting on resolutions proposed to be passed at the meeting;"

(2) By the amendment of *section 1103(2)(iv)* by deleting "sections 1106 and 1109 for voting electronically or by correspondence respectively" and replacing it with "section *1109* for voting by correspondence."

EXPLANATORY NOTE

Head 80 is ancillary to the provision in head 8 permitting the holding of hybrid of wholly virtual meetings. *Section 181* of the Companies Act 2014 contains the provisions relating to the notice that must be provided in advance of general meetings. *Section 1103* makes additional provisions concerning notice under *section 181* by a traded PLC and *section 1103(2)* provides specifically what must be set out in the notice of general meetings for PLCs.

Section 1103(2)(aa) was inserted by the *Companies (Miscellaneous Provisions) (Covid -19) Act 2020* for an "interim period" and addressed the specific details to be included in notice to attendees where the meeting was to be held as a hybrid or wholly virtual meeting during that

period. *Section 1103(2)(aa)* as introduced by the 2020 Act is repealed in head 3. It is substituted, and replicated, by the paragraph in this head.

Subhead (2) reflects the repeal of *section 1106* in *head 3*.

Head 81 Amendment of *section 1129* of Principal Act
[Mergers to which Chapter applies -definitions and supplementary provision]

To provide that:

Section 1129 of the Principal Act is amended by the substitution:

(1) in *subsection (2)* of –

"In this Chapter "merger by absorption" means an operation whereby, on being dissolved and without going into liquidation, one or more companies transfer all of their assets and liabilities to a company that is the holder of all the shares representing the capital of the transferor companies."
for
"In this Chapter "merger by absorption" means an operation whereby, on being dissolved and without going into liquidation, a company transfers all of its assets and mentioned company.", and

(2) in *subsection (3*) of "a transferor company" for "the first-mentioned", where it occurs.

EXPLANATORY NOTE

Section 1129 of the Principal Act sets out the types of mergers to which Chapter 16 of Part 17 applies and where at least one of the merging companies is a PLC (*section 1128*) – namely mergers by acquisition, mergers by absorption and mergers by formation of a new company. Currently, under *subsection (2),* only one company at a time can merge by absorption into the successor company.

Head 81 amends *subsection (2)* to provide that in the case of public companies a group of subsidiary companies, wholly owned by the same parent company taking part in a merger by absorption, be facilitated in one transaction rather than several transactions.

The amendments to *subsection (3)* are consequential and technical.

This amendment implements a recommendation made by the CLRG in their report of May 2022 *On certain company law issues under the Companies Act 2014 relating to corporate governance.*

Chapter 15

Statutory Audits

Head 82 Amendment of *section 1551* of the Principal Act
[Publication of information to a website]

To provide for:

In *section 1551 (13)(a)* of the Principal Act remove 'on its website' in the last line and include after 'which body carries out those functions and how that body is composed', 'by one of the following ways':

(a) its own website, or

(b) in any annual report published by it, or

(c) in an annual return or other periodic statement delivered by it to the Registrar or Central Bank.

EXPLANATORY NOTE

Under the *Audit Directive 2006/43/EC* as amended, public interest entities are required to have audit committees and the rules are set out in *section 1551* of the Companies Act 2014 inserted by the Companies (Statutory Audits) Act 2018.

There are some exceptions permitted and the option in *article 39.4* of the Directive was exercised in the 2018 Act to allow the category of captive insurers/reinsurers not to have an audit committee as long as they have a body or bodies performing equivalent functions. This exception is set out in *section 1551* paragraph 13. This was a continuation of the policy that existed before the 2018 Act.

However additionally, captives that benefit from this exemption were required to publish information to their website on the body or bodies performing equivalent functions as a transparency measure. This head introduces flexibility to require that the entity disclose this information on its website or alternatively in any annual report published by it or an annual return or other periodic statement delivered by it to the Registrar or Central Bank in light of the fact that it has been submitted to the Department that not all such entities have public facing websites.

