

# COMPANIES



Údarás um Fhorfheidhmiú Corparáideach  
Corporate Enforcement Authority

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# 1.0 Introduction

The Companies Act 2014 (hereafter ‘The Companies Act’) consolidated and amended the previous Companies Acts. It created new forms of company and introduced a number of changes to the roles of various parties in company law.

The Company Law Enforcement Act 2001 established the Office of the Director of Corporate Enforcement (ODCE), and its functions were carried over by the Companies Act. The Companies (Corporate Enforcement Authority) Act 2021 has established the Corporate Enforcement Authority (‘The Authority’) and it will now enforce company law in Ireland.

One of the functions of the Authority is to encourage compliance with company law. Accordingly, the Authority will issue a series of Information Books outlining the main roles and responsibilities of some of the key actors in company law; as well as to assist non-professionals in being better informed about their rights and obligations under the law.

**The CEA Information Books concern the following topics:**

**Information Book 1 – A Single Guide for Companies**

**Information Book 2 – Companies**

**Information Book 3 – Company Directors**

**Information Book 4 – Company Secretaries**

**Information Book 5 – Members and Shareholders**

**Information Book 6 – Auditors**

**Information Book 7 – Creditors**

**Information Book 8 – Liquidators, Receivers and Examiners**

In addition to information on the relevant duties and powers, each book also contains information on the penalties for failure to comply with the Companies Act.

The Authority considers it important that individuals who take the benefits and privileges of incorporation should be aware of the corresponding duties and responsibilities. These Information Books are designed to increase the awareness of individuals in relation to those duties and responsibilities.

Each book has also been prepared for use by a non-professional audience in order to make the main requirements of company law more easily understandable.

The Authority reiterates that this guidance cannot be construed as offering its interpretation of the legal effects of the relevant provisions of the Companies Act.

It is important to note that when readers have a doubt as to their legal obligations or rights, they should seek independent professional legal or accountancy advice as appropriate.

**Corporate Enforcement Authority**

**July 2022**

# 2.0 Principal Duties and Powers of Companies

## 2.1 What is a Company

A company is a legal structure created by a person or persons to manage a business or social enterprise. It is a legal entity separate and distinct from that of its individual members or shareholders. The fact that a company is a separate legal entity means that, in the eyes of the law, the company exists separately from the individuals who own and manage it. This means, for example, that a company can:

- take legal action in its own name rather than in the name of its owners or managers;
- be subjected to legal action in its own name rather than in the name of its owners or managers;
- enter into legally binding contracts;
- own assets in its own right.

**In Ireland, the manner in which companies must be operated is governed by the Companies Act together with a number of other related pieces of legislation, for example EU Regulations. The Companies Act sets out the law in a clear, accessible and structured way. It identifies clearly the various company types that can be established and defines the law that applies to each company structure. Parts 1-15 of the Companies Act contains all the legislation relating to the company limited by shares (the “LTD”, referred to below), which is the most common form of company.**

## 2.2 Types of Company

There are a number of different types of company structures provided for under the Companies Act. Company structures can broadly be classified as either private companies or public companies with limited or unlimited liability.

## 2.3 Limited and Unlimited Liability Companies

All companies are fully liable for the debts that they incur. The distinction between limited and unlimited liability relates to the liability of the owners (known as the members or shareholders) of the company for debts incurred by the company.

In the case of limited liability companies, the company’s owners are liable only for the company’s debts up to the amount that they have agreed to contribute to the company. In the case of unlimited companies, the company’s owners are liable for the company’s debts without any limit.

## 2.4 Private and Public Companies

A company that issues shares can be either a private company or a public company. One of the main differences between public and private companies depends on how the company proposes to raise its capital. A private company is prohibited from offering its shares or debentures to the public while a public company may raise its capital by way of public offering of shares and debentures in accordance with the Companies Act.

In order to qualify as a private company, certain conditions must be satisfied and generally the following features are necessary:

- the company has a minimum of 1 member and a maximum of 149<sup>1</sup>;
- the company has a share capital;
- the rights of the members to transfer their shares are restricted;
- the public are not invited to subscribe for shares in the company.

Private Limited companies can, under certain circumstances, obtain an exemption from the requirement to have their accounts audited<sup>2</sup>, and may also avail of certain exemptions when filing company information with the Registrar of Companies.

## 2.5 Company Structures

The Companies Act makes provision for a number of different company structures.

The characteristics of these types of companies are described in greater detail below.

The types of companies capable of being established under the Companies Act are:

- private company limited by shares (LTD)
- designated activity company (DAC), which can be either:
  - a) a private company limited by shares, or
  - b) a private company limited by guarantee and having a share capital
- private unlimited company (ULC)
- public limited company (PLC), which can be either:
  - a) an investment company with its sole object being the collective investment of funds, or
  - b) a public limited company (other than an investment company) that carries on an activity in the State being an activity that is mentioned in its memorandum<sup>3</sup> (including Societas Europae<sup>4</sup>)
- public unlimited company, which can be either:
  - a) a public unlimited company having a share capital (PUC), or
  - b) a public unlimited company not having a share capital (PULC)
- company limited by guarantee (CLG)
- external company

1. Section 17(4) Companies Act.

2. Section 360 Companies Act.

3. Section 1006 Companies Act.

4. A SE is a European Public Limited Company registered in Ireland.

### 2.5.1 Private Company Limited by Shares (LTD)

The LTD is a private company limited by shares formed for a lawful purpose where the liability of the shareholder/member is limited to the amount, if any, unpaid on the shares registered in their name at that time. For example, if a person holds one hundred €1 shares in a company, once the €100 has been paid, that person has no further liability in respect of the company's debts. The shares in the company collectively represent the share capital of the company.

There are many benefits in registering a company as an LTD such as; a single document constitution, it does not need an objects clause, one director with a separate company secretary, provision to have between one and 149 members, the option to dispense with holding AGM's by adopting written procedures and certain other features which can be availed of under company law.

### 2.5.2 Designated Activity Company (DAC)

A DAC has the status of a private company and can be formed for any lawful purpose by any person or persons subscribing to its constitution and complying with relevant sections of the Companies Act<sup>5</sup>. A DAC's constitution is in the form of a memorandum and articles of association and contains an objects clause<sup>6</sup>. The format of a DAC can be either:

- a) a private company limited by shares, or
- b) a private company limited by guarantee and having a share capital.

Some of the features of a DAC are: a DAC limited by shares can be established with a minimum of one member and have a maximum of 149, A DAC must have a minimum of two directors<sup>7</sup>, it is required to hold an AGM if more than one member<sup>8</sup> and a DAC may avail of audit exemption and other exemptions.

### 2.5.3 Private Unlimited Company (ULC)

A ULC is a private unlimited company with a share capital formed for any lawful purpose by the subscribers to the constitution and complying with relevant sections of the Companies Act<sup>9</sup>. Unlimited companies are not generally used as trading companies as the liability of the members is not limited and, in a winding up situation, the members are obliged to pay all the debts of the company.

Some of the features of a ULC are that it may be formed with just one member, it must have a minimum of two directors, it must hold AGMs, and provided it is not a "designated ULC"<sup>10</sup> it is not required to attach financial statements to its annual return<sup>11</sup>.

5. Section 965 Companies Act.

6. Section 967 Companies Act.

7. Section 985 Companies Act.

8. Section 988 Companies Act.

9. Sections 1231 & 1233 Companies Act.

10. Section 1274 Companies Act (as substituted by Section 78 Companies (Accounting) Act 2017).

11. Sections 347 & 348 Companies Act.

## 2.5.4 Public Limited Company (PLC)

A public limited company (PLC) means a company limited by shares and having a share capital which is not less than the authorised minimum of €25,000<sup>12</sup>. A PLC's constitution is in the form of a memorandum and articles of association and contains an objects clause<sup>13</sup>. It has the capacity to offer, allot and issue securities to the public in accordance with Part 23 of the Companies Act.

The format of a Public Limited Company (PLC) can be either:

- a) an investment company with its sole objects of collective investment of funds, or
- b) a public company other than an investment company.

The main feature of a PLC is that it can establish with a minimum of one member and no maximum limit. It must have a minimum of two directors and the directors have a duty to ensure that the person appointed as company secretary has the skill necessary to carry out his/her statutory duty. A PLC is required to hold an AGM and have its financial statements audited and a traded company<sup>14</sup> is required to include a "corporate governance statement"<sup>15</sup> in its director's report.

