

Latest Developments in Company Law

The Companies Act 2014

December 2024

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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 2025 which also have the capacity to increase fee income

Key Predictions for 2025

The Work, Role, Duties and Responsibilities of the Company Director will increase in 2025 and beyond

2025 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

2023 CRO Figures

- ZERO!! companies involuntarily struck off
- 6,227 companies struck off by consent
- 24 companies restored within 12 Months
- Few OMCs restored by the CRO H1 OMC
- 38 High Court restoration
- 591 Creditors Vol liquidations
- 45 High Court liquidations
- 1227 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 2025 and have lost their corporate existence and any assets left vesting in the State

Company directors in 2025 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 2025 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 2025, you refer to the Constitution

What's Relevant for Solicitors and their Clients in 2025

- We have 300,000 + LTD's in 2025
- 750,000 company directors
- 1 Million shareholders/ members of companies
- Come January 2025, 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 2025, 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 2025 Company Law

Here is a link on the Law Reform Commission website to the Companies Act 2014 as revised, updated to 1st October 2024.

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

Other Important Weekly Reading

<https://cro.ie/cro-gazette-category/2024-gazette/>

Good idea to have a read through the Wednesday CRO Gazette and the list of companies on the InVoluntary Strike List First Notice in 2025 when the campaign recommences.

THE CRO GAZETTE

The CRO Gazette is published every Wednesday and the list of companies on the involuntary strike of list is published 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.

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

2 NEW COMPANIES ACTS 2024

1. The Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 (Act)

Enhances protections for employees in a collective redundancy and for creditors and employees on a winding up under the Companies Act 2014

The New Companies Act 2024

Amends section 571 of the 2014 act to oblige directors to notify employees of a winding up petition at the time it's presented to court.

Amends section 572 of the 2014 Act to provide the court can have regard to whether the directors of the Company concerned have met their legal obligations under Section 571 to inform its employees of the winding up petition

Statement of Affairs to be made available to the employees

RELATED COMPANY CONTRIBUTION

Amends section 599 of the Companies Act permitting a liquidator to seek a court order directing a related company to contribute to assets of the company in liquidation

Expands the courts jurisdiction to make a contribution order if the winding up of the company is attributable to the acts or omissions of the related company.

UNFAIR PREFERENCE/RETURN OF PROPERTY IMPROPERLY TRANSFERRED

The time limits for making an unfair preference is extended from 6 months from the date of the Company's winding up or 2 years in the case of a connected person to "such longer period as the court considers just and equitable having regard to the circumstances of the act concerned.

NEW TEST FOR RECKLESS TRADING

The new Act introduces a new test for reckless trading from subjective to objective.

It has removed the requirement that a director must “knowingly” be a party to reckless trading before the court can pierce the veil of incorporation. The relief provisions are tightened requiring directors to satisfy the court that they took steps to minimise the loss to company’s creditors.

2.COMPANIES (CORPORATE GOVERNANCE ENFORCEMENT AND REGULATORY PROVISIONS) ACT 2024

Common Seal: facilitates the execution of instruments under seal on separate counterparts.

Virtual General Meetings: permits companies the option to conduct general meetings and fully virtual or in hybrid format

INVOLUNTARY STRIKE OFF

3 additional grounds for involuntary strike of a company by the CRO

failure to deliver notice of change of registered office

failure to record a company secretary

failure to file beneficial ownership information with the RBO

LOSS OF AUDIT EXEMPTION

Section 22 provides a company that is late with its CRO returns on the first occasion in any 5 year period will no longer lose audit exemption entitlement. However, the relevant section has not yet been commenced into law and it might be February or March 2025 before it becomes operational.

S.I. NUMBER 301 OF 2024

EUROPEAN UNION (ADJUSTMENT OF SIZE CRITERIA FOR CERTAIN COMPANIES AND GROUPS) REGULATIONS 2024

micro company turnover below €900,000

small company turnover below €15 million

medium company turnover below €50 million

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

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

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"

More Shareholder Disputes in 2025!

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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