

The Company Limited by Shares (the “LTD”)

COMPANIES ACT 2014

The Companies Act 2014 (the “**Act**”) came into effect on 1 June 2015 and introduced significant reforms in company law in Ireland.

Under the Act, an existing private company limited by shares has to decide, within a transition period (ending on 30 November 2016) whether to opt into the new regime for private companies limited by shares (LTD) or to opt out by becoming a designated activity company (DAC) or some other type of company by 31 August 2016. The LTD is the new form of the existing private limited company.

Key Features

- The LTD is a private limited company.
- The constitution of an LTD comprises one document which replaces the need for a memorandum of association and articles of association.
- The LTD does not have an objects clause and has full unlimited capacity to carry on any legal business, subject to any restrictions in other legislation.
- The name of an LTD must end in “Limited”, “LTD” or the Irish language equivalent, and it may not apply for an exemption from this requirement.
- The LTD may have a single director but it must have a separate company secretary.
- The LTD may have from 1 to 149 members.
- The LTD has the right to dispense with holding an AGM.
- The law relating to DACs applies to all existing private companies limited by shares until they re-register as an LTD or another company type or migrate to an LTD at the end of the transition period.

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Preliminary

This briefing may be read in conjunction with McCann FitzGerald briefings on DACs and Migration of Existing Private Limited Companies.

Parts 1 to 14 of the Act govern the LTD exclusively. The Act is based on the LTD being the paradigm type of company, with additional parts of the Act adapting the LTD-related parts and applying them to the relevant company type. The Act provides that, during the transition period, an existing company may migrate into any type of company that the Act recognises, while retaining most of the provisions of its existing memorandum and articles of association (although an LTD may not have any objects clause). Even though the DAC is the most similar company type to the existing company limited by shares (which perhaps confusingly used “Ltd” or “LTD” in its name under previous Companies Acts) the company type LTD is the new model form company type under the Act. In the event that any company does not proactively migrate during this transition period, a default transition occurs (eg a then-existing private company limited by shares becomes an LTD).

In any event, procedures in the Act accommodate the conversion of a company from any type to any type, with a default constitution being applied unless the company adopts a tailored document.

Constitution

Single-Document Constitution

An LTD has a single constitutional document, effectively amalgamating the memorandum of association and the articles of association of an existing private limited company. There is no longer a requirement for detailed articles of association as the majority of the provisions commonly provided for in articles of association on the internal administration and governance of a company are contained in the Act (ie as legislation rather than internal statutes of the company) and apply to every private company (in some cases, unless its constitution provides otherwise).

Abolition of Table A of the Previous Companies Acts

Provisions commonly provided for in the articles of association of a company are now contained in the Act so that the familiar default rules in Table A have been abolished. In their place, default rules are set out in the body of the Act which apply to every company unless explicitly stated otherwise in its constitution. These principally incorporate the procedures for corporate governance previously contained in Table A (although there are some changes introduced to the model provisions of Table A).

Capacity

Objects Clause

An LTD is not permitted to have an objects clause, so that an LTD has the same unqualified legal capacity to do anything that a natural (ie a human) person may lawfully do. Therefore, the doctrine of ultra vires (“beyond the legal powers”) no longer applies to an LTD, and an LTD, by default, is empowered to do anything lawful that its directors determine. This is the main distinguishing feature of the LTD compared to other types of private companies limited by shares, such as the DAC.

Public Offers

An LTD is prohibited from offering securities (equity or debt) to the public. Subject to specific exemptions, an LTD may not make to the public any offer of any of its shares, debentures or other securities, nor allot (for cash or otherwise) any of its shares or debentures with a view to their being offered for sale to the public. The Act also places a new prohibition on an LTD having securities (or interests in them) admitted to trading or listing on any market (including a regulated market) in Ireland or elsewhere and from applying for any such admission.

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Corporate Governance

Directors

An LTD may have a single director (the previous entitlement to have a single member is retained), but a sole director is not permitted to be the company secretary, therefore requiring a second person to perform that role.

