

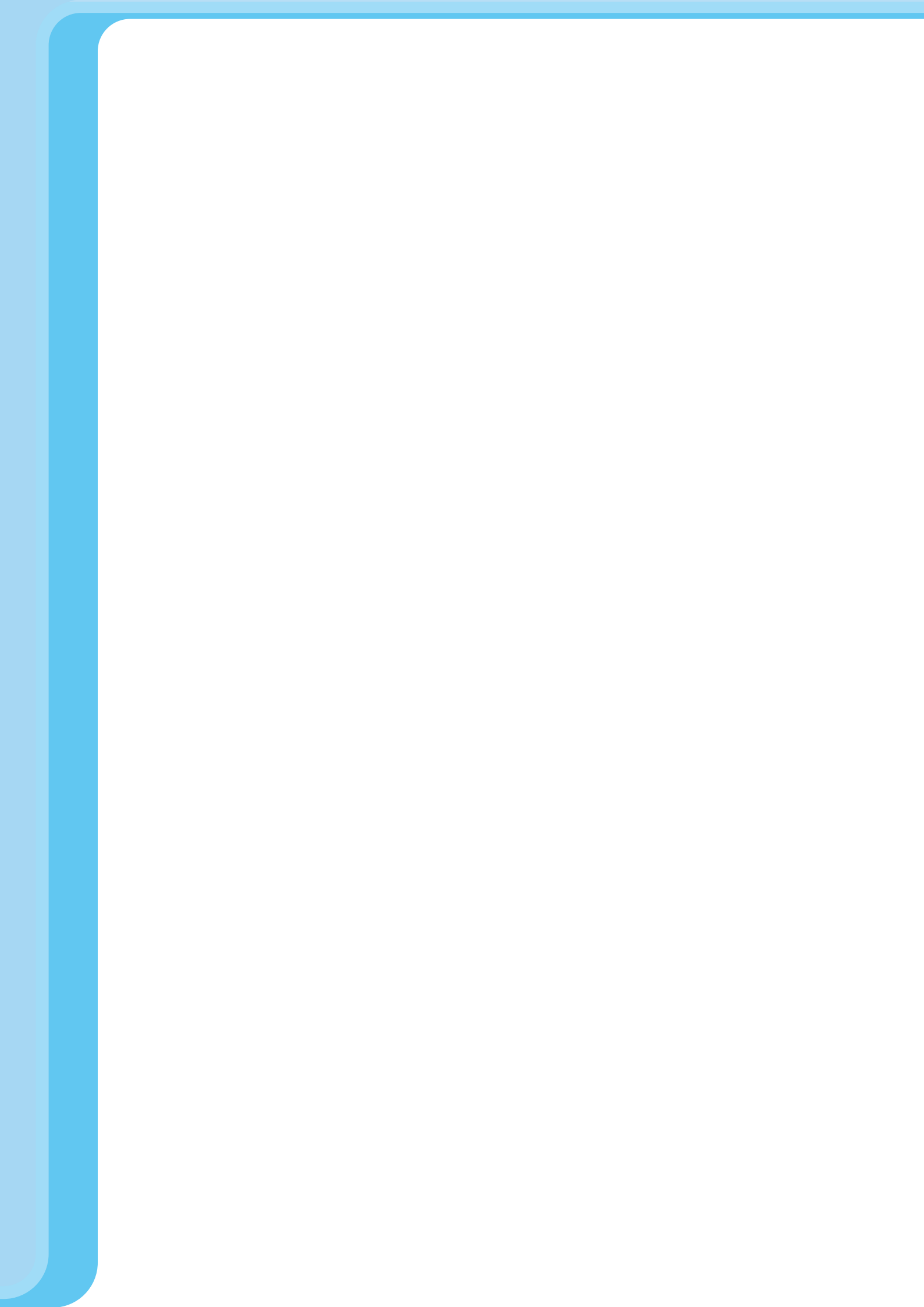


AN OIFIG UM CHLÁRÚ CUIDEACHTAÍ  
COMPANIES REGISTRATION OFFICE



# FREQUENTLY ASKED QUESTIONS - NEW COMPANIES ACT

FAQ INFORMATION LEAFLET no. 32 / JULY 2015



## CHANGES TO THE COMPANIES ACTS

As of **June 1st 2015** the new Companies Act 2014 has been commenced. This is the primary legislation that deals with companies and applies to companies directly. While parts of legislation have been rearranged, many of the procedures remain the same. Changes have been made to the Acts which will consolidate information that was spread out over several acts from several different decades. A number of the processes involved in the registration and running a company have been simplified. This leaflet provides a brief outline of some of the main changes. It isn't a complete statement of law.

