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Who Can become a Director?

As there are no specific qualifications required by law, almost any individual person can become a Director of a private limited company in Ireland.

There are of course some exceptions to this rule and the most common examples are listed below;

- Un-discharged bankrupts are prohibited from becoming directors
- A corporate body is not permitted to be a director
- The company auditor is prohibited from also acting as a director of that company
- Those who have a disqualification or restriction order against them (interestingly, a person disqualified in another jurisdiction is permitted to act as a Director of an Irish company provided notification of this is given to the CRO prior to appointment).

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In addition to the restrictions set out in the Companies Acts 1963 to 2012, companies may also utilise their own internal rules, which are contained within the Articles of Association. Many adopt the standard provisions in Table A, which also deem that being of unsound mind or being convicted of an indictable offence will also make someone ineligible. Other common restrictions relate to age (minimum and maximum) and whether a Director must also be a Shareholder of the company.

It is also important to note that whilst Directors of Irish companies need not necessarily be resident in the country, at least one of the Directors must be resident in the EEA (European Economic Area). Failing this, the company can opt to either take out a Section 43 Bond (which is used to pay any fine or penalty imposed under either the Companies Acts 1963 to 2012 or the Taxes Consolidation Act 1997), or obtain certification from the Revenue that the company has a real and continuous link with economic activities that are being carried out in the State.

DUTIES & RESPONSIBILITIES OF DIRECTORS

The Directors are appointed by the owners of the company (the members or shareholders) and their primary function is to manage the company on behalf of the members. Under present legislation every company must have a minimum of two Directors at all times, however proposed changes in the Companies Bill 2012, do allow for a new single-Director company for the standard private limited company type. Although it should be further noted that in such cases a separate company secretary will also be required.

Directors have both statutory and common law duties that they must fulfil, and the legal onus on them should not be underestimated.

DUTIES OF A DIRECTOR

- 3 categories of duty - ordinary, fiduciary & statutory
- Power to allot shares
- Power to declare dividends/carry forward profits
- Power to borrow money
- Power to appoint a Managing Director

Directors can also find themselves subject to prosecution in a personal capacity, most commonly by the ODCE for contraventions of Section 202 (failure to keep proper books of account). In the event of a successful prosecution, where fines are

levied they can run into thousands of Euro. Directors of companies who persistently file their annual returns late, or not at all, can also find themselves personally prosecuted by the CRO.

In summary, if Directors keep proper books and records, file their returns on time and do not take unauthorised money they will meet most of their obligations.

APPOINTMENT OF DIRECTORS

New Directors can be appointed to a company in a number of ways;

- By an ordinary resolution of the shareholders at a general meeting
- By co-option by the existing board of Directors. Directors so appointed are usually required to retire and stand for re-election at the next Annual General Meeting
- By any special procedure provided in the Articles of Association e.g. the Articles of a subsidiary company may empower the parent company to appoint or remove a director by way of notice sent in writing to the registered office of the company.

Whichever mechanism is used, all appointments of directors must be notified to the Companies Registration Office within 14 days, through the filing of a B10 form. The Register of Directors and Directors' interests must also be updated, as a B10 on its' own, whilst indicative, is not conclusive proof of who is an officer of the company.

CAN I BE A DIRECTOR OF MORE THAN ONE COMPANY?

A person can hold up to 25 Irish directorships at any one time. In the calculation of this threshold, certain directorships can be excluded such as those relating to public limited companies or groups of companies.

CAN I BE APPOINTED A DIRECTOR WITHOUT MY CONSENT?

Both the notice of the appointment of first Directors (CRO form A1) and the notice of appointment of all subsequent Directors (CRO form B10), must contain the signature of the appointee signifying their consent to the appointment.

Therefore, appointments cannot be made effective without your consent.

In the next issue we will cover the Resignation and Removal of Directors.

PARTIAL VAT REBATE ON CERTAIN COMPANY CARS

A business engaged in fully VATable services may claim a VAT rebate of 20% of the VAT incurred on the purchase or hire of company cars that are used 60% for business purposes.

The input credit will only apply to cars within the A, B and C VRT category that are registered after 1 January 2009. If the car is disposed of or ceases to meet the 60% test within two years of acquisition some or all of the VAT reclaimed will be clawed back by Revenue.

