



Flynn O'Driscoll Legal Update

The Irish Companies Act 2014 compared with the UK Companies Act 2006

Introduction

On 1 June 2015 the new Irish Companies Act 2014 ("**CA 2014**") came into force, repealing and consolidating the Irish Companies Act 1963 and all subsequent amending acts and statutory instruments. The UK went through a similar process when the UK's Companies Act 2006 ("**CA 2006**") replaced its predecessor, the UK Companies Act 1985, in a staged implementation between 2007 and 2009. UK company law is also currently undergoing further significant change in light of the Small Business, Enterprise and Employment Act 2015 ("**2015 Act**") which aims to simplify and reduce the cost of UK company law compliance.

Groups of companies, directors and company secretaries, current and potential investors, lawyers, accountants and other professional advisors with interests in companies and company law in both the UK and Ireland will be keen to compare and contrast the two legal frameworks. Flynn O'Driscoll's Dorian Rees, qualified as a solicitor in England & Wales and admitted to the Roll of Solicitors in the Republic of Ireland, takes a look at some of the key similarities and differences between the CA 2014 and the CA 2006. This article is not intended to be exhaustive and primarily focuses on the most common type of company - the private company limited by shares.



Position under the CA 2014	Position under the CA 2006
1. Types of Company	
<p>There are seven types of company governed by the CA 2014*:</p> <ul style="list-style-type: none"> • Public limited company (“Irish plc”). • Public unlimited company with a share capital (known as a “PUC”). • Public unlimited company without a share capital (known as a “PULC”). • Private company limited by shares (known as a “LTD”). • Private designated activity company (known as a “DAC”). • Private company limited by guarantee (known as a “CLG”). • Private unlimited company (known as a “ULC”). <p>*Aside from “Irish plc” the acronyms above (PUC, PULC etc) are what the various types of company are defined as in the CA 2014.</p>	<p>There are four types of company governed by the CA 2006*:</p> <ul style="list-style-type: none"> • Public limited company (“UK plc”) (which may be limited by shares or limited by both guarantee and shares). • Private company limited by shares (“UK LTD”). • Private company limited by guarantee (“UK CLG”). • Private unlimited company (“UK ULC”). <p>*The acronyms above are not used as definitions in the CA 2006.</p>
<p>Ireland does not yet have a hybrid partnership/company undertaking similar to the US or UK, which serves to limit the personal liability of partners, but debate on this matter is ongoing.</p>	<p>The UK also has a hybrid partnership/company undertaking called a limited liability partnership (LLP), which is a particularly popular vehicle through which law and accountancy firms operate, who historically operated under a traditional partnership.</p>
<p>A DAC is essentially a private limited company with specified objects, suitable for special purpose vehicles. In practice a LTD is the more common type of private limited company in Ireland.</p>	<p>There are other varieties of company in the UK, such as a Community Interest Company (CIC). This is a company (limited by shares or guarantee) specifically set up solely for the benefit of a community, where its assets are applied for the good use of that community and limitations are applied to dividend and interest payments made to shareholders. However, the four principle types of company are those listed above.</p>
2. Company Incorporation and Ongoing Record Keeping	
<p>A single person cannot form any type of company as the director and secretary</p>	<p>Any type of company can be formed by a single person.</p>



