



**Bille na gCuideachtaí
(An tÚdarás um Fhorfheidhmiú Corparáideach), 2021
Companies (Corporate Enforcement Authority) Bill 2021**

*Meabhrán Míniúcháin
Explanatory Memorandum*



**BILLE NA gCUIDEACHTAÍ (AN tÚDARÁS UM
FHORFHEIDHMIÚ CORPARÁIDEACH), 2021
COMPANIES (CORPORATE ENFORCEMENT AUTHORITY)
BILL 2021**

EXPLANATORY MEMORANDUM

PART 1

PRELIMINARY AND GENERAL

Section 1 contains the short title and commencement arrangements.

Section 2 contains the definition for “Principal Act” which means the Companies Act 2014.

Section 3 repeals Chapter 3 of Part 15 of the Companies Act 2014.

PART 2

**AMENDMENT OF PRINCIPAL ACT-CORPORATE
ENFORCEMENT AUTHORITY**

Section 4 amends section 2 of the Companies Act 2014: *Interpretation Generally*. It substitutes the definition of ‘officer of the Director’ for the definition ‘officer of the Authority’ and means either a member of staff of the Authority, an officer of the Minister assigned to the Authority; a member of the Garda Síochána seconded to the Authority; or a person employed under a contract for service or otherwise to assist the Authority is an officer of the Authority. It also amends section 2 by defining the ‘Authority’ as the ‘Corporate Enforcement Authority’.

Section 5 amends a reference in section 12: *Regulations and orders*.

Section 6 amends a reference in section 930A: *Designation of competent authority*.

Section 7 amends references in section 930B: *Annual audit programme and activity report*.

Section 8 amends references in section 936A: *Supplemental provisions in relation to section 934 - relevant directors*.

Section 9 amends references in section 936B: *Communication with the CEAOB*. CEAOB is the Committee of European Audit Oversight Bodies.

Section 10 amends part 15 of the Act and inserts Chapters 3A *Corporate Enforcement Authority* and 3B *Investigation of director or former director of public-interest entity to find whether such director has engaged in certain prohibited conduct, etc.* respectively immediately before Chapter 4.

Chapter 3A - contains the main provisions to establish the Corporate Enforcement Authority, to replace, and perform the functions previously performed by, the Director of Corporate Enforcement. The provisions are set out in sections 944A to 944Y.

Section 944A Definitions (3A) contains definitions for the purposes of Chapter 3A and Schedule 22.

Section 944B Establishment day provides that the Minister for Enterprise, Trade and Employment shall, by order, appoint a day to be the establishment day for the purposes of Chapter 3A.

Section 944C Establishment of Corporate Enforcement Authority provides for the name of the body in Irish An tÚdarás um Fhorfheidhmiú Corparáideach and, in English language, the Corporate Enforcement Authority. It provides that the body may perform the functions conferred on it by the Companies Act 2014. The provisions of Schedule 22 shall have effect in relation to the Authority.

Section 944D Functions of the Authority sets out the functions of the Authority. It derives from and largely re-enacts section 949 of the Companies Act 2014. *Subsection (1)* provides that the functions of the Authority include encouraging compliance with the Companies Act 2014, investigation of suspected offences and non-compliance with the Act, enforcement and prosecution of offences by way of summary proceedings, and the discretion to refer cases to the Director of Public Prosecutions where the Authority has reasonable grounds for believing that an indictable offence under the Companies Act 2014 has been committed. It provides that the Authority shall exercise, in so far as it considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in discharge of their functions under the Companies Act 2014. Provision is also made for the Authority to perform such other functions in respect of any matters to which the Companies Act 2014 relates as the Minister considers appropriate and may, by order, confer on the Authority. The section provides that the Authority shall act as a member of the Irish Auditing and Accounting Supervisory Authority (IAASA). It derives from and largely re-enacts section 949 of the Companies Act 2014.

Subsection (2) provides for the Authority's role in sections 930A *Designation of competent authority* and 930D *Conflicts of interest to be avoided* of the Companies Act 2014.

Subsections (3) and (4) provide that the Authority may do everything necessary or expedient to enable it to perform its functions and exercise its powers and for its independence in the performance of its functions.

Subsection (5) provides that the Authority shall regulate its own procedures, subject to the provisions of Chapter 3A and Schedule 22.

Section 944E Transfer of functions of Director to Authority in *subsection (1)* provides for the functions of the Office of the Director of Corporate Enforcement are transferred to the Authority. *Subsection (2)* provides that references to the Director or to the office of the Director, in other enactments and instruments shall be construed as a reference to the Authority.

Section 944F Membership of Authority provides for the membership of the Authority. *Subsections (1) and (2)* provide for the structure of the Authority which is that of a commission, with between 1 and 3 full-time Members, as may be determined by the Minister for Enterprise, Trade and Employment.

Subsection (3) provides for the appointment of a Member of the Authority by the Minister on the recommendation of the Public Appointments

Service (PAS). The appointment shall be on a full-time basis for a period not exceeding 5 years from the date of appointment.

