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The Companies Act 2014: Structure & Key Provisions

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Background to the Companies Act

- The cornerstone of modern Irish company law is the Companies Act 1963 and when commenced the Companies Act will repeal and consolidate it and c 32 other enactments (17 Acts & 15 SIs)

- The publication by the Department of Jobs, Enterprise and Innovation of the Companies Bill 2012 on 21 December 2012 was a landmark development in a process conceived by the McDowell Group on Compliance & Enforcement in 1998 and begun by the Company Law Review Group (CLRG) in 2000.

  "...a programme should be undertaken to incorporate the provisions of the existing Companies Acts and the substantive company law now set out in regulations...into one single comprehensible companies code." (McDowell Report at para 5.4.1)

Background to the Companies Act

- The CLRG was established as a statutory advisory group to the Minister for Jobs, Enterprise and Innovation by the Company Law Enforcement Act 2001, having been established on an administrative basis in January 2000.

- CLRG's purpose is to monitor, review and advise the Minister on matters concerning the Companies Acts and in so doing to "*...seek to promote enterprise, facilitate commerce, simplify the operation of the Companies Acts, enhance corporate governance and encourage commercial probity*."

Background to the Companies Act

- The CLRG's First Report (to 31 December 2001) made 195 recommendations, all unanimously endorsed by its widely-based membership which included the **social partners** (e.g. ICTU and IBEC etc); **users of company law** (e.g. CCABI, Law Society, Bar Council, Courts Service, Revenue Commissioners, ISE, Institute of Directors, ICSA etc); and **regulators and administrators** (e.g. CRO, AGO, the Department etc). Membership has since been enlarged to include ODCE, ISME, SFA, IAASA, Central Bank etc.

- CLRG's First Report was the blueprint for the Companies Act.

The design of the Companies Act

- The importance of the private company was recognised by CLRG which said it should become the "model company" (**para 3.6.5**)
  - "The private company limited by shares should be the primary focus of simplification" (**para 3.2.3**)
  - "the law should be clear and accessible…the legislation should be structured in such a way that the provisions apply to small companies are easily identifiable" (**para 3.2.8**)
  - "The Companies Act should be sub-divided into two groups of law: the first group will define the private company and contain all company laws that apply to it.(**para 3.7.2**)
- The key architectural feature is that the Act, published in two volumes, segregates the law relating to the LTD from other types (Volume 1 – Parts 1 to 15) and the law relating to all other types is set out in Volume 2 – Parts 16 to 25.

The design of the Companies Act

- The Act modernises the law relating to registered companies:
  - How they are formed
  - How they are administered
  - How they are to be wound up and dissolved
  - How shareholders and creditors are protected
  - The criminalisation of certain acts and omissions by companies and others
- The Act is confined to company law and does not address matters relating to:
  - the rights and protections of employees of companies;
  - the taxation and residence of companies or their directors;
  - the administration and regulation of charities;
  - the regulation of commercial contracts;
  - consumer protection;
  - the management of apartment buildings, etc
- The key reason is because such matters are not are not exclusive to companies but are relevant to other forms of business organisation and do not properly form part of "company law".

The design of the Companies Act

- CLRG drafted the heads of the Companies Bill which were published as two volumes and a report in 2007, thereafter the parliamentary draftsman in the Office of the Attorney General spend the next number of years drafting the Bill.
- A draft of the first 15 Parts was published on 30 May 2011.
- The Bill, containing 25 Parts (now, 1,448 sections), was:
  - published on 21 December 2012;
  - passed by the Dail on 2 April 2014,
  - passed by the Seanad on 30 September 2014 and
  - passed by both Houses of the Oireachtas on 10 December 2014.
- Signed by the President as the ***Companies Act 2014***, on 23 December 2014.
- Indicative commencement (by statutory instrument) is 1 June 2015

Key features of the model private company (LTD)

- Can have between 1 and 149 shareholders (*Part 2 - s 17*);
- May have just 1 director (*Part 4 – s 128*);
- Must have a company secretary (*Part 4 – s 129*);
- Liability of shareholder(s) is limited to the amount, if any, unpaid on the shares registered in their name (*Part 2 - s 17*)
- Must have a one-document constitution (*Part 2 – s 19*)
- Name must end in "Limited" or "Ltd" (*Part 2 – s 26*)
- Cannot have an objects clause because it has full unlimited capacity (*Part 2 – s 38*)
- The board (including a sole director) and a registered person will be deemed to have authority to bind the company (*Part 2 – s 40*)
- Cannot list any securities (including debt)

