Short Overview of Companies Act 2014

Background to the Act

The overall rationale for the Act is to improve Ireland's competitive position as a location for business investment. In the same way as similar jurisdictions, such as the UK, have done, the consolidation, modernisation and reform of the law seeks to ensure a balance between simplifying the day-to-day running of a business; the compliance duties of company officers and auditors aimed at protecting creditors and investors; and the corporate enforcement regime to ensure compliance.

The Company Law Review Group's General Scheme of the Companies Consolidation and Reform Act

In early 2007, the Company Law Review Group (CLRG) submitted its General Scheme of (what was then called) the Companies Consolidation and Reform Act to the then Minister for Enterprise, Trade and Employment. The General Scheme represented the outcome of more than six years' work by the CLRG, including by its sub-committees and individual members representing the broad community of stakeholders in company law.

In July 2007, Government approved the formal drafting of the Act along the lines of the General Scheme. The General Scheme contained in the region of 1,400 Heads, and sought both to bring together the existing Companies Acts, which now number 17 separate Acts dating from 1963 to 2013, and also to introduce a number of reforms which were designed to simplify the operation of a company in Ireland, whilst preserving sufficient safeguards for members and creditors.

One of the principal innovations of the General Scheme was reflected in its general structure. For the first time in Irish company law, the most common company type, the private company limited by shares (the "LTD") has been placed at the centre of the legislation, as the default company. This was reflected by all of the provisions governing the operation of the LTD being placed in the first portion of the General Scheme, called "Pillar A". Again reflecting the simplified structural concept, these provisions were arranged to reflect the life cycle of the company – first, the provisions dealing with how a company is set up, followed by the provisions which apply when the company is in operation, and finally the provisions which are relevant to closing the company down.

Publication of Parts 1 to 15 in "Soft Copy" format in May 2011

In May 2011, the Minister for Jobs, Enterprise and Innovation published, on his Department's website, the "soft-copy" draft of Parts 1 to 15 of the Act, which correspond to "Pillar A" of the General Scheme. This text comprised 952 sections, together with 6 Schedules, and represented over two-thirds of the

DJEI

entire Act. This text contained all of the provisions in the Act relating to private companies limited by shares (the "LTD", as described above), which currently represent approximately 90% of all companies registered in Ireland.

The primary purpose of the May 2011 publication of Parts 1 to 15 was to facilitate familiarisation with, and technical interrogation of, that portion of the Act by the businesses and companies to which those Parts will apply, and by their advisors. In the period from May 2011 until November 2012, drafting continued both on the remaining Parts of the Act (dealing with other company types, such as, for example, guarantee companies, unlimited companies, and PLCs) and also on making further technical refinements to Parts 1 to 15.

The entire Act, comprising Parts 1 to 25, and the 17 Schedules was published on December 21, 2012.

Significant features and benefits of the Companies Act

The provisions contained in Parts 1 to 15 of the Act will make it simpler to operate the most common form of company used in Ireland at present – the new model private company limited by shares (the "LTD"). When introduced into law, these provisions will reduce burdens on business, and will simplify the day-to-day operation of a company, thereby offering tangible benefits to a broad range of ordinary businesses throughout the country.

The simplifications and benefits contained in the provisions of Parts 1 to 15 include:

- The LTD will have the same legal capacity as a natural person. The current *ultra vires* rule will not apply to this new company type – the *ultra vires* rule is the legal doctrine whereby a company must have an "objects clause" in its Memorandum of Association. This "objects clause" lists the Activities which the company has power to undertake, with the consequence that any other Activities are regarded as being beyond the powers of, or *ultra vires*, the company. In practice, this can lead to companies drawing up exhaustive objects clauses, to be certain that they have power to do the things which they wish to do, and can in some cases lead to legal disputes as to whether a company actually had power to undertake a certain transaction or activity.

- The LTD will be allowed to have only one director. Under the current law, a company must have at least two directors – even if one person wishes to establish a business as a company on his or her own, he or she needs to find an additional person to Act as the second director. Removing this requirement will make it easier to start a new business.

