

*Doing the Deal:  
Corporate Acquisitions  
in Ireland*

*Tuesday, 2 June 2015*



# *Introduction to the Irish Companies Act 2014*

**Paul Egan**  
**Partner & Chairman, Corporate**  
**Mason Hayes & Curran**



## *This morning*

- Irish Legal and Corporate Environment
  - Paul Egan
- New Transaction Types for Irish Companies
  - David Mangan
- Doing Deals in Ireland
  - Matt Cole
- Irish & UK Public Company Takeovers: What's Different?
  - Justin McKenna

## *Irish Companies Act 2014 – What's in it?*

- Included
  - All the Companies Acts
  - All the company law SIs transposing EU Directives
- Excluded
  - All the securities law SIs transposing EU Directives
    - Listing
    - Market Abuse
    - Prospectus
    - Transparency
  - Audit Regulations 2010
  - Removal of unlimited company accounts filing exemption
  - EU Regulations – SE, Insolvency, EEIG
- Pending
  - Transposition of Accounting and Audit Directives

## *New Jargon*

LTD	DAC	SAP
Private company limited by shares	Designated Activity Company	Summary Approval Procedure
Many reforms in the Act apply only to the LTD	Company limited by shares, with restricted objects	Directors' declaration of solvency and special resolution
Unlimited corporate capacity, single director, no AGM	Company name will end with "DAC"	In some cases, accountant's opinion
		Potential directors' liability on insolvency

## *Environment*

- Law for private companies and for transaction structures much reformed
- Law for PLCs the same
- Distinctions in Takeover Rules and Panel practice continue
- 85 Irish-registered PLCs subject to Irish Takeover Panel Act and Rules
- 28 listed on NYSE or NASDAQ only
- Drift to London listings

# *New Transaction Types for Irish Companies under the Companies Act 2014*

**David Mangan**

**Partner, Corporate, Mason Hayes & Curran**



## *New Irish transaction law*

- Financial assistance reformed
- Merger relief introduced
- Share capital rules simplified
- Law on three-party share for undertaking transactions deals with distribution etc. issues
- Mergers introduced for all companies



# *Financial Assistance*

## 1. Financial assistance

- Prohibition still applies to all companies
- Relaxation of the prohibition
  - only applies to assistance that is “for the purpose of” an acquisition
  - prohibition does not apply where assistance is not the principal purpose or where the assistance is only an incidental part of some larger purpose
  - an anomaly in the refinancing exception has been resolved, and now expressly applies to re-refinancings

## 2. Merger relief

## 3. Share capital rules

## 4. Three-party share for undertaking transactions

## 5. Mergers

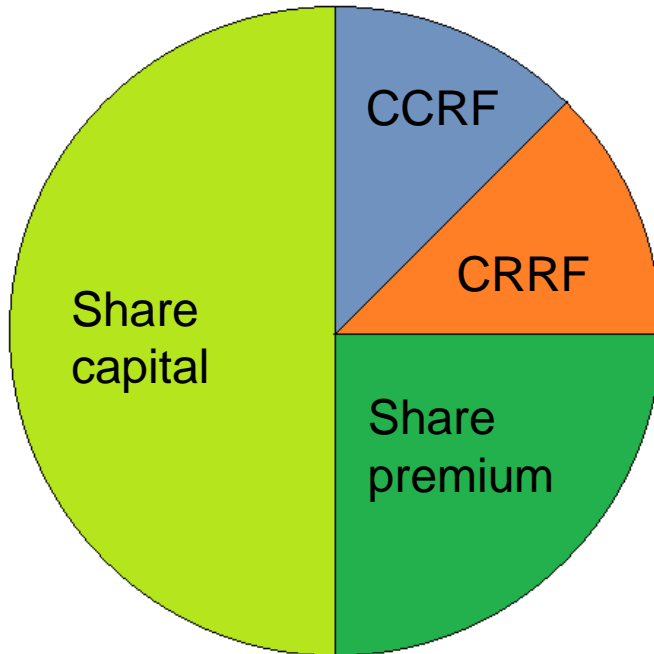
## *Merger Relief*

1. Financial assistance
2. Merger relief
  - Substantially the same as the UK
3. Share capital rules
4. Three-party share for undertaking transactions
5. Mergers

