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# CHARTERED GOVERNANCE INSTITUTE UK & IRELAND - IRISH REGION

Company Shareholders & Corporate  
Governance Update

17 January 2024



The Chartered  
Governance Institute

**FCS SERVICES**  
.....  
Corporate Governance Specialists

LK SHIELDS

**DHKN** \*  
.....forward thinking

# Welcome!

## What we hope to cover

- Shareholders:
  - ❑ Rights and Powers
  - ❑ Shareholders' Agreements
  - ❑ Register of Beneficial Ownership
  - ❑ How to exit
- Corporate Governance Update

## Introductions

- **Anna Holland** Managing Director, FCS Services
- **Gemma Forde** Partner & Head of Galway Office, LK Shields LLP
- **George Alton** Head of Corporate Compliance, DHKN
- **Robert Lohan** Head of Tax, DHKN
- **Conn Cleary** Regional Development Manager, CGI UK & Ireland - Irish Region

## FCS Services - Who We Are



**Anna Holland**     Manager Director



**Moira Cleary**     Client Filings Officer



**Jill Benton**     Governance Professional



**Lorraine Kilroy**     Office Administrator

# What we do

## ➤ Our Services

- ❑ Company Secretarial
- ❑ Contract and Consultancy
- ❑ Training and Resources
  - Launch of our eBook Series



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# Company Shareholders

Presented by Gemma Forde  
Corporate and M&A Partner & Head of LK Shields, Galway



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# LK SHIELDS

# TOPICS

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- Shareholders' Rights and Powers
- Shareholders' Agreements
- Register of Beneficial Ownership

# What is a shareholder?

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- Holds a share/shares in a company – participates in capital
- Owner(s) of a company
- Become a shareholder at incorporation, acquisition of shares by transfer or further issue by a company
- A shareholder becomes a “member” on entry to Register of Members
- Liability of the members is limited (excl. unlimited company)
- A company with no share capital only has members (no shareholders) e.g. Company Limited by Guarantee with no share capital

# Evidence of Title

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- Share Certificate under common seal is prima facie evidence of title to shares (S.99)
- A company is required to issue a certificate within 2 months of allotment, or a valid and accepted share transfer, or debenture
  - It's Category 4 offence not to issue a share certificate as outlined above
- A member can serve notice on a company in case of default to issue a certificate and apply to the Court if the default is not made good within 10 day
- Defaced/Lost/ Stolen – a member can request a replacement or provide indemnity



# Register of Members

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- Every company is required by law to maintain a Register of Members (S.169) which must include:
  - Name and address of past & present members
  - The shares held and consideration paid for those shares
  - Date of entry and cessation
- Trusts not to be entered
- Entries should be made within 28 days and failure to properly update and maintain the Register of Members is a Category 3 Offence
- Register of Members may be maintained by agent (S.216(2)) in which case the agent is also liable for default
- Register of Members must be located within the State at Registered Office (or principal place of business or other place within the State (agent))

# Members' Duties

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- The principal duty is to pay the amount agreed for shares which is the nominal value of the shares (+ a share premium if applicable)
- Directors may make calls upon members for unpaid amount, subject to the conditions of issue and may charge interest on late payment from a member
- In the event of a Winding Up:, the following duties apply: -
  - Limited Company: Pay unpaid amount on shares
  - Company Limited by Guarantee: nominal amount – usually €1.00
  - Unlimited: liable for all debts

# Rights & Powers

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- Set out in the Companies Act 2014 and the Constitution
- Directors may exercise all powers of a company which are not required by CA 2014 or by the Constitution to be exercised by members
- The rights and responsibilities of members vary depending on nature of a company and its Constitution such as different share classes with different rights attached  
e.g. voting / non-voting shares, preference shareholders to receive a fixed dividend before ordinary shareholders etc.

# Rights & Powers – Shareholder Resolutions (S.191)

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## Ordinary Resolution

- Requires a simple majority greater than 50% of votes cast at General Meeting (7 days' notice)
- Business of an AGM is usually Ordinary Resolutions
- Written Resolutions permitted in certain circumstances e.g. single member company
- Unanimous or Majority Written Resolutions are permitted for LTDs and DACs only
- CRO Form G2 / G2 B4 (E-Filing only)

e.g. increase authorised share capital, variation (subdivision, consolidation, redesignation) of share capital, removal of a director (EGM needed unless a single member company)

## Special Resolution

- Requires 75% of votes cast at General Meeting (21 days' notice)
- The notice of a general meeting to consider a Special Resolution must include text or substance of the special resolution
- Written Resolutions permitted in certain circumstances
- CRO Forms G1 / G1 B4 / G1Q

e.g. Alteration to Constitution, Change of Name, re-registration of company type, SAPs, winding up etc.