The new Companies Act is split into two major parts, Parts 1 to 14 which deals with private companies limited by shares (LTD company) and Parts 16-25 which deals with the other company types - public limited companies, external companies, guarantee companies, designated activities companies (DAC's) etc.

The vast majority of companies incorporated from **June 1st 2015** will be the new LTD company model. Private limited by shares companies which were incorporated under the old Companies Acts will have the opportunity to convert to this new company type during the transition period. See leaflet 31 - Conversion for more information.

### **Where can I get a copy of the new Companies Act 2014?**

The Companies Act is available from Government Publications and also from the Irish Statute Book website and the CRO website - [www.cro.ie](http://www.cro.ie).

### **Is the Companies Act now complete and in force?**

No. The Companies Act will be supplemented by further Regulations and commencement orders issued by Statutory Instrument for certain sections of the Act.

### **Do I have to use the new Forms?**

Yes. The form changes come into force on 1st June 2015. **Old versions of the forms can only be used for documents signed before that date, thereafter they will be rejected if submitted.** See information leaflet 30 regarding the form changes in total, with descriptions of the old and new forms.

There are changes to every form that is submitted to the CRO, including the introduction of some new ones. Most forms have retained their numbering system from before - B1 for annual return, B10 for change in company officer information and B2 for registered office change. These new versions of the forms are available from the website - [www.cro.ie](http://www.cro.ie) - and each form bears a reference to the Companies Act 2014 rather than the 1963 Act.

## Changes to Company Model and Conversion

There are a number of significant changes in this Act. The primary change is the introduction of some new company models, namely the Private Company Limited by Shares (LTD company) and the Designated Activity Company (DAC). These types refer to private limited companies only and private limited companies already on the register will convert to one of these two types. If at the end of the transition period (**30th November 2016**), a company has failed to convert, the registrar will give effect to the deeming provisions in the Act and issue a new certificate of incorporation.

### **What is a Private Company Limited by Shares (LTD)?**

A private company limited by shares (LTD company) is a new company model introduced by the Companies Act 2014. Only companies which have undergone the conversion process or have been incorporated as such post introduction of the new Companies Act are LTD companies.

The constitution (replacing the memorandum and articles of association) of such a company does not have any memorandum of association but still has articles specified in its constitution. Most LTD companies will not require articles beyond what is stated in the sample constitution as the majority of the articles as stated in Table A of the old Acts are now transposed to sections of the new Act.

A LTD company may have only one director if it so chooses. This does not apply to any other company type. LTD companies can pass majority written resolutions. Private limited by shares companies incorporated post (June 1st 2015) will be LTD companies or DAC dependent on their

constitutions. A LTD company is eligible for audit exemption. A LTD company cannot list debentures or securities.

Previously incorporated private limited by shares companies can convert to the LTD company type during the transition period. Please see information leaflet 31 for more information.

### **What is the constitution?**

The constitution replaces the memorandum and articles of association. In a LTD company, the constitution states the name of the company, the fact that the company is a private company limited by shares, any additional regulations the company may wish to specify, the share capital information and takes the form set out in Schedule 1 of the Companies Act 2014. Most of the regulations that would previously be stated in the M&A are included in the sections of the Companies Act, removing the need for the information to be supplied in a company's constitution.

The constitution can be changed by special resolution.

### **What is a Designated Activity Company (DAC)?**

A Designated Activity Company (DAC) is determined in Part 16 of the Companies Act 2014 and encompasses companies which have a specific object for which they are registered. A DAC is a private company either limited by shares or by guarantee. A DAC will have certain regulations in its constitution which it wishes to retain under the new Act, detailing certain objects and articles of association which are not specified in the template LTD company constitution.

