

Minutes of the CRO Combined Fora meeting.  
Wednesday 26<sup>th</sup> October 2016  
Companies Registration Office, Parnell House.

**Present:**

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

**Members:** Ruairi Cosgrove (PWC), Conor Sweeney (CLS), Emer Kelly (CPA), Andrew Lambe (Company Bureau), Conal Kennedy (CAI), Tom Rogers (IIPA), Ray Hunt (Mcann Fitzgerald), Deirdre Mooney (William Fry), Linda Murray (Deloitte), Salvador Nash (KPMG)

**Apologies:** Dermot Madden (CRO), Anne Sykes (CAI), Eamonn Leahy (CCAG), Kathryn Maybury (Komsec).

**1. Minutes of the previous meeting.**

The Registrar welcomed the group to what is the third 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. Mandatory Electronic filing.**

The Registrar said that the Minister has signed a Statutory Instrument making the electronic filing of a number of documents mandatory from June of next year.

The documents involved are the B1, the B2, the B10 and the B73 and it will be mandatory to file these electronically from next June.

As over 80% of these documents are already filed electronically it may be felt that there is nothing to worry about but actually there is a change in relation to the Annual Return. In future in order for it to be an electronic filing the payment will also have to be electronic and the financial statements will have to be uploaded using the facility we have on our system, making a more streamlined filing process.

As a result electronic filing will be mandatory for all aspects of the Annual Return filing process except for signatures. Customers will continue to have the option of signing using ROS or using a signature page.

The CRO is about to launch an information campaign around this subject but the initial message will be that electronic filing will be mandatory. The finer detail concerning electronic filing of Annual Returns will be the subject of a later advertising campaign until after Christmas..

The Registrar mentioned that this will save stakeholders some money as it is free to file the B2, the B10 and the B73 if done electronically. The B1 has a filing fee of €20.

This will have the effect of reducing the CRO's "take" from the business community by over €700,000 per year.

**3. Conversions.**

The Registrar invited Gerry Doyle to address this subject.

Gerry said that up to mid-year, conversions had been coming in to the CRO at a rate of 1000 per month but have now increased to over 1000 per week. From 1 June 2015 to-date we have received over 30,000 conversion applications to be processed and while we are fully up to date on the N2 and N3 forms, we currently have a backlog of 7000 unregistered N1 forms. Any company whose N1 has not been processed by 30 November, will be automatically converted to the new LTD company type by the CRO on 1 December in accordance with the Companies Act. The CRO will complete the processing of Constitutions and G1s attached to unregistered N1s after 1 December.

All of the new Certificates of Incorporation will be issued by e-mail as electronic/ digital certs and CRO has no plans to issue paper certs after 1 December.

CRO is in the process of “harvesting” e-mail addresses from within its own records and has also written to in excess of 5000 companies asking them to provide us with a current company e-mail address to which their conversion certificate can be issued. We have provided instructions on how to upload or correct an e-mail address on CORE - <https://core.cro.ie/>– which involves going into “My Workspace” and clicking on the “Notify/Verify Company e-Mail” button in the bottom right hand corner (see below).

The screenshot displays the CORE user interface. At the top, there is a navigation bar with the following items: 'My Work Space', 'File A Form', 'Core Tools', 'Administration', 'Help', 'Welcome, Gerry Doyle...', and 'Language: English/Gaeilge'. Below the navigation bar, the main content area is divided into several sections. On the left, there is a 'My Work Space' section with a table of records. The table has columns for 'Ref.No.', 'Name/Company', 'User', 'Sub Id', 'Form Type', 'User Ref.', 'Stored', 'Status', 'Document Management', and 'Select'. The table is currently empty, showing 'No data available in table'. Below the table, there are buttons for 'Delete' and 'Select All'. On the right, there is a 'Profile: Gerry Doyle' sidebar with fields for 'First Name', 'Surname', 'Group', and 'Email'. Below the profile, there are links for 'Requests Pending (0)', 'Events (0)', 'Edit Profile', and 'Logout'. At the bottom right of the main content area, there is a button labeled '> Notify/Verify Comp. Email <' which is highlighted with a yellow circle.

