

# COMPANIES ACT 2014



**The Companies Act 2014 (the "Act"), consolidates Irish Company legislation and aims to simplify and reform the obligations of smaller companies by introducing a new model type for private companies limited by shares. Since the Act commenced on 1st June 2015, it has provided a modern state of the art Company Law Code, making it easier to transact business in Ireland**

## What are the key impacts of the Act?

The Act has 24 parts with the first fifteen covering the new model private company limited by shares (LTD). The remaining parts of the Act provide for the other company model types; designated activity company (DAC), company limited by guarantee (CLG), public limited company (PLC), public unlimited company with share capital (PUC), public unlimited company without share capital (PULC), private unlimited company with share capital (ULC), unlimited company (UC).

Essentially, the vast majority of Irish companies in existence at present are private companies limited by shares. As such, all companies that are currently registered as private companies limited by shares will need to choose whether to convert to a LTD or to a DAC.

Some of the main elements of a LTD and DAC are as follows:

<i>Company Limited by Shares (LTD)</i>	<i>Designated Activity Company (DAC)</i>
A LTD is a private company limited by shares.	A DAC may be either limited by shares, or limited by guarantee, with a share capital
Will have a single document constitution which replaces the need for a Memorandum and Articles of Association	Will have a two part document constitution.
It will not have an objects clause because it has full unlimited capacity to carry on any legal business.	Must have a Memorandum and Articles of Association with an objects clause, but the ultra vires rule will be reformed.
May have a single director, aged over 18. Where a company has a single director they will need another person or a body corporate to act as Company Secretary.	Must have two directors, each aged over 18. One of them may also be the Company Secretary. A Body Corporate can act as Company Secretary. The Directors must ensure that the Company Secretary has either the skills or resources necessary to discharge his/her statutory and other legal duties
Need not have an authorised share capital.	Must have an authorised share capital.
May dispense with the holding of a physical AGM.	A DAC cannot dispense with holding a physical AGM unless it is a single member company.
May utilise the majority written resolution procedure.	DAC may utilise majority written resolution procedure, unless its constitution (M&A) provides otherwise.

The majority of private companies limited by shares were converted as of 30 November 2016 to the LTD model. They will have a simplified constitution, can have a minimum of one director and will not be required to change their name. The DAC, on the other hand, will have a two part constitution document, must have a minimum of two directors and will require a change of name.

### Secretary's Duties

Each company must have a company secretary who will be responsible for the co-signing of the annual return with one of the directors of the company, ensuring that all CRO and Revenue filing requirements are met within the specified timeframes, maintaining the statutory registers and maintaining up to date minute books of meetings of both the Board and the Members. The directors of the company must ensure that the company secretary has the necessary skills and resources to perform his/her duties.

Each company secretary must, on appointment, make a declaration acknowledging their responsibilities as company secretary.

A body corporate can continue to act as company secretary.

### Directors' Duties

Under the Act, directors' fiduciary duties have been codified making it easier to determine what is expected of a director. Directors are now responsible for complying with the Companies Act (previously this was the responsibility of the company secretary).

The duties of the director are now much clearer and cover:

- a) acting in good faith in the best interests of the company;
- b) acting honestly and responsibly in relation to the conduct of the affairs of the company;
- c) acting in accordance with the company's constitution and exercising those powers only for lawful purposes;
- d) not using company property unless approved by the members or permitted in the company's constitution;
- e) not agreeing to restricting the director's power to exercise an independent judgment;
- f) avoiding conflicts of interest unless released by the members or by the company's constitution;
- g) exercising care, skill and diligence; and,
- h) having regard for the employees and members of the company.

### Directors' Compliance Statements

All PLCs and any CLGs, LTDs or DACs with a balance sheet total greater than €12.5m and turnover in excess of €25m for the year, will be required to prepare a directors' compliance statement. Unlimited companies are not subject to this obligation.

Each company that is impacted will be expected to outline in their annual statement the policies of the company and that these policies are appropriate for that company to ensure compliance with its relevant obligations under Company Law and Taxation Law.

In addition to the annual statement, the directors of the company will also be responsible for ensuring that appropriate structures are in place in the company to ensure compliance with its obligations.

Finally, directors must conduct an annual review of such structures and policies.

### New categories of offences

The act details four categories of offences:

- Category 1 offences are the most serious and carry a fine up to €500,000 and/or up to a prison term of 10 years.
- Category 2 offences up to €50,000 fine and/or up to a 5 year prison term.
- Category 3 offences carry a maximum €5,000 fine and/or up to 6 months in prison.
- Category 4 offences cover fines not exceeding €5,000.

