



Here are some key Company Secretarial matters to note for the annual preparation of your financial statements.

Statutory Financial Statements

When considering the preparation of financial statements, directors of a company need to determine:

- (i) the type of statutory financial statements they are legally required to submit to their shareholders at its Annual General Meeting;
- (ii) whether those statutory financial statements can be abridged for filing in the Companies Registration Office (CRO) and therefore reduce the amount of financial information filed on public record; and
- (iii) whether an audit is required.

Since the introduction of the Companies (Accounting) Act 2017, (CAA 2017) companies can avail of a new less onerous statutory financial statements reporting regime. The first thing to note is that it is not mandatory: even if a company qualifies to avail of a less onerous regime, it can decide to prepare what is known as full financial statements.

If a company can avail of a less onerous statutory financial statements reporting regime (micro, small or medium company (see criteria below)) and elects to prepare its financial statements under that regime, then those financial statements become the statutory financial statements of the company. For example, a company that qualifies as a micro company can elect to prepare its statutory financial statements in compliance with the micro companies regime and one of the benefits is that it will not be required to disclose details of directors' remuneration.

A company must meet two out of the three following relevant criteria to be regarded as micro, small or medium in respect of both a relevant financial year and the immediately preceding financial year (unless the financial year concerned is the company's first financial year):

Size Thresholds	Micro Company	Small Company	Medium Company
Net Turnover	≤ €700,000	≤ €12m (prev €8.8m)	≤ €40m (prev €20m)
Balance Sheet Total	≤ €350,000	≤ €6m (prev €4.4m)	≤ €20m (prev €10m)
Average Employees	≤ 10	≤ 50	≤ 250

Other relevant factors to be aware of include:

- Investment companies now have to file their statutory financial statements in the CRO.
- Certain medium companies (i.e. balance sheet total exceeds €12.5m and turnover exceeds €25m) are now required to complete a Directors' Compliance Statement.
- A company with subsidiaries meets the criteria for a small holding company if the group it heads qualifies as a small group. Such companies are exempt from the requirement to prepare consolidated financial statements.

All holding companies (except micro and small) must prepare and file consolidated financial statements unless, subject to conditions, the holding company is itself a subsidiary of a company that prepares consolidated financial statements.

Abridged financial statements

- Companies exceeding the thresholds for a small company are required to file full financial statements, thereby removing the option for previously qualifying medium companies to file abridged financial statements.
- In other words, small company thresholds must be met to qualify to file abridged financial statements.

Audit Exemption

Small company thresholds apply when deciding whether certain companies can avail of the audit exemption. A company with subsidiaries only qualifies for the audit exemption if the largest group of which it is a member qualifies as a small group. The thresholds must be met when all Irish and non Irish holding companies and sister companies are included.

Filing of Financial Statements

Financial Statements cannot be filed on their own. They must be electronically filed when submitting an Annual Return in the CRO.

Filing Deadlines

The filing deadlines of some of the more popular financial year ends are set out below, based on the assumption that a company has extended its Annual Return Date to the maximum time permitted:-

Year End	Must be filed prior to
31 December	28 October of the following year
31 March	28 January of the following year
30 June	28 April of the following year
30 September	28 July of the following year

Annual General Meetings

Additionally be aware that every company is obliged by law to submit its statutory financial statements to an Annual General Meeting within 9 months of its financial year end and this deadline must be borne in mind when considering timeframes for the completion and filing of financial statements in the CRO.

