



# Structure and Governance: NEW COMPANY TYPES

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INFORMATION LEAFLET NO. 34 / JULY 2015

## Companies Act 2014

The Companies Act 2014 commenced on 1st June 2015. These new processes replace the Companies Acts 1963-2013 and only the new procedures should be followed. Under the new Act, there are new company types that can be used and each has unique characteristics.

There are two new company models being introduced in the new Companies Act 2014.

- LTD - Private company limited by shares, and
- DAC - Designated activity company which can be limited by shares or by guarantee

As of June 1st 2015, newly incorporated private limited by shares companies can be registered as either a Private Company Limited by Shares (LTD company) or as a Designated Activity Company (DAC) limited by shares. Private limited by shares companies that were already on the register as at June 1st 2015, can convert to either type depending on their situation. There is a specific timeframe for the conversion process. Existing companies on the register are deemed to be subject to the laws referring to a DAC unless they convert to a LTD company. At the end of the transition period any private limited by shares company which has not converted will be converted by the registrar to a LTD company. See leaflet 31 for more information.

Other company types remain but must now contain a description of their company type as part of their company name. There is a transition period for this to happen for all existing companies and an exemption is also available to guarantee companies. See leaflet 33 for more information.

- PLC - Public Limited Company
- CLG - Company limited by guarantee
- ULC - Private unlimited company having a share capital
- PUC - Public unlimited company having a share capital
- PULC - Public unlimited company not having a share capital

### 1. The LTD Company - Private Company Limited by Shares

A private company limited by shares (LTD company) is a new company type introduced by the Companies Act 2014.

**Only companies which have undergone the conversion/re-registration processes or has been incorporated as such, post introduction of the new Companies Act, are LTD companies.**

The LTD company is a simplified version of a private limited by shares company. The constitution of such a company does not have any memorandum of association and but will still have articles specified in its constitution. Since it does not have a memorandum, there are no stated objects in its constitution meaning it can engage in any allowed activity.

Most LTD companies will not require articles beyond what is stated in the template constitution as the majority of the articles as stated in Table A of the old Acts are now transposed to sections of the new Act. The template constitution is provided in Schedule 1 to the Companies Act 2014.

- A LTD company can have one director if it so chooses. **(This does not apply to any other company type). If a LTD company has only one director it must still retain a separate secretary.**
- LTD companies can pass majority written resolutions.
- The LTD company type is eligible for audit exemption.
- The LTD company type will have either "Limited" or "Teoranta" at the end of its name.
- The LTD company type is a private company and is limited by shares. It cannot be limited by guarantee.
- The LTD company can dispense with need to hold an Annual General Meeting.
- The LTD company type does not have objects stated in its constitution.
- The LTD company type can have up to 149 members.
- The LTD company type is not permitted to list securities, whether shares or debts.
- The LTD company type can participate in a domestic Merger/Division under Part 9 of the Companies Act 2014 (and is a required party for such a procedure to be utilised).

## 2. The DAC - Designated Activity Company

The DAC is a new company type introduced by the new Act. Only companies registered under the Companies Act 2014, are Designated Activity Companies (DAC) and private guarantee companies incorporated under the previous Companies Acts are deemed to be DACs. Previous incorporated private limited by shares companies can convert under the new Act to a DAC limited by shares.

***Private limited by shares companies, incorporated under the previous Companies Acts, currently on the register are deemed to be subject to the laws referring to a DAC unless they convert to a LTD company. At the end of the transition period any company which has not converted, will then be converted by the registrar to a LTD company following the deeming provisions set out in Part 2 of the Companies Act 2014.***

A Designated Activity Company (DAC) is determined in Part 16 of the Companies Act 2014 and defined as a **private company limited by shares** with the capacity, including the power, to do only those acts or things set out in its constitution (memorandum of association) **or a private company limited by guarantee and having a share capital** with the capacity, including the power, to do only those acts or things set out in its constitution. So, a DAC company will have certain regulations in its constitution, detailing certain objects or articles of association unlike the template LTD company constitution. The formats of the constitutions are set out in Schedules 7 and 8 to the Companies Act 2014.

