



# The CPD Fest 2020

## Latest Developments in Company Law for Accountants in Practice

### Presenter:

Brian Walker – The Bar of Ireland

Sponsored by :-



**Core Technical Online CPD for Irish Accountants**  
**Tax, Audit, Financial Reporting, Insolvency, Company Law, Regulation,**  
**Management Accounting & Business Skills**



**OmniPro Education & Training**  
Main Street, Ferns, Enniscorthy, Co. Wexford  
053 910 0000  
[www.omnipro.ie](http://www.omnipro.ie) [info@omnipro.ie](mailto:info@omnipro.ie)



**Table of Contents:**

Presentation..... 1

.....

.....

.....

.....

**[www.CPDStore.com](http://www.CPDStore.com)**

**Core Technical Online CPD for Irish Accountants  
Tax, Audit, Financial Reporting, Insolvency, Company Law, Regulation,  
Management Accounting & Business Skills**



## **Latest Developments in Company Law**

### **The Companies Act 2014**

18th November 2020

Brian Walker, Barrister

1

1

---

---

---

---

---

---

---

---

## **The New 2020 Company Law**

Here is a link on the Law Reform Commission website to the Companies Act 2014 as revised, updated to 21<sup>st</sup> August 2020.

<http://revisedacts.lawreform.ie/eli/2014/act/38/front/revised/en/html>

An updated version incorporating changes from the Companies (Miscellaneous Provisions) (Covid - 19) Act 2020

2

2

---

---

---

---

---

---

---

---

## **The New 2020 Company Law**

Other essential reading is the Companies Act 2014,  
an Annotation,  
Brian Conroy BL,  
Crowe,  
published by Round Hall

ISBN 978-0-41405-253-6

3

3

---

---

---

---

---

---

---

---

### What's Relevant for Accountants and their Clients

- We have 240,000 LTD's in 2020
- 750,000 company directors
- 1 Million shareholders/ members of companies
- Come March 2021, lots of companies will still be late with CRO compliance
- Companies are not really availing of the District Court CRO waiver

4

4

### 2019 CRO Figures

210,000	-private companies
1,045	-PLCs
4,682	-unlimited companies
16,635	-guarantee companies
2,965	-external

5

5

### 2019 CRO Figures

- 5000 companies involuntarily struck off
- 6000 companies struck off by consent
- 300 companies restored by way of the CRO Form H1
- very few OMCs restored by the CRO H1 OMC
- 100 High Court restoration
- 600 Creditors Vol liquidations
- 67 High Court liquidations

6

6

## 10 Big Issues in the New 2020 Company Law

1. Thousands of companies will be liquidated in 2021! Possibly 2,000 to 3,000!
2. Thousands of companies will be involuntarily struck off the CRO register in 2021, perhaps as many as 20,000!
3. Preparing for Creditors Meetings, a new role for the company secretarial department, a New Fee Note
4. Attendace Notes a Creditors Meeting
5. Small company "Corporate Governance" will be a **MUST** in 2021. Monthly management meetings and a New Fee Note!

7

7

## 10 Big Issues in the New 2020 Company Law

6. **The District Court CRO Late Filing Fee Waiver**, thousands of companies will be late with CRO returns in 2021
7. CRO compliance will shortly get much easier with the "New 56 Day One-Step Process"
8. Thousands of companies will not be paying their debts as they fall due for payment and "Getting Paid" will be a real issue in 2021! **How to Get Paid ?**
9. You Will See More and More Shareholder Disputes in 2021!
10. The Duty to Act "Honestly and Responsibly"

8

8

## 1. Thousands of Companies Will Be Liquidated in 2021

It's inevitable, there have only been about 20 High Court liquidations so far this year with just another month to run in the legal year to December 2020 along with approximately 400 creditors voluntary liquidations

Start Swotting up on Insolvency Law!