Proceedings of Directors

The Act imposes a duty on a director of an LTD who is, in any way, whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his or her interest at a meeting of the directors of the company. In the case of a proposed contract, the Act requires a director to make a declaration at the directors’ meeting at which the question of entering the contract is first considered and, in the case of a director becoming interested in a contract after it being made, be made at the first meeting afterwards. The Act requires such declarations to be entered on to the register within three days (of making or giving the declaration).

General Meetings

The Act permits an LTD to dispense with the requirement to hold an annual general meeting (“AGM”) and provides that AGMs (should the requirement not be so dispensed with) and extraordinary general meetings (“EGMs”) may be held inside or outside the State. The Act expressly confirms that a single member holding 10% or more of the paid up share capital of a company carrying the right to vote has the right to convene an EGM. Subject to conditions, an LTD (whether having a single member or multiple members) is entitled to adopt written procedures in place of an AGM.

Auditing, Financial Statements and Accountability

Audit Exemption

An LTD may avail of the audit exemption where at least two of the prescribed conditions in respect of the particular year are satisfied:

- the balance sheet total of the company does not exceed €4.4m;
- the amount of the turnover does not exceed €8.8m; and
- the average number of persons employed by the company does not exceed 50.

Accountability¹

The Act provides that directors of an LTD, the balance sheet of which exceeds €12.5m and the turnover of which exceeds €25m, must prepare a compliance policy statement. This statement must set out the company’s policies (i.e. those that, in the opinion of the director, are appropriate to the company) on its compliance with certain statutory obligations (principally those under the Act).

Share Capital

Variation in Capital

Unless its constitution provides otherwise, an LTD has the power by ordinary resolution to increase its authorised share capital or to cancel unissued shares (if in either case it has chosen to have an authorised share capital) and to consolidate or subdivide its shares. On conversion of shares into redeemable shares, a significant change in the Act is the removal of the restriction that no shares may be converted into redeemable shares if, as a result, the nominal value of the non-redeemable issued share capital would be less than 10% of the nominal value of the total issued share capital of the company concerned. This is consistent with the removal of the corresponding restriction applicable at the time of issue or redemption of redeemable shares.

¹ Some provisions of the Act will not apply to a company until its first financial year beginning on or after 1 June 2015. These provisions include the obligation to prepare a Directors’ Compliance Statement.

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Reduction in Company Capital

A reduction of company capital may be effected by employing the Summary Approval Procedure (below) or by adopting the traditional procedure of passing a special resolution that is to be confirmed by the court.

Summary Approval Procedure

The Act introduces a procedure referred to as the Summary Approval Procedure, under which certain activities that would otherwise be restricted may be undertaken by a company subject to the shareholders passing an appropriate special resolution following the making of a prescribed declaration by the directors. The rationale here is to establish a single shareholder validation procedure. This is applied to many types of transaction that previously required shareholder (or even court) approval, such as:

- financial assistance by a private company for the acquisition of its own shares;
- guarantees for loans to a company’s own directors;
- mergers of companies of many types;
- a reduction of capital;
- certain reorganisations of a company’s capital; and
- treating the pre-acquisition profits of a subsidiary as being available for distribution by the parent.

Transition

Under the Act, an existing private company limited by shares has to decide, within the transition period, whether to opt into the new regime for an LTD or opt out by becoming some other type of company.

From 1 June 2015 until the expiry of the transition period (30 November 2016), all existing private companies limited by shares are subject to the laws applying to the DAC limited by shares. Any private company limited by shares that wishes to become an LTD and not retain its objects clause should elect to re-register as an LTD during the transition period. An LTD is particularly well suited to small trading companies and groups. Banks, insurance undertakings, State companies and existing private companies limited by shares that have debentures listed on an exchange cannot become an LTD and so must become DACs (or another acceptable form such as a public limited company). Joint venture companies also favour a DAC to an LTD structure.

The articles of an LTD may take the form of substantive regulations or a statement confirming that the provisions of the Act are adopted. If adopting the former approach it would be inadvisable for an LTD to incorporate its existing articles into its constitution without further consideration and analysis as provisions of existing articles may conflict with mandatory provisions of the Act.

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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.

This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting or refraining to act on any of the matters discussed.

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