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we start where other accountants finish

in this issue...

tax briefs page 3 • central bank regulations page 4
business briefs page 5 • credit guarantee scheme/foreign exchange page 6
legal briefs page 7 • right to renew a commercial lease page 8

COMPANIES ACT 2014

The genesis of this new Act, which is the largest in the history of the State, can be traced back to the establishment of the Company Law Review Group (CLRG) in 2000. The CLRG was mandated to make recommendations on the updating, consolidation and simplification of company law in Ireland to bring it to world class standards.

This was achieved by shifting the emphasis of company law away from Public Limited Companies and on to the workhorse of Irish commercial life, the Private Company Limited By Shares. It was further achieved by a re-ordering of existing law into a more logical and user friendly format, along with the introduction of a number of common sense innovations.

The most frequent comment made is that this Act is 'old wine in a new bottle'. Accordingly, existing company law knowledge is not entirely lost, but rather re-packaged and made easier to access.

The company types under CA 2014 are as follows;

LTD – New model private company
DAC – Designated Activity Company
PLC – Public Limited Company
CLG – Company Limited By Guarantee
PUC – Public Unlimited Company
PULC – Public Unlimited Company w/out share cap.
ULC – Private Unlimited Company
SE – Societas Europaea
External Companies
Unregistered Companies
Investment Companies
Joint Stock Companies

CONTINUED OVERLEAF



COMPANIES ACT 2014

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As such the 1,448 Sections of CA2014 has been constructed so that the legislation relating to each company type can be found in one location in the Act. Parts 1-15 relate to 'Ltd' companies

Key Features of new model Private Company Limited by Shares (LTD)

This simplified company type is expected to be the corporate form which the vast majority of Irish companies will take either on incorporation or by way of conversion. The key features are as follows:

- ➔ 1 to 149 Shareholders (up from a maximum of 99)
- ➔ May have just one Director (but must have a separate Company Secretary)
- ➔ Must have a Company Secretary (may not be sole director)
- ➔ Shareholder(s) only liable for unpaid portion of share capital
- ➔ Name must end in 'Limited' or 'Teoranta'
- ➔ No main objects clause (rule of Ultra Vires is gone)
- ➔ May register any person who can 'bind' the company, in the CRO
- ➔ Must have company seal
- ➔ Cannot list any securities (inc. debt securities)
- ➔ May become Audit Exempt/Dormant
- ➔ Can dispense with the holding of physical AGM
- ➔ 'Majority' written resolutions permitted (but with 7/21 day cooling off period)

May dispense with having a specified Authorised Share Capital

Key Features of Designated Activity Company (DAC)

Despite being a 'new' company type, the DAC will closely resemble a Private Company Limited by Shares as registered under the Companies Acts 1963 to 2013.

- ➔ 1 – 149 members/shareholders
- ➔ Can be limited by shares or by guarantee
- ➔ It will have a two document constitution very similar to a Memorandum & Articles of Association
- ➔ Must have TWO Directors
- ➔ May become Audit Exempt/Dormant
- ➔ Can dispense with holding of physical AGM ONLY where there is a sole member/shareholder
- ➔ May list debt securities

Existing companies which are envisaged as becoming DACs would include trustee companies, Joint Venture companies, charities, companies limited by guarantee having a share capital and companies which are incorporated for a specific purpose for which the shareholders want the capacity of the company to be clearly stated. Also, companies which have heavily negotiated Articles of Association are unlikely to want to go through the process again.

Conversion of existing private companies to either LTD or DAC during Transition Period

Once the Act has been commenced on 1st June 2015, there will be an 18 Month 'Transition Period' during which existing companies will have to decide on which form they wish to take i.e. either LTD or DAC.

Where Shareholders do NOT engage with this process and actively convert, there is then an obligation on the Directors to take action. They must prepare a minimal new form constitution, circulate it to the shareholders for consideration and then file in CRO with the relevant Form N1.

