

# The Companies Act 2014



# Agenda

- new company types
- overview of new innovations in the Act
- company secretary
- directors' duties
- summary approval procedure (“**SAP**”)
- directors' loans
- tax issues
- accounting matters
- case study



# What has happened?

- Current law the Companies Act 1963 and circa 32 other pieces of legislations
- Companies Act 2014 (the "Act") consolidates all this into 25 parts, over 1400 sections – enacted 23 December 2014, commencement 1 June 2015
- Act is structured in 2 volumes:
  - parts 1 to 15 - model private company limited by shares
  - parts 17 to 25 - all other companies.

# Company types going forward

- Private Company Limited by Shares (LTD)
- Designated Activity Company (DAC)
- Unlimited companies (UC)
  - private unlimited company with shares
  - public unlimited company with shares
  - public unlimited company no shares
- Public Limited Company (PLC)
- Guarantee Company (CLG).

# What is a new model Private Limited Company (Ltd)

- likely to be the most common form of Private Limited Company (Ltd)
- single director companies (different secretary)
- unlimited capacity to carry on any business
- one document constitution – no objects clause
- can dispense with holding an AGM
- cannot list debt securities
- does not need an authorised share capital
- no name change needed

# What is the new Designated Activity Company (DAC)?

- similar to our current Private Limited Company
- name must end in DAC
- must have at least two directors and a company secretary
- two document constitution – will have an objects clause
- can list debt securities
- cannot waive requirement to hold AGM
- can convert to a DAC during the transition period.

# A company limited by guarantee "CLG"

- This will be the most common form of entity used by charities, sports and social clubs and management companies
- It will continue to have a Memorandum and Articles of Association with a main objects clause
- It may opt to have just one member (currently must have at least seven)
- It will be able to avail of the audit exemption (not currently available)
- Name changes to include words "Company Limited by Guarantee" or "CLG" at the end of its name
- It must have two directors

# Transition period

- transition period of 18 months (this can be extended by Ministerial Order)
- during transition private companies limited by shares should decide whether they will:
  - register as a private limited (LTD)
  - register as a Designated Activity Company (DAC) or another form of company
  - do nothing and be deemed to register as an LTD

existing private limited companies will be treated as DACs during the transition phase until they make their election.





# How to decide whether to re-register

While there are no strict rules the following should be considered:

- was the company incorporated for a specific purpose – eg film relief – will it need a principle objects?
- is the company a joint venture with specific objects?
- does the company have debt securities listed or will it need to list any?
- is the company an insurance undertaking or a credit institution?

## Some key innovations

The Act is primarily a consolidation of law and there are fewer new obligations and regulations than you may think.

Some key innovations include:

- ultra vires rule to be abolished
- codification of directors' duties in statute
- single director companies (still need a separate secretary)
- loan from a director if not in writing is presumed not to bear interest or security and is subordinated to all creditors (gift!!)
- loan to a director, if not in writing is presumed repayable on demand and to bear interest.

## Some key innovations/ contd...

- audit exemption for small groups
- members written resolution no longer unanimous
- validation procedures standardised (old section 60):
- directors of insolvent company must show they co-operated with liquidator to avoid restriction.
- directors report to confirm there is no relevant audit information of which auditors are unaware – increased accountability
- provision for revision of defective financial statements
- can only change year end once every five years

## Some key innovations / contd...

- directors compliance statements back on the agenda
- private companies will be allowed reduce their capital without court order
- offences will be categorised
- audit committee for large companies.

# Categorisation of offences



Part 14 sets out one of the most far-reaching reforms provided for in the Act - categorising of the criminal offences that will be created by the Act into four categories each of which will attract a particular category of penalty, as follows:

- **Category 1 offence** – conviction on indictment can result in a term of imprisonment of up to ten years or a fine of up to €500,000 or both (reportable by auditor);
- **Category 2 offence** – conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both (reportable by auditor);
- **Category 3 offence** – a summary offence only, attracting a term of imprisonment of up to six months and a “Class A fine” (or both); and
- **Category 4 offence** – also a summary offence only, punishable by the imposition of a Class A fine (i.e. a fine not exceeding €5,000).

