

Corporate Department

# Companies Act 2014

## A Guide to Key Provisions

## Companies Act 2014 – A Guide to Key Provisions

**Published: 16 January 2015**

The Companies Act 2014 (“the Act”) was signed in to Law on 23 December 2014 and it is expected that it will become operative in June 2015. Once commenced it is hoped that the Act will provide significant benefits to companies. Now that the Act is signed, businesses should consider the terms going forward in relation to any reorganisations they may be planning.

In addition, group structures should be reviewed to identify the different types of companies within the group, e.g. limited, unlimited, places of business, and determine how the Act may impact upon them. Dormant Companies should be determined and considered as to whether they are required going forward.

The Act will repeal all existing company law statutes and a majority of statutory instruments however the repeal of existing legislation will not affect the incorporation of any company already registered under any current company legislation. It is anticipated that the Act will commence in June 2015. The Act provides for a transition period of 18 months which will take effect once the Act commences and during this period private companies limited by shares will need to consider their options with regard to conversion under the Act. These options are specified below.

### Structure of the Act

The Act consolidates the existing 17 Companies Acts which date from 1963 to 2013 into one Act and introduces new provisions. The Act is set out in 25 parts and extends to over 1,400 sections.

### Steps to be taken

Existing Private Companies limited by shares (“EPC”), which represent the majority of companies registered in Ireland, need to consider the options available to them.

During the transition period, EPCs have the following options:

Option 1 – Convert to the new model company limited by shares (“LTD”);

Option 2 – Re-register as a Designated Activity Company (“DAC”).

It is anticipated that most companies will convert to the new private company limited by shares model (LTD) and this can be done by way of special resolution.

### Options available

Option 1 – Conversion to a LTD during the transition period can be done by way of a special resolution and compliance with the provisions of the Act.

Option 2 – Re-registration as a DAC during the transition period can be done by way of an ordinary resolution passed not later than three months prior to the transition period.

Existing private companies that take no action during the transition period will automatically be converted to an LTD.

While a default mechanism is available, this is not recommended as clients should engage with the provisions of the Act so as to ensure that their Constitution will now reflect the current terms of the Act rather than relying on old provisions of table A which will be incorporated in current Memorandum and Articles of Association.

## Which option is most suitable?

### LTD

It is anticipated that most companies will adapt to the new LTD model being the more flexible of the two options available.

The features of a LTD include;

- It will have full unlimited capacity to undertake business, no objects clause,
- Single Constitution rather than a Memorandum and Articles of Association,
- It can dispense with the holding of an AGM,
- It can have one director,
- It must have two officers as it will require a secretary,
- Directors and Secretaries must be a minimum of 18 years.

### DAC

A DAC is very similar to the existing private company limited by shares currently provided for under the Companies Act 1963 – 2013. Companies which continue to need an objects clause will need to reregister as a DAC or those that are prohibited from being an LTD e.g. an insurance undertaking.

Features of a DAC include;

- It will continue to have an objects clause,
- It will have a Memorandum and Articles of Association but these will together comprise its Constitution,
- It must have two directors,
- It can apply to have debt instruments listed,
- It cannot dispense with the holding of an AGM where it has more than one member,
- It will have the words 'Designated Activity Company' or 'DAC' as part of its name.

## Steps for other types of companies

It is only existing private companies limited by shares ("EPC") which need to take action in terms of conversion or reregistration during the transition period. Other companies do not need to take such action.

### Public Limited Companies (PLCs)

A PLC incorporated under existing companies legislation will continue in existence under the Act on commencement. Part 17 of the Act sets out the Law relating to PLCs. The Memorandum and Articles of Association of a PLC registered before the commencement of the Act shall, save to the extent that they are inconsistent with any mandatory provisions in the Act, continue in force and can be altered or added to in accordance with the conditions under which Memorandum or Articles are permitted to be altered under the Act in the case of PLCs.

