

SPRING/SUMMER NEWSLETTER

REFLECTIONS OVER THE PAST YEAR

Our eBook series - *My Company Secretarial Companion* - was launched at the end of 2023 with the first two titles available for purchase on our website: *How do I set up my Irish Company and what do I need to know?* and *Irish Subsidiary Company Secretarial Compliance*

Keep a watching eye for further releases in the My Company Secretarial Companion eBook series.

In January 2024, we hosted a *Company Shareholders & Corporate Governance Update* CPD event at Platform94 in conjunction with the Chartered Governance Institute UK & Ireland (CGIUK&I), DHKN and LK Shields.

Being the inaugural CGIUK&I event in the West of Ireland, we were delighted to see so many Company Secretaries and Governance Professionals together at this CPD event.

Last summer we re-launched our website - check it out at www.fcscorporateservices.com!



2024: WHAT'S NEW

PROPOSED CHANGES TO COMPANIES ACT 2014

On 15 March 2024, the *General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024* was published by the Minister of State for Trade Promotion, Digital and Company Regulation. The Office of the Attorney General is now working on priority drafting of the bill.

The General Scheme contains provisions amending and enhancing the Companies Act 2014 primarily relating to four areas of company law, namely, (i) corporate governance, (ii) company law enforcement and supervision, (iii) company law administration and (iv) corporate insolvency.

Provisions that are expected in the bill, once enacted, include:

- the option to hold fully virtual general meetings going forward (originally introduced under the Companies (Miscellaneous Provisions)(Covid-19) Act 2020 (the "Covid-19 Act"), which is set to be repealed at the end of 2024);

READ MORE 

WHAT'S NEW CONT'D....

COMPANIES ACT 2014 - PROPOSED CHANGES

- a graduated regime to replace the automatic loss of the audit exemption for a first late filing with the Companies Registration Office;
- appropriate legislative tools for investigating and prosecuting breaches of company law by the statutory authorities enforcing the Companies Act 2014, namely the Corporate Enforcement Authority, the Companies Registration Office and the Irish Auditing and Accounting Supervisory Authority; and,
- a permanent provision to enable documents executed under seal to be executed in counterpart (re-instating temporary arrangements introduced under the Covid-19 Act); and,
- provisions to allow a registered office agent to notify the Registrar and the company that the registered office of the company is no longer care of that agent.

When publishing the General Scheme, Minister Calleary stated “this important bill, when enacted, will ensure Ireland’s Companies Act 2014 remains fit for purpose, providing a modern and responsive business regulatory environment that reflects international best practice.” We will follow its progress with great interest!

CHARITIES (AMENDMENT) BILL 2023

This Bill completed Dáil Éireann, Third Stage on 23 May 2024. The purpose of the Charities (Amendment) Bill 2023 is to make amendments to the Charities Act 2009 in respect of accounting, audit and reporting requirements, responsibilities of trustees and the operation of the Register of Charities.

Amongst the changes proposed, is the requirement for the Charities Regulator to consent to changes to a company’s constitution in terms of updates to the charity name, objects, charitable purpose, income/property and winding up clauses.

CORPORATE SUSTAINABILITY REPORTING DIRECTIVE (“CSRD”)

The CSRD came into force in January 2023 with a requirement for all EU Member States to have it transposed into national law by 5 July 2024. To date, there has been no update on the date by which Ireland expects to transpose the CSRD into law.

Whilst this will not affect smaller client companies, it is important that all companies are aware of the scope of the CSRD, as many smaller Irish companies may have reporting requirements if they are part of the value or supply chain of a company that exceeds two of the following criteria (for Large Undertakings):

- Balance sheet total: €25 million
- Net turnover: €50 million
- Average number of employees: 250

If a company meets the criteria for a “Large Co”, the reporting obligations will commence for financial years starting on or after 1 January 2025. The CRO is updating the CORE system to accommodate related filings from January 2025. Again, we will be keeping a watch out for updates on the timeline for transposition of the CSRD into Irish law.