Subsection (4) provides that the person who is Director immediately before the establishment day, (other than an acting Director) shall be a Member of the Authority. The person shall be a Member on terms and conditions to which the person was entitled to immediately before the establishment day by virtue of holding the office of Director and that are in addition to the terms and conditions to which he or she is entitled to under the Civil Service Regulation Act 1956.

Subsection (5) provides that the PAS shall ensure that a person is recommended for appointment only if PAS is satisfied that the person has the qualifications, experience and skills necessary to enable the Authority to effectively perform its functions. *Subsection (6)* provides that a Member whose term of office expires may be reappointed to the Authority by the Minister for one further period not exceeding 5 years from the date of reappointment.

Subsection (7) provides that a Member to whom *subsection (4)* applies and whose term of office expires by the elapse of time may be reappointed to the Authority by the Minister for one further period not exceeding 5 years from the date of his or her reappointment.

Subsection (8) sets out the terms and conditions applying to a Member of the Authority. It provides that a Member shall act subject to such terms and conditions and be paid by the Authority such remuneration and allowances for expenses (if any) as the Minister for Enterprise, Trade and Employment may, with the consent of the Minister for Public Expenditure and Reform, determine. It also provides that a Member may not hold any other office or occupy any other position in respect of which emoluments are payable or carry on any business without the consent of the Minister for Enterprise, Trade and Employment and shall cease to be a Member on attaining the age of 70 years or, where a higher age is prescribed by order under section 3A(2) of the Public Service Superannuation (Miscellaneous Provisions) Act 2004. Where a Member is a new entrant on or after 1 April 2004, for the purposes of the Public Service Superannuation (Miscellaneous Provisions) Act 2004, the requirement to cease to be a Member on grounds of age shall not apply.

Section 944G Appointment of chairperson of Authority in subsection (1) provides where there is more than one Member of the Authority, the Minister for Enterprise, Trade and Employment shall appoint one of the Members to be chairperson. It provides that an additional allowance may be paid by the Authority to the chairperson as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.

Subsection (2) provides that the chairperson shall have a casting vote in the event of a tied vote in the case of decisions to be taken by the Authority, and *subsection (3)* provides that where a chairperson is unavailable to perform his or her duties, the Minister shall appoint a person to act as chairperson for the duration of the period of absence or incapacity.

Subsection (4) provides that where the Authority consists of one Member, a reference in Chapter 3A or in Schedule 22, to the chairperson shall be construed as a reference to that Member.

Subsection (5) provides for the role of the chairperson to carry on and manage and control generally the staff, administration and business of the Authority.

Section 944H Resignation, removal, disqualification of Member provides for the resignation, removal or disqualification of a Member.

Subsection (1) provides that a Member may resign from office by letter addressed to the Minister for Enterprise, Trade and Employment and the resignation shall take effect on the date specified in the letter, or the date on which the Minister receives the letter, whichever is the later.

Subsection (2) empowers the Minister to remove a Member at any time, which power may only be exercised for stated reasons. It provides that the Minister for Enterprise, Trade and Employment may, at any time, remove a Member from office. The grounds for removal of a Member are if the Minister is satisfied that the Member has become incapable through ill-health of performing his or her functions, the Member has committed stated misbehaviour, or the removal of the Member appears to the Minister to be necessary for the effective performance by the Authority of its functions.

Subsection (3) provides that if a Member is removed from office in accordance with *subsection (2)*, the Minister shall provide the Member with a statement of reasons for the removal and ensure that a copy of the statement of the reasons for the Member's removal is laid before each House of the Oireachtas.

Subsection (4) provides the grounds for disqualification for office. It provides that a Member shall cease to be qualified for office and cease to hold office if he or she is adjudicated bankrupt, makes a composition or arrangement with creditors, is sentenced by a court of competent jurisdiction to a term of imprisonment, is convicted of any indictable offence in relation to a company or any other body corporate, is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, has a declaration made against him or her under section 819 of the Companies Act 2014, *Declaration by court restricting director of insolvent company in being appointed or acting as director*, or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of the Companies Act 2014, *Disqualification and restriction undertakings* or is, or is deemed to be, the subject of an order under section 160 of the Act of 1990, being the Companies Act 1990, or a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014.

Section 944I Acting Member contains provisions for a person to be authorised as an acting Member. It is based on section 948 of the Companies Act 2014, which section is to be repealed by this Bill.

Subsection (1) provides that in the case where there is only one Member of the Authority, the Minister for Enterprise, Trade and Employment may authorise a person to perform the functions of a Member during any period when that Member is absent or for any other reason is unable to perform the functions of a Member.

Subsection (2) provides that where a vacancy occurs in the office of Member and no Member stands appointed, the Minister may authorise in writing a person (which may be a member of staff of the Authority) to perform the functions of a Member during the period of that vacancy. An authorisation under subsection 2 shall not remain in force for a period of more than 6 months. *Subsection (3)* provides that if it is not practicable for an appointment under section 944F to be made within that period, the Minister may extend that period by such further period as he or she is satisfied is a period within which it is practicable for an appointment to be made.