Position under the CA 2014	Position under the CA 2006
<p>must be different people. However a company can be incorporated with a single member and single director.</p>	
<p>Company names may be reserved, in specific circumstances, for up to 28 days (and such period may be extended by a further 28 days at the discretion of the Registrar of Companies).</p>	<p>Company names cannot be reserved.</p>
<p>Certain company names are prohibited e.g. if they are too similar to existing names, names that suggest a link to the Irish government or if they are offensive. Certain words may also require special permissions to be included in a name (e.g. "Charity").</p>	<p>Certain company names are prohibited e.g. if they are too similar to existing names, contain sensitive words as prescribed in secondary legislation, names that suggest a link to the UK government, offensive names and the use of certain characters, signs or symbols in names. Certain words may also require special permissions to be included in a name (e.g. "Charity").</p>
<p>In terms of suffixes on company names:</p> <ul style="list-style-type: none"> • A LTD must use the suffix "Limited", "LTD" or "L.T.D." (or the Irish language equivalent), in upper or lower case. • A DAC must use the suffix "Designated Activity Company", "DAC" or "D.A.C." (or the Irish language equivalent), in upper or lower case, except in certain circumstances (e.g. if a DAC is a charitable company). • An Irish plc must use the suffix "Public Limited Company", "PLC" or "P.L.C." (or the Irish language equivalent), in upper or lower case. • A CLG must use the suffix "Company Limited by Guarantee", "CLG" or "C.L.G." (or the Irish language equivalent), in upper or lower case, except in certain circumstances (e.g. if a DAC is a charitable company). • A ULC, PUC and PULC must use the suffix "Unlimited Company", "UC" or "U.C." (or the Irish language equivalent), in upper or lower case, except in special circumstances determined by the Minister for Jobs, Enterprise and Innovation. 	<p>In terms of suffixes on company names:</p> <ul style="list-style-type: none"> • A UK LTD and UK CLG must use the suffix "Limited", "LTD" (or the Welsh language equivalent), in upper or lower case, with some exceptions (e.g. if it is a charity or was previously exempt). • A UK plc must use the suffix "Public Limited Company" or "PLC" (or the Welsh language equivalent), in upper or lower case. • UK ULC's do not need to have a suffix at all. • A CIC must use the suffix "Community Interest Company" or "CIC" (or the Welsh language equivalent), in upper or lower case.
<p>Companies can be incorporated electronically via the Companies Registration Office (the "CRO"), but the process cannot currently be undertaken within the same day and can take several working days. The fee for online incorporation is €50.</p>	<p>Companies can be incorporated electronically, online, within the same day (for as little as £50 using a web-based incorporation agent).</p>



Position under the CA 2014	Position under the CA 2006
<p>Companies may appoint an electronic filing agent (which could be a solicitor or accountant) to file documents such as annual returns electronically on its behalf using the CORE online filing portal. Electronically filed forms either incur no fee or a lower charge than paper-filed forms.</p>	<p>When a company is incorporated it is assigned a unique authentication code. Anybody who holds this code and who has registered with UKCH to file UKCH forms online can then file forms electronically through the UKCH website, incurring no fee or a lesser charge than paper-filed forms. There is no need to appoint an electronic filing agent. There is also a service called “PROOF” which, if activated, means a company can <i>only</i> file forms electronically, in an effort to prevent a company from being “hijacked” by fraudsters. For example, a fraudster could file paper forms indicating they are directors of a company and then seek to register a mortgage against that company.</p>
<p>Every Irish company must have a registered office in the Republic of Ireland where notices, letters and reminders can be served on the company. A company’s statutory books and registers need to be kept at its registered office.</p>	<p>Every UK company must have a registered office where notices, letters and reminders can be served on the company. An English company will need an English registered office address, a Scottish company a Scottish registered office address and so on. A company’s statutory books and registers do not need to be kept at its registered office address and can be kept at a “Single Alternative Inspection Location” (“SAIL”), provided the SAIL address is notified to UKCH (as defined below) and is within the same part of the UK as the company’s registered office.</p>
<p>A LTD has unlimited capacity to carry on any business and to conduct all acts and transactions consequential thereto. A company’s directors are deemed to have authority to bind the company, and any other persons entitled to bind a company <i>may</i> be registered at the CRO. A DAC’s capacity is limited by the objects in its memorandum of association.</p>	<p>A UK LTD also has unlimited capacity to carry on any business and to conduct all acts and transactions consequential thereto and its directors are deemed to have authority to bind the company. There is currently no register of persons entitled to bind a company at the UK Companies House (“UKCH”) although a register of people with “significant control” over a company will need to be filed at UKCH from 30 June 2016.</p>
<p>All companies must maintain a prescribed set of statutory books (which can be electronic or physical); including (where relevant) registers of members (or shareholders), allotments and transfers of shares, a register of directors and directors’ residential addresses, a register of secretaries, register of charges, (where relevant) a register of option holders, and a minute book. Irish companies do not currently have the option of maintaining any statutory registers at the CRO.</p>	<p>All companies must maintain a prescribed set of statutory books (which can be electronic or physical); including (where relevant) registers of members (or shareholders), allotments and transfers of shares, a register of directors and directors’ residential addresses, a register of secretaries, register of charges, (where relevant) a register of option holders, and a minute book. From June 2016 UK LTD’s will have the option of maintaining their register of members, directors, secretaries, directors’ residential addresses at UKCH rather than their registered office.</p> <p>With effect from April 2016, most companies will also need to start keeping a register of people with “significant control” over the company, the “PSC register”, although that</p>