A **private company limited by shares** incorporated under the previous acts can convert to a DAC during the transition period. The company must pass an ordinary resolution and submit this with the new constitution and form N2 before the elapse of a special 15 month transition period. Please see Information Leaflet 31 for more information on company requirements for conversion to a DAC.

A company which has not altered its constitution within 18 months of the introduction of the Act, will be deemed to be a LTD company. So, if your company wishes to be a DAC, or is required to be a DAC, then it is important to complete the conversion during the transition period or else the company will become a LTD company and may require a court order to convert to the desired company type.

A company which is required to become a DAC is an existing private company that has published an offering document or obtained an admission to trading on a regulated market for its debentures. (Debentures means debenture stock, bonds and any other debt instruments of a company or any forms of securitised debt, including depository receipts in respect of such securities, whether constituting a charge on the assets of the company or not).

### **Do I have to include the company type in the company name?**

Yes. Under the Companies Act 2014, any company incorporated will have its company type suffixed at the end of its company name.

- LTD company will have either "Limited" or "Teoranta"
- DAC companies will have either "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe"
- PLC companies will have either "Public Limited Company" or "Cuideachta Phoiblí Theoranta"
- CLG (companies limited by guarantee without a share capital) will have "Company Limited by Guarantee" or "Cuideachta faoi theorainn Ráthaíochta"
- All unlimited companies, regardless of type, will have "Unlimited Company" or "Cuideachta Neamhtheoranta".

### **Is there an exemption available from having to have the company type in the company name?**

Yes. However, this applies to Designated Activity Companies (DACs), Companies Limited by Guarantee (CLGs) and Unlimited Companies only. No other type can apply. LTD companies cannot apply for the exemption.

DAC or CLG: Only companies whose objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object and which are not for profit companies can qualify

Unlimited Companies: Exemption can only be granted by the Minister for Jobs Enterprise and Innovation.

### **Our Company had an exemption under the old Companies Acts. Does this still apply?**

Yes. Such companies which were exempted under section 24 of the Companies Act 1963 as amended, will continue to be allowed to apply the exemption. This exemption now applies to the requirement to display the company type. Such companies will not be required to state Designated Activity Company/Company Limited by Guarantee at the end of their names.

### **When do I have to change the company name?**

**Private limited by shares companies incorporated under the old Companies Acts:** These companies do not have to change their name during the Transition Period. These companies operate under the Designated Activity Company legislation (Part 16) for the duration of the Transition Period. If these companies choose to convert to the Designated Activity Company type, then they will have to change their name (unless exempted).

**Other companies types:** Such companies incorporated under the previous acts are required to change their name to comply with the legislation by (30th November 2016), the end date of the Transition Period. During the Transition Period, such companies are not compelled to change their name but failure to do so will result in their name change being enforced by the Registrar of Companies at the end of the Transition Period.

**Public Guarantee companies, unlimited companies and private guarantee companies with share capital** should file Form N3 to apply the name change requirement. **Form N3 can be filed for free.** The name change will necessitate changes to company documents/letters/stationery, so it is in the company's interest to make the change in a timely fashion.

## **Converting to a LTD company**

### **What are the procedures for conversion?**

There are three methods for conversion to the new LTD company model (company private limited by shares) under the Companies Act. Section 59, Section 60 or company will be automatically be converted under Section 61.

Basically under section 59, a special resolution is passed and the new model constitution is adopted. Under section 60, a constitution drafted by the directors is submitted to the CRO. The company in either case submits **Form N1** and the new constitution. Under section 61, if the company does nothing it will be automatically converted at the end of the Transition Period. Please see information leaflet 31 regarding conversion of companies.

### **Why is my company a DAC? Why is the company not a LTD company?**

If your private limited by shares company was incorporated under the previous Companies Acts and does not initiate a conversion on the commencement of the new Companies Act 2014, it does not automatically become a LTD company. A private limited company, limited by shares, instead operates under the law referring to a Designated Activity Company (DAC). One of the reasons is that the company has a memorandum and articles of association. The memorandum of association sets out the objects by which the company can operate.

