



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

#5 Important Corporate Governance Considerations ahead of Brexit

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As Brexit discussions between the UK and the European Union continue in the lead up to 29 March, 2019, governance is a rolling agenda item for the Company Secretary and the Board of Directors of many companies as part of corporate governance reporting.

The following key considerations should be given consideration as part of Brexit planning for Irish companies:



1. EEA Resident Director Requirement

The current requirement under Section 137 of the Companies Act 2014 is that all Irish companies are required to appoint a minimum of one EEA resident director.

Consideration now needs to be given to appointing an additional Director that meets the EEA resident requirements. Alternatively, the company may be able to progress with one of the following options:

Putting a non EEA Directors insurance bond in place. This can be done for a period of two years and

renewed thereafter (Section 137 of the 2014 Act).

Obtaining a certificate from the Registrar of Companies that proves that it has real and continuous link with one or more economic activities carried on in the state of Ireland (Section 140 of that 2014 Act). The Registrar will only grant such a certificate on receipt of proof of such a link from the Irish Revenue Commissioners.

2. Filing Group Financial Statements

Where an Irish company is a subsidiary or another holding company established under the laws of an EEA country, the Irish company may be able to avail of a filing exemption in respect to its individual entity financial statements which are normally required to be filed at the CRO. Section 357 of the Companies Act lays down various conditions must be fulfilled to successfully avail of the filing exemption.

As this filing exemption is only available where the holding company is incorporated in an EEA country, the implications of this disclosure requirement for individual Irish companies should be considered in advance of the next annual return date for relevant companies.

3. Aligning Financial year end

Section 288 of the Companies Act 2014 stipulates that an Irish company is restricted in changing its financial year end date to once in every five years. However, this restriction does not apply to a subsidiary or holding company of another EEA company where it needs to align its financial year end with that other EEA company.

Any Irish subsidiaries of UK parents considering aligning their financial year end should consider giving effect to those considerations now so as to avoid disappointment and potential delay.

4. Group Structures

The governance around the day to day operations of the group structure will need to be reviewed in order to alleviate any adverse business consequences for either the parent or subsidiary companies. Financial, logistical, HR and intellectual property structures will need to be considered and amended or enhanced to ensure optimised operations in a post Brexit environment.

The governance framework (policies, procedures, delegations of authority, etc.) will need to be amended around such changes together with the delivery of appropriate training to avoid associated risks to the operations of a business.

5. Registration of Branch Companies in Ireland

The registration and compliance process in Ireland for branch companies of UK registered companies will cease to fall under the current EEA company requirements as set out in Part 21 of the Companies Act 2014.

The non EEA Company requirements will need to be applied for both the registration and the ongoing compliance requirements of new and existing branch companies of UK Parent Companies under Section 1304 of the Companies Act 2014.

Next Steps

The governance implications for companies need to be at the forefront of the Board agenda in order to mitigate risks and ensure a smooth transition for the Company and its stakeholders. We recognise that company secretarial solutions are not one size fits all and have been assisting many of our clients in their specific governance requirements. Our team has considerable experience providing a complete suite of services to our clients across numerous jurisdictions, If you would like assistance with any corporate governance matters, please do contact us.

About the Author