Position under the CA 2014	Position under the CA 2006
	information will not need to be made available on the public register at UKCH until June 2016.
Irish companies must notify the CRO of certain events in the life of a company by filing various forms, including but not limited to relating to; changes of officers, any allotments of shares; and a change of registered office. The majority of forms can be filed online, which will either incur no fee or a lesser charge than paper filing.	UK companies must notify UKCH of certain events in the life of a company by filing various forms, including but not limited to relating to; changes of officers, any allotments of shares; and a change of registered office. The majority of forms can be filed online, which will either incur no fee or a lesser charge than paper filing.
<p>Irish companies must file an annual return each year, made up to a specified annual return date. The annual return must contain up-to-date information, including but not limited to details of a company's current officers, the numbers and classes of shares currently allotted (including any authorised share capital) and details of all shareholders. An annual return must be filed within 28 days of a company's annual return date together with its latest accounts. If filed late, a company can lose its audit exemption and incur a significant fine with daily penalties accruing. The relevant form (B1) can be filed online.</p> <p>An Irish company's annual return date must be within 9 months of its accounting reference date, which is the date on which its annual financial statements must be made up to. Its accounts must be filed at the same time as its annual return. The accounting reference date and annual return date can be shortened or lengthened, subject to the provisions of the CA 2014.</p>	<p>Until June 2016, UK companies must file an annual return each year, made up to a specified annual return date. The annual return must contain largely the same information as an Irish company's annual return and must be filed within 28 days of a company's annual return date. If filed late, a company can incur a fine or be struck-off if no annual return is forthcoming. The relevant form (AR01) can be filed online.</p> <p>From June 2016, a UK company will no longer have a duty to deliver an annual return to UKCH. Instead, it must file a confirmation statement, which confirms that it has delivered all information required in the period to which that statement relates. This includes information about the company's registered office, principal business activities, directors, company secretaries, list of "people with significant control" and where a company keeps its statutory registers (if not at its registered office). A confirmation statement must be filed every 12 months but can be provided more frequently at the election of the company.</p> <p>A UK LTD's annual accounts do not need to be filed at the same as its annual return. A UK LTD's accounting reference date is determined by reference to a company's incorporation date unless altered in accordance with the CA 2006. Its accounts must be filed within 9 months of its accounting reference date (save in the case of a newly incorporated UK LTD which has 21 months to file its first accounts) and there are significant fines for late filing.</p>
A member of the public can obtain information on an Irish company directly from the CRO. Details such as its registered office and company registration number can be obtained for free. However, in order to obtain copies of accounts and annual returns, as well as other documents filed by that company, a fee is charged per document.	Most information on UK companies can now be downloaded by a member of the public for free using UKCH's BETA service; including annual returns, accounts and articles of association.



Position under the CA 2014	Position under the CA 2006
3. Company Constitution	
<p>A LTD has full and unlimited capacity to carry on and undertake any business or activity and has a single-document constitution without any need for an objects clause. This document is simply called a “constitution”. However, a DAC has a two-document constitution by way of a memorandum of association (including its objects) and articles of association and is more restricted in its activities.</p>	<p>There is no requirement for a UK company to have a memorandum of association. A memorandum of association stating that the subscribers wish to form a company, hold at least one share (if the company is to have a share capital) and signed by the subscribers is required to form a company. A UK company’s constitution consists of its articles of association and any resolutions or agreements affecting its constitution.</p>
<p>There is no form of model constitution provided under the CA 2014. Statutory provisions contained throughout the CA 2014 will apply by default to a LTD unless it adopts its own customised constitution.</p>	<p>The CA 2006 does provide model articles for a UK LTD, UK CLG and UK plc. These will govern a company by default on incorporation unless bespoke articles of association are adopted.</p>
<p>A LTD’s constitution may be altered by special resolution of its members. A full copy of the amended constitution must be filed at the CRO, no matter how small the amendment, together with a print or copy of the relevant special resolution adopting the amended provision(s).</p>	<p>A UK LTD’s articles of association may be altered by special resolution of its members. A full copy of the amended articles must be filed at UKCH, no matter how small the amendment, together with a print or copy of the relevant special resolution adopting the amended provision(s).</p>
4. Company Directors	
<p>A LTD can have a sole director who must be at least 18, but cannot appoint a director who is not a natural person. A DAC, CLG and Irish plc must have at least two directors. There is no upper age limit on directors.</p>	<p>All private companies in the UK can have a sole director who must be at least 16, and can also appoint a corporate director (albeit it must have at least one director who is a natural person). A UK plc must have at least two directors. There is no upper age limit on directors. The right for a UK company to appoint a corporate director is to be abolished by the 2015 Act but is not yet in force.</p>
<p>A director’s date of birth and residential address must be lodged at the CRO and in a company’s register of directors. The Minister for Jobs, Enterprise and Innovation may by regulations provide that the usual residential address of a director need not appear on a company register or at the CRO if the relevant director’s personal safety or security warrant an exemption.</p>	<p>Directors who are natural persons may elect to have their residential address kept on a separate, restricted record and not widely available on public record. However, a service address for a director must be kept on public record (it is filed with every annual return), which can be the company’s registered office. A register of directors’ usual residential addresses must also be kept by companies, but these are not required to be</p>