PART 3

Miscellaneous

Head 83 Amendment of Industrial and Provident Act 1893

To provide that:

The Industrial and Provident Societies Act 1983 is amended by the substitution of the following section for *sections 14A and 14B* (inserted by *sections 27 and 28 of* the Companies (Miscellaneous Provisions) (Covid-19) Act 2020):

> "**Participation in a general meeting by the use of electronic communications technology**
>
> **14A.** (1) This section (including any regulations made thereunder) shall apply to the general meetings of a registered society, notwithstanding any other provision of this Act and the Industrial and Provident (Amendment) Act 1978, unless the rules of the registered society provides that this section shall not apply.
>
> (2) A general meeting convened or held by the society may be conducted—
>
> (a) wholly by the use of electronic communications technology that provides attendees entitled to attend, with a reasonable opportunity to participate in the meeting in accordance with subsection (3),
>
> (b) in one or more physical venues at the same time, or
>
> (c) at a physical venue and, if necessary, include the use of electronic communications technology that provides attendees with a reasonable opportunity to participate in the meeting in accordance with subsection (3).
>
> (3)(a) A registered society may provide for participation in a general meeting by providing or facilitating, for that purpose, the use of electronic communications technology, including a mechanism for casting votes by a member, whether before or during the meeting.
>
> (b) The mechanism referred to in paragraph (a) shall not require the member to be physically present at the general meeting or require the member to appoint a proxy who is physically present at the meeting.
>
> (4) The use of electronic communications technology pursuant to subsection (3) may be made subject only to such requirements and restrictions put in place by the registered society as are necessary to ensure the identification of attendees and the security of such technology, to the extent that such

requirements and restrictions are proportionate to the achievement of those objectives.

(5) A registered society shall inform attendees, before the general meeting concerned, of any requirements or restrictions which it has put in place pursuant to subsection (4).

(6) Attendees entitled to attend a general meeting shall not permit a person not entitled to attend that meeting to participate, listen or view the proceedings of a meeting by way of electronic communications technology.

(7) A registered society that provides for the use of electronic communications technology for participation in a general meeting by an attendee shall ensure, as far as practicable, that—

(a) such technology—

(i) provides for the security of any electronic communications by the attendee,

(ii) minimises the risk of data corruption and unauthorised access,

(iii) provides certainty as to the source of the electronic communications,

(b) in the case of any failure or disruption of such technology, that failure or disruption is remedied as soon as practicable,

(c) such technology enables the attendee to—

(i) hear what is said by the chairperson of the meeting and any person introduced by the chairperson, and

(ii) speak and submit questions and comments during the meeting to the chairperson to the extent that the attendee is entitled to do so under the rules of the society, and

(d) in the case of a matter being the subject of a vote, guarantees the accuracy and confidentiality of an individual vote of the member in terms of it being communicated, recorded and counted.

(8) Any temporary failure or disruption of electronic communications technology shall not invalidate the general meeting or any proceedings relating to the general meeting.

(9) Unless such failure or disruption is attributable to any wilful act of the registered society, a registered society shall not be liable in respect of any failure or disruption relating to the equipment used by an attendee to access a general meeting by electronic communications technology that occurs and

which failure or disruption prevents or interferes with the attendee's participation, by way of such technology, in the meeting.

(10) Each member and, where the rules of a registered society allow for a proxy, each proxy shall be counted in the quorum where they attend a general meeting by way of electronic communications technology in accordance with this section.

(11) The notice of a general meeting given by a registered society in accordance with its rules, where the meeting includes participation by the use of electronic communications technology, shall specify, at a minimum—

(a) the electronic platform to be used for the meeting,

(b) details for access to the electronic platform,

(c) the time by and manner by which a member must confirm his or her intention to attend the meeting,

(d) any requirements or restrictions which the society has put in place in order to identify members who intend to attend the meeting,

(e) the procedure for members to communicate questions and comments before and during the meeting, and

(f) the procedure to apply for voting on resolutions proposed to be passed at the meeting.

(12) (a) The Minister may, if he or she considers it appropriate, by regulations make further provision for all or any of the following in relation to general meetings to be held by way of electronic communications technology:

(i) the convening and conduct of the meetings;

(ii) attendance at the meetings;

(iii) notice to be provided relating to the meetings;

(iv) access to and participation in the meetings.

