



COMPANY SECRETARIAL AND COMPLIANCE

---

# The Companies Act 2014 - It is Time to Take Action

by

# The Companies Act 2014 - It is Time to Take Action

7th June 2016 | by

It is now a year since the Companies Act 2014 (the Act) came into force.

The deadline for taking action is fast approaching, so it is an opportune time to revisit the main call to action made by the Act to pre-existing private companies limited by shares (LC).

The Act requires all existing LCs to convert to a new type of limited company. In particular, LCs as we knew them, have been phased out by the Act, and the following conversion options are available to LCs.

1. Convert to the new simplified type of private company, an LTD
2. Convert to the new company that is most like an LC, a Designated Activity Company (DAC)
3. Convert to another type of company

The Act provided for a period of transition for LCs to facilitate their orderly transition from the old law to the new, during which LCs will continue to exist. This transition period is coming to an end and the deadlines for making the decision to convert are:

1. 30 November 2016 if converting to an LTD
2. 31 August 2016 if converting to a DAC

We recommend that this decision should be made as soon as possible and definitely well in advance of these deadlines.

From 1 December 2016 there will no longer be LCs as every LC will either be converted to an LTD or DAC voluntarily, or will have converted to an LTD by default.

## Differences between an LTD and a DAC

LTD	DAC
May have just one director and a separate secretary.	Must have at least two directors. One can also act as secretary.

<b>LTD</b>	<b>DAC</b>
Full and unlimited capacity; no objects clause required.	Must have an objects clause.
Will have a single document constitution.	Will have a two part document constitution.
The name must end in "limited", "ltd" or the Irish equivalent.	The name must end in "designated activity company", "DAC" or the Irish equivalent.
May dispense with holding an AGM.	Cannot dispense with holding an AGM unless a single member company.
May decide not to have an authorised share capital.	Must have an authorised share capital.
May not list or have securities admitted to trading.	Will be able to list or have admitted to trading certain securities.

## So what should you do?

You should now consider which type of company, private or otherwise, that best suits your needs. Are the more simplified administrative requirements of an LTD desirable or are the provisions relating to a DAC, which is the most similar to current private limited companies, preferable?

We also suggest that this process is an opportunity for you to look at the current structures and arrangements that are in place to see if they need to be updated and/or changed. For example, larger organisations with many group companies may undertake a housekeeping exercise with a view to simplifying their structures in order to assist with the transition. Less complicated companies should consider whether the more simplified corporate governance regime would best suit the members and directors and future business needs.

While some companies will be obliged to convert to a DAC, those carrying on the activity of a credit institution or insurance undertaking, we would anticipate that the benefit of the simplified corporate governance requirements for LTDs will be appealing, and that most private companies will convert to LTDs.

The DAC might be more suitable where the company has been established for a specific purpose and it is important to the shareholders to restrict its activities, i.e. a joint venture company.

Once you have made the choice of which type of company you want, we can provide advice and guidance to ensure that your constitution meets the requirements of your new company model.

## What if I do nothing?

If a company fails to make a decision to re-register as an LTD or DAC by the deadline an existing private company will be deemed to be an LTD with a one document constitution consisting of the existing provisions of its Memorandum

and Articles, excluding its objects clause and any clause prohibiting alteration of the M&A.

This may have consequences in that if the existing Articles contain specific provisions which have been negotiated, the company may end up with a constitution which does not reflect the arrangements which have been negotiated between the shareholders.

Furthermore, by doing nothing, the directors could be in breach of their duty to ensure that they have complied with the Act and there may be a challenge by shareholders or creditors who could seek remedies, including payment of compensation.

## **Name Change**

If a company is converting to a DAC it will also need to change its name to end with the words "Designated Activity Company" or this can be abbreviated to DAC. The LTD company name will still end with the word "Limited".

## **Timing**

As well as being aware of the deadlines of 30 November 2016 for an "LTD" and 31 August 2016 for a "DAC", directors should also be mindful of the time taken to process applications by the CRO. As we get closer to the deadline the number of applications will increase and the wait time which is currently three weeks for a conversion, may well increase.

An existing LC will become the relevant type of new company only upon issue of the new Certificate of Incorporation on Conversion. Directors should be cautious of this as if a filing is made close to the deadline an existing LC will default to the new LTD on 1 December 2016 rather than by election of the directors and where a company is electing to become a DAC it will have defaulted to an LTD until the CRO has processed the registration.

## **How Can We Help?**

LK Shields can assist you in converting your company to an LTD or a DAC or some other type of company and we can advise you on the options for, and your obligations, concerning conversion. We have an experienced team of chartered secretaries with in depth knowledge of the implications of conversion and would welcome hearing from you at your earliest opportunity.

**For further information on the Companies Act 2014, please contact our Company Secretarial and Compliance team at [cosec@lkshields.ie](mailto:cosec@lkshields.ie) or visit [www.companiesact.ie](http://www.companiesact.ie).**

**About the Author**