

SIX THINGS THAT EVERY COMPANY DIRECTOR SHOULD KNOW ABOUT COMPANY REGISTRATION

INFORMATION LEAFLET NO.2 / APRIL 2019

INTRODUCTION

In accordance with the Companies Act 2014, companies are required to file documents with the CRO. This information leaflet summarises the **six things** that every company director should know in respect of filing these documents.

Any forms (and associated filing fees) and information leaflets referred to here may be downloaded from www.cro.ie.

1. Every company, whether trading or not, must file an annual return at the CRO not later than 28 days from its statutory annual return date (ARD). The ARD of every company can be checked free of charge on the CRO website at www.cro.ie/search

A company director must ensure that an annual return on behalf of the company is delivered to the CRO.¹ The annual return (**Form B1**) is a document setting out certain prescribed information in respect of the company. This document has to be filed with the CRO annually, regardless of whether or not the company is trading.

A company's annual return is required to be made up to a date every year which is no later than the company's ARD and to be filed with the CRO within 28 days of the date to which it has been made up.

A new company's ARD is the date that is six months from its date of incorporation. The first annual return is required to be made up to that ARD.

Although not statutorily required to do so, the CRO has a policy of sending an ARD reminder to each company at its registered office in advance of the company's ARD every year.

Where financial statements (accounts) are required to be attached to the annual return (see 2. below), the return filing deadline is **either**

- the company's ARD plus 28 days *or*
- the company's financial year-end plus nine months and 28 days, whichever is **the earlier**.

See Information Leaflet No. 23, "Annual Return and Financial Statements Requirements".

Mandatory E-Filing: Since **1st June 2017**, all annual returns have to be completed online. It is not possible to file a paper submission. The CRO online filing system is at www.cro.ie. Companies have to upload their financial statements as a pdf and pay the filing fee for the B1 online as well.

2. In almost every case, financial statements must be attached to that return; the financial year end of those financial statements must be no earlier than nine months before the date of the return. To comply with that requirement, it might be necessary to change your company's ARD. Changing an ARD is possible only if the statutory provisions are followed in full, see www.cro.ie > Annual Return

Generally speaking the documents required to be attached to the annual return², are:

- a copy of the balance sheet*;
- a copy of the profit and loss account*;
- a copy of the directors' report; and
- a copy of the auditor's report.

The financial statements marked * are required by law to be audited³ and to cover the period:

- in the case of the first annual return to which financial statements are annexed, since the incorporation of the company, and
- in any other case, since the end of the period covered by the financial statements annexed to the preceding annual return filed with the CRO,

and must be made up to a date not earlier by more than nine months than the date to which the

¹ Section 343(11) Companies Act 2014

² Note that certain exemptions from these requirements are available to micro-sized and small-sized companies as defined by the Companies Act 2014, Chapter 1A, Sections 280A-280H Part 6.

³ Unless the company is a company which is entitled to the audit exemption and claims it – see Information Leaflet No. 23 "Annual Return and Audit Exemption".

annual return is made up.

3. Where returns are not filed on time, a substantial late filing penalty must be paid and further enforcement actions may be pursued by the CRO.

Returns which are filed late (i.e. more than 28 days after the effective date of the return) with the CRO incur a substantial late filing fee, in addition to the standard filing fee of €20 (electronic). The late filing fee is €100 with effect from the expiry of the company's filing deadline, with a daily late fee of €3 accruing thereafter, up to a maximum of €1,200 per return.

The following enforcement options are open to the CRO in respect of non-filing of annual returns:

(a) Prosecution

The CRO prosecutes companies and their directors for failure to file annual returns on time. Companies and directors may receive a conviction in respect of each year that annual returns are outstanding. Failure to file is a category 3 offence. A director with three such convictions may be disqualified from acting as a director or having any involvement in the management of any company.

(b) Court injunction

Where a notice calling upon a director to comply with a statutory provision under the Companies Act has been served on him/her and 14 days have elapsed since the date of service, but the breach of the provision continues, application may be made to the High Court by the Registrar of Companies or the Director of Corporate Enforcement ("the Director") for an order directing compliance by a defaulting director with the statutory provision in question within such period as the court may specify. An order for legal costs of this court application may be made against the director(s) concerned. This procedure is laid down in section 797 Companies Act 2014.

(c) Strike off

Any company which does not file its annual return in respect of any **one** year is liable to be struck off the register and dissolved. On dissolution, any assets will vest in the Minister for Public Expenditure and Reform by operation of law, and the protection of limited liability is lost from the date of strike off. In addition, application may be made to the High Court by the Director for an order pursuant to section 842 Companies Act 2014, disqualifying the company's directors from acting as director or having any involvement in the management of any company, together with an Order for the legal costs incurred by the Director in bringing such an application and the costs incurred by him in investigating the matter.

Enforcement measures employed by CRO have regard to a company's annual return filing compliance history in recent years. Filing an annual return late affects a company's compliance history and could result in it being selected by this Office for enforcement measures in future years.

A late return also disqualifies the company from claiming the audit exemption in respect of the financial statements attached to the next two year's annual returns, even if the company meets all other qualifying criteria for the audit exemption in respect of the financial years covered by the financial statements attached to both returns.

