



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Compliance Agenda - July 2017

by **lk-shields**

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We are delighted to publish the second edition 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.

Beneficial Ownership Register

As detailed in our last Compliance Agenda, most Irish companies are required to gather and maintain current and accurate information about their beneficial owners. This requirement was introduced by the Irish Government as part of the EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016.

A beneficial interest in a company relevant for the purposes of the legislation is defined as an interest of any natural person owning a shareholding, controlling interest or ownership interest in excess of 25%.

A central register of beneficial ownership of corporate and other legal entities is required by the 4th EU Anti-Money Laundering Directive. Under regulations, expected to be introduced shortly, the Companies Registration Office (CRO) will be given responsibility for establishing and maintaining the central beneficial ownership register. The CRO website has been updated to reflect this.

Companies will be expected to electronically file details of their beneficial owners with the CRO through an online portal. It is anticipated that this information will be publically available.

More recently the CRO have announced that the date for the implementation date for the central register of 26 June 2017, is no longer achievable. In order to ensure the speedy launch of the central register once the EU Fifth Anti-Money Laundering Directive comes into force, further development work on the central register will continue.

It is now expected that the launch of the central register will take place in Q4 of 2017. More definitive information will be available in September and there will be an extended period for companies to make their beneficial ownership filings.

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

Companies (Accounting) Act 2017 - Key Points

The Companies (Accounting) Bill 2017 was passed by the Irish government on 10 May 2017 and introduces some key accountancy changes to part 6 of the Companies Act 2014 in relation to financial statements, annual returns and auditing requirements of Irish companies.

Some of the key provisions of The Companies (Accounting) Act 2017 are as follows:

Micro Companies

A new type of micro company has been introduced which will enable such a company to submit a minimum amount of financial information to the public record in the Companies Registration Office. For a company to qualify as a micro company, it must satisfy two of the following three criteria:

- Turnover shall not exceed €700,000.
- Balance Sheet shall not exceed €350,000.
- Average number of employees shall be less than 10

Non-Filing Structures

Previously effective "non-filing structures" where a company could avail of the exemption from filing financial statements being an unlimited company whilst still retaining the protection of limited liability through a group structure will be a thing of the past. The new Act will require Irish registered unlimited companies which have a direct or indirect limited liability holding company to file accounts with their annual return.

Unlimited Company Names

The Companies Act 2014 made provision for Unlimited Companies to apply to the Minister for Jobs, Enterprise and Innovation to allow that company to drop the words "Unlimited Company" or "UC" from the company name. The Companies (Accounting) Act 2017 withdraws this mechanism to apply for an exemption to drop the words Unlimited Company from a company name. We should point out that if an unlimited company has already been granted an exemption under the old rules the exemption shall remain in force for the designated period.

Best Practice for Drafting Minutes

Pursuant to Section 166 of the Companies Act 2014 (the "Act"), all companies are required to keep minutes. If a company fails to keep required minutes then they will be held guilty of a Category 4 Offence and subject to a maximum penalty of €5000.

The degree of detail which is required when preparing minutes will depend wholly on the organisation itself and the needs of the company. Many companies have employed a house style which in turn allows for the development of policies and standards around minute taking.

The Act provides that when recording minutes it is essential to note the following:

- The names of the directors present at the meeting
- All resolutions and proceedings at each meeting
- The date, time and location of the Board meeting

The Act provides that Board meetings can take place over the telephone or by other audio means. This is the default position for companies provided their constitution does not disapply the provision.

A Chairperson is appointed at the beginning of a meeting and will lead the meeting and maintain order. Once the minutes have been drafted and approved then the chairperson will be authorised to sign the minutes at the next Board meeting. Any minute that has been signed by the chairperson shall constitute evidence of the undertakings of that meeting.

Once minutes have been drafted they should be sent to the chairperson and other members of the Board for review and be clearly marked as draft in order to avoid any confusion. Once minutes have been finalised they should not be amended.

Minutes of meetings must be kept on file for the purpose of inspections and must be written up as soon as possible to ensure an accurate representation of the undertakings and decisions made at the meeting.

Compliance Dates and Deadlines

E-Filing of Certain CRO Forms Mandatory from 1 June 2017

From 1 June 2017, E-filing is now mandatory for each of the following Companies Registration Office (“CRO”) documents:

- Form B1: Annual return
- Form B2: Notice of change in registered office
- Form B10: Notice of change in director or secretary or their particulars
- Form B73: Nomination of a new annual return date

When e-filing Form B1 Annual Returns, the associated financial statements must be uploaded as PDF attachments through CORE or other software packages such as Blueprint or GEMS. Paper copies are no longer accepted by the CRO.

The Optimum Annual Return Date For December Financials is 30 September 2017

For companies with a financial year end of 31 December, 30 September of the following year is the optimum date to which the company can make its Form B1 – Annual Return. Doing this will allow the company to make the most of the nine months which are allowed to exist between a company's Financial Year End and its Annual Return Date (“ARD”).

The ARD may be changed by either filing a Form B73 to extend it by a maximum of six months, or it may make its Annual Return up to a date earlier than its current ARD and nominate the earlier date as the new ARD going forward.

Annual General Meetings

Annual General Meetings (“AGMs”) should be held within nine months of the date of the company's balance sheet. Companies with a financial year end of 31 December 2016 should ensure that sufficient time is allowed between the AGM and the preparation and e-filing of the annual return.

Strike Off Period For Missed Annual Returns To Be Reduced

The period between a missed annual return and the commencement of involuntary strike off proceedings against out-of-date companies will be reduced. This means that the current period of over 300 days will, over three months, be reduced to 200 days.

For further and more detailed information on the above topics please [contact us](#).

About the Author