### Financial Statements – The Main Changes

- It will be necessary for large companies that have an annual turnover of €50m and above, in the previous two financial years to have an audit committee.
- It will be possible to avail of audit exemption where a company meets any two out of three prescribed criteria; this will lead to more companies being in a position to avail of the exemption.
- The ability to claim audit exemption has also been extended to certain dormant companies and companies limited by guarantee as well as certain small groups.
- Changes have also been introduced relating to the alignment of year ends for subsidiary companies and new procedures to allow for defective financial statements from a prior year, to be revised.

### Summary Approval Procedure

A written approval process was introduced in the Act with the intention of simplifying the procedure for certain restricted transactions. Restricted transactions that may be dealt with using the new procedure include:

- (i) financial assistance for purchasing a company's own shares;
- (ii) reduction of share capital;
- (iii) variation of share capital in a reorganisation;
- (iv) loans to directors;
- (v) members voluntary winding up;
- (vi) domestic private company mergers; and,
- (vii) treatment of pre-acquisition reserves in respect of profits available for distribution

In all cases, the Summary Approval Procedure will require a special resolution of the members (mergers must have unanimous approval of the members) and a declaration of solvency from the directors of the company. In some cases it will also be necessary to have an independent report (generally from someone qualified to be the company's auditors). There will also be strict filing requirements for the declarations. Overall, it is expected that the process will be less time consuming and less expensive for companies as there will be no requirement to attend the High Court.



### Other initiatives in the act include

**Charges** - a two tier process introduced for registering a charge where notice of a lender's intent to create a charge may be provided to the CRO. This would allow the lender the opportunity to secure priority (up to 21 days in advance) before the charge is created.

**Company Capital** - a company's capital will now be made up of the following elements:

1. The aggregate value of the consideration received by the company in respect of shares allotted by the company – expressed as a currency amount; and
2. Un-denominated capital which includes the share premium account, the capital conversion reserve fund and the capital redemption reserve fund.

A company will be entitled to vary its capital in advance of reorganisations where it is disposing of one or more assets, an undertaking/part of an undertaking, or a combination of assets and liabilities to a body corporate where the consideration meets certain criteria. Such reorganisation must have been approved using the Summary Approval Procedure. Where the criteria has been met, the company may, by ordinary resolution, vary the structure of its capital by reducing the reserves and company capital by an amount equal to the book value of the transferred assets and undertakings.

It is expected that this will make reorganisations much simpler and will facilitate the completion of reorganisations by companies that would have been prohibited from doing so in the past by virtue of having negative or low reserves.

**Directors Loans** - must now be properly documented and approved in writing.

**Mergers of Private Companies** - in the past, private companies could only merge with companies in other EU jurisdictions under the EU Cross Border Merger Regulations. This has been amended by the Act and private companies may choose to merge with another company using either the Summary Approvals Procedure or through the Courts.

**Persons binding the company** - there is an option to register the names of individuals who are authorised to bind the company with the CRO.

**Recording of Residential address** - in cases where the personal safety or security of a director or secretary is in question, an exemption to recording the usual residential address of that officer in the register of directors and secretaries may be allowed.

**Redeemable Shares** - it will no longer be necessary to maintain a non-redeemable portion of the issued share capital (there was a 10% threshold previously).

