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Submission on Section 150 of the Companies Act 2014 and the Companies Act 2014 (Section 150) (No. 2) Regulations 2015 [S.I. No. 543 of 2015]

The Company Law Review Group

18 June 2024

www.lawsociety.ie

1. Introduction

1.1 The Law Society of Ireland (the “**Law Society**”) wishes to make the following comments and recommendations on section 150 of the Companies Act 2014 (as amended) (the “**Act**”).

1.2 This submission has been prepared for the Law Society by our Business Law Committee (the “**Committee**”) which is comprised of practitioners with substantial experience and expertise in the law of public and private companies, insolvency law, partnership law, banking and financial services law, business regulation, foreign direct investment, competition law, the law of contract and consumer protection law. Additional input was provided by GDPR experts on the Intellectual Property & Data Protection Law Committee in the Law Society.

1.3 The Law Society previously made a submission to the Department of Jobs, Enterprise and Innovation in April 2016 which covered a number of proposals for amendments to the Act including section 150 (the “[2016 Submission](https://www.lawsociety.ie/globalassets/documents/committees/business/subs/submission-companiesact2014_april_2016.pdf)”).

2 . Background and Summary

2.1 The purpose of this submission is to:

2.1.1 highlight a gap in the legislation that affects officers (directors and individual company secretaries) of entities registered under the Act (“**Affected Officers**”) who are seeking an exemption from disclosing their residential addresses to the Companies Registration Office (the “**CRO**”),

2.1.2 request the Company Law Review Group (“**CLRG**”) to progress the implementation of the recommendations for Issue 8 in the Company Law Review Group’s Report on certain company law issues under the Companies Act 2014 relating to Corporate Governance dated May 2022 (and included in the CLRG’s 2022 [annual report](https://www.clrg.org/publications/clrg-annual-report-2022-.pdf)) (the **“2022 report”**) with a view to recommending legislative changes to address the issues we have raised.

2.2 Section 150(11) of the Act and the implementing statutory instruments (SI 225/2015 and SI 543/2015) introduced a process allowing an Affected Officer’s residential address to be omitted from the public register (and relevant company register) where the Affected Officer’s personal safety or security is at stake. The policy objective behind this measure was to minimise potential risks to Affected Officers of certain types of company where home address details were easily accessible to members of the public.

2.3 We are aware that the CLRGhas also previously highlighted the shortcomings in the law and the procedure under Section 150(11) in its 2022 report, in particular that addresses already on the CRO register cannot be redacted under the current regime, separate applications must be made for each company involved; the exemption is automatically cancelled where, even inadvertently, the officer’s home address is included on any CRO filing and has recommended that these issue be considered further by the Corporate Governance Committee.

2.4 The 2016 Submission was also referenced in the Law Society submission to the Joint Committee on Enterprise, Trade and Employment on the General Scheme of the Companies (Corporate Enforcement Authority) Bill in December 2020 (the “[2020 Submission](https://www.lawsociety.ie/globalassets/documents/submissions/2020-general-scheme-companies-corporate-enforcement-authority-bill.pdf)”).

2.5 The Law Society submits that the current procedure under Section 150(11) is of very limited use in practice.  Notwithstanding some efficiencies which have been achieved, the exemption, once granted, only applies prospectively from the date the application is made, and an Affected Officer’s personal address is not removed or redacted from any historic filings already on the public CRO register. Accordingly, the residential address of an Affected Officer can be easily obtained from a previous filing and the protection afforded by this process is effectively nullified. The Law Society recommends that procedures be put in place to exclude personal addresses from historic as well as future filings, as without this mechanic the protection is meaningless and only benefits incoming or newly appointed Affected Officers.

3. Issue

3.1 The default position under Section 149 of the Act is that particulars of an Affected Officer, including their residential address, must be disclosed to the CRO via submission of a Form B10, and are also required to be included in various other filings as well as the entity’s annual return. As a consequence, the residential addresses of Affected Officers are publicly accessible on the Register of Companies (the ”**Register”**) and such Affected Officers are under an ongoing obligation to notify the CRO of any change in their residential address and ensure the Register is updated accordingly. Failure to comply with this requirement is a category 3 offence under the Act, punishable by a term of imprisonment of up to six months and a Class A fine of up to €5,000 (or both).

3.2 Section 150(11) of the Act contains an exemption from the general disclosure requirement, to permit Affected Officers to use the company’s registered office address on the public record instead of their usual residential address (the “**Exemption**”), and provides:

The Minister may make regulations providing that any requirement of this Act that the usual residential address of an officer of a company appear on the register referred to in section 149(1) or the register kept by the Registrar shall not apply in relation to a particular person who is such an officer if -

(a) in accordance with a procedure provided in the regulations for this purpose, it is determined that the circumstances concerning the personal safety or security of the person warrant the application of the foregoing exemption in respect of him or her; and

(b) such other conditions (if any) as are specified in the regulations for the application of the foregoing exemption are satisfied.

