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CHAPTER 7

Simplification: Incorporation and Registration

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7.1 Introduction

7.1.1 The procedures surrounding the registration of new companies and the disclosure, through the CRO, of subsequent information comprises a substantial part of the compliance with regulatory requirements of companies. It is necessary to keep under review the law and practice regarding these functions to ensure the minimum imposition on companies whilst preserving the protection principles outlined elsewhere in this Report. The Review Group explored a range of measures to facilitate easier registration processes and to encourage electronic filing by companies. The Group also recognises the importance that the CRO should be in a position to make registered information readily available to customers using the opportunities resulting from electronic communications.

7.2 Incorporation of a company

7.2.1 The recommendations made in the Report regarding the capacity of a company at Chapter 10, articles of association at 3.2.7, and statutory declarations at 7.4.12, when taken together, provide a basis for considerably simplifying the process of the incorporation of a private company limited by shares.[1] To maximise the benefits of these proposed changes, there is a need for a further merging of the provisions regarding the incorporation of companies. The Review Group recommends that the various sections of the Companies Acts regarding the incorporation of private companies limited by shares should be replaced by a provision that any one or more persons may, by subscribing their names to an application for incorporation in a form prescribed for that purpose, form a private company limited by shares.[2]

Company constitution

7.2.2 The Review Group considers that, as regards private companies limited by shares, it is no longer necessary to retain the distinction between the memorandum of association and the articles of association and that it is possible to merge them into a single document – the company constitution. As these companies will by definition have limited liability, and as they will have their own application for incorporation,[3] it will not be necessary to include a limited liability clause in that constitution. Because of the recommendation in Chapter 10, the requirement for an objects clause does not arise.

7.2.3 The Review Group does not, however, recommend a complete merging of the incorporation documents. The law must have regard to the First Directive[4] which provides at Article 2.1(c) that where any change is made to the "instrument of constitution" or "the statutes" of a company, the complete text of those documents as amended to date must be filed with the regulatory authority. If, therefore, all the incorporation documents were to be merged into one, a complete new set would have to be filed following a change in any of the particulars.

Capital duty statement

7.2.4 The incorporation application includes a statement in respect of companies' capital duty required by the Stamp Duty Consolidation Act 1999. The Review Group understands that the Revenue Commissioners would be prepared to have this statement incorporated in the new application form which the Group is proposing. (See also Chapter 5 at 5.8)

1 i.e. the proposed CLS recommended by the Review Group as the base company in 3.6. The Review Group will consider simplification of incorporation procedures in respect of other company types at a later date.

2 Replacing s 5 of the 1963 Act.

3 See 7.2.1.

4 68/151/EEC.

Writing the number of shares subscribed for

7.2.5 There is at present a requirement that each subscriber must write in the memorandum of association the number of shares for which he is subscribing.[5] The need for actual writing – as opposed to signing a typed statement – is an anachronism. The Review Group recommends that this provision should be repealed. This recommendation applies to all company types.

New application form for incorporation

7.2.6 A draft form set out in Annex I to this chapter was produced by the Registrar for consideration by the Review Group. This form would be used for the incorporation of a private company limited by shares.

7.2.7 The form prescribed for the application should contain the following:

Part I: The company name, details of the first officers, address of the registered office, the company's activity in the State and where it is carried on.[6]

Part II: The company constitution containing (i.e. repeating) the company name, the share capital clause, and the rules currently contained in the articles of association.

Part III: A signature section, in which the first officers of the company consent to acting as such, and which includes the current association or subscription clause, wherein the subscribers subscribe to the documents and verify their contents.

Where the company constitution is altered post-incorporation, only Part II of the document would be required to be re-filed in full.[7]

7.2.8 The Review Group recommends the adoption of a form along the lines of the draft form for the incorporation of private companies limited by shares, annexed to this chapter.

7.3 Reservation of a company name

7.3.1 Whatever further simplification takes place, it will remain necessary for the CRO to ensure the suitability of a proposed company name having regard, inter alia, to the similarity of a proposed name to names already on the register. If the name could be checked and reserved while the documentation for incorporation is being prepared, the registration of the final documents could be greatly expedited. The sole purpose of such a name reservation system should be to facilitate swifter company incorporation. It will be necessary therefore to prevent names being blocked from proper use by other parties for an unreasonable amount of time.

7.3.2 If the time delay associated with the process of name approval could be dealt with separately, it would be easier to establish a process for the immediate incorporation of a company electronically.

7.3.3 The Review Group recommends that persons engaged in the formation of a company ought to be permitted, on payment of the prescribed fee,[8] to reserve a company name for a period not exceeding twenty-eight days[9] from the date of confirmation by the CRO that the name has been reserved in favour of that person.

