

New Company Act 2014



The Companies Act 2014 was signed into law in December last year and will come to the fore on the 1st June 2015. There will be significant changes for all companies. In this handy document we summarise what it might mean for your business.

Introduction:

The new company act will commence on the 1st June 2015. It will replace all company law statutes currently in law in Ireland and is expected to simplify all Company law.

New Company Act 2014:

The new company act provides for the following formats of registered companies:

- Private Limited Company (LTD)
- Company Limited by Guarantee (CLG)
- Designated Activity Company (DAC)
- Public Limited Company (PLC)
- Unlimited Company with share capital (ULC)
- Public Unlimited Company with share capital (PUC)
- Public Unlimited Company without share capital (PULC)

Following the commencement of the act on the 1st June 2015 there will be a 'transition period' of 18 months for companies to re-register in one of the new formats. This will mainly impact on Private Limited Companies, which will have the following choices:

1. Convert to the new format of Private Limited Company (LTD).
2. Convert to a Designated Activity Company (DAC), within the first 15 months of the transition period.
3. Elect to do nothing – the company will automatically convert to a LTD at the end of the 18 months transition period.

We recommend that clients identify any dormant Private Limited Companies that could be voluntarily struck off the register in order to reduce and avoid administration work and costs.

Regarding many of the other company types set out above, no further action is required in relation to conversion and registration. Under the new company act Companies Limited by Guarantee may be constituted with only one member, compared to the previous minimum of seven members. The AGM may only be dispensed with where there is only one member. Companies Limited by Guarantee and Unlimited Companies must include the words 'Company Limited by Guarantee' and 'Unlimited Company' respectively in their company name. If no action is taken to change the name using the form N3 during the transition period then it will automatically change at the end of the period.

LTD vs. DAC

LTD

- Must have at least one director and a company secretary.
- Does not need an AGM if a unanimous written resolution is signed.
- One document constitution, without an objects clause (i.e. unlimited company).
- Does not need to have authorised share capital.
- Cannot list debt securities.

DAC

- Must have a Company Secretary and at least 1 director.
- Can only dispense with holding an AGM if there is one shareholder.
- Two document constitution, which is a Memo & Arts, containing an object clause.
- Can list debt securities.
- Alter its name to include 'DAC' or 'Designated Activity Company'.
- Can either be a Private Company Limited by shares or Limited by guarantee with a share capital.
- Incorporated for a specific purpose for which the shareholders wish the capacity of the Company to be clearly defined.

Registering a LTD Company

A new form constitution is to be adopted by special resolution of the members (shareholders) or by resolution of the new Directors. It is preferable however that the new form constitution is adopted by special resolution of the shareholders, given that one adopted by the directors would remain bound by the existing options in its articles of association.

The new form constitution is to be filed with the relevant form N1 to the CRO, upon completion of filing the CRO will then issue a new certificate of incorporation.

Registering a DAC

Voluntarily, by ordinary resolution, or compulsorily on notice by a shareholder holding more than 25% of the total voting rights or by court order following application by certain qualifying members or creditors.

A copy of the amending resolution is to be filed to the CRO with a copy of the new memo and arts and the relevant form N2, upon completion of filing the CRO will then issue a certificate of incorporation.

The company suffix will then change from 'LTD' to 'DAC'. A new company seal should also be obtained and the company name should be amended on the company website, email footers and all signage and stationary. Share certs should also be amended with the name change.

It is expected however that registering as a DAC will be appropriate in only a handful of cases. Certain companies will be required to register as DAC's for example insurance companies.

If you wish to become a DAC you must initiate the process before 31 August 2016.

Do Nothing

As of 30th November 2016, the expiration of the transition period of 18 months, the company will be deemed to have become a LTD. The existing memo and arts will be interpreted as its constitution with the exception of its object clause and any provision that prevents alliteration of the articles. The CRO will then issue a new certificate of incorporation.

It is not considered the best viable option for those companies where the most appropriate option is to be registered as a DAC.

During this 18 month transition period all existing private Companies Limited by shares will operate under DAC laws unless they elect to convert to a LTD.

Company Secretary

The Company Secretary under the new legislation must have the skills necessary so as to enable him or her maintain the records required to be kept in relation to the company. A Company Secretary can either be a person or a body corporate, this means that in some cases an external party can act as the Company Secretary or the Company Secretary will outsource the maintenance of the records to a skilled third party.

Audit Committee

If you have a turnover of more than €50M per annum in the last two financial years you will be obliged to have an audit committee once the new legislation comes into effect.

Audit Exemption

Dormant companies, parent and subsidiary companies, guarantee companies and Private Unlimited Companies that could not avail of audit exemption under the previous legislative may now avail of audit exemption provided the various criteria are met. The Directors of all companies that

do not avail of audit exemption have to provide a statement confirming that there is no relevant audit information they are aware of which has not been made available to the auditor.

Directors Duties

The New Company Act 2014 sets out the key duties of the directors in statutory form for the first time, as follows:

- Act in good faith in what the director considers to be the interests of the Company
- Act honestly and responsibly in relation to the conduct of the affairs of the Company
- Act in accordance with the Company's constitution and exercise his/her powers only for the purposes allowed by Law;
- Not to use the Company's property, information or opportunities for his/her own or anyone else's benefit unless expressly permitted by the constitution or is in the interest of the Company;
- Not to restrict his/her power to exercise independent judgement unless it is expressly permitted by the constitution or is in the interest of the Company;
- Avoid conflicts of interest unless permitted by the members
- Exercise care, skill and diligence and
- Have regard to the interest of the Company's members

Directors Compliance Statements

The New Company Act has introduced the requirement that the directors of large Companies include a Directors' Compliance Statement with the Directors Report, this should set out details of compliance with relevant obligations which then must be filed along with the annual returns to the CRO. A Large company is defined as having a turnover > €25m and a balance sheet total > €15m.

Financial Year End

The CRO must be notified of the changes in a company's financial year end using a form B78A. It can only be done once every 5 years and the maximum length of an accounting period will be 18 months under the new Act. Parent and subsidiary companies should have the same year end unless there are substantial reasons for not doing so.

Written Resolution

A written resolution can only be passed unanimously, under the new legislation it has to be signed by more than 50% of the voting rights (for an ordinary resolution) and more than 75% for a special resolution.

Loans to Directors

Loans between Companies and Directors must now be properly documented. There is a summary approval procedure which allows for loans to Directors to be legalised in certain circumstances. 75% or more shareholder agreement is needed to legalise them and a declaration setting out certain required information must be foiled to the CRO within 21 days of the loan being made.

CRO forms

All CRO forms will change from the 1st June 2015. Old version will not be accepted after the date and new version will only be accepted from the 1st June onwards, not beforehand.

Registered Office Agent

Under the New Company Act 2014 a Company's registered office can be placed in the care of an agent who has an office in the State and is approved by the Registrar of Companies. If you want to use your agents address as their registered office have to complete a B2 or A1 form which is filed in the CRO.

Contact US:

If you have any questions or queries relating to the New Company Act 2014 and how it may impact your business please don't hesitate to contact TRA Professional Services

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