Subsection (4) provides that an acting Member may perform the functions of a Member under this Act, and, for that purpose, references to a Member in Chapter 3A (other than in sections 944F(3), 944H(2) and

944L) and in Schedule 22 shall be construed as including references to that person.

Subsection (5) provides that the Minister may terminate an authorisation at any time.

Section 944J Assignment and transfer of staff to Authority contains provisions for the assignment and transfer of staff of the Office of the Director to Authority on its establishment date.

Section 944K Staff of Authority, etc. This section provides the Authority with the power to appoint its own staff and to determine the grades and number in each grade subject to Ministerial approvals.

Subsections (4) and (5) provide that the Authority may authorise in writing an officer or officers of the Authority to perform, on its behalf, a specified function or functions of the Authority. An officer of the Authority who performs any of its functions is presumed in any proceedings to have been authorised to do so on its behalf, unless the contrary is shown.

Subsections (6) and (7) provide that members of the staff of the Authority are civil servants and the terms and conditions of service of members of staff, shall be such as may be determined from time to time by the Authority with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

Subsection (8) provides that there shall be paid by the Authority to the members of its staff such remuneration and allowances as, from time to time, the Authority determines, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

Subsection (9) provides that in relation to its staff, the Authority is the appropriate authority (within the meaning of the Public Service Management (Recruitment and Appointments) Act of 2004 and the Civil Service Regulation Acts 1956 to 2005).

Section 944L Superannuation of Members provides that the Minister for Enterprise, Trade and Employment may, if he or she considers it appropriate to do so, and with the consent of the Minister for Public Expenditure, prepare a superannuation scheme in respect of the Members (other than a Member who is a civil servant). The superannuation scheme must be laid before each House of the Oireachtas. A superannuation scheme may be amended or revoked by a subsequent scheme made by the Minister under this section with the consent of the Minister for Public Expenditure and Reform. This section derives from section 950 of the Companies Act 2014.

Section 944M Secondment to Authority of member of Garda Síochána derives from and re-enacts section 951 of the Companies Act 2014. It provides for the secondment of members of the Garda Síochána to the Authority. Such persons, whilst reporting to the Authority, continue to be vested with the powers and duties of the Garda Síochána and may exercise those powers and perform those duties during the secondment. A member of the Garda Síochána seconded to the office of the Director immediately before the establishment day shall, on the establishment day, be seconded to the Authority on the same terms and conditions on which he or she was seconded to that office.

Section 944N Accountability of Authority to Committee of Public Accounts provides for the accountability of the chairperson of the Authority to the Public Accounts Committee. It provides that the chairperson shall, whenever required in writing to do so by the Committee of Public Accounts, give evidence to that Committee in relation to the regularity and propriety of the transactions recorded or required to be recorded in any book or other

record of account subject to audit by the Comptroller and Auditor General. The chairperson will also give evidence to the Committee on the economy and efficiency of the Authority in the use of its resources, the systems, procedures and practices employed to evaluate the effectiveness of its operations, and any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993. It derives from section 26 of the Competition and Consumer Protection Act 2014.

Section 944O Accountability of Member to certain Oireachtas Committees provides that a Member of the Authority, which may include Members and a chairperson, shall attend before an Oireachtas Committee to give account for the general administration of the Authority. It derives from section 27 of the Competition and Consumer Protection Act 2014.

Subsection (1) provides that the term Member means the Chairperson of the Authority where more than one Member has been appointed. The term Committee means a Committee appointed by either House of the Oireachtas or Joint Committee. It excludes the Committee on Public Accounts, the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann.

Subsection (2) provides that following a written request a Member shall attend before a Committee to give account for the general administration of the Authority.

Subsection (3) provides that a Member shall not be required to give account before a Committee in relation to any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

Subsection (4) provides that where a Member is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, the Member shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chairperson is before it, the information shall be conveyed in writing.

Subsections (5) to (7) introduce new provisions in the Act. *Subsection (5)* introduces an appeal to the High Court to determine whether a matter comes within *subsection (3)* or not. Where a Committee requests a Member to attend before it and a Member is of the opinion that a matter in respect of which he or she is requested to give an account is a matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State, and the Committee does not withdraw the request for a Member to attend, within 21 days the Member or the Committee may apply to the High Court for determination of the question as to whether the matter is one where *subsection (3)* applies. *Subsection (6)* provides that the Member shall not attend the Committee to give account of the matter the subject of the High Court application, pending the Court's determination of the application. *Subsection (7)* provides that if the High Court determines that the matter concerned is one to which *subsection (3)* applies and is a matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State the Committee shall withdraw the request for a Member to attend before it. Where the Court determines that *subsection (3)* does not apply, the Member shall attend before the Committee and give account for the matter.

Subsection (8) provides that in the performance of his or her duties under this section, a Member shall not question or express an opinion on the

merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Section 944P Confidentiality of information. This section provides for confidentiality of information. *Subsections (1) and (2)* provide that no Member or officer of the Authority, or a former Member or officer, shall disclose, except in accordance with law, information obtained in performing the functions of the Authority, and which has not otherwise come to public notice. It derives from section 956 of the Companies Act 2014.