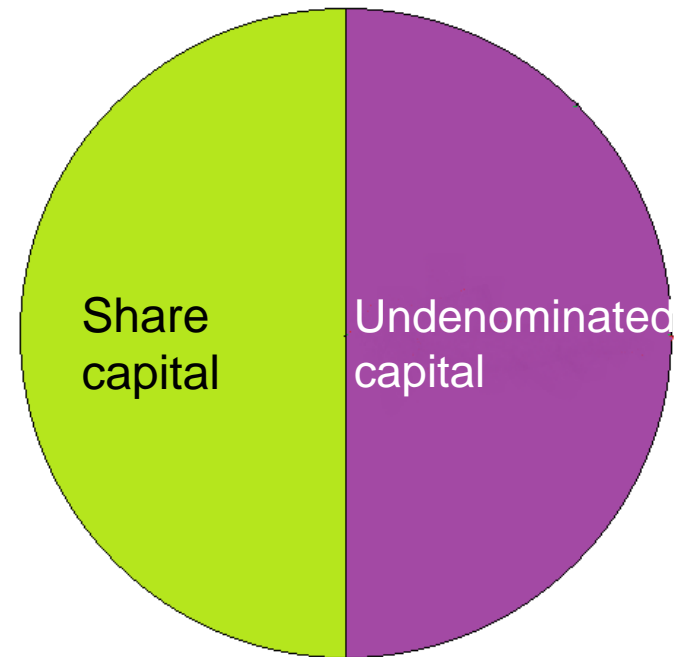
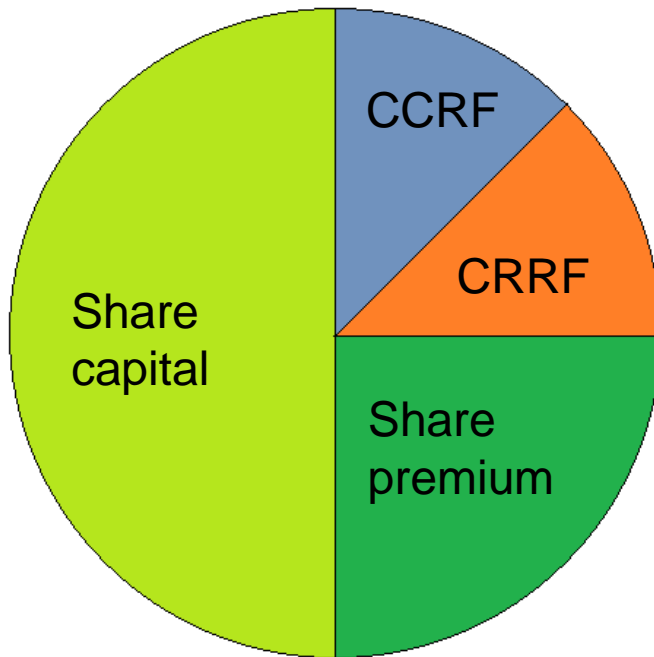
# *Share Capital Rules*

1. Financial assistance
2. Merger relief
3. Share capital rules
  - Increase or decrease par value of shares by ordinary resolution
  - Reduction in share capital in private companies by Summary Approval Procedure
  - “Company capital”
4. Three-party share for undertaking transactions
5. Mergers

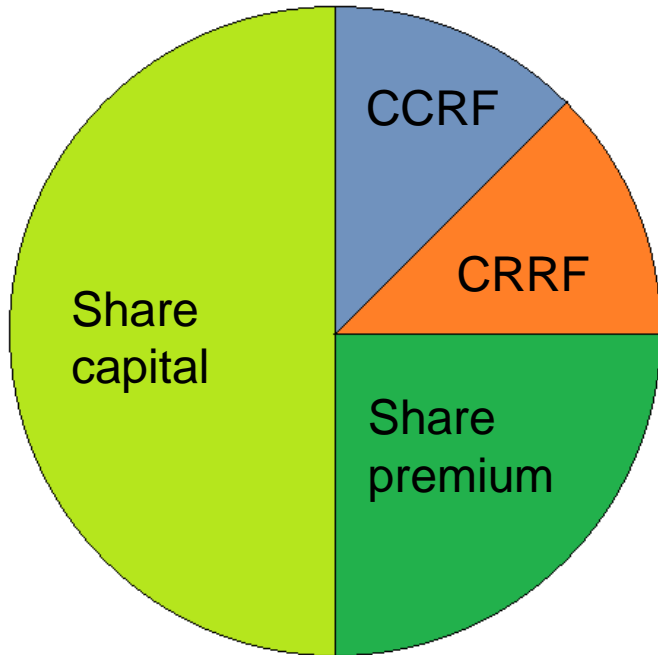
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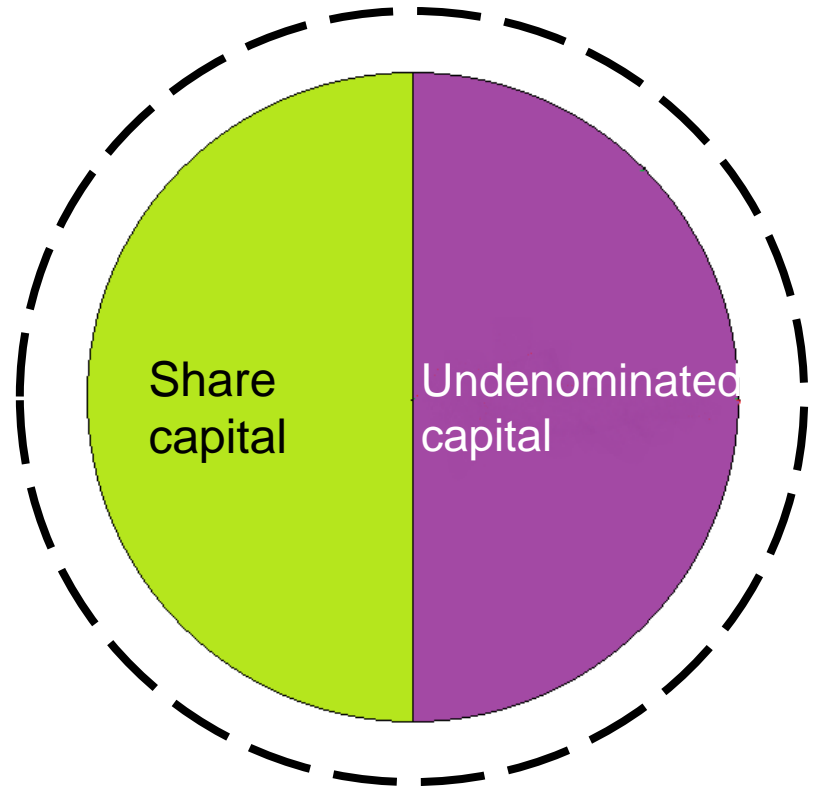
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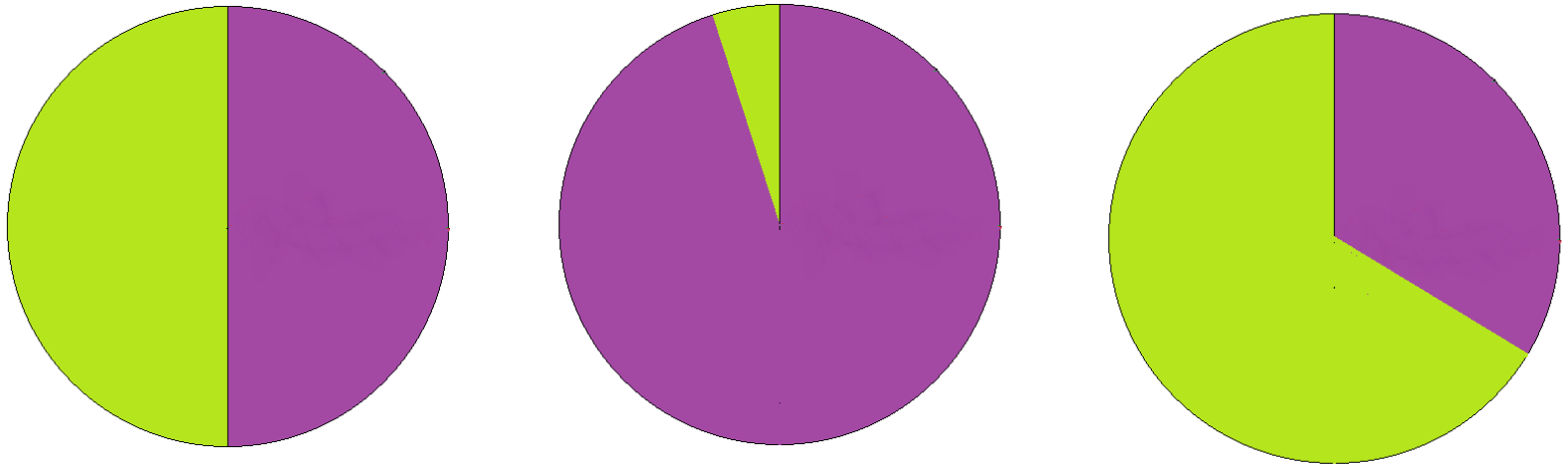
# Share Capital Rules