DJEI

- The LTD will have a single-document constitution, as contrasted to the current law whereby every company must have two documents – a Memorandum of Association, and separate Articles of Association. A further benefit of the new legislation will be that the extensive and detailed provisions which every company currently needs to include in its own Articles of Association, will now be brought into the main body of the legislation and will apply to each company by default. However, the vast majority of these provisions can be modified by an individual company if that company has particular circumstances in light of which it would wish to alter the general provision.

- The LTD will no longer be obliged to go through the formality of holding a “physical” AGM whereby all of the members have to convene in one location at the same time once each year. The new Act will allow the members to instead hold a “written” AGM, whereby all of the matters which must be dealt with at the AGM can be approved by written procedure.

- The Act contains a codified version of the fiduciary duties to which directors are currently subject by a combination of the common law and statutory provisions. This will bring all of these duties together in a single identifiable place.

- The Act contains a “summary approval procedure”, which will be applicable to a number of Activities (for example, reduction of capital) which under the current law might require the company to undertake the burdensome and expensive process of securing Court approval. The new “summary approval procedure” incorporates safeguards in relation to directors’ liability in circumstances where the procedure is used without proper justification.

- The Act introduces, for the first time in Irish law, a qualification regime for liquidators. In general, this will require liquidators to be a member of a prescribed accountancy body, or of the Law Society, or of any other body recognised for this purpose by the Irish Auditing and Accounting Supervisory Authority (IAASA), or to be approved individually by IAASA pursuant to the transition (or “grandfathering”) provision, based on the individual’s experience and expertise. Liquidators

will now also be required to hold appropriate professional indemnity cover. This qualification regime will also be extended to examiners under the Act.

- For the first time, all offences under company law have been streamlined under a new classification procedure which operates on the basis of four categories of offences, with Category 1 being the most serious. This will bring a structure and consistency to the offence provisions throughout the legislation.

- For the first time, it will be possible to merge two Irish private companies. The procedure for this is modelled on the EU Cross-Border Merger Regulations, which are regarded as relatively straightforward to operate by the business and advisory community.

The simplifications and benefits contained in the provisions of Parts 16 to 25 include:

- Each company type (other than the private company limited by shares, which is dealt with in Parts 1 to 15) will have its own dedicated Part of the Act. Each of these Parts will apply, disapply or vary the default provisions as set out in Parts 1 to 15, so as to tailor the application of the law for each other type of company.

- The company types which will each have their own dedicated Part, following this structure, are as follows – designated activity companies (Part 16), PLCs (Part 17), guarantee companies (Part 18), unlimited companies (Part 19), external companies (Part 21), unregistered companies (Part 22), and investment companies (Part 24).

- For the first time, Part 18 extends the availability of the audit exemption to guarantee companies, on the same basis as this is available to "normal" trading companies (private companies limited by shares). However, any one member of a guarantee company can object to the audit exemption being availed of, and in these circumstances the company will be required to proceed with an audit.

DJEI

- Part 20 contains provisions which will enable a company to convert from any company type (for example, a private company limited by shares) to any other company type (for example, a PLC), subject to complying with the requirements for the company type to which it wishes to convert.

- Part 21 contains a streamlined regime for external companies operating in Ireland. The previous “place of business” concept from the Companies Act 1963, which was problematic in certain respects in its operation, is not being carried forward in the Act. All external companies will now have the single option of registering as a “branch” in Ireland, which is a concept under EU law (and which Ireland is accordingly obliged to provide for) and which offers greater clarity and structure. IDA Ireland was consulted on this aspect, and is supportive of the proposed new structure.

- Part 23 contains the provisions that apply to companies whose shares are traded on a stock exchange, including provisions in relation to what is known as “Markets Law”. This includes provisions dealing with public offers of securities (including prospectus law), market abuse law, corporate governance statements for traded companies, and transparency law. These provisions are largely based on EU requirements in these respective areas.

- Part 24 contains the provisions relevant to investment funds companies, which were previously set out predominantly in Part XIII of the Companies Act 1990. These have now been consolidated with appropriate subsequent provisions from the 2005, 2006 and 2009 Acts in this Part.

DJEI