9

9

**2.** Thousands of companies will be involuntarily struck off the CRO register in 2021, perhaps as many as 20,000!

With no companies struck off since March 2020 it's inevitable that there will be a tsunami of cases listed for strike off from March 2021 throughout 2021

Pulling them back on the register again will always be a challenge But most likely necessary to recover monies

10

10

### **Cautious Trading Limited**

This is still very much the law the land and is the main case setting out the consequences for company directors like Martin and Linda Forristal directors of this company that did not engage with the ODCE or offer any evidence to the court when the disqualification proceedings were initiated.

These two directors were banned for five years, costs against the directors to be taxed in default of agreement.

11

11

### **IMPLICATIONS FOR DIRECTORS**

In 2021, you cannot just walk away from a company and hope that it will struck off the register, disappear and be forgotten about.

Companies must be terminated or disposed of properly and in accordance with law.

12

12

## Baned Directors 31 Dec 2019

List of disqualified persons-3,798

List of restricted persons-850

13

13

**3.** Preparing for Creditors Meetings, a new role for the company secretarial department, a New Fee Note

Preparing for a creditors the meeting was always a specialist task, it's not for the fainthearted and you need to know what you're doing with the new electronic creditors meetings will be even more challenging and look likely to be a permanent fixture here !!

Get This Wrong at Your Peril

14

14

## 4. How to prepare for a Creditors Meeting

Some Questions to Ask at a Creditors Meeting

Did the directors prepare this estimated statement of affairs?

Ask if it was properly approved at a formal meeting of the directors and if all the directors were in agreement and ask how many directors were at the meeting and where it was held?

Was the liquidator associated with the preparation of the Statement of Affairs?

Can I see a copy of the letter from the liquidator formally accepting his nomination?

Why was the creditors meeting convened for 8am this very cold December morning in the Downshire Arms Hotel in Blessington County Wicklow when the registered office in place of business of this company is located in Fitzwilliam Square in Dublin 2.

Why is our company name not on the list of creditors in the statement of affairs?

15

15

### Some Questions to Ask at a Creditors Meeting

Why do you have security men engaged to secure this room?

What happened to the stock that I supplied to the Company?

How was the company's choice of liquidator introduced to the Company?

When did the company cease trading?

What arrangements have the directors made to open a special bank account of the company to hold on monies received in trust for the general body of creditors pending determination by a liquidator?

When did the directors first realise the company was insolvent?

Please detail all major payments made in the last three months

16

16

### When Was the Last Set of Accounts Prepared

Who are the auditors?

Are all taxes to the Revenue Commissioners up-to-date?

Did any of the directors or persons connected with them such as brothers sisters acquire any property from the company within the last five years?

Did the bank have personal guarantees as security for the company's lending?

Who owns the building that the company operated from?

Have any mortgages or charges being taken out against the Company within the last 12 months and to whom?

Will the directors continue the business through another company? Specific questions should always be asked on the statement of affairs

17

17

### More Questions to Ask at a Creditors Meeting

Why are the accounts qualified?

**You've motor vehicles with a net book value of €125,500,** "What sort of vehicles are they?"  
Where they all leased and what is the attitude of the leasing company?."

"How many people were employed?"

What was your salary?

18

18



**5.** Small Company "Corporate Governance" will be a **MUST** in 2021. Monthly meetings and a New Fee Note!

### Covid 19 and the Insolvency Related Functions of the ODCE

In the event of a company going into liquidation, the ODCE or creditors perhaps seeking to have directors made personally liable for reckless trading will zone in on the following issues:

19

19

### ODCE Issues

a) the adequacy of the directors' processes and procedures for monitoring the company's financial position on an ongoing basis;

b) whether, and if so at what point, directors sought professional advice relating to the insolvency/impending insolvency;

c) the basis upon which the company's directors formed the view that the company would be able to trade out of its difficulties within a reasonable timeframe (which might include, for example, the potential impact of access to Government grants, loans and other supports, both already announced and in prospect);

20

20

### ODCE Issues

d) the length of time that trading continued after it had become apparent, or should have been apparent, that the company was insolvent;

e) the extent to which the company's financial position continued to deteriorate, as well as the nature of any additional liabilities that accrued, during the period during which the directors knew, or ought to have known, that the company was insolvent;

21

21

## ODCE Issues

f) in cases where there are material tax liabilities involved, the extent to which such liabilities arose prior to, or during, the pandemic and, where they arose during the pandemic period, the extent to which the company availed of, and complied with, the Revenue Commissioners' requirements for deferred payment and warehousing of liabilities;

g) the steps taken to reduce costs and/or to restructure the business.

