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## Top Company Secretarial Issues in 2018

- Welcome to Your Webevent
- Introducing the Webevent Team
- Your Downloads and Material
- Your Questions
  - During the session
  - At the end of the session

## Top Company Secretarial Issues in 2018

- Webevent Timing - 15.00 – 16.00
- Introduction – 5 Minutes
- Teaching Space – 40 Minutes
- Questions and Answers – 10 Minutes
- Session Close – 5 Minutes

# Top Company Secretarial Issues in 2018

Area's covered

- Annual returns – Electronic regime
- B1B's
- B1X – Defective financial Statements;
- AGM's & directors Meetings
- Section 357 Guarantee;
- Bonus issues;

# Top Company Secretarial Issues in 2018

Area's covered

- Sub-division of shares;
- Companies (Statutory Audits) Act 2018
- Group re-organisations
- Redemption/buyback of shares
- Company Restoration
- Update of Constitution
- S 343 District Court Application to extend filing deadline

## New Filing Regime, CRO Annual Returns

- New Filing Regime
- Mandatory Electronic Filing – B1, B2, B10 and B73
- From 1<sup>st</sup> of June 2017
- Annual Returns – Electronic only
- Digital ROS Signature or Signing Page
- 90% of returns filed online previously but only 10% of financial statements
- Financial statements uploaded as a PDF attached to the eB1
- Financial statements must be uploaded prior to return of signature page

## CRO Annual Returns

- Key Points from new process
  - E B1 filed as normal
  - PDF of financial statements uploaded (within 28 days of E B1)
  - Wet ink certification ***follows*** upload of financial statements
  - **Or** Company's ROS signature is used to certify the accounts

## CRO Annual Returns

- Common questions
  - Can I file multiple years simultaneously? Yes!
  - Can I pay in cheque or cash? No!
  - Who must certify? Director and Secretary
  - What happens if the return is incorrect?
    - **IMPORTANT** – a valid email address is required as all rejection notices will be issued electronically



## CRO Annual Returns

- Common questions
  - Can I still file a B1U under S 357? (Old S 17 guarantee)
    - No, but....
    - B1U originally conceived to reduce paper work
    - No longer required as no more paper returns
    - Can still file group accounts under S 357 but separate B1s

## CRO Annual Returns – B1B

- What is a B1B?
  - Filed when the original **Annual Return** is **incorrect**
- A B1B **cannot** be filed electronically currently
- A paper annual return with B1B handwritten on to it.

## CRO Annual Returns – B1X

- What is a B1X?
  - Filed when the original **Financial Statements** are defective
    - Can be amended by Supplementary Note
    - A revised Directors' Report
    - Revised Financial Statements
- A B1X **cannot** be filed electronically currently
- Currently a fillable PDF form

## Governance – General Meetings

- S.175 The requirements to hold AGMS
- 15 months between AGMs
- 18 months from date of incorporation
- Accounts to be laid before AGM within 9 mths of period end (S.341)
- S.175(3) – Written resolution all members entitled to attend

# Governance – Directors Meetings

- S.160 CA 2014;
- Requirement for Directors minutes;
- Notice required:
- Voting ability

## **S. 357 guarantee & Guarantees**

- Section 357 guarantee – the requirements
- See sample wording and items to be put in the financial statements in notes

### **Branches**

- Branch – within a month of set up F12 (EEA) & F13 (Non-EEA) –  
Must be permanent place of business

## Bonus Issues

- Section 126 CA 2014 refers:
- Can capitalise the profits from un-denominated capital, distributable reserves & revaluation reserve
- Directors meeting held;
- If not permitted by Constitution – Special resolution to update constitution
- Ordinary resolution required;
- Usually used where number of shares in issue is low -  
Examples;

## Subdivision of shares

- Section 83 CA 2014 refers:
- Directors meeting held;
- Section 231 notification where directors hold shares
- Ordinary resolution required to update authorised & issued share capital;
- Special resolution to update constitution for new authorised share capital
- File B7 with CRO
- Usually used where number of shares in issue is low



# Companies (Statutory Audits) Act 2018

- S.9 - Deletes S.343(7) of CA 2014
  - The court of application for a S.343(5) shall be the District Court or the High Court