Key innovations in the Act

- Statutory segregation of corporate type and the law applicable thereto.
- Activities that might prejudice shareholders or creditors are permitted where the company complies with the *Summary Approval Procedure* which requires a special resolution, a declaration of solvency which, in some cases, must be supported by the report of an independent person (*Part 4 – Chapter 7*)
- Directors' common law fiduciary duties have been codified and together with all diverse statutory duties assembled as a comprehensive code (*Part 5*)
- All offences are categorised as being either Category 1, 2, 3 or 4 offences and the penalties applicable to each type are set out in one provision (*Part 14 – s 871*)
- No "Table A" – There is no model set of internal regulations; instead depending upon the type of company there will be a number of "statutory defaults" (e.g. for an LTD, some 156 defaults) that will apply to govern the company. These can, however, be disapplied where the constitution so provides.

New obligations and new regulations?

The Companies Act is primarily a consolidation of new law and there are fewer new obligations and regulations than one might expect. The main new obligations include:

- Transitional obligations – for private limited companies to elect to be LTDs or DACs; banks and insurance companies and those with a debt listing cannot be LTDs; CLGs and UCs to changes names.
- New obligations – to make compliance statements (only some companies), to state in directors' report auditors not unaware of any relevant audit information; to establish audit committees (only some)
- New regulations – shares cannot be allotted unless the allotment is authorised; minors cannot be directors; loans to and from directors should be in writing.

Preliminary and General (Part 1)

- Commencement is to be by order (section 1)
- Definitions are provided in section 2, and these definitions will apply generally throughout the 25 Parts.
- The definitions apply in hundreds of provisions in the Act and great care has been taken in ensuring that they are fit for purpose in all instances;
- E.g. “company”, “director”, “constitution” etc
- A central definition (in section 7) is that of “subsidiary” and the definition afforded includes what is currently the s 155 CA 1963 definition of “subsidiary” and also the group accounts definition of “subsidiary undertaking”.
- References in instruments to subsidiary and holding company as defined in the 1963 Act are unaffected by the new definitions of those terms (sections 7(1) and 8(4)).

Incorporation & Registration (Part 2)

- Part 2 is the source of many of the provisions that are key to the identity of the new model private company limited by shares (referred to here as the LTD).
- Part 2 contains provisions relating to the formation and registration of LTDs and is divided into 6 chapters:
  1. Preliminary (definitions)
  2. Incorporation and consequential matters
  3. **Corporate capacity and authority**
  4. Contracts and other transactions
  5. Company name, registered office and service
  6. **Conversion of existing private companies to the new model private company**

Incorporation & Registration (Part 2)

Chapter 3 – capacity and authority

- LTD will have full and unlimited capacity to carry on and undertake any business or activity, to do any act or enter into any transaction and for those purposes, full rights, powers and privileges (*s 38*)
- The effect is to make redundant the doctrine of *ultra vires*
- Where the board of directors appoint persons entitled to bind the company (except where restricted to a particular transaction or class of transaction) such persons *may* (note, this was initially proposed to be a mandatory obligation) be registered with the CRO (*s 39*)
- The board of directors and registered persons are deemed to have the authority to bind the company (*s 40*)

Incorporation & Registration (Part 2)

Chapter 6 – Conversion of existing companies

- The default is that at the end of the transition period (18 months after commencement) existing private companies will be deemed to have become new model private companies (LTDs) (*s 55*)
- An existing private company can "opt-out" by passing an ordinary resolution up to three months before the end of that period to become a *designated activity company (DAC)*, which will continue to have an objects clause and a memorandum and articles of association. (*s 56*)
- Members and creditors meeting certain thresholds will have a right to apply to court for an order directing that their company re-register as a DAC. (*s 57*)

Incorporation & Registration (Part 2)

- Existing companies need not wait until the end of the transition period and can convert to an LTD by passing a special resolution adopting a new constitution (*s 59*)
- Where a new constitution is not adopted by special resolution, the directors have an obligation to prepare a new constitution (based on current memo and arts less objects clause and certain other provisions) and file it in the CRO (*s 60)*
- The model constitution is set out in *Schedule 1* to the Act.
- Where a company sends nothing to the CRO, it will at the end of the transition period be deemed to have a constitution comprising its existing memorandum and articles of association less the objects clause, and certain other provisions (*s 61*)

