

Oifig an Stiúrthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

Information Book 1 **Companies**

Decision Notice D/2011/1

The Principal Duties and Powers of

# **Companies**

under the Companies Acts 1963-2009



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## 1.0 Introduction

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The Companies Acts 1963-2009 contain extensive provisions detailing how the affairs of companies are to be conducted. These provisions describe how the various participants in companies should discharge their duties and obligations. In addition, participants are accorded substantial rights and powers in order to enable them to assert their rights and, if necessary, defend their personal and/or corporate interests.

The Director of Corporate Enforcement is of the view that the extensive requirements of the Companies Acts make it difficult for many non-professional participants in company affairs to be well informed of their rights and obligations under the law. This has, in part, contributed to an inadequate standard of compliance with company law in the past.

Section 12(1)(b) of the Company Law Enforcement Act 2001 specifies that a function of the Director is *“to encourage compliance with the Companies Acts”*. Consistent with this remit, the Director has issued a series of information books. These Information Books were first issued in November 2001, and this edition updates those books for changes in the law up to the end of 2010. There are information books on the following topics:

**Information Book 1 – Companies**

**Information Book 2 – Company Directors**

**Information Book 3 – Company Secretaries**

**Information Book 4 – Members and Shareholders**

**Information Book 5 – Auditors**

**Information Book 6 – Creditors**

**Information Book 7 – Liquidators, Receivers & Examiners**

In addition to information on the relevant duties and powers, each book contains information on the penalties for failure to comply with the requirements of the Companies Acts and useful addresses and contact points.

Each book has been prepared for use by a non-professional audience in order to make the main requirements of company law readily accessible and more easily understandable.

The Director of Corporate Enforcement considers it important that individuals who take the benefits and privileges of incorporation should be aware of the corresponding duties and responsibilities. These information books are designed to increase the awareness of individuals in relation to those duties and responsibilities.

The Director wishes to make clear that this guidance cannot be construed as a definitive legal interpretation of the relevant provisions. Moreover, it must be acknowledged that the law is open to different interpretations. Accordingly, readers should be aware that there are uncertainties in how the Courts will interpret the law, particularly when the law is applied to the specific circumstances of specific companies and individuals.

It is important to note that where readers have a doubt as to their legal obligations or rights, they should seek independent professional legal or accountancy advice as appropriate.

As changes are made to company law in the future, the Director intends to keep this guidance up to date. He also welcomes comment on its content, so that future editions can remain as informative as possible.

**Office of the Director of Corporate Enforcement**

October 2011

## 2.0 Principal Duties and Powers of Companies

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### 2.1 What is a Company

A company is a separate legal entity which is usually, though not always, formed for the purposes of carrying out business activity. The fact that a company is a separate legal entity means that, in the eyes of the law, the company exists separately from the individuals who own and manage it. This means, for example, that a company can:

- take legal action in its own name rather than in the name of its owners or managers;
- be subjected to legal action in its own name rather than in the name of its owners or managers;
- enter into legally binding contracts;
- own property in its own right.

In Ireland, the manner in which companies must be operated is governed by the Companies Acts 1963 to 2009, together with a number of other related pieces of legislation e.g. EU Regulations<sup>1</sup>.

### 2.2 Types of Company Structure

There are a number of different types of company structure provided for under the Companies Acts. Company structures can be broadly classified as:

- limited liability or unlimited liability companies, and;
- private companies or public companies.

The structure of every company is a combination of the above classifications e.g. public limited company, private unlimited company, private limited company etc. These classifications are explained in the following sections.

### 2.3 Limited and Unlimited Liability Companies

All companies are fully liable for the debts that they incur. The distinction between limited and unlimited liability relates to the liability of the owners (known as the members/shareholders) of the company for debts incurred by the company.

In the case of limited liability companies, the company's owners are liable only for the company's debts up to the amount that they have agreed to contribute to the company. In the case of unlimited companies, the company's owners are liable for the company's debts without any limit.

### 2.4 Private and Public Companies

A company can be either a private company or a public company. In order to qualify as a private company, certain conditions must be satisfied. The benefit of a company being private is that it can avail of certain concessions under company law (dealt with in section 2.5). For a company to qualify as a private company, the following features are necessary:

- the company has no more than 99 members (owners);
- the company has a share capital;
- the rights of the members to transfer their shares are restricted;
- the public is not invited to subscribe for shares in the company;
- the company has a minimum of two members (this minimum requirement can be reduced to one member where the private company in question is also a limited company).

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<sup>1</sup> A list of the Companies Acts is set out in Appendix D. A full list of all companies legislation can be accessed on the ODCE website at [www.odce.ie](http://www.odce.ie).



Any private company which is unable to satisfy the above criteria cannot avail of the concessions normally available to private companies.

Private companies can take the following forms:

- private company limited by shares: this is the most common form of company structure in Ireland. The liability of the members for the company's debts is limited to the amount that they have agreed to pay for the shares that they own in the company. For example, if a person holds one hundred €1 shares in a company, once the €100 has been paid, that person has no further liability in respect of the company's debts. The shares in the company collectively represent the share capital of the company;
- private company limited by guarantee and having a share capital: relatively few companies limited by guarantee also have a share capital. In such cases, the liability of members is limited to paying for the shares that they have guaranteed to purchase. It should be noted that in the case of guarantee companies, the company can only look to its guarantee fund when it is being wound up (the winding up of a company is the process whereby a company is dissolved);
- private unlimited company having a share capital: this type of company is rarely used as a trading company. The liability of the members for the company's debts is unlimited;
- single-member private limited company having a share capital: these companies, which are required to have only *one* member, must be either private companies limited by shares or limited by guarantee<sup>2</sup>.

Private companies, with a few exceptions, must have the word 'Limited' or 'Teoranta' (Irish for limited) after their name.

Any company which is not a private company is a public company. As with private companies, public companies can be either limited or unlimited liability companies. Public limited companies can be limited either by shares or by guarantee.

Public companies can take the following forms:

- public company limited by shares<sup>3</sup>;
- public company limited by guarantee and having a share capital;
- public company limited by guarantee and not having a share capital;
- public unlimited company having a share capital;
- public unlimited company not having a share capital.

The great majority of public companies in Ireland fit into the first two groups i.e. public companies limited by shares and public companies limited by guarantee. Public companies limited by shares are required to have 'public limited company' or 'plc' after their names.

## 2.5 Concessions Available to Private Companies

As referred to earlier, private companies can avail of certain concessions that are not available to public companies. Many of these concessions are dealt with later in this guide. However, set out below is a summary of the main concessions available to private companies:

2 The topic of single-member private limited companies is dealt with in Appendix F to this book.

3 Section 19 Companies (Amendment) Act 1983 requires public limited companies to have a minimum allocated share capital of €38,092.

