

Brexit and Non EEA Directors in Irish Companies

EEA RESIDENT DIRECTOR REQUIREMENT

Under Section 137 of the Companies Act 2014, Irish registered companies are required to have at least one director who is resident in the European Economic Area (EEA). Existing Irish companies that have fulfilled this requirement by appointing a UK resident director should consider replacing that director or adding an additional director who is an EEA-resident, with Brexit fast approaching.

This requirement is based on residency, not nationality. For example, a company director of Irish nationality who lives in the UK will not satisfy this requirement.

Another option is the Section 137 Revenue Bond. When an Irish Company does not have at least one EEA-Resident Director, it can take out a Section 137 Revenue Bond which acts as a type of insurance policy against fines or penalties incurred for non-compliance. A Section 137 Bond 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. The bond costs in the region of €2,000 and would have to be renewed/paid every 2 years.

THE EXCEPTION TO THE RULE – ‘REAL AND CONTINUOUS LINK’

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 Section 137 Bond or to have an EEA-resident director.

The Statement is granted based on the company having a “real and continuous link to the State of Ireland”. The successful company will satisfy one or more of the following provisions laid out in Section 140 (9) of the Companies Act 2014:

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;
3. 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 paragraphs (1) and (2); or
4. the company is a subsidiary of a company, another subsidiary of which satisfies either or both of the conditions specified in paragraphs (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.

Only if the Registrar of Companies in Ireland is satisfied and issues the certificate will the company be permitted to continue operating without purchasing a Section 137 Bond or appointing an EEA-resident director. The above information applies to Irish registered companies, including subsidiary and holding companies.

ACTIONS TO BE TAKEN

Please contact us at [PKF O'Connor Leddy & Holmes Limited](#) to discuss your company's options.

We can assist you with claiming the 'Real and Continuous Link' Exemption; by sourcing an Irish Director or we can assist in getting a Revenue Bond put in place.

Right people.
Right size.
Right solutions.

Please contact a member of our team if you would like to discuss any of the issues raised.

 01 496 1444

 info@pkf.ie

 www.pkf.ie

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