

Latest Developments in Company Law

The Companies Act 2014

4th December 2023

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10 Great Applications under the Companies Act 2014 to know about

10 Really Useful Applications under the Companies Acts that clients will need in 2024 which also have the capacity to increase fee income

Key Predictions for 2024

The Work, Role, Duties and Responsibilities of the Company Director will increase in 2024 and beyond

2024 is the perfect time to crank up Corporate Work

Corporate compliance is too much for the average company director to handle

CRO compliance is not getting any easier

Over a million shareholders/directors mainly of private limited liability companies

2022 CRO Figures

- ZERO!! companies involuntarily struck off
- 6,376 companies struck off by consent
- 66 companies restored within 12 Months
- Few OMCs restored by the CRO H1 OMC
- 30 High Court restoration
- 420 Creditors Vol liquidations
- 42 High Court liquidations
- 770 Section 343 District Court CRO late Filing Fee Waiver Applications in 2021

That Is Going to Change Drastically

Over 30,000 companies are currently in line of sight to be very quickly and efficiently being sent to **DEATH ROW** and most of these will be **GONE**, struck off the register by summer 2024 and have lost their corporate existence and any assets left vesting in the State

Company directors in 2024 are expected at the very least to know their company law with the basic requirement to certify on appointment that;

"I acknowledge that as a director I have legal duties and obligations imposed by the companies acts, other enactments and at common law"

What Are the Basic Corporate Governance Rules

1. Irish Company Law in 2024 starts off with the new Companies Act 2014 which effectively has become the new rulebook for all company types

2. “Other Enactments”

This includes all the relevant legislation for a company such as Health and Safety Law, Employment Law, Equality Law, Fire Services Acts 1988 to 2003, the Criminal Justice Act 2011, Revenue Law, Data Protection, Financial Services Law, Food Safety and Hygiene, Waste Management, except etc. etc.

3. “The Common Law”

The Common Law is the judge-made law. That is the reported decisions/judgements handed down in the High Court and the Supreme Court. These decisions are then followed by the other judges and become part of the Common Law.

4. The Constitution

- The Memorandum and Articles of Association sets out how the company is governed.
- In 2023, you refer to the Constitution

What's Relevant for Solicitors and their Clients in 2024

- We have 300,000 + LTD's in 2023
- 750,000 company directors
- 1 Million shareholders/ members of companies
- Come January 2024, lots of companies will still be late with CRO compliance
- Companies are not really availing of the District Court CRO waiver
- Many Don't Have Shareholders Agreement in Place

More Meetings of Directors Required

Another very important role for solicitors in leading the way by way of structured regular monthly board meetings to discuss the financial affairs of the company, debtors creditors, cash flow, what's happening on the ground, sales projections et cetera et cetera and all of this needs to be committed to paper and minuted in detail.

Section 166. - Minutes of proceedings of directors

166. (1) A company shall cause minutes to be entered in books kept for that purpose of—

(a) all appointments of officers made by its directors;

(b) the names of the directors present at each meeting of its directors and of any committee of the directors;

(c) all resolutions and proceedings at all meetings of its directors and of committees of directors.

Section 166. - Minutes of proceedings of directors

(2) Such minutes shall be entered in the foregoing books as soon as may be after the appointment concerned is made, the meeting concerned has been held or the resolution concerned has been passed.

(3) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.

Section 166. - Minutes of proceedings of directors

(4) Where minutes have been made in accordance with this section of the proceedings at any meeting of directors or committee of directors, then, until the contrary is proved—

(a) the meeting shall be deemed to have been duly held and convened;

(b) all proceedings had at the meeting shall be deemed to have been duly had; and

(c) all appointments of officers made by its directors at the meeting shall be deemed to be valid.

Section 166. - Minutes of proceedings of directors

(5) A company shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book or books kept in accordance with subsection (1) by it and shall give to the Director of Corporate Enforcement such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.

(6) If a company fails to comply with subsection (1) or with a requirement made of it under subsection (5), the company and any officer of it who is in default shall be guilty of a category 4 offence.

Implications for directors of dissolved unliquidated companies

In 2024, you will not be able to walk away from a company and hope that it will struck off the register, disappear and be forgotten about.

Companies must be terminated or disposed of properly and in accordance with law.

Cautious Trading Limited

This is still very much the law the land and is the main case setting out the consequences for company directors like Martin and Linda Forristal directors of this company that did not engage with the ODCE or offer any evidence to the court when the disqualification proceedings were initiated.

These two directors were banned for five years, costs against the directors to be taxed in default of agreement.

The New 2024 Company Law

Here is a link on the Law Reform Commission website to the Companies Act 2014 as revised, updated to 4th July 2023.