Only a LTD company registered under the Companies Act 2014 or converted to a LTD company under the same act, can operate without objects. No other company type is allowed to do this. So unless the company converts, the company is deemed to be a DAC for the duration of the transition period.

**While operating under the DAC legislation for the duration of the Transition Period, the company does not have to change its name** unless it is actually converting to a DAC.

### **How long is the Transition Period?**

The Transition Period lasts from June 1st 2015 to 30th November 2016 (18 month period). Private limited by shares companies can convert to LTD or DAC models during this period. There is a shorter time limit for conversion to DAC to be initiated (June 1st 2015 to 31st August 2016 - 15 month period), so any company that wishes to retain its objects or is required to convert due to its issuing of securities to the public.

Once the Transition Period has elapsed any private limited by shares company which has not converted will be deemed to be a LTD company.

### **What if I choose to do nothing, what happens to my company?**

If the company chooses to do nothing, automatic conversion will take place. Please see timescale for conversion set out in Information Leaflet 31 - Conversion. However it should be noted that private limited by shares companies will be converted to a LTD company with the simplified constitution, which is a constitution which may not suit. It would be better to convert the company and have a constitution as specified by the company itself.

## **Annual Return and Accounts**

### **What is meant by financial statements and accounting records?**

Statutory "financial statements" replaces the term "accounts". Such entity financial statements include a balance sheet, a profit and loss account, and other statements and notes attached to the foregoing. Companies which are not exempted are expected to file such statements with their annual return.

### **What are the requirements for a company to be defined as Small or Medium?**

The requirements have changed under the new Companies Act. A small company is defined by section 350 of the Companies Act 2014 and it states that a small company is one which fulfills 2 or more of the following conditions. - the amount of turnover does not exceed €8.8 million; the balance sheet total does not exceed €4.4 million and the average number of employees does not exceed 50.

For a medium sized company, the turnover cannot exceed €20 million, the balance sheet total doesn't exceed €10 Million and the average number of employees does not exceed 250.

### **Do I have to complete a Compliance Statement as a director?**

Company directors of large companies (balance sheet total in excess of €12.5M and with a turnover in excess of €25M) must supply a compliance statement as part of the directors report which accompanies financial statements submitted to the CRO. (S.325 Companies Act 2014). All PLC must complete the statement and the requirement does not apply to Unlimited Companies.

Directors of such companies must acknowledge responsibility for securing compliance with its obligations and confirming whether certain things have been done - see section 225 Companies Act 2014.

Those certain things are the drawing up of a Compliance Policy Statement setting out the company's policies regarding obligations and then setting out arrangements designed to ensure compliance. A review is then to be conducted of those arrangements during the financial year. If these things are not done, this must be then stated in the directors report.

Relevant obligations means anything where a failure to comply will result in a category 1 or 2 offence being committed or a serious Market Abuse offence/Prospectus offence/tax law.

## **Directors**

### **Is there be a minimum age for directors?**

Yes. All directors must be over the age of eighteen. Section 131 applies. Body corporates cannot be a director of a company. If an individual, rather than a body corporate, is a secretary, then they must be over eighteen also.

### **Will the underage rule apply retrospectively and does it apply to dormant companies?**

Yes. Any underage directorships are void. Form B10 must be submitted to demonstrate that the individual has been removed.

### **Can a company have only one director?**

Yes but only if the company is a private company limited by shares under Part 2 of the Companies Act 2014 (LTD company).

**This does not apply to companies which were incorporated under previous Companies Acts and which have not yet converted to the LTD company model.** Also it does not apply to other company types, Designated Activities Companies, Plc's, guarantee companies etc. Only after conversion/re-registration to a LTD company can a company have only one director.

### **Do I still need to have a secretary?**

Yes. A company still needs to have a secretary and the secretary cannot be same person as the director if a company has only one director. Secretaries must also be over eighteen.

### **What happens where a company does not have an eligible director?**

The company may be selected for strike-off and removal from the register.