- they can exist with one member only i.e. as a single-member private limited company<sup>4</sup>;
- they can, under certain circumstances, avail of certain exemptions when filing company information with the Registrar of Companies;
- they can, under certain circumstances, obtain an exemption from the requirement to have their accounts audited.

## 2.6 Forming a Company

The process of forming a company is known as ‘incorporation’. In order to form a company certain documentation and information must be submitted to the Registrar of Companies, who registers all companies formed in the State. Contact details for the Registrar of Companies are set out in section 4.0 – Useful Addresses.

The required information includes:

- a company name – the Registrar can refuse to accept a proposed company name on a number of grounds e.g. if the name is already registered or if the name is offensive;
- a declaration that the company will, when registered, carry on an activity within the State;
- details of where the company proposes to conduct its business and the company’s Registered Office i.e. the place where the central administration of the company will normally be carried on;
- confirmation that the company will have at least one director who is resident in the European Economic Area (EEA) (the EU states plus Iceland, Liechtenstein and Norway). Where the company will not have at least one director resident in the EEA, it is required to hold a bond to a

value of €25,395. The purpose of the bond is to provide for certain fines or penalties that might be imposed as a result of the company’s non-compliance with company and/or tax law.

- memorandum of association and articles of association. These form the constitution of the company (see section 2.7 below on the Constitution of a Company for information on these documents and their required contents);
- a completed Form A1, which is available from the Registrar of Companies.

When the required documentation, together with the appropriate fee, is provided to the Registrar of Companies, the company will be incorporated and the Registrar will issue a Certificate of Incorporation. Further information on the incorporation of a company can be obtained from the Registrar of Companies (website address: [www.cro.ie](http://www.cro.ie)).

The other manner in which a company can be set up is to purchase a pre-incorporated company from a company formation agent. Company formation agents incorporate companies in bulk which they then sell to the public off the shelf.

## 2.7. Constitution of a Company

Every company must have a written constitution, which is comprised of two documents, namely;

- the Memorandum of Association (the memorandum), and;
- the Articles of Association (the articles).

A company’s memorandum and articles are of fundamental importance in that they set out the constitution and internal rules of the company. Where the content of the two documents conflicts, the memorandum of association takes precedence over the articles of association.

<sup>4</sup> The topic of Single Member Private Companies is dealt with in Appendix F to this book.

### 2.7.1 Memorandum of Association

The memorandum is the principal document by which a company's registration is effected. Section 16 of the Companies Act, 1963 (the 1963 Act) prescribes that the form of the memorandum shall be in accordance with the relevant format as set out in that Act (a number of formats are set out depending on the type of company). The relevant format for a private company limited by shares (the most common form of company) is as set out in Table B of the first schedule to the 1963 Act. When incorporating, a company can opt to use the standard format memorandum as set out in Table B or, alternatively, can draw up its own memorandum.

There are five compulsory clauses required in the memorandum. Those clauses, as set out in Table B, are:

- the name clause: sets out the company's name. The Registrar can refuse to register a name under certain circumstances e.g. where it is already registered or where the name is undesirable;
- the objects clause: this clause sets out the objectives of the company. Where a company subsequently carries out activities which are outside those provided for in the objects clause, it is said to be acting *ultra vires* (outside its powers). Any transactions which are *ultra vires* can be rendered void by the other party to the transaction. A company is not permitted to have objects which are illegal;
- the liability clause: this clause states whether the company is a limited or unlimited liability company;
- the capital clause: this clause sets out the company's authorised share capital i.e. the maximum number of shares that can be issued by the company. The number of shares that have actually been issued at any given time is known as the issued share capital. For example the authorised share

capital might be one million €1 shares, whereas the issued share capital might only be two 1€ shares. In this example the company has only issued two shares but, by virtue of the memorandum of association, is empowered to issue up to one million shares;

- the association clause: this clause contains a statement by the persons forming the company that they wish to form a company. It also contains their names, addresses and the number of shares taken by each individual.

To be valid, the memorandum must be printed, stamped, signed and attested (witnessed).

### 2.7.2 Articles of Association

The articles of association are the internal rules of the company. They govern relations between the company and its members (owners) and between the members with each other.

Private companies limited by guarantee having a share capital and unlimited private companies must register their own articles with the Registrar of Companies. Private companies limited by shares are not required to register articles. However, where they do not do so, the standard form articles as set out in Table A of the first schedule to the 1963 Act will be automatically deemed to apply. Even where a private company limited by shares does register its own articles, the Table A provisions continue to apply insofar as they are not expressly excluded or modified by the company's own articles.

To be valid, the articles must be printed, divided into numbered paragraphs, stamped, signed by each person who has signed the memorandum and attested (witnessed).

The standard form articles applicable to private companies are sub-divided into a number of headings, including for example:

- directors;
- powers and duties of directors;
- managing director;
- company secretary;
- meetings<sup>5</sup>;
- votes of members.

## 2.8 Company Directors

Every company is required by law to have a minimum of two directors. The directors of the company are nominated by the members to manage the company on their behalf.

The directors are collectively known as the board of directors. While the directors may also be members of the company it is not a requirement that they be members. The topic of directors (including their responsibilities) is considered in detail in Information Book 2 – Company Directors.

## 2.9 Company Secretary

Every company is required by law to have a company secretary. The primary role of the company secretary is to ensure that the company's obligations under company law are complied with. The topic of the company secretary is dealt with in detail in Information Book 3 – Company Secretaries.

## 2.10 Duties of a Company

As stated previously, companies are separate legal entities. As such, they have certain legal duties. Companies' principal duties are as follows:

- to maintain proper books of account;
- to prepare annual accounts;
- to have an annual audit performed (subject to exceptions);
- to maintain certain registers and other documents;
- to file certain documents with the Registrar of Companies;
- to hold general meetings of the company.

### 2.10.1 Duty to Maintain Proper Books of Account

Under section 202 of the Companies Act, 1990 (the 1990 Act) as amended every company is required to maintain proper books of account. Proper books of account should:

- correctly record and explain the transactions of the company;
- at any time, enable the financial position of the company to be determined with reasonable accuracy;
- enable the company's directors to ensure that the balance sheet and profit and loss account comply with the Companies Acts, and;
- enable the accounts to be readily and properly audited.

