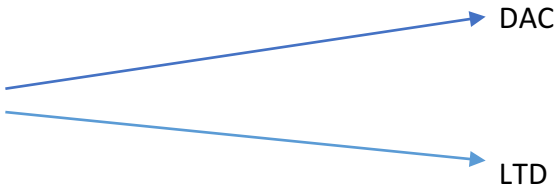
Information Sheet

Companies Act 2014

- Ultra Vires no longer an issue
- 1 Director permitted
- Memos & Arts replaced by a single document
- AGMs can be in writing reducing the need for physical presence
- Directors fiduciary duties now listed in one place
- Liquidators need to hold professional qualification
- Co Law offences are now rated 1-4
- Merging of 2 companies now permitted
- Audit exemption available to co.s limited by guarantee
- Externally located companies will register a 'Branch' in Ireland
- Directors Compliance Statement introduced in the annual Director's Report

1 Introduced on 1 June 2015.



All existing private companies must convert to either a DAC or LTD

2 The Act

- 1400 sections
- In 25 parts
- Amalgamates the previous 33 company law enactments in to one piece of legislation

3 Conversion

30 November 2016

Do nothing then an existing LTD converts to an LTD

Or – pass a resolution to convert from LTD to DAC

Unlimited Companies/PLCs/Companies limited by Guarantee need not convert

4 All companies can be Single Member

4.1 Company Limited by Shares (LTD)

- one director but, in that case, must have a
- separate company secretary.

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- A company secretary of an LTD, DAC, CLG or an unlimited company must possess the necessary skills and resources to fulfil his/her role in accordance with section 129. Section 1112 places further qualification requirements on the company secretary of a PLC;
- It can adopt written procedures instead of holding an annual general meeting of shareholders (AGM).
- It has a one-document constitution (replacing its current memorandum and articles of association) and its internal regulations are set out in simplified form in that constitution. Its name will not change after conversion and it can continue to use the suffix "Limited" or "Ltd" (or the Irish equivalent). An LTD is prohibited from offering securities (equity or debt) to the public.
- Directors rotation not required
- Board of Directors determines te remuneration of the Directors
- 50% of members can call an EGM – previously 50% of members could call on the directors to call an EGM

4.2 Designated Activity Company (DAC)

- continued existence of an objects clause in the DAC constitution. A DAC may be a suitable vehicle where an objects clause is needed (eg to restrict the corporate capacity of a joint-venture vehicle) or for companies listing debt securities on a stock exchange.
- A DAC requires two directors.
- It must convene an AGM unless it is a single member company, in which case this requirement can be dispensed with. Its name must end with "designated activity company" or "DAC" (or the Irish equivalent) which will mean changes to company stationery, websites, seals and registrations.
- Directors rotation not required
- Board of Directors determines te remuneration of the Directors
- 50% of members can call an EGM – previously 50% of members could call on the directors to call an EGM
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4.3 Unlimited Company The Act recognises that there are three distinct types of unlimited company:

- The private unlimited company with a share capital (ULC)
- The public unlimited company with a share capital (PUC)
- The public unlimited company without a share capital (whose liabilities are guaranteed by its members) (PULC)
- Unlike the LTD, an unlimited company must have at least two directors
- Hold an AGM unless it is a single member company in which case this requirement can be dispensed with.

- Significantly, the statutory rules on distributions (and any other rule of law on the topic) do not apply in the case of unlimited companies. ULCs may not offer for sale or list any new securities, as is the case for an LTD, but a PUC and PULC may list debt securities.
- Directors rotation not required
- Board of Directors determines te remuneration of the Directors

4.4 Public Limited Company (PLC)

- The PLC continues to be recognised as a company type under the new regime. A PLC must have an objects clause although the Act seeks to oust the doctrine of ultra
- A PLC must have at least two directors
- and cannot dispense with the holding of an AGM.
- It must have a minimum issued share capital of €25,000.