### **What if I was disqualified in another jurisdiction prior to the commencement of the Act?**

Where a new director is being appointed either on incorporation (form A1) or change in company information (form B10), form B74 is also submitted where the director in question is disqualified in another jurisdiction.

### **What if I was disqualified in another jurisdiction after my appointment?**

Where a director becomes disqualified after their appointment (B10/A1) they should file a Form B74a indicating their disqualification. Under the new Act, any company employing a director who is currently disqualified abroad should also **submit form B74a within three months** of the commencement of the Act, regardless of necessity to file a form B10.

## **Resolutions/Meetings**

### **What is the required majority needed for a special/ordinary/written resolution?**

A special resolution requires 75% majority of the votes cast by the members entitled to vote. An ordinary resolution is defined in this Act (section 191) and requires a simple majority of the votes cast by the members, entitled to vote, to be voted in person or by proxy at a general meeting of the company.

A written resolution under this new Act, can be either a special or an ordinary resolution. Please see sections 193 and 194. A unanimous written resolution is one in writing, signed by all the members of a company that are for the time being entitled to attend and vote. A majority written resolution includes either an ordinary or a special majority and the requirements vary according to the requisite majority (Neither an Unlimited Company, Public Limited Company (PLC) nor a Company Limited by Guarantee (CLG) can pass a majority written resolution).

A majority written resolution takes effect later than an unanimously passed written resolution. A majority written ordinary resolution takes effect seven days after the last signature, a majority written special resolution takes effect 21 days after the final signature. A majority written resolution can be undertaken by LTD companies/Designated Activity Companies (where constitution permits) only.

### **Does my company need to hold an AGM?**

No. A LTD company (the new company model) under the new Companies Act, may dispense with the requirement to hold an Annual General Meeting. A company can avoid holding an AGM where **all the members** entitled to attend and vote at such general meeting sign, **a written resolution**, acknowledging receipt of the financial statements, resolve that all such matters as would have been resolved at the AGM and confirm no change in the appointment of the Auditors (if any appointed). See section 175(3).

## **Registration**

### **Does my company not have to file a memorandum of association?**

No. But this applies to the new company model - LTD company only. A company private limited by shares (registered as a LTD company under the new Act) has a constitution rather than a Memo and Arts. Under the Companies Act 2014, a constitution now replaces the Memorandum and Articles of Association. Companies do not have to state their objects if they are registered as a LTD company. This removes the requirement to state what objects the company has been set up to do. This means there is no doctrine of ultra vires for a LTD company. All other company types, however, do have a constitution that consists of a memorandum and articles of association.

### **What is the constitution?**

The constitution replaces the memorandum and articles of association. In a LTD company, the constitution states the name of the company, the fact that the company is a private company limited by shares, any additional regulations the company may wish to specify, the share capital information



and takes the form set out in Schedule 1 of the Companies Act 2014. Most of the regulations that would previously be stated in the M&A are included in the sections of the Companies Act, removing the need for the information to be supplied in a company's constitution.

The constitution can be changed by special resolution.

## Summary Approval Procedure

### Do I still have to apply to the High Court to engage in certain restricted activities?

No. An alternative procedure has been introduced in the Companies Act 2014. The Summary Approval Procedure is covered in Chapter 7 of Part 4 of the Act. The SAP covers several different areas of the Act and the procedure relates to certain restricted activities.

The restricted activities are

- the financial assistance for the acquisition of shares (section 82),
- reduction in company capital (section 84),
- variation of company capital on reorganisations (section 91),
- prohibition on pre-acquisition profits or losses being treated in holding company's financial statements as profits available for distribution (section 118),
- prohibition of loans to directors and connected persons (section 239),
- domestic merger (section 464),
- members voluntary winding up (section 579).

The Summary Approval Procedure means the procedure where a resolution (special) is passed conferring authority, passed not more than 12 months prior to the commencement of the activity and the company delivers to the Registrar a copy of the declaration as required under section 202. The company must deliver the declaration not later than 21 days **after** the date on which the financial assistance is to be given.

