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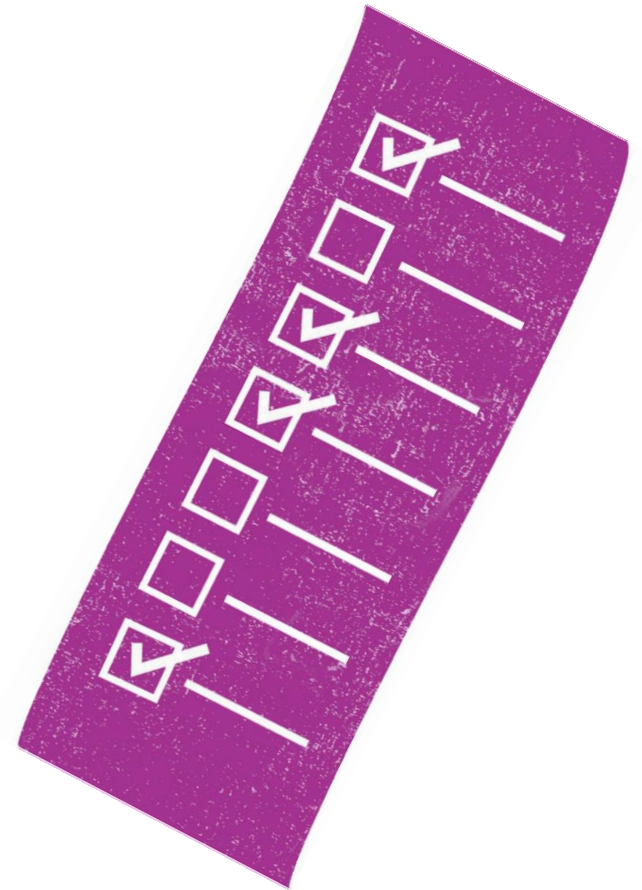
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# The Companies Act 2014



# Agenda

- new company types
- overview of changes in the Act
- impact on the role of directors'
- accounting matters



# What has happened?

- Companies Act 2014 (the "Act") consolidates all old legislation into 25 parts, over 1400 sections – enacted 23 December 2014, commenced 1 June 2015
- Act is structured in 2 volumes:
  - parts 1 to 15 - model private company limited by shares
  - parts 17 to 25 - all other companies



# Company types going forward

- Private Company Limited by Shares (LTD)
- Designated Activity Company (DAC)
- Unlimited companies (UC)
  - private unlimited company with shares
  - public unlimited company with shares
  - public unlimited company no shares
- Public Limited Company (PLC)
- Guarantee Company (CLG).



# What is a new model Private Limited Company (Ltd)

Likely to be the most common form of Private Limited Company (Ltd)

Single director companies (different secretary)

Unlimited capacity to carry on any business

One document constitution – no objects clause

Can dispense with holding an AGM

Cannot list debt securities

Does not need an authorised share capital

No name change needed

# What is the new Designated Activity Company (DAC)?

similar to our current Private Limited Company

name must end in DAC – *The Happy Hotel Dac*”

must have at least two directors

two document constitution – continues to have an objects clause

can list debt securities

cannot waive requirement to hold AGM

can convert to a DAC during the transition period.

# A company limited by guarantee "CLG"

Entity used by charities, sports and social clubs and management companies

Name changes to include words "Company Limited by Guarantee" or "CLG"

Must have at least two directors

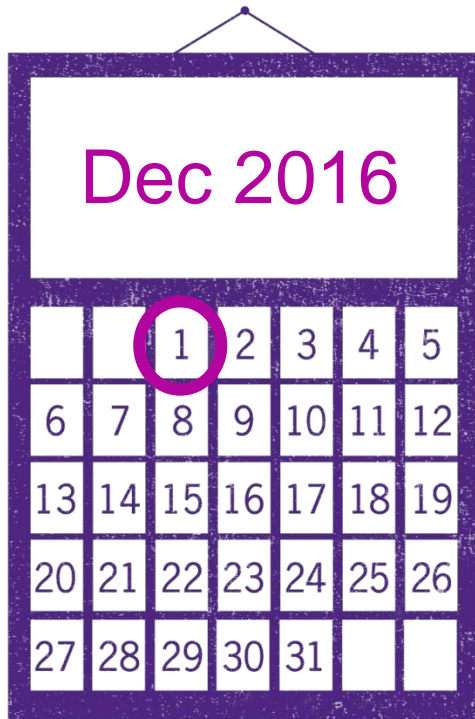
Continues to have a Memorandum and Articles of Association with a main objects clause

It will be able to avail of the audit exemption (not currently available)

Cannot waive requirement to hold AGM

May opt to have just 1 member (currently must have at least 7)

# Transition period ends



during transition private companies limited by shares should decide whether they will:

- register as a LTD
- register as a DAC or
- Register as another form of company
- do nothing and be deemed to register as an LTD

Existing private limited companies will be treated as DACs during the transition phase until they make their election.



