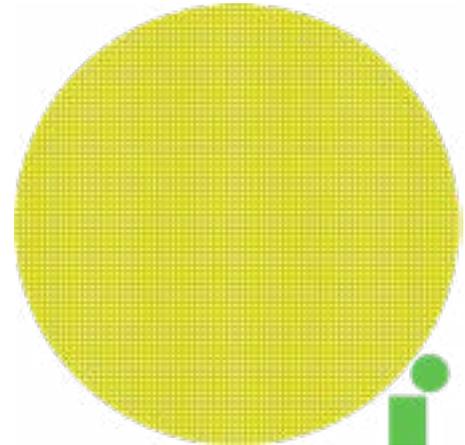


DESIGNATED ACTIVITY COMPANY HAVING A SHARE CAPITAL

FACTSHEET



KEY FEATURES

DESIGNATED ACTIVITY COMPANY HAVING A SHARE CAPITAL (A "DAC" COMPANY)

Key Features	Commentary	Ref. in Act
Governing legislation	Part 16 of the Companies Act 2014 (the "Act")	Part 16
Contractual capacity	A DAC shall have the capacity to do any act or thing stated in the objects set out in its memorandum	s.972(1)
Corporate Governance	Constitution includes a Memorandum and Articles of Association	Sch.7, s.967
Name	Company name must end in the words "Designated Activity Company" or "DAC" or in Irish "Cuideachta Ghníomhaíochta Ainmnithe" or "CGA"	s.969
Liability of members	Limited to the amount, if any, unpaid on the shares registered in the member's name at any time	s.965
Share Capital - Statutory Provisions	Minimum of one share issued	
Members - minimums	1	s.965
Members - maximum	149	s.965
Directors	Minimum of two directors required who must be over 18 and at least one of which is resident in the EEA	s.985
Company Secretary	One needs to be appointed and a director can also act as company secretary	s.129
Resolutions	Resolutions, whether ordinary or special can be passed by majority of members	s.191
Annual General Meeting	Needs to hold an AGM where it has two or more members	s.178
Financial Statements	Can claim audit exemption and dormant company audit exemption	Chap 15 + 16

Is a DAC the right set up for you?

Find out how UHY FDW can assist your business



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TYPICAL USES

A designated activity company having a share capital is typically used:

- Where a company is to be incorporated to complete a specific or sole purpose that for legal reasons wish to have the company's powers restrictions (e.g. a Joint Venture)
- By an existing limited company that falls under the regulations to trade in specified markets (e.g. Financial Regulation) and by companies that have published an offering document and list securities
- By certain trustee companies (for undertaking specific activities) and Special Purpose Vehicle (SPV) Companies
- By companies whose shareholders have a strong preference to be incorporated as a DAC

SOME OF THE ADVANTAGES OF USING A DAC

Legal Personality

- More suitable to those companies who wish to outline a definitive type of business in their constitution rather than have unlimited scope and powers as per a private limited company
- A DAC retains the requirement to have Memorandum & Articles of Association as part of an overall Constitution document and thus the doctrine of Ultra Vires still applies. So, a DAC company will have certain regulations in its constitution, detailing certain objects or articles of association which are not specified in the template LTD company constitution
- Having a separate legal entity means that the company can enter into contracts in its own name
- Can hold property in its own name

- The company can sue and be sued

Liability

- Members have limited liability and are only liable to contribute in the event of a winding up to the amount, if any, unpaid on the shares they hold
- If a creditor sues a DAC and is awarded a sum of money (simple debt or award of damages) then the creditor cannot pursue and enforce the order against the personal assets of the company's members

Perpetual Succession

- Perpetual succession arises by virtue of the company having a separate legal personality
- No transfer of assets is required when a person involved in the company (either as a member or director) leaves and a new person joins

Commercial Funding

- The company can provide a creditor with security over the company's assets without necessarily hindering their use
- The Act permits a DAC to have debentures admitted to trading and this is not possible with a private limited company having shares unless it converts to a DAC
- Additional capital can be raised by issuing more shares to existing shareholders, but not the public at large
- Shares cannot be traded on a stock exchange

Change of Ownership

- Pre-emption rights as to the transfer of shares
- Shares can be bought and sold with directors approval

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SOME OF THE DISADVANTAGES OF USING A DAC

Statutory Obligations

- Annual returns and accounts have to be filed with the Companies Registration Office ("CRO")
- Specific criteria relates to the availing of audit exemption and to a credit institution or insurance undertaking (which are subject to alternative arrangements) or formed for charitable purposes
- All documents filed with the CRO are available for public inspection. In particular filed accounts can then be accessed by the public, media and competitors and this makes it easy to find out information on cost structures, margins, earnings, staff salaries, dividend payments to shareholders and other sensitive financial data and may also give rise to unsolicited correspondence

Costs – Setup and Ongoing

- A DAC is more expensive and time consuming to set up than a sole trader or partnership
- Cost of undertaking statutory requirements can be expensive

Administration

- There is separation of ownership and control which means that the owners (members) no longer make all the decisions
- Statutory requirements such as those regarding the passing of resolutions can be cumbersome, time consuming and expensive.
- A DAC company still needs to have a company secretary.
- A DAC needs to have an annual general meeting if it has more than one member