CRO will then issue a new Certificate of Incorporation. Failure to do this will leave the Directors in default of their general obligations to keep their company compliant with company law.

VERY IMPORTANT NOTE:

Where Directors/Shareholders are not pro-active in completing the conversion process to either LTD or DAC their company will automatically 'convert' to the new form LTD at the end of the transition period.

However, it is strongly recommended that companies do not allow this to happen for the following reasons.

Because of the deeming provisions of CA 2014 their governing instrument as filed at the CRO (*their previous Memorandum & Articles of Association*) will become practically unintelligible as a stand-alone document.

Apart from being poor corporate governance this may impact the subject company's dealings with its own shareholders, with banks, potential investors, Enterprise Boards and any other third parties.

Directors may be exposed where shareholders have been prejudiced by inaction.

Companies wishing to become 'single Director' must convert to being a LTD.

Accordingly, companies would be well advised to address this issue as quickly as possible. We will continue with part 2 of this article in the next issue.

Companies Registration Office up-date on Accounts etc.

The CRO have issued a statement which sets out how they will be dealing with various issues relating to accounts and annual returns in the run up to June 1st and thereafter. In the case of filing accounts practitioners have the choice of filing under the Companies Acts 1963-2013 OR the Companies Act, 2014, depending on when the subject company's financial year end has occurred and when the financial statements have actually been signed.

For further details please see the CRO's Website under the heading 'Whats New 2015'

www.cro.ie/About-CRO/Contact-Us/Whats-New

sean@formations.ie



Tax Tip

If you think you may be entitled to a tax refund, why not send in your return early and obtain your refund now!!!

VAT ADJUSTMENTS

Taxpayers are reminded that from 1 January 2014, where a VAT input credit has been claimed on an invoice but the invoice remains unpaid after six months, a VAT adjustment is required to be made in respect of that input credit. Where an adjustment is made and the person subsequently pays the full consideration or part thereof, a corresponding re-adjustment should be made. In exceptional circumstances where there are genuine commercial reasons for not having paid the consideration and Revenue are satisfied with these reasons, no adjustment is required.

CARE OF INCAPACITATED INDIVIDUALS

The maximum relief available to a person who employs a carer to take care of an incapacitated individual has been increased from €50,000 to €75,000 from 1 January 2015. Tax relief is provided by way of a deduction at the individual's marginal rate of tax where the individual employs a person to take care of either:

Himself/herself or his or her spouse who is totally incapacitated by reason of physical or mental infirmity or a relative of the individual or of the individual's spouse who is totally incapacitated by reason of physical or mental infirmity.

RENT A ROOM RELIEF

From 1 January 2015, individuals can earn up to €12,000 per annum tax free by renting a room or rooms in his or her home. Once the tax free threshold of €12,000 is exceeded all of the income becomes taxable. Revenue recently clarified that the provision of accommodation to occasional visitors for short periods of time does not qualify for the relief as the visitor is using the accommodation as guest accommodation as opposed to residential accommodation. Revenue also noted that Rent a Room relief can apply in the case of letting to students.

REVENUE FOCUS ON EMPLOYMENT PRACTICES - 2015

It has come to our attention that Revenue intend to focus on employment practices in 2015. This is relevant for all employers. Some of the areas of focus will include:

- The maintenance of a Register of Employees
- The tax treatment of expense payments, specifically tax-free reimbursement of expenses to employees and directors
- The calculation and treatment of Benefits-in-Kind.

Should you wish to discuss any of these areas please contact us.

PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

INCOME TAX

Filing date of 2014 return of income (self-assessed individuals)	31 October 2015
Pay preliminary income tax for 2015 (self-assessed individuals)	31 October 2015

CAPITAL GAINS TAX

Payment of Capital Gains Tax for the disposal of assets. Made from 1 January 2015 to 30 November 2015	15 December 2015
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CORPORATION TAX

Filing date for Corporation Tax returns for accounting periods ending in August 2014	21 May 2015
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BALANCING PAYMENT OF CORPORATION TAX

for accounting periods ending in August 2014	21 May 2015
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VAT IMPLICATIONS OF SELLING A PROPERTY

Recent improvements in the property market have been strongly welcomed. If you are expecting to dispose of a property it is important that you know the VAT implications of same in advance of agreeing a sales price. A lack of awareness can have a negative effect on your cashflow. Please contact us for advice in this regard.



CENTRAL BANK REGULATIONS ON RESIDENTIAL MORTGAGE LENDING FOR FINANCIAL SERVICES PROVIDERS

THE CENTRAL BANK OF IRELAND ANNOUNCED ON 27 JANUARY 2015 THE INTRODUCTION OF NEW REGULATIONS WHICH WILL APPLY PROPORTIONATE LIMITS TO MORTGAGE LENDING BY REGULATED FINANCIAL SERVICES PROVIDERS IN THE IRISH MARKET. THE KEY OBJECTIVE OF THESE REGULATIONS IS TO REDUCE THE RISK OF BANK CREDIT AND HOUSE PRICE SPIRALS FROM DEVELOPING IN THE FUTURE.

THE MEASURES INTRODUCE PROPORTIONATE LIMITS FOR LOAN TO VALUE AND LOAN TO INCOME MEASUREMENTS FOR BOTH PRIMARY DWELLING HOUSES AND BUY TO LET MORTGAGES.

LOAN TO VALUE (LTV) FOR PRINCIPAL DWELLING HOUSES (PDH)

There are different limits for different categories of buyers:

- PDH mortgages for **non-first** time buyers are subject to a limit of 80 per cent LTV.
- For **first time buyers** of properties valued up to €220,000, a maximum LTV of 90 per cent will apply. For first time buyers of properties over €220,000 a 90 per cent limit will apply on the first €220,000 value of a property and an 80 per cent limit will apply on any excess value over this amount.
- For each financial service provider, the cumulative monetary value of loans for principal dwelling purposes which breach either of these limits should not exceed 15 per cent of the euro value of all PDH loans on an annual basis.

Housing loans for borrowers in **negative equity** who wish to obtain a mortgage for a new property are **not within the scope** of the LTV limits.

LOAN TO VALUE (LTV) FOR BUY TO LET MORTGAGES (BTLs)

- BTL mortgages are subject to a limit of 70 per cent LTV.
- For each financial service provider this limit can be exceeded by no more than 10 per cent of the euro value of all housing loans for non PDH purposes during an annual period.

LOAN TO INCOME (LTI) FOR PDH MORTGAGES

- PDH mortgage loans are subject to a lending limit of 3.5 times loan to the applicant's gross income.
- For each financial service provider this limit should not be exceeded by more than 20 per cent of the euro value of all housing loans for PDH purposes during an annual period.

The Regulations do not apply to:

- Switcher Mortgages (remortgaging from one lender to another)
- Housing loans entered into for the purposes of addressing any arrears.



Twitter Article

Can Twitter actually help my business or is it a total waste of my time? This is a question that is getting asked a lot these days. Twitter is essentially a micro-blogging platform that has a 140-character limit for its tweets. To answer this question, you must first look at the type of business you run and the value both you and your customers would potentially derive from using it.

We see Irish brands like AerLingus and Ryanair doing a killer job on Twitter right now but they are blessed with a huge customer base. The majority of people are getting in touch with small problems and complaints but due to the lightening-quick manner of both question and reply, they can be seen to deal with enquiries in an efficient manner. Basically, short of being able to text Michael O'Leary, this is your next best option!

You will be able to connect with your customers because they themselves are using Twitter. It has become a daily routine where people log onto it every single day, some log onto twitter the first thing they wake up even before brushing their teeth. If you have an unsatisfied customer you will hear them on Twitter. This will help your company to help them. Of course, this has a positive knock on effect to both your branding and marketing efforts.

