

## **Companies (Amendment) Act 2009**

On the 12<sup>th</sup> July 2009, the Companies Amendment Act 2009 was signed into law by President Mary McAleese. This Act introduces important changes to the Companies Acts that will affect all companies in Ireland. Among the main provisions of the Act are the following:

### **Increased Powers for the Office of Director of Corporate Enforcement ("ODCE"):**

As per section 194 of the Companies Act 1963 company directors are obliged to keep a register detailing any interests that they have in contracts or proposed contracts with the company. Previously this register was only available for inspection by the officers, members and auditors of the company. The new legislation now gives the ODCE a right of access to inspect this register.

The new legislation increases the search and entry powers of the ODCE when investigating a company. Under this new legislation the ODCE have the power to remove paper and electronic information off the company premises for analysis elsewhere. The duration of a search warrant which is currently valid for a period of one month can now be extended on application to a district court judge.

### **Legal Professional Privilege of certain documents**

The Act introduces changes to section 23 of the Companies Act 1990 in regard to legal professional privilege. Previously any such information would not have to be disclosed if privilege existed over such information.

However the new legislation entitles the ODCE to seize such privileged documents provided that they are kept on a sealed basis. An application can then be made to court to determine whether privilege exists in the seized documents.

### **Transactions with Company Directors**

This is an important change that all company directors need to be aware of. Section 31 of the Companies Acts 1990 prohibits a company from making loans to any of the company directors. Section 40 of the 1990 Act penalised only the officer who authorised the breach.

The new legislation amends section 40 and now makes each officer of the company guilty of an offence regardless of his/her knowledge or actions.

### **Loans to Directors of a Licensed Bank**

Previously licensed banks had a different disclosure regime relating to transactions with directors compared with non-banking companies. This has now changed and any future loans to a director will be treated the same way as with that of a non-banking company.

In the banks annual return the particulars of such transactions will need to be disclosed subject to a de-minimus threshold. Previously only an aggregate amount

had to be disclosed. Any breach will make the company and all its directors guilty of an offence.

### **Non – Resident Director**

This is an important and welcome change for Irish registered companies who do not have an Irish resident director. Previously such companies were required to have a bond in place in such situations where they did not have an Irish resident director.

However this has now changed. In order to address the concerns of the European Commission the requirement is now to have at least one director who is resident in a member state of the EEA.

Therefore as an example if an Irish registered company which has two directors based in France, they no longer need to have a bond in place. This will mean a saving of nearly €1,700 for such a company. The EEA includes all the countries of the EU plus Iceland, Liechtenstein and Norway.

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