



An Roinn Fiontar,
Turasóireachta agus Fostaíochta
Department of Enterprise,
Tourism and Employment

Public Consultation on proposed changes to the Companies Act 2014 and related legislation

Response Template

Section A: Proposed amendments to the Companies Act 2014

Implications of the proposed changes for information maintained by companies:

Question A1:

Do you have any views on the intended approach relating to the maintenance by companies of address details of relevant officers?

Response:

Mediahuis Ireland's news publications are pledged to be professional, courageous and relentless in their pursuit of truth and of news.

For good and obvious reasons, the Mediahuis Editorial Code of Practice states that our journalists "must strive to be accurate and establish the facts of circumstances". Further, it states "stories must be well sourced and based on sound evidence".

The Code also states "It is a basic tenet of good and responsible journalism to put any critical or damaging claim or allegation to the subject before publication. Where allegations are being made, the individual or organisation concerned should be given a fair opportunity to respond to the allegations before publication".

In short, the recommendations of the Company Law Review Group (CLRG), endorsed by the Department of Enterprise, Tourism and Employment, have grave implications for Mediahuis' journalists ability to be accurate, base their investigations on sound evidence, and contact impacted individuals for a right of reply.

Mediahuis Ireland is aware of a separate submission that is being made by News brands Ireland which we adopt and endorse.

Mediahuis Group Business Editor [REDACTED] has also made a submission on behalf of the Business Journalists Association of Ireland and again, we adopt and endorse what he has said.

Context

The media's role as the public's watchdog cannot be taken for granted. It has a history of uncovering corporate wrongdoing that would otherwise have remained undetected. The public interest in this reporting is particularly acute in relation to money laundering, terrorist financing and the unscrupulous use of the corporate veil by some in order to perpetuate fraud and other financial wrongdoing.

The Republic of Ireland has some of the most stringent defamation laws in the World. Making a mistake, including mis-identifying an individual, is not a defence to a defamation action. If a publisher is looking to rely on a "fair and reasonable publication" defence to defamation then, subject to the circumstances of the case, it will need to show that it has taken steps to contact the impacted individual / entity for comment.

Against this backdrop Mediahuis Ireland undertakes thorough pre-publication editorial and legal review of proposed publications. This process will be fundamentally undermined by the proposed changes.

The EU's 6th Anti-Money Laundering Directive and the judgment of the Court of Justice of the EU in WM and Sovim SA -v- Luxembourg Business Registers (2022) both contain important caveats noting the ability for journalists to gain access to information. Sadly, and inexplicably, that is not reflected in the CLRG recommendations.

Impact

The importance of the media's ability to verify and cross-check information with public records cannot be overstated. A director's address is information that is less likely to make its way into the final publication, but is crucial in being able to

satisfy journalists (and, in turn, editors and their legal advisors) that the reporting is accurate, that impacted parties have been given the opportunity to comment, and ultimately that it is safe to publish.

This verification issue has previously been addressed by the CLRG:

The inclusion of the requirement for the usual residential address facilitates the identification of the Relevant Officer by both the CRO and more generally by the public (e.g. to distinguish Sam Smith with an address in Athlone and Sam Smith with an address in Bantry).

Bluntly, if investigative journalists are not able to confirm which Sam Smith their information relates to, the story will not be published.

██████████ Mediahuis Ireland's Group Business Editor has set out the verification requirements of business journalists in this area and the impact of these recommendations in stark terms in his submission on behalf of the Business Journalists Association of Ireland.

Whilst it is understood that directors and company secretaries will provide a "contact address", this may not provide sufficient comfort that an individual has been given a chance to comment compared to being able to contact them at their residential address.

It is also worth noting the provisions of Section 18 of the Defamation Act 2009, which provides for the defence of qualified privilege. Part 1 of Schedule 1 to the Act sets out categories of information of which fair and accurate reporting attracts the defence of qualified privilege.

Included in Part 1 of Schedule 1 is:

10. A fair and accurate copy or extract from any register kept in pursuance of any law which is open to inspection by the public or of any other document which is required by law to be open to inspection by the public.

So, to use the example referred to by the CLRG, if Sam Smith gives an incorrect address that is recorded on the register (or if the address is incorrectly recorded) and this is reported by the media, then they have a full defence if another Sam Smith claims that the use of this incorrect address wrongly identifies them.

