

THE CORPORATE ENFORCEMENT AUTHORITY

A QUICK GUIDE



Údarás Forfheidhmithe Corparáideach
Corporate Enforcement Authority

PROMOTING HIGH STANDARDS
OF CORPORATE BEHAVIOUR THROUGH
THE ENFORCEMENT OF COMPANY LAW

Contents

Introduction

About this Guide

Why does Company Law matter?

Who is our work relevant to?

Establishment of the CEA

The functions of the CEA

Independence and accountability

Governance

What we do

Sources of information and confidentiality

Our people

Encouraging compliance

Enforcement of the Companies Act 2014

Our statutory powers

Where can I get more information?

Our Mission

To promote and serve the public interest by ensuring high levels of compliance with company law through effective advocacy and proportionate, robust and dissuasive enforcement.



Introduction

The Corporate Enforcement Authority (“CEA”) is Ireland’s company law enforcement agency.

This Quick Guide will provide you with information about who we are, what we do and how you can contact us. It will point you towards our range of publications, which are designed to assist company directors and other officers in meeting their duties and obligations as well as assisting members, shareholders and creditors of companies in understanding and vindicating their rights under company law.

The public is one of our key sources of information and it is for this reason that we encourage members of the public to submit complaints, expressions of concern and protected disclosures in respect of suspected breaches of company law.

Further information is available on our website (www.cea.gov.ie). By following our social media channels on LinkedIn and Twitter, you can also obtain regular news and updates.

Corporate Enforcement Authority
July 2022

About this guide

We have produced this quick guide to introduce and explain the role of the CEA. It will explain who we are, what we do and how you can contact us.

Why does company law matter?

One of the core purposes of company law is to facilitate separate legal personality and limited liability. These are privileges which, by circumscribing personal exposure to financial risk, facilitate and encourage entrepreneurial activity.

In return for these privileges, company law sets down a framework within which:

- companies and their directors are expected to operate;
- certain transparency requirements must be complied with;
- certain protections are afforded to shareholders, creditors and the wider public; and
- sanctions, civil and criminal, are provided for in respect of certain non-compliance.

Who is our work relevant to?

As of June 2022, there are over 280,000 active companies on the register of companies. Depending on their size, number of employees and turnover, they can be classified as micro, small, medium, or large companies. In Ireland, 95% of companies are classified as micro or small, 3% are classified as medium and the remaining 2% are classified as large companies.

Every company, and its directors, incorporated (i.e. created) under Irish company law comes within the remit of the CEA. There are many different types of company, which can be either public or private, and each of them have benefits and obligations that derive from the privilege of incorporation.

The various categories of company are as follows:

- private company limited by shares (LTD). This is the most frequently formed type of company;
- designated activity company (DAC), which can be either:
 - a private company limited by shares, or
 - a private company limited by guarantee and having a share capital;
- private unlimited company (ULC);
- public limited company (PLC), which can be either:
 - an investment company with its sole object being the collective investment of funds, or
 - a public limited company (other than an investment company) that carries on an activity in the State being an activity that is mentioned in its memorandum (including a European Company or *Societas Europaea*);
- public unlimited company, which can be either:
 - a public unlimited company having a share capital (PUC), or
 - a public unlimited company not having a share capital (PULC);
- company limited by guarantee (CLG); and
- external Company (an EEA or non-EEA company whose members' liability is limited).

Establishment of the CEA

The CEA was provided for in law with the enactment of the Companies (Corporate Enforcement Authority) Act 2021 and was established with effect from 7 July 2022 by the Companies Act 2014 (Corporate Enforcement Authority) (Establishment Day) Order 2022.

The CEA is responsible for enforcing company law, including the Companies Act 2014 ('the 2014 Act').

