



Údarás um Fhorfheidhmiú Corparáideach
Corporate Enforcement Authority

Information Note 2022/1

**Section 385 of the Companies Act 2014
and the appointment of auditors
by the Corporate Enforcement Authority**

Introduction

This Information Note addresses s.385 of the Companies Act 2014 ("the 2014 Act"), which confers on the Corporate Enforcement Authority ("CEA") the power to appoint an auditor to a company where one has not been appointed at a general meeting.

The operation of this provision of the 2014 Act has come into focus in the context of the audit of Irish registered companies and compliance with the European Union ("EU") sanctioning of Russia following the invasion of Ukraine in February of this year.

The purpose of this Information Note is to provide a high level overview of the issues in question for stakeholders' benefit. It is not, and should not be interpreted or construed as being, a detailed legal analysis of the relevant statutory provisions. Affected parties should always, if considered necessary or prudent, seek their own legal advice regarding the operation and interpretation of the 2014 Act.

Section 385(1) of the 2014 Act - appointment of auditors by the CEA

Section 385(1) (as amended) provides that:

"Where at an annual general meeting of a company no statutory auditors are appointed by the members and the company is not entitled to avail itself of the audit exemption, the Corporate Enforcement Authority may appoint one or more persons to fill the position of statutory auditors of the company".

Companies' reporting obligations where no statutory auditor is appointed by the members and associated relevant provisions

A company must, within **one week** of an Annual General Meeting at which a statutory auditor should have been, but has not been, appointed, give notice of that fact to the CEA¹. In this regard, it is important to note that in the event that a company fails to give such notice within the prescribed timeframe, the company and every officer in default shall be guilty of a category 3 offence, which carries a term of imprisonment of up to six months and/or a Class A fine².

Nature of the CEA's power to appoint a statutory auditor to a company

The CEA's view is that the power conferred upon it by s.385(1) to appoint a statutory auditor to a company is directed towards the company rather than the auditor, i.e., is intended to ensure that companies do not frustrate the requirement to have a statutory auditor in place by simply failing to appoint one.

Recent focus on section 385

Following the Russian invasion of Crimea in 2014 and the invasion of Ukraine on 24 February 2022, EU sanctions against Russia have progressively strengthened. The most recent package strengthening the sanctions, introduced on 3 June 2022, prohibits the provision of various professional services, including audit services, to the Russian Government or to entities established in Russia. For audit contracts already in place, auditors were given until 5 July 2022 to bring themselves into compliance with these new sanctions.

A number of professional services firms have elected to cease to act as statutory auditors to Irish companies that are subsidiaries of Russian companies and/or that are providing services to Russian companies and individuals - including various trust and company service providers.

These Irish companies were incorporated under the Companies Act 2014 and have associated obligations in that regard, including with respect to ensuring that their statutory financial statements are audited. The CEA is aware that certain companies are experiencing difficulty in securing the services of statutory auditors in the context of the operation of the sanctions regime.

¹ See s.385(2) Companies Act 2014.

² Sees. 385(3) Companies Act 2014.

Effect of the EU sanctions on the provision of audit services

It is not definitively established that the EU's sanctions regime prohibits the provision of auditing and accounting services to Irish companies, even where they are wholly owned subsidiaries of Russian companies. Accordingly, it may be that, subject to anti-circumvention provisions of the sanctions regime, duly authorised individuals and professional services firms are entitled to continue to act as statutory auditors to such companies.

Nevertheless, it appears to be the case that a number of professional services firms have opted to resign as statutory auditors to relevant Irish companies, not for legal reasons but rather on risk management, ethical and/or reputational grounds.

Consequences for the affected companies

Incorporation under the 2014 Act brings significant benefits, such as, for example, limited liability. However, with those benefits come duties and responsibilities, some of which can be onerous. In circumstances where a company finds itself unable to appoint a statutory auditor because none is willing to act in that capacity, that:

- has serious consequences in terms of ability to comply with the 2014 Act and may have unavoidable consequences for the company's viability, and
- may expose the company, and its directors, to risk.

Statutory audit is a fundamentally important element of Ireland's company law framework. That being the case, the CEA will be taking a robust approach towards non-compliance with the company law obligations referenced herein.

CORPORATE ENFORCEMENT AUTHORITY
29 JULY 2022