

# The Company Agenda

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COMPANY SECRETARIAL GROUP NEWSLETTER

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## CORPORATE GOVERNANCE

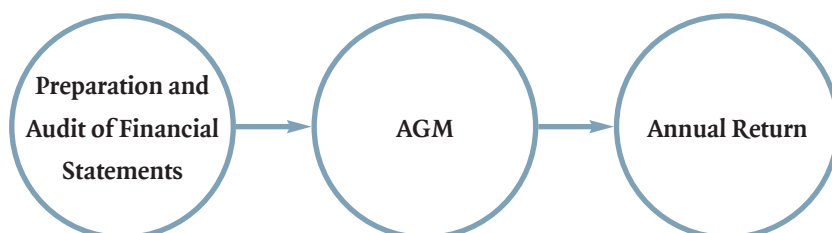
### Accounts, Annual General Meetings and Annual Returns

The Companies Registration Office ("CRO") has maintained its active compliance policy with a view to increasing the number of companies which not only file their annual returns and accounts but do so every year and on time. From the low of 13% of companies filing on time in 1998, under threat of strike-off and prosecution, compliance has improved greatly and last year some 73% of companies file on time.

The days when companies would ignore CRO notices threatening all kinds of adverse outcomes should the company not make its statutory filings are long gone and a new regime has taken over whereby any company in default faces a real and serious risk of penalties some imposed on the company itself and some on its officers. The significant increase in the number of compliant companies is testament to the effectiveness of this campaign and all indications from Parnell Square are that there will not be any let up in the future.

To avoid prosecution or strike-off it is a must that the directors of Irish companies ensure that adequate resources and proper planning are put into place well before the relevant deadlines.

For the vast majority of companies, this entails a three-tier set of procedures and processes starting with the preparation and audit of the financial statements then moving to the annual general meeting and then to the annual return.



Please note that this publication is for information purposes only and is intended to provide a broad outline of the issues covered. It does not constitute legal or tax advice and if specific queries arise, they should be addressed to your contact in the firm or other professional advisors.

## Step 1 - Preparation and Audit of Financial Statements

The directors of Irish companies, whether or not they are trading, are required to have prepared a balance sheet, a profit and loss account and a directors' report. The report of the auditors on these accounts must also be attached (unless the company has an audit exemption) and all of these items must be laid before the members at the AGM.

Failure to comply with these requirements renders the directors liable to conviction for an offence punishable on summary conviction by imprisonment for a term not exceeding six months or by a fine not to exceed €1,905 or to both. It is possible to offer a defence in such proceedings and the term of imprisonment would not be imposed unless the offence were committed wilfully.

Specific accounting principles are to be observed in the preparation of the financial statements which must be produced in specified formats and must disclose certain information by way of notes to the accounts. The financial statements must give a "true and fair view" of the affairs of the company. Although there are certain exemptions available to medium-sized and small companies from the rigours of the requirements relating to the annual accounts, their accounts must also adhere to the "true and fair view" standard.

For most companies, every balance sheet and profit and loss account of the company must be signed by two directors of the company and if any unsigned version of such documents is issued, circulated or published, then the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding €1,905.

The Directors' Report must give details on a wide range of items including any recommended dividend, the amount to be taken to reserves, a fair review of the development of the business and any related risks. The Directors' Report must also be signed by two directors.

Unless the company is a small company which has availed of an audit exemption, an auditors' report must also be included as part of the financial statements or annual accounts. The auditors must report to the members on the accounts examined by them and on every balance sheet and profit and loss account. The auditors will not sign their report until they are satisfied that the information contained in the profit and

loss account, the balance sheet and the directors' report are accurate and reflect a true and fair view of the company's affairs and until those documents have each been signed by two directors.

Every member of the company is entitled to a copy of the annual accounts, regardless of whether or not they are entitled to receive notice of the AGM, and failure to comply with the requirements regarding the circulation of the accounts renders the company and every officer in default liable to a fine not exceeding €1,905.