# Company Secretary

- Overseer of day to day running of company, maintenance of records, filing of returns and accounts
- Previously responsible for company complying with CA – now moved to directors
- Directors must satisfy themselves that company secretary has necessary skills to perform duties
- General market view – professional company secretarial function employed to ensure directors' obligation fulfilled
- Declaration on appointment acknowledging responsibilities as company secretary

# Company Secretary

- **Statutory duties**
  - co-sign the annual return with a director of the company
- **Common law duties**
  - Maintaining the company's statutory registers
  - Retain meetings of board meetings and the annual general meeting
  - Ensure CRO and Revenue filing requirements are complied with
- **Duties delegated by the board of directors** of the company

# Directors' Duties

- Part 5 CA 2014
- Move towards accountability and responsibility of directors
- General breaches – Part 14 CA 2014
- Shadow directors – Section 221 CA 2014
- De-facto Directors – Section 222 CA 2014
- General and fiduciary duties



# General Duties

- Ensure compliance by company with CA 2014
- Director's Declaration
- Interests of Members and Employees
- Other interests of director
- Director to act in professional capacity for company
- Directors' disclosures

# Breach of Certain Duties

- Breach of certain sections specified under S 232 CA 2014
  - Duty to account to the company directly for the gain; and
  - Indemnify the company in respect of any loss or damage resulting from breach.
- Extended persons connected with director of the company or of its holding company

# Directors' Duties

## 1. Directors' Fiduciary Duties

- act in good faith;
  - act honestly and responsibly;
  - act in accordance with the company's constitution;
  - not use the company's property, information or opportunities for the director's own or anyone else's benefit;
  - not agree to restrict the director's power to exercise an independent judgement;
  - avoid any conflict between the director's duties to the company and the director's other interests;
  - exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person in the same position with the same knowledge; and
  - have regard to the interests of its employees and of its members as a whole.
- Law is clarified, not changed

# Directors' compliance statement set to be introduced

## Key points

- applies to all Public Limited Companies (except investment companies) and to all other large limited companies with a balance sheet total of €12,500,000 and a turnover of €25,000,000 (unlimited and investment companies are excluded from this requirement).
- directors must make an annual statement in their Directors' Report, acknowledging that:
  - they are responsible for securing the company's compliance with its relevant obligations\*
  - confirming that certain things have been done or, if they have not been done; and
  - explaining why they have not been done.

\*Relevant obligations" means an obligation under tax law, or where failure to comply would constitute a Category 1 or Category 2 offences under the Act, or a serious Market Abuse or prospectus offence (or in certain cases a serious Transparency offence).

# Directors' Resolutions

- Formal proposal and passing of decision at meeting of board of directors
- Resolution is written document detailing the nature of the decision
- Section 161 CA 2014 –
  - Board of LTD
  - Pass by unanimous written resolution of directors
  - No requirement for board meeting
- Majority resolution may also be passed where one or more of the directors would not be permitted to vote on a resolution if such a resolution was passed at a duly convened meeting of the board of directors.

# Directors' Resolutions

- Resolution may consist of a number of similar documents, all of which should be signed by the directors
- Effective from the date signed by the last director
- No requirement to be in one room – telephonic, video or other electronic form
- Meeting location is the location of majority or location of chairman
- WATCH – tax residency of a company (by law – location now formal)

# Summary Approval Procedure (“SAP”)

- Innovative provision of CA 2014
- Aim is to simplify procedural requirements and costs
- Replaces existing “whitewash” procedures to authorise transactions
- Validation procedure for restricted transactions
  - Financial assistance for acquisition of own shares
  - Loans to directors or persons connected to director
  - Treatment of pre-acquisition profits
  - Members’ Voluntary winding-ups
  - **Mergers**
  - **Reduction of share capital**
  - **Variation of capital on reorganisations**
- Last three court application can still be used; SAP must be used for all others

