

A new addition

The enactment of the Companies (Accounting) Act 2017



On 17 May 2017, the Companies (Accounting) Act 2017 (the “2017 Act”) was signed into law, and, consequently, it is likely to be in force by the end of May. The main purpose of the 2017 Act is to incorporate the provisions of the EU Accounting Directive 2013/34/EU into the Companies Act 2014 (the “2014 Act”). These amendments will have a significant impact on private Unlimited Companies (“ULC’s”) and their pre-existing rights to not have to file accounts.

Non-filing by ULC’s

By way of reminder of the existing position, all ULC’s except for designated ULC’s (see more details below) are exempted from the requirement to file accounts. This means that, for example, a stand-alone ULC owned by private individual shareholders is not required to file accounts and this will continue to be the case with the 2017 Act. The 2017 Act has tightened the definition of a designated ULC, which will have knock-on effects to structures implemented which sought to marry the non-filing rights of ULC’s with the desire of the ultimate beneficial shareholders to have their liability limited to some extent.

Expanded concept of designated ULC

A designated ULC cannot rely on the exemption from the obligation to file accounts. This will capture the below types of ULC:

- I. a ULC which has been a subsidiary of a limited liability undertaking wherever incorporated. The previous equivalent provision had referred to EU Member States; or
- II. a ULC which has been a holding company of a limited liability undertaking (“HoldCo ULC’s”); or
- III. a ULC in which two or more of the limited liability undertakings, wherever incorporated, has had rights exercisable, which, if exercised by one of them, would have made the ULC a subsidiary of that undertaking; or

IV. a ULC, all of whose members are:

- a) companies limited by shares or guarantee (Irish or non-Irish);
- b) unlimited companies, wherever incorporated, all of whose shareholders then have limited liability;
- c) general partnerships, Irish or non-Irish, where the general partners are again limited companies and who is governed by the laws of one or more Member State;
- d) limited partnerships where each of the general partners are limited companies (Irish or non-Irish); and
- e) any combination of the above; or

V. a ULC which is held within a structure whereby the ultimate beneficial owners enjoy the protection of limited liability.

Extension to adoption

The 2017 Act provides that Holdco ULC’s will not be affected by this amendment until financial years commencing on or after 1 January 2022. After that date, it would appear that Holdco ULC’s will have to ensure that they do not fall within the definition of a designated ULC if they wish to continue to be exempt from its filing obligations.

Reason for change

The reason the non-filing regime is being abolished is grounded upon a principles-based approach and is to prevent corporate structures containing multiple layers of undertakings established within or outside the EU. Article 30 of the EU Accounting Directive 2013/34/EU sets out the general publication requirement obliging Member States to ensure that undertakings publish financial statements and related information within a reasonable period of time after the balance sheet date.

Removal of the naming exemption

Currently, the 2014 Act provides that an unlimited company must use the words "unlimited company" or "ULC" (or the Irish equivalent) in its name. This obligation applies to both private and public unlimited companies, unless the ULC has obtained an exemption under s.1237(5) of the 2014 Act by the Minister for Jobs, Enterprise and Innovation not to use the word unlimited in its title. The 2017 Act will remove the power of the Minister to grant such an exemption, however, exemptions that have already been granted will continue in force until their stated expiration.

Practical implications

The 2017 Act will introduce significant future amendments to the current regime ULC's can avail of. Once the 2017 Act comes into force, ULC's will no longer be able to avail of a naming exemption.

However, the more significant amendments relate to the filing obligations for designated ULC's, although, Holdco ULC's can continue to avail of the filing exemptions until the financial year commencing on 1 January 2022. Post 2022 if a Holdco ULC fails to comply with its filing obligations both it and every officer of the company who is in default can be liable for a fine not exceeding €5,000.

If you have any further queries on your future filing obligations or any corporate law matters, please contact:



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