

# Non-filing structures – extinct or on the verge?

Ruairi Mulrean examines the impact of the Companies (Accounting) Act 2017 on existing non filing structures



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With the commencement of the Companies (Accounting) Act 2017 a major change has been introduced which has negated the effectiveness of so-called “non-filing structures” for financial years commencing 1 January 2017. These structures had been previously used to limit the amount of financial information Irish unlimited companies had to publicly file while at the same time preserving effective limited liability status for the shareholders.

## So what has changed?

Section 78 of the 2017 Act inserted a new section 1274 into the Companies Act 2014

As before, Section 1274 provides that Irish unlimited companies must file financial statements in the Companies Registration Office (**CRO**) where the relevant unlimited company is of a designated type i.e the **Designated ULC**.

Under the old legislation an Irish unlimited company with at least one member being an unlimited company incorporated outside the EEA was not a Designated ULC and therefore was not required to publicly file financial statements in the CRO. However Section 78 significantly expands the categories of unlimited companies treated as Designated ULCs, including those of the sort referred to, and in so doing negates the effectiveness of non-filing structures utilising such companies.

## What does this mean?

In short, unlimited companies forming part of a group of companies, all of whose ultimate shareholders, at any time during the financial year in question, have the benefit of limited liability for its liabilities are Designated ULCs. As such they will have to file financial statements with their annual return. This new obligation will apply for financial years starting on or after 1 January 2017.

Unlimited holding companies with limited subsidiaries are also treated as Designated ULCs however, the obligation for them will only apply for periods commencing 1 January 2022.

## Why the need for change?

The change in law has been implemented to give effect to EU Law and to transpose the Directive – a directive intended to result in greater transparency as to the financial health of companies throughout the EU.

The long standing obligation on limited companies to file financial statements in the CRO was seen as affording those doing business with a limited company with a level of protection. With the financial statements being available in the CRO for inspection, those thinking about doing business with them could ensure that they were dealing with a solvent company where there was no recourse to the shareholders. When dealing with unlimited companies it was thought that this protection was not needed; however, with the development of non-filing structures designed to preserve limited liability as well as availing of the lesser financial reporting obligations, the legislature has seen fit to extend the scope of the obligation.

## What now?

Directors of non-filing unlimited companies should evaluate their corporate structure to assess whether they will be treated as a Designated ULC and if so, the impact of the new rules on the company. In particular they should consider the potential impact to their business of the requirement to publicly disclose the company’s future financial statements, particularly sensitive financial information.

Having done so such companies should speak with their advisers to identify any alternate corporate structures that might be of interest and implement arrangements that are appropriate to each group to address these changes.