# Companies (Statutory Audits) Bill 2018 – What nearly happened

- S.9 - Deletes S.343(7) of CA 2014
  - The court of application for a S.343(5) shall be the District Court or the High Court
- S.10 - Inserts S.343(A)
  - Company will need to apply to the High Court to preserve the audit exemption
  - The District Court can only waive the filing fee

**NOTE THIS DID NOT HAPPEN IN THE END – CAN STILL GO TO DISTRICT COURT**

## **Companies (Statutory Audits) Act 2018**

- Changes to losing the audit exemption – prospective auditing Vs retrospective auditing
- Changes to filing regime
- Act enacted 25<sup>th</sup> of July 2018 –
- Commencement – 21 September 2018 other than;
  - S.3(1)(a) – To repeal S.344 – electronic filing extension-LTD;
  - S.3(1)(h) – To repeal S.996 – electronic filing extension-DAC;
  - S.3(1)(i) – To repeal S.1220 – electronic filing extension-CLG;
  - S.3(1)(j) – To repeal S.1277 – electronic filing extension-ULC;
  - S.9 – To allow for change in ARD date if filed within 56 days

## **Companies (Statutory Audits) Act 2018**

- S.10 Amending S.363 and S.364 of Companies Act 2014
- Where a company fails to file an annual return in accordance with the requirements of S.343
- Not entitled to audit exemption for the 2 years immediately SUCCEEDING the relevant financial year
- Rather than in that financial year
- Importance of not filing with Audit Exempt accounts if wish to go down Section 343 Route

## Other matters

- The importance of advising clients of the accounting implications of various rights to be attached to shares;
- Ordinary resolution under Section 238 is not required to be filed with CRO;
  - Remember where non-cash assets transacted with directors/connected persons

## Other matters

- Recurring question – How to allow funds to flow between companies and still not come within remit of Section 239?
- Options:
  - Preference shares; or
  - Put in place a golden shares; or
  - Create a company law group; - Issue a golden share.

## Beneficial Owners Register & The Company Registers

- MLD 4 – Beneficial Owners Register
- SI 560 of 2016 – November 2016
- Relevant entities
  - Companies
  - Industrial and provident societies
  - Friendly societies

## Beneficial Owners Register & The Company Registers

- Direct or indirect beneficial ownership in an entity
- Maintain a beneficial ownership register
- Take all reasonable steps to obtain and hold adequate, accurate and current information in respect of beneficial owners



## Beneficial Owners Register & The Company Registers

- Failure to Comply with Reg 14(1) is a summary offence
- Summary conviction
- Class A Fine - €5,000
- Central Beneficial Owners Register
- Going Live in 2018!!!!

## Share Buybacks/Redemptions

- Potential opportunity for shareholders to exit in tax efficient manner
- Company buys back/redeems shares from the Shareholder
- Can avail of CGT rather than income tax if valued at more than par
- Must meet Revenue Conditions

# Share Buybacks/Redemptions

- Ensure a share buyback/redemption is permitted
  - When permitted
- Does the constitution allow it?
- Is there a need for subdivision/bonus issue?
  - Ensure there are shares to redeem!!!

## Share Buybacks/redemptions

- Tax treatment – ordinarily Income tax if above par but may be CGT if conditions in S.176-186 TCA 1997 applies
- Requirement to maintain capital – S.106 CA 2014
- Ensure formal valuation prepared – Revenue scrutiny

## Share Buybacks/Redemptions

- Co Sec requirements
  - Amend constitution
  - Approve redemption
  - Various minutes
  - Special resolution
  - Ordinary resolution
  - Filings with CRO

# Group re-Organisations

- Common Commercial Reasons for re-org
  - Pre sale re-organisation
  - Retirement planning (Share buy back/redemption)
  - Risk management
    - Separate trade/non-trade assets

# Group re-Organisations

- Some options available
  - Share transfer
  - Golden shares
  - Share for Share exchange
  - Share for Undertaking
  - Mergers

