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The new Companies Act 2014 which becomes law on 1st June 2015 and will affect every company in the State. At JPA Brenson Lawlor we want to make sure that all our clients are fully informed about what the changes will mean for them and to make sure that all our clients are fully compliant with the many changes that the new Act will bring about.

This is the biggest shakeup of company law in the Republic for over five decades and as each company is different the new rules will affect each company differently. We strongly urge you to talk to us in the coming weeks about how the changes will affect your company in areas such as:

Conversion to new company type

All existing Private Limited Companies will have 18 months from the 1st June 2015 about what company type they wish to operate as. The main options available are:

- "Opt in" to a Company Limited by Shares ("LTD")
- "Opt out" to a Designated Activity Company ("DAC")

The main differences are:

COMPANY LIMITED BY SHARES (‘Limited’)

DESIGNATED ACTIVITY COMPANY (‘DAC’)

Must End in the suffix Limited or LTD	Must end in the suffix Designated Activity Company or DAC
Minimum of 1 Director	Minimum of 2 directors
No objects clause - full or unlimited capacity	Capacity limited to the objects clause in the Memorandum
Company Secretary cannot be the sole director	Secretary may be one of the directors
May dispense with holding the AGM - (a written resolution signed by all members entitled to vote will still be required by any company choosing this option)	Cannot dispense with holding the AGM
No requirement for an authorised share capital	May have an authorised share capital
Cannot list debts or securities	May list debts and securities
Cannot be a credit institution or an insurance undertaking	May be a credit institution or an insurance undertaking

Or you can wait until the transition period has passed and be automatically converted into a Company Limited by Shares on 1st December 2016.

Other Company Types

PLCs, Companies Limited by Guarantee and Unlimited Companies will automatically convert over and they have the choice of amending their name to have the appropriate suffix or wait until the transition period has elapsed, and a new certificate of incorporation will then be issued with the new suffix. These companies will have to update their headed paper and company seal.

Rules concerning directors' loans and connected persons

When the Act becomes law, loans to directors/connected persons must be in writing with terms set out, otherwise they will be presumed to be repayable on demand and attract interest. Loans from directors must also be in writing with terms set out otherwise they may be considered as a 'gift' and may not rank with creditors.

Directors' duties

For the first time the duties of Directors have been codified and are set out in one location in the legislation. These duties are categorized as follows:

- Act in good faith in the Company's best interests
- Act honestly and responsibly in the conduct of the company's affairs
- Act in accordance with the Company's constitution
- Not misuse company's property, information or opportunities
- Not fetter discretion
- Avoid conflicts of interest unless agreed
- Exercise care, skill and diligence
- Have regard to the interests of the members as well as employees

Directors will have to sign a statement confirming these undertakings on appointment as a director.

Length of financial periods being fixed

Under the new Act the financial statements attached to a company's first full annual return (i.e. with financial statements) must cover the period from incorporation and must not be for a period longer than 18 months. Each subsequent financial year begins on the date immediately after the last financial year end date and must be for a period of no more than 7 days shorter or longer than 12 months.

Courts can grant extension of time to file annual returns

Applications for an extension of time to file an annual return can be made through the District Court. Consequently, the CRO will no longer be engaging in correspondence with companies appealing the application of penalties as a result of the late filing of an annual return. Instead companies that need more time to file their annual return should make an application to the District Court.

Directors Compliance Statements

- Applies to all PLC's (except investment companies)
- Applies to LTD's/DAC's/CLG's which have a turnover €25m plus and a balance sheet total of €12.5m plus
- Certain classes of companies are exempt
- Directors must declare compliance with 'relevant obligations'

The directors' annual report must contain a statement which acknowledges that they are responsible for securing the company's compliance with its 'relevant obligations' and must include:

- A compliance policy statement that sets out the company's policies in relation to compliance. "In the directors' opinion", these policies must be appropriate to the subject company.
- That arrangements have been put in place that are "in the directors' opinion" designed to secure substantial compliance with the company's relevant obligations.
- A review has been conducted of the arrangements noted above. This review must have taken place during the financial year to which the report relates.

Summary Approval Procedure

A standardised 'Summary Approval Procedure' has been introduced which will simplify how companies will deal with what were previously restricted or prohibited transactions, specifically:

- Financial assistance in purchasing its own shares
- Reduction in share capital
- Variation of capital in re-organisations
- Treatment of pre-acquisition losses/profits in holding company
- Loans to directors/connected parties
- Mergers of private companies
- Members voluntary winding up

Audit Exemption

Companies will have to meet 2 of the 3 size criteria to qualify as a “small company” for the purposes of claiming audit exemption subject to banking, creditor and director requirements.

Audit Committee

Audit committees are now required for larger private companies, defined as those with a balance sheet of over €25 million and a turnover of over €50 million.

We’re here to help

At JPA Brenson Lawlor we have studied and identified the many changes in the legislation that will directly affect each company type. We are happy to help you:

- Decide the best new company-type for your existing company
- Adopt a new constitution
- Prepare all of the necessary documentation to convert to a new company-type
- Answer any queries in relation to your own company

If you wish to discuss the above further or have any specific queries, please call our Corporate Legal Director Cathal Maher or Genevieve Keane on 01 6689760 or email them at cathal@brensonlawlor.ie or genevieve@brensonlawlor.ie

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