# How to decide whether to re-register

While there are no strict rules the following should be considered:



Requires a specific purpose



Credit institution or insurance undertaking



Has debt securities listed

So far.....

2569

Limited companies have converted



49

opted for a DAC  
(**2%** approx.)

2061

opted for LTD

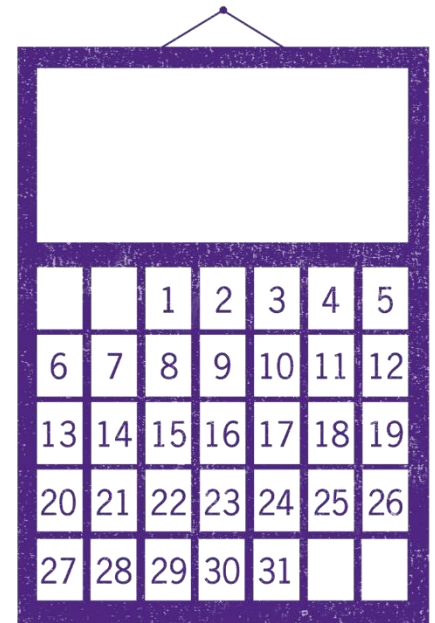
*numbers provided by Search4Less*

# Incorporations under the new Act

**June**  
91 DAC  
1260 Ltd

**July**  
70 DAC  
1611 Ltd

**August**  
53 DAC  
1307 Ltd



*numbers provided by Search4Less*

# Some of the changes brought about by the Act

the Act is primarily a consolidation of the old law

- ultra vires rule abolished
- single director companies (still need a separate secretary)
- members written resolution no longer needs to be unanimous
- location of directors meeting now set-out in law
- directors of insolvent company must show they co-operated with the liquidator to avoid restrictions
- court liquidation: increase in outstanding amount due (€10k) for creditor to petition wind-up
- prescribes minimum qualifications for liquidators



# Some of the changes brought about by the Act

- private limited companies allowed reduce their capital without court order
- validation procedure – **Summary Approval Procedure**
  - financial assistance for acquisition of own shares
  - reduction of company capital
  - variation of capital in reorganisations
  - loans, etc, to directors and connected parties
  - mergers
  - voluntary windings up.
- offences categorised



# Categorisation of offences

## Category 1 offence

conviction on indictment can result in a term of imprisonment of up to ten years or a fine of up to €500,000 or both (reportable by auditor).

## Category 2 offence

conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both (reportable by auditor).

## Category 3 offence

a summary offence only, attracting a term of imprisonment of up to six months and a “Class A fine” (or both).

## Category 4 offence

also a summary offence only, punishable by the imposition of a Class A fine (i.e. a fine not exceeding €5,000).



# Officers duties

Amanda-Jayne Comyn



# Company Secretary

- officer of the company who acts in accordance with the directors' instructions
- **overseer** of day to day running of company, maintenance of records, filing of returns and accounts
- written declaration acknowledging role and responsibilities associated with the role
- previously responsible for company complying with Companies Act – now moved to directors
- directors must satisfy themselves that company secretary has necessary skills **or resources** available to perform duties
- general market view – professional company secretarial function employed to ensure directors' obligation fulfilled
- duties include:
  - co-signing annual return
  - certifying true copies of financial statements with annual return.





# Types of Director



1. **Executive Director** – works on a full-time basis for the company (*not defined in the Act*)
2. **Non-Executive Director** – works in a part-time capacity for the company (*not defined in the Act*)
3. **Alternate Director** – person appointed to act for another director with agreement by the other directors
4. **Shadow Director** – person in accordance with whose instruction the board of directors is accustomed to act
5. **De-facto Director** – person who occupies the position of director but who has not been formally appointed.

# Change to the definition of Director under CA 2014

**Director** was defined in the 1963 Act as:

*“including any person occupying the position of director by whatever name called” (i.e. executive and non-executive)*

**Shadow directors** were included under the 1990 Act in respect of certain duties only – liability for fraudulent/reckless trading, restriction and disqualification, conflicts of interest.

**CA 2014** expands the definition to expressly include: Shadow directors, De-facto directors in addition to formally appointed directors.