## Offences

The Act provides for a four-fold categorisation of offences into Categories 1 to 4. Throughout the Act, offences are, as created, categorised as attracting a particular category of penalty. In Chapter 7 of Part 14, those penalties are set out:

- **Category 1 offence** – conviction on indictment can result in a term of imprisonment of up to 10 years or a fine of up to €500,000 or both;
- **Category 1 offence** - summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both;
- **Category 2 offence** – conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both;
- **Category 2 offence** - summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both;
- **Category 3 offence** – a summary offence only, attracting a term of imprisonment of up to six months and a “Class A fine” (or both); and
- **Category 4 offence** – also a summary offence only, punishable by the imposition of a Class A fine.

A “Class A fine” is a fine within the meaning of the Fines Act 2010 (i.e. a fine not exceeding €5,000).

## Liquidations, Receiverships and Examinerships

### Have the procedures been changed in relation to filing liquidation documents with the Registrar?

Yes. In relation to all three procedures, members voluntary winding up, creditors voluntary winding up and court liquidations, the documents to be filed and the periods that they must cover have been altered. Please see Information Leaflet 38 regarding Liquidations.



There is now a qualification necessary for appointment as liquidator (applies only to liquidations started after the commencement of this Act).

#### **What forms are used to complete a court liquidation?**

Dependent on the court order, liquidators now file forms E3 as well as E4. At completion of the liquidation, the liquidator may file forms E5 and E7 rather than a final court order (dependent on court instruction). Please see leaflet 38 for more information.

#### **Is there any change to the procedure to register receiverships?**

Yes. A form E8 is still submitted to appoint a receiver to a company. There must be a registered charge or High Court order to appoint the receiver. A form E11 is completed to notify cessation of appointment. However on appointment there is no longer a requirement that an advertisement be placed in a daily newspaper.

#### **Do I have to be qualified to act as an Examiner or Liquidator?**

Yes. Under the Companies Act 2014, there are certain qualifications necessary prior to a person being able to act as liquidator or examiner. There are five areas in which someone can be qualified in order to act as either liquidator or examiner. The qualification does not refer to any liquidation or examinership that was started prior to the commencement of this Act. Please see Liquidations Leaflet (no. 38)

#### **Is it possible to stop the liquidation and begin trading again?**

A company can return to Normal status and recommence trading but only following an order of the High Court. See section 631 Companies Act 2014.

#### **How do I apply for a company to be placed in court liquidation?**

A creditor can apply to the High Court to wind up a company where certain criteria are met. Under section 569 Companies Act 2014, a company can be wound up if it is unable to pay its debts. In a voluntary winding up, it is the company that places itself in liquidation, whether it is able to pay off all of its debts (members voluntary winding up) or where the company is insolvent (creditors voluntary winding up).

#### **When is a company unable to pay its debts?**

If a creditor is owed over €10,000 and the sum remains unpaid after three weeks, application can be made to the court for the liquidation of a company. (See section 570 Companies Act 2014)

#### **Do I have to file annual returns once a company has gone into liquidation?**

No. When a company commences a winding up, the company ceases to carry on its business and the powers of the directors of the company cease. Instead the appointed liquidator files his/her own set of periodic accounts. However, it is important that the liquidation documents are filed correctly with the CRO. If the resolution hasn't been registered, the company status remains as "Normal" and the company could be subject to strikeoff/prosecution procedures. So it is important to file the outstanding documents.

#### **What if my declaration of solvency E1 is ineffective?**

If ineffective, the company is deemed to be in a Creditors voluntary winding up rather than a members Voluntary Winding Up. The High Court can declare that the carrying on of the restricted activity under the Summary Approval Procedure is valid. Therefore it is very important to file the document correctly. See Information leaflet 38.

#### **Can foreign companies be wound up?**

Yes. However only the High Court can wind up an external company. An external company cannot be placed in voluntary winding up.