Books of account must be kept on a continuous and consistent basis. That is to say the entries made in them must be made in a timely manner and be consistent from one year to the next. The requirement that accounts be prepared in a consistent manner from one year to the next is to allow accounts covering different periods to be compared. Where they are not directly comparable due to, for example, a change in the manner in which they

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<sup>5</sup> The topics of meetings and voting are dealt with in detail in Information Book 4 – Members and Shareholders.

have been prepared (e.g. due to a change in accounting policy), this must be stated in the accounts.

Section 202 of the 1990 Act stipulates that the books of account must contain:

- entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place;
- a record of the company's assets and liabilities;
- if the company's business involves dealing in goods (i.e. stocks):
  - a record of all goods purchased and sold (except those goods sold for cash by way of ordinary retail trade) showing the goods, sellers and buyers in sufficient detail to enable the goods, sellers and buyers to be identified and a record of all the invoices relating to such purchases and sales, and;
  - a statement of stock held by the company at the end of each financial year and all records of stocktakes on which such statements are based;
- where the company's business involves the provision of services, a record of the services provided and all the invoices relating to those services must be maintained.

The books of account should be kept at the company's registered office or at such other place as the directors think fit.

It is a criminal offence for a company to breach its requirement to maintain proper books of account. Furthermore, it is a criminal offence for any director of the company to fail to take all reasonable steps to ensure compliance with this requirement. The penalties on conviction are a maximum fine of €12,700 and/or 5 years imprisonment.

It is also worth noting that where a company which is being wound up (see also Information Book 7 – Liquidators) is unable to pay its debts and has contravened section 202 (i.e. requirement to maintain proper books of account) and the Court considers that the contravention has contributed to the company's inability to pay its debts:

- every officer of the company who is in default is guilty of an offence (section 203), and;
- the Court can, on the application of the liquidator or any creditor, declare that any one or more of the officers and former officers of the company shall be personally liable for the debts of the company (section 204).

Appendix E provides guidance on the minimum accounting records etc. that should be maintained by companies.

### **2.10.2 Duty to Prepare Annual Accounts (Financial Statements)**

Generally, companies are required to prepare accounts on an annual basis. The annual accounts are prepared from the information contained in the company's books of account and other relevant information. The accounts (also known as financial statements), which are required to give 'a true and fair view'<sup>6</sup>, normally include the following, some of which are required by law and others of which are required by accounting standards:

- Profit and loss account: this records the income and expenditure of the company over a particular period and shows the profit or loss arising from the company's activities;

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<sup>6</sup> The term 'true and fair view' is not defined in law. However, it is generally accepted that a set of financial statements will give a true and fair view when they have been prepared in accordance with (i) the provisions of the Companies Acts, and (ii) accounting standards.

- Balance sheet: this is a statement of the company's assets and liabilities at a given point in time;
- Cash flow statement: this is a statement of the company's cash inflows and outflows over a period of time. The cash flow statement is not a legal requirement. However, it is a requirement under accounting standards but is not required in the case of 'small' companies. The criteria to qualify as a 'small' company are set out in Appendix A.
- Notes to the financial statements: these contain more detailed information relating to figures appearing in the profit and loss account, balance sheet or cash flow statement e.g. analysis of fixed assets and depreciation, analysis of the creditors figure etc.;
- Directors' Report: this is a report by the directors of the company to the members. The directors' report is dealt with in detail in Information Book 2 – Company Directors.

Companies required to prepare annual financial statements are further required to furnish every member of the company with a full copy of those financial statements.

### **2.10.3 Duty to Have an Annual Audit Performed**

Having prepared their financial statements, companies are generally obliged by law to have their financial statements audited at least once a year. An audit is an independent examination of the financial statements by an independent expert (an auditor). Having conducted an examination of the financial statements, the auditor is required to report to the members of the company. In that report, the auditor is required to form an opinion on a number of matters including e.g. whether the financial statements give a true and fair view and whether the financial statements are in agreement with the underlying books of

account. The contents of auditors' reports are dealt with in detail in Information Book 5 – Auditors.

In general, companies can be exempted from the requirement to have an annual audit provided that they comply with certain conditions<sup>7</sup>. The main conditions for audit exemption, all of which must be satisfied, are that:

- the company's turnover does not exceed €7.3 million<sup>8</sup>;
- its balance sheet total does not exceed €3.65 million;
- its average number of employees does not exceed 50;
- it is not a parent or subsidiary undertaking i.e. the company does not own, nor is it owned by, another company, and;
- the company is up to date with its obligations to file certain documents with the Registrar of Companies (see Section 2.10.5 'Duty to File Certain Documents with the Registrar of Companies').

### **2.10.4 Duty to Maintain Certain Registers and Other Documents**

Every company is required by the Companies Acts to maintain certain registers and other documents. These are as follows:

#### **Register of Members<sup>9</sup>**

The register of members is required to record the following information:

- members' names;
- members' addresses;

<sup>7</sup> The criteria and procedures for audit exemption are set out in Part III of the Companies (Amendment) (No. 2) Act, 1999 as amended.

<sup>8</sup> The term 'turnover' refers to a company's income from its main operation (i.e. usually sales) exclusive of VAT. It excludes income such as bank interest received, dividends received etc.

<sup>9</sup> Section 116 Companies Act, 1963 as amended.



- number of shares held by each member (in the case of companies having a share capital);
- the date on which each person was entered in the register;
- the date on which each person ceased to be a member of the company.

The company is required to notify the Registrar as to where the register is kept and to make the register available for inspection by any member of the public<sup>10</sup>. The register must ordinarily be kept at the company's registered office. However, it may be kept elsewhere (although not outside the State) for the purposes of being updated etc.

#### **Register of Directors and Secretaries<sup>11</sup>**

This register is required to contain the following information in respect of each of the company's directors:

- date of birth;
- address;
- nationality;
- occupation;
- details of any other directorships held.

The following information is required to be included in the register in respect of the company secretary:

- name;
- address;
- where the secretary is a company, details of its name and registered address.

The company is required to make the register available for inspection by any member of the public.

#### **Register of Directors' and Secretaries' Interests<sup>12</sup>**

This register is required to show, in respect of each director and secretary of the company, the number, description and amount of any shares in or debentures of:

- the company;
- the company's holding company i.e. parent company;
- the company's subsidiary i.e. a company owned by the company;
- another subsidiary of the holding company i.e. a sister company.

The company is required to make the register available for inspection by any member or debenture holder of the company.

#### **Register of Debenture Holders<sup>13</sup>**

In general terms, a debenture is a loan given to a company in a written form. Every company issuing debentures is required to maintain a register of debenture holders. The register is required to contain details of the name, address and amount held in respect of each debenture holder. The company is required to notify the Registrar of the location of the register and to make the register available for inspection by any member of the public.

