

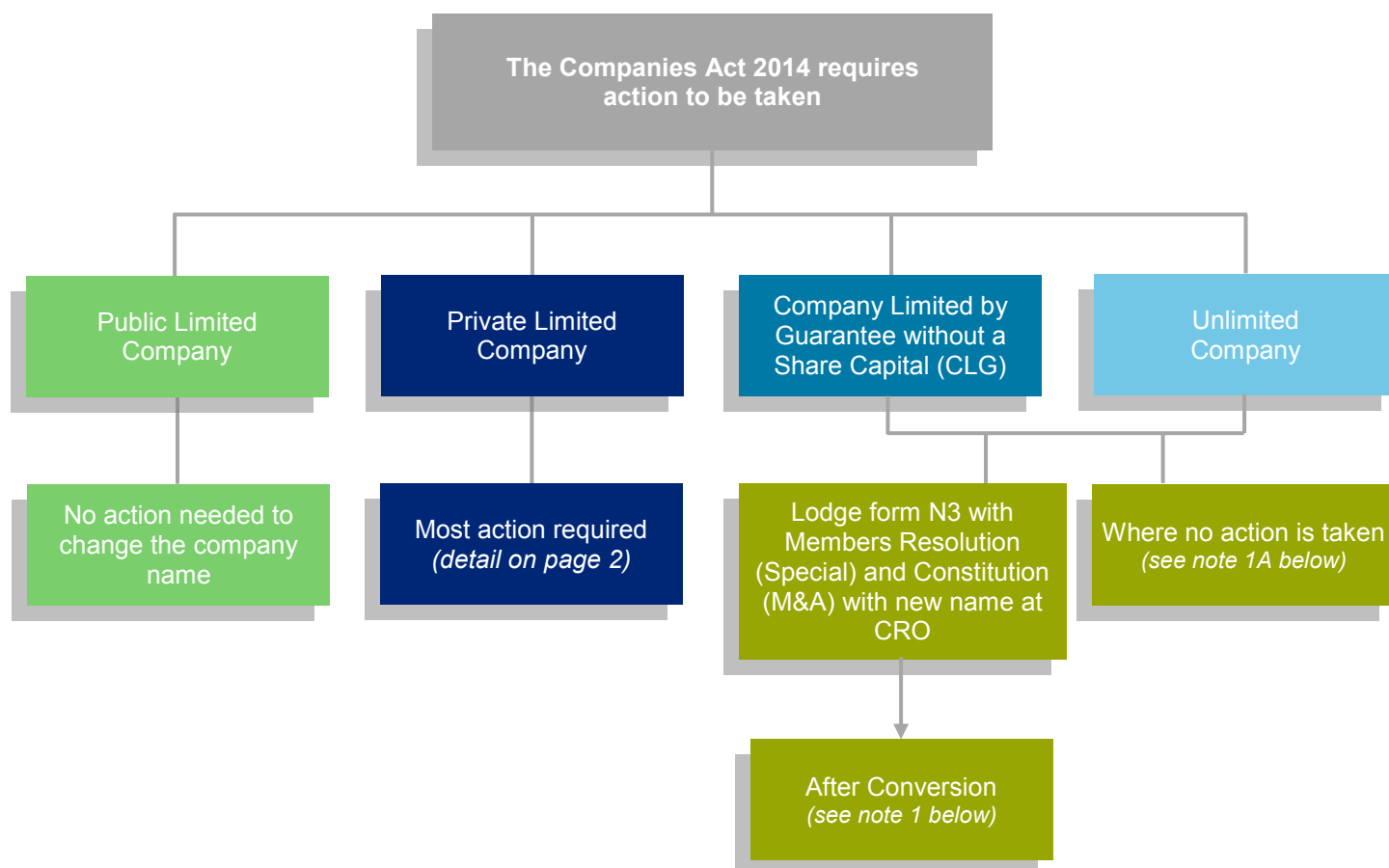


January 2015

## Corporate & Legal

### Your guide to the Companies Act 2014

Commencement expected on 1 June 2015



## CLG & Unlimited

### Note 1

#### After Conversion

The CRO will issue a new Certificate which reflects the company's new name<sup>(i)</sup> being either a Company Limited by Guarantee (CLG), or an Unlimited Company (UC) or their Irish equivalent. Arising from the name change:

- stationery will need to be altered
- registers and share certificates updated
- a new seal obtained
- website and signage updated.