22

22

## More Meetings of Directors Required

Another very important role for the company secretarial department in leading the way by way of structured regular monthly board meetings to discuss the financial affairs of the company, debtors creditors, cash flow, what's happening on the ground, sales projections et cetera et cetera and all of this needs to be committed to paper and minuted in detail.

23

23

## 6. The District Court CRO Late Filing Fee

**Waiver**, thousands of companies will be late with CRO returns in 2021

This remedy has been available since 2001 but really only took off when it was introduced in the District Court in 2015 and it is hugely underutilised but you need a "Good Story"

24

24

7. CRO compliance will shortly get much easier with the "New 56 Day One-Step Process"

At long long last the CRO will finally launch the new portal will facilitate the one-step process of filing both accounts and annual return within a 56 day window and the plan is that the system will be operational in January 2021 or earlier in 2020.

The procedure will be to file the form, upload the accounts, upload the signature page and then pay!!

25

25

### Upload the wrong financial statements at your peril!!

It's very easy to upload the wrong financial statements when e-filing into the CRO and in the past we applied to the High Court for an order to remove and replace the accounts but a recent decision of the Court of Appeal on 2 October 2020 in *Wee Care Limited v CRO* has now closed off this regular application.

Accordingly, once these documents are registered there is no removing them from the CRO file!

26

26

**8.** Thousands of companies will not be paying their debts as they fall due for payment and "Getting Paid" will be a real issue in 2021! **How to Get Paid ?**

There are great applications under the Companies Acts for creditors to use to get that attention they need from companies not paying their debts on time and creditors really need to be very proactive and on the ball promptly with good strong solicitors letters and followed on with immediate effective applications

27

27

## 9. More Shareholder Disputes in 2021!

It's already started and with over 1 million shareholders members of various types of companies it's inevitable that relationships between stakeholders will sour from time to time but it's important for aggrieved shareholders to fully utilise the various applications available to them under the Companies Act 2014 and other ADR procedures

28

28

## 10. The Duty to Act "Honestly and Responsibly"

The main relieving mechanism in Section 610, Civil Liability for Reckless Trading

.....If in the course of the winding up of a company or in the course of proceedings under Part 10 in relation to a company, it appears that— (a) any person was, while an officer of the company, knowingly a party to the carrying on of any business of the company in a reckless manner, or (b) any person was knowingly a party to the carrying on of any business of the company with intent to defraud creditors of the company, or creditors of any other person or for any fraudulent purpose, the court, on the application of the liquidator or examiner of the company, a receiver of property of the company or any creditor or contributory of it, has the following power.

29

29

## 10. The Duty to Act "Honestly and Responsibly"

8. Where it appears to the court that any person in respect of whom a declaration has been sought on the grounds set out in subsection (1)(a) has acted **honestly and responsibly** in relation to the conduct of the affairs of the company or any matter or matters on the ground of which such declaration is sought to be made, the court may, having regard to all the circumstances of the case, relieve him or her either wholly or in part, from personal liability on such terms as it may think fit.

30

30

## 10. The Duty to Act "Honestly and Responsibly"

### Section 819 Restriction of directors of insolvent companies

On the application of a person referred to in section 820(1) and subject to subsection (2), the court shall declare that a person who was a director of an insolvent company shall not, for a period of 5 years, be appointed or act in any way, directly or indirectly, as a director or secretary of a company, or be concerned in or take part in the formation or promotion of a company, unless the company meets the requirements set out in subsection (3).

