



STATUTORY ELECTRONIC FILING AGENT

INFORMATION LEAFLET NO. 15 / APRIL 2019

INTRODUCTION

Under section 35 Companies Act 2014, a company may appoint a person to be its electronic filing agent (EFA). This leaflet explains the following:

1. How a person can become an EFA
2. How a company may appoint an EFA
3. The duties of the EFA
4. The responsibilities of the company to the EFA
5. The means of authenticating documents filed electronically.

It is now possible to file an annual return form online, using one of the software packages that provide the facility or via www.core.ie.

The relevant text from the legislation is at Appendix 1.

1. HOW A PERSON CAN BECOME AN EFA

To become an EFA, the agent must apply to the CRO to act as an EFA on Form J1(a). The J1(a) is an application for a digital certificate and the nomination of a named individual or individuals within the agent's organisation who will verify the signing of documents. The names of these individual(s) must be listed on the form.

2. HOW A COMPANY MAY APPOINT AN EFA

Section 35 of the 2014 Act provides that "a company may authorise a person (who shall be known and is in this Act referred to as an "electronic filing agent") to do the following acts on its behalf":

- (a) the electronic signing of documents that are required to be delivered by the company to the Registrar of Companies, and
- (b) the delivery to the Registrar of Companies, by electronic means, of those documents so signed.

Having thus authorised the EFA, the company must file a Form B77 notifying the Registrar of the authorisation. The form must contain the company name and number and the agent details including their CRO ID which they will have obtained when applying to the CRO to act as an EFA.

Where a firm (partnership) is being appointed as the company's electronic filing agent, the name and principal office of the firm may be stated instead of the names of all the partners in that firm. By appointing a firm by name, it indicates the appointment as the company's EFA of those persons who shall from time to time during the currency of that appointment, be the partners in that firm as from time to time constituted.

Only one EFA may be appointed by a company to act on its behalf as at any given date. Multiple EFA's having concurrent authority may not be appointed for the purposes of CRO filings. If a company wishes to replace its EFA, it may give the CRO notice of revocation of that EFA's authority before notifying CRO of the appointment of a new EFA. (as to revocation, see 4, below)

3. THE DUTIES OF THE EFA

The electronic signing and delivery of a document by an EFA on behalf of a company will be as valid in law as if it had been done by the company as long as:

- (a) an authorisation by the company is in place;
- (b) CRO have been notified of that authorisation (see below);
- (c) the signing and delivery complies with any requirements of the registrar of companies of the kind referred to in the Electronic Commerce Act 2000 (see 5. below).

It will be the joint responsibility of a company and the EFA to manage the control of the documents. Section 35(7) of the 2014 Companies Act provides that an EFA will not be precluded from acting as an auditor of a company.

4. THE RESPONSIBILITIES OF THE COMPANY TO THE EFA

Section 876 of the Companies Act 2014 provides that a person who knowingly or recklessly furnishes false information to an electronic filing agent that is subsequently transmitted in a return made, on the person's behalf, will be guilty of an offence.

A company may revoke the authorisation of an EFA and must notify CRO of that revocation on Form B77. The EFA's authorisation to act on behalf of the company remains in force until such time as CRO has been notified by the company on Form B77 of the revocation.

If a revocation constitutes a breach of contract, or otherwise gives rise to a liability being incurred, this does not affect the validity of the revocation.

5. THE MEANS OF AUTHENTICATING DOCUMENTS FILED ELECTRONICALLY

Documents that:

- are furnished by an EFA who has been duly authorised by a company, and
- contain a valid ROS (Revenue Online Signature) certificate for the EFA

have been signed by that EFA in accordance with the Companies Act and the Electronic Commerce Act 2000.

It is important to note that, **where the EFA is not an individual**, all responsibilities regarding the filing of the document remain with the EFA.

APPENDIX 1

35.—(1) A company may authorise a person (who shall be known and is in this Act referred to as an “electronic filing agent”) to do the following acts on its behalf.

(2) Those acts are—

- (a) the electronic signing of documents that are required or authorised, by or under this Act or any other enactment, to be delivered by the company to the registrar of companies, and
- (b) the delivery to the registrar of companies, by electronic means, of those documents so signed.

