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## Court appoints Inspectors to investigate INM's corporate affairs

The Director of Corporate Enforcement (the “ODCE”) has successfully applied to the High Court for Inspectors to be appointed to Independent News and Media PLC (“INM”) to investigate and report on the corporate affairs of INM. The application was made under section 748 of the Companies Act 2014 (the “Act”). The ODCE’s application was opposed by INM and its directors.

### Why have Inspectors been appointed?

Section 748 of the Act provides that following an application by the ODCE, the Court “*may*” appoint one or more Inspectors to a company if it satisfied that there are circumstances to suggest that any of the ten matters identified in section 748 have occurred or are occurring in respect of a company.

### The Court’s discretion/other investigations

Mr. Justice Kelly noted that the Court had discretion as to whether to appoint Inspectors following a section 748 application. In particular he noted that the Court should take public interest and the existence of other investigations into account, when deciding whether to appoint Inspectors.

Mr. Justice Kelly concluded that in this case it was in the public’s interest for Inspectors to be appointed, as INM occupies a dominant position in the media sector in Ireland and therefore there was an obvious public interest in its proper governance.

For further information on any of the issues discussed in this article please contact:



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In terms of other investigations, Mr. Justice Kelly noted that the Data Protection Commissioner (the “DPC”) had notified INM of her intention to commence an investigation into matters relating to the data interrogation (see Terms of Reference below). He also noted that the Central Bank of Ireland (the “Central Bank”) had taken an interest in the proceedings but had not yet notified INM of an intention to investigate any matter.

Ultimately Mr. Justice Kelly concluded that the DPC’s investigation and any investigation which may be initiated by the Central Bank would be limited to those authorities’ statutory scope and would not be as broad, or have the same powers, as an investigation carried out by Court appointed Inspectors. He therefore concluded that an investigation by the DPC or a potential investigation by the Central Bank were not sufficient reasons to warrant a refusal of the ODCE’s application.

### What are the Terms of Reference?

Mr. Sean Gillane (a Senior Counsel at the Irish Bar) and Mr. Richard Fleck (a former partner and currently a consultant with an English law firm) have been appointed as Inspectors to INM. The Inspectors’ Terms of Reference permit them to inquire into various matters including:

- ▣ the interrogation of INM’s data;
- ▣ the proposed acquisition by INM of Newstalk radio;
- ▣ the proposed payment to Island Capital of a success fee associated with the disposal of INM’s shareholding in APN News and Media Ltd; and
- ▣ possible breaches of Market Abuse Regulations.

The Terms of Reference also require the Inspectors to report into whether there have been any breaches of the Companies Act 2014, the Protected Disclosures Act 2014, the Data Protection Acts 1988 and 2003 and the Market Abuse Regulations, among other matters.

### The Inspectors’ Powers

The Inspectors have wide ranging powers under the Act. They can require officers or agents of INM and any related company to produce books or documents concerning INM/a related company which are in the officer’s/agent’s possession or control. They can also examine these parties on oath. Where a person refuses to produce books, documents or information in accordance with sections 754-756 of the Act, the Inspectors may certify the refusal and apply to Court for an order requiring the individual to comply with the relevant requirement. Any answer given by a person to the Inspectors under the relevant provisions, can be used against them in any subsequent civil proceedings.

These powers can be used in respect of both current and former directors of INM and/or related companies, present/former bankers and auditors of INM and/or a related company and other persons employed by INM and/or a related company in a professional or consultancy capacity, as well as in respect of other parties. The Inspectors can also require past and former directors of INM and/or related companies (as well as persons connected to them) to produce documents in relation to their personal bank accounts, whether held solely or jointly, in certain circumstances.

### What happens afterwards?

The Inspectors must produce a final report at the conclusion of their inspection, a copy of which will be given to the ODCE. The Court may also decide to provide a copy of the report to various other parties (including the Central Bank, the Revenue Commissioners and the Companies Registration Office) and even to publish it.

Section 760 of the Act gives the Court the very broad power of making any order “*it thinks fit*” on foot of a report by Court appointed Inspectors. These are expressly stated to include an order for the company to be wound-up or an order remedying any disability suffered by any person whose interests were adversely affected by the conduct of the relevant company. A report by Court appointed Inspectors is also admissible in evidence in any civil proceedings as proof of the facts set out in it, unless the contrary is shown.

### Contact information

If you have any queries about the information contained in this article, please contact Muireann Reedy of our Regulatory Investigations Unit at [Muireann.Reedy@dilloneustace.ie](mailto:Muireann.Reedy@dilloneustace.ie) or at 01-674 1002.

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