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**Financial Statements, Annual Return & Audit
Part 6 of the Companies Bill**

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Background to the Companies Bill

The publication by the Department of Enterprise Trade and Innovation of the draft Companies Bill is a landmark development in a process conceived by the McDowell Group on Compliance & Enforcement in 1998 and begun by the Company Law Review Group (CLRG) in 2000.

"...a programme should be undertaken to incorporate the provisions of the existing Companies Acts and the substantive company law now set out in regulations...into one single comprehensible companies code." (McDowell Report at para 5.4.1)

Background to the Companies Bill

The CLRG was established as a statutory advisory group to the Minister for Jobs, Enterprise and Innovation by the Company Law Enforcement Act 2001, having been established on an administrative basis in January 2000.

CLRG's purpose is to monitor, review and advise the Minister on matters concerning the Companies Acts and in so doing to *"...seek to promote enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity."*

Background to the Companies Bill

The CLRG's First Report (to 31 December 2001) made 195 recommendations, all unanimously endorsed by its widely-based membership which included the **social partners** (e.g. ICTU and IBEC etc); **users of company law** (e.g. CCABI, Law Society, Bar Council, Courts Service, Revenue Commissioners, ISE, Institute of Directors, ICSA etc); and **regulators and administrators** (e.g. CRO, AGO, the Department etc). Membership has since been enlarged to include ODCE, ISME, SFA, IAASA, Central Bank etc.

CLRG's First Report was the blueprint for the draft Companies Bill.

The design of the Companies Bill

“The private company limited by shares should be the primary focus of simplification” (**para 3.2.3**)

“the law should be clear and accessible...the legislation should be structured in such a way that the provisions apply to small companies are easily identifiable” (**para 3.2.8**)

“The private company limited by shares should be established as the model company” (**para 3.6.5**)

The consolidated Companies Act should be sub-divided into two groups of law: the first group will define the private company and contain all company laws that apply to it and the second group will define the remaining types of company and the provisions that apply to each (**para 3.7.2**)

The design of the Companies Bill

The draft Bill contains 15 Parts (952 sections) and applies exclusively to the private company limited by shares.

The remaining 10 Parts will be published in 12 months time and will deal with the DAC (designated activity company – also private), PLC/SE, Guarantee company, Unlimited Company, Unregistered Company, Investment Company and converting from one type of company to another.

All 25 Parts likely to be published formally as a Bill in late 2012.

Enactment likely in 2013, but possibly going into 2014.

Key features of the model private company

- Can have between 1 and 99 shareholders (*Part 2 - s 17*);
- Can have 1 or more directors (*Part 4 - s 125*);
- Must have a company secretary (*Part 4 - s 126*);
- Liability of shareholder(s) is limited to the amount, if any, unpaid on the shares registered in their name (*Part 2 - s 17*)
- Must have a one-document constitution (*Part 2 - s 19*)
- Name must end in "Limited" or "Ltd" (*Part 2 - s 26*)
- Cannot have an objects clause because it has full unlimited capacity (*Part 2 - s 38*)
- Must register persons (other than officers or persons with limited authority) authorised to bind the company (*Part 2 - s 39*)
- Must have a common seal (*Part 2 - s 43*)

Key innovations in the Draft Bill

Activities that might otherwise prejudice shareholders or creditors are permitted where the company complies with the *Summary Approval Procedure* which requires a special resolution, a declaration of solvency which, in some cases, must be supported by the report of an independent person (*Part 4 – Chapter 7*)

All offences are categorised as being either Category 1, 2, 3 or 4 offences and the penalties applicable to each type set out in one provision (*Part 14 – s 861*)

Directors' common law fiduciary duties have been codified and together with all diverse statutory duties assembled as a comprehensive code (*Part 5*)

Part 6 – Financial Statements, Annual Returns and Audit

21 chapters and 132 sections

Consolidates provisions from a number of enactments

Ensures consistency of treatment of:

- Companies Act and IFRS accounts; and
- Individual and group accounts.

Chapter 1 – Preliminary

S.271 - Definitions clarified:

- “Financial statements” and “accounting records” rather than “accounts” and “books of account”.
- “True and fair view” defined to include equivalent concept of “presenting fairly” under IFRS.
- “Holding company” and “holding undertaking” now have same meaning save for wider universe in latter case.

Greater prominence to definition of “realised profits”

Chapter 2 – Accounting Records

As per previous Chapter, now clear distinction between “accounting records” and “financial statements”.

S 278 requires that “adequate” accounting records be kept, while s 279 sets out the meaning of this requirement.

Ss 280-281 ensure that accounting records are accessible to those entitled to inspect them, while s 282 sets out the penalties for failure to comply with the above provisions.

Chapter 3 – Financial Year

S 284 provides a clearer definition of “financial year” than has previously been the case.

Chapter 4 – Statutory Financial Statements

- S 286 gives greater prominence to the “true and fair view” requirement than has previously been the case.
- Ss 287-289 require that a company prepare either Companies Act entity financial statements or IFRS entity financial statements.
- Ss 290-292 provide similarly in respect of group financial statements, while s 293 requires that there generally be consistency within a group.

