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23 May 2024

Submission on the General Scheme of the Companies (Corporate Enforcement Authority) Bill

Department of Enterprise, Trade and Employment

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Submission on the General Scheme of the Companies (Corporate Enforcement Authority) Bill

1. Background
   1. The Law Society of Ireland (the **Law Society**) wishes to make a submission to the Minister for Enterprise, Trade and Employment (the **Minister**) on the General Scheme of the Companies (Corporate Enforcement Authority) Bill 2023 (the **General Scheme**) to propose a minor amendment to eliminate a troublesome and, we believe, unintentional anomaly which has arisen following an imperfect implementation of dematerialisation of listed securities.
   2. The dematerialisation of listed securities has resulted from a series of legislative measures, both Irish and EU, most notably:
      1. Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (the **CSD Regulation**);
      2. Migration of Participating Securities Act 2019;
      3. Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020, Part 4;
      4. European Union (Dematerialised Securities) Regulations 2023 (the **2023** **Demat Regulations**).

Whilst the responsibility for driving the dematerialisation policy has been dealt with by the Minister for Finance, it is the Minister for Enterprise Trade and Employment who retains responsibility for the company law consequences of the dematerialisation policy.

* 1. The 2023 Demat Regulations made amendments to the Companies Act 2014 (the **2014 Act**) in relation to transfers of shares
     1. generally, at Chapter 5A of Part 3 of the 2014 Act
     2. separately in relevant Parts relating for the purposes of the different types of companies possibly affected by dematerialization, e.g.,
        1. for DACs (as debt securities issuers) in Chapter 3A of Part 16 of the 2014 Act;
        2. for PLCs at Chapter 7B of Part 17 of the 2014 Act;

and similarly for unlimited companies.

* 1. Irish PLCs with securities listed on markets have historically included a London listing as well as a Dublin listing. In recent years, there has been a trend for some companies to list in London only, whether on the main market (equivalent of our official list) or on AIM (the equivalent of our Euronext Growth market).
  2. Practitioners have found a likely mismatch between the terms defined at Chapter 5A of Part 3 of the Companies Act 2014 and some of the provisions which follow, which gives rise to a doubt as to whether dematerialisation has been effected with respect to certain securities issued by Irish listed PLCs.
  3. We recommend a simple and, we believe, uncontroversial change which can be made in Chapter 14 of Part 2 the General Scheme relating to PLCs, where a number of other anomalies and corrections are being addressed.

1. The Anomaly
   1. Chapter 5A of Part 3 of the 2014 Act, inserted by the 2023 Demat Regulations, includes this definition of “**applicable securities**”:

“transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU (or interests in them) that were, prior to 1 June 2015 –

(a) issued by a relevant issuer, and

(b) admitted to trading or listed on any market, whether a regulated market or not, in the State or elsewhere.”

Chapter 7B of Part 17 of the 2014 Act, inserted by the 2023 Demat Regulations, includes the following definition of “**applicable securities**”:

“transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU that –

(a) are issued by a relevant issuer,

(b) are admitted to trading or traded on a trading venue, and

(c) are not ‘relevant securities’ within the meaning of Chapter 7A of Part 17.”

Chapter 7A of Part 17 of the 2014 Act defines “**relevant securities**” as:

“securities that are - issued by a relevant issuer, and registered in the name of (i) a central securities depository, or (ii) a body as may from time to time be nominated by a central securities depository to hold securities represented in that depository's securities settlement system;”

A “**trading venue**” has the meaning given to it in Article 2 of the CSD Regulation, which is taken from the MiFID II Directive (2014/65/EU) and means a regulated market, an MTF or an OTF (each as defined).

* 1. The above mismatch in (A) in the definitions of “applicable securities” and (B) the use of the distinct expressions “any market” and “trading venue” indicate that this anomaly arises for Irish PLCs with (only) a UK listing (i.e. not listed in Ireland or another EU member state):
     1. from 1 January 2025, Chapter 5A of Part 3 of the 2014 Act will apply to those PLCs only in respect of securities issued on or before 1 June 2015, and
     2. from 1 January 2025, Chapter 7B of Part 17 of the 2014 Act will notapply to those companies.

1. **Recommended Solution**
   1. We recommend the inclusion in Chapter 14 of Part 2 of the General Scheme of a provisions to amend the definition of ‘trading venue’ in s1087I in Chapter 7B of Part 17 of the 2014 Act:

"**trading venue**" (a) has the meaning given to it in Article 2 of the CSD Regulation or (b) a UK regulated market, a UK MTF or a UK OTF (as defined in Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012)”

* 1. This amended definition ensures that the dematerialisation provisions will apply to Irish PLCs with (only) a UK listing in respect of securities issued after on or after 1 June 2015.
  2. The Law Society is available to further assist the Department of Enterprise, Trade and Employment on any aspect of this submission which requires further clarification or elaboration.

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Blackhall Place, Dublin 7

t. 01 672 4800

e. general@lawsociety.ie