7.3.4 The Review Group further recommends that as long as the application for incorporation is received by the CRO within the period during which the name in question is reserved, the fee for name reservation should be offset against the incorporation fee, as the pre-approved name would not have to be checked on receipt by the CRO of the application for incorporation.[10]

5 See s 6(4)(d) of the 1963 Act.

6 Currently required by s 42(2) of the 1999 (No 2) Act.

7 This will additionally overcome the anomaly of repeat filing of the particulars of the first subscribers.

8 Say, €25.00.

9 With one further reservation of that company name for an immediately consecutive 28-day period being permissible on payment of a further fee.

10 In effect providing the reservation service free of charge to a person who goes on to incorporate a company bearing a name which he has reserved provided that it is used within one month.

7.4 Statutory declarations

7.4.1 The Companies Acts 1963 to 2001 require, in many instances, the making and filing of statutory declarations with the CRO.[11] The relevant sections are listed in the following table, and "SD" adopted as an abbreviation for "statutory declaration".

Section	Provision
1963 Act	
24 (inserted by s 88 of the 2001 Act)	Exemption from use of the word "limited" in company name – SD of officer that company complies, or where applicable will comply, with the requirements of s 24(a) and (b).
60 (2)	On giving financial assistance for the purchase of shares – SD by directors as to the nature of that assistance that they have formed the opinion that the company, having carried out the transaction, will be able to pay its debts in full as they become due.
115 (1)(d)	Restrictions on commencement of business – SD by officer that certain conditions have been complied with, where company has share capital and has issued a prospectus.
115 (2)(c)	Restrictions on commencement of business – SD by officer that certain conditions have been complied with, where company has share capital and has not issued a prospectus.
179 (1)(b)(iv)	Optional SD by director that he has taken up shares.
256(1)	Statutory declaration of solvency in case of proposal to wind up voluntarily.
320(4)	Statement as to the affairs of the company to be delivered to Receiver.
332	(Part IX Registration of companies not formed under the Act) SD by two or more directors verifying lists of members and directors.
1983 Act	
5(5)	SD to be delivered with application for incorporation.
6(2)	(Restriction on commencement of business by plc) SD by officer that allotted share capital is not less than authorised minimum.
9(3)(e)	Re-registration of private company as plc - SD by officer that certain conditions have been met.
12(5)(b)	Re-registration of "old public limited company" to plc – SD by officer that conditions for conversion have been met.
18(4)(e)	Companies registering under the Act pursuant to Part IX of the 1963 Act; conversion to plc – SD by officer that certain conditions have been met.
52(3)(b)	Re-registration of limited company as unlimited – SD by the directors of the company that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and, if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered so to do.

11 In certain other instances, statutory declarations are not expressly required by the legislation, but are required pursuant to CRO Forms Orders – for instance, Forms 49 (full satisfaction of a charge) and Form 49a (partial satisfaction of a charge) each contain a declaration verifying the memorandum of satisfaction of charge for the purposes of s 105, 1963 Act, although that section does not stipulate that a statutory declaration is required, merely that "evidence [must be] given to [the] satisfaction of " the Registrar.

Section	Provision
1990 Act	
34 (inserted by s 78 of the 2001 Act)	Provision of guarantee or security in connection with loan or credit transaction made by another person for a director or a connected person – SD by directors stating the circumstances in which the guarantee is to be entered into or the security is to be provided, the nature of same.
1999 (No 2) Act	
42	Carrying on of an activity in the State – SD that company will do so.
45	Limit on number of directorships – SD that company falls within a category of company specified in the table to s 45.
47	Notice of resignation of officer – SD of resigning officer that s/he has resigned, and that company has failed despite written request to file notice of that resignation with the CRO.

7.4.2 Statutory declarations are additional to the actual information being provided. Statutory declarations made under the Companies Acts are furnished to designated persons, most commonly the Registrar. For example, when registering a new company with the Registrar, it is necessary to lodge a statutory declaration of compliance with the Companies Acts in respect of registration signed either by the solicitor involved in the company formation or by a person named in the articles of association as a director or secretary of the company.[12]

7.4.3 Where a statutory declaration is required to be delivered to the CRO for the purposes of an application, it is not possible to complete that application by a single electronic communication. The question arising is how best to address this. A number of options arise.

7.4.4 One option would be to prepare an order pursuant to the ECA 2000 enabling the documents listed in Annex II to this Chapter to be dealt with electronically. The ECA 2000 provides at s 10(1):

> Sections 12 to 23 are without prejudice to the law governing the creation, execution, amendment, variation or revocation of the law governing the making of an affidavit or a statutory or sworn declaration, or requiring or permitting the use of one for any purpose; except to the extent that regulations under section 3 may from time to time prescribe.

Section 3 is the general provision as to the making of regulations.

7.4.5 Section 10(2) provides:

> Where the Minister is of the opinion that–
>
> (a) technology has advanced to such an extent, and access to it is so widely available, or
> (b) adequate procedures and practices have developed in public registration or other services, so as to warrant such action, or
> (c) the public interest so requires
>
> he or she may by regulations extend the application of this Act to or in relation to a matter specified in subsection (1) subject to such conditions as he or she thinks fit.

