New Disclosure Requirements for Limited Liability Companies

Ursula McMahon - Partner

email: ursula.mcmahon@ie.landwellglobal.com
Tel. +353 (0) 1 792 6737

Yvonne Donaghey - Solicitor

email: yvonne.donaghey@ie.landwellglobal.com
Tel. +353 (0) 1 792 6461

On 6 February 2007, the Minister for Enterprise, Trade and Employment introduced the European Communities (Companies) (Amendment) Regulations 2007 (S.I. 49 of 2007) (the "2007 Regulations") for the purposes of giving further effect to the requirements of Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003.

Directive 2003/58/EC was introduced to modernise and update the First Company Law Directive 68/151/EEC (which deals with disclosure requirements in respect of certain types of companies) by giving members of the public easier and faster access to information on companies, whilst at the same time simplifying the disclosure requirements imposed upon companies.

Key provision of the 2007 Regulations

Of particular significance for Irish-registered limited liability companies is the extension of the existing requirement to display general information about companies on company letters and order forms in paper form to electronic communications such as e-mail and fax. This requirement, in light of technological developments and the increased use by companies of websites as a method of communication, has also been extended to company websites.

Therefore, with effect from 1 April 2007 all Irish-registered limited liability companies are required to display the following additional pieces of information on their websites and in their electronic communications namely:

- The name and the legal form of the company;
- The place of registration of the company, the number with which it is registered and the address of the registered office;
- In the case of a company exempt from the obligation to use the word "limited" or "teoranta" as part of its name, the fact that it is a limited company;
- In the case of a company which is being wound up, the fact that it is being wound up; and
- If there is reference to the share capital of the company on any letters or order forms, the reference shall be to the paid-up share capital.

Failure to comply with new disclosure requirements?

Failure to comply with the new disclosure requirements may result in the company and every director/company secretary who is in default and any person acting on the company's behalf who is responsible for or authorises the default being liable to a fine not exceeding €2,000.

Companies Registration Office Obligations

In addition to the above new disclosure requirements, Directive 2003/58/EC required each Member State to ensure by 1 January 2007 that it would be possible for companies to file by electronic means all documents and particulars required to be disclosed by the company with its relevant Companies Registration Office ("CRO"). The Directive also provided that a copy of the filed documents must be obtainable from the CRO either in paper or electronic form on application (again by paper or electronic means) to the CRO.

Whilst electronic copies of filed documents supplied by the CRO to the applicant will not automatically be certified as "true copies" (i.e. the applicant must specifically request such certification if same is required), the 2007 Regulations obliges the CRO, where such certification is requested, to ensure that the certification of electronic copies of the documents guarantees both the authenticity of their origin and the integrity of their contents by means at least of an advanced electronic signature.

Furthermore, in an effort to improve cross-border access to company information, provision is now made for the CRO to accept filings of certified translations of company documents and particulars which are required to be filed with the CRO in Irish or English.

Conclusion

In this new era of corporate enforcement and compliance in Ireland and in light of the Director of Corporate Enforcement's comments in a press statement urging companies and their staff to take steps immediately to assess the extent to which they were already in compliance with the new requirements and to ensure that by 1 April, the information disclosed on their websites and contained in their emails and other electronic forms of communication complies with the new requirements, it is highly probable that great focus will be placed on ensuring compliance with these new requirements.