**EEA Resident Director Requirement**

S137 Companies Act 2014 ‘Company to have director resident in an EEA state’ provides thatIrish companies are required to have at least one Director that is resident in the EEA. The European Economic Area comprises all EU member states, and also Iceland, Liechtenstein and Norway.

On Friday 31st January 2020 the United Kingdom is leaving the European Union and the UK will fall outside of the EEA. **However, there will be a transitionary period in place until 31st December 2020.** During this period, the UK’s trading relationship with the EU will remain unchanged as the UK will stay within the single market and customs union. The UK will also continue to follow all EU regulations and any updated regulations. This transitional period will also mean that Irish companies with only UK-based directors can continue to operate as normal for the time being

Involuntary strike off

Non-compliance with s137 ( ‘Grounds for involuntary strike off’ ) is specifically stated in s726 (c ) ‘the Registrar has reasonable cause to believe that [*section 137*](http://www.irishstatutebook.ie/2014/en/act/pub/0038/sec0137.html#sec137)*(1)* is not being complied with in relation to the company’ as being reason for an involuntary strike off.

Moreover, a fine of €5,000 for the company and its officers may be levied. The consequent inconvenience of a strike of may be quite costly as leases and contracts may terminate.

It should be noted that this requirement is based on residency, not nationality. Thus for example, a company director of Irish nationality who lives in the UK and has done so for a number of years is unlikely to satisfy the EEA requirement in the future which is a question a number of our clients have been considering.

**Solutions:**

1. Replace the UK Director with, or add an additional director, who is an EEA-resident.
2. **S137 Bond**

It is possible for a company to put in place a Section 137 Revenue Bond which is an insurance policy that CRO approve in replacement of having an EEA resident individual on the board. This insurance policy covers against fines or penalties incurred to the value of €25,000 for non-compliance and covers the company for a period of two years at which point the company will either need to renew the bond or appoint a director who meets the requirement. We can assist you in making this application.

1. **The Exception to the Rule – ‘Real and Continuous link’**

**Companies Act s140; ‘Exception to**[***section 137***](http://www.irishstatutebook.ie/2014/en/act/pub/0038/sec0137.html#sec137)**— companies having real and continuous link with economic activity in State’**

It is possible for the Directors of an Irish Company who have no EEA-resident directors to apply to the Revenue Commissioners for a Statement under Section 140 of the Companies Act 2014 which, if granted, will relieve the company from the requirement to hold a Bond or to have an EEA-resident director.

This Statement is granted based on the company having a **‘real and continuous link to the State of Ireland’**. The successful company will need to satisfy one or more of the following two conditions:

1. The affairs of the company are managed by one or more persons from a place of business established in the State and that person or those persons is or are authorised by the company to act on its behalf.
2. The company carries on a trade in the State.

Furthermore, a company may be granted this Statement based on either of the following two conditions:

1. The company is a subsidiary or a holding company of a company or other body corporate that satisfies either or both of the conditions specified in 1 and 2.
2. The company is a subsidiary of a company, another subsidiary of which satisfies either or both of the conditions specified in 1 and 2.

This Statement is granted based on retrospective activity and will generally not be granted to a company that intends to have a real and continuous link to the state.

Once the Statement is made by Revenue to the successful company, the Company Secretary can apply to the Registrar of Companies for a certificate that exempts the company from the Section 137 bond requirement or the need to have an EEA-resident director appointed to the board.

Application for this exemption to Companies registration office must be accompanied by this statement from the Revenue Commissioners made within two months of the date of the application of the Revenue Commissioners statement.

.

Consolidation of group accounts post Brexit.

Under S 299 (**Exemption from consolidation: holding company that is subsidiary undertaking of undertaking registered in EEA)** of the Companies Act 2014, an Irish company is exempt from preparing consolidated financial statements where it is itself a subsidiary of a company registered in the EEA which prepares consolidated financial statements. It follows that where an Irish company is a subsidiary of a UK company and is relying on this exemption to avoid preparing consolidated financial statements in Ireland, it may no longer be in a position to avail of this exemption after the Brexit transitional period lapses.

Under S 357 (**Subsidiary undertakings exempted from annexing their statutory financial statements to annual return)** of the Companies Act 2014, providing certain conditions are met, an Irish company can claim an exemption from filing its financial statements with the CRO, and instead file the consolidated financial statements of its parent company with the CRO, providing the parent company is registered in an EEA state.