

Minutes of the Accountants Forum / CRO Link meeting
Wednesday 22nd June 2016
Companies Registration Office, Parnell House.

Present:

CRO: Maureen O’Sullivan, Eileen O’Carroll, Gerry Doyle, David McFadden, Aine de Bairtiseil, Mark Donoghue (Secretary).

Members: Ronan Rock (KPMG), Eamonn Leahy (CCAG), Dearbhla Kelly (Eversheds), Ruairi Cosgrove (PWC), Conor Sweeney (ICSA), Emer Kelly (CPA), Mark Pery-Knox-Gore (Law Society), Anne Sykes (CAI), John Carolan (CIMA), Andrew Lambe (MIT), Oliver Holt (CAI), Ray Hunt (McCannFitzgerald), Deirdre Mooney (ICSA), George Alton (ICSA).

Apologies: Dermot Madden (CRO), Claudine Forrest (CRO), Salvador Nash (KPMG), Maire Cunningham (Beauchamp’s), Kathryn Maybury (Komsec),

1. Minutes of the previous meeting.

The Registrar welcomed the group to what is the second joint Fora meeting, and asked if there were any changes sought in relation to the minutes of the last meeting which were previously circulated. There were none, so the minutes were deemed agreed.

2. One year on, a review of the Companies Act 2014 by the Registrar.

The Registrar said that it was appropriate to review the CRO experience of the Companies Act 2014. The first year had over 11,000 applications to convert to LTD and 338 applications to convert to DAC.

There were 858 applications to define a name change, and the CRO view is that there will be about 20,000 companies affected by the name change, with approximately 160,000 existing private companies who were on the register before the commencement of the Act. As a percentage of this amount, the Registrar said that 11,000 was not a large quantity.

The rate of companies seeking conversion is rising but the volume is much lower than expected. Domestic merger and divisions were provided for in the Act, there have not been any divisions but 59 companies involved in domestic mergers and divisions resulted in the dissolution of 47 companies. A new feature has been the appointment of the “Registered Person” to act for a company.

There were 69 of those in the first year, and 263 applications to rectify a financial statement and only 1 notification of a foreign disqualification of a director.

There were 92 applications to appoint a “Registered office agent” and 966 alterations of the financial year end.

On Mortgages the C1 and F8 are now mandatory e-filing and the Act brought in the option of a two-stage procedure. 86% are using the one-stage procedure and only 14% are using the two-stage procedure. In the case of foreign companies 77% used the F8 form which is the one-stage form and 22% used the two-stage procedure.

Enforcement actions are reported by full year but we had over 4,000 voluntary strike offs by the end of 2015 and over 2,200 to-date in 2016. Involuntary strike offs were 3,072 in 2015 and 5,160 in the first five months of this year. The reasons for the low numbers last year was that we paused our Enforcement program at the time of commencement of the new Act to ensure that enforcement

proceedings did not straddle different pieces of legislation and have begun to catch up now. The numbers are already quite high for this year to date.

In terms of e-filing where it is possible to file on-line, almost 81% of documents are filed in this way

The Registrar concluded saying the numbers of new companies incorporated in 2015 are the second-highest on record.

3. Assistant Registrar's update

The Registrar invited Eileen O'Carroll to give an update on the stats within her area.

Eileen said that the statistics within the New Companies area were very positive, having risen by approximately 2,000 a year since 2013. The CRO may have 21,000 registrations by the end of this year and receiverships are also down, which would appear to mirror the economy.

Digital Certification of charges was introduced on 13th April 2016 and this completes the E-filing "package". The introduction of mandatory e-filing on charges as part of the Companies' Act 2014 had familiarised the stakeholder community with e filing procedures and the acceptance of Digital Certs. A Registration can now be completed within two days.

A note in our next E-Zine will publicise a new policy on Restorations whereby CRO will no longer accept payment by cheque. While the number of cheques "bounced" is relatively small there is a significant administrative overhead when this happens and the value of the cheque tends to be large. As a result CRO procedure had been to hold applications for restoration pending cheque clearance. As payment by cheque is being "phased out" in line with government policy, it will be possible to process applications for restoration within a faster timeframe. This will be in relation to H1's and the accompanying B1 forms.

Payment will continue to be accepted by Bank Draft and Postal Money Order for postal applications and our Cash Office will continue to accept both Debit and Credit cards in addition to Bank Draft and Postal Money Orders. This new initiative is intended to be introduced for 1st September 2016.

Conor Sweeney (ICSA) asked if there was any kind of stats available in relation to "who is forming Companies" and "how many are formed by formation agents". Eileen responded by saying that we do not currently maintain statistics to address this particular request type but she undertook to see if an appropriate report could be run as Conor sought. This concluded Eileen's update, the Registrar then thanked her.

The Registrar then invited Gerry Doyle to give an update on the stats within his area.

In relation to District Court applications for extra time to file under section 343(5), CA2014, Gerry remarked that at the time of the last meeting in February, CRO had only received 160 applications but since then, with the Courts granting 100% of companies extensions of time to file, the number of applications received has increased significantly by the month and the total number of applications received is now close to 700.

Following a review of the role of the CRO, as a Notice party, in the District Court process, CRO issued an e-zine in May outlining a change of approach. The main changes are as follows:

(1) The Registrar will object to any application made in the District Court for an extension of time to file an annual return that should have been delivered prior to 1 June 2015. The application in that case would have to be made to the High Court (Section 343(7) refers).