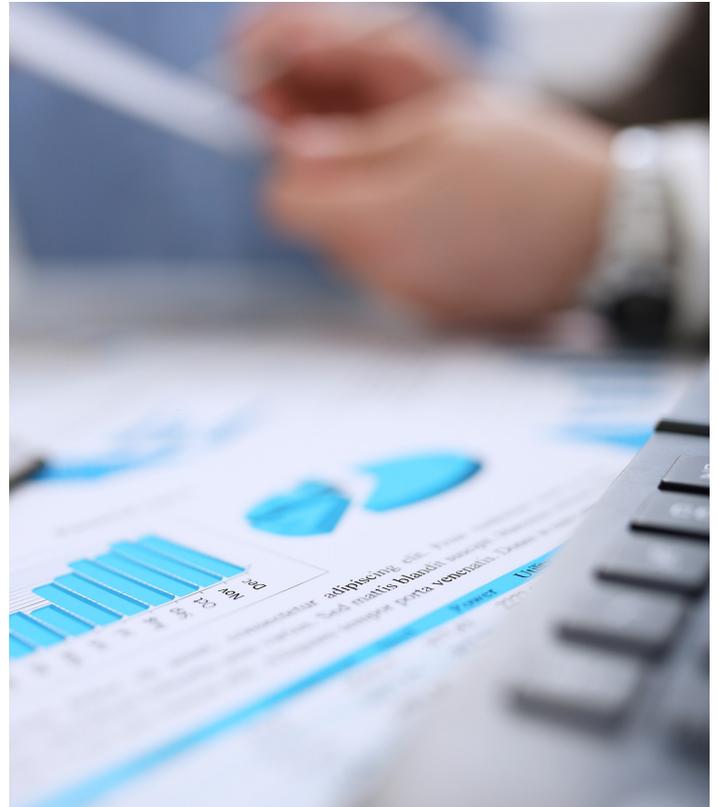
The shareholders of a company may wish to consider the statutory financial statements prior to their submission in the CRO. Accordingly, the timing aspects of convening the AGM and the obligation to file should be considered.

Parent Company Guarantee

An Irish subsidiary of a parent company incorporated in the EEA may, provided certain criteria are satisfied, be exempt from filing its own statutory financial statements in the CRO and instead file the consolidated financial statements of its EEA parent.

To avail of this exemption from filing its own statutory financial statements, the EEA parent must provide an irrevocable guarantee in respect of all of the commitments entered into by the subsidiary, including amounts shown as liabilities in the statutory financial statements, for the financial year in question.

The guarantee, details of which must be disclosed in the financial statements of the EEA parent, must be put in place prior to the filing of the Annual Return of the Irish subsidiary.



The Companies Act 2014 (2014 Act) and the CAA 2017 extended the original definition of the parent company guarantee contained in the Companies (Amendment) Act, 1986 from all 'liabilities' of the subsidiary to all 'commitments of the subsidiary, including amounts shown as liabilities in the financial statements' and the wording of the guarantee must reflect this change.

Group Financial Statements – Exempted Parent

An Irish holding company (Exempted Parent) that has subsidiary companies and which is itself a subsidiary of a holding company may be exempt from preparing and filing its own consolidated financial statements in the CRO.

In such situations, provided certain criteria are met, the Exempted Parent must file the following financial statements in the CRO with its Annual Return:-

- its own individual statutory financial statements; and
- the consolidated financial statements of the holding company which include the results of the Exempted Parent.

In such situations, the notes to the financial statements of the Exempted Parent will state that it is taking advantage of the exemption from preparing and filing consolidated financial statements.

Dormant Company Audit Exemption

Section 365 of the 2014 Act introduced a new exemption from audit for dormant companies.

If the directors of a company, other than a plc and an investment company, are satisfied that it meets the conditions and that decision is recorded by the directors in the minutes of a meeting of directors then the statutory financial statements of the company do not have to be audited.

The conditions which must be met during the year in question to qualify as dormant are:-

- (i) the company must have no significant accounting transaction; and
- (ii) its assets and liabilities must comprise of only permitted assets and liabilities.

Permitted assets and liabilities are investments in shares of, and amounts due from other group undertakings.

In deciding whether or not a company is dormant, a company may disregard any transaction arising from:-



- the taking of shares in a company by a subscriber to the constitution of the company;
- the payment of fees on a change of name, its re-registration or the filing of its Annual Return.

The dormant company audit exemption is not subject to any size criteria. Therefore, while a company might not qualify for audit exemption because it is part of a group, it could still qualify for the dormant company audit exemption.

It is important to note that the Annual Return and the financial statements of a company must be filed on time in both the year in question and also the preceding year in order to avail of the dormant company audit exemption.

Financial Statement Filing Obligations of Unlimited Companies

A significant change introduced by the CAA 2017 relates to the financial statement filing obligations of unlimited companies (ULCs), the ultimate beneficial owners of which enjoy limited liability protection. The CAA 2017 amends Section 1274 of the 2014 Act to broaden the definition of 'designated ULCs' which will be obliged to file financial statements going forward.

The new filing obligations will apply to a ULC which:

- is a subsidiary or a holding company of a limited undertaking;
- is a holding company for certain financial institutions such as banks and insurance companies or is itself a credit institution or an insurance undertaking; or
- whether directly or indirectly, the ultimate beneficial owners of the ULC enjoy the protection of limited liability.