12 Section 5(5) of the 1983 Act.

7.4.6 The drawback to going the route of an order under the ECA 2000 is that there will remain major practical difficulties in making a statutory declaration electronically. There are always two unconnected parties whose signatures are required on a statutory declaration. It would be necessary for each party to the declaration to be able to sign electronically.

7.4.7 The other possibility would be to remove the requirement for statutory declarations, and to replace it with a requirement for an unsworn declaration.[13] The requirement for statutory declarations could be removed for electronic communications only. This was done in the UK where the requirement for a statutory declaration for electronic communications was replaced with a specific statutory offence for falsely making declarations to the registrar[14] with severe penalties for breach.

UK provisions

7.4.8 The UK have replaced the provisions in their companies code on statutory declarations *as they apply to electronic filing* as follows: [15]

> "(3) In place of the statutory declaration there may be delivered to the registrar of companies using electronic communications a statement made by a person mentioned in paragraph that the requirements mentioned in subsection (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.
> (3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.
> (3B) makes provision for a simple offence of making a false statement. The new penalties in (3B) are to replace existing Perjury Act offences for making false declarations."

7.4.9 The Companies Acts in Ireland could adopt a similar approach.It should be noted, however, that there is no equivalent in the UK to s 242 of the 1990 Act which sets out the offence of, and penalty for, furnishing false information in purported compliance with the Companies Acts.

Purpose of a statutory declaration

7.4.10 A statutory declaration is an attempt to increase the awareness of somebody making a false statement. It is notable, however, that the penalty for falsely making a statutory declaration is very much less than the penalty for any other false statement on a CRO form, although the making of a false statutory declaration could be considered as a separate and additional offence. Section 6 of the Statutory Declarations Act 1938 provides that:

> Every person who makes a statutory declaration which to his knowledge is false or misleading in any material respect shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds or, at the discretion of the Court, to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

Section 242 of the 1990 Act, however, provides that:

> A person who, in purported compliance with any provision of the Companies Acts, produces, lodges or delivers any return, report, certificate, balance sheet or other document false in a material particular, knowing it to be false, or recklessly...lodges or delivers any such document false in a material particular shall be guilty of an offence.

7.4.11 The maximum penalty under s 242 is €1,904.61 (£1,500) or 12 months on summary conviction or €12,697.38 (£10,000) or 5 years on indictment. Where a person is guilty of an indictable offence under subsection (1) and the court is of opinion that the offence has had certain specified severe effects, the maximum penalty on conviction on indictment increases to "imprisonment for a term not exceeding 7 years or to a fine not exceeding €12,697.38 (£10,000) or to both". The existing penalty for breach of s 242 of the 1990 Act is therefore far greater than that applying under s 6 of the Statutory Declarations Act 1938.

14 The UK Companies Act 1985 (Electronic Communications) Order 2000.

15 Section 12 of the UK Companies Act ,1985 as amended.

13 To date, a statutory declaration may be accepted by the Registrar as sufficient evidence of compliance with various statutory requirements. If statutory declarations were no longer to be required to be delivered to the CRO, it would be necessary to replace them with another form of proof on which the Registrar could rely. The relevant provisions of the Companies Acts would have to be amended to reflect this change.

Conclusion

7.4.12 From the perspective of simplification, the Review Group concluded that the most logical approach is to remove the need for a statutory declaration with regard to the filing of any information in compliance with the Companies Acts. The Group considered this is warranted on the basis that it is not appropriate to have different offences, and different levels of penalties, apply to electronic filings and hard copy filings. Nor is it necessary, in the view of the Group, to create an additional specific offence in the companies code given the existence of s 242 of the 1990 Act which established the offence and penalty for furnishing false information in purported compliance with any provision of the Companies Acts. The Review Group recommends that all existing requirements (as identified in 7.4.1) to make and file statutory declarations with the CRO should be replaced with a requirement to make an unsworn declaration.

7.4.13 The Group acknowledges, however, that the scope of s 242 requires to be broadened if statutory declarations are no longer to be required to be delivered to the CRO by the Companies Acts.[16] The Review Group recommends that a statutory declaration should be replaced with a requirement to deliver "an unsworn declaration in the prescribed form," which the Registrar may in relevant circumstances accept as sufficient evidence of compliance.

7.5 Company electronic filing agents

7.5.1 While it can be expected that many larger companies will use electronic filing methods as soon as these become feasible, uptake by many smaller companies can be expected to be slower. It is the reality that the company accountant, solicitor, or other secretarial service provider, is often charged with the task of preparing returns based on the company records and on information supplied by the officers of the company. The company assigns effective responsibility in practice to the service providers to ensure that company filings are kept in order. The documents, however, are sent out to be signed by the company secretary or the director, who remains ultimately responsible for ensuring the accuracy of its contents. The Review Group recommends that it should be open to the board of a company to authorise agents to sign documents electronically on behalf of the company and to forward them directly to the CRO. It should be a matter between the agent so authorised and the company to manage the control of these documents. The Review Group recommends that appointments should be notified to the Registrar with a confirmation that the company accepts that such agents are authorised to sign documents on its behalf. The Group further recommends that the Registrar, under the general powers provided pursuant to the ECA 2000,[17] should lay down the means whereby agents could file electronically with the CRO.