Position under the CA 2014	Position under the CA 2006
	made available for public inspection. In an effort to minimise the risk of identity theft, the 2015 Act has removed the need for a director's birth date (but not the month or year) to be recorded publicly at UKCH.
A director is limited to 25 directorships in Irish private company limited by shares (with some exceptions).	Directors do not have to register details of other directorships at UKCH. There is no limit on the number of directorships of UK companies a director can hold.
There is no statutory share qualification requirement for directors.	There is no statutory share qualification requirement for directors.
An Irish company must have at least one director who is resident in the European Economic Area ("EEA") (subject to certain exceptions).	There is no requirement for a director of a UK company to be resident in the EEA.
Directors of LTD's and DAC's are not required to retire by rotation under the CA 2014. However, directors of Irish plc's and CLG's are so required, albeit this requirement can be overridden in the relevant company's constitution.	Directors are not required to retire by rotation under the CA 2006.
Shareholders may remove directors by ordinary resolution at an extraordinary general meeting (but not written resolution), having followed specified procedures with certain prescribed time limits. The position is very similar in the UK.	Shareholders may remove directors by ordinary resolution at a general meeting (but not written resolution), having followed specified procedures with certain prescribed time limits. The position is very similar in Ireland.
Copies of a director's service contract must be kept at the company's registered office or its principal place of business (provided the CRO is notified). Members may inspect such documents.	Director service contracts of length in excess of 2 years must be approved by members. Members can request copies of such contracts and copies must be kept at the company's registered office or an alternative address (provided UKCH is notified) for at least one year post-termination/expiry of such contract.
A non-exhaustive list of directors' fiduciary duties is contained in the CA 2014, codifying many common law and equitable rules. The eight listed duties are; to act in good faith in the interest of the company; to act honestly and responsibly; to act in accordance with the company's constitution; to use the company's property, information or opportunities only for the interests of the company; not to agree to restrict his/her power to exercise independent judgment; to avoid conflicts of	A non-exhaustive list of seven, general, directors' fiduciary duties is contained in the CA 2006, codifying many common law and equitable rules. These are; a duty to act within their powers; a duty to promote the success of the company; a duty to exercise independent judgment; a duty to exercise reasonable care, skill and diligence; a duty to avoid conflicts of interest; a duty not to accept benefits from third parties; and a duty to declare any interest in a proposed transaction or arrangement. Regard must still be had