# Options for creation of groups – Share Transfer

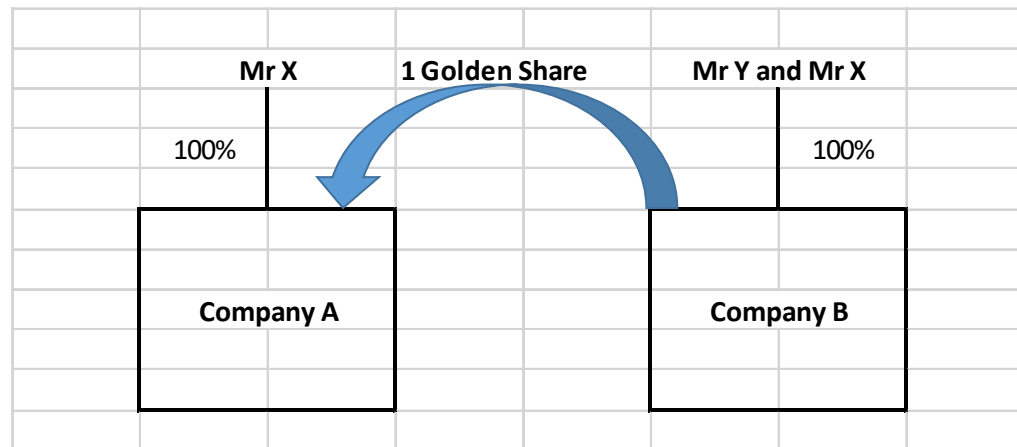
- Example: Mr X transfer his shares in Company A to Company B
- Straight forward share transfer to create a parent/subsidiary arrangement
- Pros
  - Straight forward
  - Less filing requirements
- Cons
  - Stamp Duty!
  - Transfer of funds to buy shares
  - CGT/CAT liability (CAT if market value not paid)



# Options for creation of groups – Golden Share

- A share is created whereby Company A controls the composition of the board of company B
- Known as ‘Golden Share’
- Pros
  - Allows legal transfer of cash between one company and another
  - No cash changes hands for share other than nominal amount;
  - Practical solution
- Cons
  - Amendment to constitution required
  - Only suitable if share holders common to both companies – otherwise agreements required
  - Not a ‘tax’ group

# Options for creation of groups – Golden Share

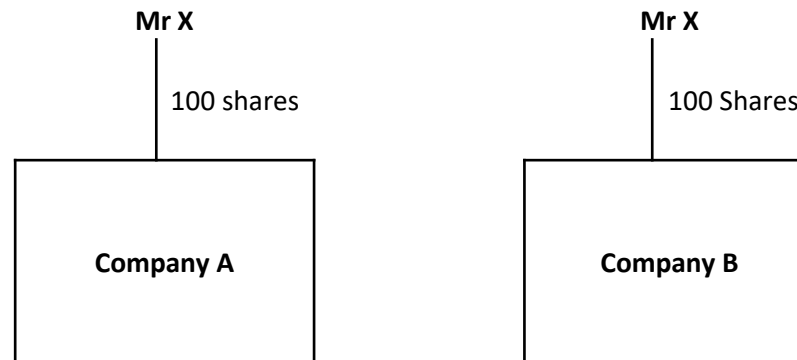


## Options for creation of groups – Share for Share Exchange

- Mr X transfer his shares in Company A to Company B in exchange for shares in Company B
- Known as ‘Share for share exchange’
- Pros
  - Potentially alleviates tax liabilities
  - No cash changes hands
  - Creation of ‘tax group’
- Cons
  - More complex filing requirements
  - Must maintain ownership for 2 years (or stamp duty claw back)

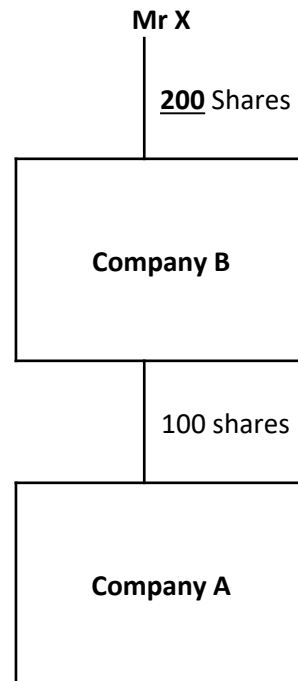
## Options for creation of groups – Share for Share Exchange