Signatory cannot currently act as auditor

7.5.2 Large accountancy and legal firms in particular should be in a position to deal electronically with the CRO. Many already have in place the technology to file returns electronically and could readily register for electronic signatures under the ECA 2000. Section 187(2)(a) of the 1990 Act however prohibits "an officer or servant of the company" from acting as the company's auditor. Where a firm of accountants acts as the company auditor, it is not possible for them to act also as the company secretary. That means that they may not sign documents on behalf of the company for filing at the CRO, creating a real barrier to the uptake of electronic filing. This is despite the fact that the involvement of professional auditors in this process should facilitate both efficiency and good compliance. The Review Group recommends that it should be expressly recognised by the Companies Acts that authorised electronic filing agents are not, by virtue of their appointment as such, to be deemed to be an officer or servant of the company, for the purposes of s 187(2)(a) of the 1990 Act. The Review Group also recommends that s 242 of the 1990 Act should be further altered to take account of the appointment of electronic filing agents.[18] Auditors, in particular, should have procedures in place to ensure that their independence is preserved and that management are responsible for the integrity of the information provided to them.

16 See 7.6 below.
17 ECA 2000, s 12 (writing) and s 13 (signatures).
18 See 7.6.2.

7.6 Requirements to broaden scope of offence under s 242 of the 1990 Act

7.6.1 An offender under s 242 of the 1990 Act is anyone who, inter alia, "produces, lodges or delivers" a document in purported compliance with the Companies Acts "knowing it to be false" in a material particular, or who recklessly delivers such false information. Under the Statutory Declarations Act 1938, an offence is committed by a person who makes a false declaration. If statutory declarations are removed from all documents to be filed with the CRO, leaving s 242 as the only sanction for the delivery of false particulars, it will be possible to deliver false information to the CRO and yet avoid criminal conviction.This could be achieved if the person who falsely completes the form uses a presenter (agent) to deliver the form who is entirely unaware as to whether the contents are correct or not. The person who falsely completed the form has not "produced, lodged or delivered " the form and so he falls outside the ambit of s 242. The person who has delivered the form to the CRO does not know that the contents of the document were false, and so he also falls outside the ambit of s 242.

7.6.2 The Review Group recommends that s 242(1) of the 1990 Act should be expanded to create an offence for any person who "completes, signs, produces, lodges or delivers" any document. The Review Group also recommends that s 242 should be further expanded to take account of filings by electronic filing agents and so recommends the creation of an offence "knowingly or recklessly to furnish false information to an electronic filing agent" under s 242.[19]

7.7 Delivery of documents otherwise than in legible form to the Companies Registration Office

7.7.1 Provisions regarding the rejection of documents by the Registrar were consolidated by s 107 of the 2001 Act. Unless a document delivered to the CRO satisfies Regulations prescribed[20] as to the form and content of documents filed at the CRO, or does not comply with any other requirement of the Companies Acts or other legislation relating to the completion of a document and its delivery to the CRO,[21] the document may be returned to the presenter by the Registrar with a notice indicating the respect in which the document does not comply. Unless a replacement document complying with the matters identified in the notice is delivered to the CRO within 14 days, the original document will be deemed never to have been delivered to the CRO.

7.7.2 Section 249 of the 1990 Act, dealing with the delivery to the Registrar of documents otherwise than in legible form, has not yet been commenced. If s 249 is commenced, this will necessitate the making of a further set of Regulations as to form and content pursuant to s 249, in the same terms as the Regulations pursuant to s 248. The ECA 2000,[22] however, makes adequate provision for the filing of documents by electronic means with public bodies.

7.7.3 The Review Group recommends that s 249 of the 1990 Act should be repealed, and s 248 expanded to cover the delivery of documents to the Registrar in non-legible as well as legible form. One set of Regulations as to form and content will then apply to the delivery of both paper filings and electronic filings to the CRO. This may be achieved by amending s 248(1) to read:

> (1) This section applies to the delivery to the [R]egistrar under any provision of the Companies Acts of documents, whether in legible form or otherwise.

7.8 Exploiting Electronic Communications

7.8.1 Electronic communications have already made it possible to introduce improvements in the performance of its obligations by the CRO. For instance, the 2001 Act[23] provides for the filing by companies of a reference text for

19 See schedule attached to Chapter 8.
20 Pursuant to s 248 of the 1990 Act (delivery of documents in legible form).
21 See s 249A of the 1990 Act, inserted by s 107 of the 2001 Act.
22 ECA 2000, s 12 (writing) and s 13 (signatures).
23 2001 Act, s 80.

the subsidiary objects clauses of the memorandum of association or for the articles of association. This is possible because the CRO electronic document imaging system can cross-reference from one document to another and display them to searchers as though they were one document. Clearly, there will be savings in paperwork and general administration if companies exploit this provision. It is valuable to explore ways in which similar advantages might be gained in other respects.

