

The Companies Act 2014 and the Companies (Amendment) Bill 2016

The Companies Act after 15 months

Key dates:

- **1 June 2015**
Commencement of the Act
- **1 January 2016**
First financial year under the Act for most companies – compliance matrix and audit committee requirements apply to companies in scope
- **31 August 2016**
Last day for re-registration as a DAC without special resolution
- **1 December 2016**
All private companies limited by shares – other than those that have elected to be DACs – become LTDs
- **31 December 2016**
End of first financial year under the Act for most companies. Financial statements for companies in scope must state whether:
 - compliance policy statement drawn up
 - structures and arrangements put in place to implement policy
 - review of structures and arrangements conducted

Amendments to the Companies Act

- Miscellaneous amendments
- Audit Regulations – 17 June 2016
 - EU Regulation 537/2014 and SI 312/2016
 - IAASA takes over regulation of auditors
 - Mandatory audit firm rotation for public interest entities
 - Restrictions on certain non-audit services to public interest entities

*Dublin, London
& New York*



- certain tax services
 - internal audit
 - legal, negotiation and advocacy services
 - human resources
- Fees for non-prohibited non-audit services must not exceed 70% of total audit fee of a public interest entity
- “Big 4” contractual limitations on choice of auditor prohibited from 17 June 2017
- Market Abuse Regulations – 3 July 2016
 - EU Regulation 596/2014 and SI349/2016
 - 12 EC Regulations, Central Bank Rules and ESMA Guidance
 - Unified regulation by Central Bank
 - Common regime for listed companies and ESM/AIM companies:
 - disclosure of information to the market
 - disclosure of PDMRs’ dealings
 - insider dealing
 - market manipulation
 - Finance (Certain European Union and Intergovernmental Obligations) Bill 2016 will deal with criminal penalties and civil right of action
- Companies (Accounting) Bill 2016

Provisions that are working well

- Generally
 - Single Act
 - Simplified company constitutions
 - Ultra vires – gone from LTDs and subdued in other companies
 - Procedures for passing of member and director resolutions
 - Telephone meetings
 - Registered persons
 - Share capital adjustment and reduction
 - Summary approval procedure
 - System for registration of charges
 - Rectification of accounts
- Client-friendly procedures
 - Financial assistance simplified
 - All “acquisitions” other than redemptions or repurchases
 - “for the purpose of” only

- No prohibition if—
 - » the company’s principal purpose in giving the assistance is not to give it for the purpose of any such acquisition, or
 - » an incidental part of some larger purpose of the company
 - Continuance of 2005 exceptions
- Summary approval procedure
 - Broader scope than financial assistance, guarantees for directors and members’ voluntary liquidations
 - » Loan etc. transactions with directors
 - » Reduction of capital
 - » Variation of company capital on reorganisation
 - » Onward distribution of subsidiary’s pre-acquisition profits
 - » Merger of companies
 - “Declarations”, not statutory declarations – directors’ meetings can be by telephone, video conference

Anomalies

- “Credit institution”
 - a LTD “shall not carry on the activity of a credit institution”
 - a company or undertaking “engaged in the business of...granting credit for its own account”
 - Companies (Accounting) Bill expected to deal with this
- Forms of proxy
 - Where the time limited by any provision of this Act for the doing of anything expires on a Saturday, a Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, a Sunday or a public holiday.
- Listings by LTDs
 - Companies (Accounting) Bill will deal with this
- Share capital issues
 - Requirement for distributable reserves in unlimited companies
 - Availability of share premium account as in CA 1963 s 62(1)
 - Share capital reduction where deficit on profit & loss account
- Registration of charges over shares in non-Irish companies
- Share buybacks on AIM and ESM

Companies (Accounting) Bill – unlimited companies

- Directive 2013/34/EU clarifies requirement for unlimited companies with limited shareholders must file accounts
- Bill goes beyond the directive to extend the legal obligation to file to all subsidiaries, including partly owned subsidiaries
- Foreign unlimited companies that are subsidiaries (including partly owned) with Irish branches must register and file accounts

Companies (Accounting) Bill – other companies

- New micro-company and thresholds increase for other sub-types
- Micro companies
 - must satisfy 2 of these 3 requirements:
 - ≤10 employees
 - balance sheet ≤€350,000
 - turnover ≤€700,000,
 - not a subsidiary or a holding company
 - exemptions from
 - disclosure the directors' remuneration in their financial statements
 - requirement for directors report
 - disclosure of information in relation to directors benefits such as loans, credit transactions and guarantees
 - ability to use the minimal form financial statements contained in the Bill
- Small
 - must satisfy 2 of these 3 requirements:
 - ≤ 50 employees
 - balance sheet ≤€6,000,000
 - turnover ≤€12,000,000
- Medium
 - must satisfy 2 of these 3 requirements:
 - ≤ 250 employees
 - balance sheet ≤€20,000,000,
 - turnover ≤€40,000,000
 - Must now disclose turnover and cost of sales
- Audit exemption even if annual return late
- Extractive industry and forestry companies
 - New Part 26
 - Annual country by country report of payments to governments

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