#### **Do I have to go through the liquidation process to dissolve a company?**

No. Companies can also be struck off the register, whether involuntarily or voluntarily. Please see information leaflet 28 regarding the voluntary strike off process. **It is not available to all companies and is not available to companies which have assets or liabilities greater than €150.**

## Strike-off of a company

Strike-off of a company is covered in Part 12, sections 725 to 735, of the new Companies Act. The procedure for the involuntary strike-off of a company has not changed. The advertisement of strike-off notices however is now published in the CRO Gazette rather than Iris Oifigiúil. The CRO Gazette is published on the website - [www.cro.ie](http://www.cro.ie) - every week.

### Voluntary Strike-off Procedure

#### Has the procedure for Voluntary Strike-off changed?

Yes. There are several changes. The procedure for voluntary strike-off has now been formalised. The company must have passed a resolution to request voluntary strike-off within the 3 months prior to the application submitted to the CRO. The company must then submit form H15 requesting strike-off and have document signed by **all of the directors** of the company.

All of the directors must sign, there are no exceptions allowed. The form H15 itself must be accompanied by a letter from Revenue (**not more than 3 months old**) and an advertisement that was placed in a daily national newspaper (**not more than 30 days old**). All annual returns must be up-to-date **prior** to application.

#### How can I object to a strike-off of a company?

If the company is being struck off involuntarily, only the submission of the outstanding required documents can prevent the dissolution of the company.

Where a company is being struck off voluntarily, a **form H16** can be submitted to object to the strike-off. This form H16 must state the grounds for the objection to the strike-off, stating which part of the application for voluntary strike-off was in default. This objection must be lodged within the 90 day period of the strike-off procedure. The objection can be rejected by the Registrar and the strike-off can continue where the Registrar is of the opinion that there is no reasonable basis to the objection as submitted.

#### Can I change my mind and stop the strike-off?

Yes. The company can submit form H17 within the 90 day period. Like the objection procedure any submission received outside the 90 day period will be rejected and the strike-off will continue and the company will be dissolved.

### Restoration of a company

The procedures for the restoration of a company are set out in sections 736 to 745 of the Companies Act. These restoration procedures relate only to companies that have been struck off the register (does not include companies that have completed the liquidation procedure).

A company can still be restored administratively within one year of the strike-off by application to the Registrar. **Form H1** is completed for companies that were struck off for default in filing with Revenue Commissioners as well as for strike-off by the Registrar. **Form H1R is no longer completed.**

Where a company has been restored by court order, the certified copy of the order must be received within 28 days of its perfection or it will not be accepted. Section 742 of the Act also allows the court to insist that the company's name be changed if it is too similar to another company on the register or another company which has reserved the name in accordance with section 28.

## Mortgages/Charges

#### Is there any change to the procedure to register charges?

Yes, a company can file a form C1 as before and file the document within 21 days of creation. There is now an alternative using a two stage procedure under section 409 of the Act. A form C1a is completed detailing that a charge is being created and within 21 days of the receipt of the form, a form C1b is submitted detailing the completion of the charges creation. If the form C1b is not submitted as required, then the form C1a is rejected.

All C1, C1a, C1b charge forms must be submitted online. No paper form can be sent to the CRO. Please see [www.core.ie](http://www.core.ie) regarding electronic filing.

#### Is there any extra time allowed to file the form?

No. Under the new Act, there is no extra time to file a charge form. If the document is not received,

within the 21 days as required, the form is rejected.

### **What is the priority order for charges?**

The order of priority for charges is determined by the date and time of receipt of the documents by the Registrar. Section 412 states where the two stage procedure is used, the date and time of receipt of form C1a accords priority to the charge.

### **Judgment Mortgages**

Judgment Mortgages are now submitted using form C10. The form can be submitted by the creditor within 21 days of receipt from the Property Registration Authority (PRA) of the mortgage's creation. The date of receipt is determined to be 3 days after the PRA issued the notice to the creditor.

### **How do I register a satisfaction of a charge?**

The company would complete a form C6 for full satisfaction of a charge or C7 for partial satisfaction. The form has changed in that the declaration is an unsworn declaration by a director and secretary of the company or by two directors. Once this is received, a notice is issued to the chargee regarding the fact that unless an objection is received, the satisfaction will be registered. If the form C6 or C7 is completed by the chargee, no notification is necessary and the satisfaction is simply registered.