Any existing private limited by shares company which has not completed the conversion process by the end of the Transition Period, will be deemed to be a LTD company instead. So it is important, that a company that was incorporated under the previous Companies Acts undertakes the conversion where required or desired, because *where a company has not passed the necessary resolution within the 15 month transition period and wishes to still convert to a DAC, such company can convert to a DAC by High Court order only.*

### Features of the DAC include:

- It has a constitution document which includes a memorandum and articles of association.
- A Designated Activity Company has a memorandum of association in its constitution which states the objects for which the company is incorporated.
- It has limited liability and has a share capital or is limited by guarantee.
- It must have at least two directors.
- It can have up to 149 members.
- It cannot forego the requirement to hold an Annual General Meeting where the company has two or more members.
- It can pass majority written resolutions where the constitution allows.
- It can claim eligibility for audit exemption.
- “Designated Activity Company” or “Cuideachta Ghníomhaíochta Ainmnithe” must be stated at the end of the company name unless exempted.

Certain companies are specifically envisaged as being DACs. Examples include charities, management companies, companies limited by guarantee and companies which are incorporated for a specific purpose for which the shareholders wish the capacity of the company to be clearly defined. Certain companies are obliged to convert to a DAC - an existing private company that has published an offering document or obtained an admission to trading on a regulated market for its debentures.

(Debentures means debenture stock, bonds and any other debt instruments of a company or any forms of securitised debt, including depositary receipts in respect of such securities, whether constituting a charge on the assets of the company or not).

***Private limited by shares companies, incorporated under the previous Companies Acts, currently on the register, are deemed to be subject to the laws referring to a DAC unless they convert to a LTD company. However, during the course of the Transition Period they are not required to change their name unless they are converting to the Designated Activity Company type. If such companies do nothing, they will be deemed to be LTD companies at the end of the Transition Period and no name change would be required as a result.***

### Conversion Process

- **1st June 2015** - *New companies being incorporated* can be registered as an LTD company or as a DAC type.
- **1st June 2015** - Transition period begins. Private limited by shares companies, incorporated under the previous Companies Acts, may convert to a Designated Activity Company (DAC) limited by shares by passing an ordinary resolution or can convert to the LTD company type by special resolution. Companies which wish to or must re-register as a DAC can do so within the next 18 months.
- **31st August 2016** - Final date for private limited by shares companies who wish to convert to Designated Activity Company (DAC) to initiate procedure.
- **30th November 2016** - Private limited by shares companies which have not converted to either a LTD company or a DAC will automatically be converted to a LTD company. Transition period ends.

### Change to Company Name Required

All Designated Activity Companies, which are limited by shares must have the words “Designated Activity Company” or “Cuideachta Ghníomhaíochta Ainmnithe” at the end of their name.

The words “designated activity company” may be abbreviated to “d.a.c.” or “dac” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the DAC. The words “cuideachta ghníomhaíochta ainmnithe” may be abbreviated to “c.g.a.” or “cga” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the DAC.

## 2.2 Exemption from use of the Company Type in Name of Company

Companies incorporated under the previous Companies Acts which were exempted under section 24 of the Companies Act 1963 as amended, will continue to be allowed to apply the exemption regardless of the fact that the Acts have been repealed - section 971(8) (DACs) and section 1180(8) (CLGs) refer. Where reference was made in the previous exemption to “limited”/“teoranta” this now applies to the requirement to display the new company type.

Under the new Act, the phrase “Designated Activity Company” or “Company Limited by Guarantee” may be dropped from the company’s name where the company is a Designated Activity Company or a Company Limited by Guarantee and the constitution of the company states that the objects will be the promotion of commerce, art, science, education, religion or charity. In addition, the company’s constitution must state that

- (a) the profits of the company (if any) or other income are required to be applied to the promotion of the objects;
- (b) payment of dividends/distributions to its members is prohibited;
- (c) all assets which would otherwise be available to its members are required to be transferred on its winding up to another company whose objects are the promotion of commerce, art, science, religion or charity.

Such companies file a form G5 together with the application to incorporate. Companies which are converting to DAC status must submit the form G5 together with their application to convert to the new company type.

It should be noted, however, that a company which is exempted from the obligation to use the words as part of its name, is still obliged to show on its letters and order forms the fact that it is such a company.

**Companies Incorporated under Statute:** Private limited by shares companies which were incorporated under statute law, such as semi-state bodies should also convert to the Designated Activity Company model. Section 63(13) Companies Act 2014 applies. Such companies should consult with their relevant Minister. Where the company was incorporated under statute law and by virtue of that legislation does not use the word “Limited” or “Teoranta” in its name, then this exemption would continue in force and such companies do not have to alter their name. Section 1446 Companies Act 2014 applies. This applies only to companies which complete the conversion process to DAC.

