



## *Flynn O'Driscoll Legal Update*

### ***The Bond***

#### **Introduction**

Under the Companies Act 2014 (the "Act"), at least one director of an Irish registered company must be a resident of the European Economic Area ("EEA") however this requirement does not apply to any company that holds a bond or section 140 certificate. The bond in place must be to the value of €25,000, allowing for the payment of the relevant company's liabilities in respect of a fine or penalty which may be imposed under the Act.

The surety under the bond must be a member of class specified in schedule 2 of the Companies Act 2014 (Bonding) Order 2015 i.e. a bank, building society, insurance company or credit institution.

#### **New Companies**

When incorporating a new company, a bond must accompany the application for incorporation where none of the directors are EEA resident. In these circumstances, the following requirements must be met;

- The presenters must clearly identify applications for incorporation that are accompanied by bonds;
- The bond must be executed under the common seal of the surety; and
- The original bond, together with a certified copy should be submitted to

the Companies Registration Office with the application for incorporation.

#### **Existing Companies**

If a director wishes to resign as director of an Irish registered company, leaving the company without an EEA resident director, the company should lodge either a bond with the form B10 notifying the Companies Registration Office (the "**CRO**") of the termination of the directorship of the sole or last remaining EEA-resident director, or obtain a certificate pursuant to section 140 of the Act.



In relation to the submission of a bond, the following requirements must be met;

- The bond must be executed under the common seal of the surety; and
- The original bond, together with a certified copy should be submitted to the CRO with the form B10. Alternatively, the resigning director may submit the bond with a letter sent to the Registrar of Companies, within 14 days of his/her resignation, notifying the Registrar that to his/her knowledge, no other director of the company is resident in a member State. If the bond has not been filed prior to the date of the annual return, the bond should be sent to the CRO with the annual return of the company.

#### Effective date of the bond

In accordance with the Companies Act 2014 (Bonding) Order 2015, a period of two years is prescribed as the minimum period of validity of the bond. This period may commence not earlier than the occurrence of the event which gave rise to the requirement to effect a bond. The period of validity of the bond ought to commence with effect from the date of resignation of the EEA-resident director.

#### **Section 140 Certificate**

A company can be exempt from the requirement to have at least one EEA resident director if a company is granted a certificate from the Registrar of Companies, acknowledging that the company has a real and continuous link with one or more economic activities that are being carried on in the State. In order to obtain a certificate in accordance with the Act, the company must satisfy the Revenue Commissioners that one or more of the following conditions are satisfied by the company:

- The affairs of the company are managed by one or more persons from a place of business established in the State and that person or those persons is or are authorised by the company to act on its behalf;
- The company carries on a trade in the State; and
- The company is a subsidiary or a holding company of a company or another body corporate that satisfies either or both of the conditions set out above.

The application for a section 140 certificate must be accompanied by a statement from Revenue, made within two months of the date of the application to the CRO, that it has reasonable ground to believe that the company has such a link. An application can be made in writing to Revenue for such a statement.

*We will keep you updated as more of the sections are commenced.*

*Should you have any queries arising out of the foregoing please contact either of the undersigned who will be happy to assist.*



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