- Before



# Options for creation of groups – Share for Share Exchange

- After

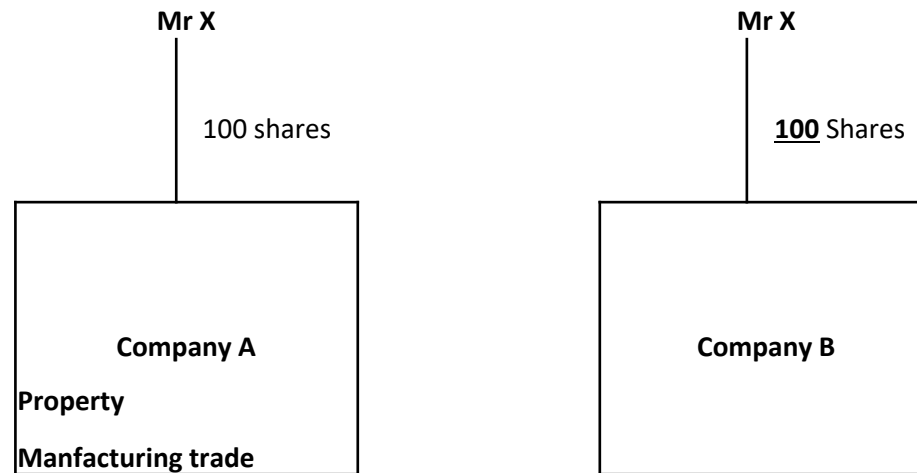


# Re-org – Share for undertaking

- Used to separate trades/assets into separate companies
- Tax efficient but can't be used as part of pre-sale strategy
- Shares given in new co in exchange for undertaking
- See Diagrammatical Example

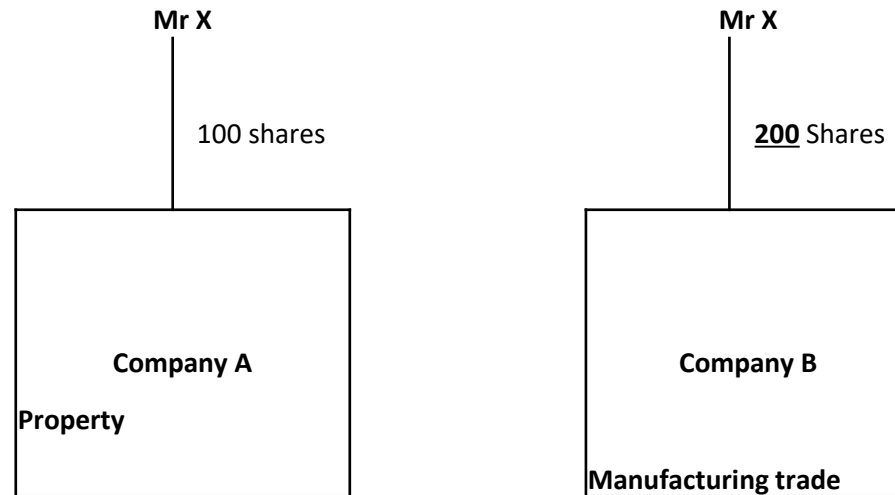
# Re-org – Share for undertaking

- Before



# Re-org – Share for undertaking

- After





## Re-org – Share for undertaking

- Key points to note:
  - The shares allotted in company B must reflect the value of the undertaking
  - Can be used to transfer a sole trade into a pre-existing company
  - Stock must transfer in at book value
  - Plant and equipment transfers at TWDV
  - TUPE regulations must be considered

## Share Buybacks/Redemptions

- Accounting journals required:

Journal 1

Dr OSC/SP

Cr Bank

Journal 2

Dr P&L reserves (balance after other journals are posted)

Cr Capital redemption reserve/other undenominated capital with  
the amount in OSC & SP

## Mergers

- Becoming more popular for groups;
- 3 methods;
- Advantages
- Disadvantages;
- The process – SAP 206

# Company Restorations

- Less than 12 months dissolved
- Administrative Restoration
- Form H1 & audited accounts – Form H1-OMC  
Property Mgt co.'s
- Must comply with requirement to have 2 or 1 director(s)

# Company Restorations

- Fast track option available
- Office presents at CRO with various filing requirements and company is restored immediately
- Cheques not accepted for fast track restoration

# Court Restorations

- Dissolved for greater than one year
- Must apply to High Court for restoration
- Officer or shareholder must make application
- What is the process?