The functions of the CEA

The CEA's functions are conferred on it by the 2014 Act. They include:

- encouraging compliance with company law;
- investigating instances of suspected breaches of company law;
- taking appropriate enforcement action in response to identified breaches of company law;
- supervising the activities of liquidators of insolvent companies;
- operating a regime of restriction and disqualification undertakings in respect of directors of insolvent companies; and
- other functions which can be prescribed by Ministerial Order, e.g. conferred under the Irish Collective Asset-management Vehicles Act, 2015.

Independence & accountability

The CEA is independent in the performance of its functions. This is an important statutory provision because the CEA engages in law enforcement functions and has to be able to perform that role without fear or favour.

As a body established by the Oireachtas, the CEA is, however, accountable for how it discharges its functions. This accountability takes a number of forms. The CEA must:

- prepare and submit a Strategy Statement to the Minister for Enterprise, Trade & Employment – this happens every three years;
- prepare annual accounts and submit them to the Comptroller & Auditor General for audit;
- prepare an Annual Report in respect of each financial year and to submit it to the Minister for Enterprise, Trade & Employment;
- publish its Annual Report on its website; and
- if requested by the Minister for Enterprise, Trade & Employment, permit any person appointed by the Minister to examine the Authority's books and records.

The sole Member/Chairperson of the Authority must:

- whenever required to do so by the Dáil Committee of Public Accounts, give evidence to that Committee on matters coming within S944N of the Companies Act 2014; and
- attend before other Committees of the Houses of the Oireachtas on matters relating to the general administration of the CEA when requested to do so.

Governance

As a State Agency, the CEA is subject to the Code of Practice for the Governance of State Bodies (“the Code”).

What we do

We encourage adherence to the law through a range of strategies, including the provision of independent information and guidance and through various outreach and stakeholder engagement activities. Our enforcement remit is both civil and criminal in nature and, to enable us to discharge that role, we have an extensive suite of investigative powers at our disposal.

In discharging our enforcement mandate, we supervise the corporate insolvency process and conduct financial and related investigations across the full spectrum of companies, from SMEs and not-for-profits to companies whose securities are publicly listed.

Where our investigative activities identify non-compliance with company law, our enforcement options include civil remedies, such as directing companies and their officers to take certain corrective measures; the restriction and disqualification of company officers; and criminal options, including prosecuting in the CEA’s name or referring a matter to the Director of Public Prosecutions (DPP) for consideration as to whether charges should be preferred on indictment.

Sources of Information and Confidentiality

We receive information from a variety of sources. Certain professionals, i.e., auditors, examiners and receivers, are required to make reports to us under certain circumstances. Certain professional bodies have similar obligations. In addition, every liquidator appointed to an insolvent company must submit reports to us.

In addition, we actively encourage members of the public to submit complaints and expressions of concern to us where there is a suspected instance of non-compliance with company law. In certain circumstances, a person may be eligible to make a protected disclosure to us. Additional information relating to protected disclosures is available on our website. Where in any doubt as to whether the protections of protected disclosures legislation applies to you, consideration should be given to obtaining independent legal advice as we can't provide legal advice.

In order to ensure that you provide us with the information that we need in order to review your complaint or expression of concern, we ask you to read carefully, and then complete, our Complaint Form, which can be accessed at www.cea.gov.ie/publication/forms. Once completed, you should send your Complaint Form to complaints@cea.gov.ie.

All information received by the CEA is treated as confidential and is dealt with in accordance with law.

Our people

Because company law is complex and specialised, and because companies can be complex entities, enforcing company law requires diverse skill sets. For that reason, our officers, include, amongst others, accountancy, legal and digital forensics professionals as well as members of An Garda Síochána (police officers).

Details of our leadership team can be obtained from our website (www.cea.gov.ie/about).

Encouraging Compliance

One of the functions of the Authority is to encourage compliance with the Companies Act.

Accordingly, along with this Quick Guide, we have issued a series of Information Books which are available at www.cea.gov.ie/publications. These publications outline the main roles and responsibilities of some of the key actors in company law and assist members of the public in being better informed about their rights and obligations.