### 3. Companies Limited by Guarantee (CLG) (previously Public Guarantee Companies)

Companies limited by guarantee are governed by Part 18 of the Companies Act 2014.

Existing Guarantee Companies: Companies which are limited by guarantee and do not have a share capital are deemed to be Companies Limited by Guarantee (CLG) under section 1189.

**There is a requirement for Companies Limited by Guarantee to have the company type added as a suffix to the end of the company name.**

All newly incorporated Companies Limited by Guarantee will have the company type at the end of their name from June 1st 2015. (Unless exemption granted under section 1180)(see 2.2 above).

- “Company Limited by Guarantee” or “Cuideachta faoi theorainn Ráthaíochta” must form the end of the company name.
- **There is a transitional period, until 30th November 2016, by which guarantee companies which were incorporated under previous Companies Acts, can continue to use limited/teoranta in their name.**
- If such companies do not change their names and submit an amended constitution using **Form N3**, then at the end of the Transition Period, the Registrar of Companies will apply the change, alter the name of the company and issue a new certificate of incorporation.
- Guarantee companies which have an existing exemption from using Limited/Teoranta as a suffix to their name, continue to enjoy the exemption and do not have to alter their name.
- Changes to the company name will affect company letterheads, stationery and signage. Any documentation submitted to the CRO after the end of the transition period which bears the incorrect name will be refused.
- CLG Guarantee companies are eligible for audit exemption.
- CLG Guarantee companies cannot pass majority written resolutions.
- CLG Guarantee companies must have at least 2 directors.
- CLG Guarantee companies must hold an Annual General Meeting where it has 2 or more members.
- The format for the constitution of a CLG is in Schedule 10 to the Companies Act 2014

### 4. Unlimited Companies (Private and Public)

Unlimited Companies are governed by Part 19 Companies Act 2014.

Existing Companies: Companies which are unlimited whether private or public are deemed to be Unlimited Companies by virtue of section 1244.

A Private Unlimited Company having a share capital is referred to as a ULC.

A Public Unlimited Company having a share capital is referred to as a PUC.

A Public Unlimited Company that has no share capital is referred to as a PULC.

**There is a requirement for all Unlimited Companies to have the company type added to the end of the company name.**

- All newly incorporated Unlimited Companies will have the company type at the end of the company name from June 1st 2015 unless they have obtained an exemption from the Minister of Jobs Enterprise and Innovation.
- “Unlimited Company” or “Cuideachta Neamhtheoranta” must form the end of the company name.
- **There is a transitional period, until 30th November 2016, by which unlimited companies which were incorporated under previous Companies Acts, can continue to not have the company type suffix at the end of their name.**
- If the company does not change the name of the company and submit an amended constitution using **Form N3**, the Registrar of Companies will apply the legislation, change the name of the company and issue a new certificate of incorporation. An exemption can be granted by the Minister and must be attached to the Form N3. (see section 1237(5) Companies Act 2014).
- Changes to the company name will affect company letterheads, stationery and signage. Any documentation submitted to the CRO after the end of the transition period which bears the incorrect name will be refused.
- Unlimited companies must have at least 2 directors

- Unlimited companies must hold an Annual General Meeting where the company has 2 or more members
- Public Unlimited companies are not eligible for the audit exemption
- Unlimited companies can pass majority written resolutions
- The format for the constitution of an ULC is set out in Schedule 11 to the Companies Act 2014, the format for a PUC is set out in Schedule 12 and the PULC format is set out in Schedule 13.

## 5. Existing Companies on the Register

Once the new Act commences - June 1st 2015 - the current company types will be regarded as stated below. If a company is required to make an alteration to type or to its name, **the change is not effected until a new certificate of incorporation is issued by the Registrar of Companies.**

### Existing Private Companies as at 1st June 2015

#### Private Limited by Shares.

##### Single member private company limited by shares.

For the duration of the transition period – these companies will be deemed to operate under the legislation referring to DACs. - Designated Activity Companies. **85% of all companies on the register would fit into this category.**

The transition period lasts from June 1st 2015 to 30th November 2016. All of these types can convert to LTD or DAC company type. Some will be required to become a DAC (see s.56 Companies Act 2014) others may desire to retain their objects as stated in their memorandum of association.