(b) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(13) In this section—

‘attend’, in relation to a general meeting of a registered society, means to attend the meeting at a physical venue or to attend or participate in the meeting by the use of electronic communications technology;

‘attendee’, in relation to a general meeting of a registered society, means—

(a) a member of the society,

(b) a proxy of a member of the, where the rules of the society allow for a proxy,

(c) a person entitled to attend the meeting by virtue of provisions in the rules of the registered society

‘electronic communications technology’, in relation to a general meeting of a registered society, means technology that enables real time transmission and real time two-way audio-visual or audio communication enabling members as a whole with a reasonable opportunity to participate in the meeting using such technology from a remote location;

‘electronic platform’, in relation to a general meeting of a registered society, means an electronic system for the delivery of audio-visual or audio communication, including websites, access software and access telephone details or any other electronic technology that delivers such communication;

‘general meeting’, in relation to a registered society, means any of the following:

(a) an annual general meeting of the society;

(b) a general meeting of the society;

‘Minister’ means the Minister for Enterprise, Trade and Employment.”.

EXPLANATORY NOTE

Head 83 substitutes *section 14A and 14B* Industrial and Provident Societies Act 1983 (inserted by *sections 27 and 28* of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020) with a new 14A to provide for the participation in a general meeting of an industrial and provident society by the use of electronic communications technology.

Subsection (1) provides that the section and any regulations made under it shall apply notwithstanding any other provisions of the Industrial and Provident Societies legislation or the rules of the registered societies unless the rules provide that *section 14A* shall not apply.

Subsection (2) sets out the ways in which a general meeting may be conducted. It provides that registered societies may hold fully electronic meetings, hybrid meetings (meetings where some

of the attendees attend at the venue specified in the notice of the meeting while others participate by electronic means), or meetings held in more than one physical location.

Subsection (3) sets out that a registered society may provide for participation in a general meeting by electronic communications, which shall include a mechanism for casting votes, and the mechanism adopted shall not require a member or his/her proxy to be physically present at the meeting.

Subsection (4) clarifies that the use of the electronic communications may be made subject only to such requirements as are necessary to ensure the identification of those taking part in the meeting and the security of the electronic communication. Such requirements and restrictions must be proportionate to the achievement of these objectives.

Subsection (5) requires that attendees shall be notified of any of these requirements or restrictions.

Subsection (6) provides that attendees shall not permit a person not entitled to attend the meeting to participate, listen or view the proceedings of a meeting.

Subsection (7) sets out that when providing for electronic communications for participating in a meeting, the registered society must ensure (as far as practicable) that the security of any electronic communication by the member is guaranteed, that the risk of data corruption and unauthorised access is minimised and that the source of the communication is certain. In addition, where there is a failure or disruption in the electronic communications, the registered society must ensure that the failure or disruption is remedied as soon as possible. The electronic communications must enable the attendees to hear, speak and submit questions, and if voting, guarantee the accuracy and confidentiality of an individual vote.

Subsection (8) clarifies that a temporary failure or disruption of the communication does not invalidate the general meeting or any proceedings relating to it.

Subsection (9) provides that the society is not responsible for any technological failure or disruption relating to the electronic equipment of the member, provided that the failure is not attributable to the wrongdoing of the society.

Subsection (10) explicitly provides that each member and proxy (provided that the rules of the registered society allow for participating in a general meeting by proxy), shall be counted in the quorum where they participate in a meeting virtually.

Subsection (11) provides for the particular details which a notice of a general meeting that includes participation by electronic communications must specify at a minimum, namely the electronic platform and details for access to it; the time and manner by which a member must confirm his/her intention to attend the meeting; any requirements and restrictions put in place by the society to identify the members; the procedure for communicating questions and comments and the procedure for voting on resolutions.

Subsection (12) empowers the Minister to make regulations to make further provision for the convening and conduct of general meetings held by electronic communications, attendance, access to and participation in such meetings and notice in relation to these meetings.

Subsection (13) provides definition for ‘attend’, ‘attendee’, ‘electronic communications and technology’, ‘electronic platform’ and a ‘general meeting’ for the purposes of *section 14A.*

Head 84 Amendment of Registration of Business Names Act 1963

To provide that:

Section 16 of the Registration of Business Names Act 1963 is amended by the insertion of the following subsection after *subsection (1):*

> "(1A) On payment of the prescribed fee, any person may enter a data licence agreement with the Registrar for the use, distribution and access to any document which has been registered by the Registrar in pursuance of this Act".