The new filing rules for ULCs will first apply to financial periods starting on or after 1 January 2017, with the exception of unlimited holding companies with limited liability subsidiaries that are not otherwise required to file, who will only be obliged to file their financial statements for financial years commencing on or after 1 January 2022.

It is important therefore that the Directors of all unlimited companies review their group structures to understand fully the implications of the new rules and their impact on the financial information to be filed in the CRO.

Change in financial year end

Under the 2014 Act, a company may change its financial year end once in every five years. Any proposed change must not result in a financial period in excess of 18 months.

When considering whether or not to change a financial year end it should be noted that any notice of a change in the financial year end of a company must be filed in the CRO prior to the date that the financial statements of a company should have been filed in the CRO had no change taken place.

The 2014 Act permits a company which for example has a financial year end of 31 December to change its year end by plus or minus 7 days each year and such a change will not constitute a change in financial year end for the purposes of the legislation.

This means that in practice a company could use the last Friday in December of each calendar year as its financial year end without changing its year end date each year.

Change in Financial Reporting Framework

Once every five years a company can change its financial reporting framework from financial statements prepared in accordance with the accounting requirements of company law to financial statements prepared in accordance with International Financial Reporting Standards without the previous requirement of there being a 'relevant change in circumstances'.

However, the company must now explain in its statutory financial statements the reason for, and any impact of, a change in accounting policy.

Hot off the press: 5th Anti-Money Laundering Directive

On December 20, 2017, EU ambassadors confirmed that agreement had been reached between the European Parliament and the European Council regarding the latest amendments to the Anti-Money Laundering Directive (AMLD 5).

The main change is that the Register of Beneficial Owners of companies operating within the EU will be made publicly accessible and national registers will be better interconnected, to facilitate cooperation between Member States.

It is expected that the amended Directive will come into force by the end of 2019 i.e. 18 months after its publication which is expected in mid-2018. The national Registers of Beneficial Owners of companies will be made public by the end of 2019.

Readers of Connect will be aware that the CRO is the office that will be charged with holding the information provided to it pursuant to the Fourth Anti-Money Laundering Directive on Ultimate Beneficial Ownership Registers (AMLD4). The CRO has published a template of the information to be provided to it on its website and has indicated that they are expecting the Department of Finance to issue a further Statutory Instrument in respect of the commencement of the provisions requiring companies to provide information to the CRO in Q1 of 2018.

Criminal Prosecutions

The CRO have recently completed prosecutions under the 2014 Act against companies for the late filing or non-filing of Annual Returns resulting in fines ranging from €1,300 to €5,000.

The Registrar of Companies has indicated that where criminal proceedings have commenced, that office will object to any application for more time to file the Annual Return in the CRO.



Mandatory e-filing

On 1 July 2017 the CRO introduced mandatory e-filing in respect of Annual Returns (forms B1) and financial statements, changes in registered office (forms B2), extension of Annual Return Dates (forms B73) and changes in Directors/Secretaries or in their particulars (forms B10).

This new regime has resulted in significant changes in practices and procedures for those charged with dealing with the CRO. Gone are the days of hand delivering those forms to the CRO and waiting for the CRO to process them in due course.

It is perhaps timely to comment on some of the issues which have arisen since the introduction of the new system:-

(i) a form B1 must be submitted to the CRO electronically and then the originally signed financial certificate signature page must be posted to/handed in over the counter to the CRO within the stipulated timeframe. If the originally signed page is not delivered on time to the CRO a company will be deemed not to have made its filings on time and as a result may lose its audit exemption/dormant company audit exemption for both that year and the subsequent financial year.

A heavy price to pay for what simply might be a clerical error in failing to deliver the original certificate to the CRO.

(ii) another example of the practical difficulties arose with the electronic filing of a form B10 in respect of the appointment of a director of a company. The signed signature pages of a form B10 were submitted to the CRO, over the counter, within the timeframe laid down in the legislation.

However, the signature pages were rejected by the CRO but, unlike in the days before e-filing, the signature pages were not returned to the company for correction. The CRO shredded the signed signature pages (presumably in error) and this resulted in the form B10 having to be electronically filed a second time and new signature pages being physically signed again.

It is now perhaps more important than ever to consult your professional advisor to assist you with your filings in the CRO and to ensure that your filings are made on time so you have the peace of mind that an audit exemption has not been lost or a summons is in the post.

Further Information

To find out more about how we can help you, please contact Salvador Nash or your usual KPMG contact:



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