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**Designated Activity Companies:  
Part 16 of the Companies Bill**

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## **Part 16 – Designated Activity Companies**

- 35 sections of law in 8 chapters
- Designated activity companies (DACs) are an alternative form of private company to the new model private company (LTD)
- Will bear a close resemblance to the existing private limited company, and will not benefit from the reforms applicable to LTDs.

# Chapter 1 – preliminary and definitions

- Begins with a number of definitions used throughout Part 16, notably recognising two distinct forms, the *DAC limited by shares* and the *DAC limited by guarantee (s 965)*
- DAC limited by guarantee to have a share capital; limited company without share capital is a CLG under Part 18.
- The architecture of the law applicable to DACs is that the law applicable to LTDs (i.e. Parts 1 to 14) will apply to DACs, save to the extent disapplied, modified or supplemented by any provision of Part 16 (s 966)

## Chapter 2 – incorporation etc

- A DAC may be formed for any lawful purpose by a person subscribing to a constitution and complying with the Act; liability of members will be limited to any amount unpaid on shares (and if applicable the amount of the guarantee); can have from 1 to 149 members excluding certain persons (s 967)
- A DAC must carry on some activity in the State (s 968)
- Two-document constitution – memorandum and articles of association – including an objects clause (but see s 976 below), in the form set out in Schedule 7 or 8 (s 969)
- Where a provision is to apply save to the extent the constitution provides otherwise, that provision shall apply unless excluded or modified by DAC's articles (s 970)

## Chapter 2 – incorporation etc

- The name of a DAC must end with the words “designated activity company”, or the abbreviation “DAC” (whether capitalised or lower case, and with or without punctuation marks – i.e. DAC, D.A.C., dac or d.a.c. are all acceptable) or the Irish equivalent (s 971)
- It is an offence to trade under a misleading name or imply one is a body corporate other than a DAC (s 972)
- A DAC shall be exempt from the requirement to use the suffix in s 971 if it has a charitable object, is not-for-profit and has made the appropriate application to the CRO (s 973)
- A provision in the constitution of a DAC purporting to give a person a right to participate in the profits of the company other than as a member shall be void (s 974)

## Chapter 2 – incorporation etc

- DAC to have capacity only to do things stated in objects (s 975)
- However the validity of an act done by a DAC shall not be called into question on the ground of lack of capacity by reason of anything contained in the DAC's objects (i.e. the Bill seeks to oust the operation of the doctrine of *ultra vires*) (s 976)
- A DAC may by special resolution (with notice) alter its objects clause, but if holders of 15% or more of the company's shares or debentures object to the court, the alteration shall not have effect (ss 977, 978 and 981)
- A DAC limited by guarantee may by special resolution alter the amount that each member of the DAC will contribute to the assets of the company in a winding up (s 979)
- A DAC may alter its articles by special resolution (s 980)

## Chapter 3 – share capital

- DAC may (unlike an LTD) have its debentures (or interests in them) listed or traded, but shall not be permitted to have other securities (or interests in them) listed or traded (s 982)
- Where a DAC has classes of shares having different rights, the rights of a class may be varied or modified, but only if approved by a special resolution, or a 75% resolution, of the holders of that class (s 983)
- S 984 makes the necessary modifications for s 115 (which deals with the acquisition by a subsidiary of shares in its holding company), to apply where the latter is a DAC limited by guarantee
- S 985 provides that s 1085 (power of the Minister to make Regulations for the transfer of securities) shall apply to securities of a DAC as it applies to securities of a PLC.

## Chapter 4 – corporate governance

- DAC (unlike an LTD) must have at least 2 directors (s 986)
- A person may not be a director of more than 25 companies (one or more being a DAC) (s 987)
- S 988 limits membership of a DAC limited by guarantee , for “avoidance of doubt” to subscribers or shareholders.
- DAC (unlike LTD) may not dispense with holding an AGM (even, it seems, where it has only one member (s 989)
- A DAC may use unanimous and majority written resolutions, but its articles of association may preclude it from doing so (ss 990 and 991)

## Chapter 5 – financial statements, annual return and audit

- Part 6 of the Bill shall not apply to credit institutions or insurance undertakings, being subject to specific requirements (s 992)
- Requirement in Part 23 for a corporate governance statement shall apply to a DAC with debentures admitted to trading (s 993)
- S 994 provides that a DAC may not avail of an audit exemption where it has debentures admitted to trading, or where it or its holding company is a credit institution or insurance undertaking
- The disclosure obligations on a PLC that is a licensed bank shall apply equally to a DAC that is a licensed bank (s 995)
- Where a DAC is not-for-profit, it shall be exempted from filing financial statements with its annual return (s 996)

## Chapter 6 – liability of contributories in winding up

- In the event of a DAC being wound up, members shall be liable, but liability shall be limited to the amount if any unpaid on shares, as well as (in the case of a DAC limited by guarantee) the amount of the guarantee; in limited circumstances, past members shall also be liable (s 997)

## Chapter 7 - examinerships

- S 998 provides that the provisions in s 511 in relation to petitioning for a LTD to be put into examinership shall apply with necessary modification to a DAC (save that where the DAC is a bank or building society, only the Central Bank may bring the petition)

## Chapter 8 – public offers of securities etc

- S 999 provides that the provisions of Chapters 1, 2 and 4 of Part 23 (which relate to prospectus law, market abuse law, and transparency law) shall apply, in so far as those provisions are applicable to companies other than PLCs, to DACs.

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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.*

# Thank You.

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