Subsection (3) contains three provisions for the disclosure of information by or under the authority of the Authority where it considers that the information is required for a purpose. Firstly, nothing in *subsection (1)* shall prevent disclosure for a reason under section 791(a) to (m) of the Companies Act 2014. Section 791 contains a range of provisions under which the disclosure by the Authority of information, books or documents relating to a company that have been obtained under sections 778 to 780, 783 or 787 is permitted without the consent of the company, if in the opinion of the Authority publication or disclosure is required. Secondly, disclosure of information by the Authority is permitted for the purposes of the performance of a function or functions by another competent authority. The defined list of competent authorities for the purposes of this subsection is set out in section 792(2) of the Companies Act 2014. Thirdly, nothing in *subsection (1)* shall prevent disclosure for the performance by the Authority of a function or functions of the Authority.

Subsection (4) provides for the disclosure of information to any member of the Garda Síochána if that information, in the opinion of the Authority, may relate to the commission of an offence other than an offence under this Act.

Subsection (5) provides that a person who contravenes this section shall be guilty of a category 2 offence. Under the Companies Act 2014 a person guilty of an offence under this Act that is stated to be a category 2 offence shall be liable on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

Section 944Q Disclosure of information to Authority derives from section 957 of the Companies Act 2014. *Subsection (1)* provides for the reporting to the Corporate Enforcement Authority of information relating to offences under the Companies Act 2014, which has been gathered by the Competition and Consumer Protection Commission Authority, members of the Garda Síochána, officers of the Revenue Commissioners, the Irish Takeover Panel, the Registrar of Companies, and the Registrar of Friendly Societies and such other authority or person as may be prescribed.

Subsection (2) clarifies that the disclosure of information is that, which in the opinion of the Authority or other person referred to in *Subsection (1)* relates to the commission of an offence or noncompliance otherwise with the Companies Act 2014 or with the duties and obligations to which companies and their officers are subject. *Subparagraph 2(i)* covers information that could materially assist the Authority or an officer of the Authority in investigating whether an offence or non-compliance under this Act has been committed. Without prejudice to the generality of *subparagraph 2(i)*, in a case where the making of an application for a disqualification order in relation to a particular person in accordance with section 842(h) is contemplated, whether and to what extent the matters mentioned in section 843(3) apply in the circumstances concerned.

Subsection (3) provides that an officer of the Revenue Commissioners may be prescribed to give evidence relating to taxpayer information in connection with any proceedings initiated under the Companies Act 2014.

Subsection (4) may use the information received under *subsection (1)(i)* or *(ii)* in relation to circumstances specified in *subsection (1)(i)* or *(ii)* other than the circumstances invoked by the relevant authority or person.

Section 944R Restriction of application of certain articles of Data Protection Regulation re-enacts section 957A of the Companies Act 2014. This section provides that Articles 14 (Information to be provided where personal data have not been obtained from the data subject) and 15 (Right of access by the data subject) of the Data Protection Regulation (EU) 2016/679 are restricted. This restriction is to the extent necessary and proportionate to safeguard the effective performance by the Authority of its functions in relation to investigation of instances of suspected offences or suspected non-compliance under the Companies Act 2014, and the Authority's supervisory role over the activity of liquidators and receivers in discharge of their functions under the Companies Act 2014.

Section 944S Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by office of Director contains provisions that are consequent on the establishment of the Corporate Enforcement Authority. The purpose of this section is to ensure a seamless transfer between the Office of the Director of Corporate Enforcement and the new Corporate Enforcement Authority. *Subsection (1)* provides for the transfer of property vested in the Office of the Director of Corporate Enforcement to the Authority on establishment day. *Subsection (2)* is a standard technical provision providing that a chose in action vested in the Director transfers to the Authority. *Subsection (3)* provides that all books, papers and other records of the Director shall transfer to the Authority on establishment day. *Subsection (4)* provides that any contract, agreement or arrangement made between the Director in force immediately before the establishment day continues after that day and has effect as if the name of the Authority were substituted in the contract, agreement or arrangement for the Director.

Subsection (5) provides that any proceedings pending in any court or tribunal to which the Director is a party, immediately before the establishment day, do not abate and shall continue in the name of the Authority. *Subsection (6)* provides that any act done or in the course of being done before the establishment day by or on behalf of the Director and any such act, if and in so far as it was operative immediately before that day, has effect on and after that day as if it had been done on behalf of the Authority.

Section 944T Annual report provides that the Authority shall prepare and submit an annual report. *Subsection (1)* and *(2)* provides that the report on its activities shall be to the Minister for Enterprise, Trade and Employment subject to statutory deadlines and the Minister shall cause it to be laid before each House of the Oireachtas. *Subsection (3)* provides that the annual report shall include information in such form and regarding such matters as the Minister may direct but nothing in this subsection shall be construed as requiring the Authority to include information which the authority considers is likely to prejudice the performance of its functions. *Subsection (4)* provides that the Authority may provide the Minister with such information about the performance of its functions as it considers appropriate and shall provide the Minister with advice on any matter relating to those functions, as the Minister may request, unless the Authority considers the provision of information likely to prejudice the performance

of its functions. *Subsection (5)* provides that the report shall be published on the Authority's website.

