

Managing Corporate Governance  
in Irish Subsidiaries Series:

## Updates to Ireland's Company Law Regime on the Horizon

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As part of a series of articles providing insights on the management and corporate governance of Irish-incorporated companies and, in particular Irish subsidiaries of international companies, Gráinne Boyle (Partner, International Business, Corporate), Ursula McMahon (Professional Support Lawyer, Corporate) and Elaine Hayden (Trainee Solicitor, International Business, Corporate) provide an overview below of some of the key proposed amendments which may impact, and provide more flexibility, to Irish subsidiaries following the recent publication of the General Scheme of the much anticipated Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill (the “**Scheme**”). The Scheme proposes numerous changes (including addressing some technical anomalies) to the existing Companies Act 2014 (the “**2014 Act**”), the primary piece of legislation governing the operation of companies in Ireland.

## Virtual general meetings going forward

The Scheme proposes to permit wholly virtual general meetings (AGMs and EGMs) on a permanent statutory basis (they were temporarily permitted under Covid-19 legislation). Hybrid online and in-person meetings may also be legitimately facilitated, provided this is not expressly prohibited by the company's constitution.

The proposed amendment includes recognition that electronic attendance / participation counts toward the quorum for meetings. This amendment would significantly facilitate flexibility, and remove the strict necessity for, in-person meetings.

## Execution in counterpart of documents under seal

The Scheme proposes to permanently permit companies to execute documents under seal in multiple parts (again, this was temporarily permitted under earlier Covid-19 legislation but this particular provision had in fact expired).

Currently, all signatories and the company seal must be on the same signature page which can be a logistical burden in many circumstances. This welcome provision will provide much more flexibility in terms of document execution.

## Mergers between Designated Activity Companies

The Scheme proposes to permit mergers involving two or more 'designated activity companies' ("DACs").

Currently at least one of the merging companies must be a private limited company and, as a result, a DAC must re-register as a private limited company before it can avail of the merger regime.

## Multiple subsidiary mergers

The Scheme proposes to facilitate a group of subsidiary companies merging into their parent company via one merger process.

Currently, a separate merger process must be carried out by each subsidiary (although they can be carried out in parallel). This will be a further helpful tool in carrying out intercompany reorganisations (and, in particular, entity rationalisation projects).

## Flexibility for small company audit exemption

At present, a small company or micro company will lose its audit exemption when it fails to file any annual return on time with the Companies Registration Office (the "CRO").

The Scheme provides that the audit exemption will now only be lost where such a company also fails to deliver its annual return on time for a second or subsequent time within a five-year period. This amendment therefore mitigates the consequence of late filings with respect to these types of companies.

## Involuntary strike-off: new grounds

Interestingly, the Scheme proposes an expansion of the grounds for involuntary strike-off of a company with three new grounds being introduced as follows:

1. failure to deliver notice of change of registered office;
2. where no secretary of a company has been filed with the CRO; and
3. failure to notify information relating to a company's beneficial owners.

However, where a company is to be struck off on any of these new grounds, the directors of the company will not be liable to be disqualified.

## Proxies: potential longer notice periods

Currently a minimum 48-hour notice is required to appoint a proxy. The Scheme proposes that this would be amended to exclude weekends and public holidays from the time counted towards this notice requirement.

## Optional reporting of board gender

The Scheme provides that companies may choose whether or not to publicly provide information on the gender of its board of directors within its annual return, for statistical purposes only.

## Increased statutory powers

Other noteworthy features of the Scheme (but outside the scope of this article) include increased powers and functions of the relevant statutory authorities including the Corporate Enforcement Authority and the CRO, and amendments to provisions related to corporate insolvency and regulation of receivers.

## Conclusion

In general, the legislative changes are centered around providing additional flexibility and practical processes in respect of the operation of Irish companies.

In terms of next steps, with the Scheme having been published and the bill listed for priority publication in the Government Summer 2024 Legislative Programme, it is referred to the Office of the Attorney General for priority drafting. It will then undergo the usual legislative journey and it is hoped that it will become law before the end of 2024.

For more information on the above, or for further guidance and insight in respect of the corporate governance of Irish-incorporated companies generally, please contact Gráinne Boyle ([Grainne.Boyle@matheson.com](mailto:Grainne.Boyle@matheson.com)) or your usual Matheson contact.

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