Dealing with a director directly

7.8.2 The CRO maintains a register of company directors for internal administrative purposes rather than for general public use. In principle, each director should have only one entry in this register with electronic pointers to each company with which he is associated. As is the case with many such sets of records, much duplication has arisen over time with some directors having multiple entries. The CRO is commencing a project to eliminate duplications and will in due course be asking directors to supply their unique Personal Public Services Number (PPSN).[24] The use of this unique number is being promoted by the Government agency REACH, established to develop a strategy for the integration of public services and to develop and implement a framework for electronic government. As the duplications are eliminated over time, it should be possible for a director to notify, *in his own capacity*, changes in personal particulars such as address.

Re-using data supplied electronically

7.8.3 It is also possible for the CRO to retain a history of directors' "other directorships" with "date of appointment" or "date of ceasing to act". This arises for example on the form notifying a change of director as well as on the form for the incorporation of a new company. Where a director provides this information electronically on one occasion, it should not be necessary to provide it again as the CRO system would be able to retrieve it into the future and display it as appropriate. The Review Group recommends that it should be lawful to prescribe forms, which would:

(i) allow a director on one form to file a change in personal particulars to be applied to the records on more than one company;

(ii) allow directors who have already provided data on other directorships in an electronic format to the CRO to exclude that information from subsequently filed forms.

Modern payment methods

7.8.4 Remote access to CRO services would be encouraged by the ability to pay for such services electronically. The Review Group understands that the REACH and BASIS[25] projects will support electronic direct debit or other payment methods. These facilities will be valuable for regular clients of government services. For more casual users, including searchers from abroad, it should be possible to pay by credit card. The Group notes that this would not require any change in company law but recommends that provision of such a facility should be considered. The Review Group recommends that persons filing documents electronically or carrying out company searches electronically should be allowed to pay CRO fees by credit card. This recommendation does not extend to searches carried out by post or in the CRO where the administrative burden would not be greatly reduced.

7.9 Records kept by the Companies Registration Office

7.9.1 Section 378 of the 1963 Act provides that any register required to be kept by the Registrar may be kept by making entries in bound books or "by recording the matters in question in any other manner". All statutory information supplied by companies is kept on file by the CRO - in paper format in the case of companies formed prior to 3 May 1990, and in electronic format for companies incorporated since that date. All company documents received in the CRO since 11 March 1991 are copied onto a computerised imaging system.

24 This will have the additional advantage of verifying to the CRO the identity of the person concerned. Parallel provisions would be required in the case of non Irish-resident directors.

25 BASIS (Business Access to State Information and Services) is a Government initiative to improve compliance processes that affect business in Ireland by delivering electronic information and services based around the "life events" of a business, e.g. business start-up and development, paying taxes and employing staff.

Destruction of documents

7.9.2 Section 313 of the 1963 Act provides that the Registrar shall, after the expiration of 20 years from the dissolution of a company, send all the documents filed in connection with such companies to the Public Record Office. Consequently, the CRO is obliged to retain all documents filed during the lifetime of every company for a twenty-year period after each company has been dissolved, notwithstanding that the documents may also be stored in electronic form. The Review Group recommends that, subject to there being a reliable assurance as to the integrity of the information, and provided that the information is capable of being displayed in intelligible form, and that it is readily accessible so as to be usable for subsequent reference, the Minister ought to be empowered to permit by order the destruction of a certain class or classes of documents, after a period of at least three years has elapsed since date of delivery of a document in that class to the CRO, and to deem the electronic copies of such documents to be the originals of the documents for all purposes.

7.10 Statutory functions of the Companies Registration Office

7.10.1 The Review Group noted that existing law does not set out all the functions of the CRO. Various sections throughout the Companies Acts require documents to be filed with the Registrar. Certain important functions of the CRO, however, have to be inferred from the legislation, which is unsatisfactory. The Review Group accordingly recommends that the statutory functions of the Registrar ought to be expressly stated in the Companies Acts, in a form equivalent to s 12 of the 2001 Act, which sets out the statutory functions of the Director. The Review Group further recommends that specific reference ought to be made therein to the Registrar's function of operating advanced, readily accessible, information systems relating to the documents filed with him.

7.11 A searchable index of company directors

7.11.1 The Review Group considered whether there ought to be a publicly searchable index of company directors. As noted above[26] the CRO retains a register for its own purposes and that might form the basis of such a publicly available register.