EXPLANATORY NOTE

The Registrar of Companies supplies, under a data licence agreement, daily updates of data, downloaded from the internet, in bulk format for high volume users of the Companies Registration Office (CRO) data. The data concerned is company information in respect of all companies and business names on the register. In addition, historic scanned documents that are associated with live CRO submissions may be purchased under licence. *Head 84* inserts a new *paragraph (d*) in *section 891* to clarify that the Minister may prescribe a fee for the provision of documents under a data licence agreement.

Head 85 Amendment of the Criminal Justice (Surveillance) Act 2009

To provide that:

The *Criminal Justice (Surveillance) Act 2009* is amended -

(a) in *section 1* –

(i) in the definition of "superior officer" –

(I) `in *paragraph (c),* by the substitution of "principal officer" for "principal officer; and",

(II) in *paragraph (d),* by the substitution of "principal officer; and" for "principal officer;", and

(III) by the insertion of the following paragraph after *paragraph (d)*: "(e) in the case of the Corporate Enforcement Authority, an officer not below the rank of principal officer;",

(ii) in the definition of "relevant Minister", by the insertion of the following paragraph after *paragraph (aa)*:

"(ab) the Minister for Enterprise, Trade and Employment, in relation to approvals granted by a superior officer of, and documents and information in the custody of, the Corporate Enforcement Authority.",

and

(iii) by the insertion of the following definition:

'relevant company law offence' means a Category 1 or Category 2 offence under the Companies Act 2014;

(b) in *section 2,* by the substitution, in *subsection (1),* of "members of the Defence Forces, officers of the Revenue Commissioners, authorised officers of the Competition and Consumer Protection Commission and officers of the Corporate Enforcement Authority" for "members of the Defence Forces, officers of the Revenue Commissioners, authorised officers of the Competition and Consumer Protection Commission",

(c) in *section 3,* by the substitution of "a member of the Defence Forces, an officer of the Revenue Commissioners, an authorised officer of the Competition and Consumer Protection Commission or an officer of the Corporate Enforcement Authority" for "a member of the Defence Forces, an officer of the Revenue Commissioners or an authorised officer of the Competition and Consumer Protection Commission",

(d) in *section 4* –

(i) by the insertion of the following subsection after *subsection (3A):*

"(3B) A superior officer of the Corporate Enforcement Authority may apply to a judge for an authorisation where he or she has reasonable grounds for believing that, as part of an investigation being conducted by the Corporate Enforcement Authority concerning a relevant company law offence, the surveillance being sought to be authorised is necessary for the purposes of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purposes of proceedings in relation to the offence,"

and

(ii) in *subsection (5),* by the *substitution of "(3), (3A), (3B) or (4)"* for "*(3), (3A) or (4)"*

(e) in *section 5* –

(i) in *subsection (2)(a),* by the substitution of *"(2), (3), (3A) or (3B)"* for *"(2), (3) or (3A),*

and

(ii) in *subsection (7),* by the substitution of "Forces, any officer of the Corporate Enforcement Authority, any authorised officer of the Competition and Consumer Protection Commission or any officer of the Revenue Commissioners" for "Forces, any authorised officer of the Competition and Consumer Protection Commission or any officer of the Revenue Commissioners",

(f) in *section 7* –

(i) in *subsection (1),* by the substitution of "a member of the Defence Forces, an officer of the Revenue Commissioners, an authorised officer of the Competition and Consumer Commission or an officer of the Corporate Enforcement Authority" for "a member of the Defence Forces, an officer of the Revenue Commissioners or an authorised officer of the Competition and Consumer Commission",

(ii) in *subsection (2)* –

(I) by the substitution of *"(2), (3), (3A) or (3B)"* for *"(2), (3) or (3A)",* and

(II) by the substitution of "arrestable offence, revenue offence, relevant competition offence or relevant company law offence, as the case may be" for "arrestable offence, revenue offence or relevant competition offence, as the case may be" in each place it occurs,

(iii) in *subsection (7)(c),* by the substitution of "member of the Defence Forces, officer of the Revenue Commissioners, authorised officer of the Competition and Consumer Protection Commission or officer of the Corporate Enforcement Authority" for "member of the Defence Forces,

officer of the Revenue Commissioners or authorised officer of the Competition and Consumer Protection Commission", and

(iv) in *subsection (12),* by the insertion of the following paragraph after paragraph (ab):