Share Capital (Part 3)

- Part 3 deals with share capital, shares and other instruments and is set out in sections 64 to 126
- Part 3 is sub-divided into 7 Chapters:
  1. Preliminary and interpretation
  2. **Offers of securities to the public**
  3. Allotment of shares
  4. **Variation in capital**
  5. Transfer of shares
  6. Acquisition of own shares
  7. Distributions

Share Capital (Part 3)

Chapter 2 - Offers of securities to the public

- The restrictions on offers to the public applicable to the model private company (*LTD*) will be even stronger than currently apply to private companies, which can currently list debt.
- No offer of any securities to the public may be made in respect of which a prospectus is required or where the offer is to more than 149 people (*s 68(1)*)
- No securities or interests in securities may be admitted to trading on any market anywhere in the world (*s 68(2)*)

Chapter 4 - Variation in capital

A significant reform is that private companies may reduce their share capital, without court confirmation, by the employment of the *Summary Approval Procedure*.

Corporate Governance (Part 4)

- Part 4 sets out in 92 sections the law relating to the governance and administration of companies in 10 chapters:
  1. Preliminary
  2. **Directors and secretaries**
  3. Service contracts and remuneration
  4. **Proceedings of directors**
  5. Members
  6. **General meetings and resolutions**
  7. Summary approval procedure
  8. Protection for minorities
  9. Forms of registers, indices and minute books
  10. Inspection of registers and provision of copies etc

Corporate Governance (Part 4)

Chapter 4 – Proceedings of directors

- A major innovation is the codification of the rules of internal management found today in articles of association.
- The substance of virtually all of the 138 regulations in Table A have been incorporated into the Act and will be the statutory default, so that there is no need to have extensive articles set out in the constitution of a new private company (LTD) .
- Accordingly, what is now Reg 80 of Table A will become section 158(1), which provides that the business of the company shall be managed by its directors.
- Moreover, section 158(3) provides that the directors may exercise all the powers to borrow money and mortgage or charge its undertaking, property and uncalled capital
- These provisions are optional so that they are expressed to apply "*save to the extent that the company's constitution provides otherwise*".
- Audit committee requirement for large private companies on a comply or explain basis (section 167)

Corporate Governance (Part 4)

Chapter 6 – General meetings and resolutions

- AGMs become optional for LTDs, even where they have more than one member *(s 175);*
- All law relating to meetings, voting and resolutions has been made statutory subject to an elective opt-out;
- Majority written resolutions can be passed as ordinary or special resolutions, and will take effect 7 and 21 days (respectively) after the last member has signed (unlike unanimous written resolutions which take immediate effect) (*s 194*)

Duties of directors (Part 5)

- Codification of common law duties hugely significant. All statutory and common law duties now provided for in 53 sections, divided into 6 chapters:
    1. Preliminary and definitions
    2. **General duties of directors etc**
    3. **Evidential provisions concerning loans etc**
    4. Prohibitions and restrictions on loans etc
    5. **Disclosure of interests in shares etc**
    6. Responsibilities of officers etc

Duties of directors (Part 5)

Chapter 2 – General duties of directors

- Introduction of *Directors' Compliance Statement* (*s 225*);
- Obligation to prepare applies to all companies (except unlimited and investment companies) where both the balance sheet >€12.5m and turnover >€25m;
- In the Directors' Report the directors must confirm that they are responsible for the company securing compliance with its relevant obligations and also confirm that the following three things have been done or if not done, specifying the reasons why not (i.e. on a comply or explain basis):
  - That a compliance policy statement has been drawn up, setting out its policies concerning compliance with relevant obligations;
  - That appropriate arrangements or structures designed to secure material compliance with relevant obligations have been put in place; and
  - That a review in the financial year to which the Directors' Report relates of arrangements and structures that are in place has been conducted.

Duties of directors (Part 5)

Chapter 2 – General duties of directors

Statement of 8 principal fiduciary duties of directors (*s 228*)

1. Act in good faith in what the director considers to be the company's interests;
2. Act honestly and responsibly in the company's affairs
3. Act in accordance with the constitution and exercise powers only for lawful purposes
4. Not use company property for own or others' use unless approved by members or in the constitution
5. Not to fetter discretion unless permitted by constitution or entered into in the company's interests
6. Avoid conflicts of interest unless released by members;
7. Exercise care, skill and diligence (subjective test);
8. Have regard to interests of members and employees.

