



www.lkshields.ie

August 2011

*Corporate firm
par excellence*
Chambers Global

Company Secretarial and Compliance

OWNER MANAGEMENT COMPANIES — CORPORATE DEVELOPMENTS

Many of the housing developments that were built during the boom years have left property owners saddled with significant problems in relation to the management, control and completion of the common areas within these developments. The general governance of the management companies responsible for overseeing the maintenance of these common areas has led to a number of complaints being made to the Office of the Director of Corporate Enforcement.

The Multi-Unit Developments Act 2011 (the 2011 Act) was introduced to address the lack of regulation in this area and much of it came into force on 1 April 2011.

An Owner Management Company (OMC) is a company incorporated under the Companies Acts, for the purposes of becoming the owner of the common areas of a multi-unit development and managing, maintaining and repairing such areas. Such a company may take the form of a private limited company where membership numbers are restricted to ninety nine, or a guarantee company which is a public company and where there is no restriction on the number of members. One of the differences between these two types of companies is that a private company will issue shares and share certificates which would normally then be issued to the shareholder, whereas a guarantee company would normally issue a membership certificate. One of the advantages of having a private company operating as the OMC is that such a company may qualify for an audit exemption thus saving audit fees, whereas a guarantee company does not have this option.

The main corporate developments that are relevant to an OMC are discussed below.

Existing OMCs

The words 'Owner Management Company', which may be abbreviated to 'OMC', must be included in the name of the OMC of a multi-unit development in respect of which no contract for the sale of a residential unit has been entered into prior to the commencement of the Act. The 2011 Act provides that before a residential unit in such a development can be sold, an OMC must have been established (at the developer's expense) and ownership of the common areas and the reversionary interest in the residential units must have transferred to that OMC.

The 2011 Act also attempts to improve the situation of unit owners in existing developments in which units have been sold but the common areas have not been transferred to the OMC. It provides that ownership of the common areas must be transferred to the OMC within six months of 1 April.

Membership

As the members of the OMC will be the owners of the units in a multi-unit development, the 2011 Act provides that whenever a unit is sold or assigned, membership of the OMC will automatically transfer when a unit is sold. It is usual in the case of companies incorporated under the Companies Acts for such a transfer to be effected by way of stock transfer form which is approved by the directors of the company at a board meeting. However, the 2011 Act provides that membership of the OMC shall transfer to the new unit owner without the need to execute a transfer or have it approved by the directors of the company. The OMC will be obliged to ensure that the purchaser of the unit receives a share or membership certificate as soon as practicable after notification of the change of ownership.



www.lkshields.ie

Owner Management Companies — Corporate Developments

Lawyers understand the business angles and provide advice tailored to specific needs

Legal 500

LK Shields Solicitors assures personal attention and fields good team players

Legal 500

LK Shields Solicitors has the ability to very quickly get to the heart of the problem

Legal 500

Voting Rights

The 2011 Act provides for voting rights in OMCs and specifies that one vote of equal value shall attach to each unit holder. Existing management companies will have to change their constitution to provide for this unless the Circuit Court makes an order to the contrary. No such order will be made unless the Court is satisfied that to make such a change would prejudice an essential economic interest or it would be contrary to the interests of fairness and justice.

Directors

The position regarding directors of an OMC is also addressed in the 2011 Act. The minimum number of directors that a company must have is two. A person cannot be appointed as director of an OMC for life, or for a term greater than three years. If a person is a director of an existing management company and that appointment is for life or for a term greater than three years, then they will have to vacate their office within three years of 1 April 2011, in the case of a life director, or on the day of the expiry of the term which a director was appointed for, or within three years of 1 April 2011 in the case of a director appointed for a term greater than three years.

AGM

An OMC must hold an AGM in each year and where at least twenty-one days notice should be given to each member. A copy of the annual report of the OMC must be furnished to each member at least ten days before the AGM. The AGM itself must take place within reasonable proximity to the multi-unit development unless otherwise agreed in writing by a 75% vote of the members of the company. These obligations are in addition to any other obligation or duty of the company under any other Act or Statutory Instrument. The 2011 Act also sets out various matters to be included in the annual report of the OMC. These include details of income and expenditure, assets and liabilities, the annual service charge, planned expenditure, a sinking fund account, insurance cover and contracts entered into by the company.

Service Charge

A scheme for annual service charges to fund expenditure on maintenance, insurance and repair of the common areas and the provision of common services to unit owners must be established. The service charge cannot be levied unless considered at a general meeting of the members. The service charge proposed may not be enforced if 75% (the majority required for passing a special resolution) of the members present and voting disapprove. In such a case the service charge for the previous period continues.

Restoration

A recurring problem for unit holders in existing developments is that when they finally do get control of their management company, they find that it has been struck off due to a failure to file annual returns in the Companies Office. Where a company has been dissolved for less than a year, it can be restored to the Register of Companies by filing the outstanding annual returns and accounts and paying the appropriate penalties. However, under existing legislation where a company has been struck off for more than a year, as well as filing the outstanding annual returns and accounts and paying the appropriate penalties, an application is also required to the High Court to have it restored. This is clearly a costly exercise.



www.lkshields.ie

Owner Management Companies — Corporate Developments

LK Shields Solicitors is committed and responsive with excellent commercial knowledge

Legal 500

LK Shields Solicitors is praised for having excellent strength in depth and a good network of recommendations for European and US work

Legal 500

The 2011 Act provides for an exception where an application to restore is made by members or officers of a management company, by extending the period within which the Registrar may effect the restoration to six years. The 2011 Act only applies to management companies which had vested in them ownership of the common areas or a part of the common areas of a multi-unit development at the date of their strike off. Such an application must be accompanied by a certificate from a solicitor or accountant certifying that the company is an OMC.

How we can help

Whilst the measures contained in the Act are welcome, they are complex and directors should familiarise themselves with their responsibilities under the 2011 Act as well as the Companies Acts generally.

For more information please contact



Alan Browning

T +353 1 6371529
E abrowning@lkshields.ie

Alan is Head of the [Company Secretarial and Compliance Unit](#) at LK Shields Solicitors. He is a Fellow of the Institute of Chartered Secretaries and Administrators and has over 20 years' experience working in both Dublin and London in various corporate secretarial and compliance roles.

Alan has expertise in the areas of corporate restructuring, reorganisations, start-ups and the law of meetings. He has wide-ranging experience in company law, company secretarial practice, compliance and corporate governance. Alan provides support and advice in these practice areas to both public and private companies.

About LK Shields Solicitors

LK Shields Solicitors is one of the leading law firms in Ireland. Founded in 1988, we have consistently grown and we now have upwards of 130 staff. We enjoy and take pride in our work and offer clear commercial advice to our clients. We ably meet the full legal services needs of both international and national businesses across a large range of industry and service sectors.

Copyright

If you would like to reproduce any of this publication, please contact Emer Craig - ecraig@lkshields.ie.
© LK Shields Solicitors - August 2011. All rights reserved.

The material in this publication is for general information purposes only. Professional legal advice should always be sought in relation to any specific matter. No liability will be accepted for any losses incurred by those relying solely on this publication.

LK SHIELDS SOLICITORS

39/40 Upper Mount Street, Dublin 2, Ireland

T +353 1 661 0866 | F +353 1 661 0883 | E info@lkshields.ie | W www.lkshields.ie