

Companies Bill

What's coming down the road

The Minister for Jobs, Enterprise and Innovation has published the Companies Bill 2012. The proposed changes will consolidate the existing Companies Acts, simplify Company Law going forward, while also introducing some welcome reforms. Enactment of the bill is expected in early 2014 with implementation possible by early 2015.

Financial reporting

Electronic filing pdf's

Permission to 'type sign' only accounts for filing purposes as per Companies (Miscellaneous Provisions) Act 2013

Revision of defective financial statements

Allow voluntary revision of company financial statements and reports filed with the Registrar where directors have already approved them and subsequently an error/deficiency comes to light. An auditor's report on the revised financial statements is also required to be filed, except where there is an audit exemption.

Mergers and divisions

It will be possible to divide companies and merge them: Once directors complete the appropriate summary approval procedures.

Audit exemptions

Expanded to include Companies limited by Guarantee, dormant companies and there is an increase in thresholds for medium companies.

Dividends from preacquisition profits

Once directors complete the appropriate summary approval procedures 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 exemptions for group companies

All companies in the group must have filed returns on time and the group taken as a whole meets 2 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; extended to parent company and subsidiaries; special exemption for dormant companies.

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 necessary skill to maintain records as required by the Bill. A company secretary may be a corporate entity. A CLS with only one director must have a different person/entity as its company secretary.

Registered person

A person may be appointed by a company as a registered person with authority to bind a company in a contract. The registered person must be notified to the Registrar of Companies and is entitled to use the company seal, and retains authority until the Registrar is notified of revocation. This person does not have to be a director.

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 Bill 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 to 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.

Director compliance statements

For the first time under this Bill, Directors of a PLC or a company with a balance sheet total greater than €12.5m and turnover greater than €25m for the year will be required to make a statement that they acknowledge that they are responsible for securing and have reviewed the company's compliance with its relevant obligations.

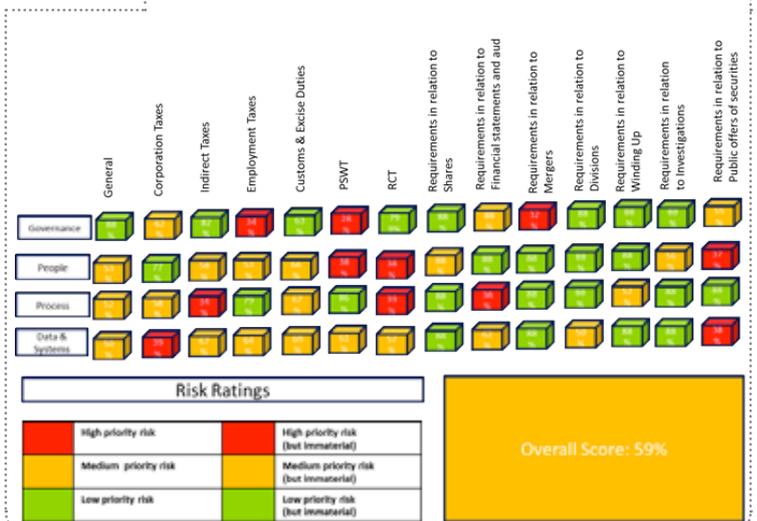
Compliance with relevant obligations include all taxation legislation as well as compliance with Category 1 and Category 2 offences as outlined in the Bill. One of the challenges for Directors is the basis upon which they can make the required statements. The Deloitte Assessment Cube can help.

Introducing the Deloitte Assessment Cube

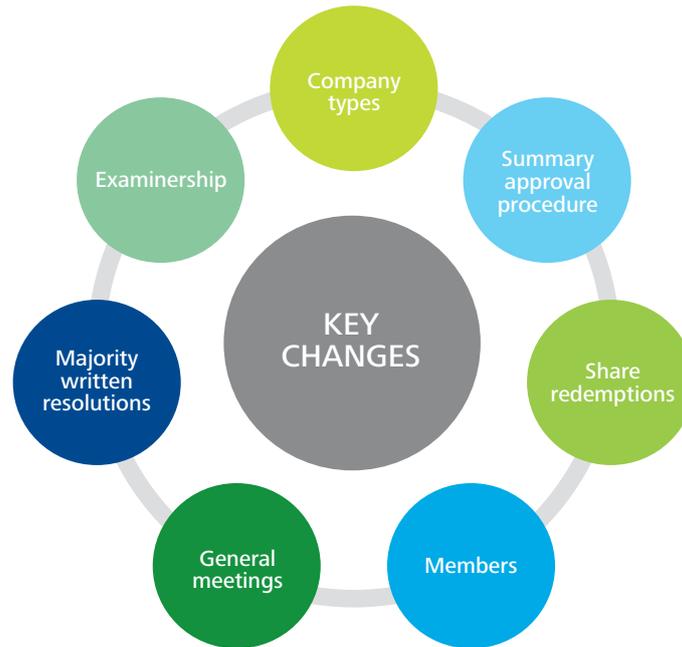
Our risk assessment tool, the Deloitte Assessment Cube can help you develop an initial understanding of the current state of your governance. The Cube is a set of relevant areas to support self-assessment questions and categorises and scores your responses into four interrelated components which govern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

Understanding priorities

The output from the Deloitte Assessment 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 Assessment 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.



Key changes



Company types

Public limited company

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

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 (CLS)
- Designated activity company (DAC)

Summary approval procedure

One streamlined validation procedure introduced with minor variations tailored for certain transactions e.g. financial assistance, mergers and transactions with directors.

The procedure involves **Special Resolution of Members OR** in the case of a Merger a **Unanimous Resolution** from each of the merging companies' members, A Declaration of Company Solvency by Directors – tailored to each type of transaction. An **Auditor's Report** 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. A CLS 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 is extended to 149. A CLS can have a single member.

General meetings

A CLS will have the power to dispense with the requirement to hold an 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 Bill, can apply to the Circuit Court rather than the High Court for Examinership as per Companies (Miscellaneous Provisions) Act 2013

Contacts

Who will it impact?

This is the most significant change in Company Law ever introduced and it will impact:

All Companies

All Directors

Company Secretaries

When?

Completed Committee Stage in the Dáil on 6 November 2013, with report stage expected to be completed by the end of February 2014 and implementation, possibly as early as January 2015 but nothing yet announced in this regard by the DTE.

How to be prepared

Private Companies

(Within 15 months of the enactment of the Bill)

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. Re-register as a CLS or DAC
3. For large companies make preparations for the approval of the Directors Compliance Statement

Public 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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