

Group Briefing

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Companies Act 2014 - converting an SPV to a DAC – deadline approaching

The Companies Act 2014 introduced two new company types: a new form of private company limited by shares (known as an “LTD”) and the designated activity company (known as a “DAC”).

A company that was, on 1 June 2015, already in existence as a private company limited by shares under the previous Companies Acts (an “EPC”) must re-register as an LTD, a DAC or another company type.

From 1 June 2015 until 30 November 2016, an EPC that has not converted to an LTD, a DAC or another company type is subject to the same law as if it were a DAC limited by shares. A DAC limited by shares is the type of company that is most closely aligned with the EPC. However, on 30 November 2016, the Companies Registration Office (“CRO”) will automatically convert those companies to LTDs. For the reasons set out in this briefing, Irish special purpose vehicles (“SPVs”) operating in the debt capital markets/structured finance space who have listed, or intend to apply to list, debt securities should take steps to convert to a DAC limited by shares set out in Part 2 of the Act, which must be initiated before 31 August 2016. If an SPV with listed debt securities is automatically converted to an LTD on 30 November 2016, it will be in breach of the Act and it and its officers are liable to be prosecuted.

This briefing outlines the steps that need to be taken to convert an EPC to a DAC limited by shares.

DAC OR LTD?

Under the Act, a DAC limited by shares may have, or apply to have, wholesale debt securities (denominations of not less than €100,000) listed on any market, but an LTD cannot. For that reason, an EPC that has listed debt securities must convert to a DAC limited by shares, and an EPC which expects to list (or apply to list) debt securities in the future should also convert to a DAC limited by shares. An EPC which has or intends to list retail debt securities (of less than €100,000) will have to consider listing as a PLC.

As mentioned above, a DAC limited by shares is very similar in structure to an EPC. It is, however, important to note that the name of a DAC limited by shares must end in “designated activity company” or “DAC” – this will necessitate a change to company stationery and possibly IT systems.

HOW TO CONVERT TO A DAC

There are two main options open to an EPC SPV when it converts to a DAC limited by shares:

» **Option 1:**

Its shareholders can pass an ordinary resolution approving the conversion. It must then submit the following to the CRO:

- » a Form G2 in relation to the ordinary resolution;
- » its Memorandum and Articles of Association (now known as its “constitution”) in its new name (i.e. “SPV designated activity company”); and
- » a Form N2.

There are no CRO fees for this conversion option.

» **Option 2:**

If an EPC SPV uses Option 1, any references to the old Companies Acts in its constitution will remain (as under Option 1, only the name of the company is changed as set out above) – while those references will be interpreted in light of the new Act (save where there is inconsistency, in which case the new Act will prevail), it is strongly recommended that an EPC SPV adopt a new constitution to conform to the Act’s new requirements on, for example, share allotment and to refer to the corresponding provisions of the new Act. In this case, the shareholders

must pass an ordinary resolution approving the conversion, and a special resolution to adopt a new constitution. It must then submit the following to the CRO:

- » a Form G2 in relation to the ordinary resolution;
- » a Form G1 in relation to the special resolution;
- » its new constitution (containing both its new name (i.e. “SPV designated activity company”) and the other changes approved by special resolution of the shareholders); and
- » a Form N2.

It is a matter for the directors and shareholders of each EPC SPV to decide which option it should adopt.

IMPORTANT POINTS TO NOTE

The CRO has advised that directors of companies wishing to be converted to a new company type should consider this matter at the earliest opportunity and file their conversion applications with the CRO in good time before 31 August 2016. A failure to pass an ordinary resolution prior to 31 August 2016 will prevent companies using the simplified re-registration procedure contained in Part 2 of the Act and the less streamlined and more costly procedure contained in Part 20 of the Act will have to be considered before 30 November 2016 if an EPC with a debt listing is to avoid committing an offence.

After the CRO receives the conversion application, it will issue a new certificate of incorporation – the conversion takes effect from the date of that certificate, not the date of the resolution or application. This is currently taking 3 to 4 weeks but that time is likely to increase as 31 August 2016 draws nearer.

As mentioned above, if an EPC SPV lists or intends to apply to list debt securities, it must convert. As this is a mandatory requirement of Irish company law, if the changes made to its Memorandum and Articles of Association are simply to change its name (and, in the case of Option 2, update statutory references to the corresponding provisions of the new Act, with no substantive changes being made) then third party consent to the conversion is unlikely to be required. However, it remains possible that documentation specific to individual transactions could include consent requirements even where a change is required as a matter of law, so companies and their advisors should check this in each case.

Even if an EPC SPV doesn't have, or intend to have, listed debt securities, there may be other circumstances in which it would be advisable for an SPV to convert to a DAC - we recommend that each case be considered separately on its facts.

KEY CONTACT

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