



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Companies (Accounting) Bill 2016 – New Rules on Non- Filing Structures

by **Ruairí Mulrean**

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The Companies (Accounting) Bill 2016 (the "**Bill**") was published on 5 August 2016.

The main purpose of the Bill is to transpose Directive 2013/34/EU (the "**Directive**") on financial statements and related reports of certain types of undertakings into Irish law.

A major change introduced by the Bill, once enacted, will be to abolish so-called "non-filing structures" in their current form. These structures had been used to limit the amount of financial information Irish unlimited companies had to publicly file while at the same time preserving limited liability status for the shareholders.

Current law and proposed changes

Currently, section 1274 of the Companies Act 2014 (the "**Act**") provides that Irish unlimited companies must file financial statements in the CRO where the relevant unlimited company is of a designated type ("**Designated ULC**"). Irish unlimited companies with at least one member being an unlimited company incorporated outside the EEA are not Designated ULCs and therefore are not required to publicly file financial statements in the Companies Registration Office (the "**CRO**").

Section 76 of the Bill proposes to amend section 1274 of the Act by significantly expanding the categories of Designated ULCs required to publicly file financial statements. In effect, the change will negate the effectiveness of existing non-filing structures.

Timing of enactment of the Bill

The Oireachtas is currently in recess and will not sit again until 27 September 2016 consequently the timeframe for debate of the Bill and the ultimate enactment is still unclear. Ireland is already late in complying with its obligations to transpose the Directive into Irish law as it was due to be transposed by 20 July 2015. Therefore we expect that the Bill will be enacted without significant further delay.

When do the new filing requirements come into effect?

It is as yet unclear as to from when the changes will apply, however, a reasonable presumption is that the changes will apply to financial years beginning on or after 1 January 2017. On this basis, financial statements for non-filing companies for financial years ending 31 December 2016 or before will not have to be filed with the CRO.

The above being the case, the Act requires the inclusion of comparative information relating to the preceding financial year in the financial statements. This means that financial information relating to the

previous financial year will nonetheless appear in the first set of financial statements filed after the enactment of the Bill.

Actions required

Directors of non-filing companies should consider the potential impact to their business of the requirement to publicly disclose company's future financial statements, particularly sensitive financial information. Additionally, such companies should evaluate their corporate structure to assess the impact of the new rules and speak with their legal advisers to identify and implement arrangements that are appropriate to each group to address these imminent changes.

As lawyers active in providing assistance for company restructurings we will continue to monitor the Bill's development and keep you informed of its progress.

This article was written by Ruairi Mulrean, Partner in Corporate and Commercial.

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