# Summary Approval Procedure (“SAP”)

- SAP requires:
  - Members’ special resolution approving the transaction (unanimous in the case of mergers)
  - Director’s declaration in relation to post-completion solvency of the company
  - Independent accountant’s report for following:
    - Reduction of share capital
    - Voluntary winding-up
    - Variations of capital
    - Treatment of pre-acquisition profits of target company as distributable in acquiring company’s financial statements (previously needed certification by directors and auditors that such treatment would be fair and reasonable)
  - New test for auditor’s report is that declaration by directors is “not unreasonable” – lesser requirement than previous standard of “reasonable”



# Summary Approval Procedure (“SAP”)

## Declaration

- Full inquiry made into the affairs of the company
- Company is able to pay its debts and liabilities for 12 month period after the restricted activity
- Various other declaration requirements depending on activity

## Unlimited Liability

- On application to Court by specified parties (liquidator; creditor or Director of Corporate Enforcement)
- Where director makes declaration without having reasonable grounds for making the solvency confirmation
- Court declaration for unlimited personal liability for all debts of the company
- ***Automatic assumption*** of no reasonable grounds
- Where winding-up commences within 12 months of declaration and debts not paid within 12 months of commencement of winding-up

# Loans to and from Directors

## **Loans from Directors to company**

- Undocumented loans by a Director presumed to be a gift to the company
- Documented loans without statement of interest presumed to bear no interest

## **Loans from company to Directors**

- Prohibited under Section 232 CA 2014 (previously s31 CA 1990)
- Repetition of previous prohibition together with relevant exceptions
- Section 34 Auditor's certification of reasonableness of director's declaration replaced by SAP
- SAP used for all transactions prohibited under Section 232 – (i.e. loans, quasi-loans, credit transactions and security and guarantees in respect of such loans, quasi-loans, credit transactions)

# Tax Issues

- Location of directors' meetings – relevant for establishing residency under management and control test
- Stamp duty reconstruction relief – Section 80 SDCA – incorporating new company as acquirer – must be a DAC so that object can be stated to be the acquisition of the target to meet condition of relief
- Declaration of pre-acquisition profits of target as available for distribution following the re-org using SAP – Previously could only be achieved by certification by directors and auditors (fair and reasonable and non-prejudicial)
- No obligation on acquiring company to account to share premium account on premium paid on shares (as allotment of shares is consideration for shares) – resulting in profits available for distribution
- Undocumented director's loan – gift to company (i.e. shareholders) – CAT?

# Accounting & Audit Matters



# Audit Exemptions

## Exemption from the requirement to have a statutory audit

- Where a company meets **2 of 3** of the requirements:
  1. Balance sheet total not exceeding €4.4m
  2. Turnover not exceeding €8.8m
  3. Average number of employees not exceeding 50
- Cannot avail of exemption if:
  - Notice is served
  - Annual return is not filed in time



# Audit Exemptions (continued)

## Small Group Audit Exemption

- Where a holding company and all of its subsidiaries meets **2 of 3** of the requirements:
  1. Balance sheet total not exceeding €4.4m
  2. Turnover not exceeding €8.8m
  3. Average number of employees not exceeding 50

**Note:** Companies limited by guarantee can now also avail of the audit exemption where applicable

# Audit Exemptions (continued)

## Dormant Company Exemption

- Where:
  - no significant accounting transactions
  - assets and liabilities comprise only **permitted assets** and liabilities

Permitted assets and liabilities = investments in shares and amounts due to/from other group undertakings

# Consolidation

*“Where at the end of its financial year a company is a holding company, the directors of the company, as well as preparing entity financial statements for the financial year, shall prepare group financial statements for the holding company and all its subsidiary undertakings for that financial year” [Part 6, Chapter 5, paragraph 293]*

Also required under FRS 2/IFRS 10.....