<https://revisedacts.lawreform.ie/eli/2014/act/38/front/revised/en/html>

Other Important Weekly Reading

[https://www.cro.ie/en-
ie/Publications/Publications/CRO-
Gazette/2023-Gazette/category/2023-
gazette](https://www.cro.ie/en-
ie/Publications/Publications/CRO-
Gazette/2023-Gazette/category/2023-
gazette)

Good idea to have a read through the Wednesday CRO Gazette and the list of companies on the InVoluntary Strike List First Notice

THE CRO GAZETTE

The CRO Gazette is published every Wednesday and the first list of companies on the involuntary strike of list was published on Wednesday 15th November and every Wednesday companies will be consistently listed for strike off within 28 days and usually this is considerably less than 28 days as the Registrar tends to strike the company is off on the preceding Friday so time is of the essence if the company is listed here if they wish to avoid being struck off the register there is little that can be done other than file the outstanding annual returns or bring an immediate Section 343 Application before the District Court or the High Court depending on the circumstances of the case.

THE CRO GAZETTE

The latest list published on Wednesday, 22 November 2023 contains some interesting companies about to be dissolved before Christmas:

Hayes Hotel Ltd-this company bears the name of the famous hotel in Thurles County Tipperary where the first members of the GAA met there in 1920's and were established by Archbishop Croke I think and it has historic meaning even though this company was incorporated only 34 years ago in 1989 it probably took over the business of that hotel in Thurles County Tipperary

THE CRO GAZETTE

FAXHILL Homes Limited-this has history and is a company that was owned by Michael Lowry the politician and was caught up in a controversy with Ben Dunne over not keeping proper books and records

THE CRO GAZETTE

Cleary & Co 1941 public limited company, this is the death notice for old Clery's shop on O'Connell Street and the famous under Cleary's Clock meeting point established by Michael Guiney and his wife Mary Guiney who ran the company for many years as one of the main department stores in O'Connell Street particularly during the 50s and 60s when it was The Shop in Dublin where most people did their shopping on the main shopping street O'Connell Street in the good old days before they went to Brown Thomas and the other fancy places over the south side Cleary's was the mainstay for the folk of Dublin for many many years and unless it files its outstanding annual returns within the next 28 days it will be dead in the water before Christmas 2023,

COMPANY RESTORATION APPLICATIONS

1. The CRO form H1-12 months
2. The CRO form H1 OMC-6 years
3. High Court Application-20
Years
4. High Court Application Trustee
-20 plus

The New Companies Act 2024

The New Companies Act 2024 is currently in the form of a draft bill being drafted by the parliamentary draughtsman and all the stakeholders and is expected to be introduced in the Oireachtas as an official new Companies Bill 2024 with the expectation that it will be passed into law by the end of 2024 bringing in lots and lots of new changes for all concerned

The Big Company Law Issues Coming Your Way

1. Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024

The New Companies Act 2024

1. Corporate Governance
2. The Company Law Enforcement and Supervision
3. Company Law Administration
4. Corporate Insolvency Including the Regulation of Receivers

1.CORPORATE GOVERNANCE

The Companies (Miscellaneous Provisions) Covid 19 Act 2020 facilitated the holding of virtual general meetings during the period of the pandemic to enable companies fulfil their obligations. These provisions were temporary and time bound with the Act due to lapse in December 2023.

It is proposed that these provisions will be put on a permanent basis for an option in addition to the holding of physical and hybrid meetings to hold fully virtual AGM's and general meetings

2. COMPANY LAW ENFORCEMENT AND SUPERVISION

The New Act will seek to enhance the powers of the Corporate Enforcement Authority CEA and the Irish Auditing and Accounting Supervisory Authority and the Companies Registration Office CRO to streamline procedures, deliver administrative efficiencies and strengthening reporting requirements

3. COMPANY LAW ADMINISTRATION

It is proposed to enhance certain administrative processes carried out by the Registrar of Companies to ensure the register is suitably equipped as well as modernising certain administrative requirements for companies

4. CORPORATE INSOLVENCY/REGULATION OF RECEIVERS

Numerous amendments are proposed to various insolvency related processes across the Companies Act 2014 including late filing fees for liquidators CRO forms and enhanced regulation and first time registration of receivers along with a **SCARP “Small Companies Administrative Rescue Process”** makeover

Possible simultaneous reporting by liquidators to the DPP and the CEA

Sections 723 of the Companies Act 2014 to streamline the procedures whereby Liquidator's Report offences committed by officers and members of a company to provide for simultaneous reporting to the DPP and the CEA

LATE FILING FEES FOR LIQUIDATORS

A NEW PROPOSAL!