## Court Restorations

- All filings must be up to date with CRO
  - Annual returns and financial statements
- Late filing fees must be paid up to a maximum of €3,600
- Revenue filings must be made up to the date of dissolution

# Court Restorations

- Affidavit must be drafted, setting out the following (amongst other things)
  - Details of company
  - Why struck off
  - Why being restored



# Court Restorations

- Letter of no objection required from the following:
  - CRO
  - Revenue
  - Chief State Solicitor
- Company represented in the High Court by Barrister
- Given 28 days to file remaining Revenue returns

# Court Restorations

- Process requires detailed management
  - Lots of areas for slippage
  - Revenue response can be challenging – moved to new department in Wexford so should improve

# Conversion of Constitutions

- ‘Conversion’ has occurred on 1 December 2016
- Impact of not converting
  - Out of date constitution
  - Read as if under New Act
  - Urgent conversions
    - Property acquisition/bank loans
    - Charity funders

# Conversion of Constitutions

- Companies must now update constitutions
- Process
  - Draft new constitution
  - Directors meeting
  - Special resolution
  - Completion of G1

## 'S 343' so far

- Very high level of success – companies generally supported by the judges

| Year | No of Applications | Granted | Refused | Withdrawn |
|------|--------------------|---------|---------|-----------|
| 2017 | 1067               | 999     | 25      | 38        |
| 2016 | 1201               | 1027    | 16      | 45        |
| 2015 | 174                | 96      | 0       | 0         |

- Over 215,000 active companies on the register - context

## 'S 343' so far

- Judges focus on procedure
- Multiple ARDs extended on a single application
- Considered to be major success story of the Act...but not by everyone!!
- Change in CRO approach – May 2016
- 'Amnesty' over !

## Who is eligible for District Court?

- All companies that missed an ARD on or after 1 June 2015
- If missed pre 1 June 2015 must go High Court route
- High Court a higher bar – more detail

# What is a valid reason?

- Strong
  - Bereavement - proof
  - Illness - proof
- Weaker
  - Posted but not received by CRO
  - Error by agent



## CRO Position

- Letter of no objection
- Letter of acknowledgement
- Letter of objection
- CRO are actively attending court – often give poor defence of position

# Current Outlook

- Varies between courts/judges
- Judge is ultimate decision maker
- Very mixed approach
- Legal experience/knowledge is key

## S.343 Process

- Company is late
- Remember Change made by Companies Statutory Audits) Act 2018 – effective from 21 September 2018
- Draft affidavit incorporating reason for being late and supporting evidence
- Notice of application
- Signed and sworn

## S.343 Process

- Lodged with CRO at least 21 days before District Court application
- Heard in District Court of registered office (NB!)
- CRO opportunity to object
- Case presented in court
- Success – court order filed extending date for filing

## S.343 Process

- Annual Return and FS filed by new date
- E B1
- No late filing penalties
- No loss of audit exemption

# Failure

- Appeal to Circuit Court
- Audit exemption lost
- Late filing fees payable

## Common Questions

- Should the company obtain representation?
  - Precedent in District Court suggests yes
- When must I file by if successful?
  - Date will be on Notice and ordered by court

# Common Questions

- How long does the process take?
  - 5-8 weeks depending on District
- Can a company that is strike off listed apply?
  - Yes



# Wrap Up

- Friday Webinar Series Continues
- CPDStore.com
- OmniPro Practice Support Team
- OmniPro Team
- Thank You

# Why OmniPro

**Our Why** - Our core belief is simply this : Accountants can and do change lives. So we get up every morning to bring them the tools, advice and training so that they can create great businesses for themselves and their clients too. In this way we change lives, communities and our world. We would live to do that together with you.

# Why OmniPro

## How We Do That –

- We do accountants
- We connect with accountants.
- We learn about accountants so we can understand them.
- We work out what accountants want and need
- We find the best solution for accountants in any given situation

# Why OmniPro

## What We Do -

We provide accountants with information products, consulting and training in the areas of;

- practice management, business development & marketing;
- company secretarial & taxation;
- audit & financial reporting;
- professional regulation and disciplinary defence.

# OmniPro

## Supporting Irish Accountants

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