Company Capital



## *Share Capital Rules*



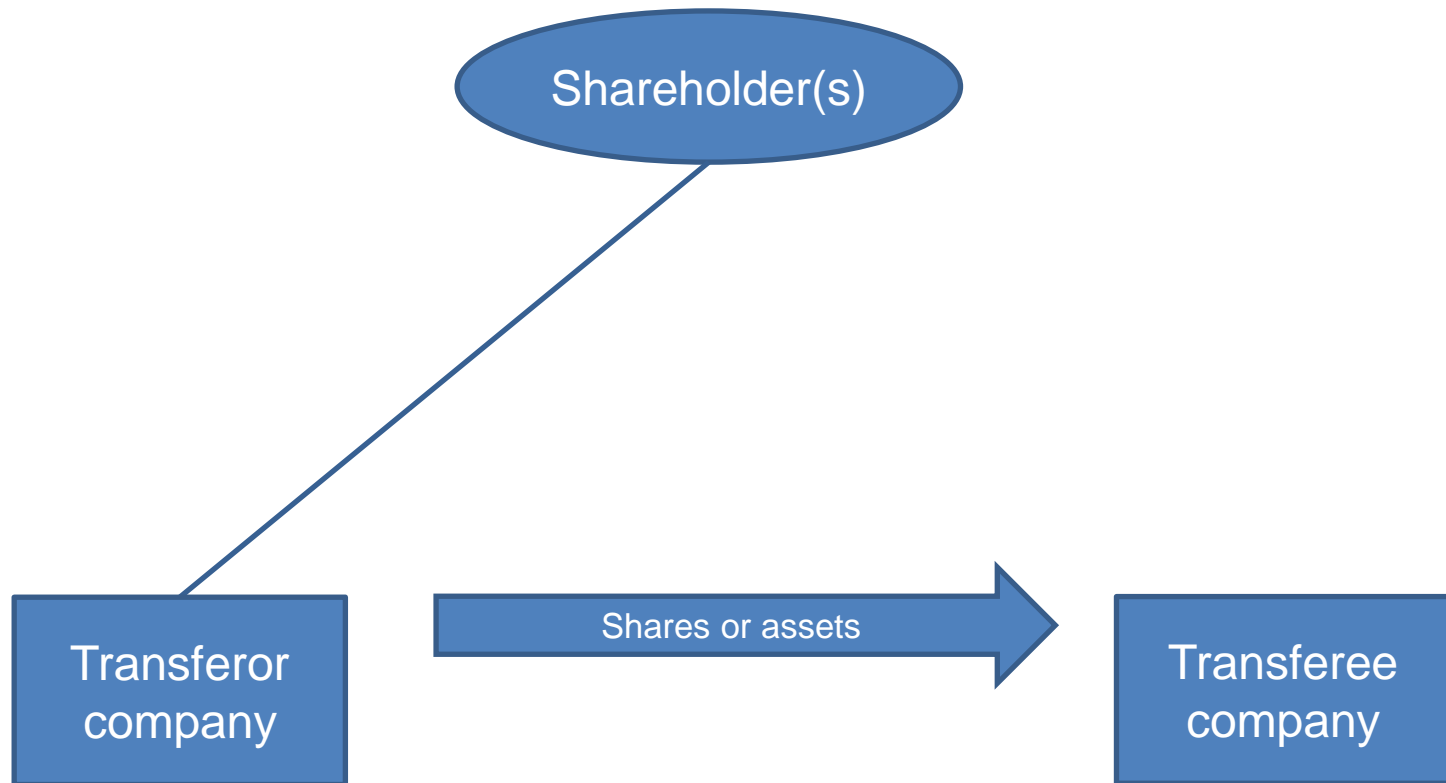
Provided “company capital” remains intact, share capital par value and undenominated capital are interchangeable