**BUT** exemptions available!





# Consolidation (continued)

## Consolidation exemptions for holding companies include:

Group size exemption  
[s297]

Ultimate parent is EEA  
entity [s299]

Ultimate parent is non-  
EEA entity [s300]

Excluded subsidiary  
exemption [s301]

IFRS permitted  
exemption [s302]

### Small Group Exemption [s297]

- Where a **group** meets **2 of 3** of the requirements:
  1. Turnover not exceeding €20m
  2. Balance sheet total not exceeding €10m
  3. Average number of employees not exceeding 250

# Consolidation (continued)

## Merger accounting

- Statutory mechanism for merging set out in the Act.
- Merger can be:
  - by acquisition
  - by absorption
  - by formation of a new company
- Basis for applying merger accounting set out in the Act – previous contradiction no longer exists!
- also introduced the concept of ‘merger relief’ and ‘group reconstruction relief’

**Note: FRS 102 only permits merger accounting in group reconstructions and for charities!**



# Disclosure of information - Directors

## Directors Report - general

	Existing	New
General Matters [s325]	✓	
Business Review [s325]	✓	
Information on acquisition and disposal of own shares [s325]	✓	
Information on interests in shares or debentures [s325]	✓	
Statement on relevant audit information [s325]		✓
Compliance Statement [s225]**		✓

# Disclosure of information – Directors (continued)

## Statement on relevant audit information

- The Directors' report must include the above statement
- s330 outlines the relevant information:
  - so far as Director is aware, there is no relevant audit information of which the statutory auditors are unaware; and
  - Director has taken all steps they ought to have taken to ensure they are aware of any relevant audit information and to establish that the statutory auditors are aware of that information

Increased accountability – category 2 offence if statement is false



# Disclosure of information – Directors (continued)

## Directors Compliance Statement – back on the agenda!

- Annual statement in the Directors Report acknowledging that they are responsible for securing company's compliance with its 'relevant obligations' [s225]
- **Compliance Statement** applies to all public limited companies (except investment companies) and to all large limited companies

Compliance requirements only apply where company has turnover of greater than €25m and a Balance Sheet total of greater than €12.5m

# Disclosure of information – Directors (continued)

## Directors Compliance Statement – back on the agenda!

- to include confirmation of the following assurance measures **having been done or if not, explaining why not:**
  - a) **Compliance Policy Statement** setting out company's policies regarding compliance with its relevant obligations;
  - b) The putting in place of arrangements or structures designed to secure material compliance with the company's obligations;  
and
  - c) The annual review of said arrangements or structures.

# Disclosure of information – Directors (continued)

## Disclosure of directors' interests in the company or other group companies

- exemption applies from disclosing a director's interest in shares where **interest is less than 1%** of the nominal value of shares of the company or shares of any other company in the group

## Disclosure of directors' remuneration

- categories and scope of directors' remuneration disclosures extended to include:
  - emoluments for qualifying services
  - gains made on the exercise of share options
  - amount of money or value of other assets for qualifying services
  - contributions paid to a retirement benefit scheme
  - compensation for loss of office or other termination benefits

# Disclosure of information – Financial Statements

## Public Disclosure of Financial Information

	Small	Medium
Turnover	€8.8m	€20m (currently: €15.24m)
Balance Sheet total	€4.4m	€10m (currently: €7.62m)
Employees	50	250

- Small and medium companies are exempt from:
  - certain disclosures in the Directors report (financial instruments, KPIs)
  - filing full financial statements
- Certain new line items in all financial statements (accruals and deferred income for example are now to be disclosed separately)



# Audit committees

## Establish or explain

- A large company shall either:
  - establish an audit committee and confirm in the Directors' Report; or
  - if not established, explain why not in the Directors' Report

A company whose	Large
Turnover	>€50m
Balance Sheet total	>€25m
or	
A group together meeting the above criteria	

# Audit committees (continued)

## Responsibilities of Audit Committee

- The audit committee's responsibilities include monitoring:
  - the company's financial reporting process
  - the effectiveness of the company's systems of internal control and risk management
  - the company's statutory audit and statutory financial statements
  - reviewing the independence of the statutory auditor

# Audit committees (continued)

## Structure of Audit Committee

- Must have at least one independent director who:
  - is a non-executive director and
  - possesses the requisite degree of independence:
    - no time during 3 year period before appointment did they have a material business relationship or
    - hold employment
- Must have competence in accounting or auditing

# Financial period

## Financial Period

- First financial period may be no more than 18 months
- Subsequent periods = 12 months +/- 7 days
- May alter year end date by notifying the Registrar – **only once every 5 years**
- Unless substantial reasons, holding company to ensure financial year end dates of subsidiary undertakings coincide



# Other matters

## Directors' Loans and Advances

- **Loans to** a director: if not in writing presumed to be repayable on demand and bear interest [s236]
- **Advances by** a director: if not in writing, presumed not to be a loan. To the extent it was a loan – does not bear interest and is subordinate
- **Beware** of accounting issues arising under FRS 102 as a result of potential 'financing transactions' emerging.