The court shall make a declaration under subsection (1) unless it is satisfied that— (a)

the person concerned has acted **honestly and responsibly** in relation to the conduct of the affairs of the company in question, whether before or after it became an insolvent company,

31

31

## The New 10 Month Company Law

- **Effective till 31 December 2020**
- **With an option for extension to 30 June 2021 ONLY**
- **Reverting back to the Statutory Provisions in the Companies Act 2014 ! But Remote Meetings might be here to stay**

32

32

## Applications under the Companies Acts

### Section 343 District Court Application

Thousands of companies are late each year with CRO statutory returns and they automatically lose audit exemption.

This application in the District Court "to restore audit exemption" has a high success rate but is not been utilised to the full extent

33

## Applications under the Companies Acts

### Section 212

Section 212 provides a remedy in case of oppression of minority shareholders and derives from Section 205 of the Companies Act 1963.

Subsection (3)(d) amends the scope of what is currently in section 205(3) CA 1963 by expressly permitting the courts to make an award of compensation

34

## "Corporate Divorce" Provisions

### Section 212-Remedying Case of Oppression

(1) **212** Any member of a company who complains that the affairs of the company are being conducted or that the powers of the directors of the company are being exercised—(a)

in a manner oppressive to him or her or any of the members (including himself or herself), or (b)

in disregard of his or her or their interests as members, may apply to the court for an order under this section.

35

## "Corporate Divorce" Provisions

(2) If, on an application under subsection (1), the court is of opinion that the company's affairs are being conducted or the directors' powers are being exercised in a manner that is mentioned in subsection (1)(a) or (b), the court may, with a view to bringing to an end the matters complained of, make such order or orders as it thinks fit.

36

### **"Corporate Divorce" Provisions**

The orders which a court may so make include an order—(a) directing or prohibiting any act or cancelling or varying any transaction;

**(b) for regulating the conduct of the company's affairs in future;(c)**

for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital; and

**(d)for the payment of compensation.**

37

### **Applications under the Companies Acts**

#### **The Winding up Petition**

This is a most under utilised application under the Companies Acts for creditors to pursue remedies for non-payment of debts and other relief and if properly managed has the capacity to deliver excellent results And the application should be self financing.

**It Works!**

38

### **Applications under the Companies Acts**

#### **Section 569-Circumstances in which a Company May Be Wound up by the Court**

Section 569 A company may be wound up by the court—

(d) if the company is unable to pay its debts,

39

## Applications under the Companies Acts

### **Section 570-Circumstances in which Company Deemed to Be Unable to Pay Its Debts**

**€10,000 increased to €50,000 However, you may have obtained a judgement that has been returned unsatisfied in whole or in part for a lesser amount**

40

## Low Cost Legal Notices

[www.closedforbusiness.ie](http://www.closedforbusiness.ie)

**Arrange low-cost advertising of winding up petitions in national newspapers**

41

## Applications under the Companies Acts

### **Section 797**

**Section 797** provides for the power of the court to order compliance by a company or officer thereof with the provisions of the Act. A hugely effective device that can be easily used by members or creditors

Any member or creditor of a company may apply to the court for an order that the company or officer in default of the provisions of the Act remedy the default within a specified timeframe.

42



### **Section 53, Option to Seize the Personal Assets of Directors**

**Section 53** is headed up "enforcement of orders and judgements against companies and their officers".

It also exists in law, but as secondary legislation, it's a statutory instrument that is contained in the rules of the superior courts, **Order 42 Rule 32**

43

43

---

---

---

---

---

---

---

### **Order 42 Rule 32, Rules of the Superior Courts**

"any judgment or order against a company wilfully disobeyed may, by leave of the court, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by order of sequestration of their property".

44

44

---

---

---

---

---

---

---

### **PENAL ENDORSEMENT**

"If you the within named Mr. Company Director and Mrs Company Director neglect to obey this order by the time herein and set out in the Notice of Motion, you will be liable to process of execution including imprisonment for the purposes of compelling you to obey the Order of Mr. Justice ..., dated 25th of January 2020".

