



Companies'
Disclosure
Requirements

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COMPANIES' DISCLOSURE REQUIREMENTS

Introduction

The rationale behind the disclosure requirements placed on companies is to provide their creditors, their customers and general members of the public with a means of identifying the relevant party to whom to look to for redress should they feel the company has wronged them or caused damage to them. The legislation which imposes these requirements on companies is comprised of certain provisions of the Companies Act, 1963 – 2006 and certain regulations¹ implemented on foot of EU Directives.

Company office

Section 114 of the Companies Act, 1963 requires a company to display its name, in legible writing and in a conspicuous place, on the outside of every office or place in which it carries on business.

Company website, letters and order forms

Section 114 also requires a company to display its name in all business letters of the company and all notices and other official publications of the company. The basic requirement to display the company name is expanded upon by the European Communities (Companies) Regulations, 1973 (as amended) which sets out that every company must include the following details on its website, letters and order forms²:

-  the name and legal form of the company
-  place of registration and registered number
-  address of 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
-  if the share capital is mentioned, the reference must be to paid-up share capital

¹ European Communities (Companies) Regulations 1973 and European Communities (Companies)(Amendment) Regulations 2007

² Section 9 as inserted by Regulation 3 of European Communities (Companies)(Amendment) Regulations 2007.

For the purposes of the 1973 regulations, *letters and order forms* means letters and order forms in paper form or any other medium.

Bills of exchange, cheques, orders for money or goods – personal liability of officers

The requirement to display the company's name under section 114 extends to 'all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company'. As well as all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all invoices, receipts and letters of credit of the company.

If a director or secretary of a company signs or authorises the signing of a bill of exchange or cheque, or an order for money or goods, in a form which does not display the company's name in accordance with the section 114 requirement such officer may be made personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

In one case³ the plaintiffs sued the director of a company who had signed several post-dated cheques which were dishonoured. Their case was based on the fact that the cheques did not have the company's full name. The director was held personally liable. Even where a company's name is displayed but not the entire name, or the word 'limited/ltd' is omitted, liability may arise. A misspelling of the company's name on the cheque, that does not mislead parties about the company they are dealing with, does not incur liability on the part of the officers.⁴

Directors' particulars

Business letters of a company must also display the forename (or initials) and surnames and any former forenames and surnames of the company directors and their nationality, if not Irish⁵.

³ *Rafsanjan Pistachio Producers Co-Op v Reiss* [1990] B.C.L.C. 352

⁴ *Company Law*, Forde & Kennedy (Fourth Edition), p.236

⁵ Section 196 of the Companies Act, 1963.

Companies may seek an exemption from the requirement to include director information if special circumstances exist which render it in the opinion of the Minister for Enterprise, Trade and Employment expedient that such an exemption be granted. Such exemption shall be subject to such conditions as the Minister may think fit.

Exemption to the requirement to show directors' particulars

Applications for such exemptions must meet the following criteria:

- ▣ history of frequent directorship changes – a minimum of two changes per year in three consecutive years (from the date of incorporation)
- ▣ the company's annual returns must be up to date
- ▣ the company's current business letterhead must be submitted to the Department of Enterprise, Trade and Employment in order to verify that the company is compliant with all other disclosure requirements as set out above

In determining whether the company has met the first criteria the records of the Companies Registration Office ("CRO") are used. Accordingly, even though a company may have noted in its statutory books the necessary directorship changes, if these are not reflected in the company's file with the CRO the application will be rejected.

The third criterion – that the company's current business letter is compliant with all its disclosure requirements – is very strictly supervised by the Department. The Department has internal guidelines in place to interpret the disclosure provisions of the Companies Act. The Department should be contacted to discuss any application for exemption prior to the application being made.

Conditions attaching to exemption

The Minister has discretion to apply such conditions as he/she thinks fit when granting an exemption. The following are the typical conditions attached to such exemptions:

- ▣ the exemption may be withdrawn at any time the Minister so decides
- ▣ all business letters of the company must show the address of its registered office, place of registration and its registered number
- ▣ that all changes in the names of directors are immediately notified to the CRO

- ▣ the exemption is granted for a ten-year period, at the end of which the "exempt" company is required to show that there is a continuing justification for such exemption, otherwise the exemption will lapse
- ▣ annual returns are lodged on time with the Registrar of the Companies;
- ▣ all business letters of the company should contain, in legible characters, the following statement: "An up-to-date list of the names of every company director, containing the particulars indicated in paragraphs (a), (b) and (c) of Section 196(1) of the Companies Act 1963, is available from the company's registered office".

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