## Step 2 - Annual General Meetings

Irish multi-member companies, whether limited or unlimited, public or private, are required to hold an annual general meeting ("AGM") in each calendar year. Furthermore, not more than 15 months may elapse between the holding of one AGM and the next bearing in mind that this should not overlook the requirement to hold an AGM in each calendar year. The only exception to this rule is that so long as a company holds its first AGM within 18 months of its incorporation, it is not obliged to hold an AGM in its year of incorporation nor in the following year.

A single member company may elect to waive the requirement to hold an AGM if it wishes and the regulations concerning the presentation of accounts and other reports to an AGM are satisfied by sending these to the sole member within the appropriate time frame. The same standards apply to the production of the financial statements as outlined above.

In each financial year, the directors must lay before the company's members in general meeting the financial statements (annual accounts), the directors' report and the auditors' report which must be made up to a date not earlier than the date of the meeting by nine months. This is referred to as the "nine month rule" and in the case of a company having a financial year end of 31st December, this means that the accounts must be presented to the AGM by no later than 30th September of the following year, i.e. nine months after the accounting year-end.

### Consequences of failing to hold an AGM

If default is made in holding an AGM, the Office of the Director of Corporate Enforcement may on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the ODCE thinks

## Step by Step Guide to Annual Return Compliance

1

Having established the relevant deadlines, contact your accountants and auditors to ensure that the audit will be completed not less than one month in advance of the ARD.

The initiation of the process will vary from one company to the next depending on the level of activity of the company, the availability of key personnel both at the company itself and at the auditing firm, absences due to holidays, input from other group entities, the standard of the records maintained by the company, response time from third parties and so on.

2

Contact Arthur Cox, your company secretarial service provider, for confirmation of any relevant deadlines or queries. Once the audit has been completed, request the completed audited financial statements from the auditors including any related letters of engagement and/or representation.. If it has been decided to avail of any exemptions regarding abridged accounts, these should be produced at the same time.

3

Once the accounting documentation is available, send Arthur Cox, your company secretarial service provider, a copy of the draft accounts so that they may be reviewed to ensure that the contents are accurate from a company secretarial point of view and that no Section 40 EGM or other item must be dealt with and then arrange for the necessary board meeting to be held. At this time a draft of the annual return could be provided so that the details may be verified by the directors when they attend the board meeting.

4

Return the signed accounts and related documentation to the auditors and the board minutes to the company secretarial service provider. Request the auditors to forward the required copy of the financial statements for filing purposes with the annual return to the company secretarial service provider as soon as they have been signed by the auditors.

5

If appropriate, arrange the holding of an AGM within nine months of the financial year-end of the company.

6

Ensure the company's annual return is made up to its current ARD which may not be later than nine months from the financial year end and filed with the CRO within 28 days of that date.

expedient, including directions modifying or supplementing in relation to the calling, holding and conducting or the meeting, the operation of the company's articles and the ODCE may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

The failure to hold an AGM or to comply with a direction of the ODCE is an offence and the company and every officer in default shall be liable to a fine not exceeding €1,904.

### Step 3 - Annual Returns

Almost all Ireland incorporated companies, whether limited or unlimited, public or private are required to file an annual return with the Registrar of Companies (the "Registrar") once every year, within 28 days of the annual return date ("ARD") of the company. All limited and most unlimited companies must annex financial statements to the annual return and there may not be more than nine months between the financial year's end of the company and the ARD.

For a company that is incorporated on or after 1st March 2002, its first ARD will be the six month anniversary of its incorporation and an annual return made up to that ARD will have to be filed within 28 days of that ARD but no accounts need be attached. This is one of the rare occasions on which an annual return may be filed without being accompanied by financial statements. When an unlimited company qualifies for an exemption from filing its statutory accounts, it is still required to file an auditors' report with its annual return.

Consequences of failing to file an annual return on time:

1. Late filing penalties will be imposed as follows:
  - €100 late filing penalty, plus
  - €3 for every additional day late (including Saturdays, Sundays and public holidays)
  - The late filing penalties accrue on a daily basis to a maximum of €1,200 per annual return.
  - This does not include the €40 which is the normal filing fee and has to be added to the total penalty being levied.