45

45

---

---

---

---

---

---

---

## Applications under the Companies Acts

### **Section 567**

Section 567 -The effect of this section is to allow individual creditors to invoke various remedies against delinquent directors and officers which would otherwise be exercisable only in a winding up. Avoids bringing a winding up petition and is suitable in certain circumstances

46

---

---

---

---

---

---

---

## Key Predictions for 2021

### **Section 212, The Remedy in Cases of Oppression, judges will encourage most of these cases to ADR.**

The Judges of the High Court Require that a new statutory declaration affidavit be completed by the solicitor for the applicant in these cases before judges will hear a typical shareholder dispute application.

The Mediation Act also puts ADR on a statutory basis

47

47

---

---

---

---

---

---

---

## Key Predictions for 2021

### **Shareholder agreements will become more widespread**

New private companies incorporated after June 2015 no longer have a typical Memorandum and Articles of Association and most will benefit from having a shareholders agreement in place before the company is registered

48

48

---

---

---

---

---

---

---

## **Key Predictions for 2021**

### **More MUD company issues will increase in 2021**

**Whilst the Multiunit Development Act 2011 arrived in 2011, compliance levels are very low and these issues will materialise when the typical member seeks to sell their property in the future.**

49

49

## **Company Secretary "Qualification Test" S.129**

Directors will be obliged to ensure that the person appointed Secretary is suitable;

Secretaries will have to consent and acknowledge their legal duties.

50

50

## **Company Secretary "Qualification Test" S.129**

### **Section 226 (2), Companies Act 2014 will provide:**

"... The directors of a Company shall, in their appointment of a secretary, have a duty to ensure that the person appointed has the skills necessary so as to enable him or her maintain (or procure the maintenance of) the records (other than accounting records) required to be kept under this act in relation to the Company"

51

51

## Company Secretary "Qualification Test" S.129

### THE STATUTORY REGISTERS

The 'All-In' Company Register

The Companies Acts require that every company maintain a set of Statutory Books. These books are kept in a Register which is termed "All In" Company Register, so named as it contains the following Registers:-

- \*Register of Allotments
- \*Register of Members
- \*Register of Transfers
- \*Register of Directors
- \*Register of Mortgages and Debentures
- \*Register of Directors and Secretarial Holdings
- \*Register of Directors and Secretaries Interests in Securities

52

52

## Other Company Secretary Duties and Roles

**Section 236, Companies Act 2014  
will provide:**

That deals with loans from a Company to a Director, ***not in writing***, then it is presumed that the loan is repayable on demand and that the unpaid amount of the loan has borne interest at the appropriate rate to be set by the Minister! New S.I. in July 2015.

53

53

## Opportunities for Corporate Compliance, **Section 128**

The current single director company increases demand for a corporate company secretarial service to facilitate those who want a one-person company without having to bring other people on board to comply with company law

54

54

## **Key Predictions for 2021**

The Work, Role, Duties and Responsibilities of the Company Director will increase in 2021 and beyond

55

55

---

---

---

---

---

---

---

---

Company directors in 2020 are expected at the very least to know their company law with the basic requirement to certify on appointment that;

***"I acknowledge that as a director I have legal duties and obligations imposed by the companies acts, other enactments and at common law"***

56

56

---

---

---

---

---

---

---

---

## **What Are the Basic Corporate Governance Rules**

1. Irish Company Law in 2020 starts off with the new Companies Act 2014 which effectively becomes the new rulebook for all company types

57

57

---

---

---

---

---

---

---

---

## 2. "Other Enactments"

This includes all the relevant legislation for a company such as Health and Safety Law, Employment Law, Equality Law, Fire Services Acts 1988 to 2003, the Criminal Justice Act 2011, Revenue Law, Data Protection, Financial Services Law, Food Safety and Hygiene, Waste Management, except etc. etc.