Chapter 1 – Preliminary and definition: Applies duties not only to formally appointed directors but also to "de facto" directors and "shadow directors"

Duties of directors (Part 5)

Chapter 3 – Evidential provisions concerning loans etc

- Loans **to** a director: if not in writing it is presumed they are repayable on demand and bear interest (*s 236*)
- Advances **by** a director to a company: if not in writing it is presumed not be a loan; and to the extent it was a loan, does not bear interest or security and subordinated to all creditors (*s 237*)

Chapter 5 – Disclosure of interests in shares etc

- Main change is that de minimis interests (<1%) can be disregarded (*s 260(f)*)

Chapter 6 – Officer in default

- Many offences under the Act apply to the company and to any "officer in default" i.e. any officer who authorises or who in breach of his duty permits the default
- Where it is proved that an officer was aware of the basic facts concerning a default, it will be presumed that he permitted the default unless he shows he took all reasonable steps to prevent it or that by reason of circumstances beyond his control, was unable to do so

Note: no duty to convene EGM on a serious loss of capital

Financial statements, filing & audit (Part 6)

- The consolidation of the law in this area is a radical improvement in accessibility and transparency, and is set out in 23 chapters:
    1. Preliminary
    2. Accounting records
    3. Financial Year
    4. Statutory financial statements
    5. Group financial statements: exemptions & exclusions
    6. Disclosure of directors' remuneration and transactions
    7. Disclosures required in notes to financial statements
    8. Approval of statutory financial statements
    9. Directors' Report
    10. Obligation to have statutory financial statements audited
    11. Statutory auditors' report

Financial statements, filing & audit (Part 6)

12. Publication of financial statements
13. Annual return and documents annexed to it
14. Exclusions, exemptions and special arrangements regarding disclosure
15. Audit exemption
16. Special audit exemption for dormant companies
17. Revision of defective statutory financial statements
18. Appointment of statutory auditors
19. Rights, obligations and duties of statutory auditors
20. Removal and resignation of statutory auditors
21. Notification to supervisory authority of certain matters etc
22. False statements – offence
23. Transitional

Financial statements, filing & audit (Part 6)

Notable proposed changes to the law here include:

- **Revision of defective financial statements** – new procedure will allow for the preparation, approval, audit and filing of revised financial statements or directors' reports in respect of a prior year (*ss 366 to 379*)
- **Updated threshold for medium sized companies** – turnover not >€20m, b/s not >€10m and employees not >250 (*s 350*);
- **Directors' report to confirm (so far as directors are aware) there is no relevant audit information of which the auditors are unaware** – increases directors' accountability for audit (*s 330*)
- **Auditors' reporting of offences** – no longer the nebulous "indictable"; will now be category 1 and 2 offences only (*s 393*)

Charges and Debentures (Part 7)

- 4 chapters: 1. Interpretation; 2. Registration of charges and priority; 3. Provisions as to debentures; 4. Prohibition on registration of certain matters
- Significant changes in the law include:
  - All "**charges**" must be registered (409(1));
  - "Charge" means (section 408(1)) a mortgage or a charge in an agreement (written or oral), that is created over an interest in **any property** of the company, excluding:
    - Cash,
    - Money credited to an account of a financial institution or any other deposits,
    - shares, bonds or debt instruments
    - Units in collective investment undertakings or money market instruments, or
    - Claims and rights (such as dividends or interest) in respect of any of the foregoing (except cash)

Charges and Debentures (Part 7)

- There is a new (optional) **two-stage registration** procedure so that notification can be given to the CRO of the *intention* to create a charge so as to secure priority even before the charge is actually created and then registering the charge within 21 days of its creation;
- The Registrar will register the notice of intention to create the charge and it will appear on the register;
- Intention is to allow lenders put the public on notice of the intention to create a charge and perhaps encourage in some cases the provision of credit before the completion of a full legal due diligence and perfection of security.

Receivers (Part 8)

- Law relating to receivers appointed to companies set out in four chapters:
  1. Interpretation
  2. Appointment of Receivers
  3. Powers and duties of receivers
  4. Regulation of receivers and enforcement of duties
- The law is mostly consolidated and modernised but there are a few innovations. For example, section 437 now lists the powers a receiver will have, subject to any court order or debenture appointing a particular receiver.