3.3 The regulations referenced in Section 150(11) are the Companies Act 2014 (Section 150) (No. 2) Regulations 2015 [S.I. No. 543 of 2015] (the “**2015 Regulations**”) which set out the mechanic by which an Affected Officer may avail of the Exemption, as follows:

*An application to request the exemption of the usual residential address of an officer of a company from appearing on the register shall comply with the following:*

*(i) The request for an exemption is sent to the Registrar in an envelope marked "For the Attention of the Registrar" and is accompanied by the form, if any, specified for such purpose by the Registrar;*

*(ii) The application requesting an exemption in accordance with section 150(11) is accompanied by a supporting statement from an officer of An Garda Síochána not below the rank of a Chief Superintendent;*

*(iii) The statement contains a request that the usual residential address of a person who is an officer of the company shall not appear on the register kept by the Registrar for reasons of personal safety or security.*

3.4 In practical terms, to avail of the Exemption, a Form T1 must be submitted to the CRO in respect of each company to which the Affected Officer has been or will be appointed, together with a supporting statement (the “**Statemen**t”) from a Chief Superintendent of An Garda Síochána stating that the Exemption in respect of such Affected Officer is necessary on the grounds of personal safety or security. To obtain the Statement, the Affected Officer must demonstrate that there is a risk to their personal safety or security, and the Law Society understands that An Garda Síochána can require examples of threats experienced by the Affected Officers to be included in the application for the Statement.

3.5 While the Exemption is helpful in theory, its application in practice is significantly constrained as the Exemption does not have retrospective effect, and the Affected Officer’s residential address is not removed or redacted from any filings already on the public Register. The Exemption only operates prospectively with effect from the date the Form T1 is registered. As a consequence, the Affected Officer is only permitted to use the company’s registered office address from the date of registration of the Form T1 and any filings made after that date, but their residential address is still visible and easily accessible by the public in any earlier filings which remain unchanged despite the Exemption. This means that where a Form T1 has been registered, for example in January 2024, the Affected Officer can use the registered office address in submissions made following that date, but their residential address can be easily obtained from the annual return filed in 2023 as well as any earlier filings in respect of that Affected Officer.

3.6 The CRO’s position in not removing or redacting any residential addresses that are already disclosed on the Register is clearly indicated in the Form T1 as well as guidance published on the CRO website, as excerpted in Appendix 1 below. The Law Society also understands that the CRO has indicated that the Registrar of Companies (the “**Registrar”**) does not have the power, either express or implied, to remove any documents that are already registered on the Register and cannot take such action as they do not have the statutory power to do so. As such, any change in CRO procedure in this regard would require legislative amendment to provide this power to the Registrar and enable the CRO to remove references to residential addresses from historic filings.

3.7 We would also like to highlight the recent decision of the Court of Justice of the European Union (“**CJEU**”) ([joined cases C-37/20 and C-601/20](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62020CJ0037)) which restricted public access to a number of beneficial ownership registers, including the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the “**RBO**”)operated by the CRO in Ireland. The CJEU found that permitting public access to registers of this nature (which include individuals’ personal address details) constituted a breach of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and held that access to such information constituted a serious interference with the fundamental rights to respect for private life and the protection of personal data. As a consequence of this ruling, the CRO has limited access to the RBO to “designated persons” and competent authorities.

3.8    The Law Society also submits that the general publication of directors’ personal addresses raises potential issues under the EU General Data Protection Regulation (the “**GDPR**”).  One of the key obligations under the GDPR is that any processing of personal data (which includes the collection and publication of personal data) must satisfy a condition for processing under Article 6 of the GDPR.  It might be argued that Article 6(1)(c) (legal obligation) and Article 6(1)(e) (processing permitted by EU or Member State Law) provide such a legal basis in light of section 149 of the Companies Act (subject to the exemption under the 2015 Regulations).  However, Article 6(3) of the GDPR provides that any EU or member state law which is relied on for the purposes of Articles 6(1)(c) or (e) must *“meet an objective of public interest and be proportionate to the legitimate aim pursued”.*We think there is a material risk that section 149 (together with the limited protection afforded to a wide cohort of Affected Officers under the 2015 Regulations) does not meet this test.  In addition, it is also open to question whether the publication of directors’ personal addresses without effective exemptions for Affected Officers meets the data minimisation requirements of Article 5(1)(c) of the GDPR which requires that any personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

3.9 Given the similarities between the details included on the RBO and the CRO, a similar argument can be made in favour of redacting Affected Officers’ address details from filings already on the Register, on privacy as well as security grounds. Accordingly, the Law Society recommends that a change to current practice is introduced and seeks the support of the CLRG in proposing an amendment to the legislation in this regard.