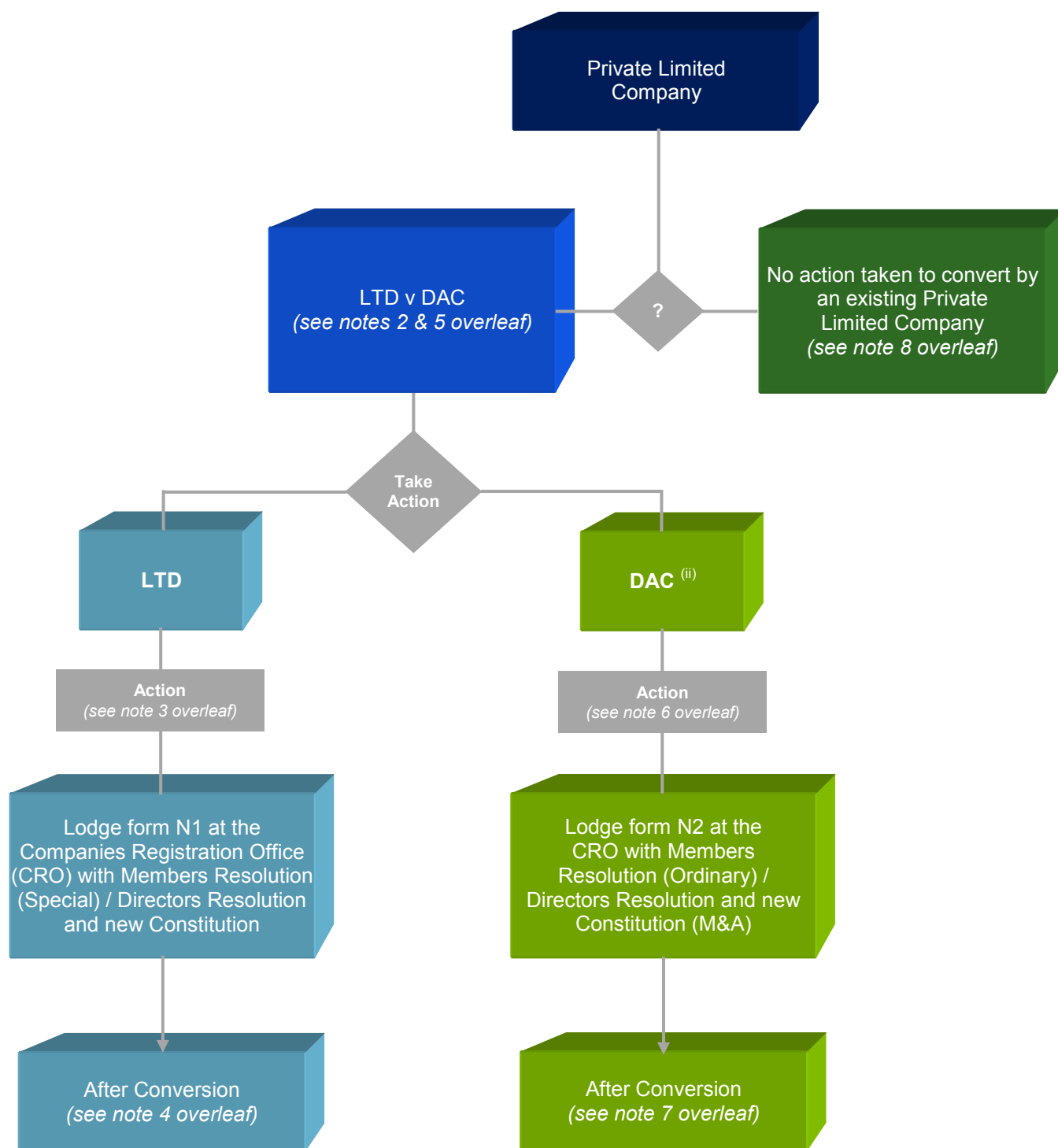
For those companies notifying the CRO of their name change it would be a suitable opportunity to also update the Company's Memorandum and Articles of Association with reference to the new legislation by passing the necessary Members Resolutions and filing the appropriate form.

### Note 1A

#### No Action

Where no action is taken by a company limited by guarantee or an unlimited company the Registrar of Companies will issue a Certificate of Incorporation with the new name.

# Actions for Private Limited Companies



(i) If a licence has been granted by the Minister pursuant the original section 24 of the Companies Act 1963 to allow the company to be exempt from the use of the word limited, this will continue to operate to exempt the company from the use of the words "Company Limited by Guarantee" or "Designated Activity Company".

(ii) A Private Guarantee Company with a Share Capital is obliged to be a DAC.

## LTD - Private Limited Company

### Note 2

#### Why become an LTD?

The decision will be based on whether the Company wants to avail of the provisions in the new Act as outlined below or in certain circumstances an existing private limited company cannot be an LTD (see DAC).

The features of an LTD are:

- one document Constitution;
- no objects clause - full and unlimited capacity;
- ability to have a single director;
- ability to dispense with their AGM - single and multi member;
- elimination of maximum authorised share capital.

### Note 3

#### Action to be taken to become an LTD

- Within the 18 month transition period a company can choose to become a company limited by shares (LTD) by:
  - 1) Passing a special resolution of the members and adopting a new form Constitution in lieu of its existing Memorandum & Articles of Association and delivering this to the CRO.
  - 2) If the members don't take action the directors are obliged to prepare a new form Constitution (derived from its existing M&A less its objects clause and any clause prohibiting alteration to the M&A) and deliver it to the CRO and to the members.
- Option 1 is a better course of action, as Option 2 limits the changes that can be made to the Constitution by the directors.