Position under the CA 2014	Position under the CA 2006
<p>interest, unless authorised; to exercise care, skill and diligence; and to have regard to the interests of the company's members and employees. There are also a myriad of other specific statutory duties outlined throughout the CA 2014, such as the duty to appoint a suitably qualified company secretary (not applicable in the UK in respect of private limited companies).</p>	<p>to common law rules which could expand upon the general fiduciary duties and create other duties. The 2015 Act also now makes clear that such duties apply to shadow directors also.</p>
<p>A director's conflict of interest in any proposed business or transaction in which a company is involved may be authorised in the company's constitution or by resolution of its members at a general meeting. Where the director is interested in any contract or proposed contract with the company, this must be declared at a board meeting, save where such contracts are minor and would not otherwise come to the attention of the board.</p>	<p>A director's conflict of interest in any proposed business or transaction in which a company is involved may be authorised by a company's other directors (provided they are independent) but the interested director cannot then count in the quorum for the relevant board meeting (unless the company's articles specify otherwise). The conflicted director must declare such interest in writing (usually recorded in the board minutes). A sole director of a company which is not required to have more than one director does not need to declare conflicts of interest. For a UK plc its articles of association must permit other independent directors to authorise a director's conflict.</p>
<p>Loans, quasi-loans, credit transactions, guarantees or security provided by a company to a director or person connected with a director are prohibited, save where such arrangements are: (i) on an arm's length basis in the ordinary course of business; (ii) the value of such arrangements (when aggregated with other permitted arrangements) is less than 10% of the relevant assets of the company; and (iii) the arrangements have been approved by the summary approval procedure ("SAP").*</p> <p>Loans from directors or persons connected to a director to a company are statutorily presumed to be interest-free, unsecured and subordinate to all other creditors, unless a written agreement exists between the director/connected person and the company stating otherwise.</p> <p>*SAP is discussed further in section 7 below. It is a process whereby certain matters can be processed following production of a directors' declaration of solvency, special resolution of members, independent persons' report (for certain transactions) and the filing of the directors' statement and special resolution at the CRO within 21 days of being passed.</p>	<p>Loans, quasi-loans, credit transactions, guarantees or security provided by a company to a director or person connected with a director are not prohibited but must be approved by resolution of that company's members (and where the director is also a director of the company's holding company, also by resolution of the members of that holding company). There are certain exceptions to the member-approval requirement, for example, for loans worth less than £10,000.</p> <p>There are no statutory presumptions under the CA 2006 as to loans from directors or persons connected to a director to a company; however, it would be advisable to record the terms of such arrangements in writing. The director duties/conflicts of interest provisions will apply as might the substantial property provisions of the CA 2006 requiring shareholder approval, where security is granted by the company (discussed further below).</p>
<p>Transactions involving substantial non-cash assets between directors and</p>	<p>Transactions involving "substantial property" or substantial non-cash assets between</p>



Position under the CA 2014	Position under the CA 2006
<p>companies must be approved by the members either before the transaction or, if after the transaction, within a reasonable period of time of the date on which the transaction was entered into. An asset is a “substantial” non-cash asset in relation to a company if it is worth at least €5,000 at the time it is entered into and it exceeds €65,000 or 10% of the amount of the company’s relevant assets.</p>	<p>directors and companies must be approved by a resolution of the members in general meeting either before or after the transaction. An asset is a “substantial” non-cash asset in relation to a company if its value: (i) exceeds 10% of the company’s asset value and is more than £5,000; or (ii) exceeds £100,000.</p>
<p>5. Company Secretaries</p>	
<p>All companies must have a company secretary appointed (who can also be a director of the company, <i>unless</i> that person is a sole director, in which case a separate company secretary must be appointed). The company secretary can either be a natural person or a corporate secretary.</p>	<p>Any private company does not need to have a company secretary appointed and, if it does appoint one, then it can either be a natural person or a corporate secretary and it can also be a director or sole director of the company. A UK plc, however, must still have a company secretary appointed.</p>
<p>A company’s directors must ensure that its company secretary has appropriate skills or resources to discharge his or her statutory and other duties (albeit this is not expanded upon in the CA 2014). An Irish plc’s company secretary must satisfy additional requirements also.</p>	<p>The CA 2006 sets out qualification requirements for a company secretary of a UK plc only. No qualification requirements are specified for secretaries of other types of company.</p>
<p>Company secretaries who are persons must record their residential address at the CRO. However, the Minister for Jobs, Enterprise and Innovation may by regulations provide that the usual residential address of a secretary need not appear on a company register or at the CRO if the relevant director’s personal safety or security warrant an exemption.</p>	<p>Any company secretary appointed does not need to record his/her residential address at UKCH but must provide a service address (which can be the company’s registered office).</p>
<p>6. Meetings and Resolutions of Members</p>	
<p>Generally Irish companies are required to hold an annual general meeting (“AGM”); however, a LTD can opt out of this requirement, provided the members sign a unanimous written resolution prior to the date that company’s AGM would occur approving the matters which would otherwise have been dealt with at a physical AGM, including approval of annual accounts.</p>	<p>Only UK plc’s and traded private limited companies are required to hold an AGM under the CA 2006. A UK LTD does not need to hold an AGM but may require one to be held under its articles of association. A UK LTD also does not need to lay its accounts before members for approval at a general meeting. A UK plc must lay its accounts and reports before the members.</p>