"(ac) in the case of an officer of the Corporate Enforcement Authority, to a member of the Corporate Enforcement Authority within the meaning of *section 944F* of the Companies Act 2014,"

(g) in *section 8* –

(i) in *subsection (1),* by the substitution of "a member of the Defence Forces, an officer of the Revenue Commissioners, an authorised officer of the Competition and Consumer Commission or an officer of the Corporate Enforcement Authority" for "a member of the Defence Forces, an officer of the Revenue Commissioners or an authorised officer of the Competition and Consumer Commission",

(ii) in *subsection (2)(a),* by the substitution of *"(2), (3), (3A) or (3B)"* for *"(2), (3) or (3A)",*

(iii) in *subsection (7)(c),* by the substitution of "member of the Defence Forces, officer of the Revenue Commissioners, authorised officer of the Competition and Consumer Commission or officer of the Corporate Enforcement Authority" for "member of the Defence Forces, officer of the Revenue Commissioners or authorised officer of the Competition and Consumer Commission", and

(iv) in *subsection (10),* by the insertion of the following paragraph after paragraph (ab):
"(ac) in the case of an officer of the Corporate Enforcement Authority, a member of the Corporate Enforcement Authority within the meaning of *section 944F of* the Companies Act 2014,"

(h) in *section 11-*

(i) in *subsection (5)(c),* by the insertion of the following subparagraph after subparagraph (ib):

"(ic) the Minister for Enterprise, Trade and Employment, in the case of a contravention by the Corporate Enforcement Authority.",

and

(ii) in *subsection (10),* by the substitution of "Defence Forces, the Revenue Commissioners, the Competition, Consumer Protection Commission or the Corporate Enforcement Authority" for "Defence Forces, the Revenue Commissioners or the Competition, Consumer Protection Commission",

(i) in *section 12(5),* by the substitution of Defence Forces, the Revenue Commissioners, the Competition, Consumer Protection Commission or Corporate Enforcement Authority" for "Defence Forces, the Revenue Commissioners or the Competition, Consumer Protection Commission",

(j) in *section 13(4)* –

(i) in *subparagraph (i) of paragraph (d),* by the substitution of "the Chief of Staff of the Defence Forces, a Revenue Commissioner, the chairperson of the Competition and Consumer Protection Commission or the chairperson, or where only one member stands appointed, the CEO and sole member standing appointed to the Corporate Enforcement Authority" for "the Chief of Staff of the Defence Forces, a Revenue Commissioner or the chairperson of the Competition and Consumer Protection Commission",

and

(ii) in the definition of "relevant person" –

(I) in *paragraph (a)* by the substation of ", an officer of the Revenue Commissioners or an officer of the Corporate Enforcement Authority" for "or an officer of the Revenue Commissioners"

And

(II) in *paragraph (e),* by the substitution of "the Defence Forces, the Revenue Commissioners, the Competition and Consumer Protection Commission or the Corporate Enforcement Authority" for "the Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission".

(k) in *section 14* –

(i) by the substitution of "member of the Defence Forces, officer of the Revenue Commissioners, authorised officer of the Competition and Consumer Commission or authorised officer of the Corporate Enforcement Authority" for –

(i) "member of the Defence Forces, officer of the Revenue Commissioners or authorised officer of the Competition and Consumer Commission" in *subsection (4)(a),* and

(ii) "member of the Defence Forces, officer of the Revenue Commissioners or authorised officer of the Competition and Consumer Commission" in *subsection (5),*

(l) in *section 15(2)(c),* by the substitution "Defence Forces, the Revenue Commissioners, the Competition and Consumer Protection Commission or the

Corporate Enforcement Authority" for "Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission".

EXPLANATORY NOTE

Head 85 amends the *Criminal Justice (Surveillance) Act 2009* to allow the Authority to exercise surveillance functions in certain circumstances extending this power to the Authority in line with policy for other similar enforcement bodies in the State including An Garda Síochána and the Revenue Commissioners and most recently for the CCPC (October 2023). It is modelled on *section 35* of the *Competition (Amendment) Act 2022*.

The 2020 Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption, approved by Government in November 2020 recommended that *"the powers at present conferred on An Garda Síochána and the Revenue Commissioners under the Criminal Justice (Surveillance) Act 2009 be extended to other bodies that have a statutory remit to investigate economic crime or corruption, such as ODCE and CCPC, in line with best practice".* This is provided for in Action 14 of the Implementation Plan.

