The Companies Act 2014 (the “Act”) requires all private limited companies existing on 1 June 2015, when the Act came into force, to convert to a company type recognised by the Act. The deadlines for change are approaching fast so private limited companies that existed on 1 June 2015 (“EPCs”) must take action.

### The Options

The Act creates two new types of private limited company, namely the private company limited by shares (the “LTD”) and the designated activity company (the “DAC”). Although an EPC can convert to any other type of company under the Act, it is envisaged that most will become either LTDs or DACs.

For a transition period that ends on 30 November 2016 (the “transition period”), the conversion options that are available to an EPC are:

- if choosing to become an LTD: an EPC may avail of a streamlined procedure in the Act to become an LTD with a constitution that the EPC/LTD chooses for itself. Alternatively, if by the end of the transition period an EPC has not converted to a type of company that is recognised by the Act, it will by default become an LTD but with the Act imposing certain changes to the company’s constitution. Any such changes will not be expressly reflected in the constitution until effected by the company;

- if choosing to become a DAC: an EPC may convert to a DAC by either passing an ordinary resolution to that effect (the Act imposes a further deadline of 31 August 2016 for this step) or by passing a special resolution by the end of the transition period; and

- if choosing to become any type of company other than an LTD or a DAC: an EPC may at any time during the transition period convert to a public limited company or (although unlikely to be attractive) a company limited by guarantee or an unlimited company.

Companies should act well in advance of the 30 November 2016 deadline (and, if relevant, the 31 August cut-off for conversion to a DAC by way of ordinary resolution) because of the time it currently takes to process these changes. This is considered further below.

From 1 December 2016, every type of company that is recognised by the Act may convert to any other type of company. By then no EPCs will exist in their pre-Act form as, by 1 December 2016, every EPC will have either converted by choice to a form that is recognised by the Act or (if it has not by 30 November elected to convert to any form recognised by the Act) will have converted by default to become an LTD.
The DAC
The DAC is the closest corporate form under the Act to an EPC, primarily because its activities remain restricted by its objects and it will retain a memorandum and articles of association. This does not mean that all EPCs should convert to DACs: the modernised form of the private limited company that the Act introduces - the LTD - is placed at the centre of company law and offers many attractions for small- and medium-sized enterprises and for subsidiaries of group entities especially.

The LTD
The LTD is not permitted to have an objects clause, so that it has the same unqualified legal capacity to do anything that a natural person may lawfully do. An LTD has a single constitutional document, effectively amalgamating the memorandum of association and the articles of association of an EPC. The LTD is the “default” type of company under the Act so that, if the directors of an EPC do not take action within the transition period, the EPC will, by default, become an LTD.

The LTD or DAC?
Considerations
The structure or activities of a company may mean that it cannot become an LTD and will therefore have to become another company type (such as a DAC). For example, the Act prohibits an LTD from carrying on the activity of a credit institution or insurance undertaking and so a company engaging in either such activity must convert to a company type other than an LTD (such as a DAC).

The prohibition in the Act on an LTD having securities listed or admitted to trading on any market does not apply in respect of securities that, before 1 June 2015, were admitted to trading or listed on any market, in the State or elsewhere.

The DAC may be a more suitable corporate vehicle than an LTD where a company is set up for a specific purpose or in any circumstance in which it is essential to stakeholders to restrict the activities of the company (such as a joint venture company).

Some of the more useful governance reforms in the Act apply only to LTDs. For example, an LTD is permitted to have a single director whereas a DAC must continue to have at least two directors and a DAC with two or more members cannot dispense with the requirement to hold an AGM. However, other reforms - such as those relating to directors’ meetings and the ability to pass majority members’ written resolutions - apply equally to DACs and to LTDs.

Name Changes
If a company is converting to a DAC then it must also change its name: a DAC must have the words “Designated Activity Company” (or the Irish language equivalent) at the end of its name. A change of name will also involve requirements such as change in stationery, seal, registers and share certificates. Also, certain third parties will need to be notified of the new company name (such as the registrars of Irish or overseas registers in which the company name is recorded).

In the case of an LTD the company name will continue to be required to end with the words “limited” or “teoranta” and these words can be used in the abbreviated forms after registration. However, exemptions from the obligation to use these words can no longer be obtained and existing exemptions will be lost.

Time for Change
In planning the conversion process, an EPC should consider how long dialogue with stakeholders is likely to take particularly in circumstances where formal consent to the conversion is required.

Conversion to the LTD
When considering the filing deadline of 30 November 2016 (ie the end of the transition period), directors of EPCs should be aware that it is currently taking approximately three weeks from receipt by the Companies Registration Office (the “CRO”) of conversion documents to issue the new certificate of incorporation. As the 30 November deadline approaches, processing
time is likely to increase and the CRO has advertised that applications for conversion should be made as early as possible. This is important because the CRO has emphasised that an EPC becomes the relevant new type of company only upon issue of the new certificate and not beforehand. Therefore, in the case of conversion documents that are filed close to 30 November, understandable delays in the CRO may mean that, on 1 December 2016, the relevant EPC becomes an LTD by default rather than by the directors’ election.

The Act provides that, to take account of any delay between the delivery of the conversion documents to the CRO for registration and their registration for conversion, the provisions applicable to a DAC will continue to apply to the EPC as if it were a DAC during any such period. Therefore, the application of the LTD provisions will be postponed until the registration is effected (unless this extends beyond 30 November 2016 in which case the LTD provisions will apply by default).

**Re-Registration as a DAC**

The Act makes it clear that an EPC will not be considered to be a DAC until a certificate of incorporation on re-registration has been issued to it. Therefore, whether the EPC has elected to re-register as a DAC by ordinary resolution (which must be passed before 31 August) or as a DAC (or other type of company) by special resolution, if the CRO has not processed the re-registration papers by 30 November 2016, that EPC will be considered to be an LTD by default until a certificate of incorporation on re-registration has been issued to it.

Therefore it is advisable that an EPC wishing to re-register as a DAC (or other type of company) do so as soon as possible to ensure that their re-registration is processed in full before 30 November 2016.

**Related Information**

Other McCann FitzGerald briefings (available on the McCann FitzGerald website) address Companies Act topics, the following of which relate to the conversion process:

- Migration of Existing Private Limited Companies
- The LTD
- The DAC
- Issues for Directors
- Meetings (General and Board)

You can also contact Ray Hunt, Head of our Company Secretarial Group or your usual contact in McCann FitzGerald will be happy to help you further.
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This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.