A Societas Europea (SE) is the European equivalent of a PLC and similar rules also apply<sup>16</sup>.

## 2.5.5 Public Unlimited Company (PUC and PULC)

A public unlimited company means a public company where the liability of members/shareholders is not limited and, in a winding up situation, the shareholders are obliged to pay all the debts of the company. Such a company may establish with just one member and must have a minimum of two directors. It is required to furnish audited financial statements to the Registrar with its annual return. A public unlimited company is prohibited from offering to the public any shares or other securities in the company.

The format of Public Unlimited Company can be either:

- a) a public unlimited company (PUC), or
- b) a public unlimited company that has no share capital (PULC)

## 2.5.6 Guarantee Company (CLG)

A CLG is a company which does not have a share capital and where the member's liability is limited by its constitution to such amount the members undertake to contribute to the assets of the company in a winding up<sup>17</sup>. A CLG is required to: have a minimum of 2 directors; hold AGM's and avail of audit exemption provided it satisfy the conditions specified<sup>18</sup>. CLGs that are credit institutions or insurance undertakings cannot avail of audit exemption.

12. Section 1000 Companies Act.

13. Section 1006 Companies Act.

14. A company with securities admitted to trading on a regulated market in the EEA.

15. Section 1373 Companies Act (as amended by Section 82 Companies (Accounting) Act 2017).

16. Section 1003 Companies Act.

17. Section 1176 Companies Act.

18. Sections 358-365 Companies Act (as amended by Sections 56 to 61 Companies (Accounting) Act 2017).

## 2.5.7 External Company

An external company means an EEA company or a non-EEA company that establishes a branch in Ireland. An external company wishing to establish a branch in Ireland is obliged to deliver to the Registrar of Companies within 30 days of establishment a certified copy of its constitutive documents<sup>19</sup>.

## 2.6 Incorporation and Registration of a Company

The process of incorporation and registration of a company commences with the delivery of a constitution together with a statement of consent<sup>20</sup> and declaration<sup>21</sup> in accordance with the Companies Act to the Registrar of Companies. On the registration of the constitution, the Registrar will certify in writing that the company is incorporated and issue a certificate of incorporation. The certificate of incorporation is conclusive evidence that the Company is registered under the Companies Act<sup>22</sup>.

The Registrar will not register a constitution unless he or she is satisfied that all the requirements in relation to the form of the constitution under the Companies Act have been complied with.

The constitution of the company must state<sup>23</sup>:

- the company's name;
- the type of company to be registered (i.e. LTD, DAC, PLC, etc.);
- the objects (if required) depending on company type;
- the liability of members;
- the share capital of the company divided into numbers and value of each share;

The Statement to be delivered with the constitution must state<sup>24</sup>:

- details of where the company proposes to conduct its business and the company's Registered Office<sup>25</sup> i.e. the place where the central administration of the company will normally be carried on;
- confirmation that the company will have at least one director<sup>26</sup> who is resident in the European Economic Area (EEA) (the EU states plus Iceland, Liechtenstein and Norway);
- where the company has no director resident in the EEA it is required to deliver for registration a bond to the value of €25,000<sup>27</sup>. The purpose of the bond is to provide for certain fines or penalties that might be imposed as a result of the company's non-compliance with company and/or tax law;
- a completed Form A1, which is available from the Registrar of Companies.

Further information on the incorporation of a company can be obtained from the Registrar of Companies ([www.cro.ie](http://www.cro.ie)).

The other manner in which a company can be set up is to purchase a pre-incorporated company from a company formation agent. Company formation agents incorporate companies in bulk which they then sell to the public off the shelf.

19. Section 1302 Companies Act.

20. Section 22 Companies Act.

21. Section 24 Companies Act.

22. Section 25 Companies Act.

23. Section 19 Companies Act.

24. Section 22 Companies Act.

25. Section 50 Companies Act.

26. Section 137 Companies Act.

27. Section 137(2) Companies Act.

## 2.7 Constitution of a Company

The constitution of a company sets out the basic boundaries of legitimate corporate existence under which it operates, such as activity, capacity, finance and internal rules.

Every company must have a constitution which is printed and signed by each subscriber or is authenticated in the prescribed manner<sup>28</sup>. The constitution of a company must be in accordance with the form set out in the relevant Schedule to the Companies Act or as near to it as circumstances permit.

The constitution of an LTD comprises a single document (without an objects clause) and the constitution of all other company types will be in the form of a memorandum of association and articles of association, contained in one document, which together are referred to as the “constitution” in compliance with the requirements of the Companies Act.

The schedules to the Companies Act hereunder set out the form of constitution required for the different types of companies:

**Schedule 1** - Constitution of a Private Company Limited by Shares (LTD);

**Schedule 7** - Constitution of a Designated Activity Company Limited by Shares (DAC);

**Schedule 8** - Constitution of a Designated Activity Company Limited by Guarantee (DAC);

**Schedule 9** – Constitution of a Public Limited Company (PLC);

**Schedule 10** – Constitution of a Company Limited by Guarantee (CLG);

**Schedule 11** – Constitution of a Private Unlimited Company having a Share Capital (ULC);

**Schedule 12** – Constitution of a Public Unlimited Company having a Share Capital (PUC);

**Schedule 13** – Constitution of a Public Unlimited Company not having a Share Capital (PULC).

### 2.7.1 Memorandum of Association

The memorandum of association is the principal constitution document by which a company’s registration is achieved. The format will be in accordance with the relevant section of the Companies Act and contain the mandatory requirements under its constitution, namely:

- its name;
- its type;
- its objects;
- liability of its members;
- its capital.

### 2.7.2 Articles of Association

The Articles of Association are the publicly registered internal rules of a company. They bind the company with its members. The standard internal rules of a company are now codified in the Companies Act which alleviates the need to have extensive articles in the constitution. A company may adopt the standard articles appropriate to the type of company being incorporated by making a statement to the effect that the provisions of the Companies Act are approved. If a company adopts the standard articles in the Companies Act as part of their constitution without any exclusions or modifications to the optional provisions, all the provisions in the standard articles, including the optional provisions will apply.

28. Section 888 Companies Act.

## 2.8 Company Directors

The directors of a company are the persons appointed, usually by the members, to control and manage the company on the members' behalf. The LTD is required by law to have at least one director<sup>29</sup>. Other types of companies are statutorily obliged to have a minimum of two directors. A person must have reached the age of 18 years<sup>30</sup> to be eligible for appointment as a director. Any change among directors is required to be notified to the Registrar within 14 days<sup>31</sup>. A change among directors is deemed to include a director becoming disqualified<sup>32</sup> under the law of another State. The core internal management rules and corporate governance requirements are set out in Part 4 of the Companies Act.

## 2.9 Company Secretary

The company secretary is the person or company appointed in accordance with the company's constitution. Every company is required by law to have a company secretary<sup>33</sup>. The function and duties are a combination of obligations deriving from the Companies Act and those duties delegated to the company secretary by the board of directors. They are essentially administrative and are limited to ensuring that the company's filing obligations under company law are complied with. It is the responsibility of the company directors to ensure that the person appointed as secretary has the skills necessary to carry out the statutory and legal duties of the company secretary<sup>34</sup>.

**The company secretary is dealt with in detail in Book 4 – Company Secretary.**

## 2.10 Duties of a Company

As stated previously, companies are separate legal entities. As such, they have certain legal duties. Companies' principal duties are as follows:

- to keep adequate accounting records<sup>35</sup>;
- to prepare annual financial statements<sup>36</sup>;
- to have an annual audit undertaken (subject to exceptions);
- to maintain certain registers and other documents;
- to file certain documents with the Registrar of Companies; and
- to hold general meetings of the company (subject to exemptions).

29. Section 128 Companies Act.

30. Section 131(1) Companies Act.

31. Section 149(8) Companies Act.

32. Section 150(1) Companies Act.

33. Section 129(1) Companies Act.

34. Section 129(4) Companies Act.

35. Section 281 Companies Act.

36. Sections 290 and 293 Companies Act (as amended by Sections 16 & 19 Companies (Accounting) Act 2017).

### 2.10.1 Obligation to keep Adequate Accounting Records<sup>37</sup>

Every company is obliged to keep or cause to be kept adequate accounting records.

