

Establishment of the Corporate Enforcement Authority in Ireland

The Irish Government has recently published the Companies (Corporate Enforcement Authority) Bill 2021. The Bill, among other matters, provides for the establishment of the Corporate Enforcement Authority ("CEA") as an independent statutory agency, which will replace the Office of the Director of Corporate Enforcement ("ODCE").

The transformation of the ODCE into an independent agency will, in effect, provide it with more autonomy and resources so that it is better equipped to undertake larger and more complex company law investigations and to prosecute white collar crime.

Background

The Bill follows on from the publication of the General Scheme of the Companies (Corporate Enforcement Authority) Bill in December 2018. The establishment of the ODCE as an independent agency was part of the Irish Government's 'White Collar Crime package' of measures to enhance Ireland's ability to combat corporate, economic and regulatory crime, which was published in November 2017.

The historic under-resourcing of the ODCE has been well documented and came into sharp focus after the collapse of the trial of Sean Fitzpatrick, the former Chairman of Anglo Irish Bank, in 2017. This was on foot of a broader ODCE investigation into the bank which commenced in 2008 and which, the Director of Corporate Enforcement later acknowledged, "*went wrong in a pretty catastrophic way*" in the case of Mr Fitzpatrick. A subsequent review by the Department of Business, Enterprise and

Innovation in December 2018 noted that the ODCE, at the time of its investigation, lacked the specific skillsets, experience and risk management processes to allow it to undertake multiple complex investigations in parallel.

This arguably may have overshadowed other convictions secured in other Anglo-related investigations, as well as the allocation of additional resources in the intervening years. Nevertheless, staffing and resources continued to be a significant issue such that the Director of Corporate Enforcement warned in February 2019 at pre-legislative discussion of the Bill that it would not be equipped to deal with December 2008 if it happened again in the morning.

What is the difference between the ODCE and the CEA?

The Bill will provide for the establishment of the CEA, by way of an amendment to the Companies Act 2014. The CEA will be in form of a commission, similar to the Competition and Consumer Protection Commission (CCPC), which may comprise up to three members, with one member acting as chairperson.

The CEA's statutory functions will largely remain the same as those of the ODCE. The key difference is the CEA's establishment as an independent agency, as opposed to an office in Department of Enterprise, Trade and Employment, which will enable it to recruit its own staff and to determine their pay grades, subject to Ministerial consent. In practical terms, this will afford the authority greater autonomy to recruit specialist staff to cope with the demands of investigations.

Such autonomy will be backed by a bigger budgetary allowance, which was increased by €1 million to €6 million in 2021.

The Department of Public Expenditure and Reform has also sanctioned 14 additional civil servant staff to be assigned to the ODCE and the number of seconded members of An Garda Síochána (the Irish police) is set to increase from seven to 16. This will represent an increase of nearly 50% in the headcount. The recruitment of additional specialist staff, including legal and digital forensic experts, appears to be already underway.

Will the CEA have any new investigatory powers?

The powers of the CEA under the Bill will be substantially the same as those of the ODCE, which already has extensive investigative powers under the Companies Act 2014. There were recommendations that the CEA's powers would be supplemented in certain respects in the Bill itself to make the CEA more effective at investigating larger and more complex cases, particularly in the area of search and seizure. Proposed additional powers include the power to require the provision of passwords to electronic devices, to conduct surveillance and to permit ODCE officials to participate in interviews alongside members of An Garda Síochána.

These, however, will have to be the subject of separate legislative enactments and have been earmarked as part of the legislative recommendations in the Government's Implementation Plan on the recommendations in the Report of the Review Group on Anti-Fraud and Anti-Corruption from December 2020 (the Hamilton Report) (See previous update [here](#)¹).

When will the Bill be enacted?

The Minister of State for the Department of Enterprise, Trade and Employment has indicated that the Bill will be passed through the Oireachtas (the Irish legislature) before the end of the year, such that the CEA will be operational in January 2022.

What can be expected from the CEA?

Like the ODCE, it is likely that the CEA will continue to operate a graduated enforcement model in relation to breaches of company law, such that it will seek to use non-judicial measures, including warnings and statutory directions, to procure compliance before resorting to criminal investigations / prosecutions.

Accordingly, it is expected that while there may be an increase in summary prosecutions, the CEA will likely continue to focus its criminal investigative sources on larger investigations involving potential breaches of company law at the more serious end of the spectrum. As the ODCE has identified, such investigations are proving to be more intensive and complex due to technological advances, the number and resources of parties, and the subject of investigation as well as litigation.

The CEA will, however, at least be better positioned to deal with such investigations going forward and its establishment is a positive step towards Ireland's commitment to tackling economic crime.

Further Information

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

¹ <https://maples.com/en/knowledge-centre/2021/5/irelands-implementation-plan-to-tackle-economic-crime-and-corruption>

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