



THE LAW FOR IRISH
COMPANIES
IS CHANGING!

YOU WILL NEED TO
ACT
SOON

An Introductory Guide to the Conversion of your
existing Private Limited Company

February 2015

Soon, the law governing Irish companies will be changing. This means you will have decisions to take, and choices to make, but we are here to help you make the decisions and choices that are best for your company, its directors and shareholders.

The Companies Bill 2012 was signed into law on 23 December 2014 and is now the **Companies Act 2014**. When the new Act enters into force (currently expected to be on 1 June 2015), all existing Irish private limited companies will have to make a decision:-

To convert to the new simplified type of private company –

Company Limited by Shares ("CLS" or "LTD")

or

To convert to the new more traditional company type –

Designated Activity Company ("DAC")

or

To convert to another company type.

There is another option – to do nothing, but we do not recommend this for reasons which we explain below.

The CLS

A CLS (or "LTD", which is the term preferred by the Companies Registration Office) can have just one director and one shareholder. Its internal rules will be set out in one document, with no requirement to include an objects clause, since a CLS will have full and unlimited corporate capacity, and no requirement to have an authorised share capital. A CLS will also be able to dispense with holding a physical AGM, irrespective of the number of shareholders. It may however be desirable in certain cases to continue with two directors and to keep holding meetings having regard to requirements necessary to maintain residence for Irish tax purposes.

The DAC

A DAC is the closest of the new company types to an existing private company. It must have objects clauses, and its name must end with "designated activity company" or DAC. Certain existing private companies will have to re-register as DACs, such as credit institutions and insurance companies or any company which has debt traded or listed on any market.

So what do I have to do?

You will need to choose between a CLS or DAC (or some other company type) in order to ensure your company is structured soundly, in a way that best suits your business needs.

Once that decision is made, you then have to choose what type of company constitution you want, and we can guide you through this process to ensure your constitution meets the requirements of your new company model.

And what if I do nothing?

There are a number of consequences of failure to act. If, within 18 months of the commencement of the legislation, an existing private company has not re-registered, it will be "deemed" to be a CLS, with a one-document constitution consisting of the existing provisions of its Memorandum and Articles (**M&A**), minus its objects and any provision which prohibits alteration of the M&A. However, if a company does not file this new constitution, its publicly filed constitution will not match this actual one-document constitution.

Also, whether or not there is a filing, any provisions of a company's existing M&A, which are inconsistent with a mandatory provision of the Companies Act, will not apply to the company. In addition, by doing nothing the directors could be in breach of their duty to ensure that the new legislation is complied with, and shareholders could seek remedies, including payment of compensation or the purchase of their shares.

Another consequence of doing nothing is that your company will end up as a CLS, and this may be the wrong option for you.

Until it has re-registered, an existing private company will be subject to the law relating to DACs.

So should my company be a CLS or a DAC?

This is the first key question to consider.

If you want to preserve an objects clause, defining what the company can do, for example, because your company is a joint venture company, then you will be more likely to want to re-register your company as a DAC. However a joint venture company is not legally required to become a DAC. If the company has listed debt, or is a credit institution or an insurance company, or if the company's shareholders require it to become a DAC, then you will have to re-register it as a DAC.

If these circumstances do not apply to you then you are more likely to want to re-register as a CLS. In fact we expect the vast majority of existing private limited companies to convert to the CLS company model.

The chart at [Appendix 1](#) to this Guide provides more detail on the conversion options and obligations facing companies in deciding which route to take.

So what is the difference between a CLS and a DAC?

The CLS is intended to be the new model private company limited by shares. It will have a number of advantages over other types of company, including the DAC, which is similar to the existing private limited company.

Key differences include:

- A CLS can have a written AGM, even if it is a multi-member company; a DAC cannot have a written AGM, unless it is a single-member company.
- A CLS can have one director; a DAC must have at least two.
- A CLS will not have an objects clause; a DAC must have one, setting out its designated activities.
- A CLS need not have an authorised share capital; a DAC must have one.
- A CLS will not be able to list any debt securities; a DAC will.

The table at [Appendix 2](#) to this Guide contains a more detailed comparison between the CLS and DAC company types.

On re-registration, the Registrar of Companies will issue a new certificate of incorporation to the company.

If my company converts, can it subsequently convert to another company type?