Adequate accounting records are those that are sufficient to:

- correctly record and explain the transactions of the company;
- enable, at any time, the assets, liabilities, financial position and profit or loss of the company to be determined with reasonable accuracy;
- enable the company's directors to ensure that any financial statements of the company required to be prepared comply with the Companies Act and, where applicable, Article 4 of the IAS Regulation<sup>38</sup>; and
- enable those financial statements of the company so prepared to be properly audited.

The accounting records must be kept on a continuous and consistent basis that is to say the entries made in them must be made in a timely manner and be consistent from one period to the next. If those records are not kept by making entries in a bound book but by other means, adequate precautions must be taken for guarding against falsification and facilitating discovery of such falsification, should it occur<sup>39</sup>.

The accounting records kept must contain:

- entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure takes place;
- a record of the company's assets and liabilities;
- if the company's business involves dealing in goods:
  - a record of all goods purchased and sold (except those goods sold for cash by way of ordinary retail trade) showing the goods, sellers and buyers in sufficient detail to enable the goods, sellers and buyers to be identified and a record of all the invoices relating to such purchases and sales; and
  - a statement of stock held by the company at the end of each financial year and all records of stocktakes on which such statements are based;
- where the company's business involves the provision or purchase of services, a record of the services provided or purchased, to whom they were provided or from whom were purchased (unless provided or purchased by way of ordinary retail trade) and all the invoices relating thereto.

The accounting records should be kept at the company's registered office or at such other place as the directors think fit. A company that contravenes Sections 281 to 285 of the Companies Act will be guilty of a category 1 or 2 offence<sup>40</sup>.

37. Section 281 Companies Act.

38. "IAS Regulation" means Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 and Article 4 relates to a private company limited by shares.

39. Section 282(2) Companies Act.

40. Section 286 Companies Act (Offences are explained in Section 3 of this book).

Where a company which is being wound up, is unable to pay its debts, and has contravened any of sections 281 to 285 (i.e. requirement to maintain adequate accounting records) and the Court considers that the contravention has contributed to the company's inability to pay its debts the Court can, on the application of the liquidator or any creditor, declare that any one or more of the officers and former officers of the company shall be personally liable for the debts of the company<sup>41</sup>. Appendix C provides guidance on the minimum accounting records etc. that should be maintained by companies.

### 2.10.2 Duty to Prepare Annual Financial Statements<sup>42</sup>

Generally, companies are required to prepare financial statements on an annual basis. The annual financial statements are prepared from the information contained in the company's accounting records<sup>43</sup> and other relevant information. The financial statements, which are required to give 'a true and fair view'<sup>44</sup>, normally include the following, some of which are required by law and others of which are required by accounting standards:

- Profit and loss account: this is a statement of performance of the company showing revenue, expenses, gains and losses earned and incurred by the company during a period in a manner required by the financial reporting framework adopted by the company;
- Balance sheet: this is a statement of assets, liabilities and financial position drawn up at a particular date showing the assets, liabilities and equity of the company at that point in time;
- Cash flow statement: this is a statement of the company's cash inflows and outflows over a period of time. The cash flow statement is not a legal requirement. However, it is a requirement under accounting standards but is not required in the case of 'small' companies. The criteria to qualify as a 'small' company are set out in Appendix A;
- Accounting policies: A company is required to disclose in the notes to the financial statements the accounting policies<sup>45</sup> adopted by the company in determining the items and amounts to be included in its profit and loss account and its balance sheet. Where a company changes its accounting policies, it must disclose the change, the reason for the change and the impact the change has on the current and preceding year's financial statements<sup>46</sup>;
- Notes to the financial statements: these contain more detailed information relating to figures appearing in the profit and loss account, balance sheet or cash flow statement e.g. analysis of fixed assets and depreciation, analysis of the creditors figure etc.; and
- Directors' Report: The directors of a company are obliged to prepare a report<sup>47</sup> each financial year for the members. The report should deal with general matters of the company, a business review, information on the acquisition or disposal of shares and relevant audit information.

**The directors' report is dealt with in detail in Information Book 3 – Company Directors.**

Companies required to prepare annual financial statements are further required to furnish every member of the company with a full copy of those financial statements.

41. Section 609 Companies Act.

42. Sections 290 & 293 Companies Act.

43. Section 282 Companies Act.

44. Section 291(2) Companies Act (See Information Book 3 – Company Directors for more information on what constitutes true and fair).

45. Section 321 Companies Act.

46. Section 321(3) Companies Act.

47. Section 325 Companies Act

### 2.10.3 Obligation to have Statutory Financial Statements Audited<sup>48</sup>

Directors of a company are obliged to arrange for the company's statutory financial statements to be audited by a statutory auditor, unless the company is entitled to, and chooses to avail itself of, audit exemption. An audit is an independent examination of the financial statements by an independent expert (an auditor). Having conducted an examination of the financial statements, the auditor is required to report to the members of the company. In that report, the auditor is required to form an opinion on a number of matters including, for example whether the financial statements give a true and fair view and whether the financial statements are in agreement with the underlying accounting records. **The contents of auditors' reports are dealt with in detail in Information Book 6 – Auditors.**

#### Audit Exemption<sup>49</sup>

Certain small companies are exempted from the requirement to have their statutory financial statements audited provided they satisfy the qualifying conditions and are not an ineligible entity<sup>50</sup> or an excluded entity<sup>51</sup>. The qualifying conditions based on the size only criteria<sup>52</sup> to avail of audit exemption are satisfied by a company in relation to a financial year in which it fulfils 2 or more of the following requirements:

Micro Company:

- the company's turnover does not exceed €700,000
- the balance sheet total does not exceed €350,000
- the average number of employees does not exceed 10

Small Company:

- the company's turnover does not exceed €12 million
- the balance sheet total does not exceed €6 million
- the average number of employees does not exceed 50

Small Group:

- group aggregate turnover does not exceed €12 million net (or €14.4m gross)
- group aggregate balance sheet total does not exceed €6m net (or 7.2m gross)
- group aggregate average number of employees does not exceed 50.

A small or micro company may avail of audit exemption in respect of its statutory financial statements for a particular financial year if the company satisfies the qualifying conditions and is not ineligible or excluded. Whether a company qualifies as a small company, a small group or a micro company is determined in accordance with Sections 280A to 280E Companies Act 2014 (as amended).

48. Section 333 Companies Act.

49. Section 360 Companies Act.

50. Section 275 Companies Act.

51. Section 280A(4), 280B(5) 280D(4) and Schedule 5 of the Companies Act.

52. Section 280A, 280B and 280D Companies Act.

A “holding company” qualifies as a small company in relation to a financial year only if the group, in respect of which it is the holding company, qualifies as a small group in relation to that same financial year<sup>53</sup>. This will not apply to a holding company if any member of the group is an ineligible<sup>54</sup> or an excluded entity<sup>55</sup>.

Dormant companies can avail of “special” audit exemption in accordance with Section 365 of the Companies Act.

In addition to the qualifying conditions, the company must have filed on time its annual return and financial statements for the current year and the preceding year with the Registrar of Companies<sup>56</sup>. A company that failed to comply with this requirement, is not entitled to avail of audit exemption for 2 years following the breach<sup>57</sup>.

It should be noted that a company which is entitled to and chooses to avail itself of audit exemption is still obliged to keep or cause to be kept adequate accounting records, prepare annual financial statements, lay the financial statements before members and file as appropriate with the Companies Registration Office (CRO).

#### **2.10.4 Duty on Large Companies to Disclose Non-Financial information<sup>58</sup>**

Large-companies<sup>59</sup>, groups and undertakings are required to disclose and publish non-financial information, each financial year, in a specific section in their directors’ report or in a separate statement. The information required is the policies the company implements in relation to: environmental protection, social responsibility and treatment of employees, respect for human rights, bribery and anti-corruption.

In addition, large traded companies are required to disclose in their Corporate Governance Statement<sup>60</sup> information on diversity on their board (in terms of age, gender, education and professional background).

Failure to comply with this requirement to disclose non-financial information is an offence and any person found guilty is liable on summary conviction to a class A fine or imprisonment not exceeding 6 months, or to both. Details of penalties under the Companies Act are referred to at Part 3.0 of this book.