Proposed new system of late filing penalties to discourage late filing of CRO forms E3 & E4 by liquidators in relation to meetings to be held at the end of each year and information about the progress of liquidations

COVERT SURVEILLANCE!

COVERT SURVEILLANCE!

A New Proposal to Extend the Criminal Justice (Surveillance) Act 2009 to the CEA to give the authority the power to apply to court for permission to conduct covert surveillance where certain offences are being investigated

DISCLOSURE OF DATA, **Section 787**

New provision to amend the Communications (Retention of Data) Act 2011 bringing the CEA and company law offences within its scope to allow the CEA apply for authorisation to require disclosure of data where it relates to a person who is suspected, on reasonable grounds, has committed certain company law offences

DISCLOSURE OF DATA, **Section 788**

To facilitate an extended power of search, similar to provisions already contained in Section 788 for paper/physical documents, but for electronic/remote data

Major Amendment to Section 363 Loss of Audit Exemption

A new two-step graduated regime to deal with late filing rather than automatic loss of audit exemption for two years will operate as follows:

On the occasion of the first instance of late filing, penalties will be incurred but there will be **no loss of audit exemption**

Major Amendment to Section 363 Loss of Audit Exemption

If there is a further instance of late filing within the following five year period, late filing fees will be incurred and the entitlement to audit exemption will be lost for the following two financial years with the company required to file audited financial statements for those years

Probation of Offenders Act 1907

To enhance the deterrent effect prosecutions for nonfiling of CRO annual returns proposed that the supply the above Act in prosecutions for nonfiling of the CRO return removing the possibility were in lieu of been convicted of an offence, the court can instead requested a contribution to a charity be made

ADDITIONAL GROUNDS FOR INVOLUNTARY STRIKE OFF OF COMPANIES

Adding in the new additional ground for a voluntary strike off by permitting the Registrar of Beneficial Ownership to request that the Registrar of Companies strike off a company for its failure to comply with the obligation to provide a statement detailing the beneficial owners!

Registered Office Provisions

To give the registrar power to request evidence in support of the company's application to change its registered office address thereby providing a greater assurance as to the accuracy of the register

Registered Office Agent (ROA)

To Allow a Registered Office Agent (ROA) to notify the Registrar that the registered office of the company is no longer in the care of that ROA and to provide documentary proof of that fact. On foot of this notice shall be sent to the officers of the company requiring notification of the new registered office within 14 days. Failure to comply may result in strike off proceedings!!

Gender Balance Requirement

New proposal to require companies to confirm annually the gender balance of its directors. This is in order to provide more granular data concerning gender at director level to assist in analysis and policy development

10 GREAT COMPANY LAW APPLICATIONS

1. Section 343 CRO District Court Late Filing Fee Waiver Application

This application can be made in both the High Court or the District Court and if successful waives late filing fees of over €3,600 and companies retain audit exemption and don't need to pay for expensive and hugely cumbersome statutory audits

10 GREAT COMPANY LAW APPLICATIONS

2. Section 212-Shareholder Disputes

With over 1,000,000 shareholders and members of companies it's inevitable that disputes will arise between members requiring at times urgent High Court intervention seeking various orders that are available pursuant to Section 212 of the Companies Act 2014

10 GREAT COMPANY LAW APPLICATIONS

3. Section 797-the 14 days statutory warning For Non-Compliance with the Companies Act 2014

A wonderful little remedy available under the Companies Act 2014 to any member or creditor of a company and has quite a wide application and the capacity to be very effective as in the attention seeking tool

10 GREAT COMPANY LAW APPLICATIONS

4. Section 569-Winding up Petition

The threshold of a creditor debt exceeding €50,000 was introduced during the Covid Pandemic and may expire on 31 December 2023 and revert back to €10,000 to ground an application to present a winding up petition in the High Court

10 GREAT COMPANY LAW APPLICATIONS

5. Section 738-restoration application

A very useful application in the arsenal of a creditor owed monies from company inadvertently struck off the register for nonfiling of statutory returns or other reasons

10 GREAT COMPANY LAW APPLICATIONS

6. Section 53 of the Companies Act 2014-Enforcement of Orders and Judgements against Companies and Their Officers

A very useful application aimed at enhancing the enforcement of orders and judgements against companies and their officers

10 GREAT COMPANY LAW APPLICATIONS

7. Section 567 of the Companies Act 2014 “switching on” of “Liquidator Type Powers” for Unliquidated Dissolved/ Struck Off Companies

A powerful remedy for creditors where a corporate body has been left abandoned unliquidated and may be dissolved and not paying its debts as they fall due for payment