Companies which have converted to a CLS or DAC can, if they wish, subsequently re-register as another company type.

Becoming a CLS

The best option for converting to a CLS is for the shareholders to adopt a new one-document constitution by special resolution, as soon as possible after the new Act becomes law. There will be an **18-month** transition

period, but the sooner you convert, the better, because otherwise your company will be treated as a DAC during that transition period, which may not be desirable.

The new constitution may resemble the existing M&A, but will have no objects clauses – since a CLS will have full and unlimited corporate capacity. It does not have to have an authorised share capital. In fact, the new constitution could be just one page long, if the company is comfortable to permit its corporate governance to be regulated entirely by the new Companies Act. However we would not recommend this, as you may want to stick as closely as you can to the existing provisions of your constitution or to modify some governance provisions contained in the new Act.

If the shareholders do not convert, **the directors are obliged to convert within 18 months** and to deliver a copy of the new constitution to every shareholder. This gives no flexibility as to the contents of the constitution, and a company cannot opt to dispense with an authorised share capital without a shareholders resolution.

The chart at [Appendix 3](#) summarises the main options open to companies in terms of choosing the type of constitution that would best suit their needs.

Becoming a DAC

To re-register as a DAC the shareholders simply have to pass an ordinary resolution within **15 months** of the commencement of the legislation. If the company has listed debt or certain members or debt holders require the company to convert to a DAC conversion has to be effected by a resolution of the directors. All companies converting to a DAC will be obliged to change the form of their constitution to a single document comprising two parts, a Memorandum and Articles in the prescribed form. Apart from also stating that the company is to be a DAC and making reference to the fact that it is a DAC in its name the constitution will not otherwise change on conversion. As the name suggests, a DAC must have an objects clause setting out its designated activities.

The chart at [Appendix 4](#) summarises what changes need to be made to a company's M&A when converting to a DAC.

A DAC's shareholders can, by passing a special resolution subsequent to conversion to a DAC, separately opt to allow its corporate governance to be regulated entirely by the new Act, but again this is not necessarily in a company's best interests, and a review of the existing Articles is recommended. Any updates to its constitution, other than those required on conversion, will need to be effected by special resolution.

Knock-on consequences of becoming a DAC

As mentioned above, if an existing private company limited by shares re-registers as a DAC, the CRO will issue a certificate of re-registration, and (unless the company is exempt from using the words "Limited" or DAC in its name) since its new name will include the words "designated activity company", or DAC, a number of administrative requirements will arise following re-registration:

- the company will need to obtain a company seal showing the new name of the company;
- the company's website will need to be updated;
- new stationery will need to be ordered;
- any name plates showing the old name of the company will need to be replaced;
- third parties will need to be notified, as appropriate, of the new company name (for example, any companies which have issued shares or debentures held in the name of the company, and any Irish or overseas registers in which the name of the company is recorded); and
- new share certificates will need to be issued.

No such requirements will arise for a CLS as its name will not change.

What about other companies? Do they need to convert too?

Other types of company such as public limited companies, unlimited companies and guarantee companies do not need to convert, although there are changes in the Act affecting such companies in other ways. For example, unless exempted, existing unlimited companies and guarantee companies will have to change their names to include the words (as the case may be) "unlimited company" or "company limited by guarantee" (or an abbreviation), by the end of the 18 month transition period after the legislation enters into force.

Timeframes

The Act is expected to enter into force on **1 June 2015**, although this date is subject to change. However, this time will pass quickly, so companies should now start to consider their options for conversion. See the table at [Appendix 5](#) for more detail on the timeframes.

How we can help

At A&L Goodbody, we can assist you in converting your company, whether to a CLS, a DAC or to some other company type. We have a team of specialists with in-depth knowledge both of the Act itself and of the various conversion obligations and options which have to be considered. We can also advise on the most appropriate form of constitution which your company should adopt and on any tax considerations to be borne in mind if converting to a CLS and thinking of having a single director.

For more information, please contact:



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Note: This Guide is a summary, for information purposes only, of some changes to be introduced into Irish company law by the Companies Act 2014. Specific advice should always be sought before taking any action.

