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CORPORATE AND COMMERCIAL

Existing Private Companies Limited by Shares

by **Ruairí Mulrean**

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Have you thought about re-registration under the Companies Act 2014? Should you be talking now to your shareholders and key creditors?

Under the Act, the existing form of a private company limited by shares (an existing private limited company) will be replaced by two different types of private company limited by shares:

- (a) a company limited by shares with flexibility to act similarly to an individual (LTD); and
- (b) a designated activity company with an object clause and stricter corporate governance rules (DAC).

The Act provides for a transition period of eighteen months, which will end on 30 November 2016 (the Transition Period). During the Transition Period, existing private limited companies should decide whether to re-register as a LTD or a DAC. Some of the principal differences between a LTD and a DAC are set out in the table below.

	LTD	DAC
Directors/ Company Secretary	May have one director only, but must have a company secretary different to a sole director.	Must have at least two directors and a company secretary, who can be one of the directors.
Constitution	Single-document Constitution No objects clause	Memorandum and Articles of Association Must have an objects clause
Company Name	Must end with "Limited" or "LTD"	Must end with "Designated Activity Company" or "DAC"
Corporate Capacity	Full unlimited capacity	Directors must ensure activities are within the objects clause
AGM	May dispense with the holding of an AGM	May only dispense with the holding of an AGM if it is a single-member company
Listing of securities	Cannot list securities (debt or equity)	May list securities (debt only subject to certain restrictions)
Credit institutions/ insurance undertakings	Cannot be a credit institution or an insurance undertaking	May be a credit institution or an insurance undertaking

Options

Unless required to re-register as a DAC, existing private limited companies have two options.

1. Up until the end of the Transition Period, it may re-register as a LTD by a special resolution of its shareholders. 75% approval is required.
2. Up until 31 August 2016, it may re-register as a DAC by an ordinary resolution of its shareholders. A simple majority approval is required.

Obligation to Register as DAC

An existing private limited company must re-register as a DAC before 31 August 2016 if:

- It has listed debt securities; and/or
- It is notified by shareholders, who have more than 25% of total voting rights, that they require it to register as a DAC.

Where there is a requirement to register as a DAC, a directors' resolution must be passed for that purpose and included as part of the registration application.

Status during Transition Period

During the Transition Period, an existing private limited company will be treated as a DAC, even though its company name may end in "Limited" or "LTD", until it re-registers as a DAC or LTD. If it does not re-register during the Transition Period, it will become a LTD on 1 December 2016, which is when the Transition Period expires.

Recommendations

The decision to re-register as a LTD or a DAC should be made with reference to the existing private limited company's requirements and those of its shareholders and creditors. For example, it must register as a DAC if it has debt securities listed on a stock exchange or requires the flexibility to list debt securities. Creditors or shareholders may require it to be a DAC so that it has an objects clause limiting the directors' authority to transact business to that acceptable to the creditors or shareholders.

We recommend that directors of existing private limited companies should consult with the company's shareholders on the shareholders' requirements. It may also be prudent and/or necessary to consult with key creditors, particularly banks and debenture holders.

If you would like further information, please contact Ruairi Mulrean at rmulrean@lkshields.ie or visit www.companiesact.ie.

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