

# The Company Agenda

VOL 1, NO. 2 - SUMMER 2007

COMPANY SECRETARIAL GROUP NEWSLETTER

## CONTENTS

<b>Company Law for the 21<sup>st</sup> Century</b>	<b>1</b>
<b>Statutory Books and Registers - A Reminder of Companies' Obligations</b>	<b>2</b>
<b>Corporate Communications Revisited - A Tabular Approach to the Disclosure Requirements under the Companies Acts</b>	<b>4</b>
<b>Arthur Cox's Company Secretarial Services</b>	<b>7</b>
<b>Contacts</b>	<b>8</b>



Head of Company Secretarial and Chairman of the Company Law Review Group (CLRG), **Dr. Thomas B. Courtney**, on 10<sup>th</sup> May presented the CLRG's Report on a new Companies Consolidation and Reform Bill to the Minister for Enterprise, Trade and Employment, **Micheál Martin**, and the Minister for Trade and Commerce, Michael Ahern.

## ■ COMPANY LAW FOR THE 21<sup>ST</sup> CENTURY

On 10<sup>th</sup> May 2007, the Company Law Review Group's *Report on General Scheme of Companies Consolidation and Reform Bill* was presented to the Minister for Enterprise, Trade and Employment, Micheál Martin, and the Minister for Trade and Commerce, Michael Ahern. The Report was accompanied by a draft of the Bill, or 'General Scheme', which runs to nearly 1,300 sections, one of the largest pieces of proposed legislation in the history of the State.

The proposed Bill will consolidate the existing 13 Companies Acts and many statutory instruments, bringing company law into one instrument. In addition to this, the draft Bill proposes to simplify company law, particularly the law relating to private companies limited by shares.

On the publication of the Report, Tom Courtney said that the: "proposals are laid out so as to treat the private company as the model around which the legislation is built, given that 90% of companies in Ireland are registered as private companies and 'thinking small, first' has served us well in developing a robust new legislative model."

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.

The proposed changes to simplify the law relating to private companies limited by shares include:

- Only c 60% of the Companies Acts will apply i.e. Pillar A of the new legislation.
- The memorandum and articles of association will be replaced by a one-document constitution.
- Companies will cease to be obliged to have an objects clause.
- Even multi-member companies can dispense with having an Annual General Meeting.
- Majority (as opposed to unanimous) written resolutions will be permitted.
- Companies will be permitted to have only one director.
- Directors' duties will be codified but only to the extent to which duties have been recognised as existing in common law or equity.

It is likely that the new legislation will be enacted late 2008 / early 2009 and that an appropriate transition period will be allowed before the legislation is commenced. The text of the draft Bill is available on the Company Law Review Group's website:

<http://www.clrg.org/companiesbill/default.asp>.

Thanking Tom and the CLRG, the Minister for Enterprise, Trade and Employment, Micheál Martin said "the proposals will make the law easier to comprehend for business people and company law practitioners alike."

## STATUTORY BOOKS AND REGISTERS - A REMINDER OF COMPANIES' OBLIGATIONS

Every Irish company is required to maintain certain registers, which must record various information about the company, its members, officers and transactions. Where Arthur Cox is providing secretarial services to our clients we will maintain these registers but companies must

remember to inform us of changes and events to be entered in these books and registers when they occur bearing in mind that entry in the books and registers must be made within specified time limits. The books and registers that are required to be kept are:

### *Register of Minutes of Meetings*

Every company is required to keep the minutes of all meetings of members (e.g. of the AGM or EGM) and of the directors (i.e. of the board of directors or committees of the directors). Written resolutions of members and directors must also be kept. Very often companies will take and keep their own minutes of directors' meetings on account of the frequency with which such meetings happen.

### *The Register of Members*

The register of members must record the company's members' names, addresses and, where applicable, the shares held by them along with the amount paid or agreed to be considered as paid on the shares, the date the person was entered as a member and the date the person ceased to be a member. The register must be updated within 28 days after a person agrees to become a member or ceases to be a member. The register must be kept at the company's registered office or somewhere else within the State. It is important to remember that the register of members can be inspected by any member of the company, without charge, and by any other person on payment of a fee of 13 cent; a member is entitled to a free copy of the register within 10 days of making the request as is any other person on payment of a fee not exceeding 8 cent per 100 words or part thereof. Unless the register is organised as an index, where there are more than 50 members, an index must also be maintained.

### *The Register of Directors and Secretary*

The register of directors and secretary must contain the following particulars in respect of each director: his or her forename and surname, date of birth, usual residential address, nationality, business occupation, and particulars of other directorships of bodies held by him or her wherever incorporated in the last 10 years excluding wholly-owned subsidiaries in a group. The register must contain the forename and

surname and usual residential address or corporate name and registered office of the secretary. All changes in the directors or secretary must be updated in the register within 14 days of their happening. Again it is important to remember that this register can be inspected also by any member of the company, without charge, and by any other person on payment of a fee of €1.27; a member is entitled to a copy of the register within 10 days of making the request as is any other person on payment of a fee not exceeding 19 cent per 100 words or part thereof.