53. Section 280B of the Companies Act.

54. Section 275 Companies Act.

55. Section 280D(4) and Schedule 5 Companies Act.

56. Sections 343 Companies Act.

57. Sections 363 and 364 Companies Act.

58. Directive 2014/95/EU implemented in Ireland by S.I. No. 360 of 2017 as amended by S.I. No. 410 of 2018.

59. Section 280H of the Companies Act.

60. Section 1373 Companies Act

## 2.10.5 Duty to Maintain Certain Registers and Other Documents

Every company is required by the Companies Act to maintain certain registers and other documents. These are as follows:

### Register of Members<sup>61</sup>

Every company is obliged to keep a register of its members and enter in it the following particulars:

- members' names;
- members' addresses;
- a statement of shares held by each member, distinguishing each share by its number (if any) and the amount paid or agreed to be paid on the shares;
- the date on which each person was entered in the register; and
- the date on which each person ceased to be a member of the company.

The subscribers to the constitution of a company are deemed to have agreed to become members of the company on its registration and their names are entered, as members, in its register of members.

The company is required to notify the Registrar as to where the register is kept and to make the register available for inspection by any member of the public<sup>62</sup>. The register must be kept at one of the following locations: (a) the company's registered office, or (b) its principal place of business within the State or (c) another place within the state.

### Beneficial Ownership Register

Article 30 of the 4<sup>th</sup> EU Anti-Money Laundering Directive (4AMLD)<sup>63</sup> requires all EU Member States to have a beneficial ownership register for corporate and legal entities.

This means there is a statutory requirement on all corporate and legal entities to hold adequate, accurate and current information on their own beneficial owners register.

The following is a summary of the information required to be held by the company on its own beneficial owners register<sup>64</sup>:

- the name, date of birth, nationality and residential addresses of each beneficial owner (the beneficial owner must be a natural person);
- a statement of the nature and extent of the interest held by each such beneficial owner of the company;
- the date on which each natural person was entered on to the register as a beneficial owner of the company; and
- the date on which each natural person ceased to be a beneficial owner of the company.

61. Section 169 Companies Act.

62. Section 216 Companies Act.

63. Directive (EU) 2015/849. This requirement for legal and corporate entities to hold their own beneficial owners register was transposed into Irish law by Statutory Instrument No. 560 of 2016 and came into operation on 15 November 2016.

64. Regulation 5 of SI 110 of 2019.

## **Beneficial Ownership – Central Register**

In addition to corporate entities own beneficial register, the 4<sup>th</sup> EU Anti-Money Laundering Directive (4AMLD) also requires all EU Member States to have a Central (public) beneficial ownership register for corporate and legal entities. The Registrar of Companies has responsibility for the establishment and maintenance of the central (public) register. For more information on beneficial owners' registers visit [www.cro.ie](http://www.cro.ie).

### **Register of Directors<sup>65</sup>**

This register is required to contain the following information in respect of each of the company's directors:

- present forename and surname and any former forename and surname;
- date of birth;
- usual residential address;
- nationality;
- business occupation, if any; and
- details of any other directorships of companies incorporated in the State or elsewhere currently held or held in the 5 years preceding the appointment.

### **Register of Secretary including assistant and deputy secretaries<sup>66</sup>**

The following information is required to be included in the register in respect of the company secretary who is an individual:

- present forename and surname and any former forename and surname;
- date of birth; and
- usual residential address;

A secretary that is a body corporate is required to supply the following information:

- the name of the body corporate;
- its registered office address;
- the register in which it is registered; and
- the number under which it is registered in that register.

The company is required to make the register of directors and secretary available for inspection by any member free of charge and to the public on the payment of the relevant fee.

### **Register of Directors' and Secretaries' Interests<sup>67</sup>**

A company is required to keep a register of interests of its directors and secretaries. The register should list in chronological order the nature and extent of interests in any shares or debentures of each director and secretary and set out the number, description and amount thereof in:

- the company;
- the company's holding company i.e. parent company;
- the company's subsidiary i.e. a company owned by the company; and
- another subsidiary of the holding company i.e. a sister company.

65. Section 149 Companies Act.

66. Section 149(5) Companies Act.

67. Section 267 Companies Act.

A company is required to make the register available for inspection by any member or debenture holder of the company. Responsibility rests with the directors and secretary to notify the company in writing of their disclosable interest<sup>68</sup>.

### **Registered Person<sup>69</sup>**

The Companies Act allows the board of directors of a company to authorise any person to bind a company. Any such authorisation must be notified to the Registrar of Companies who will register the authorisation. A person so authorised where the authorisation is registered, is referred to under the Companies Act as a “registered person”. That person will continue to be regarded as a registered person unless and until the company notifies the Registrar of the cancellation.

### **Register of Debenture Holders<sup>70</sup>**

In general terms, a debenture is a loan given to a company in a written form. Every company issuing debentures is required to maintain a register of debenture holders. The register is required to contain details of the name, address and amount held in respect of each debenture holder. The company is required to notify the Registrar of the location of the register and to make the register available for inspection by any member of the public.

### **Minute Books**

Every company is required to keep a minute book in which all proceedings of general meetings<sup>71</sup> are entered along with the terms of all resolutions passed. The accuracy of the minutes of each meeting should be confirmed by way of signature of the chairman of the board of directors.

The books containing the minutes of proceedings of any general meeting are required to be kept at the company’s registered office or another address within the State and to be made available for inspection by any member of the company.

Similarly, a company must also keep a minute book of all meetings of the board of directors as well as any sub-committees of the board<sup>72</sup>.

While the Companies Act does not prescribe the information that should be recorded in the minutes, Appendix B sets out, for illustrative purposes, the type of information that should, as a matter of best practice, be included in minutes.

### **Directors’ Service Contracts<sup>73</sup>**

Companies are required to maintain certain information regarding directors’ service contracts (i.e. directors’ contracts of employment). The requirements are as follows:

- in the case of a director whose contract of service is in writing, a copy of the contract;
- in the case of a director whose contract of service is not in writing, a written memorandum setting out the terms of the contract;
- in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of the contract or a written memorandum setting out the terms of the contract;
- a copy or written memorandum, as the case may be, of any variation of any contract of service referred to in the three previous bullet points.

<sup>68</sup>. Section 261 Companies Act.

<sup>69</sup>. Section 39 Companies Act.

<sup>70</sup>. Section 1121 Companies Act.

<sup>71</sup>. Section 199 Companies Act.

<sup>72</sup>. Section 166 Companies Act.

<sup>73</sup>. Section 154 Companies Act.

The company is required to inform the Registrar where these documents are kept and to make them available for inspection by any member of the company.

#### **Copies of Instruments Creating Charges over Companies' Property<sup>74</sup>**

Companies are required to maintain, at a location within the State, copies of every instrument creating a charge on company property. A "charge" means a mortgage or other form of legal security created over an interest in any property, asset or undertaking of the company. Each charge must also be registered with the Registrar of Companies. Copies of these documents are required to be made available for inspection by any member or creditor of the company<sup>75</sup>.

#### **Contracts for the Purchase of Own Shares<sup>76</sup>**

Every company that enters into a contract to purchase its own shares is required to keep at its registered office a copy of the contract, or where the contract is not in writing, a memorandum of the terms of the transaction. The contract must be kept until the expiration of 10 years<sup>77</sup> after the date on which the contract has been fully performed. A company is required to make the contract documents available for inspection<sup>78</sup> during business hours to every member of the company and, if the company is a public limited company, to any member of the public.

#### **Individual and group acquisitions register (applies to public limited companies (PLC's) only)<sup>79</sup>**

Any person acquiring an interest in shares of 3% or greater in a public limited company is required to notify the company of their interest<sup>80</sup>. A PLC is obliged to keep a register of individual and group acquisitions of the company's shares, by entering the name of the person, the relevant information and the date of the entry.

### **2.10.6 Duty to File Certain Documents with the Registrar of Companies**

Companies are legally required to file certain documents with the Registrar of Companies. Some documents are required to be filed by every company annually, such as the annual return while others are required to be filed only in certain circumstances, for example a change of director. It is now possible to file many documents by electronic means with the Registrar. To facilitate electronic filing the requirement to have original (written) signatures on documents annexed to annual returns has been removed, instead the signatures can be in typeset form. Further information on electronic filing is available from the Registrar's website ([www.cro.ie](http://www.cro.ie)).

Once filed with the Registrar, these become public documents and are open to inspection by any member of the public at the Companies Registration Office. Set out below is a list of those documents more commonly required to be filed with the Registrar of Companies. Other documents, which are required to be filed only in specific circumstances, are referred to elsewhere in this guide where relevant.

<sup>74</sup>. Section 418 Companies Act.

<sup>75</sup>. Section 216 (10) Companies Act.

<sup>76</sup>. Section 105 Companies Act.