Chapter 5 – Group Financial Statements: Exemptions and exclusions

Ss 294-295 set out an exemption from preparing group financial statements if the group's size is below certain thresholds (increased from those currently in force).

Ss 296-297 set out exemptions if the holding company is itself a subsidiary, if specified conditions are met.

Ss 298-299 allow for other exemptions.

Chapter 6 – Disclosure of Directors' Remuneration and transactions

Ss 302-306 bring together the various provisions requiring disclosure of financial information relating to directors, whether remuneration, credit transactions, or arrangements in which they have a material interest.

Ss 307-310 set out provisions specifically applying to licensed banks.

Chapter 7 – Disclosure required in notes to financial statements of other matters

This chapter highlights some other particularly important matters for disclosure:

- Ss 311-313 - information on related undertakings;
- S 314 – particulars of staff;
- Ss 315-317 – matters relating to share capital;
- S 318 – accounting policies;
- S 319 – remuneration of auditors;
- S 320 – off-balance sheet arrangements

Chapter 8 – Approval of statutory financial statements

S 321 brings together the provisions regarding the approval and signing of the statutory financial statements

Chapter 9 – Directors' Report

S 322 requires that the directors of every company prepare a "directors' report".

Ss 323-327 set out the information that is to be disclosed in this report, bringing together provisions previously contained in separate enactments.

S 328 sets out the procedure for approval and signing of this report.

Chapter 10 – Obligation to have statutory financial statements audited

S 329 requires that the statutory financial statements be audited by statutory auditors, save where the audit exemption (see Ch 15) is availed of.

S 330 provides that members holding 10% of the voting rights in a company may require that it not avail of the audit exemption.

S 331 requires that a statement be included in the balance sheet where the audit exemption is availed of.

Chapter 11 – Statutory auditors' report

S 332 sets out the information to be included in the statutory auditor's report.

S 333 sets out the requirements in relation to the signature of the statutory auditor's report.

Chapter 12 – Publication of financial statements

Ss 334-337 bring together the requirements regarding:

- Circulation of financial statements to members, debenture holders and other persons so entitled;
- The right of members and debenture holders to demand a copy of the financial statements;
- Publication of financial statements;
- Laying of financial statements and reports before the members in general meeting.

Chapter 13 – Annual Return and Documents Annexed to it

- S 339 sets out more clearly than was previously the case, and in one place, the definition of “annual return date”.
- S 341 provides for the alteration of the annual return date
- Ss 342-344 set out the information to be annexed to a company’s annual return.

Chapter 14 – Exclusions, exemptions and special arrangements with regard to public disclosure of financial information

S 345 redefines the definitions of small and medium-sized company.

Ss 346-352 set out the various exemptions and allowances that apply to companies meeting one or other of these thresholds.

Chapter 15 - Audit exemption

S 353 sets out the conditions for availing of the exemption. Previously, the exemption did not apply where a company was a parent or a subsidiary company.

Under the Bill, the exemption will be extended to parent and subsidiary companies (save as in Ch 11 where notice is served by a member or members meeting the requisite 10% threshold).

Chapter 16 - Revision of financial statements

To date, where a deficiency in statutory financial statements becomes apparent, there is no provision for their revision.

Chapter 16 will allow the directors prepare, have audited, lay before the AGM and deliver to the Registrar revised financial statements and/or a revised directors' report, or in certain circumstances will allow revision by supplementary note.

Ss 360-373 set out the procedure for revision.

Chapter 17 – Appointment of statutory auditors

S 374 requires that a statutory auditor be appointed and sets out general provisions in that regard

S 375 provides for their remuneration

Ss 376-378 detail the procedures for appointment

S 379 sets out the consequences of failing to appoint an auditor.

Chapter 18 – Rights, obligations and duties of statutory auditors

Ss 380-382 set out auditors rights:

- Right of access to accounting records
- Right to information and explanations concerning the company and (if applicable) its subsidiary undertakings

S 383 makes it an offence to make a false statement to the statutory auditor

S 384 requires that an auditor act with integrity, and s 385 that they make a report on the financial statements.

Ss 386-7 requires that auditors report to the ODCE where they form the opinion that a company is not keeping adequate accounting records

Chapter 19 – Removal and resignation of statutory auditors

Ss 389-393 provide for the removal from office of statutory auditors and related matters.

Ss 394-396 provide for the resignation from office of statutory auditors and related matters.

Chapter 20 – Notification to Supervisory Authority of certain matters and auditors acting while subject to disqualification order

S 397 requires the auditor to notify the Supervisory Authority (i.e. IAASA) where they either resign, or are removed, from office during the period between AGMs

S 398 imposes a corresponding obligation on the company

S 399 precludes a person under a disqualification order from acting in relation to an audit

Other minor improvements

- Allows for possibility of single-director company in respect of signature of financial statements
- Obligation to deliver an annual return removed during winding-up or voluntary strike-off
- Anomaly regarding penalties for failure to keep proper books of account resolved.

Thank You.

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