Section 944U Strategy statement and work programme contains provisions relating to the Authority's strategy statement and annual work programme. *Subsection (1)* provides that the Authority shall, as soon as practicable after the establishment day, prepare and submit to the Minister for Enterprise, Trade and Employment a strategy statement in respect of the period of 3 years immediately following the year in which the strategy statement is so submitted. Thereafter, the Authority's strategy statement shall be submitted to the Minister not earlier than 6 months before and not later than the expiration of each subsequent period of 3 years. In this section, a 'strategy statement' means a statement that specifies the key objectives, outputs and related strategies, including use of resources, includes any other matters (with the exception of any on-going investigation or prosecution) that the Minister may direct, and prepared in a form and manner that is in accordance with any directions by the Minister. Except for the first strategy statement, the statement shall include a review of the outcomes and effectiveness of the preceding strategy statement. In preparing the strategy statement the Authority may consult as it considers appropriate.

Subsections (2) and (3) provide that the Minister for Enterprise, Trade and Employment shall lay the strategy statement before each House of the Oireachtas. After it has been laid before the Oireachtas, the Authority shall publish the statement on its website. *Subsections (5) and (6)* provide for the work programme of the Authority. At least one month before the commencement of each financial year, the Authority shall prepare and submit to the Minister for Enterprise, Trade and Employment a work programme relating to the discharge of its functions. The work programme shall have regard to the Authority's strategy statement, its objectives for that year and its strategy for achieving those objectives. It shall also have regard to the Authority's priorities for that year, having regard to those objectives and available resources. The Authority shall also have regard to and comply with other matters that the Minister may from time to time specify when issuing directions or guidelines concerning the preparation of the work programme.

Section 944V Grants to Authority is a standard provision and enables the Minister for Enterprise, Trade and Employment to advance to the Authority out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine in each financial year.

Section 944W Liability of Authority for acts or omissions provides that a Member or officer of the Authority, or a former Member or officer of the Authority, are not liable for damages for anything done, purported to be done or anything omitted to be done in performing a function under this Act, unless the act or omission is shown to be in bad faith. It re-enacts section 953 of the Companies Act 2014.

Section 944X Accounts of Authority concerns the keeping of accounts by the Authority. *Subsection (1)* provides that the Authority shall submit estimates of income and expenditure to in such form as may be required by the Minister for Enterprise, Trade and Employment. The Authority shall provide any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the performance by the Authority of its functions.

Subsection (2) provides that the Authority shall keep in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform all proper and usual accounts of all

money received or expended by it and, such special accounts (if any) as the Minister may direct, with the consent of the Minister for Public Expenditure and Reform. *Subsection (3)* provides that the Authority shall, whenever so requested, permit any person appointed by the Minister for Enterprise, Trade and Employment to examine the books or other records of account of the Authority in respect of any financial year or other period. The Authority shall pay such fee for the examination as may be fixed by the Minister. *Subsection (4)* provides that the accounts kept in accordance with this section shall be submitted, not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the Minister may specify, to the Comptroller and Auditor General for audit. Immediately after the audit, a copy of the Comptroller and Auditor General's report on the accounts, a copy of the accounts, and of such other accounts (if any) as the Minister, after consultation with the Minister for Public Expenditure and Reform, may direct shall be laid before the Oireachtas by the Minister for Enterprise, Trade and Employment.

Section 944Y Final annual report of Director provides that the Authority shall prepare a final annual report for the Office of the Director of Corporate Enforcement. Subject to any necessary modifications, section 944T applies in relation to the annual report prepared under this section.

CHAPTER 3B Investigation of director or former director of public-interest entity to find whether such director has engaged in certain prohibited conduct, etc. amends cross-references to reflect this Bill as it pertains to the Companies Act 2014. Part 15 of the Principal Act is amended, in Chapter 3B, by the substitution of the sections 957A to 957I for the following sections 944Z to 944AH before Chapter 4 of that Part.

Section 944Z Definitions inserts definitions for the purposes of this section and 944AA to 944AH, concerning sanctions on directors. It re-enacts *section 957A* of the Companies Act 2014.

Section 944AA Provisions applicable where Director receives particulars, etc., from Supervisory Authority concerning relevant contravention and relevant director. Section 944AA provides that the Corporate Enforcement Authority will investigate a relevant director having received information from the IAASA. The Authority may impose a sanction where a Director has contributed to a breach by a statutory auditor or audit firm. An appeal to the court may be made against such a decision within 3 months. Information on the sanction imposed will be given by the Authority to IAASA. *Subsection (5)* provides that civil or criminal proceedings can still apply to a director subject to sanction. It re-enacts *section 957B* of the Companies Act 2014.