Finally, the Twitter search function is an amazing way to see what people are saying about your products or services. You can use the reply function to engage with these people which is a form of constructive promotion.

Ultimately, this new-age level of support will build a brand loyalty and once you've engaged with and helped your customers (followers), they will be loyal to your brand.



SME bank lending rates increase in Q1 2015

The latest Irish Small and Medium Enterprises Association (ISME) Quarterly Bank Watch Survey reveals bank lending rates to small businesses increased in the first quarter of 2015.

It's the fourth successive quarter of improvement in SME success rates for bank loan applications. The survey also noted that demand for credit has remained high among the small business community with 43 per cent seeking finance.

Less than a third (32 per cent) of Irish SME's applying for funding in the last three months were refused credit by their banks – an improvement on the 38 per cent refusal rate experienced in the previous quarter.

Almost half (47 per cent) of respondents go to banks they've been customers of for more than 20 years, with informal applications increasing from 75 per cent to 81 per cent in Q1 2015.

State Pension... What State Pension?

In 2001 the National Pensions Reserve Fund was established to fund the highly publicised pensions time bomb that ticks on and on and on with no real constructive solution in sight. It was to have 1% of the GNP alongside the proceeds from the Eircom flotation to fund the rising cost of the State Pension from 2025*. Assets totalled €25bn at its peak, more recently estimated at €20bn. These assets now form part of the Ireland Strategic Investment Fund with a changed mandate from the National Pensions Reserve Fund.

Despite the perception, the €230.30 per week Irish State Pension is one of the higher levels within the EU (4th in fact) but is ranked at a very low level in terms of its long term sustainability. So what does all of this mean, or should you ask?

STATE PENSION

Changes in the qualification for the State Pension will now make it more difficult to qualify for the full entitlement. This is one step in addressing sustainability and one further step in pushing the responsibility back on each individual to fund for their own retirement. Under the new requirements, those with fewer years' service will end up with decreased entitlements.

WHO DOES IT AFFECT

The changes will affect a large cohort however, it is easy to see that women in particular who tend to take time out of their careers for childcare are obviously disadvantaged.

NUMBER OF YEARS PAYING PRSI	PERSONAL RATE PER WEEK PRE 2012	PERSONAL RATE PER WEEK POST 2012
48 or over	€ 230.30	€ 230.30
40-47	€ 225.80	€ 225.80
30-39	€ 225.80	€ 207.00
20-29	€ 225.80	€ 196.00
15-19	€ 172.70	€ 150.00
10-14	€ 115.20	€ 92.00

Source: www.citicensinformation.ie

THE TAKE AWAY MESSAGE

Relying on the State Pension alone is no longer feasible as who knows what further changes lie around the corner.

*Source: Annual Report National Pensions Reserve Fund 2004

CHANGES TO CREDIT GUARANTEE SCHEME

Changes have been announced to the Credit Guarantee Scheme which will help more small and medium sized enterprises (SMEs) secure finance.

The Government's Credit Guarantee Scheme was set up in 2012, with the aim of helping viable businesses who have been refused conventional bank credit facilities.

The Scheme enables the Government to go guarantor (up to 75%) for an SMEs loan, that has growth and job creation potential. Since its launch, the Scheme has helped 156 businesses with loans of approximately €20m backed by guarantee, creating 649 jobs and maintaining a further 333. Until recently the Scheme was only available to businesses applying for new loans and was not available to companies who wished to move loans from a bank which is exiting the Irish market.

The changes announced recently are to open this Scheme to assist more small and medium sized enterprises to get loan finance.

The two main changes are:

- Allowing the Scheme to consider refinancing loans where an SME's bank is exiting the Irish credit market.

- Extending the maximum length of the guarantee from three to seven years.

The Scheme aims to provide credit to job-creating SMEs who currently struggle to get Finance from the banks. It is intended to address market failure affecting commercially viable businesses in two specific situations – namely, where businesses have insufficient collateral, and where businesses operate in sectors with which the banks are not familiar.

