

Company Law

# Company Law Update

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On 21 December 2012 the Minister for Jobs, Enterprise and Innovation introduced the Companies Bill 2012 which is the largest substantive bill to be introduced in the history of the State. The Companies Bill is designed to significantly reform the existing company law regime by consolidating and simplifying Irish company law. The aim of the Companies Bill is to make company law easier to navigate and to make company law obligations easier to understand. We summarise the main provisions of this legislation which will have far-reaching implications for doing business in Ireland.

Under the new legislation the most common type of company in Ireland, the private company limited by shares, will for the first time under Irish company law be placed at the centre of the legislation. The laws applying to private companies limited by shares are set out at Parts 1 to 15 of the Companies Bill. Each other type of company, including public companies, companies limited by guarantee and unlimited companies, has a dedicated part within the Companies Bill.

The Companies Bill proposes many significant changes to the existing laws applicable to private companies limited by shares (CLS) including the following:-

- A CLS will not be subject to the doctrine of ultra vires and will have the same contractual capacity as a natural person – this will remove the requirement for a CLS to have an objects clause;
- A CLS may have only one director – currently the applicable minimum statutory requirement is two directors;
- A CLS may have a one-document constitution that is, the existing memorandum and articles of association will be replaced by one document;
- The necessity for a CLS to have detailed internal regulations in the form of articles of association will be removed as most of the provisions commonly included in articles of association will be contained in the new legislation;
- A CLS will be permitted to have written AGM's where the members consent and the requirement to hold physical meetings can be dispensed with;
- Director's duties will be codified making it easier for directors to understand their duties and responsibilities;
- An omnibus validation procedure will apply to certain regulated activities including transactions with directors, financial assistance, capital reduction and solvent winding ups;

- A CLS will be permitted to engage in domestic mergers which will be equivalent to the current cross-border mergers regime; and
- The directors of a CLS meeting certain thresholds will be required to prepare an annual compliance statement.

It is expected that it will be at least another year before the legislative process to enact the provisions set out in the Companies Bill is completed and the new company law regime is finally in place. We will issue a more detailed memorandum on the Companies Bill over the coming months and we will keep you advised of the Bill's progress through the Oireachtas.

*For further information please contact Sharon McCaffrey (smccaffrey@efc.ie) or your regular Eugene F. Collins contact.*

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