# Other matters

## CRO's confirmed commencement approach

### Financial period and financial statements details

- Financial periods ending before 1 June 2015 and signed before 1 June 2015
- Financial periods ending before 1 June 2015 and signed after 1 June 2015
- Expected transition arrangement will cease in April 2016
- Financial periods ending on or after 1 June 2015

### Applicable Companies Act

CA 1963 - 2013

Choice of  
CA 1963 – 2013  
or CA 2014

CA 2014

# Worked example



## Case Study

- Happy Hotels Limited trades 4 hotels
- Acquired 2 hotels at peak
- Restructured all hotels into one SPV
- Trading well, **BUT** legacy debt too high
- EBITDA €5m, Debt €100M
- Bank want sale of business / debt restructured

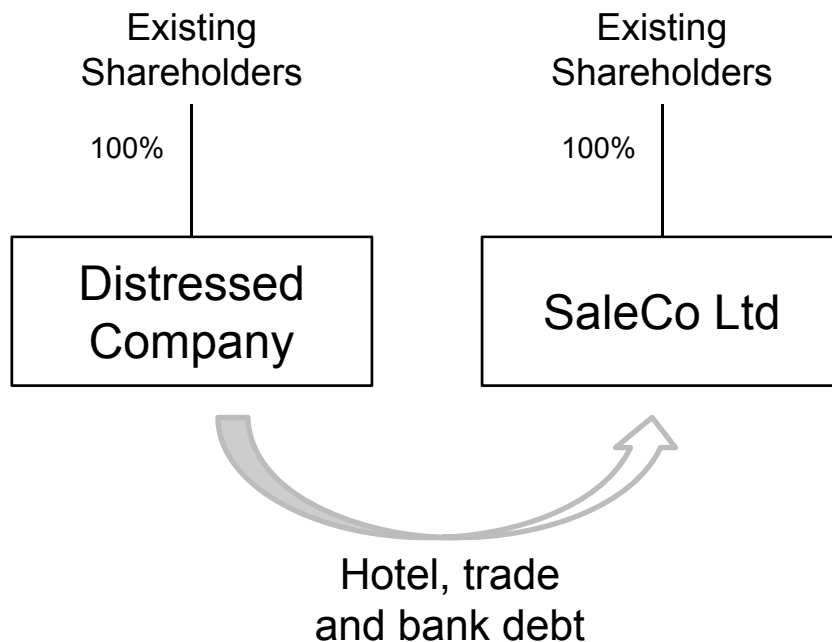


# Current Position

## Happy Hotels Limited Simplified Balance Sheet

	€M
Fixed Assets	110
Bank debt	-100
<b>Net assets</b>	<b>10</b>
Retained profit & Loss	-40
Share Capital / Share Premium	50
	<b>10</b>

# Solution current legislation



- Trade transferred as an undertaking to SaleCo
  - CGT relief – S615, 587
  - stamp duty relief – S80
- Sell SaleCo
  - deferred gain on asset remains uncrystallised
  - lower stamp duty - MV reduced by debt in SaleCo

Solution current legislation

## **Work-around for negative reserves:**

Capital reduction to create reserves

- High Court Order; or
- convert Happy Hotels to an unlimited co

Time issues, cost & complexity

## Solution current legislation

### **Risk:**

- Exposes shareholders to unlimited liability
  - shareholders now personally exposed to Happy Hotels' liabilities
  - if sale falls through unlimited liability exposure remains

## Solution under CA 2014

- Negative P&L deficit remedied by capital reduction using the Summary Approval Process:
  - similar to "whitewash" process
  - capital reduction – reserves increased
- Hotel, trade & debt can now be hived-out