### Note 4

#### After Conversion

The CRO will issue a new Certificate which reflects that the company is a Company Limited by Shares and the name will end with the word Limited or Ltd or its Irish equivalent.

## DAC - Designated Activity Company

### Note 5

#### Why become a DAC?

Under the legislation the following company types must convert to a DAC:

- licensed bank
- credit institution
- insurance company
- if it lists debt securities on the stock exchange
- Special Purpose Vehicles
- or where requested by its members or funding institution.

Directors could be in breach of their duty to ensure that the new legislation is complied with if they fail to take appropriate action and convert the company to a DAC.

The features of a DAC are:

- retains its objects clause;
- two part Constitution (M&A);
- must have a minimum of two directors;
- can have a single member;
- cannot dispense with their AGM unless it has a single member.

### Note 6

#### Action to be taken to become a DAC

##### *Voluntarily*

Within 0-15 months of the transition period, a company can elect to become a DAC by:

- Passing an Ordinary Resolution to adopt a new form Constitution (M&A) and convert to a DAC. This method is suitable when directors and members are of like mind.

##### *Compulsorily*

- A member holding 25% of voting rights can within the first 15 months of the transition period serve notice in writing on the company to re-register as a DAC before the end of the transition period
- Where re-registration does not take place before the end of the transition period (18 months), a member holding 15% of voting rights or one or more creditors holding 15% of debentures may apply to court directing the Company to be re-registered as a DAC.

### Note 7

#### After Conversion

The CRO will issue a new Certificate which reflects that the company is a Designated Activity Company and the name<sup>(1)</sup> will end with the words Designated Activity Company or DAC or its Irish equivalent. Arising from the name change:

- stationery will need to be altered;
- a new seal obtained;
- registers and share certificates updated;
- website and signage updated.

For those companies who re-register as a DAC but wish to trade under the company's name without the word "DAC" a business name can be registered by the Company.

## No Action

### Note 8

#### What happens when no action is taken by an existing Private Limited Company (LTD)?

During the transition period if a company does not opt in and take action the law which applies to the DAC will be the applicable law. After the transition period the company will be re-registered as Limited by default with restricted M&A.

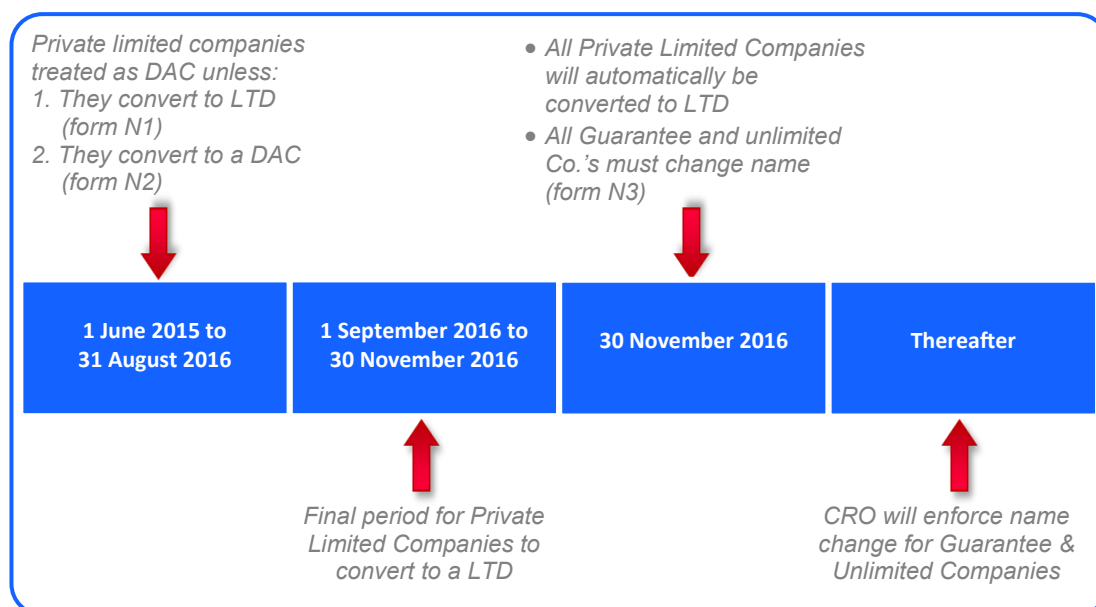
##### *Consequences*

- The company will have a Constitution comprising of its existing Memorandum & Articles of Association (excluding its objects clause and any clause prohibiting alteration to its M&A).
- This new form of company may not suit the Company's requirements.
- Certain creditors / members who would have preferred the company to register as a DAC detailing their objects may take action and challenge the company's legal status in court, claiming prejudice on the basis of directors failure to act.

## Time frame

Commencement is expected on 1 June 2015.

## Sample timeline based on enactment from 1 June 2015



The Companies Bill 2012 was signed by the President on 23 December 2014 and will be known as The Companies Act 2014.

Commencement is expected on 1 June 2015.

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