

Companies Act 2014 become effective from 1<sup>st</sup> June 2015. The Act introduced changes that affects every company. We have outlined below some of the key changes introduced by the new Companies Act 2014.

## Company Types

### Company Limited by shares (LTD)

- Is a private company limited by shares. The Company name must end in "Limited" or "LTD" or "Teoranta" or "teo".
- Will have a single document constitution which replaces the need for a Memorandum and Articles of Association.
- It will not have an objects clause therefore granting unrestricted capacity to carry on any legal business.
- May have a single director.
- Must have a company secretary. May be one of the directors where there is more than one director but if only one Director must have a different person/entity.
- No requirement to have an authorised share capital.
- May dispense with the holding of a physical AGM.
- May not list, or have admitted to trading any securities (either shares or debts).

### Designated Activity Company (DAC)

- May be either limited by shares, or limited by guarantee, with a share capital. The Company name must end with "Designated Activity Company" or "DAC".
- Will continue to have a two part constitution.
- Must have a Memorandum and Articles of Association with an objects clause.
- Must have a minimum of two directors.
- Must have a company secretary which may be one of the directors.
- Must have an authorised share capital.
- Must hold a physical AGM unless it is a single member company.
- May list debt securities.

### Guarantee Companies (CLG)

- Does not have to convert or register under the Act.
- Must change its name to include 'Company Limited by Guarantee' or 'CLG' for 'Ltd' at the end of its name.
- Must have two directors.
- Cannot dispense with the holding of an AGM where it has more than one member.
- May avail of Audit Exemption.
- Must have an Objects Clause.

### Unlimited Companies (UC)

- Does not have to convert or register under the Act.
- Must change its name to include the words 'Unlimited Company' or 'UC'.
- Must Have Two Directors.
- Must Have an Objects Clause.
- Two Document Constitution.

## Other Key Changes

### Director's Loans

Loans to the company by directors or by the company to directors should be **documented clearly in writing** to avoid the presumptions under the Act applying:

**Not in writing:**

**Company to Director**  
It is assumed to be repayable on demand and will be interest bearing at an appropriate rate.

**Director to Company**  
It is not treated as a loan.

**In writing or partially in writing but terms ambiguous:**

**Company to Director**  
It is assumed to be repayable on demand and / or it will be interest bearing at an appropriate rate.

**Director to Company**  
If the transaction is found to be a loan then the loan is presumed to be interest free and / or has no security or if it is proved to be secured then the security will be assumed to be subordinate to all other creditors.

### Audit Exemption

1. The criteria to qualify as a **"small companies"** for the purposes of claiming audit exemption has changed.

For current and previous years, companies must have filed their annual returns on time and have met 2 of the following threshold criteria: Turnover <€12m; Balance Sheet Total <€6m; Average no. of employees <50.

2. Where a company is **part of a group** they can also avail of the exemption provided the group meets the "small group" criteria.

All Irish registered companies in the group must have filed returns on time and the group taken as a whole meets 2 or more of the following criteria after the elimination of intra-group balances (in current and previous year):- Turnover <€12m net; Balance Sheet Total <€6m net; Average no. of employees <50.

3. Audit exemption has been also extended to Dormant Companies, Companies Limited by Guarantee and Unlimited Companies, subject to certain criteria being met.

### Director's Duties

Director's duties have become codified under the Act with the following key duties.

- To act in good faith, in the best interests of the company.
- To act honestly and responsibly.
- To act in accordance with the company's constitution and to exercise powers only for lawful purposes.
- Not to use company property for their own or others personal gain unless approved by the company's members or agreed to in the company's constitution.
- Not to fetter discretion unless permitted by the company's constitution or entered into the company's interests.
- To avoid conflicts of interest.
- To exercise care, skill and diligence.
- To have regard to the interests of the company's members.

### Director's Compliance Statement and Audit Committee

Companies with turnover in excess of €25m and balance sheet (fixed plus current assets) in excess of €12.5m are required to prepare and include in their financial statements a Directors' Compliance Statement.

Companies / groups with turnover in excess of €50m and balance sheet (fixed plus current assets) in excess of €25m are required to have an Audit Committee.

### Company Secretary

The Directors are now required to make sure that the Company Secretary has the skills or resources necessary to discharge his or her statutory and other duties.

## Contacts

If you have any queries on how the Act may impact on your company or its directors please contact us:



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