

The new Companies Act 2014 (**Act**) commenced on 1 June 2015. While company law will remain substantially the same, there are some significant changes which will affect every Irish company including the changes highlighted below.

### DAC or LTD

The Act introduces two new types of private limited companies - the private company limited by shares (**LTD**) and the designated activity company (**DAC**). The vast majority of Irish companies will be LTDs which will be allowed to have one director only.

A company established for a specific purpose (for example, a joint venture company) may choose to become a DAC and its activities would be limited to those designated in its memorandum of association.

### CONVERSION AND REREGISTRATION AS LTD OR DAC

Existing private companies limited by shares will have to choose to convert to an LTD or a DAC (or reregister as another type of company). There is a transition period to allow companies to convert which is eighteen months for LTDs and fifteen months for DACs.

If a company chooses to do nothing it will automatically convert to the LTD model at the end of the eighteen month transition period. If this happens then the company will be deemed to have a constitution comprised of its existing memorandum and articles of association (excluding the objects clause and any restriction on amending the memorandum and articles). These may not “work” with the new Act giving rise to uncertainty and confusion around the company’s regulations.

## DIRECTORS

### The Directors’ report

The directors’ report must contain a statement for each director that so far as he is aware there is no relevant audit information of which the auditors are unaware and he has done all he can to make himself aware of any relevant audit information and to establish that the auditors are also aware of it.

### 18 or over

Every director must be aged eighteen or over. If any existing director is a minor his/her appointment automatically terminated on 1 June 2015 and the appropriate filing must be made in the Companies Registration Office (CRO).

### Directors Duties

Directors have always had fiduciary duties and duties of care. Some of these are now codified in the Act and will apply to all directors including shadow directors and de facto directors. The Act specifies that the duties are owed to the company and the company alone. A director is obliged to act in good faith in what the director considers to be in the interest of the company and to act honestly and responsibly. There are objective standards of care and diligence imposed on a director. There are also rules dealing with the diversion of the company’s property, information or opportunities and conflict of interests.

### Directors’ Loans

A key change under the Act is that loans between a company and a director /connected person must be documented.

If a permitted loan to a director is not fully documented in writing, it will be presumed to be repayable on demand and at the “appropriate rate” of interest. The Act also introduces rules for loans from a director to a company. If a director advances monies to a company, it will be presumed that it is not a loan unless it is fully documented as such. Unless the contrary is proved, a loan from a director will be presumed to be interest free and unsecured. If it is shown to be secured, until the contrary is proved then it is presumed to be subordinate to all other indebtedness of the company.

### CRO FILINGS/ACCOUNTS AND AUDIT EXEMPTION

#### CRO Filings/Accounts

All CRO forms changed with effect from 1 June 2015. Any submission on or after that date will have to be on the relevant new form.

#### Audit Exemption

More companies will be able to avail of the audit exemption. Instead of having to meet all three of the criteria below to qualify as a “small company” for the purposes of audit exemption,

it will suffice to meet two of the three criteria:

- balance sheet total of less than €4.4 million
- turnover of less than €8.8 million
- average number of employees of less than 50

The audit exemption for smaller companies will now be available within groups, for dormant companies and for companies limited by guarantee.

#### SECRETARY

If a company has more than one director, one of them can act as secretary as well. However, directors will have to ensure that the secretary (whether or not he is also a director) has the requisite skills and resources to carry out his duties.

The secretary must be age 18 or over.

#### MERGERS

For the first time, it will be possible for two Irish private companies to merge (in the sense that one of the companies in the merger will cease to exist).

Previously this could only be done in a cross border merger or where the merging companies were plcs, both of which were subject to court approval.

#### WHAT NEXT FOR COMPANIES?

The above is a brief note on some of the key changes. We can advise you more fully on the provisions of the Act as will apply to your company. For now, you should:

- consider if your company should convert to LTD or DAC (or other kind of company)?
- ensure any loans from or to directors are fully documented
- check if your company will be able to avail of the audit exemption
- replace any minor director or secretary
- if necessary, appoint a secretary with relevant skills and resources



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