#### **Minute Books<sup>14</sup>**

Every company is required to keep a minute book in which all proceedings of general meetings<sup>15</sup>, board meetings and board sub-committee meetings are required to be recorded. The accuracy of the minutes of each meeting should be confirmed by way of signature of the chairman of the board of directors.

<sup>10</sup> Section 119 Companies Act, 1963.

<sup>11</sup> Section 195 Companies Act, 1963 as amended.

<sup>12</sup> Section 190 Companies Act 1963 as amended.

<sup>13</sup> Section 91 Companies Act, 1963.

<sup>14</sup> Section 145 Companies Act, 1963 as amended.

<sup>15</sup> General meetings are dealt with in detail in Information Book 4 – Members and Shareholders.

The books containing the minutes of proceedings of any general meeting are required to be kept at the company's registered office and to be made available for inspection by any member of the company.

While the Companies Acts do not prescribe the information that should be recorded in the minutes, Appendix C sets out, for illustrative purposes, the type of information that should, as a matter of best practice, be included in minutes.

#### **Directors' Service Contracts<sup>16</sup>**

Companies are required to maintain certain information regarding directors' service contracts (i.e. directors' contracts of employment). The requirements are as follows:

- in the case of a director whose contract of service is in writing, a copy of the contract;
- in the case of a director whose contract of service is not in writing, a written memorandum setting out the terms of the contract;
- in the case of each director who is employed under a contract of service with a subsidiary of the company, a copy of the contract or a written memorandum setting out the terms of the contract.

The company is required to inform the Registrar where these documents are kept and to make them available for inspection by any member of the company.

#### **Instruments Creating Charges over Companies' Property<sup>17</sup>**

Companies are required to maintain, at their registered offices, copies of every instrument creating a charge on company property. A charge is created where the company borrows and certain of the company's assets are offered as legal security for the borrowings e.g. a mortgage. Each charge must also be registered with the Registrar of Companies<sup>18</sup>. Copies of these documents are required to be made available for inspection by any member or creditor of the company<sup>19</sup>.

#### **Contracts for the Purchase of Own Shares<sup>20</sup>**

Every company that enters into a contract to purchase its own shares is required to keep at its registered office a copy of the contract, or where the contract is not in writing, a memorandum of the terms of the transaction. The company is required to make these documents available for inspection to every member of the company and, if the company is a public limited company, to any member of the public.

#### **Register of Interests of Persons in its Shares (applies to public limited companies only)<sup>21</sup>**

Any person acquiring an interest of greater than 5% of the shares in a public limited company is required to notify the company of that fact. Every public limited company has a corresponding obligation to maintain a register containing details of those notifications.

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<sup>16</sup> Section 50 Companies Act, 1990.

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<sup>17</sup> Section 109 Companies Act, 1963.

<sup>18</sup> Section 99 Companies Act, 1963 as amended.

<sup>19</sup> Section 110 Companies Act, 1963.

<sup>20</sup> Section 222 Companies Act, 1990.

<sup>21</sup> Section 80 Companies Act, 1990.



### **2.10.5 Duty to File Certain Documents with the Registrar of Companies**

Companies are legally required to file certain documents with the Registrar of Companies. Some are required to be filed by every company e.g. the annual return while others are required to be filed only in certain circumstances e.g. on the death of a director. Historically, these documents were filed in hard copy format. However, the Registrar is moving to a regime whereby the electronic filing of documents is also possible. Further information on electronic filing is available from the Registrar's website ([www.cro.ie](http://www.cro.ie)).

Once filed with the Registrar, these become public documents and are open to inspection by any member of the public at the Companies Registration Office. Set out below is a list of those documents more commonly required to be filed with the Registrar. Other documents, which are required to be filed only in specific circumstances, are referred to elsewhere in this guide where relevant.

#### **Documents more commonly required to be filed with the Registrar**

- Annual return (see Appendix A);
- Change of registered office;
- Notice of increase in nominal (authorised) capital;
- Change of director and/or secretary or of their particulars;
- Declaration that a person has ceased to be a director or secretary;
- Notice that a person holding the office of director or secretary has died;
- Nomination of a new annual return date (see Appendix B);
- Notification of the creation of a mortgage or charge;

- Memorandum of satisfaction of charge;
- Ordinary resolution (see Information Book 4 – Members and Shareholders for further information).

### **2.10.6 Duty to Hold General Meetings of the Company**

Every company, other than a single-member private limited company, is required to hold an annual general meeting (AGM). Under certain circumstances, companies are also required to hold extraordinary general meetings (EGMs). As these meetings are of the members of the company, this topic is dealt with in detail in Information Book 4 – Members and Shareholders.

### **2.11 Companies' Powers**

As stated previously, the objects clause contained in the company's memorandum of association sets out its objects and express powers. The company also has implied powers to do things ancillary to its objects. Where a company enters into a transaction which is not in furtherance of its objects, such a transaction is known as being '*ultra vires*', i.e. beyond the company's capacity.

An *ultra vires* transaction is generally void and unenforceable. However, where a party deals with a company and is not actually aware of the fact that the company's act was not within its powers, the act is effective in favour of the person relying on it. The director or officer of the company responsible for the *ultra vires* act is liable to the company for any loss or damage which the company suffers as a consequence. Moreover, where a person deals with a limited liability company in good faith, any transaction entered into by the company is deemed to be within the company's capacity.

## 3.0 Penalties Under the Companies Acts

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### 3.1 Penalties for Criminal Offences

#### Court Imposed Penalties

Under the Companies Acts, provision is made for two types of criminal offence, namely summary and indictable offences. A summary offence is generally of a less serious nature and is tried before a judge only in the District Court. Indictable offences are generally of a more serious nature. Indictable offences can, in the same way as summary offences, be tried in the District Court before a judge only. However, the distinction between a summary offence and an indictable offence is that, due to their more serious nature, indictable offences can also be tried in the Circuit Court i.e. before a judge and jury. Where this course is taken, the indictable offence is said to be prosecuted on indictment. Where an offence is prosecuted on indictment, the penalties provided for by the law on conviction are generally considerably higher than had the offence been prosecuted summarily.

In general the maximum penalty on conviction:

- of a summary offence under the Companies Acts is €1,904 and/or 12 months imprisonment, and;
- of an indictable offence under the Companies Acts is €12,697 and/or 5 years imprisonment.

However, the Companies Acts also provide for considerably higher sanctions in respect of certain offences e.g. fraudulent trading (€63,487 and/or 7 years imprisonment on conviction on indictment) and market abuse (€10 million and/or 10 years imprisonment on conviction on indictment).