## *Three-party share for undertaking transactions*

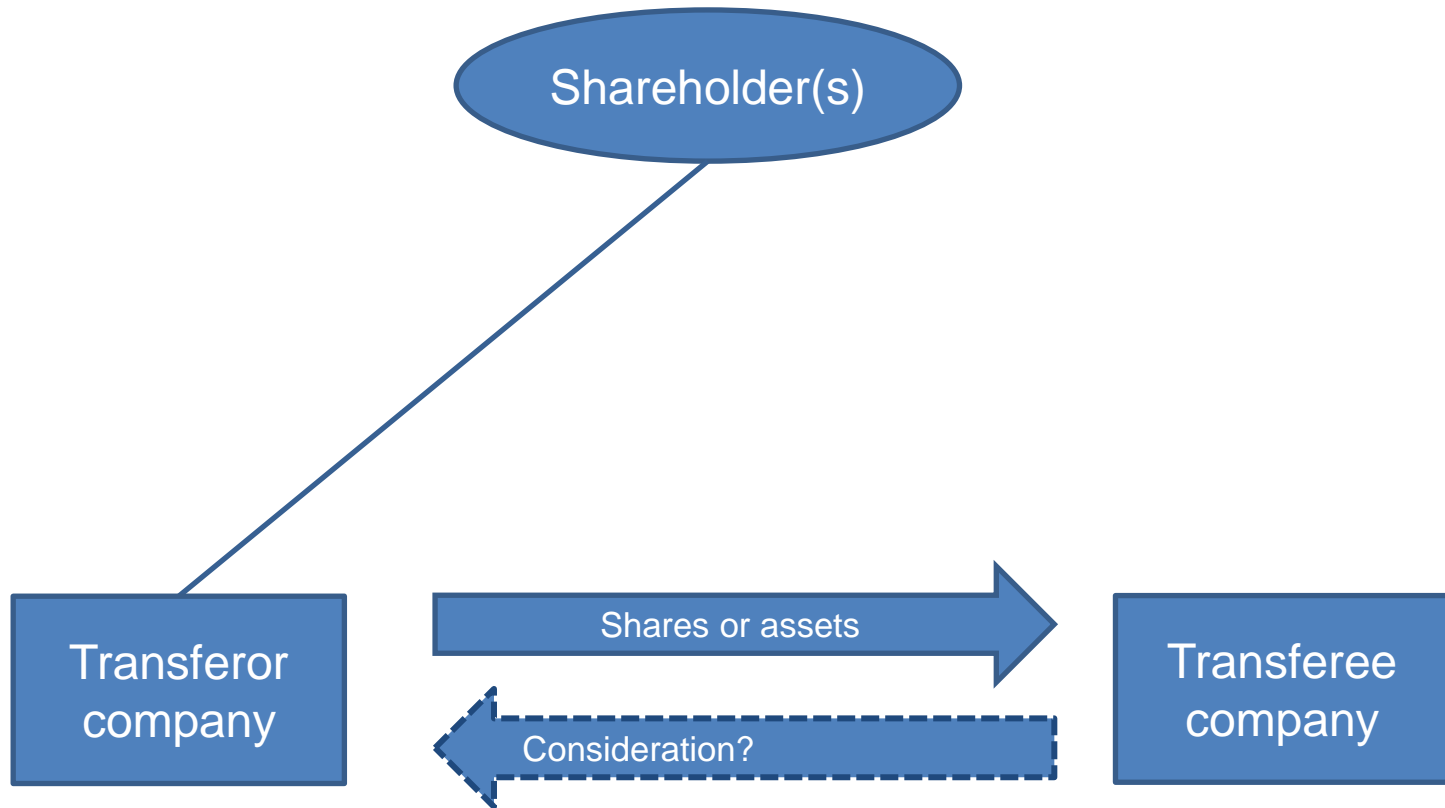
1. Financial assistance
2. Merger relief
3. Share capital rules
4. **Three-party share for undertaking transactions**
5. Mergers