Expanded definition now imposes positive obligation on both shadow and de-facto directors to comply with all director's duties



# Role of Director

- no formal qualification requirement
- officer of the company not employee
- requirement to have at least 2 directors except in a LTD
- director is appointed by the members of the company
- primary function of a director is to manage the company on behalf of the members
- director owes primary duty to the company alone and not the members who appointed them
- account for their control over company's assets by keeping proper books and accounts
- exercise their power honestly and in the best interests of the company
- not make a "secret profit" when acting for the company
- not have personal interest in a contract with the company unless permitted by the articles or ratified by company.



# Provisions in CA 2014

- internal rules on corporate governance are contained in Part 4 and 5 CA 2014
- any current or prospective director should familiarise themselves with expectations and legal responsibilities
  - Part 4 Sections 128 – 167 (corporate governance); and
  - Part 5 Sections 219 – 255 (duties and breaches)
- on appointment a director must sign a declaration acknowledging the legal duties and obligations associated with the role
- certain restrictions on transactions between a company and its directors



# Directors duties

***In the past determining the duties and responsibilities of the directors has not been clear, the codification of directors duties in the Act gives clarity for directors. These are set out in eight fiduciary duties which will apply to directors, shadow directors and de facto directors***

- Part 5 CA 2014 deals with Directors duties and consequences for breaches of duties
- duties are broken into 2 categories: general duties and fiduciary duties
- there is a definitive move towards the accountability and responsibility of directors
- company must ensure that person eligible to be a director
  - not a undischarged bankrupt
  - <18 years of age
  - not a statutory auditor of the company
  - not a disqualified director
  - not a body corporate or unincorporated body of persons.



# Breach of duties

## General duties

- dealt with under Part 14 of the Act
- each section specifies the penalty attaching for a breach  
e.g. Section 225 - Directors' Compliance Statement – failure to provide is a Category 3 offence
- general breach of company law will not affect the
  - validity of a contract or other transaction; or
  - enforceability of any contract or other transaction.

## Fiduciary duties

- 8 fiduciary duties specified in Section 228
- breach of 6 of the 8 fiduciary duties falls within Section 232
- duty to account to the company directly for the gain; and
- indemnify the company in respect of any loss or damage resulting from breach.



# General duties

- ensure compliance by company with CA 2014 – historically was a duty of the company secretary
- directors must have regard for the interests of employees and members in the performance of their functions (this duty is still owed to the company rather than the employees or members)
- duty to keep adequate accounting records
- duty to prepare financial statements
- duty to maintain certain registers
- duty to ensure certain documents are filed with the CRO
- duty to disclose
  - personal information for register of directors
  - interests in shares of company or related company (1% exemption)
  - interest in a contract with the company
  - disclose payments in relation to share transfers
- duty to convene meetings.

# Codified Directors' duties

## Law is clarified

- act in good faith
- act honestly and responsibly
- act in accordance with the company's constitution
- not use the company's property, information or opportunities for the director's own or anyone else's benefit
- agree not to restrict the director's power to exercise an independent judgement
- avoid any conflict between the director's duties to the company and the director's other interests
- exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person in the same position with the same knowledge
- have regard to the interests of its employees and of its members as a whole.





# Transactions between a Company and its Directors

## Loans from company to Directors

- prohibited under Section 239 CA 2014 (previously s31 CA 1990)
- repetition of previous prohibition together with relevant exceptions
- SAP used for all transactions prohibited under Section 239 – (i.e. loans, quasi-loans, credit transactions and security and guarantees in respect of such loans, quasi-loans, credit transactions)
- **tax rules on loans to directors unchanged!!**

## Substantial non cash transaction with directors

- Applies to real property
- Values exceeding >10% of net assets of €65,000
- requires approval by members



# Accounting and audit related matters

Kevin Foley



# Audit exemptions

## New qualifiers for the audit exemption

- small groups
- companies limited by guarantee
- dormant companies (allowed to adjust for intra-group transactions)

Where:

- no significant accounting transactions
- assets and liabilities comprise only **permitted assets** and liabilities.



# Audit exemptions

## Exemption from the requirement to have a statutory audit

- where a company meets **2 of 3** of the requirements (for 2 consecutive financial years):
  1. **total assets** not exceeding **€4.4m**
  2. **turnover** not exceeding **€8.8m**
  3. **average** number of **employees** not exceeding **50**
- cannot avail of exemption if:
  - notice is served
  - annual return is not filed on time.



