

Companies Act 2014 - An Overview

Legal Services

After a lengthy passage through the Houses of the Oireachtas, the Companies Act 2014 was signed into law on 23 December 2014 and came into effect in June 2015. The Act consolidates and reforms existing Irish company law. It aims to make it easier and more efficient for a company to do business in Ireland.

In this bulletin we highlight some of the key changes introduced by the Act that may affect your organisation. We look forward to assisting you make timely and informed decisions during this important period of reform.

Key features

- Creation of new types of company
- Codification of directors' duties
- Allows mergers and divisions of private companies
- Expands audit exemption
- Introduced summary approval procedure to ease prohibitions on certain restricted activities



New types of companies

Private Company Limited by Shares (LTD)

Minimum one director (in which case requirement to appoint a separate secretary)

One document constitution

No objects clause – capacity not limited

May adopt written AGMs rather than holding a physical meeting

No name change required

New model form of private company limited by shares more suitable for the more straightforward of structures

Not entitled to list securities (debt or equity) for sale to the public

The Act provides for an 18 month transition period after the Act commences during which existing private companies will need to decide which type of new entity best suits their needs. Those that elect not to convert to either type of new entity will, during the transition period, be treated as a DAC and at the end of the 18 month period on 30 November 2016, will automatically become an LTD.

Designated Activity Company (DAC)

Minimum two directors

Memorandum and articles of association

Objects clause – capacity limited

Must hold physical AGM (unless a single member company in which case written AGMs permitted)

Name change required (with resultant changes to stationary, websites, seals etc.)

- Certain entities will be required to convert to a DAC (e.g. regulated financial institutions)
- Private limited companies with banking covenants restricting activities or those governed by a shareholders' agreement or party to a joint venture may favour a DAC over a LTD

Not entitled to list equity securities for sale to the public but may list qualifying debt securities

A company of any type may, by following the relevant procedures set out in the Act, re-register as any other type of company provided for under the Act.

We recommend that existing private companies actively make the decision as to which entity they wish to become and that they convert before the expiry of the transition period. We can advise as to the most practical and cost effective way of doing this.

Other company types

Public Limited Companies (PLCs)

- The PLC continues to be recognised as a company type under the Act and there are few substantive changes to the existing law governing PLCs
- PLCs continue to be permitted to have shares listed on a stock exchange and offered to the public
- PLCs continue to have a memorandum and articles of association and objects clause
- PLCs are now permitted to have only one member (previously required to have at least seven)
- No name change required for existing PLCs
- PLCs may now avail of the Summary Approval Procedure in respect of some restricted activities e.g. access to pre-acquisition profits

Guarantee companies (CLGs)

- An existing guarantee company with no share capital was deemed to be a CLG on commencement of the Act. Guarantee companies with a share capital are treated as DACs
- The most popular type of company used by charities, sports clubs and management companies, particularly property management companies
- Continues to have a memorandum and articles of association and objects clause
- A name change is required as the name of the CLG must end with one of the following 'company limited by guarantee' or 'CLG' (unless exempt from doing so under the Act)
- May have only one member (previously required to have at least seven)
- Audit exemption is available (although any member can object to such exemption and require the CLG to carry out an audit)
- Physical AGM may be dispensed with if the CLG has only one member in which case written AGMs permitted

Unlimited companies (ULC)

- ULCs encompass private unlimited companies with a share capital, public unlimited companies with a share capital and public unlimited companies without a share capital (whose liabilities are guaranteed by its members)
- ULCs continue to have a memorandum and articles of association and objects clause
- May have only one member (previously required to have at least two)
- A name change is required as the name of the ULC must end with one of the following 'unlimited company' (or the Irish equivalent) or 'UC' (unless exempt from doing so by the Minister for Jobs, Enterprise and Innovation)
- No restriction on ULC that previously re-registered from limited to unlimited subsequently re-registering to limited and vice versa
- Physical AGM may be dispensed with if the ULC has only one member in which case written AGMs permitted
- Statutory distribution rules no longer apply to ULCs i.e. distributable reserves no longer required for a distribution

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Directors' duties

For the first time, directors' common law fiduciary duties have been codified. Whilst this codification now gives greater clarity to directors as to what is expected of them, it is important to note that the list is non-exhaustive and existing duties (contained in the Act, other legislation and case law) continue to apply.

The duties apply to all directors whether or not they have been formally appointed (i.e. shadow and de facto directors). The concept of 'de facto director' is now defined in the Act and the definition of 'shadow director' has been refined.

Codification of fiduciary duties

- act in good faith
- act honestly and responsibly
- act in accordance with the company's constitution and to exercise those powers only for lawful purposes
- not use company property unless approved by the members or the company's constitution
- not fetter discretion unless permitted by the constitution or unless it is in the company's interest
- avoid conflicts of interest
- exercise care, skill and diligence and
- have regard for the interests of members as well as employees.

Directors' duty of Disclosure

The Act eases the obligation on directors and secretaries to disclose certain interests in shares or debentures in the company or any group company. De minimis interests (when aggregated with those of connected persons) amounting to less than 1% in nominal value of the company's issued share capital carrying voting rights, do not need to be disclosed.