Position under the CA 2014	Position under the CA 2006
<p>The phrases “extraordinary general meeting” or “EGM” and “annual general meeting” or “AGM” are used to describe meetings of members under the CA 2014.</p>	<p>The phrases “extraordinary general meeting” or “EGM” are not used under the CA 2006. Only the terms “general meeting”, “annual general meeting” or “AGM” are used.</p>
<p>For LTD’s, an EGM may be called by directors or members (shareholders). Save where a company’s constitution states a longer period, an EGM may be called on 7 days’ written notice or sooner if approved by all the members entitled to attend and vote at the meeting. A notice of EGM should be approved by the board of the company and must include the time, date and place of the meeting; the general nature of the business to be dealt with at the meeting; and the full text of any resolution(s) proposed to be passed.</p>	<p>For UK LTD’s, save where a company’s articles of association state a longer period, a general meeting may be called on 14 clear days’ written notice or sooner if approved by the majority (90%) of members entitled to attend and vote at the meeting. A notice of general meeting should be approved by the board of the company and must include the time, date and place of the meeting; the general nature of the business to be dealt with at the meeting (although this provision can be varied by the company’s articles (unless the company is a traded company)); and the full text of any special resolution(s) proposed to be passed and the intention to propose such a resolution as a special resolution. Failure to do so will invalidate the relevant special resolution. Although there is no legal requirement to set out the full text of ordinary resolutions, it is considered best practice to do so.</p>
<p>A LTD would need to undertake post-EGM formalities, including; preparing minutes of the EGM, updating statutory registers and filing resolutions and (depending on the business transacted) CRO forms with the Registrar of Companies.</p>	<p>A UK LTD would need to undertake similar post-general meeting formalities, including; preparing minutes of the general meeting, updating statutory registers and filing resolutions and (depending on the business transacted) UKCH forms with the Registrar of Companies.</p>
<p>A LTD and DAC (but not an Irish plc) may (depending on the matter to be resolved) pass ordinary and special resolutions as either unanimous or majority written resolutions without the need for a physical meeting. Ordinary resolutions are passed under a majority written resolution once a simple majority of voting shareholders (i.e. shareholders whose shares hold voting rights) have signed the written resolution, and special resolutions are passed under a majority written resolution once 75% or more of voting shareholders have signed the written resolution, A unanimous written resolution takes effect on the date which the last member signs it. A majority written resolution is not deemed to take effect until: (i) 7 days after the date the last member signs it in the case of ordinary resolutions; and (ii) 21 days after the date the last member signs it in the case of special resolutions. Notice of ordinary or special resolutions should be field at the CRO, with the text of the resolution recorded in a form G1 for special resolutions and</p>	<p>A UK LTD (but not a UK plc) may pass ordinary and special resolutions as written resolutions of its voting members (i.e. shareholders whose shares hold voting rights) without the need for a physical meeting. Ordinary resolutions are passed once a simple majority of voting shareholders have signed the written resolution, and special resolutions are passed once 75% or more of voting shareholders have signed the written resolution, The written resolution should be filed at UKCH and a copy kept with the company’s statutory books. Once a shareholder has signed a written resolution, his/her agreement cannot be revoked. A UK LTD cannot prohibit written resolutions under its articles of association,</p>



