

# The Companies Act 2014: What's Changing?

## Your brief guide to the highlights

### Introduction

The Companies Bill 2012, as passed by the Dáil and Seanad, was signed by the President of Ireland on 23 December 2014, and accordingly is now the Companies Act 2014 (the Act).

The vast majority of the Act's provisions entered into force on 1 June 2015.

The Act, which contains 1,448 sections and 17 schedules, consolidates and reforms Irish company law by condensing the current 17 Companies Acts and numerous related company law provisions into a single comprehensive code of company legislation. While many of the Act's provisions merely restate, with some amendments, the provisions of existing company law, there are also a large number of both new and amended provisions which will affect the way business is done.

This high-level briefing note is intended to provide you with a short summary of some of the more significant of these changes. Contact us if you would like further information on any aspect of the Act.

### Overview

#### Action by private companies

- All existing private companies limited by shares will be required to convert to a particular company type (most will be able to, and will wish to, convert to a company limited by shares (known as a CLS or LTD) or a designated activity company (DAC)). Otherwise, after eighteen months from commencement of the Act, they will be "deemed" to have become a CLS. The directors will have a statutory obligation under the Act to address this, and it is better to have a clear, amended company constitution, so inaction is not advisable. We therefore recommend that clients:
  - » review their company portfolios and decide what is the best structure (e.g. CLS or DAC) to suit their business needs; and
  - » determine the required form of constitutional documents so that they can avail of the benefits of the CLS/DAC structures, as appropriate.

#### Action by public limited companies, unlimited companies and companies limited by guarantee

- Some PLCs will need to take legal advice regarding their shareholder authorities to allot shares, disapply statutory pre-emption rights and buy back their own shares after 1 June 2015, and action may need to be taken to ensure that the necessary authorities continue after that date.
- PLCs, unlimited companies and companies limited by guarantee will continue in existence and do not need to convert to another form of company, but unlimited companies and companies limited by guarantee will need to take action to change the company's name to "unlimited" or "company limited by guarantee" (or an abbreviation) (as the case may be) by the end of the 18 month transition period from 1 June 2015. All these company types will also need to review their existing Articles of Association to ensure that they will be in conformity with mandatory provisions of the Act and that, where appropriate, the company has availed of any permitted opt-ins or opt-outs from the legislation.

#### Expanded definitions of subsidiary and holding company

- There are expanded definitions of "subsidiary" and "holding company" which may have implications for the structuring of transactions.

#### Corporate Transactions

- It should be possible to effect on a less costly basis certain transactions, e.g. involving reductions of capital by private limited companies, which previously always required Court approval, and also previously prohibited distributions of pre-acquisition profits by holding companies, by going through a new "Summary Approval Procedure" (SAP), which is similar to the existing financial assistance "whitewash" procedure, though with some differences.
- The consequences attaching to a director making a declaration of solvency without having reasonable grounds for it under the SAP will be severe.
- A number of difficulties which often arise in group reorganisations have been removed or relaxed, e.g. the requirement to establish a share premium account in the case of certain mergers, and it has been put on a statutory footing that non-cash assets can be distributed to members at book value, about which there was previously some legal ambiguity.

#### Mergers

- There are simpler, more cost-effective procedures for statutory mergers, and also divisions, of private companies, modelled along the lines of existing EU cross-border merger legislation; this could become a popular means of acquisition rather than going the traditional share or asset purchase route.

## Corporate governance requirements

- There are increased responsibilities on directors of certain companies, (1) requiring directors to provide compliance statements and (2) also requiring the establishment of audit committees, unless reasons are given why not.
- New statutory audit confirmations from directors are required.
- The requirements in respect of compliance statements, audit committees and directors' audit confirmations apply in respect of financial years beginning on or after 1 June 2015.
- It will be advisable for all loans made by a company to a director, or a director of its holding company or a connected person, and also all loans made by a director or connected person to the company or its holding company to be set out in writing, and to contain clear terms e.g. as to repayment and whether the loan is interest-bearing, as otherwise a number of adverse presumptions will apply, unless the contrary is proved.
- Directors are required to ensure that secretaries have the skills or resources required to discharge their functions.
- The already-established fiduciary duties of directors have been put on a statutory footing.
- The CLS/LTD has unlimited capacity, and can have a single director, but if it does, that person cannot also be the company secretary.
- The CLS/LTD can dispense with holding an AGM if certain conditions are met, regardless of the number of members it has; other company types are able to do so where they have only a single member.
- Corporate governance requirements are set out throughout the Act and there is no longer any Table A, although existing references to Table A in a company's articles can remain.

## Taking Security

- Priority of charges is established by the date of receipt by the Companies Registration Office (CRO) of the filing of the charge, not the date of its creation, as was previously the position, and there are new procedures for registering charges, including the ability to file a notice of intention to create a charge, which will ensure priority for lenders for a period of 21 days. The combined effect of these provisions will lead to changes in the current practice of taking security over loans, in some cases.

Other changes include those related to:

- Organisational matters
- Administration/company secretarial matters
- Financial statements
- New rules on audit exemptions
- Reform of the ultra vires rule
- Majority written resolutions
- Rules on the giving of financial assistance for the purpose of the acquisition of the Company's shares
- Share capital/corporate reorganisations
- Examinerships and liquidations
- PLC's
- Unlimited companies
- CLG's
- Offences, penalties and enforcement

For further information please contact Eithne FitzGerald, Jack O'Farrell or one of your usual Partner contacts at A&L Goodbody.

## PARTNER CONTACTS



### Eithne FitzGerald

Partner, Corporate Department

T: +353 1 649 2311

E: [efitzgerald@algoodbody.com](mailto:efitzgerald@algoodbody.com)



### Jack O'Farrell

Consultant, Corporate Department

T: +353 1 649 2230

E: [jofarrell@algoodbody.com](mailto:jofarrell@algoodbody.com)

Note – This is a summary, for information purposes only, of some of the principal changes to Irish law in relation, chiefly, to private companies, introduced by the Companies Act 2014. Specific advice should always be sought before taking any action.

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