The CEA is a member of the Advisory Council Against Economic Crime & Corruption, the Economic Crime & Corruption Forum, the Company Law Review Group and its committees, the Anti-Money Laundering Steering Committee and various other Governmental and roundtable groups engaged in the examination and review of companies and criminal law generally.

Based on the knowledge and experience gained through the discharge of our functions, we seek to influence policy and decision makers and to engage in thought leadership on matters relevant to our statutory remit.

Enforcement of the Companies Act 2014

The CEA investigates where there are suspected breaches of the 2014 Act. Suspected breaches come to our attention through a variety of sources, for example, through reports that professionals such as auditors and liquidators are obliged to send us, through public complaints and through protected disclosures. We can investigate suspicions even if no complaint is made to us by a third party.

If our investigation gathers evidence that company law may have been breached, we can take action to enforce the law. We can do this in a number of ways, but in doing so, we consider what is the most appropriate and proportionate response.

We seek to deploy our available resources in a manner most likely to maximise our impact and the dissuasive effect of our enforcement actions. In determining where to deploy our resources we, therefore, have regard to considerations including:

- the scale and gravity of the issues involved;
- the wider potential impact of the apparent/alleged misconduct;
- the potential for further misbehaviour by the relevant individual/entity;
- whether a complainant, where there is one, has other remedies at their disposal;
- the probability of achieving a positive outcome; and
- public interest considerations.

Enforcement action can include:

- issuing warnings and requiring evidence of voluntary rectification of non-compliance;
- requiring certain persons to take steps to bring about compliance. For example, requiring a company's directors to convene an Annual General Meeting of the company;
- applying to Court for orders requiring steps to be taken to bring about compliance – for example, where a person has failed to comply with a direction issued by the CEA; and
- where a matter of concern is identified that falls within the remit of another statutory regulator or enforcement body, we generally have the power to refer the matter to that body.

Our statutory powers

In order to enable us to discharge our functions, we have been conferred with certain investigative and enforcement powers, both civil and criminal. These include:

Powers of investigation

- the power to require the production of documents (including electronic documents) by companies and relevant third parties;
- powers of search and seizure;
- the power of arrest; and
- the right to request the Courts to enable certain additional investigative measures such as, for example, the granting of production orders and the appointment of Court-appointed Inspectors.

Enforcement powers

- the power to offer, legally binding if accepted, restriction and disqualification undertakings;
- the power to apply to the High Court for the disqualification of a company director in certain circumstances;
- the power to apply to the High Court to have a company wound up (liquidated) in certain circumstances;
- the power to initiate summary prosecutions in the District Court; and
- the power to refer more serious matters to the Director of Public Prosecutions for consideration as to whether criminal charges should be directed on indictment.

Where can I get more information?

You can find more detailed information on the CEA's website at www.cea.gov.ie

If you are unsure about company procedures and what you need to do under the law, you should seek independent professional advice.

For regular news and updates, follow the CEA on its social media channels.

For Further Information contact:

Corporate Enforcement Authority
16 Parnell Square East
Dublin 1
D01 W5C2
Ireland

Tel: +353 1 858 5800

Email: info@cea.gov.ie

Web: www.cea.gov.ie

Tá leagan Gaeilge den leabhrán seo ar fáil

An Irish version of this booklet is available

Disclaimer

This Quick Guide is not a legal interpretation of any part of the Companies Act. The Corporate Enforcement Authority accepts no responsibility or liability for any errors, inaccuracies or omissions in this guide.

Corporate Enforcement Authority

16 Parnell Square East | Dublin 1 | D01 W5C2 | Ireland

Tel: +353 1 858 5800

Email: info@cea.gov.ie

Web: www.cea.gov.ie

Tá leagan Gaeilge den leabhrán seo ar fáil

An Irish version of this booklet is available



Údarás Forfheidhmithe Corparáideach
Corporate Enforcement Authority