CORPORATE GOVERNANCE
AND COMPANY SECRETARIAL SPECIALISTS

FCS SERVICES
Corporate Governance Specialists

Spring 2019 Newsletter

A Simple Guide for Companies

Recap on 2018 – At a glance

The Companies (Statutory Audits) Act 2018 – amended various provisions within the Companies Act 2014 (“CA2014”) in relation to statutory audits of financial statements, one of which related to late filing of annual returns. With the introduction the Act, the loss of audit exemption arising from a late filing of an annual return commences from the following two years and not the year to which the late annual return relates**.**

The Criminal Justice (Corruption Offences) Act 2018 – a key consequence for companies under this Act is a company is liable for the actions of directors, managers, secretaries, officers, shadow directors, employees, agents and subsidiaries who commit a corruption offence with the intention of obtaining business advantage for the company. If convicted, a company is liable to a fine of €5,000 on summary conviction or an unlimited fine on conviction on indictment, a term of imprisonment and /or forfeiture of property.

UK Corporate Governance Code – reviewed and updated code is in operation since January 2019. Companies listed on the MSM should ensure that they are in compliance with the new code during 2019 and in a position to report on that compliance in their annual report in 2020.

New Charities Corporate Governance Code - the Charities Regulator introduced a new code for all charities, using the ‘comply or explain’ approach, primarily focusing on volunteer-only charities and charities with small numbers of paid staff. The code was introduced to help charity trustees (Board & Committee members) meet their legal duties under Irish Charity law.

AMLD4 – The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 commenced in November 2018 transposing the Fourth Anti Money Laundering Directive into law. One of the main measures in the Act included tightening the rules on customer due diligence and enhancement of beneficial ownership information.

Planned for 2019

The General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018 – was published towards the end of 2018 with the Primary aim being to enhance Ireland’s economic and regulatory framework. In addition to the proposal to re-establish the Office of the Director of Corporate Enforcement as a stand alone agency, the Scheme will make a number of amendments to the Companies Act 2014.

Enhanced Shareholder Rights – must be transposed into Irish law by June 2019. The directive applies to companies having their registered office in a member state and whose shares are admitted to trading on a regulated market in the EU.

Beneficial Ownership Register (‘BOR’) – the Regulation currently requires companies incorporated in Ireland to hold adequate, accurate and current information on their ‘beneficial owners’ on an internal beneficial ownership register. Failure to comply with the obligations is a statutory offence. The Department of Finance is drafting legislation to establish a central register of beneficial ownership and considering the implications of 5AMLD on the register which will be governed by the CRO.

The European Union (Anti-Money Laundering Beneficial Ownership of Trusts) Regulation 2019 - adopted on 29 January 2019 and applies to all express trusts whose trustees are resident in Ireland or where the Trust is otherwise administered in the State.

ePrivacy Regulation (ePR) – one step further than GDPR, the EU will be introducing a new regulation and it’s not just about the cookies! It is about infringements and fines. No confirmed date for commencement as yet.

FCS Corporate Services Limited
Galway Technology Centre, Mervue Business Park, Galway, H91 XN5E
Tel: 091 704818
E-mail: info@fcscorporateservices.com

BREXIT and the potential implication on Irish incorporated companies

Whilst negotiations continue in relation to Brexit, Irish incorporated companies who have either UK resident directors, are part of a UK group, or businesses which may be operating in the ROI as a branch of a UK entity cannot afford to wait until there is final clarify before considering what they need to do.
Our recent briefing note (click here) on Brexit may be of interest as an initial starting point, and other areas you may want to consider are as follows:

- **Setting up a company in Ireland**
- **Benefits of an outsourced Company Secretary**
- **Appointing an EEA director**
- **The role of the Company Secretary**

Setting up a company In Ireland:

With the uncertainty of Brexit developments, more and more companies are considering a corporate restructure and/or setting up a company in Ireland for the skilled and educated workforce, low corporate tax rate and access to the EU market which make Ireland an attractive location.
To set up an Irish company you must

- have at least 1 EEA resident director;
- an ROI registered address;
- if 1 Director the company secretary must be a separate individual or corporate.

In addition as it is becoming more likely 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 unless action is taken.

The role of the Company Secretary:

It is a legal requirement for every company in Ireland to have a Company Secretary. Company Secretaries have a very important function and play a vital role in supporting the board of directors in ensuring the company meets all of its company law duties & responsibilities, and ensuring good corporate governance. Our dedicated team provide a personalised service which is based on specialist knowledge and experience in the industry.

Appointing a Director for your Company:

The majority of companies in Ireland are a private company limited by shares ("Ltd"). They may have just one director and a company secretary, but every other type of company must have at least two directors and a company secretary. Every Irish registered company requires at least one director to be resident in EEA or put in place a bond in accordance with the section 137 of the CA2014. There are a number of items to consider when appointing a director: there is a limit on the number of directorships a person may hold; appointments of directors are governed by the company's constitution; A director must provide their consent in writing to being appointed. FCS Services would be happy to assist you with any director changes.

Why outsource your Company Secretary requirements:

There is an increased responsibility on companies to ensure they are complying with all the statutory requirements that are out there today. Many businesses do not have a dedicated qualified & experienced Company Secretary and this is increasing the burden on other roles within the company. Many of the companies who approach us are becoming aware of the statutory obligations under the CA2014 in relation to the Company Secretary and recognise the benefits an outsourced service like ourselves can provide.

The lifespan of a Company

There are times when the lifespan of a company comes to an end. Perhaps it is a dormant company and has ceased trading, or has never traded. If your company has less than €150 in assets & liabilities and all filing requirements with the Companies Registration Office ("CRO") are up to date, a simple cost effective method of dissolving the company & maintaining a clean reputation as a company director/owner would be able to avail of the members' voluntary strike-off process. For more complex companies, or companies which may have had a lengthy historic trading past, a members' voluntary liquidation would be a more appropriate dissolution route and would require the appointment of a registered liquidator.

How can we help you and your company?

We can assist you with all your company secretarial and corporate governance requirements.
For more information on the topics covered above please contact:

+353 (0)91 704818
info@fcscorporateservices.com

Anna Holland
Managing Director

CORPORATE GOVERNANCE
AND COMPANY SECRETARIAL SPECIALISTS

FCS SERVICES
Corporate Governance Specialists