CHILDCARE SERVICES

Earnings for childcare provided by an individual who minds up to three children (excluding their own children) in their own home is exempt from income tax provided the amount does not exceed €15,000 per annum. The annual minimum PRSI contribution for self employed individuals of €500 per annum is payable.

Revenue has recently issued a tax briefing stating that while they acknowledge that receipt of an income from childcare services as described above is exempt from Income Tax, an individual in receipt of such income must include details of their earnings on an annual tax return to be submitted to Revenue.

PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

Income Tax

Filing date of 2013 return of income (self-assessed individuals) **31 October 2014**

On-Line pay and file for 2013 return of income tax **13 November 2014**

Pay preliminary income tax for 2014 (self-assessed individuals) **31 October 2014**

On- Line pay preliminary income tax **13 November 2014**

Capital Gains Tax

Payment of Capital Gains Tax for the disposal of assets Made from 01 January 2014 to 30 November 2014 **15 December 2014**

Corporation Tax

Filing date for Corporation Tax returns for accounting periods ending in August 2013 **21 May 2014**

Balance payment of Corporation Tax for accounting periods ending in August 2013 **21 May 2014**

HRI ELECTRONIC SYSTEM

Revenue has launched a new Home Renovation Incentive (HRI) electronic system which homeowners can use to check if a contractor is tax compliant. Contractors can enter details of qualifying works and payment received through the HRI on ROS.

The HRI scheme provides for tax relief for homeowners by way of an income tax credit at 13.5% of qualifying expenditure on repairs, renovations or improvements carried out to the Homeowners main home by qualifying contractors.

A homeowner cannot claim a tax credit if details of the works done and payment information is not logged online by the contractor. Where work has been carried out from 25 October 2013 to 9 April 2014, contractors must enter the relevant information online before 8 May 2014.

Homeowners are urged to check on-line to see if the relevant details have been updated prior to claiming the tax credit.



RELIEF FOR INTEREST IN PARTNERSHIPS

An individual could claim tax relief on interest paid on money borrowed to acquire a share in a partnership.

Finance (No.2) Act 2013 abolished interest relief for all loans made on or after 15 October 2013. Interest relief for existing loans is to be phased out over 2014 - (75%), 2015 - (50%) and 2016 - (25%) with no relief available after 1 January 2017.

Revenue confirmed that where a loan is issued post 15 October 2013 but it replaces an existing qualifying loan and the replacement loan does not exceed the balance and term of the existing loan, tax relief will still be permitted in line with the phased out relief until 1 January 2017.

FOREIGN EXCHANGE - RISK MANAGEMENT

The Irish economy generates foreign exchange (FX) flows of approximately €200 bn every year from the import and export of goods and services in addition to financial flows. Volatility in the FX markets is an ever present challenge to financial managers and business owners who are trying to minimise the impact that movements in FX rates can have on their core business.

An effective and flexible hedging strategy can achieve the dual aim of protecting the bottom line while giving the business the opportunity to benefit from an improved exchange rate environment in the event it becomes achievable throughout the year. The reality is that nobody can predict where the market will be in 3, 6 or 9 months time but we can examine current conditions, weigh up how these factors will evolve over the coming months and make informed decisions based on these considerations



WHAT YOU CAN DO?

SPOT

Spot contracts are suitable for those who need to buy or sell a currency quickly, and need to make payments to suppliers or convert sales proceeds immediately. Price and speed of delivery are the most important factors to consider.

FORWARDS

This type of contract allows you to book an exchange rate for a specified date in the future. Forward contracts are a useful hedging tool that allow you to lock in a rate now for a transaction at a later date, providing certainty as to the Euro equivalent of your income or expenditure. This allows you to protect your business against adverse movements in the currency markets.

OPTIONS

Typically an option is a contract that gives you the right, but not the obligation to exchange money at a pre-agreed exchange rate on a future date. However, for the extra flexibility that foreign exchange options can provide, there is a cost to purchase these contracts in the form of an up-front premium.