(2) The Registrar reserves the right to object to any application in the District Court where the reasons provided in the Affidavit and the supporting facts do not explain or verify why it was not possible to deliver the annual return to the CRO within the time permitted by sections 343(2) or 343(3), CA 2014, and are therefore not sufficient to warrant setting aside the company's legal obligations under the Act (paragraph (4) of SI No 256 of 2015 - District Court (CA 2014) Rules 2015 refers).

(3) The Registrar will object to any application in the District Court for an extension of time to file an annual return that is made by a dissolved company as a dissolved company does not have a legal existence until such time that it is restored to the Register and has no legal standing to make an application to the District Court under section 343.

(4) The Registrar will object to any application in the District Court where the reason given is that the annual return was lost or delayed in the post. Section 343(2) requires the company to "deliver" the annual return to the Registrar and putting it in the post does not satisfy this legal obligation to deliver the return to the Registrar. CRO has clarified in a number of recent e-Zines that in the event of a document being lost or delayed in the post, the Registrar will only consider an appeal from the company against late filing penalties etc if the presenter can show that they used a form of time guaranteed delivery service which provided proof of despatch and proof of delivery (eg Express Post).

The Registrar reserves the right to be represented in the District Court in any case where an application is made for an extension of time to file an annual return under section 343(5), CA 2014.

Further information on the District Court process is available in CRO Information Leaflet No 39.

In relation to Conversions, Gerry reminded members that companies wishing to convert to a DAC must pass an Ordinary Resolution **before 31 August** and file the conversion documents with the CRO as soon as possible thereafter. Gerry took the opportunity to re-iterate that in spite of rumours, there are no plans on the part of the CRO or the Department to extend the absolute deadline of **30 November 2016** for companies to convert to one of the new company types.

This concluded Gerry's update, the Registrar then thanked him.

The Registrar then invited Aine de Bairtiseil to give an update on the stats within her area.

Aine began her update by saying that the stats already provided gave an accurate view of where we are, that electronic filing continues to grow and that the Digital Certification is progressing well. Business Names Certificates are being rolled out in the coming weeks and then in the autumn electronic company Certificates of Incorporation will be prepared.

Aine said she will take the issue of the management of e-mail addresses on the CORE system away from the meeting and consider it. The Registrar informed the group that there will need a Forms Order as there is currently nowhere on the Business Names forms for an e-mail address.

Aine concluded her update and the Registrar thanked her.

4. Issues raised by Fora members.

The Registrar then mentioned that several members had raised issues for discussion at this meeting and she invited Conor Sweeney to raise the issue he had notified CRO in advance of the meeting.

Conor said his query was about converting from a share capital company to a company limited by guarantee (Section 1247) where one of the requirements is that no issued share capital is paid up. CRO has now advised that it will no longer allow registrations with paid-up share capital. The questions that arise are "what is the purpose of this" and have the CRO any comment to offer.

This was addressed by David McFadden (CRO) who said that he was not in the position to provide legal advice on this matter, but that this matter had come to his attention.

David asked whether Conor or any other person thought that the views of the CRO on this matter were incorrect? There was clear agreement by Conor and those present that the CRO's interpretation of the law on this matter was correct. David then stated that it was not for the CRO to question the policy objective behind the decision to legislate this provision in this manner. The CRO could only apply the law as it stood. If any amount of share capital was paid up, this new provision, which was unavailable under the previous companies acts left a High Court application as the only alternative to companies wishing to convert to this company type.

David said that the CRO is applying what "we understand the law to be" and that the Court is the best party to determine what do with any paid up share capital on a "case by case" basis. Some discussion took place around this issue. David said that there were a number of Fora where interested parties could raise their concerns.

However, from a CRO perspective the CRO is merely applying the law. The Registrar added that this could be brought to the attention of the CLRG or the Department. Discussion of this item concluded.

The Registrar then invited Anne Sykes (CAI) to raise the issue she had highlighted:

Anne said that some of her members had said that when filing reports under the Summary Approval Procedures they were being rejected as they were not the Statutory Auditor of that client. The Registrar responded, saying that as it was commenced by a Statutory Instrument we have to operate in that way but that she will raise this with the Department and revert to Anne directly.

Maura Cunningham had an issue presented by Mark Pery-Knox-Gore (Law Society) in her absence.

The first request was that there would be nominated CRO staff who had specific knowledge in the areas of concern to members rather than to require them to use the more general enquiry system.

The Registrar responded to this saying that we have a central information unit which can almost "triage" the calls we receive, and as they get more complex they can be routed to the relevant staff to deal with specific enquiries.

This is essential as the "subject matter" experts could not spend their time answering phone calls. In addition, if there was such a list customers would always approach these specialist staff and avoid using the general enquiry procedure, this point was agreed.

An additional issue was raised that concerned the H5 form:

Under S 116, a form must be filed where a company has acquired shares pursuant to "this Part" which would include Section 102 (1) (a) but Form H5 deals only with acquisitions under Section 105 and not Section 102 (1) (a).

David McFadden (CRO) addressed this saying that he may need more information in relation to this query as he has already been in contact with the Department with a view to re-prescribing this form. There is a problem with this form in that it does not "track" the language that is used in the 2014 Act. David asked that the query should be further clarified by an E-mail message, this was agreed.

This concluded discussion of issues raised by the Fora members.

5. AOB.

The next meeting of the Fora is provisionally scheduled for September / October 2016 and will be confirmed well in advance of this date. There was nothing else that was required to be raised under AOB so the Registrar thanked everyone for attending and then concluded the meeting.

Regards,

Mark Donoghue

Secretary Combined CRO Forum

Ph: O1 (804) 5251 or 087-3676626

E-mail: mark.donoghue@djei.ie

22th June 2016