# Rights & Powers

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## Right to Company Information

- Right to receive a copy of the Constitution
- Right to receive a copy of the most recent statutory financial statements, including the Directors Report and Auditor's Report (if applicable)
- Right to inspect and request copies of minutes of shareholder general meetings and shareholder resolutions
- Right to inspect and request copies of instruments creating charges and various registers including the Register of Members, Register of Directors & Secretaries and their disclosable interests

**Note:** A company must notify the Registrar if the registers are kept at place other than the registered office or principal place of business of the company

- The above Registers and Documents must be open to inspection by any member without charge during business hours, except the Register of Members which may be closed for not more than 30 days in each year. Newspaper advertisement required.
- Default: Company and Officer guilty of Category 3 offence

# Rights & Powers

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## Right relating to General Meetings

- Right to receive notice of, attend and vote at AGMs & EGMs
  - includes representative of a deceased member or assignee in bankruptcy for a member who would be entitled to receive notice
- The holders of 50% of the paid-up share capital which carries voting rights may convene an EGM;
- The holders of 10% may requisition the directors to convene an EGM within 21 days, to be held within 2 months of the requisition date
  - If the directors default, members with 50% of the voting rights of that 10% may convene a meeting themselves with 3 months of requisition date
- The holders of 5% of paid-up voting rights in a Traded Company can requisition an EGM

# Rights & Powers

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## Dividend – Not guaranteed as it depends on company performance

- A dividend can only be paid if there are distributable profits and if the director(s) declare/recommend a dividend
- A **Final Dividend** is approved by members usually at the AGM based on annual accounts and the dividend must not exceed the amount recommended by the directors
- An **Interim Dividend** can be approved by the directors at any time during the year, typically based on interim accounts and does not need shareholder approval
- Rights to a dividend may vary with share classes and it is important to check Constitution for the dividend rights attaching to shares

# Rights & Powers

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## Wind Up a Company

Members can resolve to wind up a company. Two common methods are:

1. **Members' Voluntary Winding Up** – a liquidator is appointed at an EGM by a special resolution or by an ordinary resolution if the company cannot pay its debts
2. **Voluntary Strike Off** – the members pass a special resolution resolving to close the company by way of voluntary strike off

**Note:** Any member, who has held their shares for at least 6 out of the last 18 months, may **petition the Court** to wind up a company and the Court must be satisfied that it is just and equitable to do so. For example, in cases of deadlocks, mismanagement, or exclusion of shareholders from company affairs etc.



# Rights & Powers

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## Right to Restore a Company

- If a company is struck off the Register, it may be resorted by **Administrative Restoration** provided the restoration application is **filed with the CRO within 12 months of the strike off; AND**
  - All outstanding annual returns must be delivered to the Registrar with applicable filing fees
  - The Company must be in compliance with other aspects of the Companies Act such as the EEA resident director
  - If a company was struck off for Revenue non-compliance, a letter of no objection must be obtained from the Revenue
- A **High Court Order Restoration** is required if a company has been struck off for more than 12 months or was wound up by liquidation

# Rights & Powers

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## Rights in case of Oppression (S.212)

- Any member may apply to the Court for an order if they consider the affairs of a company or the powers of the directors are being exercised:
  - i. in a manner oppressive to them or any of the members, or
  - ii. in disregard to their interests, or the interests of members

For example, fraudulent and unlawful transactions, oppressive management, exclusion etc.

