

The Companies Consolidation and Reform Bill 2008

This long awaited bill was scheduled for publication in 2009 and enactment in 2010. The publication of the Bill is recognition of the fact that company law in Ireland is currently a patchwork of legislation with 14 different Acts introduced since 1963, and seven alone since 1999, making it increasingly difficult for directors, especially directors of smaller companies, to keep abreast of their statutory duties.

The Bill acknowledges the fact that the vast majority of Irish companies currently registered with the Companies Registration Office (“CRO”) are private companies limited by shares and it introduces the new standard model Irish company in the form of Company Limited by Shares (“CLS”).

The proposed Bill will represent a radical overhaul of Irish company law and contains more than 1,500 sections. The intention of the Bill is to make the revised legal framework more user-friendly and to introduce a practicality which is greatly needed in this area.

It is proposed that the Bill will do the following:-

- Require all existing private companies limited by shares to convert to the new type of company, known as a CLS, following an 18 month transition period which will commence at a date to be determined following the Bill’s enactment. Alternatively, companies may, before the expiration of the transition period, elect to become a Designated Activity Company, or “DAC”.
- Not require CLS companies to have an objects cause. The doctrine of a company acting *ultra vires* will be removed and a CLS will have the same legal capacity as a natural person.
- Require a DAC to continue to have an objects clause and the *ultra vires* doctrine will continue to apply to its activities and powers.
- Remove the current legal requirement of having to have two corporate legal documents, namely Memorandum of Association and Articles of Association, and such a constitution will be replaced by a single constitution document.
- Impose a default constitution (Table A) on CLS companies, unless such constitution is amended and submitted to the CRO.
- Provide for the codification of the common law fiduciary duties of directors, setting out a non-exhaustive list of duties, including the duty to act bona fide and in the best interests of the company and to avoid conflicts of interest.
- Require Directors to sign a Statement acknowledging and affirming their duties.

- Entitle a CLS to dispense with the current requirement to hold AGM's, so long as shareholders pass written resolutions by a majority.

The new legislation will require **all** companies currently incorporated to take positive steps to ensure compliance with the new régime, and in this regard it is advisable to seek legal advice.

We understand that the Bill is currently with the Office of the Parliamentary Draughtsman and further consultation and delay is envisaged prior to its introduction, anticipated to be towards the latter end of this year or early 2011.

For further information or to make an appointment please contact Robert Desmond on 021 4278131 or robert.desmond@fodlaw.ie