10 GREAT COMPANY LAW APPLICATIONS

8. Section 457 of the Companies Act 2014 CPO provisions to enable a shareholder/shareholders with more than 80% to CPO shares

10 GREAT COMPANY LAW APPLICATIONS

9. Section 842 of the Companies Act 2014, Power of the Court to Make a Disqualification Order

10 GREAT COMPANY LAW APPLICATIONS

10. Section 558 of the Companies Act 2014 Part 10A SCARP, **Small Company Administrative Rescue Procedure** for small and micro companies, small company threshold now being increased to turnover below €15 million

Adjustments of the size criteria for micro small medium-size and large companies In Groups

Amending the Account of Directive 2013/34/EU

The European Commission is proposing to simplify reporting requirements with the ultimate aim to reduce such burdens by 25%. They say their culmination over time can result in redundant, duplicating or obsolete obligations in efficient frequency and timing are inadequate methods of collection and when finalised will adjust upwards size criteria with regard to CRO filings

Proposed new size criteria adjusted by 25% to Account for Inflation

MICRO COMPANY

BALANCE SHEET €437, 500

NET TURNOVER €875,000

Proposed new size criteria adjusted by 25% to Account for Inflation

SMALL COMPANY

BALANCE SHEET €7.5 MILLION

NET TURNOVER €15 MILLION

Proposed new size criteria adjusted by 25% to Account for Inflation

MEDIUM/LARGE

BALANCE SHEET €25 MILLION

NET TURNOVER €50 MILLION

2. The CEA, Corporate Enforcement Authority

Companies (Corporate Enforcement Authority) Act 2021

The New CEA, preplacing the ODCE.

The CEA, Corporate Enforcement Authority

The New ODCE!

The CEA was formally established in 2022

Now run by a Commission, between one and three full-time members including the former ODCE Director, Ian Drennan

Staff numbers are doubled

The CEA, Corporate Enforcement Authority

Garda Siochana numbers are doubled

It's inevitable that the new CEA will cast a wider net

Lots of potential customers out there for the CEA, thousands of directors of involuntarily dissolved companies may be in the firing line?

They have an Obvious Exposure

Companies (Corporate Enforcement Authority) Act 2021

Addition of new grounds for applications to restrict a director where directors failed to meet certain requirements to convene a general meeting of shareholders for the purposes of nominating an named liquidator

New Section 888A Requirement, when submitting incorporation papers forms A1, CRO B1 Annual Return or CRO Form B10 notice of change of directors or secretary to provide a Personal Public Service Number PPSN or such other information required by the Registrar

5. S.I. 380 of 2022

The European Union (Preventive Restructuring) Regulations 2022

Important new Early Warning Tools and
Important New Directors Duties to
Creditors

A Significant Amendment to the Companies Act 2014

It's the law here since 29 July 2022 that the Irish company directors for the first time unable or unlikely to be able to pay their debts as they fall due must have regard to the interests of creditors as a new statutory duty and applies to all directors executive and non-executive!!

NEW ADDITIONAL DUTIES

A director who believes or has reasonable cause to believe that a company is unlikely to be unable to pay its debts as they fall due for payment must have regard to:

1. The interests of creditors
2. The need to take steps to avoid insolvency and
3. The need to avoid deliberate or grossly negligent conduct that threatens the future of the business of the company

The Greymountain Case

The High Court pierced the veil of incorporation to make directors and shadow directors personally liable for the fraud of a company Twomey J in the High Court was critical of Irish directors because they failed to observe the basic duties of a director as they failed to:

1. inform themselves about the nature of their duties as a director
2. Acquaint themselves with the affairs generally of the company
3. and exercise appropriate supervision or oversight at a board level in respect of the execution or discharge of whatever tasks and functions had been properly and appropriately delegated to others

Company Secretary

"Qualification Test" S.129

Directors are obliged to ensure that the person appointed Secretary is suitable;

Secretaries will have to consent and acknowledge their legal duties.

Company Secretary

"Qualification Test" S.129

Section 226 (2), Companies Act 2014 will provide:

".... The directors of a Company shall, in their appointment of a secretary, have a duty to ensure that the person appointed has the skills necessary so as to enable him or her maintain (or procure the maintenance of) the records (other than accounting records) required to be kept under this act in relation to the Company"

Banned Directors 31 Dec 2022

List of disqualified persons-4,298

List of restricted persons-547

More Shareholder Disputes in 2024!

It's already started and with over 1 million shareholders members of various types of companies it's inevitable that relationships between stakeholders will sour from time to time but it's important for aggrieved shareholders to fully utilise the various applications available to them under the Companies Act 2014 and other ADR procedures

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BARRISTER-AT-LAW

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