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# LEGAL UPDATE

Winter 2015

**W**e are looking forward to 2015 with a bit more positivity on the economic front but with a heavy heart after the recent events in Paris. Ireland’s blasphemy laws are thrown into the spotlight by the tragedy. The potential for abuse of such a law is now clear. Given the fact that most religions believe other religions to be wrong or in some cases offensive to their beliefs opens the door for this legislation to be used as a tool for extremists to attempt to control freedom of expression. Let’s hope the govern-

ment agrees to review the constitutional position as they line up the referendum on Marriage Equality.



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## Company Law

### Company law is braced for drastic changes under new legislation

The company law regime in Ireland is set for a complete overhaul with the coming into force of the Companies Bill later this year.

The new legislation will consolidate the multiple pieces of legislation currently in force and endeavour to simplify this complex area of law.

Company directors are advised to familiarise themselves with the new Act and the fundamental

changes that it is set to introduce.

Once the legislation comes into force, all limited companies will be required to convert into a new company type and obtain a re-issued certificate of incorporation.

The default company form will be a simplified new private company known as an "LTD". It will have one constitution instead of a separate Memorandum and Articles of Association. The LTD will also not be required to have an objects clause to limit the company's activity.

The main alternative to an LTD is a Designated Activity Company ("DAC") which closely resembles the current private company form, with two sets of constitution documents and an objects clause.

Current companies will be able to convert to an LTD once the legislation is enacted. Companies will have a period of 18 months from this date to decide whether they wish to be converted into a LTD or apply to register as a DAC.

If a private company limited by shares does not take any action over the 18 month period then it will be deemed to have become an LTD automatically and have a new deemed constitution.

It is anticipated that the vast majority of companies will convert to the new LTD regime. The benefits of the new regime include the need for only one director, the ability to dispense with an AGM, and no limiting objects clause.

## Consumer Law

### Buildings with Pyrite – Who pays?

Estimates vary as to the extent of private dwellings affected by pyrite. Some put this figure at over 1,000. If it is discovered, the cost can become a real headache: then

the blame game clicks in. A consumer might well feel aggrieved if after purchasing a dwelling they find themselves having to deal with a problem that they were completely unaware of and may cost them thousands. Thankfully the Government recognised the extent of the problem and the necessity to have the situation remedied. They approved Exchequer funding for a pyrite remediation

scheme to be implemented under the auspices of the Pyrite Resolution Board (PRB).

While the State is neither culpable nor liable for the pyrite problem, it nevertheless took responsibility to provide solutions for homeowners whose homes, through no fault of their own, have been significantly damaged by pyritic heave and who have been left with no viable means of redress following the withdrawal of cover for pyrite damage by HomeBond in the summer of 2011.

In many instances the builders of these dwellings are long gone so the Government scheme steps in but in more recently constructed buildings, a civil action might be available. Assuming the contractor builds on land owned by the homeowner, then the builder if he introduced the pyrite could be sued under the Defective Products Act, 1991; the consumer could also sue the supplier of the pyrite.



## Employment Law

Woman discriminated against over maternity leave receives €80,000 in compensation

A woman has been awarded €80,000 by the Equality Tribunal against her former employer as a result of discrimination suffered by her relating to maternity leave.

The decision serves as a reminder to employers of the importance of being aware of what is expected of them under equality legislation, as the awards given by the Equality Tribunal can be substantial.

In this instance, the woman had taken a case on the basis that she was ‘frozen out’ by her Managing Director upon informing him that she was pregnant for the third time.

She was subjected to disparaging and inappropriate remarks, and when she did return after maternity leave she was informed that her position no longer existed and was offered a lesser role.

This was notwithstanding the fact that her replacement while she was on maternity leave continued to perform the woman’s former duties.

The claimant refused to take the lesser role, a refusal which was interpreted as a resignation by her former employer.

The Tribunal found that she had been unlawfully discriminated

against on the grounds of family status and gender and made the award of €80,000 as compensation for the distress suffered.

If you are an employer, it is important to ensure that policies are in place to ensure compliance with the Equal Status Act and Employment Equality Act. Failure to do so can leave you vulnerable to a claim before the Equality Tribunal.

Having an effective policy and training programme in place can reduce this risk by ensuring staff are aware of their responsibilities, as well as having an appropriate grievance procedure in place for staff who feel they are subjected to discrimination.

## Family Law

Concealed assets by former husband result in massive pay out

Divorce proceedings can often be bitterly contested, especially in cases where a party has under declared their income or hidden assets in order to keep the benefit from their spouse.

Such circumstances can arise where one party has supervised the family finances and the other

may be at a disadvantage as regards their knowledge of their former partner’s wealth.

The Supreme Court recently considered this in the case of AA v AB, a situation where a husband deliberately concealed from his former wife four assets with a total value of over €5 million.

The man’s conduct was described as ‘consciously and deliberately dishonest’ by the Court and it was ordered that the man pay his former wife a further €2.5 million over the divorce settlement.

Full and frank disclosure of assets is essential to the success of any divorce or separation agreement. Failure to do so may result in the marriage settlement being set aside if the dishonesty is uncovered, and the offending party may find themselves prosecuted for perjury.



## Unmarried fathers and the right to guardianship

The position of an unmarried father in Ireland is considered by many to be a precarious one which leaves the parent with no automatic rights to guardianship or access to his child.

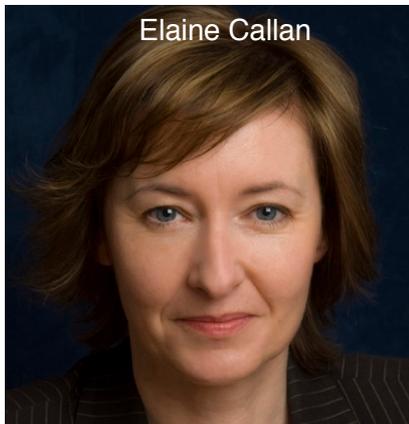
However, such rights can be obtained through either agreement with the mother or by way of a Court Order.

An unmarried father can be appointed as a guardian over his child if the mother consents and if the couple complete a statutory declaration which confirms the consent, the fact that they are unmarried and that arrangements regarding custody and access to the child have been put in place.

If the mother refuses to consent to this, the father may make an application to the Court to be appointed as a guardian, and for other ancillary rights such as custody and access.

In all such applications, the court will hear from both parents and base its decision on what is in the best interest of the child.

It is important to note that informal arrangements entered into by unmarried parents regarding access may not be legally enforceable. Should the couple wish to make their agreement legally binding, the written terms may be brought before a Judge to be made a Court



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