- After the transition period ends on 30 November, customers will still be able to
- (a) re-register their company to a different company type by filing a Form D20, Special Resolution, new Constitution and filing fee of €60,
  - (b) change their name by filing a G1Q, Special Resolution, amended Constitution and fee of €50 if filed on line/€100 on paper and
  - (c) adopt a new Constitution by filing a G1 and Special Resolution which is free if filed online/€15 on paper.

Gerry mentioned that the processing of DAC conversions will be prioritised in the lead up to 30 November. CRO is planning to enter all correctly completed N2 forms onto the CRO database before 30 November and this will prevent the company from being automatically converted to an LTD on 1 December.

#### **4. Assistant Registrar’s update**

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

Gerry said that the most noteworthy stats on his side are those relating to Conversions which, as already discussed, are as follows:

N1 Conversion to LTD	23,987
N2 Conversion to DAC	1,764
N3 Change of Co. Name	2,203
Total:	Now almost 30,000.

In relation to Unregistered Auditors, the numbers to date in 2016 are very low, with only five (5) individuals signing auditor's reports where they were not listed on the Public Register of Auditors and eleven (11) individuals who used the name of a registered auditor without their permission, giving a total of 16 individuals with a total of 25 companies involved. This is a most satisfactory improvement in the efforts to reduce the level of this problem.

Gerry referred to a document issued to the members of the Fora advising that small Audit Exempt companies must file an Extract from the Directors report in relation to their interest in shares and debentures as required by Section 352 of the Act.

Gerry said his colleague Dermot Madden has been writing to the registered accountancy bodies and the Central Bank in relation to insurance brokers to advise that some of them are still claiming an audit exemption even though they were no longer entitled to do so. Section 350 (11)(b) expressly deals with this issue.

The final problem the CRO is finding in relation to financial statements concerns the length of the financial year. The Act requires this to be twelve months, plus or minus seven days unless the company files a B83 to change its year end. If a company is a subsidiary undertaking or a holding undertaking of another EEA undertaking, and the new financial year end date specified coincides with that of the other EEA undertaking, there is no limit to how often a company can change its year-end but if not, it can only be done once every five years.

Gerry concluded his update by reminding everyone that Friday 28 October is the annual return filing deadline for over 43,000 companies. He warned of the risk associated with leaving filing until the last day, pointing out that if anything goes wrong there may not be sufficient time to complete the filing and the consequences of late filing (i.e. late penalties and loss of audit exemption) are very serious.

The Registrar thanked Gerry for his update.

Aine de Bairtiseil then updated the group saying that the CRO has now brought in the third phase of digital certificates in respect of company names which commenced on the 23<sup>rd</sup> of September, kicking this off with Business Name certificates.

It is considered that it would be very helpful for this and other exercises if people updated their e-mail addresses on CORE just to ensure that we have the totally correct addresses.

This concluded Aine's update, and the Registrar thanked her.

Eileen O'Carroll was invited to update the group on her area of business.

She drew the group's attention to the statistical packs they had been provided with, noting that there were no particular surprises contained within the figures.

The increase in company incorporations is likely to have increased to eight percent (8%) by year end, which may be some kind of broad indicator as to how the economy is growing.

There is finally the full complement of staff within new companies section which enables the section to more than meet its customer deadlines.

In relation to restorations there has been a steady increase, not really reflected in the statistics and compliance is quite high, Liquidations are down and Receiverships are at about the same level.

Eileen mentioned a recent court case in which a company called Independent Trustees took proceedings against the Registrar to prevent her from registering a notice of the appointment of a Receiver in respect of this company.

The case was based on the grounds that as the company was the Legal but not the Beneficial owner of the asset over which the Receiver had been appointed the ~~company~~ Receiver should not have had to notify us and they company should not have had to advert to this in their letters and documents.

They also challenged the power of the Registrar to change the designation of the company to Receivership.

When the case went to court initially the CRO won, but after an appeal was lodged the court did uphold that the Registrar had acted *ultra vires* in changing the description of the company to the word Receivership.

