

The Companies Act 2014

LTD or DAC



July 2015

The Companies Act 2014 came into operation on 1st June 2015. From this date there is an eighteen month transition period during which Existing Private Limited Companies (EPCs) will have to make a decision on which of the new entity types they wish to become.

EPCs can become the new simplified private company limited by shares (LTD) or a Designated Activity Company (DAC). The table below lists some of the key differences between the two new company types:

New LTD Company model (LTD)	Designated Activity Company (DAC)
It may have just one director (but it must have a separate secretary if it has only one director)	It must have at least two directors
It can have between one and 149 members	It can have between one and 149 members
It does not need to hold an AGM	It needs to hold an AGM where the company has two or more members
It has a one-document constitution which replaces the need for a memorandum and articles of association	It has a constitution document which includes a memorandum and articles of association
It will not have an objects clause because it has full unlimited capacity to carry on any legal business, subject to any restrictions in other legislation	It has a memorandum in its constitution which states the objects for which the company is incorporated
It has limited liability and has a share capital	It has limited liability and has a share capital or is a private company limited by guarantee with a share capital
Name must end in "Limited" or "Teoranta" (there is no requirement to change name for existing EPC). Can be abbreviated to LTD	Name must end in "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe". Can be abbreviated to DAC. (existing EPC will need to change its name and update stationery, letterheads, websites etc)
It cannot list debt securities	It can list debt securities

Note:

During the transition period, an EPC will be treated as a DAC, even though its company name may end in Limited or LTD, until it re-registers as a DAC or LTD.

If it does not re-register during the transition period, it will automatically become a LTD on 1 December 2016, which is when the transition period expires.

Companies wishing to convert to a DAC must initiate the procedure by 31 August 2016.

If you are still not sure whether to convert to LTD or DAC please see our conversion questionnaire.

Should I convert my EPC to DAC or to LTD?

1	Does my company perform a designated activity?	Yes	No
2	Is there a requirement for an objects clause?	Yes	No
3	Does my company have banking covenants restricting its activities?	Yes	No
4	Is my company a bank, insurance undertaking or credit institution?	Yes	No
5	Have members holding more than 25% served notice requiring conversion to a DAC?	Yes	No
6	Does my company have listed debt?	Yes	No
7	Has my company been ordered by High Court to become DAC?	Yes	No

If the answer to any of these questions is **yes** you need to convert to DAC.

We also recommend that directors of EPC's consult with the company's shareholders, especially if they have shareholders who are not directors to ascertain what their preference is regarding the two conversion options available to them. It may also be prudent to consult with key creditors such as banks.

What happens if I do not convert?

If at the end of the transition period, 30 November 2016, conversion has not been completed, the Registrar of Companies will enforce the change and convert the company to the new form LTD. A new certificate of incorporation will then be issued automatically.

Automatic conversion is not a recommended option for the following reasons:

- company may be deemed to have a corporate form and constitution that doesn't suit their requirements;
- conflicts between existing Memorandum and Articles of Association as lodged in the public records and provisions of Companies Act 2014;
- members will be able to seek remedy in the courts under the legislation (including payment of compensation or the purchase of their shares) if they feel their rights as members have been prejudiced by the company taking no action;
- may impact the company's dealings with banks, potential investors, enterprise boards and any other third parties; and
- companies wishing to have a 'single director' cannot do so until they convert.

Contact

If you require assistance or want to learn more about the Companies Act 2014, please refer to our other publications at www.grantthornton.ie/The-Companies-Act-2014 or contact our Companies Act 2014 team at companiesact2014@ie.gt.com.

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