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**Údarás Forfheidhmithe Corparáideach**  
**Corporate Enforcement Authority**

## **Press Statement**

### **CEA enforcement activities**

#### **IMMEDIATE RELEASE**

**Attribution: The below may be attributed to a CEA spokesperson.**

#### **Context**

The Corporate Enforcement Authority (“CEA”) has received a number of media enquiries since its establishment on 7 July 2022 seeking details regarding particular investigations and named individuals. Queries received to date include:

- whether a named individual is under investigation,
- whether a named individual has been arrested,
- whether a file been sent to the Director of Public Prosecutions (“DPP”) regarding a named individual and/or an entity connected with that individual, and
- why a named individual has not been “*banned*” from acting as a company director.

Consistent with its general policy of not commenting on the specifics of its investigative activities, which is grounded in the CEA’s statutory confidentiality obligations, the response to the above queries has been that the CEA does not offer any comment. Nor does the CEA confirm the accuracy or otherwise of any related reportage.

Having regard to the nature of the queries received, the CEA considers that it would be helpful to set out some general information regarding the enforcement of company law in order to aid understanding of the process. The following content is, therefore, general in nature and is not, and should not be construed as being, specific to any particular matter.

#### **Eligibility to act as a company director**

One of the central attractions of incorporating a company is to avail of limited liability. The purpose of limited liability is to facilitate entrepreneurial activity in a manner such that companies’ owners’ (i.e., shareholders’) financial risk is, subject to certain exceptions, limited to their investment in shares in the company.

Company law requires that every private company limited by shares (which is the most common form of company to be incorporated in this jurisdiction) must appoint at least 1 director. In summary, a director is a person appointed by the company's shareholders to manage the company's affairs on a day to day basis on their behalf.

Provided that they are aged 18 or above, any person may be appointed to act as a company director – unless that individual has been, or is deemed to be, disqualified from so acting. For example, a person who is an undischarged bankrupt is prohibited from acting as a company director, as is a person who has been disqualified by a court.

### **Companies' activities**

Provided that it is lawful and, where applicable, is permitted/not prohibited by a company's constitution, a company may engage in any activity it so chooses.

Additional considerations apply, however, where a company is in financial difficulty, e.g., a company's directors are under a duty to ensure that a company does not trade recklessly.

### **Transparency**

In return for the privilege of limited liability, companies have certain transparency obligations. Specifically, companies are required to file certain information with the Registrar of Companies, thereby placing that information on the public record. The purpose of these requirements, which include the requirement that directors' details be made public, is to offer protection to the public, for example, by enabling those who might be considering engaging in business with a company to undertake certain due diligence in advance.

It is a serious criminal offence – an offence that is prosecuted regularly by the CEA and by the Director of Public Prosecutions on the recommendation of the CEA - to file false information with the Registrar.

### **Indications of breaches of company law**

Where an indication of a breach of company law is brought, or otherwise comes, to the CEA's attention, (e.g., through a complaint, a referral from another statutory body, through a statutory report from an auditor or liquidator or through media reporting etc.), the matter is examined with a view to assessing whether, based on the information available, further investigation is warranted.

Many matters arising do not require to be progressed to the formal investigation phase but, rather, can be addressed on an administrative basis – for example, by securing voluntary rectification and/or through the issuing of a warning and/or through issuing a statutory direction to take a particular action.

### **Investigation**

Where further investigation is determined as being warranted, the CEA has a range of powers at its disposal, including the power to demand the production of documents (both hard copy and electronic) and powers of search and seizure where a warrant has been granted by a court. These powers are exercised regularly.

### **Enforcement action**

Where the CEA's investigative activity identifies evidence suggestive of breaches of company law, the CEA has both civil and criminal enforcement powers at its disposal. The course of action taken will depend upon a range of factors, including the nature of the behaviour/actions involved.

Civil enforcement options include, for example, applying to a court to have a person disqualified from acting as a company director.

Criminal enforcement options include prosecution in the District Court in the CEA's own name and referring a matter to the DPP for consideration as to whether prosecution on indictment (i.e., in the Circuit Court) is warranted.

Both courses of action require evidence. In that context, media reports and/or opinion/speculation/conjecture on social media or elsewhere will rarely, if ever, constitute evidence. Rather, evidence comprises of facts that can be proven before a court to the requisite standard of proof.

Depending upon the nature of the evidence gathered during the course of an investigation, the CEA may, in submitting a file to the DPP, recommend criminal charges over and above/in addition to company law charges – for example, theft, false accounting, money laundering, tax offences etc.

The Office of the DPP is entirely independent of investigative authorities in the discharge of its functions and, as such, where a file is submitted, it is entirely a matter for that Office as to whether criminal charges are directed, if so what charges are directed, and the timeframe within which such decisions are made.

### **Consequences of enforcement action**

Where a person is disqualified by a court, that person may not, for the duration of the period ordered by the court, act as a company director (or occupy certain other roles, e.g., company secretary, auditor). Breach of a disqualification order is a serious criminal offence, as is acting as a company director while otherwise prohibited from so acting (e.g., while an undischarged bankrupt).

Where a person is convicted on indictment (i.e., jury trial) of:

- a company law offence, or
- any offence involving fraud or dishonesty,

that person is, under company law, automatically disqualified from acting as a company director from the date of conviction. In such circumstances, the default disqualification period is 5 years but that period may be shortened or lengthened by the court as deemed appropriate having regard to all the facts and circumstances.

Where a court makes a disqualification order, convicts the person of an offence which is deemed to be subject to a disqualification order, or convicts for an offence of contravening a disqualification or restriction order, details of the disqualification are registered with the Companies Registration Office, thereby ensuring the public has access to this important information.

Where a person is convicted on indictment of a company law offence, or of an offence relating to fraud or dishonesty, once the disqualification period has expired, that person is free to act as a company director.

### **“Banning” of company directors**

The CEA has no statutory authority to “ban” (i.e., disqualify) a person from being a company director. That is an action that, under company law, can only be taken by a court of law. This is no different to, for example, the fact that An Garda Síochána cannot disqualify a person from driving. Rather, only a court can take such action – and will only do so based on evidence that satisfies the court to the requisite standard that such a course of action is appropriate under the circumstances.

**ENDS//**

**CORPORATE ENFORCEMENT AUTHORITY  
15 JULY 2022**

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## NOTE TO EDITORS

- The Corporate Enforcement Authority (“CEA”) is an independent statutory agency tasked with promoting compliance with, and enforcing, company law, and the exercise of certain supervisory functions in relation to liquidators and receivers. The legislation underpinning the establishment of the CEA is the [Companies \(Corporate Enforcement Authority\) Act 2021](#) (“CEA Act”), which amended the Companies Act 2014.
- Commencement Orders providing for the commencement of the CEA Act and the establishment of the CEA were signed by An Tánaiste, Dr. Leo Varadkar, T.D., on 5 and 6 July 2022, respectively.
- The CEA is staffed by, amongst others, a multi-disciplinary team of legal, accounting, and digital forensics professionals, together with seconded members of An Garda Síochána. All staff of the CEA may be referred to as CEA Officers.