- The Court may order payment of compensation or:
  - direction or prohibition of any act or canceling or varying any transaction
  - an order for regulating the company's affair in future which may include an amendment to the Constitution
  - an order that the company purchase the shares held by a member (reduction in share capital)

# Rights & Powers

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## Statutory Pre-emption Rights

- Give existing members the right to receive first offer of shares when shares are being transferred from another existing member or new shares are being allotted by a company
- It's essentially a right to first refusal and a member may decline/waive the offer of shares
- Statutory Pre-emption Rights do not apply to the allotment of Preference Shares, allotments for non-cash, or allotments in employee share schemes
- Pre-emption Rights may be disapplied/removed in the Constitution

# Shareholder Agreements (SHA)

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- SHA is legally binding contract between Shareholders and often the Company itself about how a company is managed and shareholders' rights and obligations
- Private contract which is not filed with the CRO or in the public domain
- SHA can help to avoid disputes, deadlocks, and provide minority and majority shareholder protections among other provisions
- **Key Point: SHA should be read with the Constitution of the Company and it's important to check whether there is a SHA in place**

## Examples of provisions in a SHA: -

- Composition of the Board – minority shareholder may appoint rep. to the Board
- Pre-emption rights on new share issues or transfers
- Non-Compete Provisions – be careful not to breach restraint of trade or Competition Law
- Further provisions relating to voting deadlocks, exiting employees/directors/shareholders

# Shareholder Agreements (SHA)

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## Variation of SHA and dealing with an inconsistency with the Constitution

- The procedure for variation of a SHA should be included in the SHA. For example, all parties to the SHA must consent unanimously to the variation
- High Court has power to vary or terminate a SHA (S.212)
- Important that a SHA and the Constitution are drafted to avoid material inconsistencies
- A “**Supremacy Clause**” in a SHA typically provides that in the event of inconsistency with the Constitution, the SHA will prevail and that the shareholders agree that they will use their voting powers to amend the Constitution to remedy inconsistency

# Register of Beneficial Ownership (RBO) - Companies

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**Main Point:** Consider the RBO when there is a change in shareholdings

- All Irish companies (excluding listed companies) are required to report their beneficial ownership information to the RBO and maintain an internal register
  - Initial RBO filing is within 5 months of incorporation and any updates are to be filed within 14 days
- A **discrepancy** arises when the information held at the RBO is inconsistent with the beneficial ownership position
  - a “relevant person” or “designated person” may file a discrepancy notice with the RBO and a company is then required to agree and remedy, or disagree
- Don't forget to consider the RBO and internal register when handling share transactions which may in a change to nature or extent of beneficial interest, a new beneficial owner or cessation of a beneficial owner



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# Shareholder Exit – Company Secretarial and Tax Considerations

George Alton and Robert Lohan



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# Introduction - Shareholder Exit

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A Shareholder Exit is a key event in lifecycle of a company:-

- **Share Sale**
  - (i) Sale of shares by one shareholder
  - (ii) Company sale
- **Share Redemption**
- **Members Voluntary Liquidation**

Key Considerations – Tax, Timing, Existing Agreements





# Share Sale – Sale of Shares by One Shareholder in a Multimember Company

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## Company Secretarial Considerations

- Details of scenario around sale.
- Shareholders Agreement.
- Constitution.
- Associated documentation/steps
  - Board approval
  - Share Purchase Agreement (if required)
  - Deed of Adherence (if required)
  - Share certificates
  - CRO/RBO

## Taxation Considerations

- Sale or redemption/buyback.
- Capital Gains Tax (CGT) or potentially Income Tax (IT).
- CGT reliefs.
- Stamp Duty payable by purchaser.

# Capital Gains Tax Reliefs

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## Retirement Relief

- Aged 55 or more.
- Qualifying Assets.
- Family Trading Company.
- Shareholding requirement 10%/25%.
- 10 year holding period.
- Working requirements.
- Monetary limits on consideration
  - €750k/€500k
  - €10m/€3m

## Revised Entrepreneurs Relief

- No age criteria.
- Qualifying Assets.
- Trading Company.
- Shareholding requirement 5%.
- 3 year holding period.
- Working requirement.
- €1m gain.

# Share Sale – Sale of Entire Issued Share Capital of Company

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## Company Secretarial Considerations

- Details of scenario around sale.
- Shareholders Agreement.
- Constitution.
- Associated documentation/steps:
  - Board approval
  - Share Purchase Agreement
  - Closing documents:-
    - Share certificates
    - Statutory books & registers
    - Company seal
  - CRO/RBO

## Taxation Considerations

- CGT event.
- Section 135 TCA 97 – Distribution.
- CGT reliefs.
- Warranties & Indemnities.
- Tax Indemnity
  - Limits: Time & monetary
  - Liability: Joint & Several or Several

# Share Sale – Share Redemption

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## Company Secretarial Considerations

- Details of scenario around redemption.
- Distributable Reserves.
- Shareholders Agreement
- Constitution.
- Associated documentation/steps
  - Board approval/ shareholder approval
  - Share certificates
  - CRO/RBO

## Taxation Considerations

- Distribution – IT
- CGT event if
  - Trade benefit test / trading company.
  - Not an arrangement to participate in profits.
  - Vendor is resident & ordinarily resident in the State.
  - 5 year holding.
  - Shareholding substantially reduced.
  - Not connected post sale.