EU ARTIFICIAL INTELLIGENCE ACT (“EU AI ACT”)

The EU AI Act aims to enable trust in the rapidly advancing sector of artificial intelligence by ensuring respect of fundamental rights, safety and ethical principles for EU citizens.

The EU AI Act was adopted at the Irish Transport, Telecommunications and Energy Council (Telecoms Council) on 21 May 2024 and is expected to enter into force in the following month(s). The obligations under the EU AI Act will be phased in over a period of 36 months, with the key obligations in place within 24 months. Businesses may have to comply if they are using AI within their business operations, as they would then fall within the definition of “deployer” (i.e. a user) and, therefore, any business that envisages using AI at some point in the future must be aware of their obligations under the AI Act.

With the rapid development in AI, this is an area that we all need to embrace and monitor.





ITEMS OF INTEREST...

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➤➤➤ STRIKE-OFF PROCEEDINGS BY THE REGISTRAR

Late last year, the CRO re-commenced enforcement actions under the Companies Act, 2014 with Enforcement Warning Letters being issued to companies who were in breach of their Annual Return and Financial Statement filing obligations. After encountering technical problems with the strike-off procedures in early 2024, these enforcement actions were paused. At the Governance Ireland 2024 Conference in Dublin on 22 May 2024, the CRO indicated that although significant work has been conducted to rectify the issues at that time, there is no confirmed timeline for the re-commencement of involuntary strike-off procedures.

The CRO guidance detailing the various grounds for strike-off, consequences of strike-off, and the strike-off process, can be accessed via the following link – <https://www.cro.ie/Termination-Restoration/Company/Involuntary-Strike-Off>.

➤➤➤ MOBILITY DIRECTIVE

The European Union (Cross-Border Conversions, Mergers and Divisions) Regulations 2023 (the “Mobility Regulations”) came into effect in May 2023. The Mobility Regulations provide an EU harmonised framework for cross-border divisions & conversions and enables Irish limited liability companies to migrate and change their registered office address to other EEA countries whilst retaining their Irish legal personality. There has been some activity under the Mobility Regulations since commencement and it will be interesting to see if such activity grows throughout 2024.

➤➤➤ SCREENING OF THIRD COUNTRY TRANSACTIONS ACT 2023

This Act, which is expected to enter into force by 30 June 2024, provides a framework for screening third country (outside of EEA and Switzerland, therefore, the UK and US are considered a “third country”) investments to enhance security/AML powers. The scope of this Act extends to any acquisition of an Irish undertaking or asset, or change of control of such, by a third country undertaking/party that meets certain criteria. If these criteria are met, the transaction must be notified to the Department of Enterprise, Trade and Employment not less than 10 days before the date of completion.

➤➤➤ ANTI-MONEY LAUNDERING DIRECTIVE

On 30 May 2024, the Council of the European Union adopted a package of new and stricter anti-money laundering rules (the “EU AML Package”) that will protect EU citizens and the EU’s financial system against money laundering and financing of terrorism. The EU AML Package also set up a new European Authority that will have direct and indirect supervisory powers over high-risk obliged entities in the financial sector. The EU AML Package exhaustively harmonises, for the first time, rules throughout the EU closing loopholes for fraudsters. Watch out for further updates in this area in our Autumn/Winter Newsletter and on our website.

➤➤➤ PPSN REQUIREMENTS

The implementation of s35 of the Companies (Corporate Enforcement Authority) Act, 2021, in June last year commenced the requirement for Director’s PPSNs to be included for certain CRO filings, most notably Annual Returns (Form B1) and Change of Director/Secretary Details (Form B10). At the Governance Ireland 2024 Conference, the CRO indicated that the 2023 Annual Return peak-filing period went smoothly, however, for the avoidance of any issues and/or delay, it is important to obtain the PPSN of any new Director at the outset to comply with the Form B10 filing requirements and also any related filings at the Central Register of Beneficial Ownership.

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