### *The Register of Directors' and Secretary's Interests in Shares and Debentures*

Directors and secretaries must notify the company of their interests (and the interests of their spouses and minor children) in the company's shares or debentures (or those of its holding company, subsidiary or sister-subsidary). This register is also open to inspection by members, free of charge, and to other persons on payment of a maximum of 38 cent. Again, a member is entitled to a copy of the register within 10 days of making the request as is any other person on payment of a fee not exceeding 19 cent per 100 words or part thereof.

### *Book of Directors' Interests*

Directors who are in any way, directly or indirectly, interested in a contract or proposed contract with their company are required by law to declare the nature of that interest at a meeting of the directors. A director may make a general notice to the effect that he is a member of a specified company or firm or that a particular person is connected with him and that he is to be regarded as interested in any contract which may be made with that other company, firm or person. A copy of every declaration made and notice given must be entered in a book kept for that purpose. Such book is open for inspection without charge by any director, secretary, auditor or member of the company and must be produced to the AGM and any meeting of directors, when a director requests that it be produced.

### *Directors' Service Contracts*

Companies must keep copies of contracts and, where the contract is not in writing, notes of contracts concerning directors' service contracts,

where the term, or its remainder, is greater than three years. The copies or notes of relevant contracts are open to inspection by any member of the company, free of charge.

### *Register of Charges*

A copy of every document creating a charge over a company's assets, that is required to be registered, must be kept and be available for inspection.

### *Register of Debenture Holders*

Every company is also required to keep a register of debenture holders, recording the names and addresses of the debenture holders and the amount of the debentures held by them. This register is also open to inspection by the registered holders of debentures or shares free of charge and may be inspected by others on payment of not more than 6 cent; copies of the register must be supplied to any person who asks for a copy, on payment of 8 cent.

### *Register of Transactions, Arrangements and Agreements with Directors*

A company which is, or is the holding company of, a licensed bank is required to maintain a register containing copies of certain transactions, arrangements or agreements in the nature of loans, quasi-loans, credit transactions and guarantees and securities for certain made persons, primarily directors and persons connected with them, for the current financial year and the 10 preceding years.

### *Registers Required to be Kept by PLCs*

In addition to the foregoing books and registers, Public Limited Companies (PLCs) are required to keep a **register of interests in shares** where people's interests in a PLC's shares being 5% or more are disclosed to the PLC under sections 67 to 71 of the Companies act 1990. In addition to this, a PLC is required to maintain a **register of beneficial interests** in its shares which are disclosed to it upon demand being made by the PLC under section 81 of the Companies Act 1990.

## CORPORATE COMMUNICATIONS REVISITED - A TABULAR APPROACH TO THE DISCLOSURE REQUIREMENTS UNDER THE COMPANIES ACTS

In the last issue of *The Company Agenda* we gave a heads-up on the new disclosure requirements affecting limited liability companies. Due to the considerable interest expressed by clients, we have now produced a series of tables that set out the disclosure obligations applicable to each different type of entity:

1. Irish limited companies.
2. Irish unlimited companies.
3. EU/EEA limited companies that establish a “Branch” in Ireland.
4. Non-EU/EEA limited companies that establish a “Branch” in Ireland.
5. Foreign limited companies that establish “a place of business” in Ireland.
6. Foreign unlimited companies that establish “a place of business” in Ireland.

It should be remembered that there are other disclosure requirements under other legislation e.g. VAT numbers and business names.

### 1. Irish formed and registered limited companies

	Name of Company	Legal form of Company	Directors' names (forename and surname) and nationality if not Irish	Place of registration, registered number and registered office address	If a company is exempt from using the word “limited” as part of its name, the fact that it is a limited company	In the case of a company being wound up, the fact that it is being wound up	If there is reference to share capital it must be to paid up share capital
Business Letters	✓	✓	✓	✓	✓	✓	✓
Order Forms	✓	✓	✗	✓	✓	✓	✓
Websites	✓	✓	✗	✓	✓	✓	✓
Emails	✓	✓	✗	✓	✓	✓	✓
* Other	✓	✗	✗	✗	✗	✗	✗

\* Other includes notices, official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, invoices, receipts and letters of credit.

## 2. Irish formed and registered unlimited companies

	Name of Company	Legal form of Company	Directors' names (forename and surname) and nationality if not Irish	Place of registration, registered number and registered office address	If a company is exempt from using the word "limited" as part of its name, the fact that it is a limited company	In the case of a company being wound up, the fact that it is being wound up	If there is reference to share capital it must be to paid up share capital
Business Letters	✓	✗	✓	✗	✗	✗	✗
Order Forms	✓	✗	✓	✗	✗	✗	✗
Websites	✗	✗	✗	✗	✗	✗	✗
Emails	✗	✗	✗	✗	✗	✗	✗
* Other	✓	✗	✗	✗	✗	✗	✗

\* Other includes notices, official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, invoices, receipts and letters of credit.