4.5 Guarantee company (CLG)

- Guarantee companies that have a share capital are considered to be DACs under the Act. The CLG is likely to remain a popular type of company for charities, sports and social clubs and property management companies. The members' liability is limited to such amount as they undertake in the constitution of the company to contribute to the assets of the CLG in the event of its winding up.
- A CLG has a two document constitution,
    - consisting of a memorandum and articles of association.
    - A CLG must have at least two directors and must hold an AGM unless it is a single member company in which case this requirement may be dispensed with. The name of a CLG must end with the words "company limited by guarantee" or "CLG" (or the Irish equivalent) although, as was previously the case, an exemption from using such a suffix may be available. The audit exemption previously available to other types of company was extended to the CLG under the Act (although any one member can object and can force the company to carry out an audit). www.matheson.com Companies Act 2014

5 Corporate Governance

5.1 **"Table A" provisions now statutory defaults**

Chapter 4 of Part 4 incorporates a number of provisions which were previously set out in Table A of the Companies Act 1963. These provisions have, for the most part (exceptions include those relating to the keeping of minutes of directors' meetings and audit committees) been included in the Act as statutory defaults meaning that a company is required to comply with them unless the company's constitution specifically determines otherwise. This has the advantage that new company constitutions do not have to replicate the standard administrative provisions where the statutory default is adopted whereas previously the equivalent Table A provisions would have been expressly stated in the articles of association of the company. The Table A provisions thus adopted as statutory defaults all relate to the proceedings of directors.

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5.2 Directors' duties Directors' common law fiduciary duties have been codified in the Act. These exist alongside the many existing statutory duties of directors (contained in the Act and in other legislation) which continue to apply.
5.3 Compliance statements The Act requires the directors of (i) all PLCs; and (ii) certain large private companies which reach prescribed thresholds to prepare a statement of compliance with company and tax law to be included in the directors' report in the annual accounts, and to ensure that the company adopts appropriate compliance measures.
5.4 Disclosure of interests in shares and share options The Act contains a new exemption from what is a disclosable interest in a case where the shares or share options held by a director (aggregated with those of connected persons) amount to an interest in less than 1% in nominal value of the company's issued share capital of a class of shares carrying voting rights. This should substantially reduce and, in many cases, eliminate the disclosure obligations for directors and secretaries.
5.5 Directors' residential addresses The Minister for Jobs, Enterprise and Innovation has introduced regulations which allow for the non-publication of a director's usual residential address in the Companies Registration Office or on company registers in cases where that director's personal safety or security are at stake.
5.6 Company secretary Under the Act, the company's directors are required to ensure that the company secretary has either the skills or the resources necessary to discharge his or her statutory and other legal duties. The obligation on company secretaries to ensure compliance with companies legislation has been removed.
5.7 Annual general meeting AGMs have become optional for LTDs and single member DACs, PLCs, CLGs and unlimited companies under the new regime as they are entitled to adopt written procedures instead. This involves shareholders signing a written resolution acknowledging receipt of financial statements, resolving all matters as would be required to be resolved at the AGM and confirming that there is to be no change to the auditor.
5.8 Majority written resolutions The Act introduces new decision-making mechanisms for shareholders. Majority written resolutions can be passed as ordinary resolutions (50% or more of total voting rights) or special resolutions (75% or more of total voting rights) and take effect 7 and 21 days, respectively, after the last member has signed. This is in addition to the old system where written shareholder resolutions must be unanimous and take immediate effect which option is still available to companies.
5.9 Serious loss of capital Under the new system, there is no requirement for private companies to convene an extraordinary general meeting on a serious loss of capital. The requirement remains in the case of PLCs. www.matheson.com Companies Act 2014
6 Capacity 6.1 Corporate capacity The doctrine of ultra vires ("beyond the legal powers") ceases to apply to the LTD which no longer has an objects clause. This means that an LTD has unlimited corporate capacity once acting within the law. Other company types retain an objects clause but a third party dealing in good faith with the company will not be prejudiced if the company exceeds its corporate capacity. 6.2 Corporate authority Where