4. Recommendations and Conclusion

4.1 The Law Society submits that the Exemption affords very little protection to Affected Officers where details already on the Register remain unchanged and are easily accessible, and the policy objective underpinning the arrangements under section 150 and the 2015 Regulations is not being appropriately addressed and achieved.

4.2 The Law Society reiterates its recommendations set out in the 2016 Submission that:

4.2.1 a dedicated unit or contact point within An Garda Síochána with the necessary resources be formally nominated (and/or details of same published) to deal with applications of this type;

4.2.2 guidelines be published as to the criteria to be used in granting any supporting statement by An Garda Siochána; and

4.2.3 procedures be put in place to allow directors residing outside the State to make the relevant application through their Irish legal advisers.

4.3 We are aware that the CLRG has also previously highlighted the shortcomings in the law and the procedure under Section 150(11) in its 2022 report, in particular that addresses already on the CRO register cannot be redacted under the current regime, separate applications must be made for each company involved; the exemption is automatically cancelled where, even inadvertently, the officer’s home address is included on any CRO filing and has recommended that these issues be considered further by the Corporate Governance Committee.

4.4 The Law Society echoes the recommendations of the CLRG and reiterates our earlier submissions on this procedure. The current Irish laws were formulated in a pre-internet era, and their continued application now fundamentally ignores the ease and speed at which information can be accessed online and individual safety and rights to privacy. Where an Affected Officer has already demonstrated to An Garda Siochána that there is risk to their personal safety or security (and has obtained a statement to that effect), the policy objective of affording protection to such individuals fails entirely unless residential addresses are removed from all public filings or the Exemption is inadvertently lost. It therefore follows that for the Exemption to have any meaningful effect, an amendment to the legislation and existing procedures to enable filings to be redacted and Exemptions to be maintained is necessary and important.

4.5 Our attention has been brought to the experience of Affected Officers of certain classes of company, for example, in the technology and related sectors and high-profile multinationals, who have received serious threats and been the subject of a number of public order incidents including intrusion of their personal homes. The continuing disclosure of the residential address of those individuals poses a significant risk to their public safety and represents a considerable disadvantage of accepting an Irish directorship for those who have legitimate concerns. This seems particularly unfair where Affected Officers have already demonstrated the risk to their safety via the established Garda process.

4.6 The current system with its significant limitations on the Exemption makes Ireland an unattractive location for directors of certain companies.

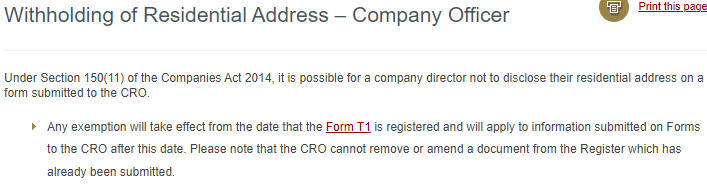
4.6 The Law Society recommends that the Form T1 should be amended to permit one application for all companies that an Affected Officer is appointed to. The practice of having to make separate applications for each company involved is disproportionate, inefficient and an unnecessary use of resources in an era of sustainability and developing technologies.

4.7 The Society recommends that the process that the Exemption is automatically cancelled where, even inadvertently, the Affected Officer’s home address is included on any CRO filing should cease. With the advances in technology and the move to online filings via CORE a system should be put in place to prevent such filings being accepted by the CRO and instead such submissions should be rejected and not uploaded by the CRO.

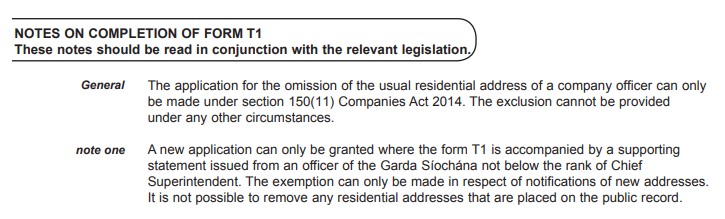
4.8 For Affected Officers that are not resident in Ireland the Law Society recommends that procedures be put in place to allow applications to be made through their Irish legal advisers.

4.9 We hope that the CLRG will find the above comments constructive and helpful. The Law Society will be happy to engage further with the CLRG if required.

Appendix 1

**CRO Website**

**Form T1**



***For further information please contact:***

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