4. Reminders and other important notices are sent to companies at their registered office as notified to the CRO. If the address is wrong you may not become aware of important information regarding your company. The registered office of every company can be checked at www.cro.ie/search

Every company is obliged to have a registered office within the State, which cannot be a P.O. Box number.

Form B2 is used to notify the CRO of a change in a company's registered office, and must be delivered to the CRO within 14 days of any such change. Form B2 may be filed free of charge electronically – see 5. below. From June 1st 2017, all forms B2 must be completed online.

It is most important that the details of a company's registered office are kept up-to-date with CRO, and that the company's post be collected regularly from that address. All official communications with the company are issued to the company at its registered office. This includes strike off notices and

annual return reminders. Any change of registered office should therefore be notified to the CRO without delay following the change.

Please note that if a company has in fact changed its registered office, but has not notified the CRO of the change, any document left or sent by post to the address currently recorded by the CRO as the company's registered office is deemed by law to have been left at or sent by post to the registered office of the company, notwithstanding that the situation of its registered office may have changed.⁴

A company can use form B2 to appoint a Registered Office Agent and place their registered office in the care of the Agent. The agent must be pre-approved by the CRO.

5. Certain forms – in particular a change of address and change of director or secretary – may be filed free of charge at www.core.ie

Online notification of changes to registered particulars is free, secure and quick. It is more reliable and more efficient than using paper and can cut down on administration.

The facility provides for the completion of forms online, the results to be printed, signed and submitted to us. The status of electronically filed forms can also be checked at any time.

Mandatory E-Filing: Since **1st June 2017**, all annual returns (**form B1**), change of registered office (**Form B2**) and change in director/secretary details (**form B10**) have to be completed online. It is not possible to file a paper submission for these forms. The CRO online filing system is at www.core.ie.

6. It is the responsibility of each director to ensure that his or her company is not in breach of the Companies Act.

The Companies Act 2014 expressly states that it is the duty of each director of a company to ensure that the company complies with the requirements of the Companies Act 2014.⁵

(a) Other CRO filing requirements

A company director must also ensure that the following changes of information in relation to the company are notified to the CRO⁶ (please note that many of these forms can be filed free of charge at www.core.ie):

| Change in | Required to file |
|--|--------------------------------------|
| locations of company's statutory registers | Form B3 |
| memorandum and articles, including authorised capital | Form G1/G1Q plus new memo & articles |
| particulars in relation to its directors and/or secretary | Form B10* |
| if director becomes disqualified in foreign jurisdiction after appointment | Form B74a |
| issued share capital | Form B5/B7/H5 |
| authorised capital (increase) | Form B4 |

* **Form B74** is required to be completed by any person being appointed as director of an Irish-registered company, where that person is currently disqualified in a foreign jurisdiction from acting as a director or secretary of a body corporate or an undertaking.⁷ For further information, see Information Leaflet No 16, "The Company Secretary".

⁴ Section 51 Companies Act 2014

⁵ Section 223 Companies Act 2014

⁶ This is not an exhaustive list, but a summary of the main changes that must be notified to the CRO.

⁷ Note that Form B74 must also accompany Form A1 (incorporation form) where any of the first directors of the company are currently disqualified abroad.

(b) Notification of termination of a directorship to CRO

A company is obliged to notify the CRO within 14 days of any change among its directors or of any particulars concerning its directors (i.e. change of address).⁸ The relevant form is **Form B10**, which must be filed electronically (free of charge) – see 5. above. Forms B10 can be completed online at www.core.ie.

Where there has been breach of this obligation, the company and every officer of the company shall be guilty of an offence.

Form B10 has to be signed by a **current** officer of the company; it cannot be signed by an officer who has resigned. Form B10 will be rejected by CRO and returned to the presenter in circumstances where the termination of the directorship notified on the form would result in the company being registered with less than the statutory minimum number of directors (two) unless the company is registered as a Private Company Limited by Shares (LTD company) under the Companies Act 2014. An LTD company can have just one director but if an LTD company has only one director, it must have a separate secretary.

Where the termination of a directorship, which is notified to the CRO on Form B10, leaves the company without an European Economic Area (EEA) resident director, the company should lodge either a section 137 bond with the B10, or obtain a section 140 certificate. For further information on the requirement that a company have at least one director resident in a member State, see Information Leaflet No. 17, “Requirement to have an EEA - Resident Director”.

If a company fails to lodge Form B10 in respect of a person who has ceased to be a director of that company, there is a procedure whereby the former director can notify the CRO, using **Form B69**, that the company has failed to file the proper documents. See Information Leaflet No. 18, “Notification by Director/Secretary of Resignation”.

Caution

These notes are in general form. In specific cases it may be necessary for you to consult with your professional adviser (e.g. chartered secretary, solicitor, accountant, etc.). While the staff of the CRO will answer questions you may have relating to the documents that a company is required to file with the Office, you should consult your professional adviser if further assistance is required as to the duties of a director or company law generally.

⁸ Section 149(8) Companies Act 2014

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