Separately, the power to conduct surveillance has been identified by the Authority as an important one to strengthen the capability of the CEA to carry out its functions.

The Companies Act 2014 provides for a wide variety of offences, these are primarily divided into compliance type offences e.g., filing obligation and conduct offences e.g., where the behaviour or conduct of directors or other company officers is relevant to establishing the offence. Offences in the Companies Act are categorised as Category 1, 2, 3 and 4 offences, with Categories 1 and 2 being the most serious.

It is intended that the Authority's surveillance powers would be limited to apply only to Category 1 and Category 2 offences as these are analogous to "arrestable offences" covered in the 2009 Criminal Justice (Surveillance) Act 2009. An "arrestable offence" means an offence for which a person of full capacity and not previously convicted may, be punished by imprisonment for a term of 5 years or by a more severe penalty and includes an attempt to commit any such offence. Categories 1 and 2 offences provide for punishment as follows:

- Category 1 offence – conviction on indictment can result in a term of imprisonment of up to 10 years or a fine of up to €500,000 or both;

- Category 1 offence - summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both;
- Category 2 offence – conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both;
- Category 2 offence - summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both.

Conferral of the powers would permit certain Authority officers to monitor, observe, listen to, or make recordings of persons or their movements, activities or communications in the context of company directors or staff meeting or discussing criminal activities/conspiracies at locations separate to company offices, or for example, when moving material from offices to third locations to escape detention. This would serve to provide either direct or circumstantial evidence or, in given circumstances, prevent the possible destruction of evidence.

Regarding other category 2 offences which involve the element of a conspiracy, such powers would be useful e.g., to provide evidence of directors acting while disqualified or restricted; acting as de facto or shadow directors; or where a phoenix company is being established on foot of a liquidation and surveillance of their actions would provide evidence of the offences.

Head 86 Amendment of the Communications (Retention of Data) Act 2011

To provide that:

The *Communications (Retention of Data) Act 2011* is amended as follows:

(1) For the addition in *section 1* of the following definitions:

(a) "Act of 2014" means the Companies Act 2014;

(b) "company law offence" means and offence under the Companies Act 2014 that is an arrestable offence;

(c) "superior officer" means" and

"(e) in relation to an officer of the Corporate Enforcement Authority, an officer not below the rank of Principal Officer."

(2) In *section 3(a),* to insert "company law offences" after "revenue offences,".

(3) To insert in *section 6* a new *subsection (4A)* as follows:

"(4A) An officer of the Corporate Enforcement Authority not below the rank of principal officer may require a service provider to disclose to that officer user data in the possession or control of the service provider -

(a) where the officer believes that the data relate to the person whom the officer suspects on reasonable grounds, of having committed a competition offence, or

(b) where the officer has reasonable grounds for believing that the data are otherwise required for the purpose of preventing, detecting, investigating or prosecuting a company law offence. "

(4) To insert in *section 6C* a new *subsection (4A)* as follows:

(a) "(4A) An officer of the Corporate Enforcement Authority not below the rank of assistant principal officer may apply to an authorising judge for an authorisation under this section where the officer is of the belief that the internet source data in respect of which the application is made –

(a) relate to a person whom the officer suspects on reasonable grounds, of having committed a company law offence, or

(b) are otherwise required to be preserved for the purpose of preventing, detecting, investigating or prosecuting a company law offence."

(b)To amend *subsection (6)* to delete "*subsections (1), (2), (3) or (4),*" and replace it with " *subsections (1), (2), (3), (4) or (4A),".*

(5) To insert in *section 6D* a new *subsection (4A)* as follows:

"(a) "(4A) Subject to *subsection (15)* an officer of the Corporate Enforcement Authority not below the rank of assistant principal officer may apply to a superior officer for an authorisation under this section where the officer believes on reasonable grounds that –

(a) paragraph (a) or (b) of *section 6C(4A)* apply to the internet source data in respect of which the application is made, and

(b) It is likely that, before the internet source data could be obtained pursuant to an authorisation under *section 6C* –

(i) the data would be wholly or partly destroyed or otherwise rendered unavailable, or

(ii) the prevention, detection, investigation or prosecution of a competition offence would be impeded." and

(b) To amend *subsection (5)* as follows:

To delete "*subsection (1), (2), (3) or (4),"* and replace it with "*subsection (1), (2), (3), (4) and (4A), ".*

(c) To amend *subsection (10)* by inserting *subsection (e)* as follows:

"(e) in relation to an authorisation pursuant to an application under *subsection (4A),* be submitted by the superior officer concerned to an officer of the Corporate Enforcement Authority not below the rank of Member of the Authority, and in the case where there is only one Member of the Authority, to that CEO and sole member of the Authority."