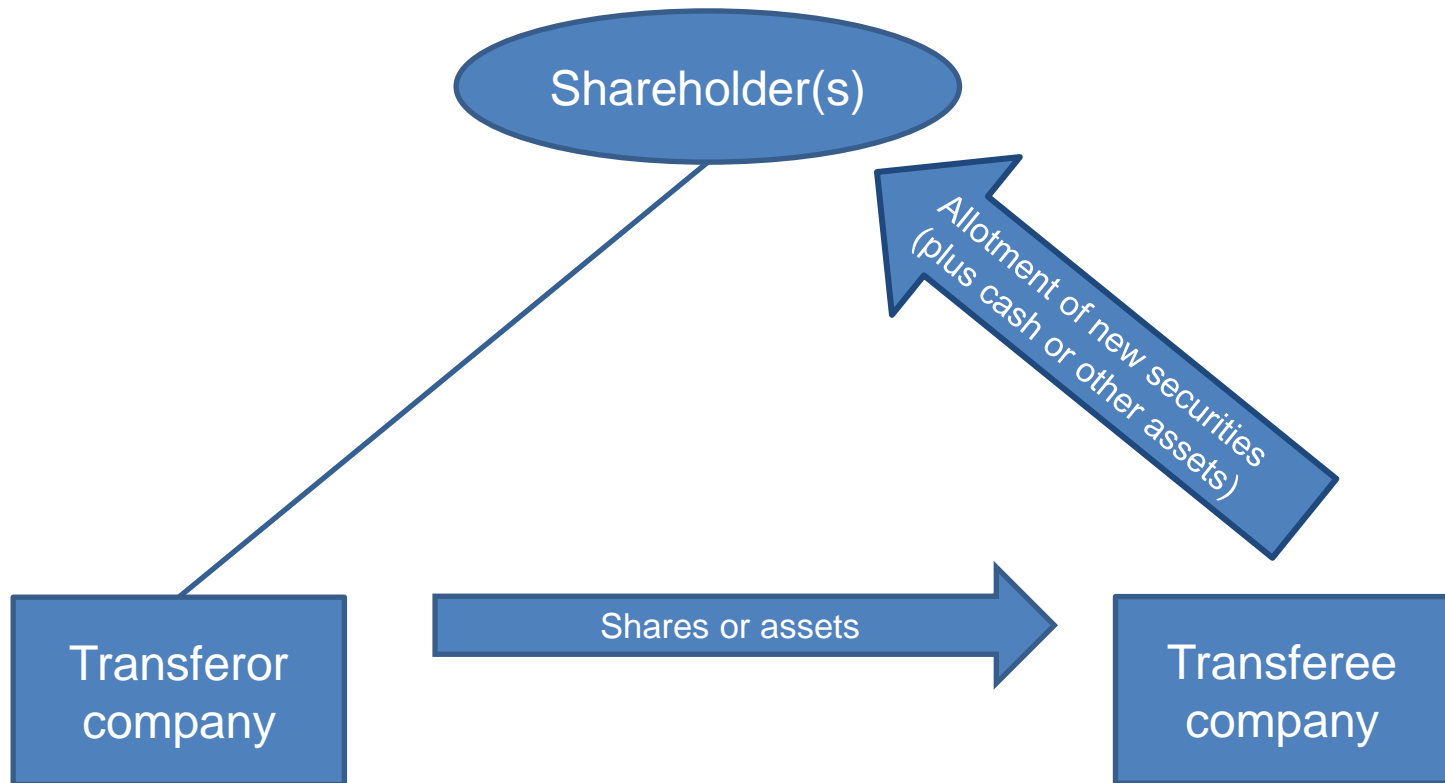
## *Three-party share for undertaking transactions*



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## *Three-party share for undertaking transactions*

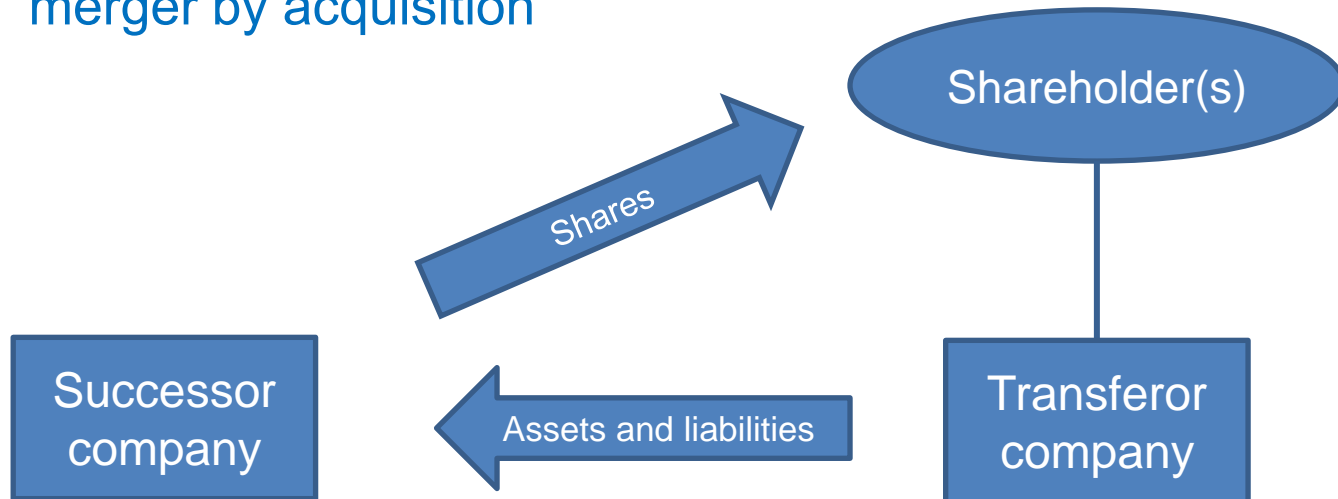


## *New Merger Structures*

1. Financial assistance
  2. Merger relief
  3. Share capital rules
  4. Three-party share for undertaking transactions
  5. Mergers
    - a kind of “true” merger
    - SAP applies to all company types with the exception of PLCs
- “merger by acquisition”
- “merger by absorption”
- “merger by formation of a new company”

