LAW SOCIETY OF IRELAND

Submission on proposals to enhance the Companies Act 2014

Department of Enterprise, Trade and Employment

June 2023

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1. Introduction

1.1 The Law Society of Ireland (the "**Society**") welcomes the opportunity to provide comments to the Department of Enterprise, Trade and Employment (**DETE**) on specific proposals to enhance the Companies Act 2014 (the "**Act**").

1.2 Since its enactment, the Society has provided feedback and recommendations on the operation of a number of provisions of the Act for further consideration and we welcome the opportunity to continue to engage on its enhancement.

1.3 We hope it is helpful that we have included reference below to certain proposals already made by the Society, which DETE may wish to again consider in the context of this review.

1.4 We have also made representations in support of the Irish Markets Committee in relation to the dematerialisation of securities under CSDR and believe that matter should be addressed separately to this review.

1.5 We are broadly supportive of the changes proposed such as:

a. Amending the audit exemption for small and micro companies to remove the automatic exemption for late filing of annual returns, and establishing a two-step gradual procedure where failure to file an annual return for a second time within a five year period should result in the loss of an audit exemption.

b. Providing companies and societies with the option to hold fully virtual AGMs and other general meetings on a permanent basis.

c. Delivering on the Programme for Government commitment in respect of the regulation of receivers.

d. Extending certain reporting obligations to examiners, interim examiners and process advisers.

e. Enhancing certain powers for the Corporate Enforcement Authority, the Auditing and Accounting Supervisory Authority and the Companies Registration Office to strengthen the State's capability to meet the challenges faced in investigating and prosecuting alleged breaches of company law.

1.6 We look forward to commenting further on the General Scheme of the Bill (once published) and hope it will address as many of our previous recommendations as possible, so that various outstanding issues can be clarified and corrected.

2. Previous Recommendations

2.1 Please see the following relevant submissions from the Society:

(a) Recommendations of The Company Law Review Group relating to Shares and Share Capital in the Companies Act 2014, March 2017 (the "**CLRG Share Capital Report**");

(b) Recommendations of The Company Law Review Group relating to Corporate Governance in the Companies Act 2014, November 2017;

(c) Submission from the Society to the Department Of Business, Enterprise and Innovation, April 2016;

(d) Submission from the Society to the Department Of Business, Enterprise and Innovation, June 2016 (the "**June 2016 Submission**");

(e) Submission from the Society to the Department Of Business, Enterprise and Innovation, October 2016;

(f) Submission from the Society to the Department Of Business, Enterprise and Innovation, October 2017;

(g) Submission to the Department Of Enterprise, Trade and Employment from the legal drafting group assembled by Euronext Dublin in relation to the Migration of Participating Securities Act 2019 (the "**2019 Act**"), November 2020 (the "**2020 Submission**"); and

(h) Submission to the Joint Committee on Enterprise, Trade and Employment, December 2020 on the General Scheme of the Companies (Corporate Enforcement Authority) Bill (the "**Second 2020 Submission**").

2.2 Again, we would ask that (to the extent they have not already been implemented - please see the table provided in the Second 2020 Submission and) where not already superseded/overtaken by events, DETE would further consider the recommendations made in these submissions, some of which are referenced below.

3. Common Seal

Section 3 of the Second 2020 Submission refers.

The requirements of the Act in relation to affixing the common seal are no longer appropriate for modern commercial transactions and are at odds with an increasingly digital environment.

While we appreciate that this measure requires further consideration, we consider that the temporary provisions set out at Section 5 of the *Companies (Miscellaneous Provisions) (Covid-19) Act 2020* (inserting Section 43A) should be made permanent for the reasons outlined at Section 3 of the Second 2020 Submission.

4. Mergers Under Chapter 3 of Part 9

Section 5 of the Second 2020 Submission refers.

We welcome the inclusion of proposals addressing many of the recommendations set out in this and in previous submissions.

The recommendations in relation to Sections 472(2), 480(3)(c) and 202(5) (Effective Date of dissolution of transferor company) and Sections 480(5)-(8) (Registers in the State) should be further considered.

5. Section 121 – Relevant Financial Statements

Section 7 of the Second 2020 Submission refers.

Section 121 of the Act has changed the standard for private companies limited by shares (when compared with the 1983 Act) so that a board is required to look to the last set of annual statutory financial statements to have been prepared, rather than the last set to have been laid before shareholders at AGM.

We understand that this does not represent an intentional change and hope it can be rectified by the insertion of a line-break before "*and for the purposes of this section, financial statements are laid […]*".

6. Section 82 – Financial Assistance for Acquisition of Shares

6.1 Section 82(6)

Please consider the amendments to this paragraph recommended in the CLRG Share Capital Report and at Section 6 of the June 2016 Submission.

6.2 Section 82(7) - private limited subsidiary of a PLC

Section 82(7) should be amended so that the test for a private limited subsidiary of a PLC is applied when the assistance is given, not when the acquisition of shares occurs (comparable with the position under the 1963 Companies Act).

7. Section 279 – US Accounting Standards may, in limited cases, be availed of for particular transitional period

Section 9 of the Second 2020 Submission refers.

We recommended that the expiry of the transitional period for filing accounts under US GAAP be extended from 31 December 2030 to 31 December 2040.

This period was not extended and was applied only to companies incorporated in the State prior to the commencement of Section 1 of the Companies (Accounting) Act 2017.

We would ask that Section 9 of the Second 2020 Submission be given further consideration or, in the alternative, consideration given to extending the benefit of Section 279 to all companies until 31 December 2030 (rationale as at Section 9 of the Second 2020 Submission).

8. Conclusion

To the extent that recommendations, either from ourselves or the CLRG, have not already been implemented, we would also draw your attention to those made in Sections 10 to 20 of the Second 2020 Submission.

We hope that these recommendations will be helpful and will be glad to engage further on any of the matters raised.

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