



# Corporate Compliance

Parfrey Murphy Newsletter  
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## The Draft Companies Consolidation Bill

### *An overview of the Bill's Structure and Provisions*

The Company Law Review Group (CLRG) has almost finalised its work on the preparation of the General Scheme of the Heads of the Companies Consolidation Bill. The General Scheme is broken down into two separate Pillars. Under the CLRG's proposals, the law applicable to private companies limited by shares is ringfenced from the law applicable to all other types of company.

#### **Pillar A: The Private Company as the New Model Company**

Pillar A is concerned exclusively with the private company limited by shares. Pillar A represents both a consolidation and a simplification of existing legislative provisions. This is being achieved in part through structural changes to the legislation. The self contained approach proposed for the private company is comprised of 14 separate parts and every provision of company law that is or may be applicable to the private company is to be found in Pillar A, viz:

1. Definitions and Interpretation
2. Incorporation and Registration
3. Shares and Share Capital
4. Corporate Governance
5. Duties of Directors and Others
6. Accounts, Audit and Annual Return
7. Debentures and Charges
8. Receivers
9. Reconstructions and Arrangements
10. Examinership
11. Winding- Up
12. Strike- Off and Restoration

13. Compliance, Investigation and Enforcement
14. Powers and Duties of the Minister and Regulatory and Advisory Bodies

The result of this restructuring is a unified body of legislation, which will be the only provisions of primary legislation in company law with which a private company, its directors, members and creditors need be concerned.

The key features of the private company provided for in Pillar A are:

- It is to be limited by shares and must have a share capital.
- It is to have the same capacity as a natural person i.e. the doctrine of ultra vires will have no application to the private company.
- It is to have a one-document constitution, which will replace the current two- document constitution that is the Memorandum and Articles of Association.
- It is to have a limit of 99 members but there will be a carve-out from this for property management companies that are formed as private companies so that they may have an unlimited number of members, provided they are all co-owners in the same development.
- It cannot publish a prospectus or list its shares or debentures.
- It requires just one director and a company secretary (who may not be the same person).
- It can have just one member.
- Its member (or members) can waive the requirement to hold an AGM.
- Its members can pass a majority written resolution.
- It will be eligible for audit exemption, provided it meets the requirements for availing of the exemption.

Part 2 of Pillar A provides for an elective conversion of existing private companies limited by shares to the new model private company. A default conversion procedure will apply to convert existing private companies limited by shares to the new model regime unless the company in question passes a resolution otherwise, i.e. making it one of the other generic types of company.

### **Pillar B: Other Corporate Form and Miscellaneous Provisions**

The General Scheme envisages that, in addition to the private company, there will be other types of company, viz:

1. The public limited company, or PLC- limited by shares
2. The designated activity company or DAC limited by shares or limited by guarantee having a share capital
3. The Guarantee Company- limited by guarantee and without a share capital
4. The Unlimited Company-private unlimited company with a share capital (ULC) or public unlimited company with a share capital (PUC) or public unlimited company without a share capital (PULC)
5. External Companies
6. Unregistered Companies
7. Investment Companies

The CLRG believes that there are legitimate users of each type of company and that Irish company law should facilitate business and the wider community by making appropriate provision for different types of companies. What is fundamental is a clear delineation and demarcation between the various types of company and the facilitative and regulatory regime applicable to them.

The law applicable to each of these types of company is provided for in Pillar B of the General Scheme, which is comprised of ten Parts, viz:

1. Definitions
2. Public Limited Companies
3. Designated Activity Companies
4. Guarantee Companies
5. Unlimited Companies
6. Re-registration and Conversion
7. External Companies
8. Unregistered Companies
9. Investment Companies
10. Miscellaneous

In terms of architecture, for each Part in Pillar B, the law that applies to the private company (as set out in Pillar A) is expressly applied to the Pillar B-type company, subject to the disapplication of provisions that are not relevant or otherwise inappropriate. Secondly, additional provisions that are not contained in Pillar A (because they are of no relevance to private companies) are set out where they are applicable to a particular Pillar B-type company.

The CLRG expects to report its recommendations to the Minister for Enterprise, Trade and Employment shortly. The draft Bill will contain in excess of 1,500 sections and, on the approval of the Government, will be passed to the Office of the Parliamentary Counsel for legal drafting. Subject to pressures on Parliamentary Counsel, the Bill could be presented to the Oireachtas in early 2008.

Updates in relation to the foregoing are available at [www.cro.ie](http://www.cro.ie)

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