Position under the CA 2014	Position under the CA 2006
form G2 for ordinary resolutions.	
<p>7. Summary Approval Procedure (SAP)</p>	
<p>Certain acts of a company are prohibited and can only be undertaken by the company undertaking the SAP. The prohibited activities which can be approved by a company via a SAP are;</p> <ul style="list-style-type: none"> • Financial assistance for acquisitions of a company’s own shares or transactions with its directors (not available for Irish plc’s). • Reducing a company’s issued share capital (not available for Irish plc’s). • Varying a company’s capital on a reorganisation (not available for Irish plc’s). • Following a takeover, applying a company’s pre-acquisition profits or losses in a holding company’s financial statements (e.g. paying out a company’s profits as a dividend payable by the new holding company) (not available for Irish plc’s). • Entering into loans, quasi-loans, guarantees and security to/on behalf of directors. • Mergers of companies (NB. Divisions of companies must be approved by a court). • Commencing a members’ voluntary winding-up of a company. <p>The documentation required for a SAP must include:</p> <ul style="list-style-type: none"> • A directors’ solvency declaration (which does not need to be sworn), declaring that the company will be able to continue to meet its debts and liabilities as they fall due in the 12 month period after the relevant act being approved. The prescribed form of this declaration varies depending on the circumstances. • A special resolution of the members of the company approving the relevant act. • Forms SAP203-SAP206 (depending on the relevant act approved) must be filed at the CRO within 21 days together with the special resolution and solvency declaration in order for the SAP to be valid. 	<p>Generally, a UK LTD is less prohibited in its actions than a LTD or DAC. In comparison to the seven prohibited activities for Irish companies:</p> <ul style="list-style-type: none"> • The CA 2006 abolished any prohibition on financial assistance for acquisitions of a UK LTD’s own shares of transactions with its directors, albeit a UK plc is still prohibited from such action. • A UK LTD can reduce its share capital either by applying to court or by following a “solvency statement” procedure, which is not radically different from a SAP, save that the form of solvency statement is shorter and less prescriptive than a solvency declaration under a SAP. • A UK LTD’s profits can be distributed by a new parent company following a takeover without the need for a process akin to a SAP. • The CA 2006 abolished any prohibition UK companies providing loans to directors or persons connected to directors, which is permissible in the UK provided shareholder approval is first obtained. • UK LTDs do not need to undergo a process akin to a SAP to perform a merger. The merger procedure is in the Enterprise Act 2002. • UK LTDs wishing to undergo a members’ voluntary liquidation (MVL) require a directors’ solvency statement and approval by the members (shareholders) pursuant to a special resolution.



Position under the CA 2014	Position under the CA 2006
<p>It is also advisable to obtain an opinion from an accountant/auditor in support of the giving of the directors' solvency statement. The thought process behind the SAP and the solvency statement should also be carefully documented in board minutes.</p>	
<p>8. Share Capital and Share Buybacks</p>	
<p>A LTD does not need to have an authorised share capital, which can either be unlimited or restricted in its constitution, nor does it need to include specific authorisation in its constitution to be able to reduce its share capital (albeit this would need to be authorised under a SAP), acquire its own shares, sub-divide or consolidate its shares or issue redeemable shares. There is a statutory pre-emption right applicable to any allotment of shares but this can be disapplied by the members by special resolution or in a company's constitution.</p> <p>A DAC is required to have an authorised share capital.</p> <p>A LTD can acquire its own shares, unless otherwise restricted in its constitution, either:</p> <ul style="list-style-type: none"> • Out of its distributable profits or reserves. • From the proceeds of a fresh issue of shares. <p>An Irish company cannot acquire its own shares out of capital nor can it generate additional distributable reserves by reducing its share capital.</p> <p>The share buy-back must be recorded in a contract between the LTD and the selling shareholders, and such contract must be approved by special resolution of the shareholders. There is no need to file a share buy-back contract at the CRO albeit it needs to be made available for inspection by the members (shareholders). Notification of the shareholders' resolution and change in share capital (B7) needs to be filed at the CRO. Stamp duty of 1% will also be payable by the company where the consideration is in excess of €1,000.</p>	<p>A UK company does not need to have an authorised share capital, which can either be unlimited or restricted in its articles of association, nor does it need to include specific authorisation in its articles of association to be able to reduce its share capital, acquire its own shares, sub-divide or consolidate its shares or issue redeemable shares. There is a statutory pre-emption right applicable to any allotment of shares but this can be disapplied by the members by special resolution or in a company's articles of association.</p> <p>A UK LTD must not acquire its own shares, unless:</p> <ul style="list-style-type: none"> • It is for valuable consideration. • In a reduction of capital. • Ordered to do so by the court. • As a result of share forfeiture. <p>A UK Ltd may buy its own shares, subject to any restrictions in the Articles of Association:</p> <ul style="list-style-type: none"> • Out of its distributable profits or reserves (the most popular, quickest and simplest procedure). UK LTD's can generate additional distributable reserves by reducing its capital following the solvency statement procedure. • Out of its own share capital (increasingly less popular as the process is more complex and takes longer). • From the proceeds of a fresh issue of shares. • With cash up to, in any financial year, the lower of £15,000 and the nominal value of 5% of its fully paid share capital (if expressly permitted to do so in its articles of association).



