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Companies Act 2014 – Reorganisations, Acquisitions, Mergers and Divisions

Introduction

The Companies Act 2014 (the "**Act**") which is expected to become operative in June 2015 consolidates Irish company law and is expected to make it easier for companies to do business in and through Ireland. The Act will also have significant implications for corporate restructurings and reorganisations. The Act, in addition to retaining the tried and tested established mechanisms for reorganising companies e.g. schemes of arrangement, will introduce new procedures for the merger and division (within Ireland) of companies of most varieties.

Mergers

Chapter 3 (Mergers) of Part 9 of the Act provides for a statutory procedure allowing two Irish private companies to merge so that the assets and liabilities of one transfer by operation of law to the other after which the former company is dissolved. Chapter 3 has been modelled on the European Communities (Cross-Border Mergers) Regulations 2008 (as amended) which implement Directive 2005/56/EC on cross-border mergers in Ireland.

Chapter 3 permits mergers by acquisition, where one company acquires another by way of merger; mergers by absorption where a wholly owned subsidiary is merged into its parent; and mergers by formation of a new company, where one or more companies transfer their assets and liability to the newly formed company.

Mergers under the Act can be effected by a court order or by using the new summary approval procedure introduced by the Act. This is a new validation procedure involving the passing of a special

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resolution by the shareholders of a company and the swearing by the directors of that company of a statutory declaration of solvency.

Chapter 3, however, has some limitations – it does not apply to public limited companies. Chapter 16 of Part 17 applies where one of the merging companies is a public limited company. Its provisions are similar to Chapter 3 of Part 9 of the Act but the summary approval procedure is not available.

Divisions

Chapter 4 (Divisions) of Part 9 of the Act permits: (i) divisions by acquisition where two or more companies (of which one or more but not all may be a new company) acquire between them all the assets and liabilities of another company that is dissolved without going into liquidation in exchange for the issue to the shareholders of the transferring company of shares in the successor companies (with or without cash payment); and (ii) by formation of new companies (an operation consisting of the same elements as a division by acquisition except that the successor companies have been formed for the purposes of the acquisition of the assets and liabilities).

Chapter 4 (Divisions) Part 9 of the Act has been modelled on the division provisions of the European Communities (Mergers and Division of Companies) Regulations 1997.

Similarly, Chapter 4 has its limitations – none of the companies involved in a Chapter 4 division may be a public limited company and the summary approval procedure cannot be used to approve a division. Chapter 17 of Part 17 applies where one of the companies involved in a division is a public limited company.

Conclusion

Although there are some limitations to the mergers and divisions regimes described above they are, nonetheless, a welcome improvement on the existing methods of reconstruction and reorganisation of companies in Ireland.

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