2. On the spot fines of up to €500 may be imposed on any company for offences under the Companies Acts 1963 to 2006, and these fines may be imposed in addition to late filing penalties. The Registrar of Companies may serve an on-the-spot fine to any company by serving notice on the company and this fine is independent of any decision of the Registrar to strike the company off the register.
3. The Director of Corporate Enforcement (the "Director") can apply to the High Court for an order to disqualify the directors of a company from acting as a director, auditor, or other officer, receiver, liquidator or examiner or from being in any way concerned or take part in the promotion, formation or management of any company or society.
4. A company failing to file its annual return becomes liable on summary conviction to a fine not exceeding €1,270, as does every officer of the company similarly in default and the proceedings in relation to such offences may be brought by the Registrar.
5. The officers of the company shall be guilty of an offence and the Registrar may bring proceedings in relation to such an offence.
6. The Registrar's most powerful weapon in relation to a company's failure to file its annual return on time is the Registrar's ability to take steps to dissolve a company by having its name struck off the register of companies. All property and assets of the company will be vested in the State (and is held by the Minister of Finance on behalf of the State) upon such dissolution and the liability (in the case of a limited liability company) of the directors, officers and members continues and may be enforced as if the company had not been dissolved. The company must immediately cease trading on strike off or the directors will be guilty of trading whilst purporting to have limited liability.

Should companies be in a position to do so, it is also possible to file the annual return and financial statements earlier than the ARD while still retaining the ARD for subsequent years. Companies which are not trading or which are exempt from filing their accounts or file accounts with limited commercially sensitive information may avail of the earlier filing regime should they wish to do so.

There is no longer any direct relationship between the date of the AGM and the ARD so that a company may, for example, file its annual return made up to a date earlier than its ARD and before it has held its AGM or it may hold its AGM early in the year and file its return made up to its ARD in the usual way.

It is also possible in certain circumstances to

extend a company's ARD if it does not fit in with its financial year's end. The maximum extension permitted is six months and this may be used only once in five years. Any application must be filed with an annual return made up to the ARD and within 28 days of the ARD and no accounts are required. If not filed within the 28 day limit, the extension application will be refused.

### Relevant deadlines

<b>Financial Statements/Accounts:</b>	First set within 18 months of incorporation Annually thereafter
<b>AGM:</b>	First within 18 months of incorporation Every calendar year thereafter Not more than 15 months between one AGM and the next Not more than nine months after the financial year end
<b>Annual Return:</b>	First made up to sixth month anniversary of incorporation Second not more than a year later Not more than nine months after the financial year end File not more than 28 days after the ARD Maximum extension six months and only once every five years

September 2007

## ■ ARTHUR COX'S COMPANY SECRETARIAL SERVICES

The Company Secretarial Practice Group assists companies and their directors, secretaries and managers to comply with their statutory obligations by giving technical and practical support and assistance. We provide the full spectrum of company secretarial services, including annual secretarial services, management of changes in officers and constitution, corporate restructuring, corporate governance and transaction support.

**Company Secretarial** - Due to the increasing volume and complexity of company law legislation many companies are using our in house company secretarial company, *Bradwell Limited*, to act as their company secretary. We also maintain client companies' statutory registers on our database and provide advice to client companies in relation to Annual Returns and AGMs as well as making all required filings in the Companies Registration Office.

**Corporate Governance** - We also provide corporate governance advice on board practice and procedures, board committees and their terms of reference and tailoring articles of association to meet the requirements of client companies.

## CONTACTS

If you have any queries about the articles in this publication or would like us to cover a particular subject in a future issue, or if you have any queries of a company secretarial nature, please contact:

### DR THOMAS B COURTNEY



Tom is Head of the Company Secretarial Group and is also a Corporate Partner. He is the author of *The Law of Private Companies* (2nd ed; 2002) one of the leading textbooks on Irish company law and is co-editor with Lyndon MacCann S.C. of *Companies Acts 1963-2006* (2007; Tottel). He is also the Chairman of the statutory *Company Law Review Group*, one of 20 non-governmental expert-members of the EU Commission's *Advisory Group on Company Law and Corporate Governance*, established by Commission Decision (2005/380/EC), who advise the EU Commission on company law reform.

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