### Advantages:

- |                                |         |
|--------------------------------|---------|
| • Expenses of High Court Order | REMOVED |
| • Unlimited liability risk     | REMOVED |
| • Facilitates reorg/hive-out   | YES     |

## Application to different circumstances

- Use of SAP to carry out capital reduction to 'plug' reserves is not limited to pre-sale planning
  - group reorganisations
  - group rationalisation / liquidations
  - mergers / demergers
  - succession planning
  - debt restructuring / refinancing



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# The Companies Act 2014

There has been significant work over the last few years about the updating of company law, as indicated by the enactment of the new Companies Act. At the start of the existing legislation, which was first passed in 1983 to 2013, the new legislation has been a credit with the Companies Act 2014 (CA14) signed into law by the Queen on 22nd March 2014 and is commenced on 1st June 2014.

Once commenced, the Act will repeal all existing company law statutes and the majority of related statutory instruments. The Act provides a consolidated and coherent company law code for its users which includes companies, directors, professional advisors, and shareholders.

The main areas of change under the Act will be in regard to company and social areas such as the formation, administration, winding up and dissolution of companies. The Act also seeks to *update the architecture of* company law, and to bring the company law statute and other related provisions of company law into a statutory footing. The Act itself does provide for the commencement of sections within one provision, meaning that Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777,

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# The Companies Act 2014

## Topic 2: Director's loans and advances

March 2015

*In this update on the Companies Act 2014 (the "CA") we discuss the topical issue of loans/advances between a company and its directors.*

### Loans to directors

The general rule of the CA is that such loans to British (UK) or Irish directors are strictly prohibited. In other circumstances, such as extending loans to a director as a director of another company, or extending loans to a director of a holding company, or providing a loan to a director of another company in connection with a loan, grant or credit facility made to that company, the CA does not prohibit a director from obtaining a loan or advance from its company under the following circumstances:

- where the value of the arrangement is less than 10% of the company's assets;
- where the company is dealing with a group company (i.e. holding company, subsidiary or sister company);
- where the arrangement is a reimbursement of the director's expenses (i.e. expenses properly incurred in the discharge of the director's duties);
- where the arrangement is a reimbursement of the sums due to the director in the ordinary course of his or her duties; or
- where the company would suffer little or no real loss, taking into account the loan or advance.

• **Anti-Insider Abuse Approved Procedures ("AAP")**  
If a director is not subject to a prohibition on obtaining a loan or advance from a company, or a credit transaction with the company, or a loan or advance from a company in connection with a loan, grant or credit facility made to that company, a parent company can usually sanction a director to obtain a loan or advance from its company.

### 10% Reimbursement cannot be more than

benefit accrued to the extent of the 10% provision where a director makes a loan to a director or parent company. If the value of the director's or parent company's loan or advance from the company's assets is deemed to be more than the director's benefit accrued to him or her, the 10% provision will not apply.

In circumstances where the company's assets fall, but the value of the loan or advance with the director, the loan must be repaid within 10% of the company's assets, the company and the director, or their parent/affiliate, must take reasonable steps to reduce the value of the company's assets that are not less than 10% more than the sum of the value of the loan or advance and the value of the loan or advance so repaid in order to have become aware of the circumstances.

The steps required to ensure compliance in this instance, as well as what should be done if the company has reasonably been aware of such a situation? The CA provides no guidance as to what reasonable steps are required.

Where directors find it not practicable to comply with this situation within the prescribed time frame, the CA provides the director should be liable for the amount of the company.

**Summary Approval Procedures ("AAP")**  
An exemption of the CA is the introduction of the summary approval procedures ("AAP") which directors and officers were subject to certain prohibitions being waived, a parent company or other company may, by resolution of its directors, exempt a director or officer from the prohibition of the CA on the director or officer obtaining a loan or advance from the company, or a credit transaction with the company, or a loan or advance from the company in connection with a loan, grant or credit facility made to that company, or a loan or advance from a company in connection with a loan, grant or credit facility made to that company, or a loan or advance from a company in connection with a loan, grant or credit facility made to that company.

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# Questions & feedback

