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Companies Bill passes all legislative stages

Introduction

The Companies Bill 2012 (the "Companies Bill") passed the final stage in the Oireachtas (Irish Parliament) before enactment on 10th December. No substantive changes were proposed at this stage and it is expected to be signed into law by the President later this month.

The effective date of the Companies Bill (which will become the Companies Act 2014) is expected to be 1 June 2015 with a transition period for certain elements of 18 months.

The Companies Bill represents a significant reform of Ireland's company law regime by consolidating, reforming and amending existing company law legislation. We have set out below some of the key innovations of the Companies Bill.

Updated Requirements

The Companies Bill will impact every Irish company together with all directors and shareholders. The key changes under the Companies Bill include:

■ The Codification of Directors' Common Law Fiduciary Duties

The Companies Bill gives statutory recognition to the current common law and equitable principles regarding director's duties which will ensure greater clarity for directors.

New Model Company – Private Company Limited by Shares

The new model private company limited by shares will replace the

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existing private company limited by shares.

There are many similarities between these legal entities, however there are some important changes such as:

- a model company limited by shares can be formed with just one director; and
- A model company limited by shares will have unlimited legal capacity and the "ultra vires" rule whereby a company's legal capacity was limited to the objects set out in its memorandum of association is abolished.

■ Elective Regime

All private companies will be obliged to either register as a designated activity company or adopt a new form of constitution and be registered as a private company limited by shares within the 18 month transition period. Otherwise, the private company will be deemed to be a private company limited by shares and a default form of constitution deemed to have replaced its memorandum and articles of association.

Summary Approval Procedure

The new summary approval procedure will authorise activities that might otherwise require High Court sanction or approval to be approved by the shareholders of a company. In certain circumstances, a reduction of capital or a merger may be effected without the need for High Court approval once the process set out under the Companies Bill is complied with (certain mergers may come within the remit of the Competition and Consumer Protection Act 2014 also).

Directors' Compliance Statements

Directors of the following companies will be obliged to sign a compliance statement acknowledging responsibility for compliance with company law obligations:

- Public Limited Companies;
- "Large" private companies limited by shares, designated activity companies and guarantee companies (i.e. which have a balance sheet total exceeding €12.5 million and a turnover exceeding €25 million).

Directors of unlimited companies and investment companies are excluded from these obligations.

Changes to the Insolvency and Corporate Recovery Regimes

The Companies Bill introduces a welcome consolidation and modernisation of the law relating to liquidations, receiverships and examinerships. The Companies Bill will reduce the Court's supervisory role in Court liquidations such that it is more closely aligned to creditors' voluntary liquidations and introduces greater consistency between the three types of liquidations, being members' voluntary, creditors' voluntary, and Court liquidations. The Companies Bill will also introduce more extensive powers of intervention and scrutiny over liquidators for the Director of



Corporate Enforcement. While the changes in relation to examinerships are relatively modest, the Companies Bill does also reform and consolidate the law relating to receivers including, for example, providing that receivers' powers will be enumerated in a non-exhaustive list, that list being without prejudice to powers which may be granted by a debenture.

■ Re-classification of all Company law offences

All company law offences have been allocated into four categories of offences with penalties attaching to each offence.

Priority of charges and registration of charges

Where security is taken over assets which do not require specific registrations for priorities in registries other than the Companies Registration Office (such as the Land Registry) the current law provides that the priority rests with the creditor who has taken the security first in time. Under the Companies Bill this will no longer be the case and instead where security is taken over such assets, the priority will rest with the creditor who has been the first to register the security interest with the Companies Registration Office. In addition, whilst the existing procedure for the registration of the particulars of charges with the Companies Registration Office within a 21 day period will remain (the "one stage procedure"), a new "two stage procedure" will also be introduced for the registration of the particulars of charges.

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



Dillon Eustace's cross firm multi-disciplinary team includes the following members who will be responsible for co-ordinating client communications on the impact of the Companies Bill in the following practice areas over the course of 2014:-

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