Options:

1. Convert using **form N1** to new LTD company type, sending in resolution/constitution. Does not have to alter its name. Will no longer have objects/memorandum.
2. Convert to DAC (**form N2**) if they wish to retain objects. Will require name change. If it was to become a DAC, the new name would be XXXX Designated Activity Company.
3. Do nothing. Company will automatically convert to a LTD company at end of the Transition Period.

CRO will issue a new certificate of incorporation in all cases. The CRO cannot advise companies on which option to choose.

#### Why is my Private limited Company a DAC? Why is the company not a LTD company?

If your company was incorporated under the previous Companies Acts and does not initiate a conversion on the commencement of the new Companies Act 2014, it does not automatically become a LTD company. A private limited company limited by shares instead is deemed to operate as a Designated Activity Company (DAC). One of the reasons for this is that a DAC has a memorandum and articles of association. The memorandum of association sets out the objects by which the company can operate.

Only a LTD company registered under the Companies Act 2014 or converted to a LTD company under the same act, can operate without objects. No other company type is allowed to do this. So unless the company converts, the company is deemed to operate as a DAC for the duration of the transition period.

Need to Convert	YES.
Need to Change Name	NO for change to LTD. YES for change to DAC type. Possible exemption for DAC name change if qualified.
When	DURING TRANSITION PERIOD.
If company does not convert	CRO WILL MAKE CHANGE. END TRANSITION PERIOD.
Changes CRO will make	Change company to LTD company type. Will issue new certificate of incorporation.
Changes that will be effected	Memorandum objects will have no effect where converted to LTD type.

Where the constitution is not changed by the company itself, from the expiry of the transition period, the existing company shall be deemed to have, in place of its existing memorandum and articles, a constitution that comprises - the provisions of its existing memorandum, other than provisions

that contain its objects or provide for, or prohibit, the alteration of all or any of the provisions of its memorandum and articles (M&A) and the provision of its existing articles. So if a company wishes to retain its M&A, it should convert to the DAC type during the allotted period (up to 31st August 2016).

#### **Private, limited by shares, licence to omit ltd.**

As per Private Limited by Shares.

However Options are slightly different:

1. Convert using **form N1** to new LTD company type, sending in resolution/constitution. Company will to alter its name to include Limited or Teoranta. All LTD companies must include the suffix at the end of the company name. Will no longer have objects/memorandum.
2. Convert to DAC (**form N2**) if they wish to retain objects. Will not require name change.
3. Do nothing. Company will automatically convert to a LTD company at end of the Transition Period.

#### **DAC - Designated Activity Company**

##### **Private guarantee with share capital.**

##### **Single member company limited by guarantee with share capital.**

These companies are automatically DAC limited by guarantee companies. They do not need to convert as such but must alter their name. Such companies need to add "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe" to the end of their names.

Companies should file **form N3** with new constitution/resolution. The form can be filed for free. Form can only be filed once. It is not for any other name change. Form is used to change name only – the allowance is for the need to enter the new type. Nothing else. Form G5 can be sent with N3 if they wish to be exempted from name change and qualify for such.

Need to Convert	NO.
Need to Change Name	YES. Possible EXEMPTION.
When	DURING TRANSITION PERIOD.
If company does not convert	CRO WILL MAKE CHANGE. END TRANSITION PERIOD.
Changes CRO will make	Change company name – place Designated Activity Company to end of name and issue new certificate of incorporation.

#### **DAC - Designated Activity Company (licensed company)**

##### **Private Guarantee shares, licence to omit Ltd.**

These are Designated Activity Companies. However there is no need to submit form to change the name as the previous exemption to omit ltd applies to DAC and there is no need to change.

Need to Convert	NO.
Need to Change Name	NO
Changes CRO will make	NONE.

#### **ULC - Private Unlimited Company**

##### **Private unlimited with share capital**

These companies do not need to convert. They are deemed to be their new type. ULC – Private unlimited company. Such companies need to add "Unlimited Company" or "Cuideachta Neamhtheoranta" to the end of their names. If they don't CRO will enforce name change at end of Transition Period.

Company should file **form N3** with new constitution/resolution. Form is free. Form can only be filed once. It is not to be used for any other changes.