## *New Merger Structures*

“merger by acquisition”

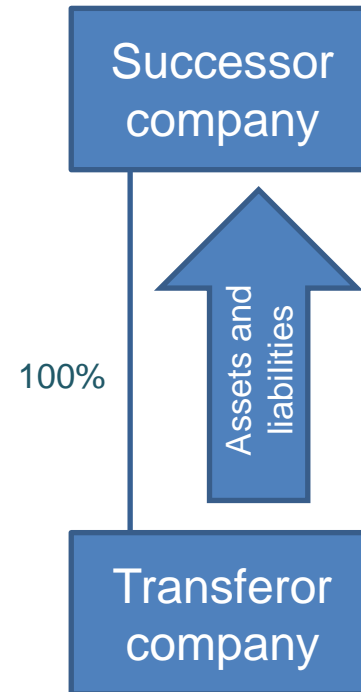


“merger by absorption”

“merger by formation of a new company”

## *New Merger Structures*

“merger by acquisition”  
“merger by absorption”

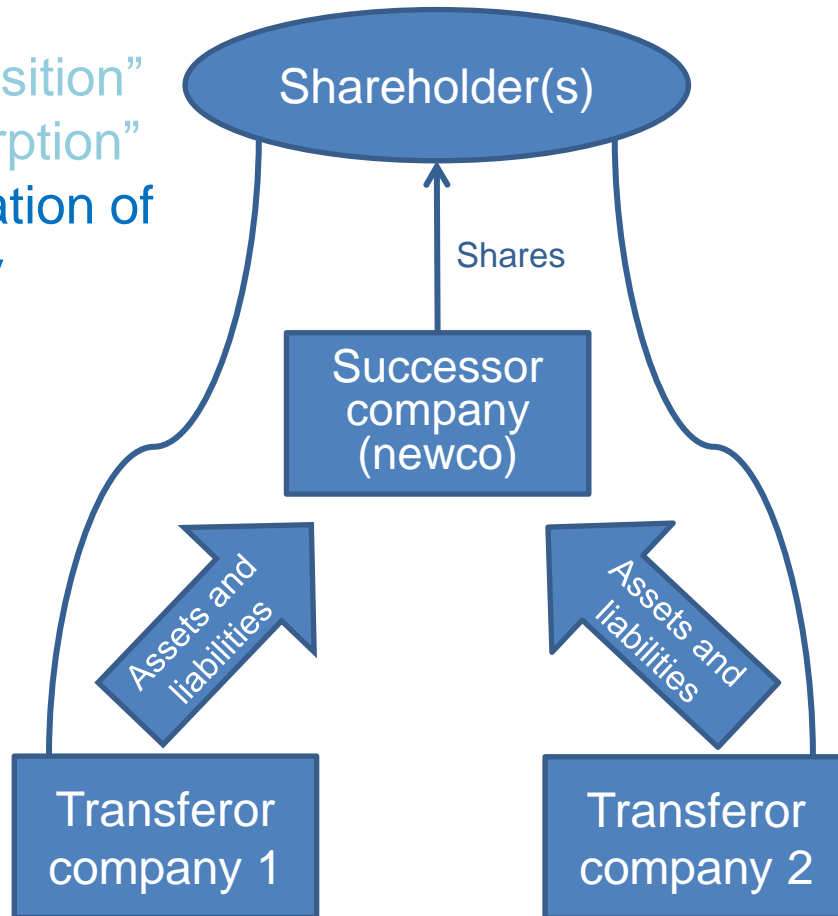


“merger by formation of a new company”

## *New Merger Structures*

Types of merger:

- “merger by acquisition”
- “merger by absorption”
- “merger by formation of a new company”



## *New Merger Structures*

1. Confirmation of a merger
  - by using the Summary Approval Procedure
  - by court order
2. Effects of the merger
  - assets and liabilities of the transferor company are transferred to the successor company
  - the transferor company is dissolved without going into liquidation
  - all legal proceedings by or against a transferor company are continued with the substitution of the successor company as a party
  - every contract, agreement or instrument to which a transferor company is a party takes effect with the successor company as a party instead of the transferor company