The decision to remove this register from public view will remove this statutory defence. We appreciate such an outcome might be inadvertent, but it is nonetheless a real-world consequence. It will persist even if a compromise approach is adopted whereby *bona fide* members of the press are to be given access to the register and in those circumstances a consequential amendment to the Defamation Act should be made.

In conclusion, Mediahuis Ireland does not agree that the current proposals for this area are necessary or required to comply with the 6th Anti-Money Laundering Directive or the WM decision. The recommendations of the CLRG fail to properly balance the (at times) competing rights between a director or company secretary's right to privacy and the public interest in transparency in company dealing and its facilitation of public interest reporting.

Proposals

The CLRG recommendations in this area should be rejected.

If amendments are deemed required then, at a minimum, the media should be proscribed as a relevant entity with permission to access directors and company secretary's residential addresses. Mediahuis Ireland supports News Brands Ireland's proposed definition of *bona fide member of the Press or broadcast media* should this be required.

Implications of the proposed changes for filing with the Companies Registration Office:

Question A2:

Do you have any views on the intended approach relating to the filing with, and maintenance by, the Companies Registration Office of address details of relevant officers?

Response:

See above

Restricted access to the “usual residential address”:

Question A3:

Do you have any views on the proposed list of entities that may be granted access to the “usual residential address” of relevant officers?

Response:

See above.

Question A4:

Are there any other comments you wish to make on the proposed approach to dealing with the “usual residential address” of relevant officers?

Response:

See above.

Section B: Proposed changes to the Co-operative Societies Bill:

Implications for information retained by a Co-operative Society:

Question B1:

Do you have any views on the intended approach relating to the maintenance by co-operative societies of address details of relevant officers?

Response:

Implications of the proposed changes for information maintained by the Registrar of Co-operative Societies:

Question B2:

Do you have any views on the intended approach relating to the filing with, and maintenance by, the Registrar of Co-operative Societies of address details of relevant officers of co-operative societies?

Response:

Restricted access to the “usual residential address”:

Question B3:

Do you have any views on the proposed list of entities that may be granted access to the “usual residential address” of relevant officers of co-operative societies?

Response:

Question B4:

Are there any other comments you wish to make on the proposed approach to dealing with the “usual residential address” of relevant officers of co-operative societies?

Response:

Section C: Changes to the Registration of Limited Partnerships and Business Names Bill:

Implications for information retained by the LP:

Question C1:

In relation to the implications for Limited Partnerships, do you have any comments on the proposals?

Response:

Implications of the proposed changes for information on LPs maintained by the Registrar of Companies:

Question C2:

Do you have any views on the intended approach relating to the filing with, and maintenance by, the Registrar of Companies of address details of a partner in a Limited Partnership?

Response:

Implications of the proposed changes for information on Register of Business names maintained by the Registrar of Companies:

Question C3:

Do you have any views on the intended approach relating to the filing with, and maintenance by, the Registrar of Companies of address details of a person registering a business name?

Response:

Restricted access to the “usual residential address” for an LP and a registered business name:

Question C4:

Do you have any views on the proposed list of entities that may be granted access to the “usual residential address” of a partner of a Limited Partnership or a registered business name applicant?

Response:

Question C5:

Are there any other comments you wish to make on the proposed approach to dealing with the “usual residential address” of a partner of a Limited Partnership or a registered business name applicant?

Response:

Freedom of Information Act 2014 and Publication of Submissions

Your attention is drawn to the fact that information provided by you in submissions is subject to release by the Department under the Freedom of Information Act 2014. In responding to

this public consultation, all individuals and organisations should clearly indicate where their submission contains personal information, commercially sensitive information, or confidential information which they would not wish to be made publicly available by being published on the Department's website or released by the Department pursuant to the receipt of an FOI Request under the Freedom of Information Act 2014.

General Data Protection Regulation (GDPR) and Data Protection Acts 1988 to 2018

The Department of Enterprise, Tourism and Employment is subject to the provisions of the GDPR and Data Protection Acts 1988 to 2018. In this context, the Department will treat all personal information which you provide in submissions as part of this public consultation process with the highest standards of security in line with our data protection compliance requirements. We would like to draw your attention to the Department's Data Protection Privacy Notice which is available on our website and explains how and when we collect personal data, why we do so and how we treat this information. It also explains your rights in relation to the collection of your personal information and how you can exercise your rights under data protection laws.

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