



QUESTION:

What is the current status of the new Companies Consolidation and Law Reform Bill?

ANSWER:

By way of recap, the new Companies Bill will have the following structure:

PILLAR A – The Private Company as the New Model Company

- 1 – Definitions and Interpretation
- 2 – Incorporation and Registration
- 3 – Shares and Share Capital
- 4 – Corporate Governance
- 5 – Duties of Directors and Others
- 6 – Accounts, Audit and Annual Return
- 7 – Debentures and Charges
- 8 – Receivers
- 9 – Reconstructions and Arrangements
- 10 – Examinership
- 11 – Winding-Up
- 12 – Strike-Off and Restoration
- 13 – Compliance, Investigation and Enforcement
- 14 – Powers and Duties of the Minister and Regulatory and Advisory Bodies

PILLAR B – Other Corporate Forms and Miscellaneous Provisions

- The public limited company, or PLC – limited by shares
 - The designated activity company or DAC
- limited by shares or
- limited by guarantee having a share capital
- The Guarantee Company – limited by guarantee and without a share capital
 - The Unlimited Company
- private unlimited company with a share capital (ULC); or
- public unlimited company with a share capital (PUC); or
- public unlimited company without a share capital (PULC).
- External Companies
 - Unregistered Companies
 - Investment Companies

When implemented, the Bill will represent the most dramatic modernisation and simplification of company law ever seen in Ireland. The Company Law Review Group's work and emphasis has been predicated on the basis of maintaining and enhancing Irish competitiveness, while at the same time acknowledging the need for effective and efficient regulation of the Irish business environment, from both an indigenous and a foreign direct investment perspective. The need for greater creditor and shareholder protection has also informed the work of the Group in this regard.

“Simplification” has been very much the byword adopted by the Group in its lengthy deliberations. The primary aim of these new proposals is to make the business of establishing and operating a company easier, while at the same time ensuring that creditors and shareholders remain fully protected.

Together with recent legislation on the expansion of thresholds thereby allowing a considerably greater number of companies to avail of the exemption from audit, coupled with VAT reforms, these new proposals will see a considerable easing of the 'red tape' burden currently facing Irish business. It is also expected that the business sector can look forward to a lowering of its administrative cost base as a direct result of these changes.

The new Companies Consolidation & Law Reform Bill seeks to consolidate 13 Companies Acts and numerous statutory instruments covering a 43-year period, into a single piece of legislation. This will become one of the largest pieces of legislation in the history of the State.

Currently Irish company law is primarily framed with public companies in mind. The new proposals seek to make the private company as the model around which the legislation should be structured. This should be particularly so given that 90% of companies in Ireland are registered as private companies.

The Heads of the new Bill as prepared by the CLRG run to 1,263 sections. However, in keeping with its “simplification” approach, just over half of these will have application for private companies limited by shares.

The draft new proposals aim to make it simpler to establish and operate a company. These include:

- A one document Constitution, in place of the current Memorandum and Articles of Association.
- The option of waiving the holding of an Annual General Meeting (AGM).
- A minimum of one director instead of two, as currently required. This will undoubtedly assist the many family businesses presently on the Register.
- Removal of the need for a company to set down its 'objects' thus removing the legal risk of exceeding its powers (*'ultra vires'*).

Furthermore, all companies will benefit from:

- A reduction in Court involvement in the winding-up of companies.
- A root and branch updating of criminal offences, leading to a new four-fold categorisation of all but the most serious of offences.

In reaching this stage in the process the Group's activities have been assisted by a process of consultation and consensus. From the outset the Group's recommendations have been published via its website and in three widely-available substantial reports. The social partnership nature of the CLRG - including as it does representatives of Government Bodies, the Stock Exchange, those in business, trade union representatives, as well as company law practitioners – have reflected a transparency of approach and ensured that its proposals have the widest acceptance before presentation to Government.

There is still a long way to go before the new Bill finds its way to the statute books.

A **tentative publication date of September 2010** has been set by the Department of Enterprise Trade & Employment for this new Companies Bill. The first fifteen parts (Pillar A) have been extensively worked on. It is anticipated that a finalized draft of these first provisions will be with Parliamentary Counsel by the end of the first quarter of 2010.

Commentaries on provisions of legislation are not intended to be a legal or comprehensive interpretation. Professional advice should be sought in specific circumstances. For further information on statutory requirements, or any provision of the Companies Acts, 1963 to 2009, please contact our Company Secretarial Department on:

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