



# BOND AS ALTERNATIVE TO RESIDENT EEA DIRECTOR

Section 137 of the Companies Act 2014 states that an Irish registered company is required to have at least one director resident in the European Economic Area (EEA). The EEA consists of all 27 member states of the EU as well as Iceland, Liechtenstein and Norway.

Section 137 (2) offers the alternative of taking up a Bond to the value of €25,000 in place of the Resident EEA Director.

## **What is the background to the Bond?**

Sections 42 to 45 of the Companies (Amendment) (No2) Act 1999 were introduced as part of the “package of measures” to inhibit the use of what were known as Irish Non-Resident Companies. (INRC’s) These companies achieved tax free status in Ireland by virtue of trading and being controlled and managed outside the State. As they did not conduct any activity here their economic contribution was virtually nil. It was also felt that their existence promoted the Republic of Ireland as an “Offshore” jurisdiction.

The requirement for a resident Director meant that Irish companies would now have somebody in the State accountable for its actions, even if it did not actually trade here. This presented a number of problems for investors located outside the State, Northern Ireland for example, who wished to register companies and conduct business here.

An exemption was required which would allow investors bringing genuine economic benefit, while at the same time dissuading previous users of INRC’s. Accordingly, the Bond was introduced.

This legislation was subsequently amended in July 2009 whereby an Irish registered company was required to have at least one of its Directors resident within the EEA rather than in the Irish State.

## **What is the purpose of the Bond?**

The Bond exempts companies registered in the Republic of Ireland from the requirement to have a Director who is resident in the EEA.

## **How will the Bond be used?**

The Bond will be used to pay:

- Any fine imposed on the Company in respect of offences under the Companies Acts 2014 e.g. failure to file Annual Returns and Audited Accounts on time.
- A fine for failure to supply certain information to the Revenue Commissioners - namely the information required on the Form CRO 11F
- Any penalty which the company has been held liable to pay under S1071 or S1073 of the Taxes Consolidation Act 1997
- Any expenses incurred in recovering the fines and penalties mentioned above

## **Who can issue the Bond?**

The Surety under the bond must be a member of a class specified in Schedule 2 to the Companies Act 2014 (Bonding) Order 2015 i.e. a bank, building society, insurance company or credit institution.

## **What would an Insurance Company require?**

They would require a Proposal Form to be completed by the applicant company and payment of the insurance premium. The Proposal Form states that the Company understands and accepts its obligations to both the Revenue Commissioners and the Registrar of Companies. It also contains a statement which sets out the company's agreement to indemnify the insurance company in the event of any claim.

**Will one Bond cover a number of Companies?**

No. Each company must apply for a separate Bond.

**Is there a minimum period the Bond must be taken out for?**

The Bond must be taken out for a minimum of two years.

**Are there penalties for not having a Resident Director or a Bond?**

It should be noted that it is a criminal offence not to have at least one EEA resident Director, a Section 137 Bond or a current Section 140 certificate in place. Non-compliance of Section 137 of the Companies Act 2014 shall mean the company concerned or any officer of the company who is in default shall be guilty of a Category 4 offence, *(a summary offence only, punishable by the imposition of a Class A fine – fine not exceeding €5,000)*

**How would this come to light?**

The CRO will review a company's annual returns to make sure the company has either a resident Director or a Section 137 Bond. If it does not, the annual return will be rejected. The company will then have just fourteen days to rectify the situation and re-file the annual return. If the return is not re-filed within fourteen days the CRO will consider it not to have been filed in the first place and will apply the late filing fees OR they may consider striking the company off.

**What happens if a company has only one Resident Director, and he/she resigns?**

Under Section 139 (1) of the Companies 2014 Act, there is an obligation on the resigning (resident) Director to inform the Registrar of Companies within fourteen days and in writing, that he or she has resigned and that no resident Director remains.

**What would happen if the Resident Director fails to inform the Registrar?**

In this case, the resigned Director becomes jointly and severally liable with the company for any fine or penalty imposed on the company under the Companies Acts or the Taxes Consolidation Act

**How long does it take to arrange a Bond?**

A Bond can be usually arranged within approximately seven to ten working days.

**Where is the Bond sent?**

Once issued, the Bond is attached to the incorporation papers if a new company is being formed or to the Annual Return when filed for an existing company. It can also be filed as a standalone document with the relevant section of the CRO. It must also be attached to a notification filed by resigning resident Directors, when no other resident Directors remain.

**Can CFI arrange a Bond?**

Yes. CFI can arrange a bond, subject to the terms and conditions of the proposal form, for a fee of €1,890 plus VAT (where applicable) for the two year period. For further details please contact **Karen Corcoran** ([karen@formations.ie](mailto:karen@formations.ie)).

**Very Important note:**

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