ORDERS

LIMIT ORDERS

Orders can be left out in the market, allowing you to target an exchange rate that is better than what is currently available. When the target rate is reached, you will automatically buy or sell the currency required. These can be useful if you have specific currency requirements but are not restricted by tight deadlines.

STOP LOSS ORDER

A stop loss order allows you to set a minimum or 'worst case' exchange rate at which you will buy or sell your currency. It is put in place to ensure that, should rates move against you, you have a safeguard in place to protect against further disimprovement beyond your 'worst case' rate.

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NEW HOMES DEVELOPMENT FUND

AIB recently launched a €350m New Homes Development Fund to support the construction and supply of new homes in the cities and suburbs of Dublin, Cork and Galway.

The fund, developed to address the growing shortage in residential housing in these urban areas, will be available to borrowers who can demonstrate prior experience in residential development.

New and existing AIB customers are invited to apply for new home development funding which is now available. The fund is expected to significantly boost job creation in the construction area.

AIB has deployed a team of specialists in each of the three regions who will be available to support applications for funding.

In addition to all this, AIB is making mortgage funding available to match demand in the market.

ALL-ISLAND SEEDCORN BUSINESS COMPETITION 2014

The All-Island Seedcorn Business Competition is designed to encourage the creation and development of emerging and high-growth business ventures throughout Ireland and to reward the effort and achievement of the individuals involved.

Application is open to independent ventures incorporated within Ireland (Republic of Ireland or Northern Ireland) that are at the seed, start-up or early stages of development – ideally targeting international markets. Applicants should be individuals or venture teams who have created, manage and own such ventures, have played a major role in conceiving the venture, and have key management roles and significant equity.

There are two categories for entry:

- New start Company – for companies under five years old at 28 June 2013 and who are seeking to raise new equity of between €50,000 and €299,999.
- Early stage Company – for companies under five years old at 28 June 2013 and who are seeking to raise in excess of €300,000.

For 2014, the total prize fund is a €280,000, including €100,000 for the Best Early Stage Company; €50,000 for the Best New Start Company; six awards of €20,000 for the Regional Winners; and €10,000 for the best university spin-out.

To submit an application, companies are required to register on the InterTradelreland website and upload their business plan.

IDA TO RESUME BUILDING IN REGIONAL LOCATIONS

The Government recently announced that IDA IRELAND has agreed contracts for delivery of two new building developments in Athlone and Waterford which will be suitable for future IDA client investments from a number of potential sectors.

This is the first time since the early 1980s that IDA IRELAND has funded and managed the construction of an advanced property solution for the marketplace. The investments are supported by the Department of Jobs, Enterprise and Innovation.

The appointed contractors are Kilcawley Building & Civil Engineering (Sligo) Limited for Athlone and Walls Construction Ltd. for Waterford. The expected completion date of the new Advanced Technology buildings is November 2014.

THE CREDIT REVIEW OFFICE

SUPPORTING SMALL BUSINESSES AND FARMERS SEEKING CREDIT

In response to the financial crisis, the Credit Review Office was set up in 2010 to ensure viable businesses and farms have access to credit, for working capital and investment purposes. The Office operates like an ombudsman, overseeing credit refusals by the banks and ensuring an independent appeals process. Enterprises who have been refused credit, or had existing facilities such as overdrafts reduced or withdrawn, can apply for an independent review.

WHO CAN APPLY?

SME's and farmers are eligible to apply for reviews of credit applications made to one of the two pillar banks, AIB and BOI, which have been declined, or approved on terms that the business feels are too onerous (constructive refusal).

Each review will only apply to one specific declined credit application up to €3,000,000 and not any other borrowings which may exist. Therefore, enterprises that may have total borrowings above this limit are not excluded from the review process.

WHAT CAN I DO IF I NEED MORE ADVICE?

Call the Credit Review Office on 1850 211 789 and talk it through.



iXBRL filing

Phasing in of mandatory iXBRL filing for corporation tax: a brief summary



Since November 2012, those obliged to file corporation tax and income tax returns have had the option to file financial statements in iXBRL format via ROS (Revenue On-line Service). iXBRL (or inline eXtensible Business Reporting Language) is a language that allows financial information to be communicated and presented in a format that may be read and analysed, both by people and computers.