(6) To amend section 6F as follows –

"(a)In *subsection (1)* by deleting "or officer of the Competition and Consumer Protection Commission," and substituting it with ", officer of the Competition and Consumer Protection Commission, or officer of the Corporate Enforcement Authority,".

(7) To amend *section 7A* by the insertion of a new *subsection (7A)* as follows:

(a) "(7A) Without prejudice *to section 3A,* an officer of the Corporate Enforcement Authority not below the rank of assistant principal officer may apply to an authorising judge for a preservation order under *subsection (8)* where the officer is of the belief that the Schedule 3 data in respect of which the application is made –

(a) relate to a person whom the officer suspects on reasonable grounds, of having committed a company law offence, or

(b) are otherwise required to be preserved for the purpose of preventing, detecting, investigating or prosecuting a company law offence." and

(b) To amend *section 7A(8)* by deleting "*subsection (5), (6) or (7),"* where it occurs and substituting it with "*subsection (5), (6), (7) or (7A),".*

(8) To amend *section 7B* by including a new *subsection (7A)* as follows:

(a) "(7A) Subject to this section, an officer of the Corporate Enforcement Authority not below the rank of assistant principal officer may apply to a superior officer for a temporary preservation order under *subsection (8)* where the officer believes on reasonable grounds that –

(a) paragraph (a) or (b) of *section 7A(7A)* applies to the Schedule 2 data in respect of which the application is made, and

(b) it is likely that, before the Schedule 2 data could be obtained pursuant to a preservation order under *section 7A* –

(i) the data would be wholly or partly destroyed or otherwise rendered unavailable, or

(ii) the prevention, detection, investigation or prosecution of a company law offence would be impeded.";

(b) By amending *subsection (8)* by deleting "*subsection (5), (6) or (7),"* where it occurs and substituting it with "*subsection (5), (6), (7) or (7A*),".

(c) By inserting *subparagraph (e)* in *subsection (14)* as follows:

"(e) in relation to an order made pursuant to an application under subsection (7a), be submitted by the superior officer concerned to an officer of the Corporate Enforcement Authority not belie the rank of Member of the Authority, and where there is only one such member to the CEO and sole member of the Authority. "

(9) By amending *section 7C* by inserting a new subsection (7A) as follows:

(a) "(7A) Without prejudice to section 3A, an officer of the Corporate Enforcement Authority not below the rank of assistant principal officer may apply to an authorising judge for a production order under *subsection (8)* where the officer is of the belief that the Schedule 2 data in respect of which the application is made –

(a) relate to a person whom the officer suspects on reasonable grounds, of having committed a company law offence, or

(b) are otherwise required to be preserved for the purpose of preventing, detecting, investigating or prosecuting a company law offence." and

(b) by amend *section 7C(8)* by deleting "subsection (5), (6) or (7), where it occurs and substituting it with "subsection (5), (6), (7) or (7A),".

(10) By amending section 7D inserting a new subsection (7A) as follows:

(a) " (7A) Subject to this section, an officer of the Corporate Enforcement Authority not below the rank of assistant principal officer may apply to a superior officer for a temporary production order under subsection (8) where the officer believes on reasonable grounds that -

(a) paragraph (a) or (b) of section 7C(7A) applies to the Schedule 2 data in respect of which the application is made, and

(b) it is likely that, before the Schedule 2 data could be obtained pursuant to a production order under 7C –

(i) the data would be wholly or partly destroyed or otherwise rendered unavailable, or

(ii) the prevention, detection, investigation or prosecution of a company law offence would be impeded.";

(b) by amending section 7D(8) by deleting "subsection (5), (6) or (7), where it occurs and substituting it with "subsection (5), (6), (7) or (7A),";

(c) By inserting a new subparagraph (e) in subsection (14) as follows:

"(e) in relation to an order made pursuant to an application under subsection 7A, be submitted by the superior officer concerned to an officer of the Corporate Enforcement Authority not below the rank of member of the Authority, and where there is only one Member of the Authority, the CEO and sole member of the Authority."

