

# WILLIAM FRY III

## The Companies Act 2014

### The New Forms of Limited Company and How to Convert

The Companies Act 2014 (the Act) came into force on 1 June 2015. Under the Act, all existing private companies limited by shares should convert to one of the new company types (DAC or LTD) during the transition period which ends on 30 November 2016.

#### *A new type of company*

The vast majority of companies currently registered in Ireland are private companies limited by shares. One of the key structural reforms of the Act is that it proposes two new forms of private company to replace all existing private companies limited by shares. The new company types are a private company limited by shares (LTD) and a designated activity company (DAC).

#### *Features of the two new types of company*

Private Company Limited by Shares (LTD)	Designated Activity Company (DAC)
<ul style="list-style-type: none"> <li>• Minimum of one director</li> <li>• Simple one document constitution</li> <li>• Unlimited legal capacity</li> <li>• May dispense with requirement to hold a physical AGM</li> <li>• May not offer its debentures/shares to the “public”</li> <li>• Name to end in “limited” or “teoranta”</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum of two directors</li> <li>• Memorandum and articles of association</li> <li>• Legal capacity limited by objects clause</li> <li>• Must hold a physical AGM (unless it is a single member company)</li> <li>• May list debentures on a debt market</li> <li>• Name to end in “designated activity company” or “cuideachta ghníomhaíochta ainmhithe”</li> </ul>

#### *Which type of company to choose?*

It is likely that most companies will opt for the LTD structure. The DAC is likely to appeal to minority shareholders, investors and venture capitalists who want to ensure that the company in which they have invested continues to only carry on the business it was intended to carry on, rather than having unlimited legal capacity to operate any other business, as would be the case with a LTD. Insurance undertakings and credit institutions, which are currently incorporated as companies limited by shares, are not allowed use the LTD structure and must convert to a DAC if they wish to remain a private company limited by shares. It is important to note that any existing private companies, which have debentures admitted to trading or listed on a market of debentures, **must** convert to a DAC by 30 November 2016.

## ***How to convert***

Companies that have not applied to the Companies Registration Office (CRO) to be converted to either a DAC or a LTD during the transition period will be automatically converted to a LTD by the CRO after 1 December 2016. The existing memorandum and articles of association of the company will effectively be deemed to have been amended by the deletion of the objects clauses and the deletion of any provision which prohibits the alteration of all or any of the provisions of its memorandum or articles.

Companies wishing to convert to a LTD should pass a special resolution during the transition period (ending 30 November 2016) resolving to convert the company into a LTD and adopting a new one-document constitution to replace the company's memorandum and articles of association.

If the members do not pass a special resolution resolving to convert to a LTD within the transition period, the directors have a duty to prepare a new constitution and to deliver it to the CRO and to the members before 30 November 2016. A constitution prepared by the directors in this way must consist solely of the provisions of the existing memorandum and articles of association, other than the objects clause and any provision which prohibits the alteration of the memorandum and articles of association.

Companies wishing to convert to a DAC must either pass an ordinary resolution to convert by 31 August 2016 or convert by special resolution thereafter. Alternatively, within the first 15 months of the transition period, members holding at least 25% of the total voting rights may call on the company to convert to a DAC by way of a notice in writing. In such circumstances, the directors of the company are obliged to pass a resolution dealing with the conversion.

It is envisaged that the CRO will receive an influx of conversion filings towards the end of the transition period and it is, therefore, advisable that companies pass a resolution sooner rather than later to ensure that the CRO has time to process such conversion applications. The CRO has stated that it is not guaranteed that applications received towards the end of the conversion process will be processed before 30 November 2016. Companies should consider this matter at the earliest opportunity and take the necessary steps to begin the process.

WF-16510301-1