The court did not uphold the other aspects of the appeal saying that the notice of the appointment of a Receiver had to be filed and registered and the Registrar does have the power to maintain a description of status and in so doing draw the attention of the public to the filing of certain statutory documents.

The fact that the Registrar can change the status of a company is positive from a CRO perspective.

David McFadden commented that when you have a company status of e.g Normal or Dissolved, people need to know this information, but an issue that arose in this particular case was that this company was acting as a type of fund administrator and that the status of Receivership was determined in relation to an asset under its management, rather than to the company itself.

The court felt that the status of Receivership appeared to infer almost a “stain” on the company.

The CRO may need to consider a more “involved” description going forward to address this concern.

David took this opportunity to discuss Section 343 (Subsection 5) in relation to late filing as there were 943 extension of time cases received in the CRO to-date in 2016 of which 698 applications granted by the District Court.

David’s experience of being in court with these applications is that the District Court has been for the most part sympathetic. The court is well aware that here is a need for a late filing penalty and a loss of audit exemption in order to encourage a compliance culture.

They are, however dealing with this on a case by case basis and we have noticed that while they say they are appreciative of the need for compliance they are nonetheless granting most of the extensions sought. In the case where an application has been made to the High Court the CRO is beginning to see cases where the court has said no to the application, supporting our objections in the case.

It is worth pointing out that the CRO does not object in a large number of cases but will normally only object in a situation where the excuse provided is clearly inadequate or groundless.

David said that this whole situation has had a huge impact on the resources available within the office.

## **5. AOB.**

The Registrar said that she had three items she wished to address under AOB.

**The new Companies Accounting Bill:** This Bill was published on the 5<sup>th</sup> August 2016 and it has ninety two sections, six schedules and it is going to transpose the 2013 EU Accounting Directive.

It brings in the concept of the Micro Company and increases the threshold for SM (small and medium) companies and introduces country by country reporting and obliges companies that are registered as unlimited but have *de facto* limited liability to file financial statements.

There are also a couple of provisions arising from the Companies Act, one is clarifying that those securities that were admitted to trading legally before the Companies Act 2014 can continue to be listed and another provision involved the anomaly that a company could lose its audit exemption for

not annexing financial statements to its annual return even though it was not required to have financial statements.

There is a section allowing IAASA to attach terms and conditions to the authorisation of liquidators under the “grandfather” provisions.

The second stage of this Bill is scheduled for Thursday the 10<sup>th</sup> November and the committee stage in the Dail is scheduled for Tuesday 22<sup>nd</sup> November but these dates are subject to change. The Department is hoping to have the Bill enacted quickly but that depends on Parliamentary time being made available.

**The Statutory Audit Regulations:** This was signed by the Minister in June, they came into effect on the 17<sup>th</sup> June and this was the same date that the EU Audit Regulation took effect in Ireland replacing previous audit regulations and amending certain parts of Part Six of the Companies Act.

These regulations met all of the transposition obligations but there are some options in the EU Directive that we cannot avail of so the Department is planning to implement some of those in the context of the Statutory Audit Bill and heads of a bill will be submitted to Government before the end of the year with the hope that the Bill will be drafted and published in early 2017.

**The Fourth Anti-Money Laundering Directive and Beneficial Ownership:** Article 30 of this Directive provide for a register of beneficial owners of Companies and other types of corporate entities, which is something that is being handled by Departments of Finance and Justice but the indications are that the Companies Registration Office will be asked to host the register of Beneficial Owners for the entities that we register which would mean that we would be responsible for Companies and Industrial and Provident Societies in our RFS guise.

This register is meant to commence on the 26<sup>th</sup> June 2017 and we are working on this basis.

The Anti-Money Laundering Directive is up for amendment and there is a proposal to reduce the threshold from twenty five percent (25%) to ten percent (10%) but this is still under negotiation.

There was nothing else to be addressed under this item so the next meeting of the Fora was provisionally scheduled for February 2017 and will be confirmed well in advance of this date.

The Registrar thanked everyone for attending and then concluded the meeting.

Regards,

Mark Donoghue

Secretary Combined CRO Forum

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