- PLC will continue to have an objects clause,
- A PLC will have a Memorandum and Articles of Association but these will together comprise its Constitution,
- A PLC must have at least two directors,
- A PLC cannot dispense with the holding of an AGM if it has more than one member,
- A PLC, unlike a LTD or a DAC, has the capacity to list and offer and issue any securities (including shares) to the public subject to compliance with provisions of the Act,
- A PLC can have one member (currently the minimum is seven).

### Unlimited Companies

There are three types of unlimited companies recognised under the Act being:

- A private unlimited company with a share capital (ULC);
- A public unlimited company with a share capital (PUC);
- A public unlimited company without a share capital (PULC).

An unlimited company of any kind does not need to convert under the Act. However unlimited companies by the end of the transition period must change their name to include the words 'Unlimited Company' at the end of the name. An unlimited company will have a Constitution which will consist of a Memorandum and Articles of Association and will have an objects clause. The main change in the law as it will apply to unlimited companies on commencement is that they need only have a single shareholder or member. Unlimited companies must continue to have at least two directors. An unlimited company will not, on commencement of part 19 of the Act, be subject to any restrictions in its ability to make distributions, as is currently the case. From the commencement of the Act, unlimited companies that are already in existence will continue in existence and will be deemed to be a ULC, a PUC or a PULC depending on what type of company they currently are. The provisions relating to the reduction of share capital of an unlimited company will continue to apply.

### **Company Limited by Guarantee without share capital (CLG)**

The Act continues to provide for companies limited by guarantee not having a share capital, now described as CLG's and are provided for in Part 18 of the Act. Companies limited by guarantee with a share capital are now considered to be DAC's limited by guarantee and are provided for in Part 16 of the Act. The CLG is a company most properly used for charities, social clubs and property management. The CLG will have a Constitution which will be in the form of a Memorandum of Association and Articles of Association. It will continue to have an Objects clause. The Memorandum and Articles of Association of a CLG registered before the commencement of the relevant provisions of the Act shall continue in force save to the extent that they are inconsistent with the mandatory provisions of the Act.

- A CLG does not have to convert or register under the Act but shall continue in existence on and from the commencement of the Act,
- A CLG will have to change its name to include the words 'Company Limited by Guarantee' or 'CLG' for 'Ltd' at the end of its name,
- A CLG must have two directors,
- A CLG cannot dispense with the holding of an AGM where it has more than one member.

The only companies which need to consider the conversion process during the transition period will be existing private companies limited by shares. PLCs, unlimited companies and companies limited by guarantee continue in existence under the provisions of the Act.

### **Other key provisions of the Act**

#### **1 Summary Approval Procedure (SAP)**

The introduction of the Summary Approval Procedure will now make it easier for certain corporate reorganisations and share capital procedures to be carried out without the need to seek court approval. The Summary Approval Procedure which will involve the swearing of a declaration by the directors can now be used to sanction:

- Financial assistance for the acquisition of shares (known as Section 60 under the existing company legislation);
- Reduction in company capital (currently requiring court approval);
- Variation of company capital on reorganisation;
- Distribution of pre-acquisition profits (currently known as Section 149(5) Companies Act 1963, Prohibition on pre-acquisition profits);
- Prohibition on loans to directors and connected persons;
- Mergers; and
- Members' voluntary winding up.

This procedure will require strict adherence but will be of assistance in corporate restructurings and reorganisations.

## **2 Mergers**

Part 9 of the Companies Act will allow domestic Mergers to be effected by means of the Summary Approval Procedure or by way of a special resolution which is confirmed by a court order. Such Mergers, being Mergers by Acquisition, Mergers by Absorption and Mergers by Formation of a new company are not available to Irish private companies. Similar Mergers can be carried out under the European Communities (Cross Borders Mergers) Regulations 2008 but these would involve one company being an EEA Company. The provisions under the Act will be available where all the companies involved are Irish companies (without any EEA Companies) provided none of the merging companies are a PLC.