Section 944AB Sanctions which Authority may impose on relevant director for certain conduct. It provides that the Corporate Enforcement Authority may direct a director to cease conduct that has given rise to a breach; ban from performing functions in audit firms or public interest entities; or pay a monetary sanction. It re-enacts *section 957C* of the Companies Act 2014.

Section 944AC Relevant circumstances to be considered in imposing relevant sanctions on relevant director. Section 944AC provides for the Corporate Enforcement Authority imposing a sanction on a director to consider a range of circumstances such as gravity and duration of the breach; degree of responsibility; financial position; level of co-operation with IAASA or the Authority and previous sanctions imposed. It re-enacts *section 957D* of the Companies Act 2014.

Section 944AD Resolution of suspected certain conduct by agreement – relevant director. Section 944AD provides that the Corporate Enforcement

Authority and a director may enter into an agreement to resolve the matters breached by the director. The agreement may be entered into (i) where no investigation of conduct has taken place, (ii) after an investigation has commenced but not completed or (iii) the investigation has been undertaken and sanctions have been determined. The terms of the agreement may include imposition of sanctions on the relevant director. The terms of the agreement are binding on the Authority and the relevant director concerned. Where the terms are not upheld by the director, the Authority may apply to the court to compel compliance. It re-enacts *section 957E* of the Companies Act 2014.

Section 944AE Publication of relevant sanction imposed on relevant director. Section 944AE provides for the publication of the breach/sanction on a relevant director on the website of the Corporate Enforcement Authority, where the court has confirmed the decision or imposed a different sanction. Information on the status or outcome of an appeal may also be published. The Authority shall publish information on an anonymous basis due to issues of (i) proportionality, (ii) impact on financial markets stability, and (iii) ongoing criminal investigation. Information in relation to subsection (1) and (2) must remain on the Authority's website for at least 5 years. The Authority shall give particulars of the sanction imposed to IAASA. It re-enacts *section 957F* of the Companies Act 2014.

Section 944AF Limitations on imposing monetary sanctions on relevant director. It provides that the Corporate Enforcement Authority may not impose on a director a monetary sanction that would make them bankrupt. Only one monetary sanction may be imposed where more than 2 breaches of the same conduct have occurred. It re-enacts *section 957G* of the Companies Act 2014.

Section 944AG Relevant director not to be liable to be penalised twice for same conduct. Section 944AG provides that where a relevant director's breach attracts a monetary sanction by the Corporate Enforcement Authority and it is also an offence under the law of the State, no punishment/prosecution under law shall incur. Likewise, the Authority shall not impose a monetary sanction where the director has been charged for committing an offence under law. It re-enacts *section 957H* of the Companies Act 2014.

Section 944AH Appeals to and orders of court, including orders confirming decisions of Authority. Section 944AH provides that in the circumstances of an appeal of a decision by the Corporate Enforcement Authority, the court may confirm, modify or annul the decision. The decision does not take effect until confirmed by the court on appeal by a director or application by the Authority. The court is free to make any order it wishes. It re-enacts *section 957I* of the Companies Act 2014.

Section 11 Amendment of Principal Act - insertion of Schedule 22 is a technical provision which provides that the Companies Act 2014 is amended by the insertion of the text set out in Schedule 1 as Schedule 22.

Section 12 Amendment of Principal Act in relation to references to Director is a technical provision which provides for the substitution of references in the Companies Act 2014 for words specified and set out in Schedule 2. For the most part the substitutions concern the substitution of the word 'Director' in the Companies Act 2014 with the word 'Authority'.

Section 13 Savings is a standard provision relating to the savings for certain acts of the Office of the Director of Corporate Enforcement before establishment day. It provides nothing in Part 2, or Schedules 1 and 2 affect the validity of any action by the Director of Corporate Enforcement done before the establishment day in so far as if was operative immediately

before that day, has effect on and after that day as if it had been done by or on behalf of the Authority.

PART 3

AMENDMENT OF PRINCIPAL ACT - SHARE CAPITAL

Section 14 amends section 71 *Payment of Shares* of the Companies Act 2014 by inserting a new subsection 5a after subsection 5 which provides that the share premium account may be applied by the company in writing off the preliminary expenses of the company, or the expenses of, or the commission paid on, any issue of shares or debentures of the company, or in providing for the premium payable on redemption of any redeemable preference shares issued by the company before 1 July 1991 or of any debentures of the company issued by a company before 1 June 2015. It restores an equivalent provision to section 62(2) of the Companies Act 1963.

Section 15 amends section 82 *Financial assistance for acquisition of shares provides for financial assistance for acquisition of shares*. Section 82(6)(n) permits in connection with an allotment of shares by a parent public company, the payment by a private limited subsidiary of that company of commissions, not exceeding 10 per cent of the money received in respect of such allotment, to intermediaries, and the payment by that subsidiary of professional fees. Commission in respect of underwriting or sub-underwriting commission is routinely paid to investors on a share issue by PLCs. Section 15 provides that section 82 is amended in subsection (6)(n), by the deletion of “to intermediaries”, to permit payment of commissions to persons other than intermediaries.

