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COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

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# Compliance Agenda - May 2017

by **lk-shields**

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Here's a round-up of all the latest updates from our Company Secretarial and Compliance Team.

## **Beneficial Ownership – Not So Private Anymore**

Regulations concerning the beneficial ownership of companies have now been in force since last November.

Previously beneficial ownership of Irish companies could remain private. Now details of beneficial ownership must be obtained and kept up to date in a register.

### **Who is a beneficial owner?**

An individual who ultimately owns or controls a legal entity through direct or indirect ownership of 25% plus of the shares or voting rights or ownership interest in an entity.

### **Who do the regulations apply to?**

All companies and other legal entities incorporated in Ireland must keep a beneficial ownership register. Companies listed on a regulated market or which are subject to equivalent international standards requiring disclosure of beneficial ownership are exempt.

### **What Information must be retained in the beneficial ownership register:**

The Register must contain the name, address, date of birth and nationality of the person identified as the beneficial owner. A statement of the nature and extent of their ownership and date of becoming or ceasing to be a beneficial owner must also be kept. If a company has exhausted all means of ascertaining its beneficial ownership, or where there is doubt that an individual is a beneficial owner, then the names of the senior managing officials of an entity (including directors and the CEO) must be inserted on the Register instead.

Where a relevant entity has reasonable cause to believe that a person listed on the beneficial register has ceased, or the details on the Register are out of date, it must take steps to update the information on the Register.

### **Who is responsible for collecting the information:**

Relevant entities must take all reasonable steps to obtain and hold adequate, accurate and current information on their beneficial ownership register. They must serve notice on any natural person whom it has reasonable cause to believe is a beneficial owner. Any person served with a notice must provide the relevant information within one month of the date of any such request.

### **What are the sanctions?**

Failure to keep a register of beneficial ownership is a criminal offence and can result in a fine of up to €5,000. The Irish High Court has the power to order rectification of the Register and can determine disputes as to whether a party actually holds a beneficial ownership.

### **What's coming?**

We can expect further measures to fully transpose the regulations over the coming months. This will require the establishment of a central register of beneficial ownership, which in all probability will be maintained by the Companies Registration Office. At this stage it is not clear what form the central register will take and whether it will be publically accessible, however your company should be prepared.

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## **Mandatory E-filing at the CRO from 1 June 2017**

Mandatory electronic filing (E-filing) will be introduced at the Companies Registration Office (CRO) from 1 June 2017.

Billed as "cheaper, smarter, simpler", E-filing is being introduced to provide a more efficient and effective service for companies, which will result in savings, and make deadlines easier to meet. Last year almost 90% of annual returns were filed on time, which is a positive result for E-filing.

### **What Documents must be E-filed?**

From the 1 June Mandatory E-filing will apply to each of the following documents:

- B1 Form: Annual Return
- B2 Form: Notice of change in registered office
- B10 Form: Notice of change in director/ secretary or their particulars
- B73 Form: Nomination of a New Annual Return Date

Additionally from 1 June 2017 associated Financial Statements must be uploaded as a PDF attachment through CORE or Software packages such as Blueprint. Paper copies will not be accepted by the CRO from the 1 June 2017.

Late filing fees and late penalties must be paid electronically by credit card/ debit card. It will not be possible to the late filing fee of any other late filing fees by cheque/ or postal order, money order or bank draft. However it will be still possible to top up a customer account by cheque after 1 June 2017.

### **So what advantages can mandatory E-filing?**

On the outset it may not appear that mandatory E-filing is offering much to Company Secretaries or their clients however a number of advantages are available from this move.

- A reduced cost in filing annual returns and it will be free of charge to submit a B2 Form/ B10 Form or a B73 Form.
- There is a reduced risk is documents being misplaced or lost.
- It is likely to reduce the back log and improve waiting times on registration of documents.
- It can improve the accuracy of documents and less time will be wasted on returned submissions.
- Mandatory E-filing will also ensure documents are submitted thus providing an electronic receipt once it has been submitted.

The process of mandatory E-filing will ultimately improve the process surrounding the operations of many companies and acts as a 'cheaper, smarter, and simpler' way of doing things.

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## **The Conversion Deadline Has Passed ... What's Next?**

The eighteen month transition period provided for in the Companies Act 2014 (the "Act") has passed and you did nothing to convert your company. So what should you do now?

You may have been surprised to have received a new certificate of incorporation from the Companies Registration Office and wondered why it had been sent to you? It is likely that the new certificate was issued at the end of the transition period provided for under the Act. At the end of that defined period of time, all private limited companies that had not previously elected to become a designated activity company or a private limited company under the Act, were deemed to have converted to private limited companies.

### **How has this affected my company?**

If you failed to take any positive action prior to the end of the transition period, your existing memorandum and articles of association will have been deemed to have been merged with the objects clause deleted. This means that your new deemed constitution may be out of date as it is likely that it still refers to legislation that is no longer relevant or in force.

### **What do I need to do?**

Any company that has automatically converted is advised to update its constitution to bring it in line with the Act. This will make it easier to interpret and will avoid any confusion that may arise from conflicting provisions. It also presents an opportunity to give wider consideration to the constitution and any existing shareholders' agreement that is in place to ensure that it is fit for current purposes.

### **What can we do?**

At LK Shields, we can assist in preparing the relevant documentation, including a new constitution tailored to your requirements, to bring your company in line with the Companies Act 2014.

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## **Audit Exemption for Companies – A Recap**

The Companies Act 2014 has introduced a number of cost saving measures which included the extension of the scope of audit exemption provisions for companies that meet certain criteria.

An audit exemption was introduced some years ago which enabled certain private limited companies to avail of this option for the first time. The Companies Act 2014 has extended the scope of this exemption to additional types of companies and your company may qualify.

### **What are the benefits?**

Although a company still has to file accounts in the Companies Registration Office, an audit exemption has benefits for a business: savings are likely to be made in relation to the time and costs that were taken up in the preparation of annual accounts and dealing with the audit process.

### **What has Changed?**

The Companies Act 2014 allows the following additional types of company to qualify for an audit exemption:

- Company Limited by Guarantee (CLG)
- Small Companies which are part of a Group
- Non-designated Private Unlimited Company (ULC)

### **The Criteria for Audit Exemption**

If your company meets certain criteria, an audit exemption may be an option.

#### **Small Company Criteria**

A company must qualify as a small company in respect of a financial year by meeting two of these criteria:

- The turnover of the company does not exceed €8.8m
- The balance sheet total does not exceed €4.4m
- The average number of employees does not exceed fifty

### **Group Company Criteria**

The company must qualify as a small company as above and the group must then qualify as small by meeting two of these following criteria:

- The turnover of the holding company and other group companies taken as a whole does not exceed €8.8m
- The balance sheet of the holding company and other group companies taken as a whole does not exceed €4.4m
- The average number of employees of the holding company and other group companies taken as a whole does not exceed fifty

Notwithstanding the above criteria and no matter which category your company falls under, the most important requirement for audit exemption eligibility is for your company to file its annual return on time every year. Under the Companies Act 2014, this requirement has been extended to include a company's first annual return.

### **Action**

With the year end audit for 2016 about to commence for many companies, it may be a good time for directors to consider whether or not their company qualifies for audit exemption. This exercise should be undertaken in advance of the commencement of the audit in order to avoid any unnecessary costs and to allow the company to benefit from the cost saving changes contained in the Act.

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**If you would like to know more about our services or have any queries on the matters discussed in this update, please get in touch with any of the contacts listed or [click here](#).**

## About the Author