### **Is there a penalty for falsely stating that the charge has been satisfied?**

If the satisfaction is submitted by the company and it is found that the persons signed the declaration knowing it to be false, then the officers in question are guilty of a category 2 offence. Also under section 416(6), if the court considers that the making of the statement contributed to the company being unable to pay its debts, prevented or impeded the orderly winding up of the company or facilitated the defrauding of the creditors, remove the limited liability as the court may specify for the debts and other liabilities of the company.

## **Share Capital**

### **How do I reduce the company's capital? Do I have to go to court?**

No. Under the new Act, there is a secondary procedure that can be employed which avoids the need to go to the High Court for approval. This procedure is effected under the Summary Approval Procedure.

## **Mergers & Divisions**

### **Can I now effect a domestic merger or division of a company?**

Mergers and Divisions can be effected both under Part 9 of the Companies Act 2014 and Part 17. A merger/division under Part 9, must involve a LTD company (a private limited by shares company registered under Part 2 of the Companies Act 2014) and cannot involve a Public Limited Company.

Under Part 9 there are two separate procedures for completing the merger, one being the Summary Approval Procedure, the other involving court approval. A merger/division under Part 17 requires court approval.

## **Changing Company Type**

### **How do I re-register the company type from Limited to Unlimited?**

In order to change Company Type, such as from a limited company to an unlimited company or from a private limited company to a public limited company, a company must complete **Form D20** and submit this to the CRO along with the special resolution and the new constitution.

Certain Company Type changes have further requirements in order for the alteration to be made. Please see Part 20 of the Companies Act and Leaflet No. 35 regarding Re-Registration.

(For example if you are changing from a LTD company to DAC you will need to have a second director - only the LTD company type can have only one director.)

### **Is Conversion the same as Re-Registration?**

No. Conversion under Part 2 of the Companies Act 2014 is for Private Limited Companies (limited by shares) incorporated under the old Companies Acts only. Sections 54-63 apply. Re-registration is a

separate process and requires additional documentation. Conversion is free and re-registration has a fee.

The name alteration requirement on Guarantee and Unlimited companies is again not the same as re-registration. See information leaflet 33 regarding the name alteration requirement. Re-Registration is for where a company is changing type rather than amending its constitution to comply with the new Act.

**If you are a private company limited by shares, you should use the conversion procedure rather than the re-registration procedure if you simply wish to become a LTD company (private limited company by shares) or a DAC (designated activity company) limited by shares.**

## Registered Office

### **What is a Registered Office Agent?**

A Registered Office Agent (ROA) is a firm who has a registered office in the State and who has received approval from the Registrar of Companies to act as a Registered Office agent. A company can apply on Form B2 to place the registered office of the company in the care of the agent. Thereafter whenever the registered office/address of the agent is changed, the company's registered office address will automatically change without the further submission of form B2.

### **How do I apply to be a Registered Office Agent?**

Applicants complete form B81 and declare that their office is maintained in the State and that the registered offices of their clients will be maintained at this address. Then whenever the address of the agent is updated by the submission of a Form B2, the registered office of the client companies will also be updated.

## External Companies

### **Why can't I register a Place of Business?**

Under the new Companies Act, an external company can only register as a Branch EEA or Branch non EEA. (EEA - European Economic Area). Existing Place of Businesses registered with the CRO cease as of June 1st 2015. Existing limited liability Place of Business registrations have the option to re-register as a Branch.

### **Can I file a charge against the "Slavenburg File"?**

No. Since June 1st 2015, the Slavenburg file has been closed. An external company cannot file particulars of a charge unless it is a registered branch on the external company register.

## Other Legislation

### **Have there been any changes to the Business Names Registration or Limited Partnerships?**

No. The registration of Business Names and Limited Partnerships is determined by separate legislation, principally, the Business Names Act 1963 and the Limited Partnerships Act 1907. As a result there is no change to the processes. Only companies are affected by the redevelopment of the Companies Acts.



**AN OIFIG UM CHLÁRÚ CUIDEACHTAÍ**  
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