(11) By amending section 9 to include a new subsection (3B) as follows:

(a) "(3B) The Corporate Enforcement Authority shall prepare and submit a report to the Minister for Enterprise, Trade and Employment in respect of data specified in Schedule 2 that were the subject of all disclosure requirements made under section 6(4A), 6F(1), 7C or 7D during the relevant period.";

(b) by amending subsection (4) to delete "or (3A)" and replace it with " (3A) or (3B)"

(c) by inserting a new subsection (7B) as follows:

"(7B) The Minister for Enterprise, Trade and Employment shall review the report submitted under subsection (3B) and shall forward it to the Minister, along with any comments that he or she may have with respect to it.";

(d) by amending subsection(8) by removing "subsections (6), (7) and (7A)" and replacing it with "subsections (6), (7), (7A) and (7B)".

(12) By amending *section 10*, *subsection(5)(a)* by removing "or the Competition and Consumer Protection Commission" and replacing it with ", the Competition and Consumer Protection Commission and the Corporate Enforcement Authority".

(13) By amending *section 12(1)(b)* by removing "and the Competition and Consumer Protection Commission" and replacing it with " , the Competition and Consumer Protection Commission or the Corporate Enforcement Authority".

(14) By amending section 12G(1) to include after "the Chairperson of the Competition and Consumer Protection Commission" " the Chairperson of the Corporate Enforcement Authority or where there is only Member of the Authority, the CEO and sole appointed Member of the Authority, "

(15) By amending section 12I to delete "or an officer of the Competition and Consumer Protection Commission" and replace it with ", an officer of the Competition and Consumer Protection Commission or an officer of the Corporate Enforcement Authority".

EXPLANATORY NOTE

Head 86 amends the *Criminal Justice (Retention of Data) Act 2011* to enable certain members of the Authority to seek data relating to certain company law offences and to align its powers with those of other enforcement agencies like the Competition and Consumer Protection Commission.

[Note – subhead 13 revised to take account of the changes made to section 12 of the 2011 Act by section 285(1)(c) of the Policing, Security and Community Safety Act 2024 which is linked to the establishment of the new Office of the Independent Examiner of Security Legislation provided for in Part 7 of that Act.

Schedule 1

Reference Number	Provision of Principal Act	Words to be substituted	Substituting words
(1)	(2)	(3)	(4)
1	Section 558ZA(3)(c)	Director	Authority
2	Section 558ZN	Director's power to examine books and records	Power of Authority to examine books and records
3	Section 558ZN(2)	the Director may, where he or she considers it necessary or appropriate, request (specifying the reason why the request is being made) an appropriate person to produce to the Director the books and records for examination	the Authority may, where he or she considers it necessary or appropriate, request (specifying the reason why the request is being made) an appropriate person to produce to the Authority the books and records for examination
4	Section 558ZN(4)(a)	Director	Authority
5	Section 558ZN(4)(b)	Director	Authority
6	Section 558ZN(4)(c)	Director	Authority
7	Section 558ZN(5)	Director	Authority
8	Section 558ZN(7)	Director	Authority
9	Section 558ZN(7)(d)	Director	Authority
10	Section 558ZO	Reporting to the Director of Corporate Enforcement of misconduct by process advisers	Reporting to the Corporate Enforcement Authority of misconduct by process advisers
11	Section 558ZO (1)	Director	Authority
12	Section 558ZR(4)	Director of Corporate Enforcement	Corporate Enforcement Authority

13	Section 558ZR(5)	to the Director of Corporate Enforcement, the process adviser shall (a) provide to the Director of Corporate Enforcement such information,	to the Corporate Enforcement Authority, the process adviser shall (a) provide to the Corporate Enforcement Authority such information,
14	Section 558ZR(6)(b)	The Director of Corporate Enforcement	The Corporate Enforcement Authority
15	Section 558ZR(6)	as the case may be, the Director of Corporate Enforcement considers that	as the case may be, the Corporate Enforcement Authority considers that
16	Section 558ZR(9)	Director of Corporate Enforcement	Corporate Enforcement Authority
17	Section 558ZAD(1)(c)	the Director	the Authority