



The Companies Act 2014

There has been significant talk over the last few years about the updating of company law in Ireland by the enactment of a new Companies Act in place of the existing legislation which stretches from 1963 to 2013. The new legislation has become a reality with **the Companies Act 2014 (the “Act”)** signed into law on 23 December 2014 and expected to be commenced on the 1 June 2015.

Once commenced, the Act will repeal all existing company law statutes and the majority of related statutory instruments. The Act provides a consolidated and current company law code for its users which includes companies, directors, professional advisers, and shareholders.

The main areas of change under the Act relate to registered companies and tackle areas such as the formation, administration, winding-up and dissolution of companies. The Act also seeks **to codify the protection of shareholders and creditors** and also to put the common law duties and other additional duties of company directors on a statutory footing. Part 14 of the Act provides for the categorisation of offences within one provision ranging from Category 1, 2, 3 or 4 offences with the respective penalties for each offence contained within the same provision.

Some of the key changes in the Act include the ability of a company to permit activities and transactions that might prejudice shareholders or creditors where a *Summary Approval Procedure* is complied with.

The *Summary Approval Procedure* requires:

- a special resolution;
- a statutory declaration of solvency; and
- in some instances must be supported by the report of an independent person.

The other key change in the Act is the consolidation of the law in relation to the requirement for a registered company to produce, file and/or audit financial statements.

The Act provides for a number of new formats for registered companies including:

- Private Limited Company (LTD);
- Designated Activity Company (DAC);
- Unlimited Company (UC);
- Private Unlimited Company with share capital (ULC);
- Public Unlimited Company with share capital (PUC);
- Public Unlimited Company without share capital whose liabilities are guaranteed by its members (PULC);
- Guarantee Company (CLG);
- Public Limited Company (PLC); and
- *Societas Europaea* (SE).



Following the commencement date, there will be a transition period extending to a period of 18 months for companies to re-register in one of the new corporate formats as provided for under the Act. During this transition period all existing private limited companies will have to consider their options in relation to re-registering and will have the following options:

- elect to convert to the new model Private Company Limited by shares (“LTD”);
- elect to convert to a Designated Activity Company (“DAC”);
- re-register as another type of company; or
- make no election – company automatically becomes a LTD at the end of the transition period.

The commencement date for the legislation is expected to be 1 June 2015 with an 18 month transition period following commencement. At this stage in the process, it is advisable for existing companies to examine their current corporate structure, review future plans and generally consider the practical effect of the commencement of the Act with a view to:

- choosing which is the most appropriate form of corporate entity;
- reviewing the existing constitution of the company to review and update;
- choose new directors and/or company secretary, if required;
- identifying any corporate governance issues; and/or
- identifying any auditing processes that require review.

Election to be a Private Company Limited by Shares (LTD)

This is likely to be the most common form of private limited company in the future. The LTD will be allowed to have only one director but must have a separate company secretary. It is now a requirement that the company secretary has the requisite skill to act as a company secretary (to the satisfaction of the director(s)). The company secretary can be a corporate entity. The LTD will have a one document constitution that will contain no objects clause, the effect of which is unlimited corporate capacity. The LTD can also

dispense with the requirement to have an AGM and can eliminate a stated authorised share capital. Not every company can be a LTD, for instance banks and insurance companies and those with a debt listing cannot be LTDs.

Election to be a Designated Activity Company (DAC)

The Designated Activity Company (DAC) is very similar to our current private limited company. It will continue to have a two document constitution (i.e. Memorandum and Articles of Association) with an objects clause and its name will end in a DAC. A DAC must state its authorised share capital. An AGM may be dispensed with provided this is contained in the Articles. DACs are suitable for those who want to be able to list debt securities on a stock exchange, or where they wish the company to have an objects clause. Certain existing private companies will be compelled to register as a DAC, such as credit institutions and insurance companies.

No election

A company that makes no election will, after 18 months of the commencement of the Act, be deemed to be a LTD. At the end of the transition period it will be deemed to have a one document constitution comprising its existing memorandum and articles of association less the objects clause. Any Article that is in contravention of the provisions of the new Act will automatically be void. This will require the Articles to be reviewed on each occasion a transaction is anticipated to make sure an Article to be relied on has not been automatically voided. Additionally the LTD form of company may not be the appropriate structure, for example; charities, debt listing companies, joint venture vehicles should not be formed as LTDs.

LTD	DAC
Can have 1 director	Minimum of 2 directors
Can dispense with AGM even when multi member	Can only dispense with AGM if single member
Will not require an objects clause	Must have an objects clause
No need for an authorised share capital	Must have an authorised share capital
Cannot list debt security	Can list debt security

Overview

Some other key points in the Act

Directors

- for certain companies a director's compliance statement will be required whereby they must acknowledge compliance with both company and tax law; and
- the directors' report in accounts to confirm there is no relevant audit information of which auditors are unaware which will lead to increased accountability.

Financial statements and audits

- large companies/groups (turnover exceeds €50 million in both the last two financial years) will be obliged to have audit committees;
- audit exemption for small groups and guarantee companies has been introduced;
- introduction of a provision for revision of defective financial statements; and
- companies will now have a limit on changing their financial year end.

Miscellaneous

- offences will now be categorised and increased penalties imposed for more serious offences (including imprisonment);
- requirement for auditors' reporting for offences falling into category 1 or 2 only;
- merger provisions for Irish private entities have been introduced;
- all companies can now be single member;
- liquidators and examiners must now be qualified to act;
- directors of insolvent companies must show they co-operated with liquidator to avoid restriction;
- optional two-stage registration process for charges;
- change to definition of charges so that charge over cash/bank account no longer required to be registered; and
- the companies must notify the CRO of anyone appointed to bind the company generally, other than directors or officers and the CRO will register the appointment as a "registered person".

Over the coming months we will confirm the commencement date when it is finalised and provide further detailed guidance on particular provisions of the Act which will include:

- Accounting Changes under the Act;
- Directors' Duties under the Act;
- Companies Act 2014 and Relevant Tax Issues; and
- Commencement Date: What to do?

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