

The Companies Act 2014 is now here...

A simple guide to what you
need to do/be aware of



Introduction

On 1 May 2015 the Minister for Jobs, Enterprise and Innovation signed the Statutory Instrument commencing the Companies Act 2014 (the “**Act**”) with an effective date of **1 June 2015**. With the exception of a limited number of provisions primarily relating to audit committees, directors’ compliance statements and various new financial statement obligations for companies with financial years commencing on or after 1 June 2015, the Act is now “**Live**” and applies to all Irish companies; big and small; operational and Not-for-profit/ non-trading.

Company owners/directors cannot afford to ignore this significant change in Irish company law and need to put some thought into how the Act may impact them and/or their company. Here at FCS Services we have endeavoured to address the key areas for consideration as set below.

Principal types of companies

Under the Act the principal types of companies are now:

Company Limited by Shares (LTD)

This is the new model private limited liability company and expected to become the most common company type for SMEs. This company type will allow you to avail of the simple, more streamlined, provisions of the Act.

Designated Activity Company (DAC)

This is the most similar type company to the previous private limited liability company and retains the two document constitution, the objects clause and similar provisions to the previous AGM and director requirement provisions.

Others

The other principal company types under the Act will be the Private Unlimited Liability Company having a share capital (ULC); Company Limited by Guarantee without a share capital (CLG) and Public Limited Company (PLC). Although these companies will not have to convert under the Act they will need to consider some action(s) such as change of name, review of Articles of Association, etc..

Things to think about when deciding between an ‘LTD’ and a ‘DAC’

For all existing private limited liability companies the key decision will be whether to convert to the new LTD or the DAC. Although there will be a default conversion to the LTD at the end of the 18 month transition period, it is not advisable to await such conversion for the reasons set out below in “**Implications if I/we take no action?**”

The new model private limited liability company, the LTD, has real positive features which many small businesses should be able to benefit from such as:

- No objects clause, therefore, no restrictions on what it can do.
- The ability to have a sole director, therefore, removing the need to find a second director just to meet the requirements of the law. It is important to note that the provisions regarding a minimum of one EEA resident director remain and, in instances where a company has a sole director, the position of the company secretary must be held by a separate person.

- › A single, simple, one page constitution.
- › The ability to dispense with the need to have a physical AGM each year, whether a single or multi-member company.
- › It is no longer necessary to have an authorised share capital.

However, until action is taken or the transition period expires, all existing private limited liability companies will be deemed to be a DAC, and therefore, will not be able to avail of the simplified provisions above.

If, however, any of the following apply to your company you **should consider** converting to a DAC within 15 months of commencement of the Act (i.e. by 31 August 2016):

- › Does your company perform a designated activity (for example, is it a financial or insurance undertaking)?
- › Have you financial arrangements in place which restrict your company activities or which have required specific provisions in your existing articles?
- › Is your company subject to a shareholders' agreement or in a joint venture arrangement?
- › Is there a specific requirement for your company to have an objects clause?
- › Does your company have listed debt, or is there a possibility it may wish to list debt in the future?

Action required

If your company is an existing private limited liability company you should:

- › Review your existing and future business needs and arrangements and take an informed view as to whether the new LTD or a DAC is the best vehicle for your business.
- › Instruct a service provider to assist you with conversion under the Act.
- › If converting to a DAC:
 - A change of name will be required, therefore, you will need to change all company stationery, signage and corporate marketing materials (don't forget your website!).
 - Notify all key stakeholders, for example bank(s), clients, service providers, employees.
 - Order a new company seal.
 - Update all statutory registers.

For other company types although conversion is not required, if a change of name is, the above requirements for a DAC will apply.

Also, if a PLC, consideration should be given to conducting a full review of your Articles of Association to ensure they reflect the mandatory company law provisions contained within the Act.

Do I need to think about the Act post conversion?

Yes! As with the previous legislation there are ongoing duties and responsibilities for directors and companies under the Act, however, there have been a number of changes in the Act which as a director you should be aware of as follows:

- › Directors' fiduciary duties have now been incorporated into the Act and, as such, are codified as follows:

- To act in good faith in what the director considers to be in the company's interests.
- To act honestly and responsibly in relation to the company's affairs.
- To act in accordance with the company's constitution and only exercise powers for allowed purposes.
- To not use company property for own or other's use unless permitted by the constitution or approved by shareholders.
- To not fetter discretion unless permitted by constitution.
- To avoid conflicts of interest unless released by the company's constitution or shareholders.
- To exercise care, skill and diligence.
- To have regard to interests of employees and shareholders.

- › In addition, directors' continue to have statutory duties, as per the previous legislation, in relation to compliance with the Act, accounting records and financial statements, certain registers, etc..
- › Under the Act, in agreeing to become a director of a company, the director now acknowledges that they have legal duties and obligations imposed by the Act, other statutes and at common law.
- › Directors also now have a duty to ensure that the person appointed as company secretary has the skill necessary to discharge his or her statutory and other legal duties and such other duties as may be delegated by the directors.
- › Loans to and from the company should be documented, otherwise unintended assumptions, such as no repayment terms for example, may be assumed.
- › Certain companies (and not just PLCs) also now have additional requirements in respect of audit committees and to produce an annual compliance statement (and ensure a policy and structure is in place for production and review of such statement).

The above is not exhaustive, but highlights significant reasons why directors, or companies, cannot "forget" about the Act post conversion.

Implications if I/we take no action?

Although there is a default conversion process to the model LTD for existing private limited liability companies at the end of the transition period, it is not advisable to wait until then to take action for the following reasons:

- If you wish to convert to the new model LTD and avail of the simplified provisions which it offers, these are not available without conversion during the transition period (i.e. before 30 November 2016).
- If conversion to the new LTD takes place under the default provisions, your company will only have a “deemed” constitution (i.e. your existing Memorandum & Articles of Association with specific clauses removed but no physical document); the consequences of which are:
 - As a director you may be potentially liable, as all directors of an existing private company have a duty to prepare a constitution for an LTD and deliver it to its shareholders and the CRO before the end of the transition period unless the shareholders have already adopted a constitution or the company is required, or is proceeding, to re-register as another company type;
 - Many financial institutions, state bodies and European/International bodies require sight of a company’s constitutional document(s) for either lending arrangements, bank account opening or tender processes with a deemed constitution this will be difficult to provide and may end up being quite costly.
- If there is some requirement for your company to be a DAC and no action is taken prior to 15 months before the end of the transition period (i.e. 31 August 2016), your company will automatically convert to the new LTD (under the default provisions) and you will need to go through the process, and expense, of converting back to a DAC.
- If your company is required to change its name under the Act (for example a Company Limited by Guarantee), all companies are required to update their letterhead, official publications, website, etc to reflect the company name. Any documentation submitted to the CRO with the incorrect name after 30 November 2016 will be refused.

The above are but a few of the more obvious implications of “no action”.

Key Dates



1 June 2015

Commencement of Act



by 31 August 2016

To convert to a DAC



By 30 November 2016

To convert to an LTD or default conversion to an LTD takes place

How can we help you?

At FCS Services we specialise in providing first class company secretarial and corporate governance services. We can, therefore, provide the full support you need to assist you in making the right decisions under the Act; being aware of your duties/responsibilities under the Act; and assist in ensuring you, and your company, meet all requirements of the Act.



For more detail on the Act, the topics covered above and how we can help you, please contact:

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The information provided here is for general information purposes only and is a brief overview of the topics covered (it is not exhaustive and no one should act on such information without appropriate professional advice). It is not intended, and does not constitute or comprise, legal or any other advice of any particular nature.

Publication date: June 2015.