

CORPORATE GOVERNANCE AND COMPLIANCE UPDATE

**OUR SEVEN MOST FREQUENTLY ASKED
QUESTIONS & WHAT'S NEW IN 2022!**

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In this update, we are highlighting the seven most popular questions we have been asked so far this year following recently introduced changes in Company Secretarial Practice and Corporate Governance Regulations affecting Irish incorporated companies and we outline what further changes we can expect in the coming months.

What is the Companies (Corporate Enforcement Authority) Act 2021?

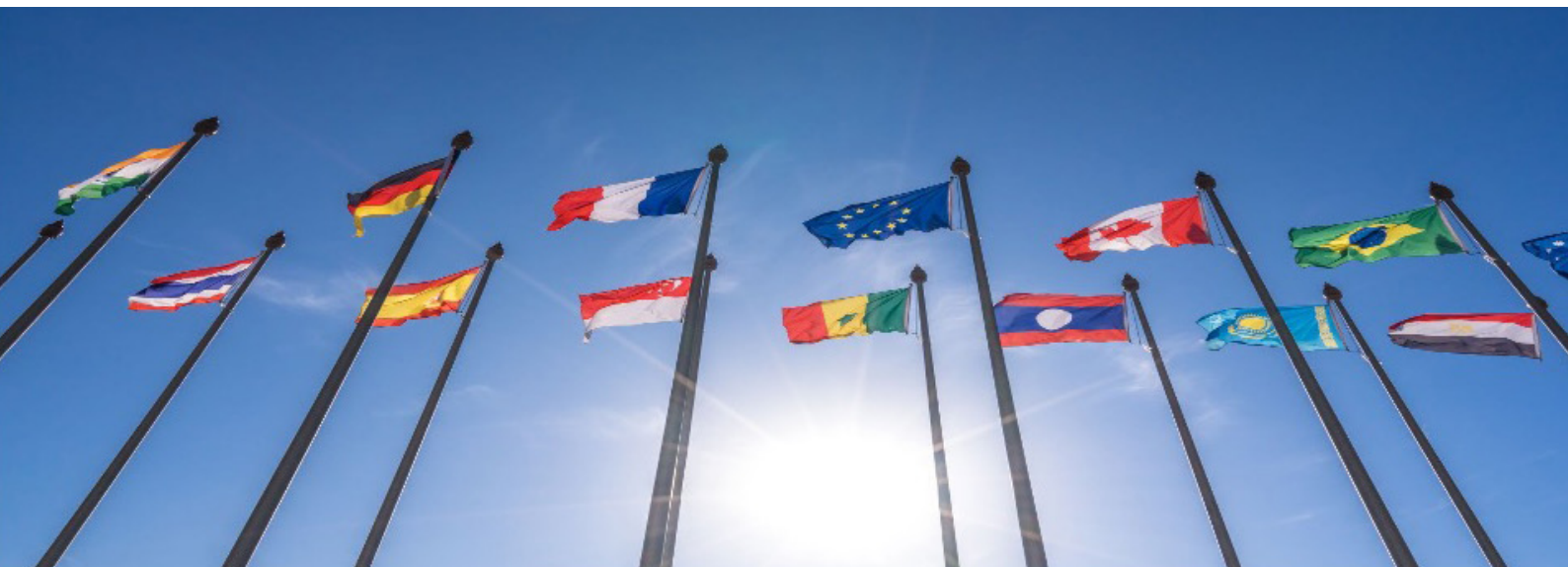
This new Act has allowed for the creation of the Corporate Enforcement Authority (“CEA”), which has replaced the Office of the Director of Corporate Enforcement. The main function of the CEA will be to investigate and prosecute corporate crime and use its additional resources to encourage companies to comply with the Companies Act 2014 and investigate suspected offences and non-compliance issues with summary fines and referring indictable offences to the Director of Public Prosecutions.

The Act also contains a number of amendments to certain sections of the Companies Act 2014 in relation to share capital and general Corporate Governance matters, as well as increasing the number of statutory CRO forms that can now only be filed on-line. With the CEA now accountable to the Oireachtas, this new Act is seen as major step forward in Ireland’s continued fight against corporate crime and corporate governance non-compliance.



What is a Non-Resident Director Insurance Bond and does my Company need one?