## 3. EU/EEA limited companies that establish a "Branch" in Ireland

	Name of Company	Legal form of Company	Directors' names (forename and surname) and nationality if not Irish	Place of registration, registered number and registered office address of the EU/EEA company	Place of registration of the branch and the number with which it is registered	If a company is exempt from using the word "limited" as part of its name, the fact that it is a limited company	In the case of a company being wound up, the fact that it is being wound up	If there is reference to share capital it must be to paid up share capital
Business Letters	✗ <sup>#</sup>	✓	✗	✓	✓	✗	✓	✓
Order Forms	✗	✓	✗	✓	✓	✗	✓	✓
Websites	✗	✗	✗	✗	✗	✗	✗	✗
Emails	✗	✗	✗	✗	✗	✗	✗	✗
* Other	✗	✗	✗	✗	✗	✗	✗	✗

<sup>#</sup> Although there is no legal obligation to state the company's name on its business letters, it may be difficult to show that the business letter is that of the company if it does not appear!

\* Other includes notices, official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, invoices, receipts and letters of credit

## 4. Non-EU/EEA limited companies that establish a “Branch” in Ireland

	Name of Company	Legal form of Company	Directors' names (forename and surname) and nationality if not Irish	Place of registration of the branch and the number with which it is registered	The place of registration of the foreign company and the number with which it is registered (if required to be registered)	If a company is exempt from using the word “limited” as part of its name, the fact that it is a limited company	In the case of a company being wound up, the fact that it is being wound up	If there is reference to share capital it must be to paid up share capital
Business Letters	x #	x	x	✓	✓	x	x	✓
Order Forms	x	x	x	✓	✓	x	x	✓
Websites	x	x	x	x	x	x	x	x
Emails	x	x	x	x	x	x	x	x
* Other	x	x	x	x	x	x	x	x

# Although there is no legal obligation to state the company’s name on its business letters, it may be difficult to show that the business letter is that of the company if it does not appear!

\* Other includes notices, official publications, bills of exchange, promissory notes, endorsements, cheques, orders for money or goods, invoices, receipts and letters of credit.

## 5. Foreign limited companies that establish “a place of business” in Ireland

	Name of Company	Country of incorporation and whether limited	Legal form of Company	Directors' names (forename and surname) and nationality if not Irish	Place of registration, registered number and registered office address	If a company is exempt from using the word “limited” as part of its name, the fact that it is a limited company	In the case of a company being wound up, the fact that it is being wound up	If there is reference to share capital it must be to paid up share capital
Business Letters / Letter-paper	✓	✓	✓	✓	✓	✓	✓	✓
Order Forms	✓	x	✓	✓	✓	✓	✓	✓
Websites	✓	x	✓	x	✓	✓	✓	✓
Emails	✓	x	✓	x	✓	✓	✓	✓
Billheads, all notices and other official publications	✓	✓	x	x	x	✓	x	x

6. Foreign unlimited companies that establish “a place of business” in Ireland

	Name of Company	Country of incorporation	Directors' names (forename and surname) and nationality if not Irish	Place of registration, registered number and registered office address	In the case of a company being wound up, the fact that it is being wound up	If there is reference to share capital it must be to paid up share capital
Letter-paper	✓	✓	✓	✗	✗	✗
Order Forms	✗	✗	✗	✗	✗	✗
Websites	✗	✗	✗	✗	✗	✗
Emails	✗	✗	✗	✗	✗	✗
Billheads, all notices and other official publications	✓	✓	✗	✗	✗	✗

June 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.

[tom.courtney@arthurcox.com](mailto:tom.courtney@arthurcox.com)

Tel: +353 1 618 0584



### JACQUELINE MCGOWAN-SMYTH

Jacqui is the Director of Company Secretarial Services, a Fellow of the Institute of Chartered Secretaries and Administrators and has been assisting Irish companies comply with their company secretarial obligations for almost 20 years.

[jacqueline.mcgowan-smyth@arthurcox.com](mailto:jacqueline.mcgowan-smyth@arthurcox.com)

Tel: +353 1 618 0516

The practice group consists of two teams of qualified and trainee chartered secretaries. The team managers are:

#### Eileen O'Connor

Tel: +353 1 618 0622

[eileen.oconnor@arthurcox.com](mailto:eileen.oconnor@arthurcox.com)

#### James Heary

Tel: +353 1 618 0630

[james.heary@arthurcox.com](mailto:james.heary@arthurcox.com)

#### DUBLIN

Earlsfort Centre  
Earlsfort Terrace  
Dublin 2  
Ireland

T: +353 1 618 0000

F: +353 1 618 0618

[mail@arthurcox.com](mailto:mail@arthurcox.com)

[www.arthurcox.com](http://www.arthurcox.com)

#### BELFAST

Capital House  
3 Upper Queen Street  
Belfast BT1 6PU  
Northern Ireland

T: +44 28 9023 0007

F: +44 28 9023 3464

#### LONDON

29 Ludgate Hill  
London EC4M 7JE  
England

T: +44 20 7213 0450

F: +44 20 7213 0455

#### NEW YORK

570 Lexington Avenue  
28th Floor  
New York NY 10022  
USA

T: +1 212 759 0808

F: +1 212 688 3237