This process involves presenting the data (financial statements) in a normal document format but with iXBRL “tags” embedded in the soft copy document. Tagging involves the application of computer-readable tags to business data, which enables the data to be processed and analysed automatically by software. iXBRL tags are interpreted by reference to a “taxonomy” which is, in essence, a dictionary linking each tag with the concept it identifies (e.g. the tag ie-gaap:ROICorporationTaxPaid means Irish corporation tax paid).

In line with the approach taken to e-filing on ROS, Revenue is rolling out mandatory filing of iXBRL financial statements for corporation tax payers in stages and has made the necessary changes in Finance Acts 2012 and 2013 to enable this. The first group, cases dealt with by Large Cases Division (LCD), has been required to do so for all corporation tax returns (Forms CT1) submitted from 1 October 2013 on, for accounting periods ending on or after 31 December 2012.

Phase 2 will extend mandatory iXBRL filing to all corporation tax payers, except those meeting the audit exemption criteria below, for Forms CT1 submitted after 1 October 2014 for accounting periods ending on or after 31 December 2013. The three criteria for exclusion from this phase are:

- The balance sheet value of the company does not exceed €4.4 million;
- The amount of the turnover of the company does not exceed €8.8 million; and
- The average number of persons employed by the company does not exceed 50.

These criteria correspond to the current audit exemption criteria; note that to be excluded from the Phase 2 filing obligation, a company must meet all three criteria.

Phase 3 will involve virtually all remaining corporation tax payers (though exemptions may still be available for “inactive” companies or companies in liquidation). It is currently expected that this will commence in 2015. Further details are to be announced in due course.

Companies not yet subject to mandatory iXBRL filing may do so on an optional basis. Revenue strongly encourage companies to use either the optional filing period or the test filing facilities to ensure they are fully prepared for mandatory filing. It seems likely that very few companies within the charge to Irish corporation tax will escape mandatory iXBRL filing.

If you need more information, Revenue has a dedicated area on its website:

<http://www.revenue.ie/en/online/ros/ixbrl/index.html>

HOME SWEET HOME

Notwithstanding there are relatively few home repossessions in Ireland, they do occur. If a borrower is having difficulties paying their mortgage and they have exhausted all available options, their lending institution, such as banks and building societies, can repossess their home in order to recover the amount owed. If the borrower does not agree to the repossession, the lending institution may institute court proceedings to be in a position to repossess.

Firstly lending institutions must adhere to two statutory codes of conduct in relation to mortgages, namely the Central Bank's Code of Conduct on Mortgage Arrears (CCMA) and its Consumer Protection Code 2012.

In general, a lending institution may start the proceedings for repossession in either the Circuit Court or the High Court however for mortgages taken out after the 1 December 2009 proceedings must be brought in the Circuit Court.

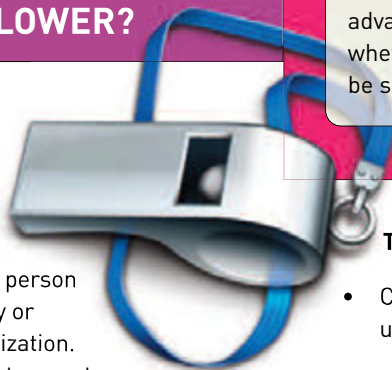
The usual procedure is that the lending institution applies to the court for one or more orders – a possession order and/or a well-charging order. These orders may be granted in the same proceedings. Generally, it is the practice of the courts to allow the borrower some time to make arrangements to repay the money owed before making any final orders.

If an order for possession or a well-charging order is made against a borrower and he/she does not hand over possession or comply with other terms of the orders, the orders may be enforced by the Sheriff (in Dublin and Cork) or by the County Registrar in other areas.

WHAT IS A WHISTLE-BLOWER?

In recent months the term 'Garda Whistle-Blower' has rarely been out of the media however very few commentaries attempt to provide a definition of a whistle-blower. A whistle-blower may be defined as a person who alleges misconduct, dishonesty or illegal activity occurring in an organization. The whistle-blower may be a current or past employee and their allegations may be in connection with current or past actions.