# Audit committees

## Establish or explain

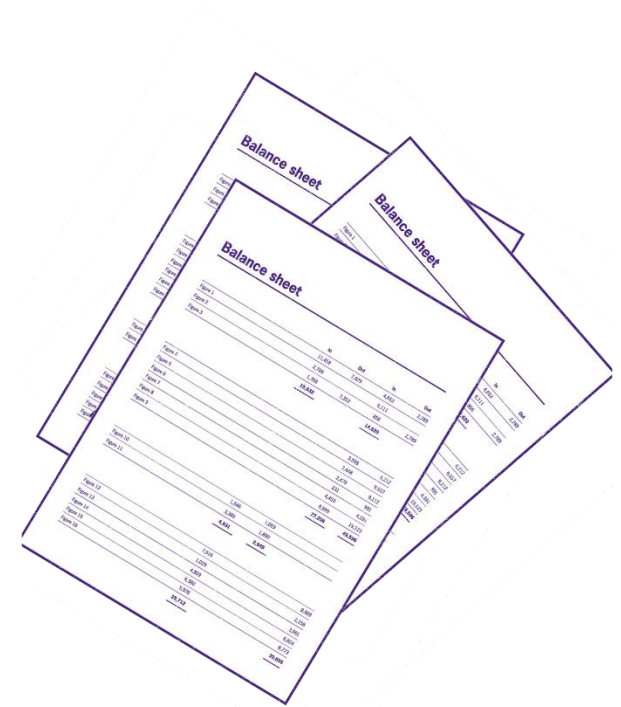
- a large company shall either:
  - establish an audit committee and confirm in the Directors' Report; or
  - if not established, explain why not in the Directors' Report

A company whose	Large
Turnover*	>€50m
Total assets*	>€25m
or	
A group together meeting the above criteria	

\*for the current and preceding financial year

# Directors remuneration

Directors remuneration is now publically available



# Directors remuneration

## Now publically available .....

- categories and scope of directors' remuneration disclosures extended to include:
  - emoluments for qualifying services
  - gains made on the exercise of share options
  - amount of money or value of other assets for qualifying services
  - contributions paid to a retirement benefit scheme
  - compensation for loss of office or other termination benefits

\*All disclosures include those of shadow and *de facto* directors



# Directors' compliance statement

## Key points

- applies to all Public Limited Companies (except investment companies) and to all other large limited companies with a balance sheet total of €12,500,000 and a turnover of €25,000,000 (unlimited and investment companies are excluded from this requirement).
- directors must make an annual statement in their Directors' Report, acknowledging that:
  - they are responsible for securing the company's compliance with its relevant obligations\*
  - confirming that certain things have been done or, if they have not been done; and
  - explaining why they have not been done.

\*Relevant obligations" means an obligation under tax law, or where failure to comply would constitute a Category 1 or Category 2 offences under the Act, or a serious Market Abuse or prospectus offence (or in certain cases a serious Transparency offence).



# Directors' loans

- **loans to** a director: if not in writing presumed to be repayable on demand and bear interest [s236]
- **advances by** a director: if not in writing, presumed not to be a loan. To the extent it was a loan – does not bear interest and is subordinate
- beware of accounting issues arising under FRS 102 as a result of potential 'financing transactions'.

## Loans from Directors to company

- undocumented loans by a Director presumed to be a gift to the company
- documented loans without statement of interest presumed to bear no interest

# Mergers

- statutory mechanism for merging set out in the Act.
- merger can now be done:
  - by acquisition
  - by absorption
  - by formation of a new company
- basis for applying merger accounting set out in the Act – previous contradiction no longer exists!
- also introduced the concept of ‘merger relief’ and ‘group reconstruction relief’

Note: FRS 102 only permits merger accounting in group reconstructions and for charities!

## Things to note...

- small company registered with Central Bank **MUST FILE FULL ACCOUNTS with CRO** will impact many insurance brokers where no requirement to file full accounts previously.
- provision for revision of defective financial statements
- can only change year end once every five years
- directors report to confirm there is no relevant audit information of which auditors are unaware – increased accountability



# www.grantthornton.ie/The-Companies-Act-2014

## KnowledgeBase announces partnership with Grant Thornton

View coverage on the announcement on TechCentral.ie, Business World, Digital Daily, Silicon Ireland, BizPlus.



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## The Companies Act 2014

There has been significant talk over the last few years about the updating of company law as embodied by the enactment of a new Companies Act in place of the existing legislation which stretches from 1963 to 2013. The new legislation has been a reality with the Companies Act 2014 ("the Act") signed into law on 23 February 2014 and expected to come into operation on 1 July 2014.

Over continued, the Act will represent a major change in the regulatory and legal framework of public companies in Ireland and will impact on the entire Irish business community. The Act provides a consolidated and comprehensive framework for all public companies in Ireland, covering public, private, and charitable companies, directors, professional advisers, and shareholders.

