The Companies Act 2014 – FAQs

The Irish Companies Act 2014 (the "**Act**") will, once it comes into force in mid-2015, introduce significant enhancements to Irish company law. The Act is designed to give Ireland a modern company law regime and is further clear evidence of the Irish government's continued commitment to making Ireland a leading location to do business.

The Act, the largest substantive piece of legislation in the history of the State, brings together the existing 33 company law enactments into a single statute. Anyone involved in running Irish companies, large or small, needs to be aware of what the new legislation will mean for them in practical terms.

Some of the key questions currently being asked in relation to the Act are as follows:

With commencement of the Act imminent, what steps should we take now?

You should at this stage be reviewing your organisational structure to identify any Irish companies, branches or places of business to assess how these will be impacted by the Act. You should identify which of your companies are limited and which are unlimited and which are public or private, as different rules will apply in each case. You should also consider which of the new company types under the Act will best suit the needs of your business.

What will happen to existing Irish companies?

The Act creates new forms of Irish company and recognises the continued existence of other company types. The principal reforms being introduced focus on private limited companies.

The Act provides for two new forms of private limited liability company:

- the model private company limited by shares ("**LTD**")
- the designated activity company ("**DAC**").

During an 18-month period following the Act's commencement, existing private limited companies may opt to become either an LTD or a DAC. If, after this transition period expires, an existing private limited company has not opted to convert, it will automatically become an LTD.

Until the end of the transition period the law applicable to DACs will apply to all existing private limited companies.

Will companies still need a memorandum and articles of association?

Under the new rules, an LTD will have a simplified single-document constitution, replacing the current memorandum and articles of association. Significantly, an LTD's constitution will not have an objects clause and it will therefore have unlimited corporate capacity. A DAC will need a memorandum and

articles of association and may be a suitable vehicle where an objects clause is needed (eg, in the case of a joint-venture vehicle).

How many directors will the new types of companies need?

An LTD may have a single director – as opposed to a minimum of two at present - but, in that case, it must have a separate company secretary. Other company types must have at least two directors.

Will the LTD and DAC still be described as "limited" companies?

The name of an LTD will not change. Its registered name must end with "Limited" which can be abbreviated to "Ltd" in subsequent usage. A company which elects to become a DAC must use "Designated Activity Company" at the end of its registered name (which can be abbreviated to "DAC" in subsequent usage). All company stationery, intellectual property and other registrations, signage, product labelling, etc. will need to be updated.

How will the Act impact unlimited companies?

While existing unlimited liability companies will continue in their current form following commencement, the Act does introduce important changes for them. Significantly, the statutory rules on distributions will not apply in the case of unlimited companies. Under the new regime, a multi-member unlimited company must continue to hold an annual general meeting but a single-member unlimited company may dispense with this requirement.

One practical consequence of the Act is that, from the end of the transition period at the latest, the registered name of all unlimited companies must end with the words "Unlimited Company" which may be abbreviated to "U.C." in subsequent usage (unless the company is granted an exemption by the Minister for Enterprise, Jobs and Innovation). Again, all company stationery, intellectual property, signage etc. will need to be updated.

How will the Act impact annual compliance and corporate governance requirements for Irish companies?

In the main, the Act keeps the existing requirements to file an annual return and, where appropriate, audited financial statements. However, it also introduces a number of changes which will mostly tend to ease the administrative burden on Irish companies.

The Act does not envisage any substantial change to the law governing the holding of board meetings by Irish companies. However, in a useful development, all single-member companies and multi-member LTDs will be permitted to adopt written procedures instead of holding an annual general meeting.

New decision-making mechanisms for shareholders are being introduced allowing in certain cases for majority written resolutions in place of unanimous written resolutions required at present.

A simplified written approval process – the Summary Approval Procedure – will be introduced for certain restricted activities such as the provision of financial assistance for the acquisition of shares, the reduction of capital and the placing of companies into voluntary liquidation.

I am a director of an Irish company – does the Act include any changes to my duties and obligations as a director?

While the duties owed by Irish company directors will remain substantially the same following commencement, the Act does codify for the first time eight principal fiduciary duties of directors previously set out by judgments of the courts.

The Act also imposes an express duty on all directors to ensure that the company secretary has the requisite skills to competently discharge his or her duties or has the necessary resources to do so.

Most significantly, the Act imposes an obligation on directors of public limited companies and certain large private limited companies to produce in their annual directors' report a compliance statement with company and tax law and to ensure that the company adopts appropriate compliance measures. Notably, this obligation will not apply to unlimited companies.

The Act contains a new exemption from what is a disclosable interest in a case where the shares or share options held by a director or secretary amount to less than 1% of the company's issued share capital. This should substantially reduce and, in many cases, eliminate the disclosure obligations for directors and secretaries.

When will the new laws come into force?

The Act was signed into law in December 2014 and is expected to come into force on 1 June 2015.

The above is merely a brief overview of some of the principal changes the Act will introduce. There are many more significant changes and businesses should consult, where appropriate, with their legal, tax and accounting advisors for assistance with assessing how the Act will impact their business operations.

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