



January 2013

## ■ The Companies Bill 2012

The Companies Bill 2012 was published on 21 December 2012 by the Minister for Jobs, Enterprise and Innovation. The Bill which runs to over 1,100 pages represents over a decade's work and seeks to consolidate the existing 16 Companies Acts and reform existing Irish company law. The Bill aims to make the incorporation and operation of Irish companies more straightforward and cost effective.

It is estimated that 12,500 private companies limited by shares are incorporated every year and this type of company makes up 90% of all companies registered at the Companies Registration Office. The Bill focuses on this type of company with the first 15 Parts of the Bill addressing the life cycle of the private company limited by shares ('CLS') from incorporation to winding up. Provisions relating to other types of company such as the public limited company, unlimited company and company limited by guarantee are set out in subsequent separate Parts of the Bill.

### Company Limited by Shares -v- Existing Private Company Limited by Shares

The CLS has a number of features which differ from the existing private company limited by shares, some of these differences mentioned below should make the operation of these companies simpler and more efficient:

*Single director companies:* there will no longer be a minimum requirement of two directors. The CLS will be able to operate with one director however a company secretary is still required and where there is only one director that person may not also hold the office of company secretary. The company must still have at least one director who is resident in an EEA state.

*Objects clause:* there will be no requirement on a CLS to have an

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objects clause. This removes the concern around a company's capacity under its constitutional documents to take certain actions and gives the CLS "full and unlimited capacity to carry on and undertake any business or activity, do any act or enter into any transaction". In doing so the Bill removes the concept of 'ultra vires' and effectively gives the CLS legal capacity equivalent to that of a natural person.

*Annual General Meetings:* the CLS is not required to hold a physical AGM and the business required to be carried out at an AGM may be conducted by the written resolution of all members entitled to attend and vote at such meeting.

*Constitution:* the current form of constitutional documents made up of a memorandum of association and articles of association is replaced by a single document referred to as the "constitution".

### Directors' Duties

Directors' duties are codified in the Bill for the first time. This represents an attempt at making this area of law, to date largely set out and determined by reference to case law based on common law and equitable principles, more transparent and accessible.

### Offences

Offences under company law are to be streamlined under the Bill and a new four-tier categorisation of offences introduced. The most serious is category 1 and offences of this category carry, following conviction on indictment, a term of imprisonment up to 10 years and/or a €500,000 fine. A summary prosecution for a category 1 offence will result in a Class A fine (as defined in the Fines Act 2010 — currently up to €5,000) and/or a term of imprisonment up to 12 months.

### Mergers

Irish private companies will be able to engage in mergers and divisions. While such mergers feature in other jurisdictions and are available to public limited companies, this option was not previously available to Irish private companies other than in cross border situations.

### Enactment

While it has been a lengthy process to get to publication of the Bill, the Bill must now make its way through the legislative process in the Oireachtas with the date of enactment dependent on the speed of this process.

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