

## BREXIT and the Companies Act 2014 (“CA2014”) - Are you Prepared?



### EEA resident director requirements

As a result of the ongoing Brexit negotiations it is a possibility that the United Kingdom (“UK”) will be leaving the European Union (“EU”) on 29 March 2019. At that point, any company incorporated in the Republic of Ireland (the “State”) and currently relying on UK resident Directors to meet EEA residency requirements will be in breach of the CA2014.

Under the CA2014 (s.137) companies registered in Ireland are required to have at least one director resident in the EEA (European Economic Area). It is, therefore, a criminal offence not to have at least one EEA-resident director and the Registrar of Companies is empowered to bring proceedings before the Dublin Metropolitan District Court for breach of this requirement.

The EEA currently consists of 28 member states of the EU, (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom), plus Iceland, Liechtenstein and Norway.

To date there are no indications to amend this requirement, therefore, if your company currently relies on director(s) resident in the UK, now is the time to start thinking about what can be done to ensure your company remains compliant with the CA2014.

### What are the options?

- **Appoint an EEA resident director:**

Your company should consider appointing a director from one of the other 27 EU member states listed above. Do you have a suitable candidate to fill the position of EEA director for your company? Are there specific requirements within your corporate structure when appointing a director? Check your company’s constitution to understand who has authority to appoint a new director. We can guide you on reviewing your options and assist with any appointment.

- **Non Resident Director Bond can be put in place:**

A Director bond (s.137 CA2014), which costs from approx. €1,500 to €2,000 (plus VAT) and lasts for 2 years, can be arranged. The purpose of the bond is to guarantee that, in the event of a company being issued a fine (up to €25,000) as a result of a breach of either Company or Tax legislation, the liability will be discharged under the bond rather than the authorities having to take proceedings against the company. We will happily assist you in applying for an insurance bond if required.

- **Obtain a certificate of “real and continuous link” from the CRO (s.140 CA2014)**

There is one exemption from the requirement to have an EEA-resident Director and this applies to companies that can evidence that they have established a “real and continuous link with one or more economic activities carried on in the State”. In order to obtain that certificate, the company will have to satisfy the Revenue Commissioners that certain conditions are satisfied. An application for such a certificate is made to the CRO on Form B67 which must be accompanied by a statement from Revenue, made within two months of the date of application.

If the UK remains in the EU, then your company’s circumstances regarding its directors will not change, however, in the event this is not the case, please contact us as soon as possible to discuss the best options for your company.

*This information is for guidance only and should not constitute as legal or any other advice*