### 3.2 Civil Penalties

#### Disqualification

In addition to fines and penalties, there are also provisions for other sanctions under the Acts. Persons convicted on indictment of an indictable offence relating to a company or involving fraud or dishonesty are automatically disqualified from acting as company directors/officers (see Appendix B to Information Book 2 – Company Directors).

The Director of Corporate Enforcement can also apply to the Courts seeking the disqualification of any person:

- guilty of two or more offences of failing to maintain proper books of account, or;
- guilty of three or more defaults under the Companies Acts.

#### Restriction

The provisions relating to the restriction of company directors apply to insolvent companies i.e. companies that are unable to pay their debts as they fall due. Where a company which goes into liquidation or receivership<sup>22</sup> is insolvent, a director of the company who fails to satisfy the High Court that he or she has acted honestly and responsibly will be restricted for a period of up to five years.

Such a restriction prevents a person from being a director or secretary or being involved in the formation or promotion of any company unless it is adequately capitalised. In the case of a private company, the capital requirement is €63,487 in allotted paid up share capital,

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<sup>22</sup> A liquidator's function is to collect and realise the assets of the company, to discharge the company's debts, to distribute any remaining surplus, investigate the company's affairs and to legally dissolve the company. The function of a receiver is to dispose of certain assets of the company in order to allow the repayment of a debt to a creditor e.g. a bank. See Information Book 7 for further information on liquidators and receivers.

and in the case of a public company, €317,435. Such a company is also subject to stricter rules in relation to capital maintenance. The topic of restriction is dealt with in detail in Appendix B to Information Book 2 – Company Directors.

### **Strike Off**

Where a company defaults in performing certain of its legal obligations e.g. fails to file an annual return with the Registrar of Companies, the Registrar can strike the company off the register of companies.

If struck off the register, ownership of a company's assets automatically transfers to the State. Ownership will remain with the State until such time as the company is restored to the register. While struck off, the liability of every director, officer and member of the company continues and may be enforced as though the company had not been dissolved<sup>23</sup>.

The procedures required to have a company reinstated to the register are dealt with in Appendix A.

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<sup>23</sup> Section 12B(1) Companies (Amendment) Act, 1982 as amended.

## 4.0 Useful Addresses

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### **Office of the Director of Corporate Enforcement**

16 Parnell Square  
Dublin 1  
Tel: 01 858 5800  
Web: [www.odce.ie](http://www.odce.ie)

### **Companies Registration Office**

14 Parnell Square  
Dublin 1  
&  
O'Brien Road  
Carlow  
Tel: 01 804 5200  
Web: [www.cro.ie](http://www.cro.ie)

### **Department of Jobs, Enterprise & Innovation**

Kildare Street  
Dublin 2  
Tel: 01 631 2121  
Web: [www.djei.ie](http://www.djei.ie)

### **Company Law Review Group**

Earlsfort Centre  
Hatch Street Lower  
Dublin 2  
Tel: 01 631 2763  
Web: [www.clrg.org](http://www.clrg.org)

### **Basis**

*Business Access to State  
Information & Services*  
Web: [www.basis.ie](http://www.basis.ie)

### **Irish Auditing & Accounting Supervisory Authority**

Willow House  
Millennium Park  
Naas  
Co. Kildare  
Tel: 045 983600  
Web: [www.iaasa.ie](http://www.iaasa.ie)

## Appendix A

### The Annual Return (Form B1)

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#### Introduction

Every company is obliged to submit an annual return to the Registrar of Companies annually. In addition, certain other information must be annexed to the annual return.

The annual return is required to be made (i.e. cover the period) up to a date not later than the company's 'annual return date'. The annual return date and how it is determined etc. is dealt with in summary form in Appendix B. Further information is available from the Registrar of Companies ([www.cro.ie](http://www.cro.ie)).

The annual return must normally be delivered to the Registrar within 28 days of the annual return date. Where a company fails to do so, the company, every officer of the company (including every director) who is in default and any person in accordance with whose directions or instructions the directors of the company are accustomed to act and to whose directions or omissions the default is attributable, is in breach of their obligations under the Companies Acts.

The penalties for failure to file an annual return or late filing include late filing fines, prosecution and the striking off the register of the company. Where a company is struck off as a consequence of failing to file an annual return, the liability, if any, of every director, officer and member of the company continues and may be enforced as though the company had not been dissolved<sup>24</sup>.

If any member, officer or creditor of the company is aggrieved at the company's strike off, they can apply to the Registrar of Companies for the restoration of the company within 12 months of the strike off. Provided that the Registrar is satisfied that all outstanding documents have been filed and all outstanding fees paid, he can restore the company to the register<sup>25</sup>. Where the Registrar restores the company to the register, the company is deemed to have continued in existence as though it had not been struck off.

After the 12 month period referred to above has expired, any member, officer or creditor of the company can apply to the High Court to have the company restored to the register (provided that the application is made within 20 years of strike off). Where the Court is satisfied that it would be just to restore the company to the register, the company is deemed to have continued in existence as though it had not been struck off. However, the Court can also order if it considers it appropriate that the officers, or any one of them, be held personally liable for any debts incurred by the company during the period of strike off<sup>26</sup>.

For Property Management Companies the timeframe to apply for restoration to the Registrar of Companies has been extended to 6 years by the Multi-Unit Developments Act 2011<sup>27</sup>.

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<sup>24</sup> Section 12B Companies (Amendment) Act, 1982 as amended.

<sup>25</sup> Section 12C(1) Companies (Amendment) Act, 1982 as amended.

<sup>26</sup> Section 12(B)(4) Companies (Amendment) Act, 1982.

<sup>27</sup> Other administrative requirements may apply in such cases. More information on this is available from the Companies Registration Office, at [www.cro.ie](http://www.cro.ie). The Multi-Unit Developments Act 2011 is not part of the Companies Acts and accordingly the ODCE has no role in enforcing any element of that Act.

## Information Required to be Provided in the Annual Return

The following information must be provided to the Registrar in companies' annual returns:

- Company name;
- Company registered number (this number is provided by the Registrar on incorporation);
- Date that the return is made up to (i.e. the date up to which the annual return covers);
- Financial year covered by the return;
- Registered office address;
- Other addresses (required if statutory registers are not kept at the registered office);
- Company secretary's name and address;
- Details of any political donations made by the company;
- Authorised share capital\*;
- Issued share capital\*;
- An analysis of issued share capital between shares paid for in cash and shares paid for otherwise than in cash\*;
- List of members\*;
- List of persons who have ceased to be members since the last return\*;
- Details of shares transferred since the last return\*;
- Directors' names;
- Directors' dates of birth;
- Directors' addresses;
- Directors' occupations;
- Details of directors' other directorships.