<sup>77</sup>. Section 112 Companies Act.

<sup>78</sup>. Section 112(2) Companies Act.

<sup>79</sup>. Section 1061 Companies Act.

<sup>80</sup>. Sections 1049 Companies Act.

*Documents more commonly required to be filed with the Registrar:*

- annual return (see Appendix A);
- change of registered office;
- notice of increase in nominal (authorised) capital;
- change of director and/or secretary or of their particulars;
- declaration that a person has ceased to be a director or secretary;
- declaration that a person has been authorised to bind the company;
- notification of the creation of a mortgage or charge;
- memorandum of satisfaction of charge;
- ordinary resolution (see Information Book 5 – Members and Shareholders for additional information).

### **2.10.7 Duty to Hold General Meetings of the Company**

A company is required to hold an annual general meeting (AGM) every calendar year<sup>81</sup>. Certain companies (such as a “single member company”<sup>82</sup> and an LTD<sup>83</sup>) may dispense with the holding of an AGM; in the case of an LTD<sup>84</sup> where all the members entitled to attend and vote at the meeting sign a written resolution to that effect before the latest date for holding the meeting. The AGM will normally be held in the State, unless all of the members entitled to attend and vote consent in writing to its being held outside the State. Not less than 21 days’ notice<sup>85</sup> is required for the calling of an AGM.

All general meetings of a company other than the annual general meeting are called “extraordinary general meetings (EGM)”<sup>86</sup>. The directors of a company may convene an EGM whenever they consider it appropriate. A member or members holding 50% or more of the paid-up share capital of the company may also convene an EGM (this number may be varied in the company’s constitution). Members holding 10% or more of the paid-up share capital of the company may request the directors to convene an EGM. Normally, EGMs are convened to deal with special business of the company. Not less than 7 days’ notice is required for the calling of an EGM<sup>87</sup>.

**This topic is dealt with in detail in Information Book 5 – Members and Shareholders.**

<sup>81</sup>. Section 175 Companies Act.

<sup>82</sup>. Section 196 Companies Act.

<sup>83</sup>. LTD’s may replace an AGM with written procedures, under section 175(3) Companies Act.

<sup>84</sup>. Section 175(3) Companies Act.

<sup>85</sup>. Section 181 Companies Act.

<sup>86</sup>. Section 177 Companies Act.

<sup>87</sup>. Section 181 Companies Act.

### 2.10.8 Duty to establish an Audit Committee<sup>88</sup>

Public Limited Companies (PLC's) are required to establish an Audit Committee irrespective of their balance sheet total or turnover<sup>89</sup>.

The board of directors of relevant companies<sup>90</sup> must decide whether or not to establish an audit committee. Their decision must be reported in the financial statements of the company and if the company has decided not to establish an audit Committee they must state the reason for that decision.

The Audit Committee of a company will include at least one independent non-executive director and a director who has competence in accounting or auditing. The responsibilities of the audit committee as set out in legislation include:

- the monitoring of the financial reporting process;
- the monitoring of the effectiveness of the company's systems of internal control, internal audit and risk management;
- the monitoring of the statutory audit of the company's statutory financial statements; and
- the review and monitoring of the independence of the statutory auditors and in particular the provision of additional services to the company.

### 2.11 Companies' Powers

The capacity of companies other than an LTD are defined in the objects clause of the constitution. The capacity of an LTD is set out in its constitution. However, any act done by a company cannot be called into question on the grounds of lack of capacity by reason of anything contained in their objects or constitution.

A member of a company (other than an LTD) may bring proceedings to restrain the company from undertaking an activity beyond its capacity. It is the duty of the directors to observe any limitation on their powers as set out in the constitution of the company.

<sup>88</sup>. Section 167 Companies Act.

<sup>89</sup>. Section 1097 Companies Act.

<sup>90</sup>. A relevant company is defined in Section 167 of the Companies Act (as amended by Section 9 Companies (Accounting) Act 2017) as a company that in its previous two financial years its balance sheet total has exceeded €25 million and its turnover has exceeded €50 million, or a company with one or more subsidiary undertakings taken together that meet this criteria.

# 3.0 Penalties under the Companies Act

## 3.1 Penalties for Criminal Offences

### Court Imposed Penalties

Under the Companies Act, provision is made for two types of criminal offence, namely summary and indictable offences. A summary offence is generally of a less serious nature and is tried before a judge only in the District Court. Indictable offences are generally of a more serious nature. Indictable offences can, in the same way as summary offences, be tried in the District Court before a judge only. However, the distinction between a summary offence and an indictable offence is that, due to their more serious nature, indictable offences can also be tried in the Circuit Court i.e. before a judge and jury. Where this course is taken, the indictable offence is said to be prosecuted on indictment. Where an offence is prosecuted on indictment, the penalties provided for by the law on conviction are generally considerably higher than had the offence been prosecuted summarily.

Under Section 871 of the Companies Act, a person guilty of an offence under the Companies Act that is stated to be a category 1 offence shall be liable:

- on summary conviction, to a class A<sup>91</sup> fine or imprisonment for a term not exceeding 12 months or both; or
- on conviction on indictment to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years or both.

In general, a person guilty of an offence under the Companies Act that is stated to be a category 2 offence shall be liable:

- on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both; or
- on conviction on indictment to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

A person guilty of an offence under the Companies Act that is stated to be a category 3 offence will be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.

A person guilty of an offence under the Companies Act that is stated to be a category 4 offence will be liable on summary conviction to a class A fine.

The Court in which a conviction for an offence under the Companies Act is affirmed or recorded may order the person convicted to remedy the breach<sup>92</sup>.

91. "Class A fine" at the date of publication means a fine not exceeding €5,000 (Source: Fines Act 2010).

92. Section 872 Companies Act.

However, the Companies Act also provides for considerably higher sanctions in relation to certain offences, such as:

- Transparency Directive<sup>93</sup> - a fine of up to €1 million and/or 5 years imprisonment on conviction on indictment under transparency (regulated markets) law<sup>94</sup>;
- Prospectus Directive<sup>95</sup> - a fine of up to €1 million and/or 5 years imprisonment on conviction on indictment under Irish Prospectus Law<sup>96</sup>;
- Market Abuse Directive<sup>97</sup> - a fine of up to €10 million and/or 10 years imprisonment on conviction on indictment under Irish market abuse law<sup>98</sup>.

## 3.2 Civil Penalties

### Disqualification

In addition to fines and penalties for criminal offences, there are also provisions for other sanctions under the Companies Act, such as disqualification and restriction.

Disqualification means a person being disqualified from being appointed or acting as a director or other officer, statutory auditor, receiver, liquidator or examiner or being in any way, whether directly or indirectly, concerned or taking part in the promotion, formation or management of any company<sup>99</sup>.

A person can be disqualified by way of:

- a) Disqualification Order by the court; or
- b) accepting a Disqualification Undertaking - whereby the person submits to being subject to disqualification, by accepting and signing a prescribed disqualification undertaking.

### Automatic Disqualification<sup>100</sup>

A person is automatically disqualified by the court, if that person is convicted on indictment of:

- any offence under the Companies Act or any other enactment in relation to a company as prescribed; or
- any offence involving fraud or dishonesty.

A person disqualified by the court is subject to a disqualification order for a period of 5 years or other period as specified by the court. The court is obliged to send details of the disqualification order to the Registrar of Companies so that the details supplied are included in the public register of disqualified persons<sup>101</sup>.

The Authority can also apply to the Courts seeking the disqualification of any person on a number of grounds<sup>102</sup> including:

- guilty of two or more offences in relation to accounting records offences (section 286);
- guilty of persistent defaults under the Companies Act;
- guilty of fraudulent or reckless trading while an officer of a company.

93. Transparency (Directive 2004/109/EC) Regulations 2007 – S.I. No. 277 of 2007.

94. Section 1382 Companies Act.

95. Prospectus (Directive 2003/71/EC) Regulations 2005 – S.I. No. 324 of 2005.

96. Section 1356 Companies Act.

97. Market Abuse (Directive 2014/57/EU) Regulations 2016 – S.I. No. 349 of 2016 (as amended by S.I. No. 11 of 2017 and S.I. No. 375 of 2017).