the board of a company generally authorises a person (including one of the directors) to bind the company in contract, that person may be registered in the Companies Registration Office as a “registered person”. The board of directors and registered persons are deemed to have the authority to bind the company. These provisions should make it easier for third parties to enter into contracts with companies as there should be no necessity to obtain a copy of a board resolution authorising the relevant transaction in certain instances.
7 Structures 7.1 Reorganisations The Act contains new procedures to merge and divide companies as well as retaining established mechanisms for reorganising companies, namely court-sanctioned schemes of arrangement and the compulsory acquisition of minority shareholdings. For the first time under Irish law, there is a statutory procedure allowing two Irish private companies (of which at least one must be an LTD) to merge so that the assets and liabilities of one transfer by operation of law to the other, after which the former company is dissolved. These new measures are modelled on the cross-border mergers regime used successfully by many Irish companies. Under the new system, a statutory merger can occur using the Summary Approval Procedure (SAP) (see below) without court approval. Use of the SAP should significantly reduce the time and cost of these type of transactions. 7.2 Capital reductions The Act makes it easier for a company to reduce its capital by providing that it may be carried out using the SAP (see part 8 below) rather than necessarily requiring court confirmation. The reserve arising from a capital reduction is treated as a realised profit. 7.3 Place of business The Act abandons the concept of a “place of business” and the new law provides only for the “branch” concept. The only external companies which are required or permitted to register and file accounts in Ireland are those whose members have limited liability and which establish a branch in Ireland. External unlimited companies and companies whose presence is less than that of a branch may not register their presence in Ireland under the new system. 7.4 Group companies The Act combines the definition of “subsidiary company” which was contained in the Companies Act 1963 with the definition of “subsidiary undertaking” which was contained in the European Communities (Companies: Group Accounts) Regulations 1992 for the purposes of group accounts, so that there is now a common definition. A “wholly-owned subsidiary” is defined for the first time under Irish company law. www.matheson.com Companies Act 2014
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8 Other key changes 8.1 Summary Approval Procedure (SAP) The introduction of an omnibus statutory validation procedure is a key innovation of the Act. A simplified written approval process may be undertaken for activities that might prejudice shareholders or creditors (financial assistance for acquisition of own shares, reduction of company capital, variation of capital on reorganisations, treatment of pre-acquisition profits as distributable, transactions with directors and connected persons, mergers and members’ voluntary windings up). This new validation procedure involves the passing of a special resolution and the making by directors of a declaration of solvency (which, in some cases, must be supported by the report of an independent person). In certain cases, the SAP eliminates the need for court approval of a transaction. 8.2 Financial assistance The Act attempts to ease

the restrictions on a company giving financial assistance for the acquisition of its own shares by reformulating the wording of the prohibition and introducing a “principal purpose” exemption. 8.3 Charges and debentures The Act introduces several important changes to the law regarding charges and debentures. The aim of these changes is to simplify the registration of charges while clarifying the rules for the priority of charges. The Act introduces an optional two-stage procedure so that notification can be given to the CRO of the intention to create a charge in order to secure priority before the charge is actually created. It is thought that lenders may be more willing to advance funds if they can achieve an enhanced security priority over a company’s assets. Under the new system, charges over cash or a bank account will not need to be registered. 8.4 Revision of defective financial statements The Act introduces a new procedure which will allow for the preparation, approval, audit and filing of revised financial statements in relation to a prior year. 8.5 Audit exemption The audit exemption is now available in certain group situations (but not for a PLC, PUC, PULC or a company with securities listed on a regulated market). The audit exemption is also extended to dormant companies (ie, companies with no significant accounting transactions during the year and which have only intra-group assets and liabilities). An LTD and a DAC may avail of the audit exemption where two of the three prescribed conditions are met (whereas, under old law, all three conditions needed to be satisfied). 8.6 Offences Under the Act, all offences are categorised as either Category 1, 2, 3 or 4 offences and the penalties which apply for each type of offence are set out in Part 14. Companies Act 2014