# *Doing Deals in Ireland*

**David Mangan**  
**Partner, Corporate, Mason Hayes & Curran**

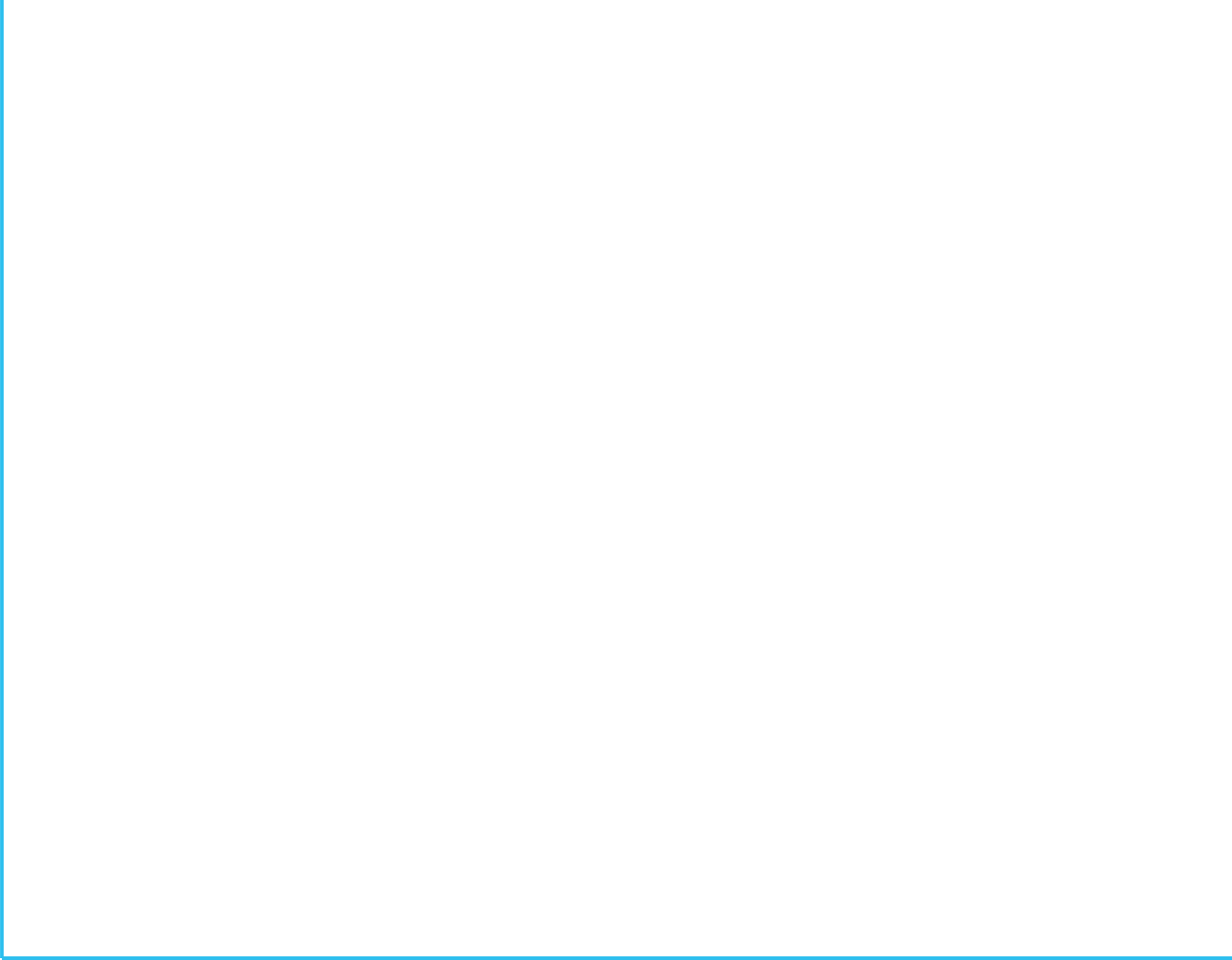


## *Irish M&A – Market Trends*

- M&A activity back to pre-crisis levels in the last 18 months
- Increase in Irish M&A significantly outstripping pan-European growth
- Strong growth across all deal size categories
- Strength in traditional sectors:
  - Real Estate
  - TMT
  - Pharma

## *Sources and drivers of growth in M&A*

- Inversions - the end of the road?
- The overseas factor - inbound and outbound deals
- Pure domestic M&A static
- Bank lending sluggish
- Alternative sources of finance plugging funding gap
- Private Equity opportunities



# *Irish & UK Public Company Takeovers: What's Different?*

**Justin McKenna**

**Partner, Corporate, Mason Hayes & Curran**



## *Irish PLCs*

The Irish PLCs that are relevant to UK firms are those listed on:

- i. London Official List and the Irish Main Securities Market
- ii. London Official List only
- iii. AIM and the Irish ESM
- iv. AIM only
- v. NYSE
- vi. NASDAQ

## *Top Irish Companies on London Markets*

### UK Official List and Irish MSM

Aer Lingus Group plc (€1.3bn)  
C&C Group plc (€1.2bn)  
CRH plc (€21.2bn)  
Dragon Oil plc (€4.7bn)  
Glanbia plc (€2.3bn)  
Green REIT plc (€1.1bn)  
Hibernia REIT plc (€866m)  
Irish Continental Group plc (€776m)  
Paddy Power plc (€3.6bn)  
Ryanair Holdings plc (€16.3bn)  
Smurfit Kappa plc (€6.4bn)

### UK Official List Only

DCC plc (£4.6bn)  
Grafton Group plc (£1.9bn)  
Greencore Group plc  
(£1.35bn)  
UDG Healthcare plc  
(£1.31bn)

### AIM/ESM

Origin Enterprises plc  
(€1.1bn)

## *Top Irish Companies on US Markets*

### NYSE Only

Accenture plc (\$63.6bn)

Actavis plc (\$121.5bn)

Covidien plc (\$49bn)

Eaton Corporation plc (\$34bn)

Fleetmatics Group plc (\$1.6bn)

Ingersoll-Rand plc (\$28.5bn)

James Hardie Industries plc (\$6bn)

King Digital Entertainment plc (\$4.7bn)

Mallinckrodt plc (\$14.29bn)

Pentair plc (\$11.6bn)

Perrigo Company plc (\$28.5bn)

Weatherford International plc (\$10.5bn)

Willis Group Holdings plc (\$8.5bn)



