



# ARTHUR COX

## Companies Bill 2012 Analysis

### **Companies Bill passes Fourth (Report) and Fifth Stage**

The Companies Bill 2012 completed its *Report Stage* yesterday 2<sup>nd</sup> April 2014. In total, of the 282 amendments proposed, the 260 proposed by the Minister were accepted.

All of the amendments that were proposed and considered are set out [here](#). All were accepted with the exceptions of Numbers 3, 4, 6, 55 - 60, 75 - 79, 81, 85, 89, 168, 169, 175, 182 and 242.

The Bill, *as amended in Report Stage*, will in due course be published by the Bills Office and when available, can be accessed [here](#).

Meanwhile, Arthur Cox has prepared an unofficial version of the Bill with the changes as made in Report Stage which can be accessed [here](#).

#### **Key changes**

The key changes agreed at Report Stage include:

- The requirement to register persons who are authorised to bind the company (without limitation) has been clarified so that it applies only where the board of directors appoints a person (and not where the members appoint the board of directors): *section 39*.
- LTDs cannot have an official seal for sealing securities, etc: *section 45* was deleted and a new *section 1019* inserted for PLCs.
- Changes have been made to the definition of private limited subsidiary: *section 64(1)*.
- Pre-emption rights are expressed to apply only where "relevant shares" are allotted and the transition arrangements have been clarified: *section 69* and *section 70*.
- It will be mandatory for transfers of partly-paid shares to be executed by both transferor and transferee: *section 94*.
- Subject to certain conditions not being present, a reserve arising from the reduction of a company's company capital is to be treated as a realised profit: *section 118(9)*.
- The powers of the directors to exercise all power of management has been clarified so that it expressly includes the power to borrow money and mortgage and charge the company's property, etc: *section 158(3)*.
- Committees of directors, as well as the full board of directors, may proceed by means of an unanimous written resolution: *section 161*.

## REPORT STAGE COMPLETED

- Changes have been made to permit, in certain circumstances, cloud computing in relation to the use of computers for keeping company records: *section 214*.
- Changes have been made to the service of notices: *section 218*.
- The duty of directors to disclose their interests in contracts has been clarified so that it does not apply to contracts which would not be entered into by the board of directors on behalf of the company (e.g. contracts in the ordinary course of business which employees would be entitled to transact): *section 231(10)*.
- Clarification has been given in relation to the definition of a charge and changes made in relation the provisions concerning judgment mortgages: *section 408* and *section 413*.
- The new provisions on Circuit Court jurisdiction for examiners in certain cases, introduced by the Companies (Miscellaneous Provisions) Act 2013 have been incorporated into Part 10.
- The Registrar of Companies is empowered to dispose of documents after certain periods have elapsed: *section 894*.
- In PLCs, the statutory default will be that directors may not vote on contracts in which they are interested unless their articles of association expressly provides otherwise: *section 1004*.
- Notwithstanding the new prohibition on bearer shares, PLCs may make certain allotments which might otherwise be caught by the prohibition: *section 1021*.

### *Seanad – the next step*

The next stage for the Bill will be to bring it to the Seanad. It is expected that this will happen in May, after the Bill has been amended officially by the Bills Office and when the remaining amendments prepared for Committee Stage in the Seanad are ready. Enactment later this year is still very likely, with commencement expected in 2015.

### *Progress to date of the Companies Bill*

First reading in Dail	Second Reading in Dail	Third (Committee) Stage in Dail	Fourth (Report) Stage in Dail	Final Stage Dail	Reading in Seanad	Committee Stage Seanad	Report Stage Seanad	Final Stage Seanad	Seanad changes send to Dail	Dail changes send to Seanad	Enactment
12/12	4/13	11/13	4/14	4/14							

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