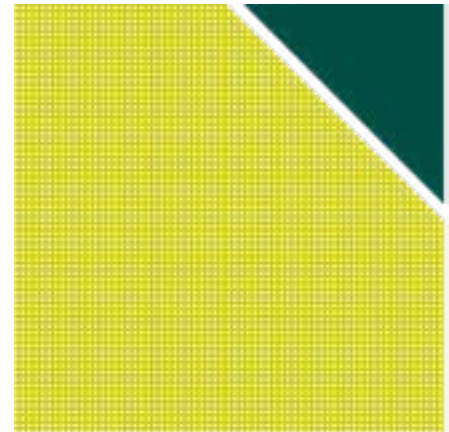


# PRIVATE UNLIMITED COMPANY HAVING A SHARE CAPITAL

## FACTSHEET



### KEY FEATURES

#### PRIVATE UNLIMITED COMPANY HAVING A SHARE CAPITAL (A "ULC" COMPANY)

Key Features	Commentary	Ref. in Act
Governing legislation	Part 19 of the Companies Act 2014 (the "Act")	Part 19
Contractual capacity	A ULC shall have the capacity to do any act or thing stated in the objects set out in its memorandum	s.1239
Corporate Governance	Constitution includes a Memorandum and Articles of Association	s.1233 Sch.11
Name	Company name must end with the words "Unlimited Company" or "ULC" or in Irish "Cuideachta Neamhtheoranta" or "CN")	S.1228
Liability of members	Member of a ULC are liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories amongst themselves	s.1278
Share Capital - Statutory Provisions	Minimum of 1	s.1233(3)(a)
Members - minimums	1	
Members - maximum	None	
Directors	Minimum of two directors required who must be over 18 and at least one of which is resident in the EEA	s.1257
Company Secretary	Needs to have a minimum of one company secretary	s.149
Resolutions	Ordinary Resolutions by simple majority, Special Resolutions 75% or more of members	s.191
Annual General Meeting	Single member companies can dispense with need for an AGM, but otherwise one needs to be held every year	s.191, s.1262
Financial Statements	Can claim audit exemption and dormant company audit exemption	

# Is a ULC the right set up for you?

Find out how UHY FDW can assist your business



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## TYPICAL USES

An unlimited company can be either a private (a "ULC") or public ("PULC") company and whilst a ULC must have a share capital, a PULC can have a share capital or not.

- Most commonly chosen when the owners/managers do not wish to publicly file financial statements with the Company Registration Office
- Ideal corporate vehicle where creditor confidence is important and the fact that members/ shareholders share are liable for a company's debts means it is perceived that it is less likely to become insolvent
- There is a general understanding that unlimited companies have a better standard of practices when it comes to executive management and that the business model focuses on minimising risk
- Easier corporate vehicle to return capital to members
- Dividends can be paid as long as a company has funds regardless of its net accumulated profit less realised losses position

## SOME OF THE ADVANTAGES OF USING A ULC

### Legal Personality

- A ULC 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
- 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

### 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
- Creditors can take comfort that the members are joint and severally liable for the company's debts
- Additional capital can be raised by issuing more shares to existing members

### Dividends and Distributions

- A company can make distributions providing it has funds to do so and thus does not have to comply with the provisions of section 117 of the Act as to having distributable profits
- A ULC can reduce its share capital, subject to the terms of its Constitution, by passing a Special Resolution as well as extinguishing or reducing any liability on any of its shares

## SOME OF THE DISADVANTAGES OF USING A ULC

### Liability

- Members have unlimited liability and are liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories amongst

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- themselves
- Creditors can pursue the assets of a member if the ULC's assets are insufficient to meet any claims
- Any liability for creditor claims falls on the person that is registered as a member and not necessarily the beneficial owner of any shares
- Former members can be liable for debts for up to 12 months after ceasing to be a member

## Statutory Obligations

- Unless a company is classified as a Designated ULC it does not have to file Audited annual returns and accounts have to be filed with the Companies Registration Office ("CRO") unless it is 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 ULC is more expensive and time consuming to set up than a sole trader or partnership

## 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 ULC company still needs to have a company secretary, and the company secretary cannot be same person as the director, if the company has only one director
- A ULC needs to have an annual general meeting if it has more than one member

