



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Brexit: Review Governance of Companies before 31 December 2020

by **Colm Hanley**

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The Brexit transition period will end on 31 December 2020. Following the transition period, UK resident individuals and UK resident companies will no longer be resident in the EEA.

The EEA residency requirements have significant implications for many Irish companies and action should be taken now to ensure compliance with Irish legislation.

UK Resident Directors

Section 137 of the Companies Act 2014 requires that all Irish companies appoint at least one EEA resident director. Companies with all directors resident in the UK have until 31 December 2020 to either appoint an EEA-resident director, put in place an insurance bond to the value of €25,000, or apply to the Registrar of Companies for a certificate confirming that the company has a real and continuous link with one or more economic activities in Ireland.

It is important that the legal requirements for appointing of a director are complied with. The appointment of a director is governed by the constitution of the company, but a shareholder's agreement may also need to be considered.

The insurance bond must have a minimum period of validity of two years, commencing no earlier than the occurrence of the event giving rise to the requirement for the bond.

The Registrar of Companies will only grant a certificate confirming economic links with Ireland on receipt of proof of such links from the Irish Revenue Commissioners.

Failure to comply with Section 137 may result in both the company and any officer of the company being liable to a fine of between €4,000 to €5,000.

Filing Group Financial Statements

Where an Irish company is a subsidiary undertaking of a holding company that is established under the laws of an EEA state, the Irish subsidiary may avail of a filing exemption in respect of its entity's financial statements.

This exemption is only available to Irish companies with EEA resident parent companies, so Irish companies with UK parent companies should ensure that they comply with the disclosure requirements for their financial statements in advance of their next annual return date.

Aligning Financial Year End

Under Section 288 of the Companies Act 2014, an Irish company may only change its financial

Year-end date once in every five years unless the company is a subsidiary or a holding company of another EEA company.

Any Irish subsidiaries of UK parent companies considering aligning their financial year-end date will need to align their financial year-end before 31 December 2020, otherwise they will be subject to the five-year rule.

UK Auditors

Brexit may also affect the audit of financial statements where auditors are registered in the UK. UK auditors may no longer be permitted to audit the financial statements of Irish companies.

Group Structures

A group of companies with both Irish and UK companies should review the governance of operational areas such as finance, taxation, intellectual property, logistics, human resources, etc., to ensure that operations are optimised post-Brexit. In many cases, a restructure of the governance framework may be required to mitigate risk and capitalise on opportunities.

UK 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. Irish branches of UK companies already registered in Ireland will not need to re-register.

Next Steps

The end of the transitional period is fast approaching. Our Company Secretarial 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 contact us.

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