7.11.2 There is a significant amount of personal data available on public registers.[27] It is possible, to a greater or lesser extent, to find out who owns what shares in what company and who are the directors. If a company complies with all the requirements to keep information and records under the Companies Acts, it should be possible to ascertain when and for how much the director acquired shares in the company of which he is director. It should also be possible to ascertain of what other companies he is director. Even though all the above information is generally available, it is not instantly available. Some research has to be done to build a picture around a particular individual. It is in this context that the question arises as to whether there should be a lateral publicly available index of directors.

7.11.3 The Review Group considered that it might make sense for there to be a deliberate lateral index of directors for public inspection, but that it brings the possibility of extending further information which may be considered gratuitous and possibly unnecessary. Each director when complying with the law will periodically notify the identity of other companies of which he is a director. It is in principle preferable that this register be a deliberate register rather than an accidental consequence of other filings. However, there is no compelling reason at this stage to introduce such a publicly available register. The CRO stated that while it might see an advantage in revisiting this issue at some future stage, considerable logistical and resource issues would arise. The Review Group noted that the requirement for correct company information would create the likelihood of clashing information such as to increase substantially the likelihood of documents being rejected. The Group noted in this context that the Registrar of Companies for England and Wales had discontinued the use of a software system

26 See 7.8.2.

27 One can access birth, marriage and death certificates. One can look up wills and schedules of assets of deceased persons. The planning and development files of local authorities are open to the public. It is possible to find out who has mortgaged their house to whom, and in some cases to ascertain how much has been spent in the purchase and how much has been borrowed.

which validated addresses of company officers against the postcode supplied, in view of the fact that discrepancies between addresses and postcodes was triggering rejections of a large volume of documents. Consequently, Companies House decided to cancel its address validation policy and now utilises the software for ease of keying purposes only. Moreover, no compelling reason was given or case made out for the public availability of a register of directors. The Review Group therefore recommends that there should not be a publicly available register of directors.

7.12 Establishment of identity of directors and secretaries

7.12.1 The Review Group considered whether there was a need for formal verification of identity of directors and secretaries where documents signed by or concerning them were delivered for filing to the CRO. Irish law, like that of the UK and other common law jurisdictions, appears to be in a minority with respect to the level of proof of identity required to be furnished to the CRO on the formation of a company and on subsequent filings. Although there does not appear to be any widespread abuse in spite of this apparent laxity, the Group understands that the CRO has from time to time intercepted incorporation and other documents with obviously fictional incorporators or signatories.

7.12.2 It is usual in a number of European civil law countries for identity cards or passports to be produced to the notary or registrar before whom a company is formed or a corporate act is attested. The notary's authentication of the incorporation papers or other documents for onward transmission to the commercial register presumes that the notary has checked the identity papers. The commercial register itself is not the invigilator of the truth of the identities. When amendments are made to constitutional documents of civil law companies, similarly the identities of the relevant officers will be cited in the documentation.

7.12.3 As against that, in Ireland, there is no such practice. The principal company law provision that punishes provision of false identities is s 242 of the 1990 Act. However, this punishes wrongdoing rather than seeking in practical terms to prevent it.

7.12.4 The Review Group came to the view that it is difficult to argue against the requirement for such proof of identity, while at the same time noting that there are many comparable public and other filings made with State bodies without the requirement for production of identity.[28] The Review Group is of the view that the REACH programme referred to above[29] provides the best way of ensuring the bona fide identity of intending company directors and secretaries on incorporation papers and of the identity of directors and secretaries on subsequently filed documents. The Group therefore recommends that formal identification procedures such as are found in certain civil law countries ought not be initiated, but rather that consideration be given to requiring the pre-registration of directors who would at all times subsequently identify themselves confidentially on CRO filings by reference to their PPSN. Parallel provisions would be required in the case of non Irish-resident directors.

28 e.g. property documents delivered for filing to the Registry of Deeds and Land Registry, tax returns.

29 See 7.8.2.

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7.13 Summary of Recommendations

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- The various sections of the Companies Acts regarding the incorporation of private companies limited by shares should be replaced by a provision that any one or more persons may, by subscribing their names to an application for incorporation in a form prescribed for that purpose, form a private company limited by shares. **(7.2.1)**

- There is at present a requirement that each subscriber must write in the memorandum the number of shares for which he is subscribing.The need for actual writing – as opposed to signing a typed statement – is an anachronism. This provision should be repealed. This recommendation applies to all company types. **(7.2.5)**

- The simplified form for application for incorporation of private companies limited by shares produced by the CRO should be approved for use, containing the following:

  Part I: The company name, details of the first officers, address of the registered office, the company's activity in the State and where it is carried on.

  Part II: The company constitution containing (i.e. repeating) the company name, the share capital clause, and the rules currently contained in the articles of association.

