

Companies Act 2014 It has arrived...

Minister Richard Bruton signed the order which commences the Companies Act 2014 (subject to certain exceptions) on 1 June 2015.

Financial reporting

Approval of financial statements

Directors are required to satisfy themselves that the financial statements give a true and fair view and otherwise comply with the Act. Only required to sign balance sheet. In addition, must also state name of signing director(s).

Financial year end

First financial period cannot be more than 18 months from the date of incorporation. Subsequent financial periods cannot be more than 12 months, give or take a week either side. Changes in year ends must be registered with the CRO. May only change once every five years with some exceptions. This restriction doesn't apply to bring a year end in line with a group.

Mergers

It is possible to merge private companies once directors complete the appropriate summary approval procedure, or apply to court.

Audit exemption

Subject to meeting certain conditions, expanded to include companies limited by guarantee, dormant companies, unlimited companies and small groups, with some exceptions.

Dividends from pre-acquisition profits

Once directors complete the appropriate summary approval procedure the receipt of a dividend out of pre-acquisition profits can be accounted for as if the dividend was out of post-acquisition profits.



Audit exemption for group companies

All companies in the group must be of the permitted type and have filed returns on time and the group taken as a whole meets two or more of the following criteria (in current and previous year):- turnover <€8.8m; balance sheet total <€4.4m; average number of employees <50; provided members holding 10% or more of the voting rights do not object.

Merger relief

The full share premium at market value for certain transactions will not be required if conditions are met including the completion of the appropriate summary approval procedure.

Impact for Company Directors & Company Secretaries



Company Secretary

It is the directors' duty to ensure that the company secretary has the skills or resources necessary to discharge their statutory or other duties eg to maintain records as required by the Act. In the case of a PLC the company secretary must meet at least two of the three attributes set out in the law with the aim of ensuring the person is capable of discharging their duties.

Directors' loans / remuneration

New evidential provisions relating to loans to and from directors:-

To a director

If not in writing or is in writing but its terms are ambiguous, it will be presumed unless the contrary is proven that the loan is repayable on demand and interest will arise at the appropriate rate, currently 5%.

From a director

If terms are not in writing it will be presumed that no loan was made or if the terms are in writing or partially in writing but are ambiguous it is presumed that the loan does not bear interest and is not secured, and is sub-ordinate to all other indebtedness.

Directors' remuneration: additional separate disclosures include aggregates of pension contributions made on behalf of directors analysed by defined benefit and contribution schemes including the number of directors in each scheme; aggregate payments under long term incentive schemes; the aggregate gains made by directors on the exercise of share options. Disclosures to include payments to connected persons.

Directors' interests

No longer need to disclose directors interests in shares which are <1% of the issued capital or are non-voting.

Directors' duties

Directors duties now codified in the Act as follows:

- To act in good faith in the interests of the company;
- To act honestly and responsibly in relation to the affairs of the company;
- To act in accordance with the company's constitution and exercise powers lawfully;
- To avoid any conflicts of interest, exercise reasonable care, skill and diligence, have regard for the interests of the company's employees and members;
- Not to use the company's property, information or opportunities for his or her own or anyone else's benefit unless expressly permitted by the constitution or approved by a shareholders resolution; and
- Not agree to restrict power to exercise an independent judgement unless permitted by the constitution or approved by shareholders resolution.

Number of Directors

A company limited by shares may have a single director who can sign the financial statements. A designated activity company must still have a minimum of two directors who must both sign the financial statements.

Retirement by rotation

The requirement for 1/3 of the directors to retire by rotation at the AGM has been removed for private limited companies except for those appointed by the board during the year who must all offer themselves for re-election.

Directors' compliance statement

For the first time under this Act, directors of a PLC (excluding investment companies) regardless of size or any company with a balance sheet total greater than €12.5m and turnover greater than €25m for the year will be required to make an annual compliance statement in every directors' report for financial periods beginning on or after 1 June 2015. Directors are required to acknowledge that they are responsible for securing compliance and either confirm, or explain why not, in relation to whether they have (i) drawn up a compliance policy statement, (ii) put the requisite arrangements or structures in place designed to secure material compliance and (iii) have conducted a review of the structures or arrangements in the financial year.

Compliance with relevant obligations includes; all taxation legislation, company law non-compliance with which is either a category 1 or a category 2 offence, or a serious market abuse or prospective offence. One of the challenges for directors is the basis upon which they can make the required statements. The Deloitte Compliance Cube can help.

Introducing the Deloitte Compliance Cube

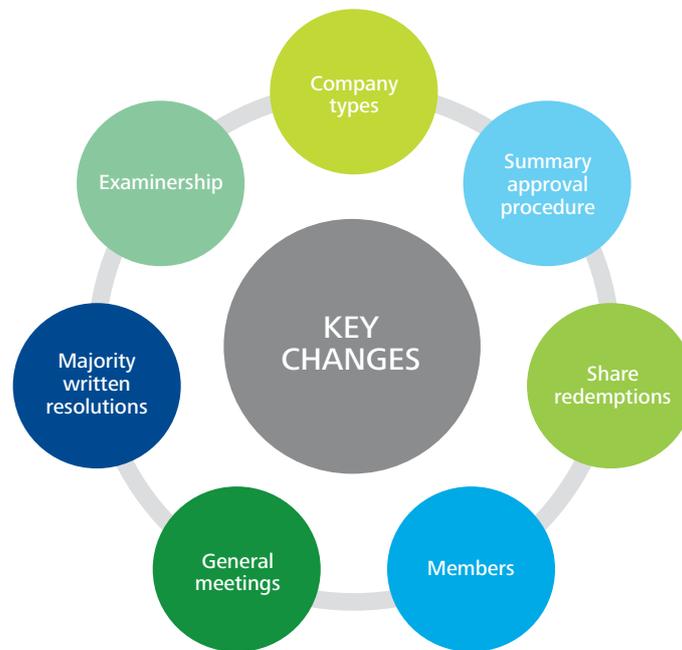
Our risk assessment tool, the Deloitte Compliance Cube can help you develop an initial understanding of the current state of your governance activities in the relevant areas to support your compliance. The Compliance Cube is a set of specifically designed self-assessment questions and categorises and scores your responses into four interrelated components which govern your compliance activities- governance, people, processes, data & systems.