Directors' Compliance Statement

The Act requires the directors of all PLCs (other than Part 24 investment companies) and LTDs, DACs and guarantee companies that reach prescribed thresholds (balance sheet in excess of €12.5 million and turnover exceeding €25 million) to prepare a statement of compliance with company and tax law to be included in the directors' report in the statutory financial statements, and to ensure that the company adopts appropriate compliance measures. Unlimited companies are not subject to this requirement.

Directors Loans

The Act introduced changes to the requirements relating to directors' loans making it essential for such loans to be formally documented.

Company Secretary

The Act provides that directors have a duty to ensure that the person appointed as company secretary has the requisite skills or resources necessary for this role, or access thereto (including, where required, the appointment of a reputable corporate service provider). We can assist by providing companies with the company secretarial services they require.

Summary approval procedure

A key innovation, the Act introduced a simplified written approval process for certain restricted activities (i.e. those that may prejudice shareholders or creditors). The following briefly outlines the relevant restricted activities; the steps to be taken to obtain approval; whether an auditor's report is required for approval; and whether court approval for those activities remains an option.

Restricted Activity	Members Special Resolution	Directors' Solvency Declaration	Auditor's Report	Available to Plcs	Court Approval Option
1. Financial Assistance in connection with the purchase of a company's own shares or those of its holding company	✓	✓	x	x	x
2. Reduction in Company Capital	✓	✓	✓	x	✓
3. Variation in Company Capital	✓	✓	✓	x	✓
4. Pre-Acquisition Reserves being treated in holding company's financial statements as profits available for distribution	✓	✓	✓	✓	x
5. Provision of loans, credit or guarantees to directors or persons connected with them	✓	✓	x	✓	x
6. Mergers of domestic private companies	✓	✓	x	x	✓
7. Members Voluntary Winding Up	✓	✓	✓	✓	x

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Other key innovations

Mergers and divisions regime

The Act contains new procedures to merge and divide private companies. For the first time there will now be a statutory procedure allowing two Irish private companies (at least one of which must be limited) to merge so that the assets and liabilities of one transfer to the other, after which the transferor company is dissolved. The merger can occur using the summary approval procedure (outlined above) without the requirement of court approval. The new merger regime is modelled on the existing cross-border mergers regime which has been successfully used by many Irish companies. The summary approval procedure does not apply to divisions.

Corporate authority

The Act provides that a LTD has the option to register with the Companies Registration Office (CRO) the name of any person who has unqualified authority to bind the LTD. Once authorised by the board and registered with the CRO, the registered person is taken to be duly authorised to bind the LTD until the CRO is notified to the contrary. This should make it easier for third parties entering into contracts with private companies.

Audit exemption

Under the Act an LTD, a DAC, guarantee companies and dormant companies may avail of the audit exemption where two of the three following conditions are met (previously companies had to meet all three of these conditions) (i) the balance sheet total of the company does not exceed €4.4m; (ii) the amount of turnover of the company does not exceed €8.8m; and (iii) the average number of employees does not exceed 50.

Alignment of group accounting

For the purposes of group accounts there is now a common definition of 'subsidiary' as the Act combines the definition of 'subsidiary company' which was contained in the Companies Act 1963

with the definition of 'subsidiary undertaking' previously contained in the European Communities (Companies: Group Accounts) Regulations 1992. In addition, for the first time in Irish company legislation a 'wholly-owned subsidiary' is now specifically defined. It is worth noting that definitions of these terms in documents created before the commencement of the Act will not be affected unless the parties to those documents agree otherwise.

Place of business

The Act disregards the concept of a 'place of business' and provides that the presence of a non-Irish company within Ireland will be known as a 'branch'.

Bearer shares

A shareholder holding a bearer instrument in relation to shares in a company entitles the holder of that instrument to transfer the shares that are the subject of that instrument by delivery. The Act now prohibits a private company from issuing a bearer instrument. Where a private company purports to do so the shares are not considered to be issued or allotted to the particular subscriber and the cost of the subscription is deemed to be a debt due by the company to the particular subscriber.

Charges and registration

The Act introduced significant amendments to the law relating to charges and debentures and helpfully clarifies the rules relating to the priority of charges. The definition of a 'charge' now excludes, amongst other things, charges created over an interest in cash, shares and money credited to a bank account. The Act also introduced a new optional two-stage procedure for registration of a charge whereby an advance notice is delivered to the CRO of a client's intention to create a charge allowing the client to secure priority before the charge is actually created.

Share Premium

The Act introduced exceptions, in certain merger-type arrangements, to the general rule that premium received on shares must be accounted for in a share premium account which forms part of the capital of the company.

Revision of defective financial statements

The Act introduced a new practice for revision of defective financial statements which will allow for the preparation, approval, audit and filing of revised financial statements in relation to a prior year.

Classification of criminal offences

The Act introduced a new four-tier categorisation of offences for breaches of the Act, these are as follows:

Category 1

Up to €500,000 fine and 10 years imprisonment

Category 2

Up to €50,000 fine and 5 years imprisonment

Category 3

Up to €5,000 fine and 6 months imprisonment

Category 4

Up to €5,000 fine only.



How we can help?

The Act introduced significant changes which will affect every company, director and shareholder. We have a dedicated team that can advise you on all aspects of the Act in a practical, reliable and timely manner. We offer a seamless integrated service which will ensure your business is Act compliant.

Contact us

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Produced by: KPMG's Creative Services. Publication Date: June 2016. (1386)