



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

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# Compliance Agenda - February 2018

by **Ruairí Mulrean**

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1st February 2018 | by Ruairí Mulrean

We are delighted to publish the first edition for 2018 of our quarterly newsletter Compliance Agenda. It contains a round-up of all the latest legal updates of interest to Company Secretaries, Company Directors and Compliance Officers.

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## Launch of the Central Register of Beneficial Ownership

The Companies Registration Office (CRO) has advised that the launch of the central register of beneficial ownership of legal entities incorporated in Ireland (Central Register) is imminent.

As noted previously the central register of beneficial ownership of corporate and other legal entities is required by the EU's 4th Anti-Money Laundering Directive (MLD4) and the Department of Finance has indicated that it is on track to have the beneficial ownership elements of MLD4 transposed into Irish law by Q1 2018.

The CRO has noted that there will be an extended time-frame (likely, the second half of 2018) for companies and industrial and provident societies to make their beneficial ownership filings to the CRO, without being in breach of their legal obligations.

It is understood that the beneficial ownership information for each beneficial owner will be submitted through a new online portal with no filing fees, and there are no plans for any paper filings.

The CRO has provisionally indicated that the following information on beneficial owners will need to be uploaded to the Central Register:

1.	Forename and Surname
2.	Date of birth
3.	Nationality
4.	Residential address
5.	A statement of the nature of the interest held by each beneficial owner (e.g. controlling shareholder)
6.	A statement of the extent of the interest held by each beneficial owner (e.g. controller of 26% of shares in company)
7.	The date on which a person was entered in the company's RBO as a beneficial owner

8.	The date on which a person ceased to be a beneficial owner
9.	If no natural persons are identified there shall be entered in the register the names of the natural person(s) who hold the position(s) of senior managing official(s) of the company
10.	Details of the presenter making the entry in the RBO on behalf of the company will also be required (i.e. name, contact details and capacity in which they are filing)

It is understood that, prior to implementation of a new EU anti-money laundering directive (MLD5), access to beneficial ownership information on the Central Register will only be available to relevant competent authorities. However following implementation of MLD5 (which is ear-marked for late 2019 or early 2020) the level of access to the Central Register could potentially provide for public access to beneficial ownership information within the Central Register.

We will be contacting all our clients in relation to their obligations under the new regulations. However, in the meantime, if you have any questions regarding beneficial ownership please refer to our previous publications and updates [here](#).

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### **Disqualification of Directors of Dissolved Companies**

The Director of Corporate Enforcement (the “Director”) recently has taken action against hundreds of directors of Irish companies that have been involuntarily struck off the register of companies for not complying with the annual return filing requirements. The Director is seeking to have directors of these companies formally disqualified under the Companies Act 2014.

The Director is entitled under Irish company law to seek a disqualification order by way of an application to the High Court against such directors. The effects of such an action, if successfully brought by the Director, will have significant consequences for the person disqualified on foot of the application has been brought against.

If a person is disqualified, they will be precluded from either being appointed or acting as a director or other officer, auditor, receiver, liquidator or examiner or being any way whether directly or indirectly concerned or take part in the management of a company while subject to the disqualification order. This is a far reaching disqualification order which could seriously hamper short term business opportunities for the person effected. You should also take note that a disqualified person will also bear the High Court costs which will also place a significant financial penalty of a case of this nature.

There has been some habit in the past when a company is no longer needed that it is simply left to it's own devices to be dissolved which can be a risky strategy to use considering the consequences of an action from the Office of the Director of Corporate Enforcement.

We at LK Shields would be happy to assist you with resolving this issue to ensure that you could continue to maximise business potential. Also if you were a director of a company was struck off involuntarily we may be able to help you to resolve this matter of non-compliance with company law rules in advance of an approach by the Director of Corporate Enforcement. If you would like any information on involuntary strike off, it's consequences and directors' disqualification and ways to rectify please contact us.

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### **Companies (Statutory Audits) Bill 2017**

The Companies (Statutory Audits) Bill (the “Bill”) was published on 6 November 2017. The purpose of the bill is to transpose discretionary elements of the EU Audit Directive 2014/56/EU. Once enacted, the bill will replace certain provisions within parts 6 and 15 of the Companies Act 2014 (the “Act”) which cover “Financial Statements, Annual Return and Audit” and “Functions of Registrar and Regulatory and Advisory Bodies” respectively.

Some of the proposed amendments confer additional powers of supervision and delegation to the Irish

Auditing and Accounting Supervisory Authority (**'IAASA'**). This will include the power to impose additional requirements for the content of the audit report. Section 27 of the Bill provides that IAASA will be designated as the competent authority for the oversight of statutory auditors.

Section 9 and 10, dealing with audit exemptions, may be a cause for concern for small businesses in Ireland. In particular these Sections, once enacted, will have implications for a company should it fail to file its annual return on time with the Companies Registration Office. Section 343 of the Act currently allows a company to apply to the District Court for an extension of its annual return filing deadline. Provided that the Court is satisfied that it is just and equitable to do so, the deadline may be extended and the annual return will be deemed to be filed on time thus relieving the company of the consequences of late filing fees and the loss of audit exemption.

The Bill proposes to amend Section 343 of the Act to move the venue of such application from the District court to the High Court. Doing so will have the knock on effect of increasing the cost of such application and potentially putting them out of the reach of many small businesses. The power of the District Court will be to remove the costs associated with late filings only.

If a Company finds itself in an unavoidable situation whereby its annual return and financial statements will be filed late, the loss of audit exemption and the prohibitive costs of a High Court application could be detrimental.

If your company is behind with its statutory filings and you intend to avail of the Section 343 remedy, now and while the option of making an application to the District Court is still available, would be the time to act. LK Shields would be happy to assist you with such an application and to guide you through this process.

For more information please contact a member of the Company Secretarial Department.

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## **GDPR**

The EU General Data Protection Regulation ("GDPR") will be implemented on 25 May 2018, replacing the existing data protection framework under the EU Data Protection Directive.

For all companies future GDPR requirements should be sitting amongst the top priorities for action in advance of implementation. The enhanced compliance, plus increased sanctions of the GDPR, requires significant changes in the world of data privacy. Now, more than ever, the business world and our personal lives rely on exchanges of digital personal data.

Under GDPR, individuals will have more control over their data by having the right to be forgotten or ask for their personal data to be erased. The reliance on default opt-outs or pre-selected 'tick boxes' to give consent for organisations to collect personal data will also become more difficult to implement. The Data Protection Commissioner will have more power to defend consumer interests and issue higher fines (up to €20m or 4% of global turnover, in cases of the most serious data breaches).

For more information on GDPR, click [here](#)

Our [Intellectual Property Team](#) at LK Shields would be happy to give you more information on GDPR and provide appropriate advice.

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## **Dates for your Corporate Diary**

- 31 December 2017 Annual Return with 31 March 2017 Accounts CRO Filing Deadline – 28 January 2018
  - 30 April 2017 Corporation Tax Return Deadline – 23 January 2018
  - November and December 2017 Corporate VAT Return Deadline – 23 January 2018
  - AGM Deadline for presentation of 30 April 2017 Financial Statements to Members/Shareholders – 30 September 2017
  - AGM Deadline for presentation of 31 May 2017 Financial Statements to Members/Shareholders – 28 February 2018
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For further and more detailed information on the above topics please [contact us](#).

## About the Authors



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