  Part III: A signature section, in which the first officers of the company consent to acting as such, and which includes the current association or subscription clause, wherein the subscribers subscribe to the documents and verify their contents. **(7.2.7)**

- Where the company constitution is altered post-incorporation, only Part II of the document would be required to be re-filed in full. **(7.2.7)**

- Persons engaged in the formation of a company ought to be permitted, on payment of the prescribed fee, to reserve a company name for a period not exceeding 28 daysfrom the date of confirmation by the CRO that the name has been reserved in favour of that person. **(7.3.3)**

- As long as the application for incorporation is received by the CRO within the period during which the name in question is reserved, the fee for name-reservation should be offset against the incorporation fee, as the pre-approved name would not have to be checked on receipt by the CRO of the application for incorporation. **(7.3.4)**

- All existing requirements (as identified in 7.4.1) to make and file statutory declarations with the CRO should be replaced with a requirement to make an unsworn declaration, which the Registrar may in relevant circumstances accept as sufficient evidence of compliance. **(7.4.12/7.4.13)**

- It should be open to the board of a company to authorise agents to sign documents electronically on behalf of the company and to forward them directly to the CRO. It should be a matter between the agent so authorised and the company to manage the control of these documents. **(7.5.1)**

- Appointments should be notified to the Registrar with a confirmation that the company accepts that such agents are authorised to sign documents on its behalf. The Registrar, under the general powers provided pursuant to the ECA 2000, should lay down the means whereby agents could file electronically with the CRO. **(7.5.1)**

- It should be expressly recognised by the Companies Acts that an authorised agent is not, by virtue of his appointment as such, to be deemed to be an officer or servant of the company, for the purposes of s 187(2)(a) of the 1990 Act. **(7.5.2)**

- Section 242 of the 1990 Act should be altered to take account of the appointment of electronic filing agents. An offence should be created of "knowingly or recklessly to furnish false information to an electronic filing agent" under s 242. **(7.5.2)**

- Section 242(1) of the 1990 Act should be expanded to create an offence for any person who "completes, signs, produces, lodges or delivers" any document. **(7.6.2)**

- Section 249 of the 1990 Act should be repealed, and s 248 expanded to cover the delivery of documents in non-legible as well as legible form. **(7.7.3)**

- It should be lawful to prescribe forms, which would allow a director on one form to file a change in personal particulars to be applied to the records on more than one company and would allow directors who have already provided data on other directorships in an electronic format to the CRO to exclude that information from subsequently filed forms. **(7.8.3)**

- Persons filing documents electronically or carrying out company searches electronically should be allowed to pay CRO fees by credit card. This recommendation does not extend to searches carried out by post or in the CRO where the administrative burden would not be greatly reduced. **(7.8.4)**

- Subject to there being a reliable assurance as to the integrity of the information, and provided that the information is capable of being displayed in intelligible form, and that it is readily accessible so as to be usable for subsequent reference, the Minister ought to be empowered to permit by order the destruction of a certain class or classes of documents, after a period of at least three years has elapsed since date of delivery of a document in that class to the CRO, and to deem the electronic copies of such documents to be the originals of the documents for all purposes. **(7.9.2)**

- The statutory functions of the Registrar should be expressly stated in the Companies Acts. Specific reference ought to be made therein to the Registrar's function of operating advanced, readily accessible, information systems relating to the documents filed with him. **(7.10.1)**

- Formal identification procedures such as are found in certain civil law countries ought not be initiated, but rather consideration should be given to requiring the pre-registration of directors who would at all times subsequently identify themselves confidentially on CRO filings by reference to their PPSN. In the case of non Irish-resident directors, parallel provisions would be required. (**7.12.4)**

sevenannex

Annex I and Annex II

Companies Registration Office

CRO receipt date stamp

Application to form a private company limited by shares

Section X, Companies Act Y,

Companies Acts, 1963 to y

A1p

Company Number

Please complete using black typescript or BOLD CAPITALS, referring to explanatory notes

PART ONE COMPANY DETAILS

Company name
in full

Limited

Registered Office
note one

Activity in State

Nace Code
note two

		–		

General nature of the business activity
note two

Place(s) of activity
note three

Place of central administration
note three

Presenter details

Name		
Address		
DX Number		DX Exchange
Telephone Number		Fax Number
Email		Reference Number

Director and secretary details

Please give details below of the persons who have consented in writing to become director(s) and/or secretary of this company.

Surname *note four*
Forename *note four*

Business Occupation
Nationality

Date of Birth Day Month Year

Irish Resident *note five*

Residential Address *note four*

Office held *note six* **Director** **Secretary**

Company *note seven* **Registered at** *note eight* **Company Number**

Other Directorships

Surname *note four*
Forename *note four*

Business **Occupation**
Nationality

Date of Birth Day Month Year

Irish Resident *note five*

Residential Address *note four*

Office held *note six* **Director** **Secretary**

Company *note seven* **Registered at** *note eight* **Company Number**

Other Directorships

Surname *note four*
Forename *note four*

Business **Occupation**
Nationality

Day Month Year

Date of Birth

Irish Resident *note five*

Residential Address *note four*

Office held *note six* **Director** **Secretary**

	Company *note seven*	**Registered at** *note eight*	**Company Number**
Other Directorships			