APPENDIX 1

COMPANIES ACT 2014

SOME RE-REGISTRATION OPTIONS AND OBLIGATIONS FOR THE EXISTING PRIVATE LIMITED COMPANY (EPC)

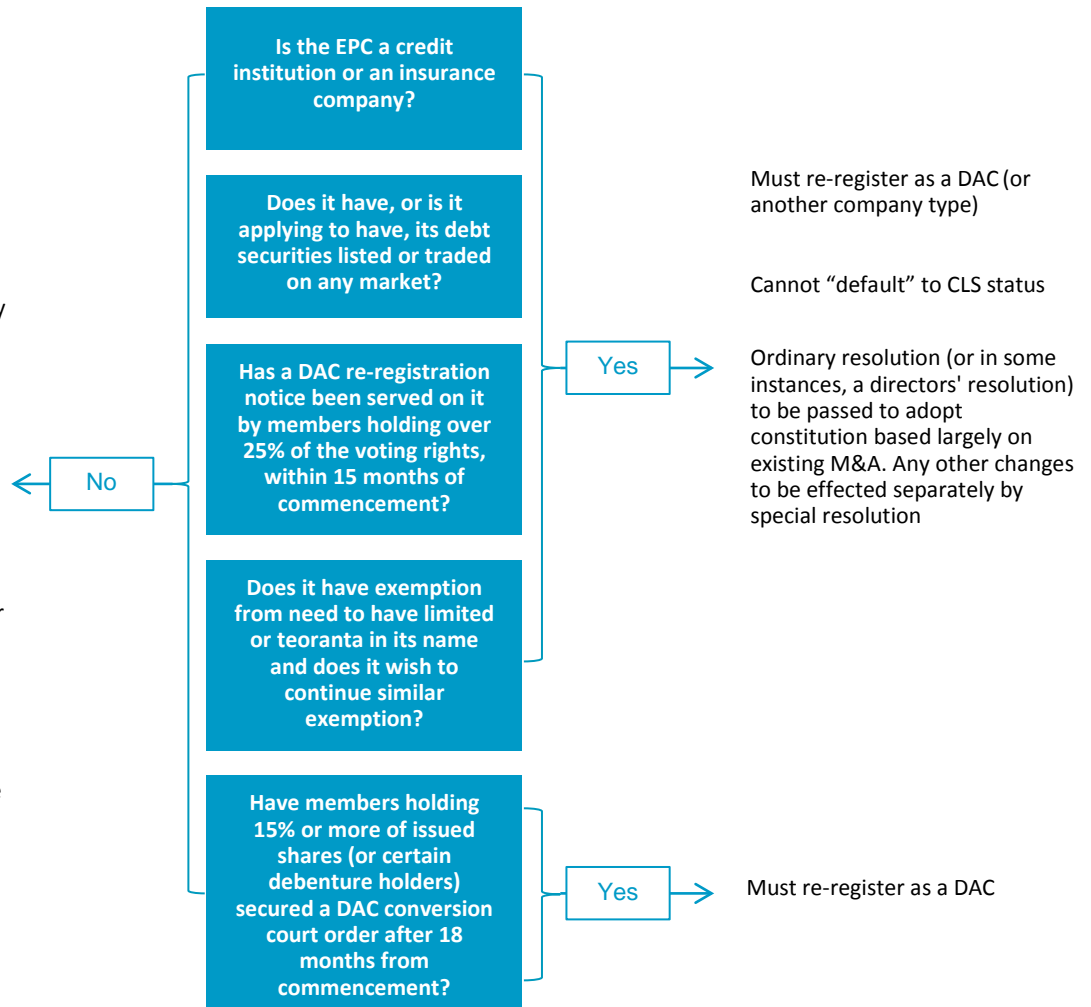
May re-register as a CLS – special resolution passed, and new constitution delivered to CRO within 18 months

If not done – Directors within 18 months obliged to prepare new constitution based largely on existing M&A less objects and deliver to shareholders and CRO – becomes a CLS

Or can re-register as a DAC within 15 months of commencement – ordinary resolution

Or can re-register as any other company type – special resolution

If no constitution delivered, and has not re-registered as a DAC or another company type – becomes a CLS by default – constitution based largely on existing M&A, minus the objects