(3) The authorisation of a firm (not being a body corporate) by its firm name to do the foregoing acts on behalf of a company shall operate to authorise the following persons to do those acts on the company's behalf, namely those persons who are from time to time during the currency of the authorisation the partners in that firm as from time to time constituted.

(4) Subject to the following conditions being complied with, an act of the foregoing kind done by such an agent on behalf of a company pursuant to an authorisation by the company under this section that is in force shall be as valid in law as if it had been done by the company (and the requirements of this Act or the other enactment concerned with respect to the doing of the act have otherwise been complied with (such as with regard to the period within which the act is to be done)).

(5) The conditions mentioned in *subsection (4)* are—

- (a) that prior to the first instance of the electronic filing agent's doing of an act of the kind referred to in *subsection (2)*, pursuant to an authorisation by the company concerned under this section, the authorisation of the agent has been notified by the company to the Registrar in the prescribed form, and
- (b) the doing of the act complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of the Electronic Commerce Act 2000.

(6) It shall be the joint responsibility of a company and the electronic filing agent authorised by it under this section to manage the control of the documents referred to in *subsection (2)*.

(7) An electronic filing agent shall not, by virtue of his or her authorisation under this section to act as such, be regarded as an officer or servant of the company concerned for the purposes of Regulation

71(4) or (5) of the European Communities (Statutory Audits)(Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010).

36.—(1) A company may revoke an authorisation by it under *section 35* of an electronic filing agent.

(2) Such a revocation by a company shall be notified by it, in the prescribed form, to the registrar of companies.

(3) Unless and until the revocation is so notified to the registrar of companies, the authorisation concerned shall be deemed to subsist and, accordingly, to be still in force for the purposes of *section 35(4)*.

(4) If a revocation, in accordance with this section, of an authorisation under *section 35* constitutes a breach of contract or otherwise gives rise to a liability being incurred—

(a) the fact that it constitutes such a breach or otherwise gives rise to a liability being incurred does not affect the validity of the revocation for the purposes of *section 35*, and

(b) the fact of the revocation being so valid does not remove or otherwise affect any cause of action in respect of that breach or the incurring of that liability.

Section 876 of the Companies Act 2014 -

(1) A person shall be guilty of a category 2 offence if that person, in purported compliance with any provision of this Act, answers a question, provides an explanation, makes a statement or **completes, signs**, produces, lodges or delivers any return, report, certificate, balance sheet or other document false in a material particular, and knows that it is false in a material particular or is reckless as to whether it is or not, but this subsection is subject to subsection (3) which provides for greater maximum penalties in certain cases.

(2) A person shall be guilty of a category 2 offence if the person provides false information to an electronic filing agent knowing it to be false or being reckless as to whether it is so and that information is subsequently transmitted in a return made, on the person's behalf, to the Registrar, but this is subject to subsection (3) which provides for greater maximum penalties in certain cases.

(3) Where a person is convicted on indictment of an offence under subsection (1) or (2) and the court is of opinion that any act, omission or conduct which constituted that offence has -

(a) substantially contributed to a company being unable to pay its debts;

(b) prevented or seriously impeded the orderly winding-up of the company; or

(c) substantially facilitated the defrauding of the creditors of the company or creditors of any other person,

then, notwithstanding, that it is a category 2 offence of which he or she has been convicted, the maximum term of imprisonment and the maximum amount of fine to which the person shall be liable for the offence shall be that as provided for in section 871(1)(b) in relation to a category 1 offence.

Offences

The Act provides for a four-fold categorisation of offences into Categories 1 to 4. Throughout the Act, offences are, as created, categorised as attracting a particular category of penalty. In Chapter 7 of Part 14, those penalties are set out:

- Category 1 offence – conviction on indictment can result in a term of imprisonment of up to 10 years or a fine of up to €500,000 or both;
- Category 2 offence – conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both;
- Category 3 offence – a summary offence only, attracting a term of imprisonment of up to six months and a “Class A fine” (or both); and
- Category 4 offence – also a summary offence only, punishable by the imposition of a Class A fine.

A “Class A fine” is a fine within the meaning of the Fines Act 2010 (i.e. a fine not exceeding €5,000).

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