Ireland: Major changes in company and insolvency legislation

At long last, the much awaited Companies Act 2014, the largest reform of company law in Ireland in over 50 years, has come into force.

The Companies Act 2014 ("the Act") was signed into law by the President of Ireland on 23 December 2014 and entered into force on 1 June 2015. The aim of the Act is to incorporate the provisions of the existing Companies Acts and the law set out in regulations into one single companies code. The Act contains 25 parts (1448 sections) and provides for a transition period of 18 months from commencement. The Act will impact all Irish companies and all insolvency procedures.

Private companies

There will now be two types of Private Company – a private company limited by shares ("LTD") and a designated activity company ("DAC"). All current Irish private companies limited by shares must convert to either of the new company types and prepare a new constitution to replace its memorandum and articles of association before 30 November 2015.

The key features of an LTD include:

- An LTD will not need to hold a physical Annual General Meeting of shareholders and can instead adopt written procedures.
- An LTD will not need a minimum of two directors – one is now sufficient. Companies with one director are required to have a separate company secretary.
- An LTD will not have an objects clause and there is no legal limit on the company's capacity to engage in different activities.
- An LTD's name will not change after conversion and it can continue to use the suffix "Limited" or "Ltd" (or the Irish language equivalent "Teoranta" or "Teo").

The key features of a DAC include:

- A DAC will not be entitled to discontinue holding a physical AGM unless it is a single member company.
- A DAC must have two directors and a company secretary.
- A DAC must have an objects clause in its constitution and its legal capacity will be limited by the scope of that objects clause.
- A DAC must change its name to include the suffix "Designated Activity Company" or "DAC" (or the Irish language equivalent "*Cuideachta Ghníomhaíochta Ainmnithe*").

The other company types permitted under the Act are Unlimited Companies, Public Limited Companies, Companies Limited by Guarantee and Investment Companies.

Insolvency

The Act retains the three existing types of liquidation – members' voluntary liquidation, creditors' voluntary liquidation and court liquidation. In order to be appointed as a liquidator or examiner, there is now a statutory obligation for a person to have certain qualifications, such as membership of a prescribed accountancy body or a practising solicitor etc.

The Act provides that once a company is wound up by order of the Court, the liquidation will be carried out as a creditors' voluntary liquidation, thus reducing the involvement of the Court, the Court Examiner and ultimately the costs of the process.

The notice to be sent to creditors, advising them of the convening of the initial creditors meeting, must include a list of the creditors of the company, or set out their right to inspect the list of creditors and must state the name and address of the proposed liquidator, if any.

Members' voluntary liquidations must now use the Summary Approvals Procedure, which is a new streamlined approval procedure introduced in the Act to permit a range of restricted activities/transactions.

Receiver's powers are set out in the Act for the first time. There are no explicit requirements regarding professional qualifications for those appointed as Receivers.

Small and medium enterprises can now apply directly to the Circuit Court for the appointment of an examiner (introduced by the Companies (Miscellaneous Provisions) Act, 2013).

Insolvency practitioners await with interest the impact of the new legislation on their work in the coming months and years.

ENDA LOWRY
Director, McStay Luby, Dublin (Ireland)

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