

Opening Statement to the Joint Committee on Enterprise, Trade & Employment

Wednesday 15th December 2021 at 9.30 am

Thank you Chair. I am pleased to have the opportunity to appear before you this morning on behalf of the Department of Enterprise, Trade and Employment in connection with the Companies Registration Office. I am accompanied by my colleague John Shine, Head of the Company Registration and Regulation Policy Unit in the Department. Bearing in mind that the topic of the discussion is the role, functions and operations of the Companies Registration Office, I would expect the discussion to touch on matters beyond my area of expertise which can best be answered by the CRO directly. Unfortunately, the Registrar of Companies cannot attend today so we will try to contribute as best we can. Thankfully, Mr David McFadden, legal advisor to the CRO is also present to assist.

At the outset, it may be helpful to briefly set out some background information on the work being undertaken by the Department to modernise and enhance the wider corporate law regime in Ireland as it pertains across a number of different areas. Of particular relevance, at this point, is the Companies (Corporate Enforcement Authority) Bill 2021, which completed all stages in the Dáil in November and is currently finalising its passage through the Seanad. As Members are aware, this legislation is a milestone in the area of corporate enforcement and will transform the Office of the Director of Corporate Enforcement (ODCE) into a statutory and independent agency with additional resources to investigate and prosecute white collar crime. The Bill also contains provisions that require directors to provide PPS numbers to the CRO at the time of incorporation of a company; in the annual returns; and if details concerning a Director or Secretary change. This is a significant enhancement to the current regime and will assist the CRO in verifying the authenticity of directors.

Another key element of the Department's reform agenda is the development of legislation in relation to co-operatives. The Department is close to finalising the General Scheme of a Co-operative Societies Bill which sets out proposals for the most far-reaching reform of the legislation relating to co-operatives in almost 130 years. The legislation will allow co-operatives to operate under a modern, fit for purpose legislative framework, and provide an attractive alternative to the company model, for those entities who subscribe to the co-operative ethos.

A further important legislative reform initiative relates to Limited Partnerships. Work on the preparation of the General Scheme of a new Limited Partnership Bill is being extended to consider issues arising from the recent publication of material relating to the Pandora Papers.

I will now turn to matters specifically relating to the CRO. The Office is a statutory office, under the remit of the Department, and the Registrar of Companies is administratively independent in the exercise of her functions. The CRO maintains a central repository of public information, required under statute, on Irish companies and business names. The main function of the CRO is to maintain the Register of Companies. This involves the incorporation of companies; the registration of company post-incorporation documentation; the enforcement, prosecution and striking-off of companies from the register of companies; and the provision of information to the public.

These registers exist to provide transparency on key aspects of entities throughout their lifecycle. They are examined by a wide range of stakeholders including those who have a commercial interest such as potential investors, professional advisers, financial institutions and suppliers. Other interested stakeholders include civil litigants and regulatory / enforcement authorities. This is an important point, the Register records the details of companies and in itself, is an exercise in transparency so that stakeholders can inform themselves, to a certain extent, of the status of a company before they undertake dealings with that company. Other requirements under Irish law provide additional assurance. For example, in the context of anti-money laundering requirements, all new companies are legally obliged to register beneficial ownership details within five months of registration. Companies who have not registered with the Register of Beneficial Ownership (RBO) are liable to enforcement action. Such companies will also be unable to open bank accounts in the State as financial institutions are obliged, under the Criminal Justice Act 2021, to consult the RBO as part of their due diligence when onboarding a new customer.

Company law is primarily concerned with providing the legislative framework for the structure and operation of companies incorporated in Ireland. At the end of 2020, there were over 250,000 companies on the Register of Companies and 600,000 business names on the Register of Business Names. This resulted in over 431,000 filings made with the CRO last year. In the region of 90% of filings are made online. So far in 2021, there has been over 525,000 filings with the CRO. Bearing in mind such numbers, it is no surprise that the long-standing policy in relation to company incorporation has been for the CRO to accept the *bona fides* of those filing documentation and process applications received so that the Register is updated in a timely manner and made available to stakeholders. However, completeness checks are undertaken to ensure that all necessary documents have been provided and have been appropriately completed and signed. This is in a context where the provision of false information to the CRO is a criminal offence under the Companies Act 2014 and subject to prosecution by the Director of Corporate Enforcement.

The CRO is keen to ensure that appropriate and proportionate checks are conducted and has developed a Risk-Based Integrity Checking Process for applications for incorporation and notifications of appointment of directors. The CRO actively follows-up on issues arising and makes referrals, where appropriate, to the Director of Corporate Enforcement. Chair, the Department wrote to you on 22nd November updating you on these matters. Arising from the issues identified so far by the CRO and addressing those that came to light elsewhere, as of last month the CRO had made six referrals to the Director of Corporate Enforcement with further referrals being prepared. In total this covered some 34 companies already on the Register and a further 26 cases where incorporation had been refused by the CRO. The Committee will understand that we cannot go into any great detail concerning particular cases.

Ireland has a reputation for being a well-regulated and business friendly country to establish and operate businesses and the Department is keen to ensure that this is maintained and even enhanced. Corporate law is kept under review on an ongoing basis and is updated / modernised, as required, as evidenced by the legislative initiatives I have mentioned. This is in a context where we seek to maintain an appropriate balance where business can set up and operate without unnecessary or costly burdens but within an effective, proportionate and robust regulatory framework. This is particularly important in an Irish context where c. 95%

of entries on the Companies Register are classified as SMEs. While we would want to ensure a straightforward process, the Register must have high levels of integrity - it is not in the interests of our companies that the system be undermined in any way. On the specific issue of the abuse of the Companies Register, both the Department and the Companies Registration Office take such matters very seriously, are keeping matters under review and will carefully consider further legislative and administrative change, to ensure the appropriate regulatory balance.

Thank you for your attention, and I am happy to take any questions that the Committee may have.