98. Section 1368 Companies Act.

99. Section 838 Companies Act.

100. Section 839 Companies Act.

101. Sections 863 & 864 Companies Act.

102. Section 842 Companies Act.

### Disqualification Undertaking<sup>103</sup>

This is an administrative procedure that provides a person (where the Authority is of the opinion that certain circumstances in relation to a person apply) with an option to submit to a disqualification without the need for a court hearing. This procedure can be availed of where the Authority has reasonable grounds for believing that one or more of the circumstances specified in section 842(a) to (i) of the Companies Act applies to the person<sup>104</sup>. The Authority may, at its discretion, offer the person an opportunity to submit to a disqualification. Where the person submits to a “disqualification undertaking” and returns the disqualification acceptance document duly signed to the Authority, they are deemed to be a disqualified person. The Authority is obliged to send details of the disqualification to the Registrar of Companies, for inclusion in the public register of disqualified persons<sup>105</sup>.

### Restriction

The provisions relating to the restriction of company directors<sup>106</sup> apply to insolvent companies, i.e. companies that are unable to pay their debts<sup>107</sup> as they fall due. Where a company which goes into liquidation or receivership and is insolvent, a director of the company who fails to satisfy the Authority or the Court that he or she has acted honestly and responsibly may be restricted for a period of up to five years.

### Restriction Undertaking<sup>108</sup>

This is an administrative procedure that provides the person with an opportunity to submit to a restriction without the need for a court hearing. The Authority may, at its discretion, offer the director of an insolvent company an opportunity to submit to be restricted. The offer will include the circumstances, facts and allegations leading to the Authority forming the belief that restriction is appropriate.

Where the person accepts the restriction, and returns the restriction acceptance document, duly signed, the Authority will send details of the “restriction undertaking” to the Registrar of Companies, for inclusion in the register of restricted persons<sup>109</sup>.

Such a restriction prevents a person from being appointed or acting in any way, directly or indirectly as a director or secretary or being involved in the formation or promotion of any company unless it is adequately capitalised<sup>110</sup>. In the case of a public limited company (other than an investment company), the capital requirement is €500,000 in allotted paid up share capital, and in the case of any other company, the capital requirement is €100,000. Such a company is also subject to stricter rules in relation to capital maintenance.

A person who continues in office as a director of a company on the restriction taking place without the company being adequately capitalised, will be deemed, without proof of anything more to have contravened the Companies Act and will be automatically disqualified as a director. **The topic of restriction is dealt with in detail in Appendix B to Information Book 3 – Company Directors**

<sup>103</sup>. Section 849 Companies Act.

<sup>104</sup>. These are the circumstances which if the court were satisfied that they applied would result in a disqualification order and are set out in section 862 Companies Act.

<sup>105</sup>. Section 864 Companies Act.

<sup>106</sup>. Section 819 & 820 Companies Act.

<sup>107</sup>. Section 570 Companies Act.

<sup>108</sup>. Section 852 Companies Act.

<sup>109</sup>. Section 823 Companies Act.

<sup>110</sup>. Section 819(3) Companies Act.

A person who acts in relation to any company in a manner or a capacity which they are prohibited by virtue of being (a) subject to a disqualification order, or (b) subject to a declaration of restriction, shall be guilty of a category 2 offence<sup>111</sup>.

### **Strike Off**<sup>112</sup>

The Registrar of Companies may give notice of the intention to strike a company off the register on any of the following grounds:

- the company has failed to make an annual return as required; or
- there are no persons recorded as being current directors of the company; or
- the Revenue Commissioners have given notice of the company's failure to deliver a statement of particulars by new companies; or
- the Registrar has reasonable cause to believe that the company is not complying with the requirement to have a director resident in an EEA state or does not hold the requisite bond in the absence of such a director<sup>113</sup>; or
- the company is being wound up and the Registrar has reasonable cause to believe that no liquidator is acting; or
- the company is being wound up and no returns have been made by the liquidator for a period of 6 consecutive months.

If a company is struck off the register, ownership of a company's assets automatically transfers to the State. Ownership will remain with the State until such time as the company is restored to the register. While struck off, the liability of every director, officer and member of the company continues and may be enforced<sup>114</sup> as though the company had not been dissolved.

The procedures required to have a company reinstated to the register are dealt with in Appendix A to this book. Specific and detailed information on restoring a company to the Register is available on the CRO website – [www.cro.ie](http://www.cro.ie)

<sup>111</sup>. Section 855 Companies Act.

<sup>112</sup>. Section 725 Companies Act.

<sup>113</sup>. Section 137 Companies Act.

<sup>114</sup>. Section 734 Companies Act.

# Appendix A

## The Annual Return (Form B1)

### Introduction

Every company is obliged to submit an annual return to the Registrar of Companies<sup>115</sup>. The Annual Return is required to be submitted in the prescribed format (Form B1) and contain the mandatory information and have annexed to it the required documents. A company filing its first annual return is not required to annex statutory financial statements or other documents to it<sup>116</sup>.

The annual return is required to be made up to a date not later than the company's 'annual return date'<sup>117</sup>. The Annual Return Date (ARD) is the date assigned to the company by the Registrar of Companies for filing an annual return. The ARD is based on the date of incorporation of the company and/or the anniversary of the previous annual return. Further information is available from the Registrar of Companies ([www.cro.ie](http://www.cro.ie)).

The annual return is required to be delivered to the Registrar in accordance with the timeframe set out under the Companies Act. Where a company fails to do so, the company, every officer of the company (including every director) who is in default and any person in accordance with whose directions or instructions the directors of the company are accustomed to act and to whose directions or omissions the default is attributable, is in breach of their obligations under the Companies Act.

The penalties for failure to file an annual return or late filing include late filing fines, prosecution and the striking off the register of the company. If a company is struck off the register of companies for failing to file an annual return, the liability, if any, of every director, other officer and member of the company continues and may be enforced as though the company had not been dissolved<sup>118</sup>.

If any member, officer or creditor of the company is aggrieved at the company's strike off, they can apply to the Registrar of Companies for the restoration<sup>119</sup> of the company within 12 months of the strike off. Provided that the Registrar is satisfied that all outstanding documents have been filed and all outstanding fees paid, s/he can restore the company to the register. Where the Registrar restores the company to the register, the company is deemed to have continued in existence as though it had not been struck off<sup>120</sup>.

<sup>115</sup>. Section 343(2) Companies Act.

<sup>116</sup>. Section 349 Companies Act.

<sup>117</sup>. Section 345 Companies Act.

<sup>118</sup>. Section 734 Companies Act.

<sup>119</sup>. Section 737 Companies Act.

<sup>120</sup>. Section 737(5) Companies Act.

After the 12-month period referred to above has expired, any member, officer or creditor of the company can apply to the Court<sup>121</sup> to have the company restored<sup>122</sup> to the register (provided that the application is made within 20 years of strike off). Where the Court is satisfied that it would be just and equitable to restore the company to the register<sup>123</sup>, the company is deemed to have continued in existence as though it had not been struck off. However, the Court can also order if it considers it appropriate that the officers, or any one of them, be held personally liable for any debts incurred by the company during the period of strike off<sup>124</sup>.

The timeframe to apply for the restoration of a Property Management Company to the Registrar of Companies has been extended to 6 years by the Multi-Unit Development Act 2011. Other administrative requirements may also apply in such cases. Further information is available from the Companies Registration Office at [www.cro.ie](http://www.cro.ie).

## Information Required to be Provided in the Annual Return

The following information must be provided to the Registrar in companies' annual returns:

- company name and legal form of the company;
- place of registration and registered number (this number is provided by the Registrar on incorporation);
- annual return date (i.e. the annual return date unless altered in accordance with section 346);
- financial year covered by the return (i.e. financial statements laid or to be laid before the AGM of the company held during the period to which the Annual Return relates);
- registered office address;
- other addresses (required if statutory registers are not kept at the registered office);
- company secretary's name and address;
- details of any political donations made by the company;
- authorised share capital\*;
- issued share capital\*;
- list of members\*;
- list of persons who have ceased to be members since the last return\*;
- details of shares transferred since the last return\*;
- directors' names;
- directors' dates of birth;
- directors' addresses;
- directors' occupations; and
- details of directors' other directorships.

\*Required only in the case of companies having a share capital

**121.** Section 743 Companies Act – Court means either the High Court or the Circuit Court.

**122.** Section 738 Companies Act.

**123.** Section 741 Companies Act.

**124.** Section 742(c) Companies Act.

## Documents to be Annexed to the Annual Return as Laid or to be Laid before the AGM<sup>125</sup>

- the statutory financial statements of the company;
- the directors' report, including any group directors' report, and
- the statutory auditors' report on those financial statements and the directors' report.