# Share Sale – Members Voluntary Liquidation

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## Company Secretarial Considerations

- Associated documentation/steps:
  - Board/shareholder approval
  - E1 Sap – Declaration of Solvency
  - Iris Oifigiúil
  - **Timing**
  - Cessation of Liquidation

## Taxation Considerations

- CGT event.
- CGT reliefs.
  - Timing.
  - Mix of assets.
  - Distribution in specie.

Corporate Governance Update  
- Quick Bites

Anna Holland



## What happened in 2023 - Things to be mindful of

- The Mobility Directive:
  - ❑ Came into effect in May 2023
  - ❑ Enables Irish limited liability companies to migrate and change their registered office address to other EEA countries whilst retaining their legal personality
- Requirement for PPSN (or IPN) to be included in certain CRO filings effective 11 June 2023
  - ❑ Forms A1, B1, B10 and B69
  - ❑ Whilst the pain of this has already been felt for the majority, for those who may have Q1/Q2 Annual Return Filings, it is important to work this process through as early as possible to avoid issues occurring
- Beneficial Ownership Register - amendment to Regulations introduced a “legitimate interest” test
  - ❑ The European Union (Anti-Money Laundering): Beneficial Ownership of Corporate Entities (Amendment) Regulations 2023 signed into law on 13 June 2023

## What happened in 2023 - Things to be mindful of (cont'd)

- ❑ Persons, other than those identified as having right to access the Central Register (such as certain public bodies, relevant competent authorities, designated persons) must prove that:
  - the application is engaged in the prevention, detection or investigation of money laundering or terrorist financing;
  - the information is being sought for those purposes; and
  - the access request relates to a person who has been convicted of such offences or hold assets in a high-risk country
  
- Re-commencement of enforcement action by the CRO in the second part of 2023
  - ❑ Involuntary strike-off proceedings by the CRO had been paused due to Covid-19
  - ❑ In late 2023, the CRO commenced issuing 10-week Enforcement Warning Letters to companies late in filing their Annual Returns
  - ❑ The involuntary strike-off process commenced if companies had not returned to compliance within 10 weeks of the date of the Enforcement Letter



## What happened in 2023 - Things to be mindful of (cont'd)

- On 15 December 2023, the interim period under the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 relating to the holding of virtual meetings, including AGMs, was further extended to 31 December 2024
- The Charities (Amendment) Bill 2023:
  - ❑ Has had a slow journey since original Heads of Bill first published in 2022
  - ❑ Completed its First Stage in Dáil Éireann on 22 December 2023
  - ❑ Whilst the primary purpose of the legislation is to facilitate introduction of Financial Accounting Regulations for charitable organisations, the Charities Regulator has taken the opportunity to include additional items in the Bill, including amending any element of a charity's Constitution without prior approval of the Regulator
- Corporate Enforcement Authority really settled into its role in 2023

## Corporate Enforcement Authority (the “CEA”)

- What is it?
  - ❑ Established in July 2022 as an independent statutory body to replace the Office of the Director of Corporate Enforcement (the “ODCE”)
  - ❑ On establishment was provided with increased resources to enable it to investigate and prosecute breaches of company law and combat white collar crime
  - ❑ The CEA’s statutory mandate derives principally from the Companies Act 2014, however, it also has statutory functions in respect of certain investment vehicles under the Irish Collective Asset-management Vehicles Act, 2015
  - ❑ In addition, the CEA is the competent authority for the purpose of imposing sanctions on company directors under the Companies (Statutory Audits) Act 2018
- The role of the CEA is best “summed up” by itself on its own website:
  - ❑ *“Promoting high standards of corporate behaviour through the enforcement of company law”*