APPENDIX 2

COMPANIES ACT 2014

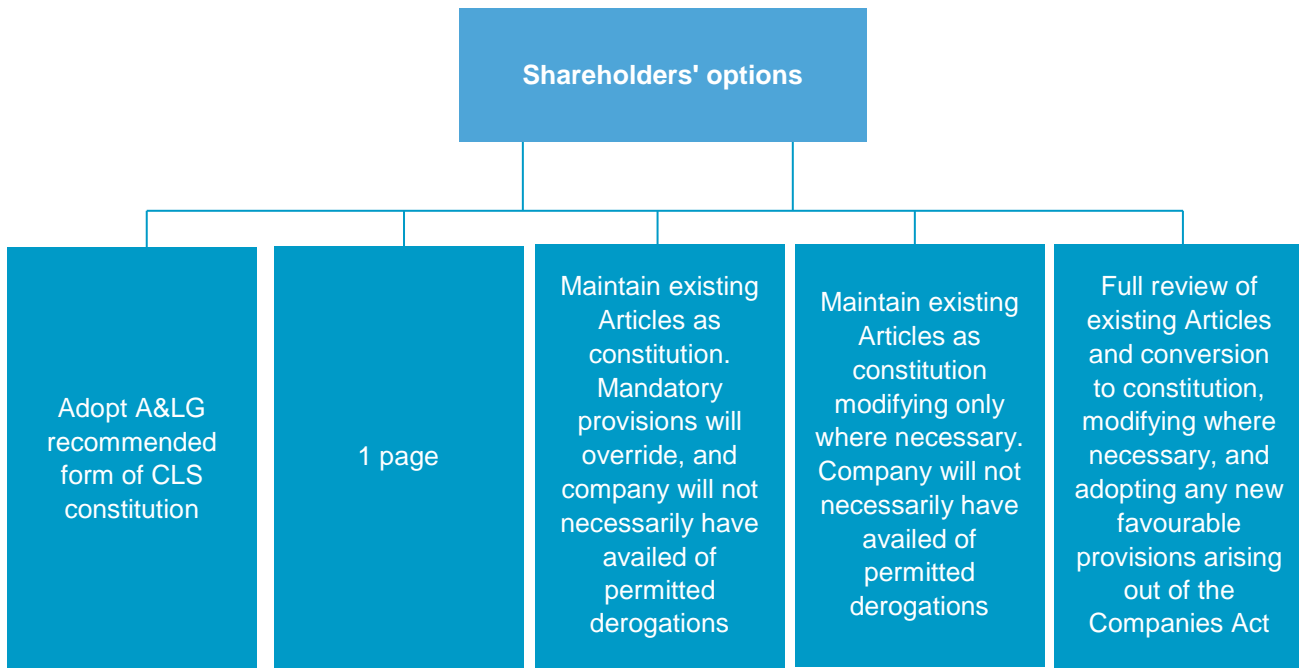
COMPARISON OF THE CLS AND DAC COMPANY STRUCTURES – KEY DIFFERENCES

CLS	DAC
<ul style="list-style-type: none"> A CLS must be a private company limited by shares. 	<ul style="list-style-type: none"> A DAC may be either limited by shares, or limited by guarantee, with a share capital.¹
<ul style="list-style-type: none"> Full and unlimited corporate capacity – no objects clause required. 	<ul style="list-style-type: none"> Must have an objects clause, but ultra vires rule reformed.
<ul style="list-style-type: none"> Will have a single-document constitution. 	<ul style="list-style-type: none"> Will have a two-part, single-document constitution.
<ul style="list-style-type: none"> A CLS name must end in "limited" or "ltd" or "teoranta" or "teo". 	<ul style="list-style-type: none"> DAC name must end in "designated activity company" or d.a.c., or "cuideachta ghníomhaíochta ainmnithe" or c.g.a.
<ul style="list-style-type: none"> May have a single director but if so, will need another natural or legal person to act as secretary. 	<ul style="list-style-type: none"> Must have two directors. One of them can also be the secretary.
<ul style="list-style-type: none"> Need not have an authorised share capital. 	<ul style="list-style-type: none"> Must have an authorised share capital.
<ul style="list-style-type: none"> A CLS may dispense with holding a physical AGM. 	<ul style="list-style-type: none"> A DAC cannot dispense with holding a physical AGM unless it is a single member company.
<ul style="list-style-type: none"> A CLS may not offer securities to the public, subject to specific exceptions. 	<ul style="list-style-type: none"> Likewise, a DAC may not offer securities to the public, subject to specific exceptions.
<ul style="list-style-type: none"> A CLS may not list, or have admitted to trading, any securities. 	<ul style="list-style-type: none"> A DAC will be able to list, or have admitted to trading, debentures which are the subject of certain limited non retail offers. Where the DAC has debentures admitted to trading on an EU/EEA regulated market, it will be required to include a corporate governance statement in the directors' report.
<ul style="list-style-type: none"> Specific provisions on the variation of class rights. 	<ul style="list-style-type: none"> Not applicable to a DAC but the provisions effectively provide for similar rights/obligations.
<ul style="list-style-type: none"> CLS may utilise "majority written resolution" procedure. 	<ul style="list-style-type: none"> DAC may do so, unless its constitution (M&A) provides otherwise.
<ul style="list-style-type: none"> CLS may utilise unanimous written resolution procedure. 	<ul style="list-style-type: none"> DAC may do so, unless its constitution (M&A) provides otherwise.
<ul style="list-style-type: none"> Part 6 of the Act (Financial statements, annual return and audit) applies to all CLSs. 	<ul style="list-style-type: none"> There are certain provisions of Part 6 that are modified in the case of some DACs (e.g. charities, credit institutions or insurance undertakings).