PART TWO COMPANY CONSTITUTION

Company name
in full

Limited

Company capital and stamp duty statement

Total authorised value

Total authorised number

made up as follows:

Class	Number of shares	Value per share

Total issued value

Total issued number

made up as follows:

Class	Number of shares	Consideration for each share

Management Rules

Tick one box only (if applicable)

☐ (a) Registered constitution reference number pursuant to section 80, Company Law Enforcement Act, 2001

☐ (b) As set out in Annex I attached

Where neither (a) nor (b) above is ticked, the company's management rules defaults to adopting Table A Part II of First Schedule to Companies Act, 1963, in its entirety

Where either (a) or (b) above is adopted, the company share details in the company capital and stamp duty section above are understood to constitute part of the company's management rules.

Where (b) is adopted, the company share details in Annex I attached must correpond with the details in the company capital and stamp duty section above.

PART THREE CONFIRMATION AND SUBSCRIPTION

Confirmation

We the undersigned apply for registration of a private company limited by shares on the basis of the information in the form and any attachments. We also consent to act in the capacity set out below.

The information provided in this application and the annexes is true and correct at the time of signing.

Signature(s) *note nine*	**Subscriber**	**Agent**	**Officeholder**	**Number of shares taken, if any**	**Date**		
		Tick box(es)			**Day**	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**
					Day	**Month**	**Year**

NOTES ON COMPLETION OF FORM A1p

These notes should be read in conjunction with the relevant legislation.

general This form must be completed in full and in accordance with the following notes. Where the space provided on Form A1p is considered inadequate, the information should be presented on a continuation sheet in the same format as the relevant section in the form. The use of a continuation sheet must be so indicated in the relevant section.

note one A full postal address must be given. A P.O. Box will not suffice.

note two The NACE code is the common basis for statistical classifications of economic activites within the E.U. The code is available on www.cro.ie.

note three A full postal address must be given.

note four Insert full name (initials will not suffice) and the usual residential address. Where the secretary is a firm, the corporate name and registered address of the firm ought to be stated.

note five Every company must have at least one Irish-resident director or a Bond pursuant to section 43(3), Companies (Amendment)(No.2) Act, 1999. Place an" X" in the box if the director is resident in the State in accordance with section 43 of the 1999 Act as defined by section 44(8) and (9) of that Act. If no director is so resident, a valid Bond must be furnished with application. (Please note that "Irish resident" means resident in the Republic of Ireland.)

note six Tick either or both boxes, where appropriate.

note seven Company name and number of other bodies corporate, whether incorporated in the State or elsewhere, except for
bodies of which the person has not been a director at any time during the past 10 years;
bodies of which the company is (or was at the relevant time) a wholly owned subsidiary;
bodies which are (or were at the relevant time) wholly owned subsidiaries of the company.

Please note that pursuant to section 45(1), Companies (Amendment)(No.2) Act, 1999, a person shall not at a particular time be a director of more than 25 companies. However, under section 45(3) of the Act, certain directorships are not reckoned for the purposes of section 45(1).

note eight Place of incorporation if outside the State.

note nine An officeholder described in Part One must sign Part Three to indicate that he/she consents to act in the capacity indicated, and accepts the duties and responsibilities that go with the post. An agent may not sign on his/her behalf.

A subscriber or agent must sign to indicate that he/she as owner or representative consent to the individuals shown as officeholders in Part One acting in that capacity for the company. However, where the subscriber is also an officeholder described in Part One, the officeholder's own signature is required and an "X" placed in both boxes i.e. "Subscriber" and "Officeholder".

Annex II Making and filing of statutory declarations

Section	Provision
1963 Act	
60(2)	On giving financial assistance for the purchase of shares; that the [directors]...have formed the opinion that the company will be able to pay its debts in full as they become due
115(1)(d) & (2)(c)	Restriction on the commencement of business; Declaration by secretary or director that conditions have been complied with
179(1)(b)(iv)	Optional statutory by director that he has taken up shares.
256(1)	Statutory declaration of solvency in case of proposal to wind up voluntarily.
320(4)	Statement to be delivered to Receiver.
332	Part IX registration of companies not formed under the Act; verification of lists of members and directors.
Table A; Regulation 63	Statutory declaration by director or the secretary that a share in the company has been duly forfeited.
1983 Act	
5(5)	Statutory declaration to be delivered with application for incorporation.
6 (2)	plc; SD that capital is not less than minimum.
9(3)(e)	Re-registration of private company as plc; statutory declaration as to meeting conditions.
12(5)(b)	Conversion from "old public limited company" statutory declaration by a director or secretary that conditions for conversion have been met.
18(4)(e)	Companies registering under the Act pursuant to Part IX of the 1963 Act; Conversion to plc; statutory declaration as to meeting conditions.
52(3)(b)	Re-registration of limited company as unlimited; statutory declaration by the directors of the company that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and, if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered so to do.