Reorganisations, Acquisitions, Mergers and Divisions (Part 9)

- Part 9 of the Act radically reforms the way in which Irish companies can be reorganised in four Chapters:
  1. Schemes of arrangement
  2. Acquisitions
  3. Mergers
  4. Divisions
- The most innovative procedures in this Part are in Chapter 3 relating to Mergers (and corresponding provisions apply in Chapter 4 relating to Divisions).

Reorganisations, Acquisitions, Mergers and Divisions (Part 9)

- Mergers are provided for in **Chapter 3**.
- The law is modelled on the Cross-Border Merger Regulations of 2008 which have been so successfully used by Irish companies merging with non-Irish EC companies.
- Merger by acquisition, absorption or formation of a new company.
- Where a merger takes place all of the assets and liabilities of the transferor company will be transferred to the successor company and the transferor will be dissolved.
- Merger can take effect by Court order or, most innovatively, by utilising the *Summary Approval Procedure,* a mechanism which will make the cost of merger significant lower than if an application to Court was required in all cases.

Examinerships (Part 10)

- The law relating to examinerships or court protection is set out in Part 10 in five chapters:
    1. Interpretation
    2. Appointment of Examiner
    3. Powers of Examiner
    4. Liability of third parties for debts of company
    5. Conclusion of examinership
- The law set out in this Part is broadly in line with the current law with one significant change, namely, all proceedings in relation to "small companies" can be brought in the Circuit Court in accordance with CLRG's September 2012 recommendations (*s 509(7)(b)*) – this provision has been brought forward in the *Companies (Miscellaneous Provisions) Act 2013* which will, on the commencement of the Act, be repealed and its provisions replaced.

Winding Up (Part 11)

The law on winding up is set out in 16 Chapters:

1. Preliminary and interpretation
2. Winding up by Court
3. Members' voluntary winding up
4. Creditors' voluntary winding up
5. Conduct of winding up
6. Realisation of assets and related matters
7. Distribution
8. Liquidators

Winding Up (Part 11)

9. Contributories
10. Committee of Inspection
11. Court's powers
12. Provisions supplemental to conduct of winding up
13. General rules as to meetings (members, creditors etc)
14. Completion of winding up
15. Provisions related to Insolvency Regulation
16. Offences by officers etc

Winding Up (Part 11)

Some significant changes here include:

- **Liquidators must be qualified** – members of prescribed accountancy body or other professional body recognised by IAASA, solicitor, person qualified in another EEA State or a person "grandfathered" (*s 633*)
- **Winding up in public interest** – by ODCE (*s 569*)
- **Minimum indebtedness increased** – to €10k (*s 559*)
- **Provisional liquidators' powers narrowed** – to those expressly provided for in the order (*s 626*)

Generally, the Act seeks to introduce greater consistency between the three modes of winding up and to reduce Court involvement in official liquidations

Strike Off and Restoration (Part 12)

Strike off and restoration are each deal with in a separate chapter.

Strike off (*ss 725 – 735*)

- Voluntary strike off given statutory recognition
- Involuntary strike off broadly repeat existing grounds

Restoration (*ss 736 – 745*)

- Administrative and judicial restoration restated.

Investigations (Part 13)

Existing law broadly remains intact – effectively a restatement of the existing law in four Chapters:

1. Preliminary
2. Investigations by court appointed inspectors
3. Investigations initiated by Director
4. Miscellaneous provisions

Compliance & Enforcement (Part 14)

Radical reorganisation involving restatement and reform:

1. Compliance and protective orders
2. Disclosure Orders
3. **Restrictions on directors of insolvent companies**
4. Disqualification generally
5. **Disqualification and restriction undertakings**
6. Enforcement - disqualification and restriction
7. **Provisions relating to offences generally**
8. Additional general offences
9. Evidential matters

Compliance & Enforcement (Part 14)

Chapter 3 - Restrictions on directors of insolvent companies

- The defence of acting honestly and responsibly is no longer sufficient for a director to avoid being restricted;
- Directors of insolvent company must now also show that they have when requested to do by the liquidator, cooperated as far as could reasonably be expected in relation to the conduct of the winding up (*s 819(2)(b)*)
- In addition to obligations on companies with share capital, the law will be clarified to provide that if, when restricted, one becomes a director of a guarantee company without a share capital, one of its members must have given a guarantee of not less that €100,000.