¹ An existing private company can only convert in the manner referred to in this guide to a DAC limited by shares. Other procedures are involved if it is to convert to a DAC limited by guarantee.

APPENDIX 3

OPTIONS FOR NEW CLS CONSTITUTION



²

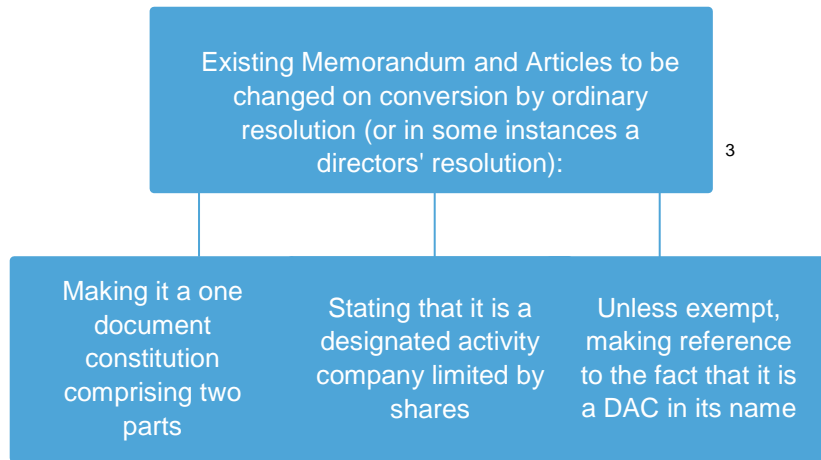
Conversion by directors or deemed conversion

If the directors effect conversion to a CLS, or if a company, after 18 months, is deemed to have converted to a CLS, its constitution has to consist solely of its existing M&A, minus its objects and any provision providing for, or prohibiting alteration of the M&A.

² This has to be in the form set out in Schedule 1 to the Companies Act 2014. If this option is chosen, and the company wishes to know what governance framework will be applicable, it will have to check all the provisions throughout the Act on e.g. appointment and removal of directors, holding AGM's etc. Further, the company will not have availed of permitted derogations from statutory governance provisions e.g. the ability to avoid a "default" restriction on the directors' absolute discretion to decline to register a share transfer, or the right not to have an authorised share capital and in addition will not have specifically provided in its constitution for certain matters which need to be in the constitution if they are to apply, such as the power to acquire its own shares, to vary certain fiduciary duties of the directors, or the right to have an official seal for use abroad.

APPENDIX 4

NEW DAC CONSTITUTION



³ Any other changes will need to be effected by special resolution.

APPENDIX 5

Timeframes: ⁴

Latest date to voluntarily re-register as a DAC under Part 2	15 months from commencement ⁵
Latest date for members holding more than 25% of voting rights to compel re-registration as a DAC	15 months from commencement
Latest date to voluntarily re-register as a CLS	18 months from commencement
If no action taken, existing private company will (save in certain specific circumstances) be deemed to have become a CLS	After 18 months from commencement

⁴ It may be possible to also convert under Part 20 of the Act which is not subject to such timeframes.

⁵ Commencement (entry into force) of the legislation is currently expected to take place on 1 June 2015.