At present, in Ireland, the protection for whistle-blowers is limited in nature and to certain sectors. Minister for Public Expenditure and Reform, Mr. Brendan Howlin T.D., has published the Protected Disclosure Bill ("the Bill") which has already been passed by the Seanad. It provides a legislative framework for the protection of whistle-blower's in all sectors of the economy. Whistle-blowers that raise issues concerning wrongdoing in the workplace and are penalized by their employer, or suffer detriment from a third party will be protected by the Bill.



PATENTS

"EVERY INVENTION BEGAN AS AN IMAGINATION"

A patent is a monopoly granted by a country (or group of countries) in respect of an invention as an incentive to innovate. Unless you have patent protection, you may find it impossible to prevent a rival company from launching a competing product. Many inventions remain un-patented due to the costs involved and the cumbersome nature of the process however a new system is expected to be up and running in the European Union by early 2015.

Signalling the most radical change in European patent practice in over 40 years, the EU's "unitary patent package" legislation will create a new unitary patent right and unified patent court system across Europe.

By creating a unified system of grant and enforcement, the legislation will fundamentally change the way patents are granted and enforced in Europe. Presently, patents are granted centrally by the European Patent Office but result in a bundle of national patents which have to be enforced separately in each European Union Member State. However, this country-by-country enforcement can result in increased litigation costs, delayed proceedings and conflicting decisions. Under the new system, a unitary patent will be immediately effective and enforceable in the new Unified Patent Court, with decisions on validity and infringement being directly binding throughout the participating Member States.

It is hoped the single unitary patent option will offer those who wish to protect their invention in Europe huge cost advantages and reduce the administrative burden. However whether the new system achieves its objective remains to be seen.

The Bill offers the following protection:

- Compensation for up to 5 years remuneration in cases of unfair dismissal for having made a protected disclosure;
- Civil immunity from actions for damages and qualified privilege under defamation law;
- A right of action in tort for instances where a whistle-blower or their family experiences coercion, intimidation, harassment or discrimination; and
- When making a protected disclosure, or reasonably believing a disclosure is protected, is a defence to any offence prohibiting or restricting the disclosure of information

The Bill closely reflects international best practice recommendations on whistle-blower protection made by the G20, the United Nations, and the Council of Europe.

DECLINED BANK CREDIT

MICROFINANCE IRELAND, THE GOVERNMENT'S LOAN FUND SCHEME

Microfinance Ireland (MFI) was launched in October 2012 as part of the Government's Action Plan for Jobs. MFI provides loans from €2,000 up to €25,000 to sole traders, partnerships or companies employing fewer than 10 people with an annual turnover below €2 million.

MFI was set up to assist both start up and existing companies who have been declined credit for their business from a bank. MFI will accept as evidence of refusal either an informal (a verbal) or a formal decline (a written letter) from the bank.

Loans are generally over 3 years for working capital facilities while loans up to 5 years may be considered if it involves financing of capital expenditure such as equipment, machinery or vehicles. The interest rate is fixed at 8.8% APR to support the running costs of MFI while remaining competitive with banks overdraft rates. There are no extra fees or hidden charges.

There are no excluded sectors and Microfinance Ireland has helped support over 200 businesses across a wide variety of sectors.

Since the inception of Microfinance Ireland (to date April 2014) over €3 million has been approved with the average loan size amounting to €15,500. 60% of approved applicants have been start-up businesses (trading less than 18 months) and MFI has helped create and sustain almost 500 jobs.

Microfinance Ireland works closely in partnership with the newly launched Local Enterprise Offices (LEOs), formerly known as County and City Enterprise Boards. LEO offices nationally can offer assistance to any applicants who may need help or advice with the application process.

MFI are introducing a 'Small Loans' Application Process for individuals who are looking for business credit under €5,000. The small loan product is very suitable for unemployed people in receipt of the Back to Work Allowance who are starting up a micro enterprise. Applicants who wish to apply for the small loan have a quick and simple application process with less paperwork required. These small loans will be processed through the Local Development Company enterprise officers or through the LEO offices.

All details on how to apply to Microfinance Ireland, including case studies of successful loan recipients are available on www.microfinanceireland.ie

ACTIVITY BY SECTOR