Understanding priorities

The output from the Deloitte Compliance Cube gives you an indicative assessment of risk, using the system of red, amber and green (see below), based on your responses to the questions. This allows directors (both executive and non-executive) to understand and identify priorities for change. Results from the Deloitte Compliance Cube may also be used to benchmark your compliance risk management framework against other organisations. Below we outline a sample output from such an exercise.

	Tax	Company Law	Mkt Abuse Offences	Prospectus Offences
Governance	40%	44%	47%	83%
People	64%	100%	50%	50%
Process	53%	88%	50%	25%
Data & Systems	54%	58%	0%	25%

Key changes



Company types

Public limited company

- Public limited company (PLC)
- Company limited by guarantee **not** having a share capital (CLG)

Unlimited company

- *Private* unlimited company (ULC)
- *Public* unlimited company (PUC)
- Public unlimited company **not** having a share capital (PULC)

Private limited company

- Company limited by shares (LTD)
- Company limited by shares or a company limited by guarantee having a share capital (DAC)

Summary approval procedure

One streamlined validation procedure introduced with minor variations tailored for certain transactions – financial assistance, mergers, transactions with directors, members voluntary winding up, reduction in share capital, variation in capital on a restructuring, treatment of pre-acquisition profits as distributable.

The procedure involves **Special Resolution of Members** OR in the case of a merger a **Unanimous Resolution** from each of the merging companies' members, and a declaration of company solvency by directors – tailored to each type of transaction. A **Report** of an independent person to confirm the directors declaration is not unreasonable is required in certain cases but not all (e.g. for loans to directors or financial assistance for purchase of own shares).

In the case of a merger – special directors' confirmation is required. An LTD can avail of summary approval procedure for reduction of share capital or variation of capital on reorganisation instead of the court procedure.

Share redemptions

The requirement to have 10% of the share capital as non-redeemable is eliminated.

Members

The maximum number of members for an LTD or DAC is extended to 149. All company types can have a single member.

General meetings

A single member/multi member LTD will have power to dispense with the requirement to hold an Annual General Meeting. A single member DAC, PLC, UC and CLG will have the power to dispense with the holding of their Annual General Meeting. AGMs and EGMs can be held outside the State and there is provision for participation by electronic means.

Majority written resolutions

100% written approval no longer required in the following circumstances:

- *Ordinary resolution is deemed passed 7 days after the members representing 51% have signed.*
- *Special resolution is deemed passed 21 days after the members representing 75% have signed. Not available for removal of a director or auditor.*

Examinership

Small companies, as defined in the Act, can apply to the Circuit Court rather than the High Court for examinership as per Companies (Miscellaneous Provisions) Act 2013

Who will it impact?

This is the most significant change in company law ever introduced and it will impact:

All Companies

All Directors

All Company Secretaries

When?

The Companies Act 2014 commences 1 June 2015 (other than):

- Section 4(1) other than in so far as it relates to Part V of the Companies Act 1990 (Insider Trading).
- Section 4(2) other than in so far as it relates to Regulation 6 of the European Communities (Mergers and Divisions of Companies) (Amendment) Regulations 2011.
- The provisions specified in Article 4(3) and section 1325 in relation to the repeal of the Bank of Ireland Acts.

The Act comes into force for financial statements approved on or after 1 June 2015, with six exceptions, each of which will apply for accounting periods commencing on or after 1 June 2015.

Section 167 – a comply or explain requirement regarding audit committees extended for certain companies;

Section 225 – certain companies to prepare and disclose a directors' compliance statement concerning the company's compliance with certain aspects of company laws and all tax law;

Section 305(1)(b) – the aggregate gains made by directors on the exercise of share options to be separately disclosed as part of directors' remuneration;

Section 306(1) – amounts paid to persons connected with a director to be separately disclosed as part of directors' remuneration;

Section 326(1)(a) – directors' report to include the names of the persons who were directors at any time during the financial year; and

Section 330 – A directors' statement concerning relevant audit information to be made each year in the directors' report.

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How to be prepared

Private Companies

(Within 15 months of 1 June 2015)

1. Examine existing Articles:

- Are they consistent with the Act?
- Are there specific Articles that need to be retained in the new constitution?
- Do you wish to retain the 'Objects' clause (and become a DAC)?
- Do you wish to retain a share capital clause?

2. Decide whether to re-register as an LTD or DAC

3. For large companies meeting the criteria make preparations for the approval of the Directors' Compliance Statement

Public Limited Companies

No need to make any immediate filings or changes but examine Part 17 and Parts 1 to 14 of the Act for Public Limited Companies and refer to Part 24 for Investment Companies.

Make preparations for the approval of the Directors' Compliance Statement.

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