Compliance & Enforcement (Part 14)

Chapter 5 - Disqualification and restriction undertakings

- The present position whereby all persons who are restricted or disqualified must be the subject of a court application will change.
- It will be possible to avoid a court appearance (and of course the costs associated with this for all parties) where the director concerned agrees to give an undertaking not to act in a way as would be prohibited if they were the subject of a disqualification order (*s 851(5)*) or a restriction order (*s 853(5)*)

Compliance & Enforcement (Part 14)

Chapter 7 - Provisions relating to offences generally

- The Act proposes a four-fold classification of offences created by the Act into categories (*s 871*)
- **Category 1** – conviction on indictment can result in imprisonment for a term of up to 10 years and/ or a €500k fine;
- **Category 2** – conviction on indictment can result in imprisonment of up to 5 years and/or a €50k fine
- **Category 3** – a summary offence only attracting a term of up to 6 months' imprisonment and/ or a Class A fine
- **Category 4** – a summary offence only, punishable by a Class A Fine

for "Class A Fine" see Fines Act 2010 – currently up to €5k

Functions of Registrar and of regulatory & advisory bodies (Part 15)

Four chapters containing the law on:

1. The Registrar of Companies
2. Irish Auditing and Accounting Supervisory Authority
3. Director of Corporate Enforcement
4. Company Law Review Group

Designated activity companies (Part 16)

- The *designated activity company* or DAC will technically be a new type of private company, but it will closely resemble the existing private limited company formed and registered under the Companies Acts 1963 to 2013.
- The law applicable to DACs will be that contained in Part 16 of the Act, and that applicable to the new LTD (i.e. Parts 1 to 14) save as disapplied, modified or supplemented
- DACs are suitable for those who want to be able to list debt securities on a stock exchange, or where they wish the company to have an objects clause (e.g. to restrict the corporate capacity of a joint-venture vehicle).

Designated activity companies (Part 16)

Key features:

- Will have a two-document constitution (*s 967*)
- Will have an objects clause (although the Act seeks to oust the operation of the doctrine of *ultra vires* by providing that the validity of an act done by a DAC shall not be questioned on the ground of lack of capacity (*s 973*)
- Its name must normally end with "designated activity company" (or "DAC", "D.A.C", "dac" or "d.a.c.") or the Irish equivalent (*s 969*)
- Will not be prevented from having its debentures admitted to trading or listed (*s 981*)
- Must have at least two directors (*s 985*)
- Single-member DACs may dispense with holding an AGM but multi-member DACs may not (*s 988*)

Public Limited Companies (Part 17)

- The proposed law applicable to the *public limited company* or PLC will be that contained in Part 17 and that applicable to the LTD as set out in Parts 1 to 14, save as disapplied, modified or supplemented.
- The law applicable to PLCs will also be applicable to the *Societas Europaea* (SE).
- PLCs will continue to be the chosen form of corporate structure where companies wish to list their shares on a stock exchange and offer them to the public, this being their key distinguishing feature.

Public Limited Companies (Part 17)

Key features:

- Can be incorporated with just one member (*s 1004*)
- Must have an objects clause (although the Act seeks to oust the operation of the doctrine of *ultra vires* by providing that the validity of an act done by a PLC shall not be questioned on the ground of lack of capacity (*s 1012*)
- Its name must normally end with "public limited company" (or "PLC", "P.L.C", "plc" or "p.l.c.") or the Irish equivalent (*s 1008*)
- Must have a minimum issued share capital of €25,000 and obtain a trading certificate which confirms this (*s 1010)*
- Can list its shares and debentures and offer them for sale to the public (*s 1019*)
- Provisions on allotment & pre-emption follow the 1983 Act (unlike for LTDs where ss 69 and 70 introduce a new regime) (*s 1021*)
- Must have at least two directors (*s 1088*)
- Can dispense with holding an AGM only if a single-member PLC (*s 1089*)
- Unless constitution provides otherwise: the directors shall retire by rotation (*s 1090*); directors' remuneration (if any) must be determined by the members in general meeting (*s 1092*)
- Supplementary rules for meetings (notice, proxies, equality etc)

Guarantee companies (Part 18)

- The law applicable to guarantee companies (CLGs) will be that contained in Part 18 of the Companies Act, and that applicable to the new LTD (i.e. Parts 1 to 14) save as disapplied, modified or supplemented.
- Key feature is that it does not have a share capital i.e. it has members, not shareholders.
- Likely to continue to be the legal form of choice for the many charities, sports and social clubs and management companies which are currently incorporated as public companies limited by guarantee without a share capital

