



COMPANIES BILL 2012

OUTLINE OF MAIN PROVISIONS

The new Companies Bill was published by the Department of Justice, Enterprise and Innovation (DJEI) on 21st December 2012 and is proposed to be the most significant reform Irish company law since the introduction of the Companies Act in 1963. When enacted, it will repeal and consolidate the existing 14 Companies Acts and 16 statutory instruments, thereby making this the lengthiest piece of legislation in the history of the State.

The Company Law Review Group (CLRG) drafted the heads of the Bill and made numerous recommendations in relation to it. The CLRG recognised that the private company limited by shares is the most common company type in operation in Ireland, with approximately 90% of companies being incorporated in that form. Accordingly the Companies Bill has been drafted with this situation in mind in that of the 25 Parts of the Bill, the first 15 deal exclusively with Companies Limited by Shares (CLS).

The Bill is divided into two parts, Volume 1 dealing with private companies limited by shares (CLS) and Volume 2 dealing with other forms of companies, including Designated Activity Companies (DAC), guarantee companies (CLG), public limited companies (PLC) and unlimited companies (ULC).

The key features of the Bill are as follows:-

- The CLS can have a single director. However where there is a single director, the person acting as director may not also act as company secretary.
- The CLS must have a company secretary and that person must be 18 years or older
- The CLS can have between 1 and 149 shareholders.
- The CLS must have a shareholder(s) whose liability is limited to the amount of unpaid share capital.
- The company must have a one document constitution.
- The doctrine of 'ultra vires' will be removed and therefore there will be no requirement for a company to have an objects clause because it has full unlimited capacity, ie the same as a natural person.

- Companies that wish to retain an objects clause and memorandum and articles of association can convert to 'designated activity companies' (DAC's) to distinguish them from CLS's. A DAC must have two directors and must hold an AGM.
- The CLS company must have a name ending in Limited or LTD
- A CLS may dispense with the physical holding of an AGM and will have the option to hold an AGM by written resolution of the members.
- The CLS will have the ability to pass majority resolutions.
- Directors duties are codified for the first time in the Bill which will put them on a statutory basis as opposed to being on a common law or equitable basis.
- Private companies will be able for the first time to engage in mergers and divisions.
- Large private companies will be obliged to have an audit committee on a 'comply or explain' basis. Large private companies are those with a balance sheet exceeding €25ml and a turnover in excess of €50ml. There must be one independent director on the committee with competence in auditing or accounting.
- Directors of CLS's that have balance sheets in excess of €12.5ml and turnover in excess of €25ml will be obliged to complete and include a 'compliance statement' in the directors report within the audited accounts.
- The CLS will be able to perform activities that would otherwise be prohibited by using the new Summary Approval Procedure. The omnibus validation procedure allows the company to approve in advance, certain categories of transaction by companies. The activities will be allowed to go ahead if they are approved by a shareholders special resolution and by the directors swearing a declaration in advance. In some cases an auditor's report will be required also. The restricted activities will include financial assistance for acquisition of shares, reduction in a company's capital, variation of company's capital in reorganisations, prohibition of loans to directors/connected persons, approval of mergers and commencement of members' voluntary winding up.
- Offences under company law will now be categorised into four categories, with Category 1 being the most serious and carrying a maximum fine of €500,000 or a maximum term of imprisonment of 10 years. Category 4 offences will be the least serious and will carry a penalty or a fine.
- The enactment of the Bill is anticipated to happen in late 2013 or early 2014. Once enacted, the transition period is envisaged to be a period of 18 months during which company conversions will be effected.

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