The main areas of change under the Act relate to company formation and the ongoing regulatory and reporting obligations of companies. The Act also seeks to clarify the powers and responsibilities of directors and officers and to provide a framework for the enforcement of the Act.

Key provisions for a number of new features for regulated companies include:

- Private Limited Company (PLC),
- Empowered Company (EC),
- Unlimited Company (UC),
- Strong Unlisted Company with share capital (SLC),
- Public Unlisted Company with share capital (PLC),
- Public Unlisted Company without share capital (PUC),
- Guarantee Company (GC), and
- Service Provider (SP).



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## The Companies Act 2014

### Topic 1: Audit committees

February 2015

**Introduction:** Following on from our overview of the Companies Act 2014 (the "Act") available on our website at [www.grantthornton.ie](http://www.grantthornton.ie), in this publication we outline the new requirements for audit committees for public companies.

An audit committee is a committee of directors, appointed by the board to oversee financial reporting and related matters.

Upon commencement of the Act only public limited companies ("public limited companies") will be required to have an audit committee. Public limited companies include companies with three or more than a stock exchange, banks and certain other public institutions, and insurance companies.

Who should serve on the audit committee? It should consist of at least three non-executive directors who should serve on the audit committee, other than the CEO. The chairman of the audit committee should be an independent and qualified "eligible director" who has been in the three years preceding their appointment, other than a current holder of another public office (either directly or indirectly), held a position of equivalent or been eligible to be appointed to that position. "Eligible director" means that the individual has not been disqualified from acting as a director.

In public limited companies there will be a number of non-executive directors. The role of the audit committee will be to oversee the financial reporting of the company and to ensure that the financial statements are prepared in accordance with the Act. The audit committee will also be responsible for the financial reporting of the company.

What is a large company under the Act? The definition of a large company is in the context of the Act as very significant in the specific provisions. In this instance a large company, for the purposes of the requirements to establish an audit committee, is one which:

- is a public limited company with share capital (PLC),
- is a public unlisted company with share capital (PLC),
- is a public unlisted company without share capital (PUC),
- is a guarantee company (GC), and
- is a service provider (SP).

Each company must have a director who is a qualified director (QD) who is an eligible director. The Act requires public limited companies to have a qualified director (QD) who is an eligible director. The Act also requires public limited companies to have a qualified director (QD) who is an eligible director.

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## The Companies Act 2014 Topic 2: Directors' loans and advances

March 2015

In this update on the Companies Act 2014 (the "Act") we discuss the topical issue of loans/advances between a company and its directors.

**Loans to directors**

The general rule of the Act is that a director of a company is prohibited from receiving a loan from the company or from a subsidiary of the company or from a holding company or providing a guarantee or security in relation to the loan. There are exceptions to this rule, such as where the loan is made to a director or officer in connection with a bona fide commercial transaction, or where the loan is made to a director or officer in connection with a bona fide commercial transaction, or where the loan is made to a director or officer in connection with a bona fide commercial transaction.

The value of the advance is less than 10% of the company's net assets.

- the advance is a bona fide commercial transaction;
- the advance is a loan to a director or officer in connection with a bona fide commercial transaction;
- the advance is a loan to a director or officer in connection with a bona fide commercial transaction;
- the advance is a loan to a director or officer in connection with a bona fide commercial transaction;

**Summary Approval Procedure (SAP)**

The SAP procedure is a procedure which allows a company to grant loans to its directors in connection with a bona fide commercial transaction. The SAP procedure is a procedure which allows a company to grant loans to its directors in connection with a bona fide commercial transaction. The SAP procedure is a procedure which allows a company to grant loans to its directors in connection with a bona fide commercial transaction.

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## The Companies Act 2014 Topic 3: Filing thresholds and audit exemption

April 2015

In this Companies Act 2014 update, we outline some of the more minor changes contained in the Act which, while not representing dramatic change or innovation, may nevertheless have a significant impact on some Irish companies.

**Company thresholds - Filing obligations**

The Act introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies.

Threshold	2014 Threshold	2015 Threshold
Number of employees	250	250
Balance sheet total	€1.2m	€1.2m
Turnover	€1.2m	€1.2m

**2. Small groups**

The Act also introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies.

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## The Companies Act 2014 Topic: Accounting miscellaneous

April 2015

In this Companies Act 2014 (the "Act") publication, we outline some changes relating to financial statements contained in the Act which, while not representing dramatic change or innovation, may nevertheless have a significant impact on some Irish companies.

**Revisions to disclosure financial statements**

The Act introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies.

**Accounting miscellaneous**

The Act introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies. The Act also introduces a new set of thresholds for public limited companies.

# More to come...

# Questions & feedback

