

Companies Act 2014

Unlimited Companies (UCs) – Changes under the Companies Act 2014

Key points

- *Unlimited companies are companies, the members of which have no limit on their liability;*
- *There are currently three types of unlimited companies - private unlimited companies having a share capital, public unlimited companies with a share capital and public unlimited companies without a share capital - and these will be replicated under the Act.*
- *The regime provided for in Part 19 of the Companies Act will be the basis for all three types of unlimited company;*
- *An existing unlimited company will generally be required to change its name at the end of the 18 month transition period so that it ends in “unlimited company”, or the Irish equivalent or a permitted abbreviation (e.g. UC);*
- *Part 19 of the Companies Act will apply much of the law relating to LTD companies to UCs subject to some important disapplications and additional provisions;*
- *PUCs and PULCs are debarred from the audit exemptions, but ULCs are not;*
- *All types of UC can have just one member but will be required to have at least two directors.*

Unlimited companies

Unlimited companies (“UCs”) are companies the members of which do not have a limit on their liability. The Companies Acts currently permit three types of unlimited company: the private unlimited company having a share capital, the public unlimited company with a share capital and the public unlimited company without a share capital. The Companies Act 2014 (the “Act”) will continue to permit three types of unlimited company, which correspond to the above: the private unlimited company (“ULC”), the public unlimited company (“PUC”) and the public unlimited company without a share capital (“PULC”).

Who are likely to use UCs?

Unlimited companies account for just over 2% of all companies on the register. Their key distinguishing feature is that members do not have limited liability: that is, where an unlimited

company is wound up insolvent, its current members, and certain past members, will be liable to make good the shortfall. One reason for using unlimited companies is that private unlimited companies meeting certain criteria are not required to file their accounts. While no change in this respect is introduced in the Act, it is potentially the case that the relevant criteria will be amended by the separate implementation of Directive 2013/34/EU.

Applicable law and transitional provisions

An existing private unlimited company having a share capital shall be deemed to be a ULC, an existing public unlimited company with a share capital shall be deemed to be a PUC, and a public unlimited company without a share capital shall be deemed to be a PULC. Accordingly all existing unlimited companies will be deemed to be UCs (section 1246).

It is proposed that the law applicable to UCs will be that contained in Part 19 of the Act. Section 1230 of the Act provides that the law applicable to LTDs contained in Parts 1 to 14 shall also apply to UCs, save to the extent that provisions of those Parts are disappplied, modified or supplemented by Part 19.

The memorandum and articles of association of unlimited companies registered under the Companies Acts 1963 to 2013 or former enactments will continue in force (section 1235(7)). Similarly, where Table E articles of association were adopted in whole or in part these shall continue to apply save to the extent that they are inconsistent with mandatory provisions of the new Act (section 1235(9)).

Under the Act, the name of a UC will be required to end with the words “unlimited company” or “cuideachta neamhtheoranta”, or a permitted abbreviation (see below). This requirement will take effect from the end of the 18 month transition period (or from the date at which the company changes its name to include the required set of words or abbreviation, if earlier) (sections 1237 and 1247(3)). This change will therefore apply to all UCs, which up till now were not required to include a suffix to their name. If special circumstances exist which render it expedient, in the Minister’s opinion, that a company be exempted from this obligation, the Minister may grant such an exemption, but it is not expected that such an exemption will be widely available.

Key features of UCs

UCs will have the following key features:

- In the event of a UC being wound up insolvent, its current members, and certain past members, will be liable to make good any shortfall (section 1278): this restates the existing law in this regard;
- UCs can have just one member (currently the minimum is two in the case of a ULC and seven in the case of PUCs and PULCs) and there is no maximum number of members (section 1231(1));
- UCs which have two or more members may not dispense with holding an AGM (section 1262);
- A PUC or PULC will not be prevented from having its debentures or debt securities from being admitted to trading or listed, however a ULC will be so prevented (section 1248);
- UCs will have a two-document constitution, consisting of a memorandum and articles of association (collectively referred to as its constitution) (sections 1233(1) and 1234(1));
- The memorandum of association must contain an objects clause (sections 1233(2) and 1234(2));

- Although a UC must have an objects clause, the Act seeks to oust the operation of the doctrine of ultra vires by providing that the validity of an act done by a UC shall not be called into question on the ground of lack of capacity by reason of anything contained in the UC's objects (section 1240(1)).
- The name of a UC must end with the words "unlimited company" or the abbreviation "UC" (whether capitalised or lower case and with or without punctuation marks, i.e. UC, U.C., uc or u.c. are all acceptable abbreviations) or the Irish equivalent (section 1237) (as set out above);
- UCs must have at least two directors (section 1257);
- Neither the provisions of Chapter 7 of Part 3, nor any rule of law on the making of distributions, shall apply to a UC: this is a change from the current position whereby the same restrictions apply to an unlimited company as to a limited company (section 1255);
- ULCs may avail of the audit exemption under Chapter 15 of Part 6, the dormant company audit exemption under Chapter 16 of Part 6, and the exclusions and exemptions from filing under Chapter 14 of Part 6, but PUCs and PULCs may not (section 1230);
- The existing provisions whereby unlimited companies forming part of a particular corporate structure are not required to file accounts are restated in section 1274 of the Act: however it should be recognised in this case that the law in this respect may be amended by regulations pursuant to Directive 2013/34/EU, which are required to be implemented by July 2015;
- UCs will not be subject to the new requirement in section 225 of the Act that a statement be included in the directors' report acknowledging the directors' responsibility for securing the company's compliance with its relevant obligations, and either confirming that they have taken specified measures in this respect, or explaining why this is not the case (section 1230);
- UCs shall be exempt from the provision under section 52 of the Act whereby a company, being a plaintiff in legal proceedings, may be required by a judge to give security for the costs of the defendant (if successful); this restates the position under the existing law (section 1230).

Action to be taken by existing unlimited companies

As set out above, existing unlimited companies will be required to amend their name by the end of the transition period. Although it may not be strictly necessary for existing companies to amend their articles of association, given the extensive changes to the law applicable to such companies and the proposed repeal of the Companies Acts 1963 to 2013, a review and restatement of the articles of association will, for many companies, be the prudent course of action.

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This document contains a general summary of developments and is neither a complete nor definitive statement of the law. Specific legal advice should be obtained before taking action.