The Credit Guarantee Scheme provides a 75% guarantee to banks against losses on qualifying loan facilities.

Bank of Ireland, AIB and Ulster Bank are participating lenders.

The borrower pays a 2% annual premium, which partially covers the cost of providing the guarantee.

Businesses seeking to avail of the Credit Guarantee Scheme can approach a participating bank to find out more.

FOREIGN EXCHANGE HOW TO PROTECT YOURSELF IN VOLATILE TIMES

FOREIGN EXCHANGE - RISK MANAGEMENT

The Irish economy generates foreign exchange (FX) flows of approximately €200Bn every year from the import and export of goods and services in addition to financial flows. Volatility in the FX markets is an ever present challenge to financial managers and business owners who are trying to minimise the impact that movements in FX rates can have on their core business. EUR/USD was trading at 1.40 back in May 2014 with the current market rate at 1.09 representing a 22% drop in value for the euro and similarly EUR/GBP has moved from 0.80 in November 2014 to the current level of 0.71 which is an 11% move lower for the euro. This recent volatility in FX rates demonstrates the need for companies to put in place a foreign exchange hedging strategy.

An effective and flexible hedging strategy can achieve the dual aim of protecting the bottom line while giving the business the opportunity to benefit from an improved exchange rate environment in the event it becomes achievable throughout the year. The reality is that nobody can predict where the market will be in 3, 6 or 9 months time but we can examine current conditions, weigh up how these factors will evolve over the coming months and make informed decisions based on these considerations

WHAT TOOLS CAN YOU USE TO MANAGE YOUR FX RISK

Spot

Spot contracts are suitable for those who need to buy or sell a currency quickly, and need to make payments to suppliers or convert sales proceeds immediately. Price and speed of delivery are the most important factors to consider.

Forwards

This type of contract allows you to book an exchange rate for a specified date in the future. Forward contracts are a useful hedging tool that allow you to lock in a rate now for a transaction at a later date, providing certainty as to the Euro equivalent of your income or expenditure. This allows you to protect your business against adverse movements in the currency markets.

Options

Typically an option is a contract that gives you the right, but not the obligation to exchange money at a pre-agreed exchange rate on a future date. However, for the extra flexibility that foreign exchange options can provide, there is a cost to purchase these contracts in the form of an up-front premium.

ORDERS

Limit Orders

Orders can be left out in the market, allowing you to target an exchange rate that is better than what is currently available. When the target rate is reached, you will automatically buy or sell the currency required. These can be useful if you have specific currency requirements but are not restricted by tight deadlines.

Stop loss order

A stop loss order allows you to set a minimum or 'worst case' exchange rate at which you will buy or sell your currency. It is put in place to ensure that, should rates move against you, you have a safeguard in place to protect against further disimprovement beyond your 'worst case' rate.

www.moneycorp.com/ireland

WORKPLACE RELATIONS COMMISSION

The Workplace Relations Bill ("the Bill") aims to streamline the existing framework for the resolution of complaints under employment legislation and industrial relations complaints and disputes. The aim of the Bill is to create a modern, user friendly employment workplace relations system and resolve workplace disputes in a more timely manner.

The functions currently fulfilled by the Labour Relations Commission, the National Employment Rights Authority, the Equality Tribunal and the first instance functions of the Employment Appeals Tribunal, will amalgamate into a single body to be known as the Workplace Relations Commission (the "WRC"). The new system will consist of the WRC (to deal with workplace complaints in the first instance) and the Labour Court to deal with all cases on appeal from the WRC.

An Early Resolution Service will deal with less complex disputes between employees and employers. The Bill provides for the provision of a mediation service to facilitate the resolution of disputes, allowing parties to enter into legally binding and enforceable agreements.