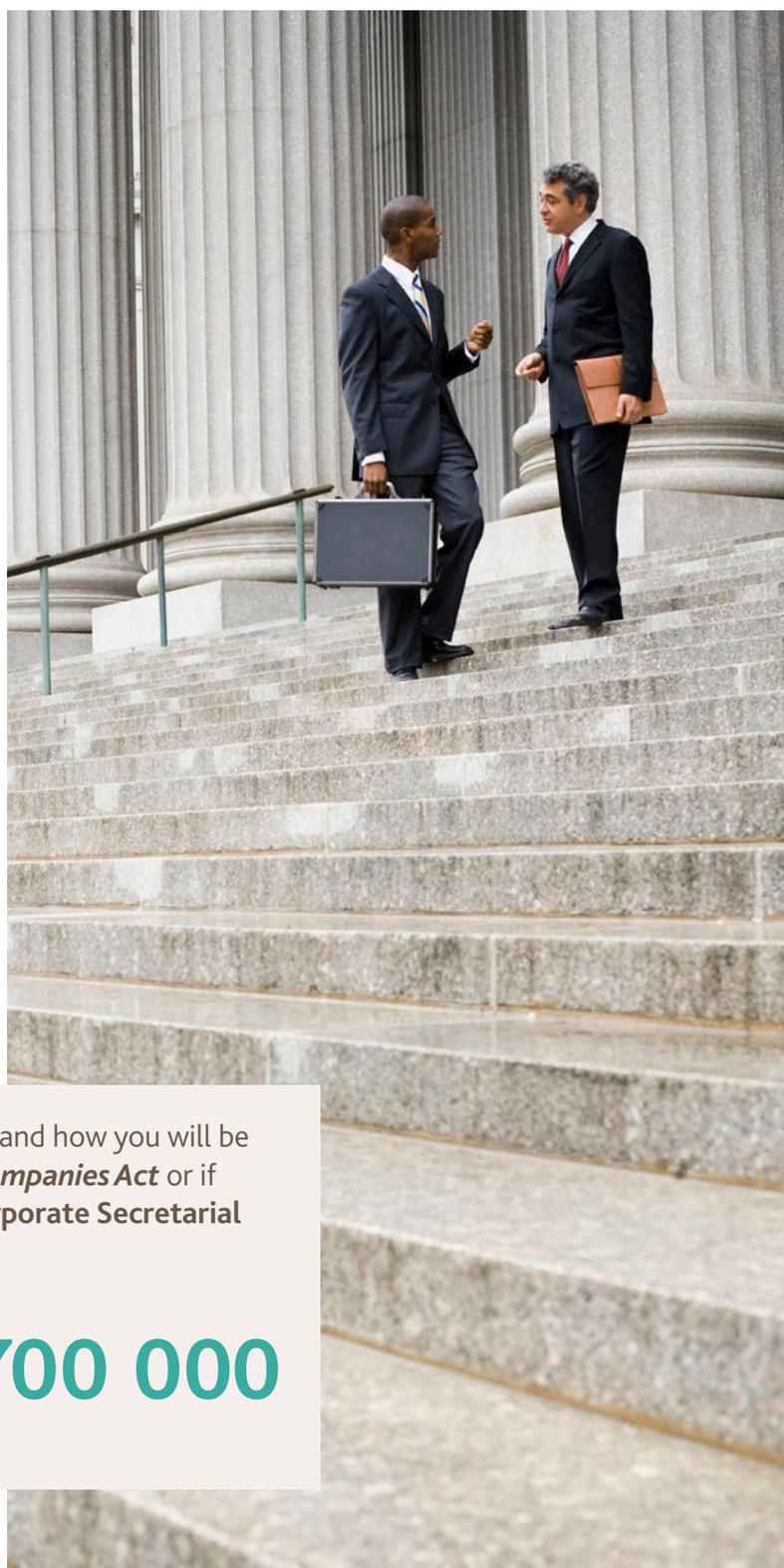
**Share notifications** - any disclosure of interest in shares and share options below 1% of the nominal issued share capital (*de minimis*) is no longer required.

**Share Premium and Merger Relief** - for the first time in Irish Company Law, the Act introduced the concept of merger relief. There are now certain exceptions to the previous requirement that the proceeds in relation to the issue of shares which are greater than the nominal value of the shares being issued must be accounted for in a Share Premium account, including:

- **Mergers** – where one company has secured at least 90% equity share capital holding in another company.
- **Group re-constructions** – where a company allots shares to its holding company (or another wholly-owned subsidiary of the holding company) in consideration for the transfer of assets, other than cash, from any member of the group which comprises the holding company and all its wholly-owned subsidiaries.
- **Acquisition of shares of a body corporate** – where a company, "A", allots shares to the members of another company, "B", in exchange for all of the issued shares of "B" so that "B" becomes a wholly-owned subsidiary of "A".

**Strike-off** - the act formalises and legislates for voluntary strike off. There are a few small changes to the method previously used to close unwanted companies. Those include a requirement to pass a special resolution within three months of the application date and to have all of the directors of the company to sign the application to the CRO. The requirements to publish the company's intention to apply for strike off and to obtain a letter of no objection from the Revenue remain. However, the latter must be dated within 3 months of the application being made to the CRO.

**Winding-up** - it will be possible to approve a members' winding-up using the Summary Approval Procedure. In general the Act has made the legislation in relation to the different methods that may be employed to wind up a company more intelligible and logical.



Should you wish to discuss your business requirements and how you will be impacted as a result the implementation of the new **Companies Act** or if you have any queries in general, please contact the **Corporate Secretarial Department** on

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