

Irish Companies Act 2014 - Key Changes To Carrying Out Business

The new Irish Companies Act 2014 (the “Act”) consolidates sixteen existing Companies Acts dated from 1963 to 2013 in to one single piece of legislation. Further it includes undertakings from EU legislation, which harmonises laws across the EU. It is anticipated that the Act will become operational in June 2015 and there will be an eighteen month transition period before certain provisions apply.

The Act will greatly benefit business operations in Ireland as the **main changes** included will give Irish companies greater flexibility in a number of ways:

- Companies will only now require one Director and not two as currently is the case.
- Director's common law and equitable duties will be codified making the law more transparent and accessible.
- The disclosure of Director's interest will have a *de minimis* threshold.
- The doctrine of ultra vires will be removed which will result in there being no requirement for a company to have an objects clause. This type of company will have the power to carry out any activity which its directors determine. If a company wishes to retain or restrict an objects clause then it will have to re-register as a Designated Activity Company (“DAC”).
- The default form of company following the transition period will be a private company limited by shares, with no objects clause. For structures employing joint ventures it may be desirable to consider re-registering the relevant Company as a DAC.
- There will be no requirement to hold an actual, physical, annual general meeting and this may be conducted in writing.
- A new limited company will only have to have a single documentation constitution, rather than a Memorandum of Association and Articles of Association.
- Should the annual turnover / balance sheet of a Private Co reach a certain threshold then the directors of the Private Co must include a statement in the annual report which affirms *inter alia*, the obligations of the director(s) to ensure the Private Co complies with its tax and company law obligations.

- There will be a variance validation procedure which will apply to regulated activities including transactions with directors giving financial assistance, members’ voluntary liquidations and capital reductions.
- The Act provides a statutory mechanism for mergers and acquisitions between Private Cos.

Further developments include streamlining the regime for external companies operating in Ireland, enabling them to register a "branch" in Ireland. Currently, a foreign company operating in Ireland from a fixed address must file a list of its directors, the address of its "place of business" in Ireland with the Companies Registration Office (“CRO”) and must file its constitutional documents. The Act means that, as long as a Company is registered in the EU, then a "branch" needs only to file annual returns with the CRO.

Registration of Charges under the new Companies Act 2014

1. Implications for ship finance transactions involving Irish borrowing Companies

Under the Act there are now two ways in which a charge can be registered in the CRO. Registration can be completed either through the one stage procedure (which has been used under the previous Companies Acts) or by the use of the two stage procedure available under the 2014 Act at the same filing fee of €40. Under the two stage procedure all particulars of the charge must be completed online and as such submission of a charge can only be affected using CORE (www.core.i.e) the CRO's online facility.

Under Section 410 of the Act, the new two step procedure allocates priority to a form C1(a) which may be completed by giving notice of the intention to create a charge and within 21 days of receipt of a correctly completed C1(a), a form C1(b) must be filed confirming completion of charge. Please note that if a form C1(b) is not submitted within the time frame (within 21 days of the creation of the charge) form the C1(a) will be rejected. Please note that the particulars on a form C1 (a) cannot be altered.

2. Implications for ship finance transactions involving Foreign borrowing Companies Conclusion

Similar to Irish companies, there are also two ways in which a charge can be registered for a foreign company with the procedure, filing fee and time limits all being the same as applicable to the Irish company. The only difference is the form used, in these circumstances a form F8(a) and form F8(b) are used in the two stage procedure and in the one stage procedure a form F8 is used.

External limited liability companies which have an established branch in the State are obliged to register with the CRO under Section 130(1) of the Act. When a foreign company creates a charge over property in the State, which charge requires to be registered with the CRO and as such particulars of the charge are required to be delivered to the Registrar of Companies. A certificate of registration will be issued to the presenter in due course on completion of such charges registered by the CRO.

The much discussed Irish Companies Act 2014 will reform Irish company law and now is an opportune time for those with Irish operations or considering conducting business in or through Ireland to evaluate their position. Those ship-owners/operators that employ or are considering employing Ireland in their structure should seek advice about the potential implications of the Act.

Please note that the Act has not commenced and as such the details referred remain subject to alteration. Campbell Johnston Clark Ireland will closely follow this exciting Act for Irish business and keep our clients, new and existing, informed of every development.



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