58

58

---

---

---

---

---

---

---

---

## 3. "The Common Law"

The Common Law is the judge-made law. That is the reported decisions/judgements handed down in the High Court and the Supreme Court. These decisions are then followed by the other judges and become part of the Common Law.

59

59

---

---

---

---

---

---

---

---

## 4. The Constitution

- The Memorandum and Articles of Association sets out how the company is governed.
- In 2020, you refer to the Constitution

60

60

---

---

---

---

---

---

---

---

Notifications That Proper Books Were Not Kept

---

The Registrar received 5 H4 notices in respect of the following companies during 2019 In accordance with the provisions of Section 392 of the Companies Act 2014 from auditors:

1. The Football Association of Ireland
2. Spraychem Ltd
3. Datalex public limited company
4. Connemara Lake Hotel Ltd
5. Syncplicity International Limited

---

61

---

---

---

---

---

---

---

---

61

**“Examinership Lite”, Section 509**

---

**“Yellow Pack” or “Examinership Lite” for Small Companies**

**Small private companies may soon be able to apply directly to the local Circuit Court to have an examiner appointed, A new CLRG Report, expected soon, may pave the way for a more inexpensive mechanism for viable businesses to restructure their debts under Section 509 of the Companies Act 2014**

---

62

---

---

---

---

---

---

---

---

62

**New Section 450 Schemes of Arrangement**

---

Different to an Examinership, reduced costs, court, independent accountant's report or multiple solicitors not required, can be very low-key local and private!

Not regulated by the ODCE

Regulated by the Companies Act 2014

---

---

---

---

---

---

---

---

---

63

### **Section 450-Convening of Scheme Meetings**

Under the Companies Act 1963, The scheme meetings required a court application to convene meetings of creditors, Section 450 scheme meetings under the 2014 Act may be called by the directors of the Company without court intervention.

64

### **Protection for the Company**

Similar to the old Section 201 of the 1963 Act, a company can apply pursuant to Section 451 to the court, to stay legal proceedings against the company

However, a receiver can still be appointed and there is no protection against reservation of title claims

65

### **Directors Duties**

Expected to provide for:

Director's duty to ensure compliance with the Companies Act, consent to act and acknowledgement of duties.

Duty to have regard to employees' interests

The Directors' Compliance Statement

The secretary's duties will be expressed to be such duties as are delegated by the board of directors.

66



### **Eight Directors Duties will be set out:**

1. • Act in good faith in what the director considers to be the company's interests;
2. • Act honestly and responsibly in the company's affairs
3. • Act in accordance with the constitution and exercise powers only for lawful purposes
4. • Not use company property for own or others' use unless approved by members or in the constitution

67

67

### **More Directors Duties**

- Not to fetter discretion unless permitted by constitution entered into in the company's interests
- Avoid conflicts of interest unless released by members;
- Exercise care, skill and diligence (subjective test);
- Have regard to interests of members.

68

68

### **More Statutory Duties**

**Section 223**, "It is the duty of each director of a company to ensure that this Act is complied with by the company"

**Section 224**, "Directors to have regard to the interests of employees"

69

69

### Directors Statement on Relevant Audit Information

**Section 330**, requires directors to confirm that there is no relevant audit information which the auditors are unaware and the director has taken all the steps to make himself or herself aware of any relevant audit information and to establish that the company's auditors are aware of that information

70

70

### More Personal Liability for Directors, Section 232

- Provision will be made for directors to be made liable to account for gains and indemnify for losses resulting from a breach of any duty under Part 5 of the Act.
- Provision will also be made for the courts to grant relief to directors who have acted **honestly and reasonably**
- The prohibition on companies indemnifying directors is maintained.

71

71

### ADR-ALTERNATE DISPUTE RESOLUTION

Be prepared to immediately engage in ADR, Arbitration or Mediation, as the Courts have a unique jurisdiction to invite the parties to mediation in typical Section 205 relationship disputes, particularly involving family members.

72

72

73

---

---

---

---

---

---