## Filing Exemptions Available for specific Companies

Exemptions are available to certain companies based on size whereby they may not be required to deliver all of the above documents to the Registrar.

### Micro Company<sup>126</sup>

The qualifying conditions based on size for a Micro Company are satisfied by a company if, in relation to a financial year, it qualifies for the small company's regime, and fulfils 2 or more of the following requirements:

- turnover does not exceed €700,000
- balance sheet total does not exceed €350,000
- average number of employees does not exceed 10.

A company that qualifies as a Micro Company and avails of the exemptions<sup>127</sup> provided are required to annex to the annual return abridged financial statements<sup>128</sup>. The abridged financial statements will be extracted from the statutory financial statements of the company and shall give a true and fair view<sup>129</sup> of the assets, liabilities and financial position. They include the balance sheet and a small number of notes. A micro company is not required to prepare a directors' report provided the information in relation to acquisition or disposal of own shares<sup>130</sup> is included in a note to the balance sheet. More Information in relation to financial statement requirements is available from the Companies Registration Office at [www.cro.ie](http://www.cro.ie).

### Small Company<sup>131</sup>

The qualifying conditions based on size for a Small Company are satisfied by a company if, in relation to a financial year, it fulfils 2 or more of the following requirements:

- turnover does not exceed €12 million
- balance sheet total does not exceed €6 million
- average number of employees does not exceed 50.

A company that qualifies as a Small Company and avails of the exemptions<sup>132</sup> provided are required to annex to the annual return abridged financial statement<sup>133</sup>. The abridged financial statements of a small company will be extracted from the statutory financial statements of the company. They include the balance sheet and the notes required. More Information in relation to financial statement requirements is available from the Companies Registration Office at [www.cro.ie](http://www.cro.ie).

<sup>125</sup>. Section 347 Companies Act (as amended by Section 50 Companies (Accounting) Act 2017).

<sup>126</sup>. Section 280D Companies Act (as amended by Section 15 of the Companies (Accounting) Act 2017, which inserted a new chapter 1A).

<sup>127</sup>. Sections 352 & 353 Companies Act (as amended by sections 51 and 52 Companies (Accounting) Act 2017).

<sup>128</sup>. Section 353 Companies Act (as amended by section 52 Companies (accounting) Act 2017).

<sup>129</sup>. Section 291 Companies Act (as amended by Section 17 Companies (Accounting) Act 2017).

<sup>130</sup>. Section 328 Companies Act (as amended by Section 44 Companies (Accounting) Act 2017).

<sup>131</sup>. Section 280A Companies Act (as amended by Section 15 Companies (Accounting) Act 2017, which inserted a new chapter 1A).

<sup>132</sup>. Sections 352 Companies Act (as amended by section 51 Companies (Accounting) Act 2017).

<sup>133</sup>. Section 353 Companies Act (as amended by section 52 Companies (accounting) Act 2017).

### **Small Group (holding company)<sup>134</sup>**

A small group qualifies under the small companies regime in a financial year when the holding company and each member of the group qualifies as a small company. The qualifying conditions are satisfied for a small group if it fulfils 2 or more of the following:

- aggregate turnover does not exceed €12 million net (14m gross)
- aggregate balance sheet total does not exceed €6 million net (7.2m gross)
- aggregate average number of employees does not exceed 50.

A holding company that qualifies for the small or micro companies regime is exempt from the requirement to prepare group financial statements<sup>135</sup>. In addition, a small group may also be eligible to avail of audit exemption<sup>136</sup>.

### **Medium Company<sup>137</sup>**

The qualifying conditions for a medium company are satisfied by a company in relation to a financial year in which it fulfils 2 or more of the following requirements:

- turnover not exceeding €40m
- balance sheet total not exceeding €20m
- average number of employees not exceeding 250.

Medium sized companies are required to file a full set of audited financial statements. Some medium sized companies are also required to prepare a director's compliance statement<sup>138</sup> where their balance sheet total exceeds €12.5m and turnover exceeds €25m. They are exempt from the requirement to disclose: (a) business review in the directors' report, and (b) remuneration for audit and audit related work in the notes to the financial statements<sup>139</sup>.

### **Medium Group (holding company)<sup>140</sup>**

- aggregate turnover does not exceed €40 million net (48m gross)
- aggregate balance sheet total does not exceed €20 million net (24m gross)
- aggregate average number of employees does not exceed 250.

Medium sized group companies are required to file a full set of audited group financial statement.

More Information in relation to financial statement requirements is available from the Companies Registration Office at [www.cro.ie](http://www.cro.ie).

<sup>134</sup>. Sections 280B and 280E Companies Act (as amended by Section 15 Companies (Accounting) Act 2017, which inserted a new chapter 1A).

<sup>135</sup>. Section 293 Companies Act (as amended by Section 19 Companies (Accounting) Act 2017).

<sup>136</sup>. Section 359 Companies Act (as amended by Section 57 Companies (Accounting) Act 2017).

<sup>137</sup>. Section 280F Companies Act (as amended by Section 15 Companies (Accounting) Act 2017, which inserted a new chapter 1A).

<sup>138</sup>. Section 225(2) Companies Act.

<sup>139</sup>. Section 322 Companies Act (as amended by Section 38 Companies (Accounting) Act 2017 and by Section 6 of the Companies (Statutory Audits) Act 2018).

<sup>140</sup>. Section 280F and 280G Companies Act (as amended by Section 15 Companies (Accounting) Act 2017, which inserted a new chapter 1A).

## Voluntary Revision of Defective Statutory Financial Statements<sup>141</sup>

Where the directors of a company become aware that the financial statements in respect of a particular financial year are defective, in that they do not comply with the requirements of the Companies Act or, where applicable, Article 4 of the IAS Regulation, the directors may prepare revised financial statements or a revised directors' report in respect of that year.

- If the “original” financial statements or “original” directors' report have been laid before the company's AGM or delivered to the Registrar, the revision to the documents is confined to the part that fails to comply to the Companies Act or, where applicable, Article 4 of the IAS Regulation and any necessary consequential alterations.
- If the reason for the revision of the statutory financial statements relates to information in the notes to those statements which was either omitted or was incorrect or incomplete, then such a revision can be made by a supplementary note, providing the revision does not affect the amounts and presentation of those statements, otherwise revised financial statements must be prepared.
- If the reason for the revision of the directors' reports is that information was omitted or was incorrect or incomplete and the additional information does not affect other information in the report, the revision can be made by supplementary note, otherwise a revised directors' report must be prepared.

Where the statutory financial statements for any financial year are revised, the next statutory financial statements prepared after the date of revision must state that the previous financial statements were revised and provide particulars of the revision, its effect and the reasons for the revision in a note to the financial statements.

<sup>141</sup>. Section 366 Companies Act.

# Appendix B

## Illustrative Forms and Content of Minutes of General Meetings

The Companies Act requires companies to keep minutes of all proceedings of general meetings and the terms of all resolutions must be entered in books kept for that purpose<sup>142</sup>. If a company fails to keep minutes of meetings or resolutions, the company and any officer of it who is in default will be guilty of a category 4 offence.

Section 199 does not specify the information that should be recorded in the minutes. However, minutes should represent an accurate reflection of what transpired at a meeting. Accordingly, it is recommended that, as a minimum, the following information should be recorded in minutes:

### General Meetings of the Company

- date, time and location of the meeting;
- names of the directors and secretary present;
- directors etc. from whom apologies for inability to attend have been received;
- name of the person chairing the meeting (Chairman);
- names of other persons present (at the 'top table') and the capacity in which they are in attendance;
- approval of minutes of previous meeting and any corrections requested;
- details of any documents or papers tabled for consideration by the members, including the title and author of any such documents. Documents that will form the basis of decisions (resolutions) at the meeting, such as the financial statements and auditor's report (where applicable), must be circulated to the members before the meeting to afford them an opportunity to study them;
- details of proposals put before the members for vote, the names of the persons proposing and seconding the proposals;
- details of any conflicts of interest declared by directors and whether, for example, they refrained from participating in any discussions, abstained from any vote taken or absented themselves from the meeting for any discussions on the matter;
- an account of the views expressed by each person making a contribution to the discussion should be recorded, including, for example, questions put to the board from the floor by members and the responses given. While the minutes may summarise the contributions made, the summary should accurately reflect the substance of the contributions made. Where a member specifically requests that their contribution be minuted, for example where disagreement arises, particular care should be taken to ensure that the minutes accurately reflect the contribution made;
- the results of any vote taken (as declared by the Chairperson) and whether it was taken by a show of hands or by poll;
- details of the resolutions passed by the company i.e. formal decisions made following a vote;
- signature of the Chairperson of the board certifying that the recorded minutes are an accurate reflection of the proceedings; and
- the agenda, as circulated to those attending the meeting should be appended to the minutes (each item on the agenda should be sequentially numbered for ease of reference).

