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Companies Bill 2012: The New Regime for Existing Companies Limited by Guarantee and Not Having a Share Capital

Introduction

Once the Companies Bill 2012 (the “Companies Bill”) comes into force all existing private companies will have to make a decision whether to convert to:

- (i) a company limited by shares (CLS); or
- (ii) a designated activity company (DAC); or
- (iii) another type of company (public limited company, Societas Europaea, Company Limited by Guarantee (CLG)).

The Company Limited by Guarantee is 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.

The Companies Bill provides for an 18 month transition period, commencing on the commencement date (expected to be 1 June 2015). During the transition period, a Company Limited by Guarantee shall continue to be deemed to be a Company Limited by Guarantee. The company shall also be permitted to continue to use

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the term “limited” or “teoranta” in its title, despite being deemed to be a company limited by guarantee. At the end of that transition period, where an existing Company Limited by Guarantee fails to elect to convert to some other type of company, that company will be deemed to have become a CLS.

Conversion Process – The New Regime

The Company Limited by Guarantee

Within 15 months of the enactment (prior to 3 months before the end of the transition period) a company limited by guarantee should elect to re-register as a private company limited by guarantee under the new bill. This can be done by means of a special resolution and appropriate filings with the CRO. The company shall then be obliged to have “Company Limited by Guarantee”, or its Irish translation or their abbreviations, in its title. However, certain companies will be permitted, on application, to drop this wording.

We have set out below a few bullet points which expand on the above and may be useful:

-  The law applicable to companies limited by guarantee which do not have a share capital (CLGs) will be that contained in Part 18 of the Companies Bill, and that applicable to the new private company limited by shares (i.e. Parts 1 to 14) save as disapplied, modified or supplemented.
-  An existing private limited company can elect to become a CLG by passing a special resolution and making the necessary filings to the Companies Registration Office (CRO) three months prior to the end of the transition period. Those registration requirements are set out at Part 20 of the Bill.
-  An existing CLG, not having a share capital, shall, on and from the commencement of the Bill, continue in existence and be deemed to be a CLG to which Part 18 applies.
-  The name of a CLG shall end with either “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”. The words “company limited by guarantee” may be abbreviated to “c.l.g.” or “clg” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the CLG. The words “cuideachta faoi theorainn ráthaíochta” may be abbreviated to “c.t.r.” or “ctr” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the CLG.
-  The Bill contains provisions enabling a CLG to continue to use, for a limited time during the transition period, “limited” or “teoranta” in its name despite being deemed to be a CLG.

- ▣ During (a) the transition period, or (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change, the provisions of the prior Companies Acts relating to the use of limited or teoranta (or their abbreviations) shall apply as respects the name of an existing guarantee company in place of the new provisions.
- ▣ On and from (a) the expiry of the transition period, or (b) the company changing its name to include either of the required sets of words, whichever happens first, the new provisions shall apply as respects the name of an existing guarantee company.
- ▣ Subject, where appropriate, to certain exceptions, on the expiry of the transition period (and where the company has not changed its name before then to include either of the required sets of words), the name of an existing guarantee company, as set out in its memorandum, shall be deemed to be altered by the replacement of (a) “company limited by guarantee” for “limited” at the end thereof, or (b) “cuideachta faoi theorainn ráthaíochta” for “teoranta” at the end thereof, as the case may be.
- ▣ A CLG shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of the Bill relating to the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this section) be subject to all the obligations of a CLG, where:
 - ✓ (a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object, and
 - ✓ (b) its constitution— (i) requires its profits (if any) or other income to be applied to the promotion of its objects, (ii) prohibits the making of distributions to its members, and (iii) requires all the assets which would otherwise be available to its members to be transferred on its winding up to another company whose objects comply with *paragraph (a)* and which meets the requirements of this paragraph, and
 - ✓ (c) a director or secretary of the company (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the Registrar a statement in the prescribed form that the company complies or, where applicable, will comply with the requirements of *paragraphs (a) and (b)*.
- ▣ Post-conversion, companies may require a name change by virtue of their suffix changing from Limited to Designated Activity Company or Company Limited by Guarantee. Items including company stationery, the company’s website and any name plates should be amended once the company has been re-registered. In addition, a new company seal should be ordered and used when sealing any documentation post re-registration.

▣ [Next Steps](#)

The commencement date of the Companies Bill is expected to be 1 June 2015. At this juncture, it is advisable for Irish private companies to review their current business activities and requirements and to decide which course of action is in the best interests of the company, its directors and shareholders.

All companies will need to choose between converting to a Company Limited by Guarantee, a CLS or a DAC (or another suitable company type such as a public limited company) to ensure that its business needs are met in a legally robust manner.

For further information on any of the issues discussed, please contact Lorcan Tiernan or your usual contact in Dillon Eustace.

Dillon Eustace will provide regular updates and briefing sessions on the Companies Bill as the effective date becomes closer.

The firm's multi-disciplinary team includes the following members who will be responsible for coordinating client communications on the impact of the Companies Bill in the following practice areas over the course of 2014/2015:-

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