



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Compliance Agenda - October 2017

by **Ruairí Mulrean**

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We are delighted to publish the third 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.

What's in a Name?

Companies are increasingly spending more time and money on establishing and developing their brand. The naming of a company is an essential element of a company's branding and as such, choosing and securing the right name can play an important part in the future success of the company.

We have put together four tips that you should consider when choosing a company name;

1. **Be Aware**

The name you wish to use may not be available. Other companies may already have the name you have chosen or something similar. Commonly encountered problems include:

It is identical or similar to an existing name on the register;
It is offensive;
It would suggest state sponsorship.

The Registrar of Companies will determine whether a name is available or not. An appeal may be made to the High Court should the Registrar refuse a name on incorporation, re-registration or merger.

2. **Be Diligent**

Search the Companies Registration Office online register for existing registered names. Generally it is recommended that additional words that are distinctive be used in a company name. Words such as company, services, holding, group, international or place names such as Ireland, Dublin or south are not considered distinctive

Words such as Bank, Co-op, University and Credit Union can only be used with the permission of the relevant authority. If a company wishes to use holding or group in its name a letter of association may be required from an existing company in the same group granting permission to the use of the new name.

The CRO do not check proposed names against names on the business names register or trade mark register. Applicants are advised to check these registers since any person claiming an existing right to a name could take a passing off action.

Where a name might seem to be available, there is also a possibility that the name may be the subject of a trade mark. In such instances, even when the Registrar grants the use of a name, the owner of a trade mark could demand that you cease using it.

3. Be Creative

Distinctive names work best. Names that are purely descriptive of what a company does (Dublin Tyre Company Ltd for a tyre services company) are difficult to protect. This is because the law does not allow you to monopolise a name that merely describes a particular activity. It is easier to protect distinctive names and the best ones can be those that are made up, e.g. Facebook, Google and Microsoft

4. Be Prepared.

A company name may be reserved for a period of up to twenty eight days. The application fee is €25 and can be offset against the fee for the incorporation of a company.

The use of the new name of a company is only permissible once the Registrar of Companies issues the certificate of incorporation on change of name. Until then the old name must be used.

December 2016 Financial Statements – Filing Deadline is Almost Upon You!

Almost 90% of companies in Ireland maintain a financial year end of 31 December year on year. This results in that company's optimum annual return date occurring around this time of year which may affect you and your company!

Most companies in Ireland operate as private limited companies and as a privilege of enjoying the protection of limited liability must file its financial statements with an annual return once in every calendar year to remain compliant. This obligation should not be confused with the additional obligation under tax law for a company to file its accounts via its corporation tax return on ROS.

How is the Annual Return Date Calculated

A company is granted its annual return date on set up which is calculated to six months after the incorporation date of a company. Often this is subsequently amended to work with the company's financial year end. The Companies Act 2014 allows a period of nine months between the financial year end and its annual return date. Therefore the optimum annual return date in relation to a year end of 31 December 2016 is 30 September 2017 which is now upon us.

What if I miss my annual return date and filing deadline:

The consequences of missing your financial accounts and annual return filing deadline can be expensive for a company and may lead to the unfortunate case of losing the right to avail of audit exemption for period two years. In effect, this will result in the company having to have its financial statements audited no matter how small the company is.

We're here to help

We at LK Shields would be happy to ensure your annual return date and deadline is optimum for you and allows your financial statements sufficient time for preparing and finalising. In the event that you have already lost your audit exemption from late filings of annual returns we may also be able to assist you to allow your right to audit exemption to be restored. Please contact us for further information.

Don't forget...

That the old style of filing your annual return is a thing of the past and the form must now be filed electronically. Let us know if you require any help with filing your annual return electronically.

Correcting CRO Filing Errors

Erroneous financial statements appearing on a Company's public file in the Companies Registration Office ("CRO") may result in embarrassment and damaged credibility of the Company and its officers in the eyes of company stakeholders. Although prior to the enactment of the Companies Act 2014 (the "Act") there was no

prescribed way of correcting such errors, since its enactment, such a process exists. Given the current compliance season, it is worthwhile taking another look at this process in case such an error was to arise.

Types of Error

Under the Act there are two types of errors. How a particular error will be dealt with will depend on the category that it falls in.

1. Errors dealt with by summary note: where the error resulting in the need for revision arises due to an omission or correction which does not affect the information contained in the financial statements or Director's report already filed, such an error can be dealt with by way of summary note.
2. Errors requiring amended financial statements: where the error resulting in the need for revision arises due to incorrect information contained in the financial statements or Director's report already filed, amended financial statements or the amended Director's report must be filed with the CRO to replace the originals.

Although best avoided, mistakes do happen. It is therefore comforting to know that there is a statutory process in place to assist in their rectification particularly in this busy compliance season. It allows proactive companies and officers to protect their credibility in the eyes of company stakeholders.

Annual Returns Peak Calendar Month

The busiest month for annual compliance is fast approaching with over 50,000 Companies with a filing deadline date of 28 October.

It is critical that your annual return is filed on time to ensure that you remain compliant with the Companies Act 2014. Therefore it is advisable that when submitting your annual return the information contained within the B1 Form is correct and accurate. This will reduce the risk of any issues being raised with filing the B1 Form.

As [previously signalled](#), it is not now possible to file a paper return with all returns now having to be made online.

Once the B1 Form has been filed within 28 days of its annual return date, the financial statements must then be uploaded via PDF within 28 days of having filed the B1 Form. This must be completed before the B1 signature page and accounts certificate are delivered to the CRO.

As the 28 October falls on a Saturday the filing deadline is extended to the next working day. However, should any B1 Forms should exceeds their filing deadline date then late filing fees will be imposed. This will also result in the company losing their audit exemption in the current year and following year.

Due to the volume of companies due to file their annual return on the 28 October it is advisable to act in advance of this date to ensure the deadline date is not missed and no further errors occur when trying to electronically file.

LK Shields can provide further advice on the preparation of annual return forms and the process surrounding annual compliance.

Dates and Deadlines for your Corporate Diary

- 30 September 2017 with 31 December 2016 Accounts CRO Filing Deadline – 31 October 2017
 - 31 December 2016 Corporation Tax Return Deadline – 23 September 2017
 - July and August 2017 Corporate VAT Return Deadline – 23 September 2017
 - AGM Deadline for presentation of 31 December 2016 Financial Statements – 30 September 2017
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For further and more detailed information on the above topics please [contact us](#).

About the Author



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