The Bill introduces a common procedure for the presentation of complaints under employment rights legislation. Broadly speaking, a dispute must be referred within six months and this period can be extended by a further period of six months if the failure to present the complaint during the first 6 month period was due to "reasonable cause". Proceedings will be conducted in private before an Adjudication Officer. An appeal from the decision of an Adjudication Officer can be made to the Labour Court (except in the case of complaints under the Equal Status Acts where the appeal goes directly to the Circuit Court) and must be brought within 42 days of the date on which the decision was given to the party. Appeals to the Labour Court will be held in public. A determination of the Labour Court may be appealed to the High Court on a point of law only. It will be interesting to see how claims will be processed and managed under the new regime.

It is likely that there will be more emphasis on filing pre-hearing submissions which will hopefully give rise to a more efficient and effective resolution service, in the interests of both employees and employers. The Bill is expected to be passed into law early this year.



CONSTRUCTION CONTRACTS ACT 2013

The Construction Contracts Act 2013 (the Act) was enacted by the Oireachtas in July 2013, but it has not yet come into force. The commencement of the Act is expected in the coming months and is widely welcomed by the construction industry. The Act aims to improve cash flow within the construction industry by introducing a new payment regime and a new fast track statutory dispute resolution mechanism of adjudication.

The Act will apply to all construction contracts entered into after commencement of the Act. Contracting parties cannot limit or contract out of the provisions of the Act. A construction contract is broadly defined for the purposes of the Act and includes traditional building contracts and agreements in relation to ancillary services, such as maintenance, architectural, design or surveying work and interior and exterior decorating appointments. Certain contracts are excluded, for example, those of a value less than €10,000 and contracts for works on residential dwellings, unless the property has a floor area in excess of 200m².

Contractual conditions that provide that payment or timing of payment is conditional on the making of a payment by a third party is prohibited by the Act. The prohibition on "pay when paid" clauses is a fundamental protection of the new legislation and one which is particularly important for subcontractors and those parties lower down the contractual chain. Accordingly, even if a party higher up the contractual chain, such as the main contractor, has not been paid, this cannot be used as the basis for refusing to pay a sub-contractor, except where the party further up the contractual chain is insolvent.

The Act introduces a new concept of a payment claim notice. Where a payment claim notice is submitted and the amount is contested by the main contractor, the main contractor has twenty-one days to respond, setting out the amount that it proposes to pay and the reason why it differs from the amount claimed in the payment claim notice. Sub-contractors under the Act will also have a statutory entitlement to suspend work when payment has been withheld for work which has been completed. The suspension cannot continue once the dispute relating to payment, in respect of which the suspension relates, has already been referred to adjudication.

Under the new statutory dispute resolution procedure of adjudication, a party is entitled to refer any dispute relating to payment to adjudication at any time. The parties may agree to appoint an adjudicator of their own choice or from the panel of adjudicators to be established under the Act. Failing agreement, the adjudicator shall be appointed by the chair of the Panel.

Whilst some in the industry have complained that the legislation has come too late to save many players, there is little doubt that this Act will be hugely important in providing crucial protection to many in the industry.

CHARITIES REGULATORY AUTHORITY & REGISTER OF CHARITIES

The Charities Regulatory Authority ("CRA") is the national statutory regulatory agency for charitable organisations. It was established on the 16 October 2014 under the terms of the Charities Act 2009 ("the Act").

The purpose of the CRA is to regulate the charity sector in the public interest. In fulfilling this function, the role of the CRA is as follows:

- to register all charities operating in Ireland;
- to monitor the compliance of registered charities with their obligations under the Act;
- to ensure accountability of charities to donors, beneficiaries and the public;
- to carry out investigations of charities;
- to promote good practice in charity management and administration;
- to provide public information about the charity sector; and
- to increase public trust and confidence in the charity sector.