Section 16 amends section 91 *Variation of company capital on reorganisation*. Section 16(a) amends section 91 subsection (1) to make it clear that three party share-for-undertaking transactions can proceed even if there is no reorganisation on the company’s company capital by the deletion of “with the result that its company capital is thereby re-organised”. Section 16(b) amends section 91 subsections (4) and (5). Subsection 91(4) currently only allows such transactions where certain conditions apply (where approved by Summary Law Procedure; or approved by special resolution confirmed by court under section 85). Section 16(b) adds 91(4) (c) so that another condition where such transaction can occur is where “the relevant company has distributable reserves at least equivalent to the value (as stated in, or ascertainable from, the accounting records of the relevant company immediately before the transfer or disposal concerned) of the transferred or disposed assets and deducts an amount, equivalent to the value of the transferred or disposed assets, from those reserves”, and as a consequence of the addition of the above section 16(c) in subsection (5), by the insertion of “referred to in subsection (4)(a) or (b)” after “such a transaction”. This amendment is consistent with the approach to such transactions in accounting standard FRS 102.

Section 17 amends section 106 *Supplemental provisions in relation to section 105* which provides that where a CLS (private company limited by shares) acquires shares under section 106 they must be either cancelled or retained as treasury shares. This section amends the definition of treasury shares at section 106, in subsection (1), by the substitution of “section 102(1)(a) or (g)” for “section 102(1)(a)” to include shares acquired by a company pursuant to a merger or division under section 102(1)(g). This is to clarify post-merger treatment of merging/dividing companies’ shares acquired by a successor company.

Section 18 amends section 109 *Treasury Shares* in subsection (2) follows on pursuant to the amendment made under section 17. Section 109 of the Companies Act 2014 concerns *Treasury shares* and section 18 amends section 109 subsection (2) by the insertion of the following new paragraph after paragraph (b): “(c) shares previously issued by a successor company, and held by a transferor company, which are acquired by a successor company pursuant to section 480 or 503.” This amendment is intended to align the definition of a treasury share under section 109 with the law applicable to shares acquired in a merger or a division.

Section 19 amends section 123 *Meaning of “distribution”, “capitalisation”, etc., and supplemental provisions* which defines ‘distribution’ as meaning every description of distribution of a company’s assets to members of the company. It inserts two exceptions to the definition of distribution in section 123 subsection (1) at (f). These exceptions relate to the reduction of share capital by paying off paid up share capital (effected in accordance with section 84 in the case of a company limited by shares), or by extinguishing or reducing all or part of a member’s liability on shares not fully paid up (effected in accordance with section 84 in the case of a company limited by shares)”. This section in effect re-enacts section 51 of the Companies (Amendment) Act 1983 and is in line with Article 17 of the Second Company Law Directive (2012/30/EU).

Section 20 amends section 480 *Confirmation order* in subsection (3) by inserting a new paragraph (aa) after paragraph (a). Paragraph (aa) provides that any fully paid shares previously issued by a successor company, and held by a transferor company, and which are acquired by that successor company in itself pursuant to a merger under this Chapter, shall be deemed to be treasury shares held by the successor company concerned to which section 109 applies. This is to clarify post-merger treatment of merging/dividing companies’ shares acquired by a successor company and follows on pursuant to the amendment made under section 17 of this Bill.

Section 21 amends section 503 *Confirmation order* to provide for a new paragraph (j) such that any fully paid shares previously issued by a successor company, and held by a transferor company, and which are acquired by a successor company in itself pursuant to a division under this Chapter, shall be deemed to be treasury shares held by the successor company concerned to which section 109 applies. This is to clarify post-merger treatment of merging/dividing companies’ shares acquired by a successor company. It follows on pursuant to the amendment made under section 17 of this Bill.

Section 22 amends section 1043 *Application of certain provisions of section 82(6) in relation to PLCs* is amended in subsection (1)(c) of the Principal Act subsection (1)(c), by the deletion of the words “to intermediaries,”. As in section 19, this section permits payment of commissions to persons other than intermediaries in this case in respect of Public Limited Companies.

Section 23 amends section 1045 *Restrictions on the transfer of shares* to clarify the law as it applies to PLCs concerning the restrictions on transfers of shares. It modifies the application of Section 95 *Restrictions on transfer*, which allows restrictions on transfers of shares in section 95(1) (a), in so far as it applies to a PLC. *Section 23(b)* inserts a new subsection (2) into section 1045 in effect re-enacting provisions from the Companies Act 1963. It provides that except where the constitution of the company provides otherwise, the directors may decline to register the transfer of a share (not being a fully paid share) in the following circumstances: to a person of whom they do not approve; or the transfer of a share on which the company has a lien; or the transfer of a share which, in their opinion,

may imperil or prejudicially affect the status of the company in the State, imperil any tax relief or rebate to which the members of the company are entitled, or involve the company in the payment of any additional stamp duty or other duty on any conveyance of any property made, or to be made, to the company.