## Corporate Enforcement Authority (the “CEA”) (cont’d)

### ➤ Its functions:

- ❑ The CEA’s primary functions derive mainly from the Companies Act 2014 and include:
  - promoting compliance with company law
  - assessing the behaviour and conduct of directors of insolvent companies in liquidation and adjudicating upon whether public protection considerations warrant a director being restricted or disqualified
  - investigating instances of suspected breaches of company law
  - taking appropriate enforcement action in response to identified breaches of company law
- ❑ In addition, to assist directors and company secretaries to navigate their responsibilities, the CEA has published a range of information and guidance documents
  - which we ourselves recommend regularly to clients
- ❑ The CEA also has a role in actively encouraging members of the public to submit complaints/expressions of concern where there may be breaches of company law
- ❑ Is the designated body to receive “*protected disclosures*” from workers (with the definition of workers now extended to include Board members and shareholders)

## Corporate Enforcement Authority (the “CEA”) (cont’d)

### ➤ Its powers:

- ❑ The CEA has certain investigative and enforcement powers, both criminal and civil, which include:
  - Powers of investigation:
    - ❖ power to require the production of documents by companies and 3<sup>rd</sup> parties
    - ❖ powers of search and seizure
    - ❖ the power of arrest
    - ❖ the right to request the courts to approve/trigger additional investigative measures
  - Enforcement powers:
    - ❖ to offer director restriction and disqualification undertakings which become legally binding if accepted
    - ❖ to apply to the High Court for the disqualification of company directors
    - ❖ to apply to the High Court to have a company wound up
    - ❖ to initiate summary prosecutions in the District Court
    - ❖ the right to refer more serious matters to the Director of Public Prosecutions

## Corporate Enforcement Authority (the “CEA”) (cont’d)

- Updates since establishment to note:
  - ❑ In June 2023, the CEA was conferred with further powers of investigation and enforcement concerning tax reporting under the EU (Disclosure of Income Tax Information by Certain Undertakings and Branches) Regulations 2023
  - ❑ In responding to a public consultation on the proposed Companies (Corporate Governance Enforcement and Regulatory Provision) Bill 2023, the CEA has put forward proposals to enhance its investigative capabilities and increase access to certain Court documents
  - ❑ Guidance published in July 2023 to members of the public who receive unsolicited approaches to become directors of companies they know little about... a clear indication of the proactive approach being taken by the CEA
- What do we take from all of this??
  - .....the CEA.....closely watch this space!

## 2024 - Keep a watching eye

- Proposals to amend Companies Act 2014
  - ❑ In May 2023, the Department of Enterprise, Trade and Employment launched a public consultation on proposals to enhance the Companies Act 2014 with focus primarily on 4 areas:
    - corporate governance - including option to hold fully virtual AGMs and General Meetings;
    - company law enforcement and supervision: enhanced powers for CEA, IAASA and CRO;
    - company law administration; and
    - corporate insolvency
  - ❑ Whilst no update on the consultation has been published to date, the announcement to extend the provision for virtual general meetings to the end of 2024 indicated permanent legislative provisions relating to virtual and hybrid meetings would be brought forward in 2024

## 2024 - Keep a watching eye (cont'd)

- Corporate Sustainability Reporting Directive (the “CSRD”)
  - ❑ Aims to develop a harmonised EU-wide framework for reporting of relevant, comparable and reliable sustainability information
  - ❑ Is applicable for mainly large and listed companies
  - ❑ Must be transposed into national law by EU Member States by July 2024
  - ❑ Applicable, however, for financial years beginning on or after 1 January 2024
  - ❑ Leads naturally into European Sustainability Reporting Standards which:
    - were adopted in 2023
    - prescribe in detail the information which needs to be reported by companies subject to the CSRD

## 2024 - Keep a watching eye (cont'd)

- In the UK: The Economic Crime and Corporate Transparency Act 2023
  - ❑ Whilst a number of provisions will only be coming into effect over the coming years, from **March 2024**:
    - the Companies House will have greater power to query information;
    - there will be stronger checks on company names;
    - new rules for registered office address (i.e. no PO Boxes allowed) will apply; and
    - new lawful purpose statements requirements will commence
  - ❑ Obviously not of relevance to Irish incorporated companies, however of interest reflecting changes being implemented only now and for those of us working with UK clients/companies





Questions &  
Answers





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# Conn Cleary – Regional Development Manager, Ireland

CGI UK & Ireland – Irish Region



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Thank You