One of the first priorities of the CRA was to establish the Charities Register. When first published, the Register contained only the names and addresses (and in some cases the charitable purposes) of charities

that were automatically registered with the CRA when it was established because they were already recognised as charities for taxation purposes by the Revenue Commissioners. Registration is vitally important as it is an offence for unregistered charities to carry on charitable activities in Ireland.

As it is envisaged that the Charities Register will be the first port of call for potential donors in terms of donation due diligence, it is advisable for charities to prepare comprehensive and detailed material to be included on the Charities Register. At this stage all recognised registered charities should have received a letter from the CRA inviting them to provide further information to be included on the Charities Register. There is no deadline for this further information but charities are encouraged to act promptly following receipt of the letter.

All registered charities are now required to make an annual report to the CRA not later than ten months after the end of the financial year to which the report relates. The annual return date will be issued by the CRA based on the financial year end date advised by the charity. The reputation of the charity sector has been severely damaged by recent revelations and it is hoped the creation of the CRA and the Charities Register will go some way to making the sector more transparent and rebuilding public confidence.



RIGHT TO RENEW A COMMERCIAL LEASE

In Ireland, the landlord and tenant relationship used to be governed by two principal pieces of legislation - the landlord and tenant (amendment) Act 1980 as amended by the 1994 Act. Since 2008, these Acts have been amended further by Section 47 of the Civil Law (Miscellaneous Provisions) Act, 2008.

For tenants, particular reliefs are available under the 1980/1994 Acts, most importantly, the right to renew a commercial lease. This article aims to provide a commercial tenant with important information about the changes that have occurred in this area of law since 2008 with the Civil Law (Miscellaneous provisions) Act and to be aware of contracting out of your statutory rights.

Section 16 of the 1980 Act provides that where Part II of the 1980 Act applies to a tenancy, the tenant shall be entitled to a new tenancy, commencing on the termination of the previous one, subject to proving any one of the following "equities";

Business equity under Section 13(1) (a), as amended by Section 3 of the 1994 Act - if the tenant has continuously occupied the premises for 5 years.

Long possession equity under Section 13(1) (b) - the tenant is required to be twenty years in possession.

Improvements equity under Section 13(1) (c) - if the tenant is entitled to compensation for improvements and the said improvements amount to half or more than half of the letting value of the tenement when the notice of intention to claim relief is served, then the tenant has an improvements equity.

The three different types of equities are important as they will determine what type of new tenancy a commercial tenant is entitled to claim. For example, the business equity, once established (i.e. in occupancy for more than 5 years) means a new tenancy will be fixed at 20 years or such lesser sum as the tenant chooses. If on the other hand the equity is based on long possession or improvements, then a tenant can claim a

thirty five year lease or such lesser sum as the tenant so chooses. The new tenancy will commence on the termination of the previous tenancy.

Up until 1994, contracting out of a tenant's right to renew was not something that could be done. However since the 1994 Act, this has changed when it comes to tenants who are renting *office space* (note here this right to "contract out" was not available to industrial and retail tenants) and where there is evidence in writing of a tenant's renunciation of this right, this is sufficient to prevent a tenant getting a renewal when the time comes to this statutory right to be invoked.

Then in 2008, under the Civil Law (Miscellaneous provisions) Act, Section 47 now extended the type of business that can now contract out of their entitlement to renew their tenancy, after 5 years to *all business tenants* who have a tenancy pursuant to Section 13(1) (a) of the 1980 Act.

More and more frequently where a business owner is entering into a short term business letting arrangement, a landlord requires that prospective tenant to execute a deed of renunciation at the same time of the execution of the short term business letting agreement. The **deed of renunciation**, once signed by a tenant, means that their right of renewal under the 1980/1994 Acts has been lost.

It would appear that tenants, who have a tenancy pursuant to long possession or improvements as outlined above, do not qualify under Section 47 of the 2008 Act and as such are not able to contract out of their rights to renew. This reason alone we would advise you to be very careful to get expert advice from your solicitor prior to entering into a commercial lease and certainly before you renounce away your statutory rights.

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