A valid insurance bond is required to be lodged with the Companies Registration Office by all Irish incorporated companies that are not actively trading in Ireland and do not have at least one Director on its board resident in the European Economic Area (“EEA”). The EEA comprises of all 27 EU member states plus Iceland, Norway and Liechtenstein. With the introduction of Brexit at the start of last year, all Irish companies with only UK resident directors were non-compliant with this section of the Act and it should be noted that it is the tax residency of the Directors that is relevant here and not their nationality.



What are the Audit Exemption rules and can my Company avail of it?

A company can claim audit exemption if it has not filed a late annual return in the last two years and meets two of the following criteria:

- Turnover is less than €12 million
- Balance Sheet total is less than €6 million
- Average number of employees is below 50

The Balance Sheet must also contain a Director’s declaration claiming the exemption and the annual return being filed with the Financial Statements must also state that the exemption is being availed of. Missing an annual return filing deadline will result in the audit exemption being lost for two years regardless of whether trading or not.

Is my Company required to file our Register of Beneficial Owners or do we qualify for an exemption?

All incorporated companies and societies have been required to prepare and submit its Register of Beneficial Owners register with the Central Register with effect from November 2019 and within 5 months of incorporation for all companies registered post November 2019.

The only companies exempt from this statutory filing requirement are those that are listed on a regulated market that is subject to disclosure requirements which ensure transparency of ownership information.

A Beneficial Owner is defined as any person who holds or controls (directly or indirectly) more than 25% of a Company.

It should be noted that Irish Banks are currently insisting that the Register is filed before they will proceed to open a new corporate bank account and that any subsequent amendments to the filed Register are to be submitted within 14 days of the change.

The Central Register are now actively issuing reminders to non-compliant companies and in doing so, setting out the potential consequences for non-filing, including substantial fines.



Do I need to register a Trading Name?

If a Company, Individual or Partnership is trading under a name that is not its registered name, then the trading name is required to be registered with the Companies Registration Office. It should be noted that a registered trading name offers its owner no name protection and cannot include the words Limited / Unlimited.

Can we change our Annual Return Date and Financial Year End?

As the original Annual Return Date of a Company is automatically designated at 6 months from the date of incorporation, this may not be suitable for companies going forward.

Companies Registration Office once in any 5 year period. There is an exemption to this rule which may be claimed by any Company during this period if they are changing their ARD to that of its Holding Company or one of their Subsidiaries.

The criteria for changing a Financial Year end is similar as the 5 year rule and Holding/Subsidiary Company exemption also applies here.

When changing an ARD, it should be noted that the new ARD cannot be extended by more than 6 months from the current date and may be no more than 9 months from the Year End Date.

When changing the Year End, the next financial period cannot be greater than 18 months.

Both dates are intrinsically linked so care should be taken when considering making changes to either of them.

Can my Company operate with one Director?

Since the introduction of the Companies Act 2014, Irish limited companies can operate with only one Director but that person cannot also act as the Company Secretary. The Company Secretary does not have to be an individual and Companies may act in this capacity – we provide this service on an annual basis to one Director companies so entrepreneurs no longer need to use their spouse, partner or other family member that are not actively involved in the Company.

It should be noted that there are a number of statutory and fiduciary duties placed upon all directors of an Irish company. Unlimited companies require a minimum of two directors.

We can provide further details on this on request or if you have any additional Corporate Governance questions we would love to hear from you.

What's New for '22?

We are expecting to see Directors being required to disclose their PPS numbers on Companies Registration Office forms when filing Annual Returns, registering new companies or when being appointed to a new directorship. This requirement is being brought in to prevent fraudulent companies being incorporated using legitimate Irish company directors without their knowledge and will allow the CRO to verify the identity of individuals concerned. It has not yet been established what the procedure will be for non-resident Directors who do not have a PPS number. Since the start of the Covid pandemic, the Companies Registration Office temporarily ceased its involuntary strike off process against companies that have not been filing their annual returns and financial statements. We are expecting the CRO to re-commence the involuntary strike off process against non-compliant companies later this year.

ABOUT GATAL



Please contact us by email admin@gatal.ie, via our website www.gatal.ie or contact your usual Gatal or Moore contact in Cork or Dublin.

Gatal Limited assists companies, their directors, company secretaries and shareholders to comply with the constantly changing regulatory landscape in Ireland and with the statutory responsibilities and obligations placed on them under the Companies Act 2014 by providing solution focused practical and technical assistance.

Our services are provided to a large number of domestic and international clients and cover all incorporation, all compliance requirements and dissolution services along with all Company Law changes that arise during the life span of Irish Companies.

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