## **3 Corporate Capacity**

The doctrine of ultra vires will cease to apply to an LTD which will no longer have an objects clause. This means that such a company will have an unlimited corporate capacity. Other companies do retain their objects clause but there are relaxations in the application of the ultra vires rule.

## **4 Director's Compliance Statement**

The Act reintroduces the provisions of Director's Compliance Statements which will apply to all PLCs and certain large private companies which exceed balance sheet and turnover thresholds as provided in the Act.

Unlimited companies are not obliged to have Director's Compliance Statements.

## **5 Relevant Audit Information Statement**

The annual Director's Report must now include a statement confirming:

- There is no relevant audit information of which the company's auditors are unaware; and
- The directors have made themselves aware of any relevant audit information and establish that the company's auditors are also aware.

This is a new provision introduced under the Act.

## **6 Company Secretary**

The directors are now required to make sure that the company secretary has the skills or resources necessary to discharge his or her statutory and other duties.

## **7 Majority Written Resolutions**

The Act introduces the concept of majority written members resolution where the requisite majority, being either 75% for special resolution or 50% for an ordinary resolution, is required. The effective date is seven days for ordinary resolution or 21 days for special resolution subject to compliance with provisions of the Act.

## **8 Annual General Meetings**

Annual General Meetings can be dispensed with by an LTD and single member DAC's, PLCs, CLG's and unlimited companies provided that those companies adhered to the procedures involving acknowledgement of receipt of the Financial Statements, resolving on such matters as would have been resolved at the AGM and confirming there is no change in auditor.

## 9 Director's Duties

Director's duties have become codified under the Act with eight key duties. In addition, the director of a company may have regard to the interests of a particular member where the director has been appointed or nominated for appointment by that member.

## 10 Audit Exemption

The audit exemption will be extended and will be available on commencement of the relevant Part of the Act in certain group situations (provided there is no objection from their members). The audit exemption is also extended to dormant companies, being companies that have had no significant accounting transactions and whose assets and liabilities consist only of intergroup investments and amounts due from or due to group undertakings, in each case during the financial year in question only. Audit exemption is not available to PLCs.

## 11 Defective Financial Statements

The Act provides a mechanism which will allow for the preparation and approval and filing of revised financial statements in respect of a financial year where the original financial statements did not comply with legislative requirements.

## 12 Director's Loans

Loans to the company by directors or by the company to directors should be documented clearly in writing to avoid the presumptions under the Act applying.

For further information on this topic please contact: Leonora Malone, Partner, Head of Corporate Department, E: [Imalone@efc.ie](mailto:Imalone@efc.ie), or any member of our Corporate Department.

## Contacts



**Leonora Malone**  
Partner & Head of  
Corporate  
T +353 1 202 6453  
E [Imalone@efc.ie](mailto:Imalone@efc.ie)



**Eileen Grace**  
Partner  
T +353 1 202 6455  
E [egrace@efc.ie](mailto:egrace@efc.ie)



**Nicola McGrath**  
Partner  
T +353 1 202 6459  
E [nmcgrath@efc.ie](mailto:nmcgrath@efc.ie)



**John Olden**  
Partner  
T + 353 1 202 6411  
E [jolden@efc.ie](mailto:jolden@efc.ie)



**Gavin Doherty**  
Associate  
T + 353 1 202 6462  
E [gdoherly@efc.ie](mailto:gdoherly@efc.ie)



**Laura McLoughlin**  
Associate  
T + 353 1 202 6519  
E [lmcloughlin@efc.ie](mailto:lmcloughlin@efc.ie)

*This document is intended to provide a general overview and guidance on a particular topic. It is provided wholly without any liability or responsibility on the part of Eugene F. Collins and does not replace the necessity to obtain specific legal advice.*

© Eugene F. Collins 2015