Section 24 amends section 1087A *Interpretation* and confirms the intention that Chapter 7A *Uncertificated Securities of relevant issuers* of Part 17 *Public Limited Companies* of the Companies Act 2014 applies to the securities registered in the name of a central securities depository (CSD) and those securities that are registered in the name of a nominee of the CSD. A CSD is a specialist settlement system that holds financial instruments such as shares on behalf of investors and facilitates transfers in ownership through electronic book entry rather than the actual physical transfer of paper certificates.

Section 25 amends section 1230 *Application of Parts 1 to 14 to unlimited companies* to disapply elements of section 105 *Acquisition of own Shares*, which requires the purchase or redemption of shares to be made out of distributable profits, in relation to private unlimited companies with share capital (ULC) and public unlimited companies with share capital (PUC). This section amends references to section 105(2) and (3) in both paragraphs (a) and (b) of section 1230. As section 105(2) and (3) are to be disapplied then section 106(4) is also disappplied. As a result ULCs and PUCs are not required to purchase or redeem shares out of distributable profits which is consistent with the rules on dividends or other distributions for those types of companies.

PART 4

AMENDMENT OF PRINCIPAL ACT - CORPORATE GOVERNANCE

Section 26 amends section 131 *Prohibition of minor being director or secretary* of the Companies Act 2014 to clarify that as well as directors, a secretary of a company must also be 18 years of age or over and that any appointment of a secretary under that age shall be void.

Section 27 removes a power for the Minister of Enterprise, Trade and Employment to grant exemptions to companies from the requirement to show the names of directors in section 151 *Particulars to be shown on all business letters of company*. The repeal of section 151(5) will not affect exemptions already in place which shall continue until they expire.

Section 28 amends section 184 *Form of proxy* to align the provisions relating to the instrument appointing a proxy in section 184 with the proxy's right to demand or join in demanding a poll as provided for in section 189(7) of the Act.

Section 29 deletes a reference in section 930 *Recognition of body of accountants* to 'the Institute of Public Accountants' which is no longer a recognised accountancy body for the purposes of statutory audit.

Section 30 Disapplication of section 181(5)(d) in respect of certain CLGs inserts a new section into Part 18, to be called section 1204A which clarifies that members of a CLG (company limited by guarantee) will not be entitled to appoint proxies to attend and vote at meetings where the constitution of the CLG does not permit its members to appoint proxies.

PART 5

AMENDMENT OF PRINCIPAL ACT - MISCELLANEOUS

Section 31 amends section 198 *Registration of, and obligation of company to supply copies of, certain resolutions and agreements* and restores the obligation to register resolutions in a creditors' winding-up (section 586(2)) with the Registrar. It rectifies an unintentional omission in relation to the restatement of the law from the Companies Act 1963 to the Principal Act.

Section 32 amends section 633 *Qualifications for appointment as liquidator or provisional liquidator — general* and provides the Corporate Enforcement Authority the power to request evidence from a person that they are qualified to act as liquidators. It provides for a new offence for failure to comply with a such a request.

Section 33 amends section 681 *Information about progress of liquidation* to provide for more frequent reporting by liquidators to the Companies Registration Office where this is required by the Registrar.

Section 34 amends section 819 *Declaration by court restricting director of insolvent company in being appointed or acting as director etc.* It adds to the grounds for applications to Court to restrict a director, where the director has failed to meet certain requirements in the course of a company becoming insolvent. The new grounds are failure by a director of an insolvent company to convene a general meeting of shareholders for the purpose of nominating a named liquidator, failure to table a notice to nominate such liquidator or a director of an insolvent company at such a general meeting and failure to provide the required notice to employees of the company in the winding up of the company.

Section 35 inserts a new section 888A *Cases in which director must supply certain data.* It provides in *subsection (1)* that when submitting certain forms to the Registrar of Companies a director of a company shall provide his or her Personal Public Service Number (PPSN), or such other information required by the Registrar. The forms concerned are the application to incorporate a company, an annual return by a company, and a notice of change of directors or secretaries by a company. *Subsection (2)* sets out the offence for failing to comply with this section.

PART 6

CONSEQUENTIAL AMENDMENT TO IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES ACT 2015

Section 36 amends references to the Companies Act 2014 and the Corporate Enforcement Authority in section 192 of the Irish Collective Asset-management Vehicles Act 2015.

SCHEDULE 1

This schedule inserts a new *Schedule 22* to the Companies Act 2014 pursuant to section 11 of this Bill to provide that the Authority be a body corporate with the name contained in the constitution, having perpetual succession and a common seal. As a legal person, the Authority shall have perpetual succession, property rights, and can sue in its name or be sued. The seal of the Authority may be authenticated by a Member or a member of staff so authorised. *Subsection (5)* re-enact sections 947(3) and (4) of the Companies Act 2014 and contains standard provisions on grounds for the disqualification of a Member of the Authority. It provides that a Member shall cease to hold office on entering or being nominated for

certain political positions and that certain holders of political positions are disqualified from being a member of the Authority.

SCHEDULE 2

Pursuant to *section 12* of this Bill, this schedule provides for the amendment of the Companies Act 2014 in relation to references to the Director of Corporate Enforcement replacing them as appropriate.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Lúnasa, 2021.*