Position under the CA 2014	Position under the CA 2006
	<p>The share buy-back must be recorded in a contract between the UK LTD and the selling shareholders, and such contract must be approved by ordinary resolution of the shareholders. There is no need to file a share buy-back contract at UKCH, albeit the shareholders' resolution and a notification of purchase of own shares (SH03) needs to be filed. Stamp duty of 0.5% will also be payable by the company where the consideration is in excess of £1,000.</p>
<p>9. Charges, Mortgages and Debentures</p>	
<p>For security interests (including mortgages, charges and debentures) created by companies registered in Ireland, the company subject to the charge <i>has a duty</i> to register both particulars of that charge at the CRO (albeit any person interested in the charge may alternatively do so) and any charges over property acquired.</p> <p>A “charge” may include a mortgage, charge or debenture (both written and oral) over any property of a company except for: cash in hand or in a deposit account; shares, bonds or debt instruments; trust units; or claims and rights (e.g. a dividend right).</p> <p>There is an optional two-stage registration process for Irish companies, whereby a company can notify the CRO of an intention to create a charge so as to secure priority before the charge is actually created (provided that charge is then registered within 21 days of its creation) or simply to register a newly created charge within 21 days of its creation.</p> <p>If pursuing a “one-stage” filing there must be filed at the CRO prescribed particulars of the relevant charge on form C1. If pursuing a “two stage” filing forms C1a and C1b must be used, which are virtually identical save that the latter contains the date of the charge created. The forms can only be filed online with a flat fee of €40 payable (payable only once in the case of a “two-stage” filing). A copy of the instrument creating the relevant charge (if any) need not be filed at the CRO.</p> <p>The priority of a charge issued by an Irish company depends on the date of filing of notice of the charge and not the date of creation of the charge. The CRO will</p>	<p>For security interests (including mortgages, charges and debentures, both written and oral) created on or after 6 April 2013 by companies and limited liability partnerships registered in England and Wales, the company subject to the charge or the beneficiary of such security interest (e.g. a bank) <i>may</i> register particulars of that charge at UKCH by filing:</p> <ul style="list-style-type: none"> • A statement of particulars of such security interest (on either forms MR01 or MR08 depending on whether the charge is created by instrument or not (or equivalent forms for LLPs). • A certified copy of the instrument creating or evidencing the charge, if a written charge. • In the case of a charge in respect of which a court order has been made to extend the period allowed for delivery of the relevant statement of particulars, a copy of that court order. • A registration fee of £13 if the particulars are filed by paper, £10 if filed electronically. <p>Any other person interested in the charge may register it at UKCH (including solicitors acting for the lender or borrower). Particulars of a security interest must be filed at UKCH within 21 days beginning with the day after the date of creation of the charge (unless a court order allowing an extended period has been granted). If this does not occur then the security will be rendered void and the creditor would become an unsecured creditor.</p> <p>An existing charge over property acquired by a company may also be registered at UKCH.</p>



Position under the CA 2014	Position under the CA 2006
issue a certificate to the chargor company confirming registration of a charge.	A correctly registered charge is valid in favour of the liquidator , administrator and any creditor of the company that created the charge (although a charge could still be challenged on other grounds, for example, as a preference or transaction at an undervalue). Registration may also give notice of the existence of the charge to third parties and therefore assist in establishing the priority of the charge. UKCH will issue a certificate to the chargor company confirming registration of a charge.
10. Execution of Documents	
An Irish company must execute a document by affixing its common seal, which should either be in the presence of two directors or a director and company secretary or, if the company's constitution specifically permits, one director.	A company may execute a document by affixing its common seal (which it does not have to adopt unless prescribed in its articles of association) or by two authorised signatories (e.g. by two directors or a director and company secretary) or by a single director in the presence of a witness.

Should you have any queries arising out of the foregoing please contact Dorian Rees, or any member of our team, who will be happy to assist.



Dorian Rees

Associate

E: dorianrees@fod.ie

P: 01 6424282

Dublin:

1 Grants Row, Lower Mount Street,
Dublin 2, Ireland

Phone: +353 1 6424220

Fax: +353 1 6618918

Galway:

Unit 23, Galway Technology Centre,
Mervue Business Park, Galway, Ireland

Phone: +353 91 396540

Fax: +353 91 792649