*\* Required only in the case of companies having a share capital*

## Information Required to be Annexed to the Annual Return

The following information must be annexed to the annual return by companies:

- Profit and Loss Account (but see filing exemptions below);
- Balance Sheet (but see filing exemptions below);
- Notes to the financial statements (but see filing exemptions below);
- Directors' report (but see filing exemptions below);
- Auditor's report (except where the company avails of audit exemption);
- Certification that the financial statements and the auditor's report submitted are a true copy of those presented to the members of the company.

## Filing Exemptions Available for 'Small' and 'Medium' Companies

Exemptions are available to certain private companies whereby they may not be required to furnish all of the above<sup>28</sup>. These exemptions apply to private companies qualifying as either 'small' or 'medium' size companies.

### Small Company<sup>29</sup>

To qualify as a small company a company must be able to satisfy two of the following three criteria:

- Turnover not exceeding €3.809m;
- Balance sheet total not exceeding €1.905m;
- Average number of employees not exceeding 50.

<sup>28</sup> Sections 8, 10, 11 and 12 Companies (Amendment) Act, 1986.

<sup>29</sup> Note: the criteria required to qualify as a 'Small Company' for these purposes differ from those relating to the small company audit exemption.

Companies qualifying as small companies are not required to annex a profit and loss account or a directors' report to the annual return. Moreover, rather than having to file a full balance sheet, the company can file an abridged balance sheet. Similarly, only certain notes to the financial statements are required to be filed by small companies.

### Medium Company

To qualify as a medium company a company must be able to satisfy two of the following three criteria:

- Turnover not exceeding €15.237m;
- Balance sheet total not exceeding €7.618m;
- Average number of employees not exceeding 250.

Companies qualifying as medium companies are not required to file a full profit and loss account and balance sheet with the annual return. Rather, they can file an abridged version of each. Medium companies can also avail of certain exemptions with regard to the filing of notes to the financial statements.

## Appendix B

### The Annual Return Date

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#### Introduction

The following is only a brief summary of the key provisions relating to the Annual Return Date. Should you require further information on this matter, the Registrar of Companies has published a number of comprehensive information leaflets on the subject. These leaflets are available from the Companies Registration Office (CRO) and can also be accessed on the CRO website ([www.cro.ie](http://www.cro.ie)). Full contact details for the CRO are set out in section 4.0 of this book.

#### Determining the Annual Return Date

The concept of an Annual Return Date (ARD) introduced by the Company Law Enforcement Act, 2001. Part 6 of that Act sets out how a company's ARD is determined.

In determining a company's ARD, it is necessary to make a distinction between companies incorporated prior to 1 March 2002 and those incorporated on or after that date.

#### Companies incorporated prior to 1 March, 2002

- Where the company had previously filed an annual return with the Registrar, that company's ARD is the anniversary of the date to which that most recent annual return was made up.
- Where the company had not previously filed an annual return with the Registrar, that company's ARD was the first day after 1 March 2002 that was six months after the anniversary of incorporation.
- Subsequent ARD's are on the anniversary of the first ARD.



## Companies incorporated on or after 1 March, 2002

- In these cases, the ARD is six months after the date of incorporation. No accounts are required to be annexed to the first annual return of a company on or after 1 March, 2002.
- Subsequent ARD's are on the anniversary of the first ARD.

## Changing the ARD

A company can change its ARD if it so wishes, subject to certain limitations.

- Where a company wishes to bring its allocated ARD forward to an earlier date it can do so. This is done by making its annual return up to a date which is greater than 14 days prior to its allocated ARD. Where the company elects this option, the annual return should be filed with the Registrar within 28 days of the date to which the return has been made up.
- Where a company wishes to bring its allocated ARD back to a later date it can do so. This is done by:
  - filing an annual return with the Registrar not later than 28 days after its allocated ARD, and;
  - notifying the Registrar of its chosen new ARD (which cannot be any later than six months after the allocated ARD).

## Appendix C Illustrative Form and Content of Minutes

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Section 145 of the Companies Act, 1963 requires companies to keep minutes of all proceedings of general meetings and all proceedings at meetings of its directors or committees<sup>30</sup>. It is an offence for a company (and its directors) to fail to keep proper minutes.

Section 145 does not specify the information that should be recorded in the minutes. However, minutes should represent an accurate reflection of what transpired at a meeting. Accordingly, it is recommended that, as a minimum, the following information should be recorded in minutes.

### Board and Board Sub-Committee Meetings

- Date, time and location of the meeting;
- Names of the directors and secretary present;
- Persons from whom apologies for inability to attend have been received;
- Name of the person chairing the meeting (Chairman);

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**30** It is common practice for the boards of directors of larger companies to delegate the consideration of certain matters to sub-committees of the board. These sub-committees should, in accordance with best practice, receive written terms of reference from the board of directors (these terms of reference are sometimes referred to as 'Charters'). The frequency with which sub-committees report to the full board is a matter for the board. While board sub-committees are not a legal requirement, certain companies, e.g. those companies listed on the Stock Exchange, are required to comply with codes of Corporate Governance best practice under which sub-committees are required. Examples of sub-committees would include Audit Committees (which are charged with, *inter alia*, considering the reports of internal and external auditors) and Remuneration Committees (which are charged with setting appropriate levels of remuneration for senior executives e.g. Chief Executive Officer).



- Names of other persons present and the capacity in which they are in attendance<sup>31</sup>;
- Approval of minutes of previous meeting and any corrections requested;
- Details of any documents or papers tabled for consideration by the board, including the title and author of any such documents (generally these documents would be circulated in advance of the meeting to allow the directors an opportunity to consider same);
- Details of proposals put before the board for vote, the names of the persons proposing and seconding the proposals;
- Details of any conflicts of interest declared by directors and whether, for example, they refrained from participating in any discussions, abstained from any vote taken or absented themselves from the meeting for any discussions on the matter;
- An account of the views expressed by each person making a contribution to the discussion should be recorded. While the minutes may summarise the contributions made, any summary should accurately reflect the substance of the contributions made. Where a board member specifically requests that their contribution be minuted e.g. where disagreement arises, particular care should be taken to ensure that the minutes accurately reflect the contribution(s) made;
- The results of any vote(s) taken;
- Details of the resolutions passed by the board i.e. formal decisions made following a vote;
- Details of any delegations of authority by the board to board members or employees e.g. the fact that the board authorised a senior staff member to sign cheques on its behalf should be recorded;
- Signature of the Chairman of the board certifying that the recorded minutes are an accurate reflection of the proceedings<sup>32</sup>.
- The agenda, as circulated to those attending the meeting should be appended to the minutes (each item on the agenda should be sequentially numbered for ease of reference).