<sup>142</sup>. Section 199 Companies Act.

## Board Meetings/Board Sub-Committee Meetings

- date, time and location of the meeting;
- names of the directors and secretary present;
- persons from whom apologies for inability to attend have been received;
- name of the person chairing the meeting (Chairperson);
- names of other persons present and the capacity in which they are in attendance;
- approval of minutes of previous meeting and any corrections requested;
- details of any documents or papers tabled for consideration by the board, including the title and author of any such documents (generally these documents would be circulated in advance of the meeting to allow the directors an opportunity to consider same);
- details of proposals put before the board for vote, the names of the persons proposing and seconding the proposals;
- details of any conflicts of interest declared by directors and whether, for example, they refrained from participating in any discussions, abstained from any vote taken or absented themselves from the meeting for any discussions on the matter;
- an account of the views expressed by each person making a contribution to the discussion should be recorded. While the minutes may summarise the contributions made, any summary should accurately reflect the substance of the contributions made. Where a board member specifically requests that their contribution be minuted, for example where disagreement arises, particular care should be taken to ensure that the minutes accurately reflect the contribution made;
- the results of any vote taken;
- details of the resolutions passed by the board i.e. formal decisions made following a vote;
- details of any delegations of authority, by the board, to board members or employees e.g. the fact that the board authorised a senior staff member to sign cheques on its behalf should be recorded;
- signature of the Chairman of the board certifying that the recorded minutes are an accurate reflection of the proceedings; and
- the agenda, as circulated to those attending the meeting should be appended to the minutes (each item on the agenda should be sequentially numbered for ease of reference).

# Appendix C

## Guidance on Accounting Records to be Maintained by Companies

### Accounting Systems

The absolute minimum form of accounting records that should be maintained by a company is a record of receipts and payments. This would involve the maintenance of two books i.e. a payments book and a receipts book.

#### Payments Book

The payments book should record all payments made by the company, together with the following information:

- date;
- cheque number;
- payee name;
- amount;
- the amount of the payment should then be analysed between VAT and the VAT exclusive element (net amount) of the payment; and
- the net amount should then be analysed into one, or more, predefined expenditure headings, for example light and heat, telephone, equipment etc.

Payment Book Example									
Date	Cheque Number	Payee Name	Amount	VAT	Net	Light & Heat	Equipment	Phone	Wages
1 Apr 21	000215	Electric Ireland	2460	460	2000	2000			
3 Aug 21	000216	Eir	1230	230	1000		400	600	
5 Dec 21	000217	Mary White	3000	0	3000				3000
	<b>Total</b>		<b>6690</b>	<b>690</b>	<b>6000</b>	<b>2000</b>	<b>400</b>	<b>600</b>	<b>3000</b>

An example of a receipts book is set out above for illustrative purposes

It can be seen from the example that the combined total of the analysis columns (i.e. Light & Heat, Equipment, Phone and Wages) equal the total of the 'Net' column. Similarly, the total of the 'Net' and 'VAT' columns equal the 'Amount' column.

In addition to maintaining the above, it is **essential** that **all** associated and supporting documentation, for example invoices, receipts, contracts and supplier statements, be retained.

## Receipts Book

The receipts book should record all amounts received by the company, together with the following information:

- date of receipt;
- name of individual/company making the payment;
- amount;
- the amount should then be analysed between VAT and the VAT exclusive element (net amount) of the receipt; and
- the net amount should then be analysed into one, or more, predefined expenditure headings, for example trade sales, bank interest, dividends received etc.

Receipt Book Example									
Date	Name	Amount	VAT	Net	Trade Sales	Bank Interest	Sale of Equipment	Dividends Received	Lodged
8 May 21	J Byrne	4920	920	4000	4000				
9 Sept 21	XYZ Ltd	12300	2300	10000			10000		17220
3 Dec 21	APB plc	3000	0	3000				3000	3000
	<b>Total</b>	<b>20220</b>	<b>3220</b>	<b>17000</b>	<b>4000</b>		<b>10000</b>	<b>3000</b>	<b>20220</b>

An example of a receipts book is set out above for illustrative purposes

Again, it can be seen from the example that the combined total of the analysis columns (i.e. Trade Sales, Bank Interest, Sale of Equipment, Dividends Received) equal the total of the 'Net' column. Similarly, the total of the 'Net' and 'VAT' columns equal the 'Amount' column.

In addition to maintaining the above, it is **essential** that **all** associated and supporting documentation relating to amounts received be retained.

## Bank Documents

All bank documents relating to the company's receipts and payments should be retained. Bank documents will include, for example:

- bank statements;
- cheque stubs (which should be properly and fully completed);
- lodgement slips;
- any correspondence from the bank, for example relating to loans etc.

Any amounts owed by the company at the year-end will require to be calculated (by reference to invoices unpaid at the year-end) and any amounts due to the company at year-end will require to be calculated (by reference to a record of goods and services provided but as yet unpaid for).

The value of stocks on hand at the year-end will require to be valued by reference to the physical quantities on hand and the cost of purchase of those stocks (or where lower, the amount for which they can be disposed of, for example where stocks have been damaged or are obsolete). In order to ascertain the physical quantities of stock on hand at year-end, it will usually be necessary for the company to perform a stocktake (at which the company's auditors will normally attend).

Maintenance of the above records, together with the retention of all supporting documents, will generally be sufficient to facilitate the preparation of a set of basic financial statements. In addition, the VAT columns in the receipts and payments books, when totalled, can be used to input the required information into the company's VAT returns.

However, the system as set out above is very basic and, generally, will not provide the requisite level of management information for all but the smallest of companies. Where the above system is not adequate to enable the company and its directors to determine at any time and with reasonable accuracy the financial position of the company, a more sophisticated accounting system will be required in order to fulfil the company's legal obligations to maintain proper accounting records.

More sophisticated accounting systems involve the maintenance of additional accounting records, including, for example;

- multiple bank accounts;
- a debtors ledger (an ongoing record of amounts due to the company);
- a creditors ledger (an ongoing record of amounts owed by the company);
- a nominal ledger (an ongoing record of income, expenditure, assets and liabilities of the company);
- records of stock movements i.e. receipts and dispatches of stocks, transfers to and from work-in-progress etc.; and
- a fixed assets register (an ongoing record of the company's fixed assets, additions to and disposals from fixed assets and depreciation etc.).

Where these additional accounting records are maintained, the amounts owed by or to the company is readily available. The directors of the company, therefore, have a clearer picture of the company's true financial position.

The type of accounting system described above is usually maintained on a computer based system. Several "off the shelf" packages are available for this purpose. Alternatively, all of the above records can be maintained manually.

## Internal Control system

In addition to the accounting systems referred to above, companies should ideally have a system of “internal control” in place, wherever practicable. A system of internal control is not a legal requirement, however it is best practice. Internal controls are a set of policies and procedures put in place by the directors to achieve certain objectives, for example:

- to ensure the accuracy of the accounting records and the financial statements;
- to safeguard the company’s assets; and
- to prevent fraud, error and other irregularities.

By way of illustration, control procedures would include, for example:

- ensuring that, wherever practicable, a single individual does not have control over an entire transaction cycle;
- ensuring adequate approval and control over documents;
- checking of the arithmetical accuracy of records;
- maintaining control accounts, for example debtors, creditors, VAT, PAYE control accounts;
- preparing regular trial balances;
- performing regular reconciliations, for example bank reconciliations;
- comparison of physical stock levels with book stock levels, identifying and investigating any discrepancies, and;
- limiting access to assets and records by, for example, physical security measures, passwords etc.

## A Note of Caution

The guidance set out in this appendix is general in nature and does not purport to be an all-encompassing guide. Companies and their directors are strongly advised to seek professional accountancy advice when setting up their accounting and internal control systems in order to ensure that the systems implemented enable the company and its directors to comply with their legal requirements in this regard.





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Tá leagan Gaeilge den leabhrán seo ar fáil

An Irish version of this booklet is available



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