Guarantee companies (Part 18)

Key features:

- Cannot have a share capital (*s 1181*)
- Can have just one member, and no maximum number of members (*s 1174(1)*)
- Will have an objects clause (although the Act seeks to oust the operation of the doctrine of *ultra vires* by providing that the validity of an act done by a CLG shall not be questioned on the ground of lack of capacity (*s 1183*)
- Its name must end with "company limited by guarantee" (or "CLG", "C.L.G", "clg" or "c.l.g.") or the Irish equivalent, save where application made to dispense with this requirement (*s 1178(2)*)
- Will not be prevented from having its debentures admitted to trading or listed (*s 1191*)
- Must have at least two directors (*s 1194*)
- Unless constitution provides otherwise:
  - the directors shall retire by rotation (*s 1196*);
  - directors' remuneration (if any) must be determined by the members in general meeting (*s 1197*)
- CLG may dispense with holding an AGM if it is a single-member CLG but not if it has multiple members (*s 1202*)
- Can avail of audit exemption but any one member can object

Unlimited Companies (Part 19)

The Act recognises that there are three distinct types of *unlimited company* (UC):

- 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).

Note, however, that the name of all three types must end in "unlimited company" or "UC" or the Irish equivalent.

The law applicable to all three types of UC is set out in Part 19 and Parts 1 to 14, save as disapplied, modified and supplemented.

Unlimited Companies (Part 19)

Key features

- ULCs cannot offer for sale or list any securities, just as a LTD cannot, but a PUC and a PULC may list debt securities (*s 1248*)
- As well as being able to reduce share capital (*s 1251*) UCs may make distributions other than from distributable profits (*s 1255*)
- The requirement to make a directors' compliance statement does not apply to any type of UC.
- Can dispense with AGM if a single member UC but not if it is a multi-member UC (*s 1262*)
- A ULC is not required to file accounts with the CRO, in the same way as a private unlimited company is currently exempted (*s 1274*)

Re-registration (Part 20)

The principle in Part 20 is that any type of company may re-register as another type of company subject to complying with the requirement applicable to that type of company.

The law on re-registration is set out in 3 Chapters:

1. Interpretation
2. General provisions as to re-registration
3. Special requirements for re-registration

Re-registration (Part 20)

Chapter 2 – general provisions as to re-registration

- A company may be registered as another type of company if it passes the requisite special resolution and application is lodged with the Registrar in the prescribed form, with the specified documents, including a compliance statement *(s 1285*)
- Re-registration takes effect when specified by the Registrar in a certificate of incorporation on re-registration *(1285(6))*
- Additional statements are required where a company is to have a share capital on its re-registration (*s 1286*)
- A PLC's resolution to re-register as an LTD or DAC can be cancelled by court (*s 1287)*

Chapter 3 – special requirements for re-registration

This chapter sets out particular requirements which must be complied with in particular cases of re-registration

External companies (Part 21)

- Significant changes proposed to the current twin-registration requirements for 'branches' and 'places of business',
- External companies are companies incorporated in the EEA (except Ireland) or outside of the EEA,
- The only external companies required to register and file in accordance with Part 21 are those
  - whose members have **limited liability**, and
  - which establish a **branch** in Ireland
- Accordingly, unlimited companies and companies whose presence is less than that of a "branch" do not register
- A presence that constitutes a "place of business" but not a branch does not give rise to a requirement to register.
- Certain provisions of Parts 1 – 14 apply to external companies, including where charges are created but note it will not be possible to register a charge against an external company which does not register in Ireland.

Miscellaneous: Parts 22 to 25

- **Unregistered companies -** Part 22 concerns unregistered companies of which the Bank of Ireland is probably the most important.
- **Public offers of securities –** Treated in Part 23 contains the provisions on prospectus law (Chapter 1), market abuse law (Chapter 2), corporate governance statement for traded company (Chapter 3), and transparency law (Chapter 4)
- **Investment companies -** Part 24 concerns investment companies, being PLCs with the sole objective of collective investment of its funds in property, which are regulated by the Central Bank. The law applicable to investment companies is stated to be Parts 1 to 14, save to the extent that they are: disapplied to PLCs by section *1004* of Part 17, or disapplied or modified by Part 24.
- **Miscellaneous** – Part 25 sets out a handful of provisions which have no other home e.g. statutory auditors, insurance undertakings and other miscellaneous matters

Further Information

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