Landwell legal **bulletin**

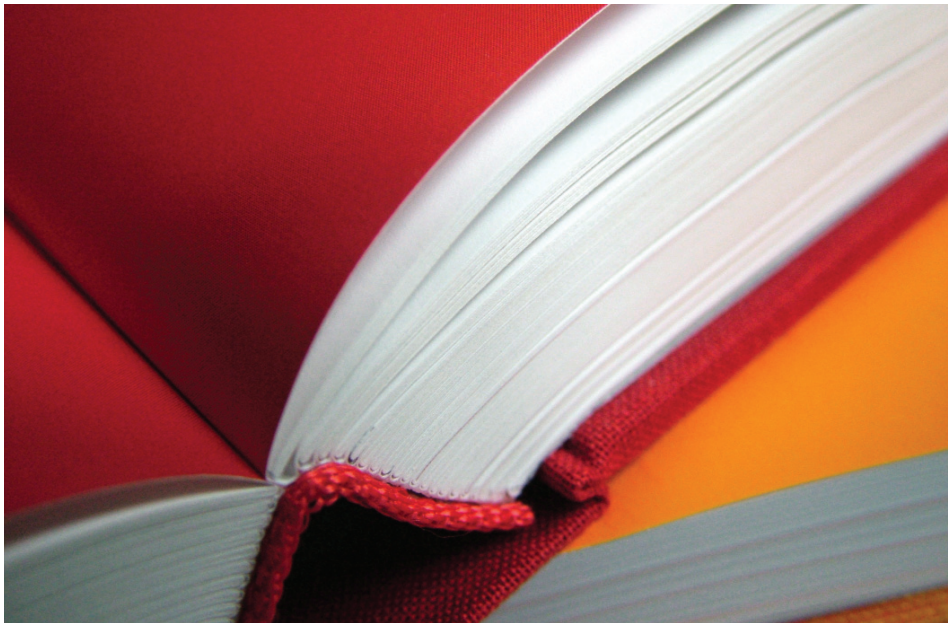
Company Law Update

Eddie Evans - Partner

email: edward.evans@ie.landwellglobal.com
Tel. +353 (0) 1 792 6855

Pauline Louth - Partner

email: pauline.louth@ie.landwellglobal.com
Tel. +353 (0) 1 792 6524'



There have recently been some important changes to Irish company law, which are summarised below. We also include details of a recent High Court case in which three company directors were disqualified for lengthy periods of time.

(1) The Investment Funds, Companies and Miscellaneous Provisions Act 2006

The Investment Funds, Companies and Miscellaneous Provisions Act 2006 (the '2006 Act') was signed into law on 24 December 2006.

Definition of Private Company

The definition of a private limited company has been amended to increase the limit on the number of members of a private company from 50 to 99. It is important to be aware that as most private limited companies restrict the number of members to 50 in their articles of association, the articles of association will need to be amended if it is intended to avail of the new higher number of members.

Prohibition on Offering 'Other Securities'

In addition to the existing prohibition on private companies from inviting members of the public to subscribe for shares or debentures in the company, the 2006 Act extends this prohibition to "other securities of the company". The articles of association of a company will not however have to be amended to reflect this extension as the existing provision in a company's articles of association will be construed as providing for this automatically.

There are a number of exceptions to the above prohibition including an offer of shares to (i) qualified investors (as defined in the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No.324 of 2005), or (ii) 99 or fewer persons or (iii) both qualified investors and 99 or fewer other persons.

Changes to Audit Exemption Thresholds

The 2006 Act has increased the threshold amounts applicable for companies wishing to avail of the audit exemption. Companies must have a turnover of no more than €7,300,000 and a balance sheet total of no more than €3,650,000. This has the effect of bringing Ireland into line with the maximum EU limits and is a substantial increase on the previous thresholds of €1,500,000 and €1,904,607 respectively.

Members holding at least 10% of the total voting rights in a company have the option of formally notifying the company that they require an audit. Written notice may be given by a member or members at least one month before the end of the financial year to which the notice relates.

It is important to note that the other qualifying criteria for the audit exemption have not changed.

(2) New Disclosure Requirements for Limited Companies

The European Communities (Companies) (Amendment) Regulations 2007 (S.I. 49 of 2007) have introduced a new obligation on companies to display certain information on their websites and in their electronic communications. Please see Yvonne Donaghey's article on page 3 for further information on the new disclosure requirements for companies.

(3) Registering an SE (Societas Europaea) in Ireland

On 27 January 2007 the European Communities (European Public Limited Liability Company) Regulations 2007 (SI No 27 of 2007) were signed into law which facilitate the registration of a Societas Europaea (SE) in the Irish Companies Registration Office. An SE will operate on a European-wide basis and be governed by Community law directly applicable in all Member States.

(4) Company Directors Face Lengthy Disqualification

The High Court recently disqualified three directors who were directors of a number of companies which were involuntarily struck off the Companies Register. The first was disqualified for 12 years and had been a director of 8 struck off companies. The other two directors were disqualified for 8 and 6 years and had been directors of 4 and 3 companies respectively when they were involuntarily struck off the register.

Mr Paul Appleby, the Director of Corporate Enforcement, remarked that the cases involved directors who were involved with numerous companies and had been struck off for failure to submit annual returns and where, in some cases, there was evidence of substantial liabilities to creditors. He emphasised the significance of evidence of persistent and/or serial abuse of company law obligations. None of the directors attempted to defend the action taken against them and costs were awarded to the ODCE. The case illustrates once again the very stringent approach being taken by the Director, in relation to compliance with company law obligations.