## *Top Irish Companies on US Markets*

### NASDAQ Only

Alkermes plc (\$9.2bn)  
Allegion plc (\$5.1bn)  
Endo International plc (\$14.9bn)  
Global Indemnity plc (\$700m)  
Horizon Pharma plc (\$4.98bn)  
ICON plc (\$3.96bn)  
Jazz Pharmaceuticals plc (\$11bn)  
Prothena Corporation plc (\$1.21bn)  
Seagate Technology plc (\$17.7bn)  
XL Group plc (\$11.6bn)

## *Irish PLCs*

Why you will come across Irish PLCs in future:

- Inversions not entirely over
- Tax advantages Irish holding company
- OECD white listed onshore jurisdiction/BEPS project
- No statutory “say on pay”, advisory say on pay in US only
- Ability to report in US GAAP
- Shareholder rights plans / fiduciary duties

## *Distinctions and Differences*

Main body of law similar, otherwise, minor differences:

- 80% squeeze out unless admitted to a regulated market
- Cancellation schemes still possible
- Implementation agreements still possible
- Transparency and Market Abuse regimes apply to PLCs admitted to regulated markets only (for now)

## *Shareholder Rights Plans*

Extract from SEC Form 8-A filed by Mallinckrodt plc:

“On June 28, 2013, the Board of Directors (the “Board”) of Mallinckrodt authorized the issuance of one preferred share purchase right (a “Right”) for each outstanding ordinary share, par value \$0.20 per share, of the Company (the “ordinary shares”) and the Company entered into the Rights Agreement with Computershare Trust Company, N.A., as the Rights Agent, dated as of June 28, 2013 (the “Rights Agreement”). The Rights will be issued on July 9, 2013 to the shareholders of record on July 9, 2013. **The Board has adopted the Rights Agreement to protect shareholders from coercive or otherwise unfair takeover tactics. In general terms, it works by imposing a significant penalty upon any person or group which acquires 10% or more of the outstanding ordinary shares of the Company without the prior approval of the Board. The Rights Agreement should not interfere with any merger or other business combination approved by the Board.** A summary of the terms of the Rights Agreement follows. This description is only a summary, and is not complete, and should be read together with the entire Rights Agreement, which has been filed as Exhibit 4.1 to this Current Report on Form 8-K. A copy of the Rights Agreement is available free of charge from the Company.

# *Shareholder Rights Plans*

## The Rights.

**The Rights will initially trade with, and will be inseparable from, the ordinary shares. The Rights are evidenced only by book-entry credits that represent ordinary shares. New Rights will accompany any new ordinary shares the Company issues after July 9, 2013 until the earlier of the Distribution Date described below and any redemption or expiration of the Rights.**

## Exercise Price.

Each Right will allow its holder to purchase from the Company one one-hundredth of a Series A Junior Participating Preferred Share (a “Preferred Share”) for \$400.00 (the “Exercise Price”), once the Rights become exercisable. This portion of a Preferred Share will give the shareholder approximately the same dividend, voting and liquidation rights as would one ordinary share. Prior to exercise, the Right does not give its holder any dividend, voting, or liquidation rights. Exercisability. The Rights will not be exercisable until ten (10) days after the public announcement that a person or group has become an “Acquiring Person” by obtaining beneficial ownership of 10% or more of the outstanding ordinary shares.

## *Shareholder Rights Plans*

Certain synthetic interests in securities created by derivative positions—whether or not such interests are considered to be ownership of the underlying ordinary shares or are reportable for purposes of Regulation 13D of the Securities Exchange Act of 1934 (the “Exchange Act”)—are treated as beneficial ownership of the number of the Company’s ordinary shares equivalent to the economic exposure created by the derivative position, to the extent actual ordinary shares of the Company are directly or indirectly held by counterparties to the derivatives contracts. Swaps dealers unassociated with any control intent or intent to evade the purposes of the Rights Plan are excepted from such imputed beneficial ownership.

The date when the Rights become exercisable is the “Distribution Date.” Until that date, any transfer of ordinary shares will constitute a transfer of Rights. After that date, the Rights will separate from the ordinary shares and be evidenced by book-entry credits or by Rights certificates that the Company will mail to all eligible holders of ordinary shares. Any Rights held by an Acquiring Person are void and may not be exercised.”

## *Irish Takeover Rules v UK City Code*

Irish Takeover Rules v UK City Code – same but different:

- SARs
- Panel decision-making
- Panel executive and staffing
- Method of appealing Panel decisions
- No compulsory PUSU
- No published rulings or guidance
- Syndication in an offer period
- Cash confirmation

# *Irish Takeover Rules v UK City Code*

## CASH CONFIRMATION

### Code Rule 24.8

When the offer is for cash or includes an element of cash, the offer document must include confirmation by an appropriate third party (eg the offeror's bank or financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer. (The party confirming that resources are available will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.)



# *Irish Takeover Rules v UK City Code*

## CASH CONFIRMATION

### Irish Rule 24.7

If the consideration under the offer is cash or includes an element of cash, the offer document shall include confirmation by an appropriate third party (including, inter alia, the offeror's bank or financial adviser) that resources are available to the offeror sufficient to satisfy full acceptance of the offer. **If such confirmation proves to be inaccurate**, the Panel may direct the person who gave such confirmation to provide the necessary resources **unless the Panel is satisfied that**, in giving the confirmation, **that person acted responsibly and took all reasonable steps to assure itself that the cash was available and would continue to be available at all relevant times.**

# Q&A