### General Meetings of the Company

- Date, time and location of the meeting;
- Names of the directors and secretary present;
- Directors etc. from whom apologies for inability to attend have been received;
- Name of the person chairing the meeting (Chairman);
- Names of other persons present (at the 'top table') and the capacity in which they attended e.g. the company's auditors, financial advisors etc.;
- Approval of minutes of previous meeting and any corrections requested;
- Details of any documents or papers tabled for consideration by the members, including

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**31** Typically, in all but the most straightforward meetings, the directors will require briefings on certain issues to assist their decision making. These briefings might for example be given by a senior employee of the company such as the sales manager, financial controller, internal auditor etc. Generally, after the briefing, these person(s) are excused to allow the board to consider the matter(s) arising and to make the necessary decisions. The names of these persons, together with details of the agenda items for which they were present should be recorded.

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**32** Standard practice is, following a meeting, to circulate the minutes to the board members for review. At the next meeting the minutes are approved by the board, having discussed, and where necessary amended, the minutes as circulated. Amendment might be required, for example, where a board member is of the view that the minutes as initially drafted do not accurately reflect the contributions made by that individual. Once approved, the minutes should be signed by the Chairman.

the title and author of any such documents. Documents that will form the basis of decisions (resolutions) at the meeting, such as the financial statements and auditor's report (where applicable), must be circulated to the members before the meeting to afford them an opportunity to study them;

- Details of proposals put before the members for vote, the names of the persons proposing and seconding the proposals;
- Details of any conflicts of interest declared by directors and whether, for example, they refrained from participating in any discussions, abstained from any vote taken or absented themselves from the meeting for any discussions on the matter;
- An account of the views expressed by each person making a contribution to the discussion should be recorded, including for example, questions put to the board from the floor by members and the responses given. While the minutes may summarise the contributions made, the summary should accurately reflect the substance of the contributions made. Where a contributor specifically requests that their contribution be minuted e.g. where disagreement arises, particular care should be taken to ensure that the minutes accurately reflect the contribution;
- The results of any vote taken (as declared by the Chairman), and whether it is was taken by a show of hands or by poll;
- Details of the resolutions passed by the company i.e. formal decisions made following a vote;
- Signature of the Chairman of the board certifying that the recorded minutes are an accurate reflection of the proceedings;
- The agenda, as circulated to those attending the meeting should be appended to the minutes (each item on the agenda should be sequentially numbered for ease of reference).

## Appendix D

### Principal Legislation Governing Companies to the Republic of Ireland

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Set out below are the principal pieces of primary legislation governing companies in the Republic of Ireland. A full list, which also includes all relevant Statutory Instruments (S.I.s) is available on the ODCE website at [www.odce.ie](http://www.odce.ie).

#### The Companies Acts 1963-2009

- Companies Act, 1963
- Companies (Amendment) Act, 1977
- Companies (Amendment) Act, 1982
- Companies (Amendment) Act, 1983
- Companies (Amendment) Act, 1986
- Companies (Amendment) Act, 1990
- Companies Act, 1990
- Companies (Amendment) Act, 1999
- Companies (Amendment) (No. 2) Act, 1999
- Company Law Enforcement Act, 2001
- Companies (Auditing & Accounting) Act, 2003
- Investment Funds, Companies and Miscellaneous Provisions Act, 2005
- Investment Funds, Companies and Miscellaneous Provisions Act, 2006
- Companies (Amendment) Act, 2009
- Companies (Miscellaneous Provisions) Act, 2009

## Appendix E

### Guidance on Accounting Records to be Maintained by Companies

#### Accounting Systems

The absolute minimum form of accounting records that should be maintained by a company is a record of receipts and payments. This would involve the maintenance of two books i.e. a payments book and a receipts book.

#### Payments Book

The payments book should record all payments made by the company, together with the following information:

- date;
- cheque number;
- payee name;
- amount;
- the amount of the payment should then be analysed between VAT and the VAT exclusive element (net amount) of the payment;
- the net amount should then be analysed into one, or more, predefined expenditure headings e.g. light and heat, telephone, equipment etc.

An example of a payments book is set out below for illustrative purposes.

It can be seen from the example that the combined total of the analysis columns (i.e. Light & Heat, Equipment, Phone and Wages) equal the total of the 'Net' column. Similarly, the total of the 'Net' and 'VAT' columns equal the 'Amount' column.

In addition to maintaining the above, it is **essential** that **all** associated and supporting documentation, e.g. invoices, receipts, contracts and supplier statements, be retained.

#### Receipts Book

The receipts book should record all amounts received by the company, together with the following information:

- date of receipt;
- name of individual/company making the payment;
- amount;
- the amount should then be analysed between VAT and the VAT exclusive element (net amount) of the receipt;
- the net amount should then be analysed into one, or more, predefined receipt headings e.g. trade sales, bank interest, dividends received etc.;
- amounts lodged to the bank, showing clearly the composition of any lodgement where a lodgement contains more than one receipt. (Note: as best practice, all receipts should be lodged intact).

#### PAYMENTS BOOK EXAMPLE

Date	Cheque No	Payee Name	Amount	VAT	Net	Light & Heat	Equipment	Phone	Wages
3 June 09	100602	ESB Electric	1210	210	1000	1000			
5 June 09	100603	Eircom	2420	420	2000		1400	600	
9 June 09	100604	S. Jones	500	0	500				500
	<b>Total</b>		<b>4130</b>	<b>630</b>	<b>3500</b>	<b>1000</b>	<b>1400</b>	<b>600</b>	<b>500</b>

**RECEIPTS BOOK EXAMPLE**

Date	Name	Amount	VAT	Net	Trade Sales	Bank Interest	Sale of Equipment	Dividends Received	Lodged
4 June 09	J. Smith	4840	840	4000	4000				
8 June 09	ABC Ltd.	12100	2100	10000			10000		16940
9 June 09	XYZ plc	500	0	500				500	500
	<b>Total</b>	<b>17440</b>	<b>2940</b>	<b>14500</b>	<b>4000</b>		<b>10000</b>	<b>500</b>	<b>17440</b>

An example of a receipts book is set out above for illustrative purposes.

Again, it can be seen from the example that the combined total of the analysis columns (i.e. Trade Sales, Bank Interest, Sale of Equipment, Dividends Received) equal the total of the 'Net' column. Similarly, the total of the 'Net' and 'VAT' columns equal the 'Amount' column.

In addition to maintaining the above, it is **essential** that **all** associated and supporting documentation relating to amounts received be retained.