Need to Convert	NO.
Need to Change Name	YES. Ministerial exemption possible.
When	DURING TRANSITION PERIOD.
If company does not convert	CRO WILL MAKE CHANGE. END TRANSITION PERIOD.
Changes CRO will make	Change company name – place Unlimited Company to end of name and issue new certificate of incorporation.

## Existing Public Companies as at 1st June 2015

**PUC - Public Unlimited Company with a share capital**

**PULC - Public Unlimited Company that does not have a share capital**

**Public unlimited company with a share capital.**

**Public unlimited without a share capital.**

These companies do not need to convert. They are deemed to be their new type. A Public unlimited company with share capital becomes a PUC – Public Unlimited Company. A public unlimited company without share capital becomes a PULC – Public Unlimited Company without Share Capital.

Such companies need to add “Unlimited Company” or “Cuideachta Neamhtheoranta” to the end of their names. If they don’t CRO will enforce name change at end of Transition Period.

Company should file **form N3** with new constitution/resolution. Form is free. Form can only be filed once. It is not for any other changes. Form for change of name only – the allowance is for the need to enter the new type. Nothing else.

Need to Convert	NO.
Need to Change Name	YES. Ministerial exemption possible.
When	DURING TRANSITION PERIOD.
If company does not convert	CRO WILL MAKE CHANGE. END TRANSITION PERIOD.
Changes CRO will make	Change company name – place Unlimited Company to end of name and send new certificate of incorporation.

**CLG - Company Limited by Guarantee**

**Guarantee company without a share capital (public).**

There are a form of public guarantee company. Under the new act, they are deemed to be CLGs – Companies Limited by Guarantee. They do not need to convert. They do need, however, to change their name. If they don’t, CRO will enforce the change at the end of the Transition Period.

Such companies need to add “Company Limited by Guarantee” or “Cuideachta faoi theorainn Ráthaíochta” to the end of their names. Company should file **form N3** with new constitution/resolution. Form is free. Form can only be filed once. It is not for any other changes. Form is for change of name – the allowance is for the need to enter the new type. Nothing else. Form G5 sent with N3 where exemption from name change is desired by a qualifying company.

Need to Convert	NO.
Need to Change Name	YES. Possible EXEMPTION available.
When	DURING TRANSITION PERIOD.
If company does not convert	CRO WILL MAKE CHANGE. END TRANSITION PERIOD.
Changes CRO will make	Change company name – place Company Limited by Guarantee to end of name and issue new certificate of incorporation.

**CLG - Company Limited by Guarantee (licensed company)**

**Guarantee licence company w/o share capital (public)**

These are a form of public guarantee company. Under the new act, they are deemed to be CLGs – Companies Limited by Guarantee. They do not need to convert. They do not need to change their name. The licence that they have already to omit ltd from their names, has effect that they don’t need to add new company type description to their names.

Need to Convert	NO.
Need to Change Name	NO.
Changes CRO will make	NONE.



### **Public Limited Companies.**

**Societas Europaea. Public limited company with variable capital.**

**PLC – Societas Europaea conversion.**

**Inward migrating company.**

**Societas Europaea – formation of subsidiary. Societas Europaea – New Incorporation.**

**Societas Europaea - plc conversion. Societas Europaea – transfer into state.**

**UCIT.**

These types are forms of public limited company. They do not need to convert. They do not need to alter their name.

Need to Convert	NO.
Need to Change Name	NO.
Changes CRO will make	NONE.

### **External Companies**

These companies are not required to convert or change their name. They are part of separate external register.

Need to Convert	NO.
Need to Change Name	NO
Changes CRO will make	NONE.

**Places of Business** will however cease to exist. These were registered under the previous Companies Acts and are not catered for in the new Companies Act. External limited liability companies can be registered as Branches of EEA or Non-EEA countries. (EEA - European Economic Area).

External limited liability companies registered as a Place of Business can re-register as a Branch or they will be removed from the register. Previously limited liability external companies were noted as being Branch EU or non EU.

**Form F12** is submitted to register a branch of an EEA state company and **Form F13** for the branch of a non-EEA State company.

### **European Economic Interest Groupings.**

**Business Names.**

**Limited Partnerships.**

These are not part of the Companies Acts and have no conversion or name change requirements.

Need to Convert	NO.
Need to Change Name	NO
Changes CRO will make	NONE.

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