**Bank Documents**

All bank documents relating to the company's receipts and payments should be retained. Bank documents will include, for example:

- bank statements;
- cheque stubs (which should be properly and fully completed);
- lodgement slips;
- any correspondence from the bank e.g. relating to loans etc.

Any amounts owed by the company at the year end will require to be calculated (by reference to invoices unpaid at the year end) and any amounts due to the company at year end will require to be calculated (by reference to a record of goods and services provided but as yet unpaid for).

The value of stocks on hand at the year end will require to be valued by reference to the physical quantities on hand and the cost of purchase of those stocks (or where lower, the amount for which they can be disposed of e.g. where stocks have been damaged or are obsolete). In order to ascertain the physical quantities of stock on hand at year end, it will usually be necessary for the company to perform a stocktake (at which the company's auditors will normally attend).

Maintenance of the above records, together with the retention of all supporting documents, will generally be sufficient to facilitate the preparation of a set of *basic* financial statements. In addition, the VAT columns in the receipts and payments books, when totalled, can be used to input the required information into the company's VAT returns.

However, the system as set out above is very basic and, generally, will not provide the requisite level of management information for all but the smallest of companies. Where the above system is not adequate to enable the company and its directors to determine at any time and with reasonable accuracy the financial position of the company, a more sophisticated accounting system will be required in order to fulfil the company's legal obligations to maintain proper accounting records.

More sophisticated accounting systems involve the maintenance of additional accounting records, including, for example:

- multiple bank accounts;
- a debtors ledger (an ongoing record of amounts due to the company);
- a creditors ledger (an ongoing record of amounts owed by the company);
- a nominal ledger (an ongoing record of income, expenditure, assets and liabilities of the company);
- records of stock movements i.e. receipts and dispatches of stocks, transfers to and from work-in-progress etc.
- a fixed assets register (an ongoing record of the company's fixed assets, additions to and disposals from fixed assets and depreciation etc.).

Where these additional accounting records are maintained, the amounts owed by or to the company are readily available. The directors of the company, therefore, have a clearer picture of the company's true financial position.

The type of accounting system described above is usually maintained on a computer based system. Several 'off the shelf' packages are available for this purpose. Alternatively, all of the above records can be maintained manually.

### **Internal Control System**

In addition to the accounting systems referred to above, companies should ideally have a system of 'internal control' in place, wherever practicable. A system of internal control is not a legal requirement, however it is best practice. Internal controls are a set of policies and procedures put in place by the directors to achieve certain objectives, for example:

- to ensure the accuracy of the books of account and the financial statements;
- to safeguard the company's assets;
- to prevent fraud, error and other irregularities.

By way of illustration, control procedures would include, for example:

- ensuring that, wherever practicable, a single individual does not have control over an entire transaction cycle;
- ensuring adequate approval and control over documents;
- checking of the arithmetical accuracy of records;
- maintaining control accounts e.g. debtors, creditors, VAT, PAYE control accounts;
- preparing regular trial balances;
- performing regular reconciliations e.g. bank reconciliations;
- comparison of physical stock levels with book stock levels, identifying and investigating any discrepancies, and;
- limiting access to assets and records by, for example, physical security measures, passwords etc.

### **A Note of Caution**

The guidance set out in this appendix is general in nature and does not purport to be an all-encompassing guide. Companies and their directors are strongly advised to seek professional accountancy advice when setting up their accounting and internal control systems in order to ensure that the systems implemented enable the company and its directors to comply with their legal requirements in this regard.

## Appendix F

### Provisions Relating to Single-Member Private Limited Companies

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In general, companies are required to have a minimum of two members. However, under the European Communities Regulations, 1994, a private limited company can have one member only. The European Communities Regulations were enacted into Irish law under Statutory Instrument (S.I.) 275 of 1994<sup>33</sup>. The main provisions of these regulations are set out in this Appendix.

- A private company limited by shares or by guarantee can be formed by one person and have one member only.
- A private company limited by shares or by guarantee which has been registered with two or more subscribers to its memorandum of association, can become a single-member company when the number of members is reduced to one and all the shares in the company are registered in the name of a sole person. Where this change to a single-member company takes place, the company is required to notify the Registrar of that fact and to provide details of the identity of the sole member within 28 days of the change occurring.
- Conversely, a company that is incorporated as, or subsequently changes to, a single-member company ceases to be such on the date that the number of members increases to more than one. Where the membership increases to above one, the company is required to notify the Registrar of that fact within 28 days. (Note: the company will, however, continue to be a private company as long as its membership does not exceed 99).
- Section 36 of the Companies Act, 1963, which imposes liability on the members of a company whose membership falls below the permitted limit, does not apply to single-member companies.
- The sole member of a single-member private limited company can decide to dispense with the necessity to hold an annual general meeting of the company. Such a decision shall have effect for the year to which it relates and any subsequent years. However, such a decision shall not remove any liability arising as a result of failing to hold an AGM prior to the decision to dispense with same.
- Where a decision to dispense with the AGM is in force, the requirements:
  - that the directors lay the financial statements before the AGM;
  - that a directors' report be prepared and presented to the AGM;
  - that the auditors make a report to the members at the AGM, and;
  - that a parent undertaking lay group accounts before the AGM;
 are deemed to have been satisfied when the accounts and other reports are sent to the sole member.

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<sup>33</sup> The text of S.I. 275 of 1994 can be accessed at [www.odce.ie](http://www.odce.ie).

- All of the powers exercisable by a company in general meeting are exercisable, in the case of a single-member company, by the sole member without having to hold an AGM for that purpose. However, this concession does not empower the sole member to remove the company's auditor without holding the required meeting.
- Any provision of the Companies Acts that requires a matter to be done or to be decided by a company in general meeting or which requires any matter to be decided by a resolution of the company shall be deemed to be satisfied by a decision of the sole member which is drawn up in writing and notified to the company. Where the sole member notifies the company of a decision made in this manner, the notification must be recorded and retained by the company.
- The sole member of a single-member private company is deemed to be connected to the directors of the company<sup>34</sup>.

Where a single-member company enters into a contract with its sole member and the sole member also represents the company in the transaction, whether as a director or otherwise, the company shall, unless the contract is in writing, ensure that the terms of the contract are set out in a written memorandum or are recorded in the minutes of the first meeting of the directors following the making of the contract. This provision does not apply to contracts entered into in the ordinary course of the company's business.

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<sup>34</sup> See Information Book 2 – Company Directors (section 2.6.9 – Transactions with Directors) for an explanation of 'Connected Person'.

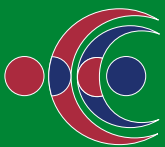












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*Tá leagan Gaeilge den leabhrán seo ar fáil  
An Irish version of this booklet is available*