



COMPANIES ACT 2014

An Information Sheet for the Community and Voluntary Sector

New information in bold

The Companies Act 2014 commenced on June 1st 2015

Companies Limited by Guarantee (CLG)

Overview

A company is an association of people formed for the purpose of some business or undertaking carried on in the name of the group.

A company is a separate legal entity and exists separately or independently of its members. There are various types of companies, but the type of company most commonly used by charities is 'the company limited by guarantee and not having a share capital', now referred to as a Company Limited by Guarantee (CLG).

It may be appropriate to establish a company where some or all of the following apply:

- The unincorporated association has grown in size and organisational activity;
- The organization is to be quite large;
- It will employ staff;
- It will regularly enter into contracts; and
- It will be an owner of freehold or leasehold land or other property.

Legal Requirements

The law governing the requirements of companies is the Companies Acts 2014 and applies generally to all forms of companies, including charitable companies. The body responsible for overseeing the operation of the Companies Acts 2014 is the Companies Registration Office.

The Companies Registration Office is responsible for ensuring that applications for registration as a company comply with the requirements of the Companies Acts 2014 which include making annual returns, (Statutory Forms B1) and the submission of annual accounts.

A Company Limited by Guarantee is required to have a minimum of one member. There is no maximum amount of members for a Company Limited by Guarantee and having no share capital. A Company Limited by Guarantee is required to have a minimum of two Directors.

Please note that the Charities Regulatory Authority requires a corporate charity to have three unrelated Directors.

The Revenue Commissioners requires a corporate charity to have three unrelated Directors and three members.

The basic requirements which apply to charities incorporated under the Companies Acts are:

- To keep a register of members and directors. **From June 1st 2015, all directors of companies must be over the age of eighteen**
- To keep minutes of all meetings
- To hold an annual general meeting within 18 months of incorporation and at least every 15 months thereafter (With an AGM to be held in every calendar year)
- To file an annual return (Statutory Form B1) to the Companies Registration Office within 28 days of the company's Annual Return Date. **From June 1st 2015 there have been a number of changes to the B1 Form (Annual Return)- Please see [Annual Return](#) for more information.**
- To notify the Companies Office of any special resolutions and of any changes to the Memorandum and Articles of Association
- To notify the Companies Office of any changes in the directors, secretary, the auditors or the registered office within 14 days of the changes and of any change in the name
- To keep proper accounts and submit audited accounts with the annual return (Statutory Form B1).
- Charities must comply with the regulations of the Charities Act 2009 in respect of the Audit of Financial Statements
- To keep minutes of all meetings

Constitution

The Constitution of the Company Limited by Guarantee incorporates the Memorandum and Articles of Association combined in one document. This document is the governing instrument of the company.

The Memorandum of Association sets out the objects of the company and the Articles of Association set out the rules and regulations of the company.

The Memorandum of Association must state the following:

- The name of the company
- Its aims and objectives -which must fall under one of the primary [charitable purposes](#) of the Charities Act 2009 for a corporate charity
- The limited liability clause-this states that the liability of the members is limited
- The capital clause- stating the amount they have undertaken to contribute to the assets of the company in the event it is wound up, typically €1
- The association clause- where the founding members declare that they wish to form a company

The Articles of Association are the regulations by which a company can be governed and managed and set out the internal management of the company and the particular areas covered will include:

- Members of the company
- Annual general meeting and extraordinary general meetings
- Board of directors
- Appointment and removal of the directors
- Meeting of the directors
- Chairperson/vice-chairperson/company secretary
- Minutes of meeting
- Company seal
- Accounts and audits

There are also specific clauses relating to income & property that must be contained in your Constitution if you want to be a registered charity. These clauses are available in the [Common Requirements](#) document at www.charitiesregulatoryauthority.ie.

The Charities Regulator has also produced a [Model Constitution for Companies Limited by Guarantee](#). This Constitution has been agreed with the Revenue Commissioners and will be suitable for an organisation which will also wish to seek charitable tax exemption status. It incorporates all the required clauses.

Any changes to the Constitution of a charitable company must be approved by the Charities Regulator, AND if the company has charitable tax exemption be approved by Revenue BEFORE amending same and filing with CRO. You must also ensure that you are also following your own Constitutions guidelines.

Directors Duties

See [Office of Director of Corporate Enforcement- Company Directors](#) for more information

The Companies Act 2014 states the responsibilities of Directors:

- Act in good faith
- Act honestly and responsibly
- Act in accordance with company constitution
- Not use company property for personal or third party benefit without approval
- Not fetter judgement unless in best interest of company
- Avoid conflicts of interest
- Exercise due care, skill and diligence
- A director may have regard to the interests of a member who has appointed

The Company Secretary

See [ODCE-The Company Secretary](#) for more information

The Companies Act 2014 states that every company **must** have a company secretary & the Act reaffirms the significance of the role and duties of the company secretary.

A Company Secretary is someone who carries out administrative and legal duties for the company. Usually, the directors appoint the Company Secretary. A Company Secretary can be either a person or a company that specialises in providing such services.

The legal Duties of the Company Secretary:

- Co-signing the annual return to the CRO with one of the directors of the company:
- Maintaining the statutory registers,
- Certify that the financial statements attached to the annual return are true copies of the originals
- Prepare an accurate statement of the company's assets and liabilities (what it owns and what it owes) if the company goes into liquidation or receivership

The Company Secretary may also hold important administrative responsibilities for the company including:

- Maintaining the company's registers
- Arranging the company's annual general meeting (AGM)
- Organising meetings of the board and its sub-committees

- Sending updated information and documents on time to the Companies Registration Office (CRO) and other relevant bodies;
- Keeping custody of the company seal

In smaller corporate charities this role is typically highly supported by senior staff. It is also important to note that the **administrative duties** outlined may be shared with another person.

Registering a Company Limited by Guarantee

- Develop the Constitution - see above for further information for a corporate charity
- Complete a [Form A1](#)
- Submit the documents with the registration fee to the Companies Registration Office.

Transition Period - Companies Act 2014

A Company Limited by Guarantee and not having a share capital (and using the term LTD) **which was in existence before the commencement of the Act on June 1st 2015**

- **From June 1st 2015** will be a Company Limited by Guarantee (CLG)
- At the end of the transition period, 30th November 2016, the company must use the CLG designation. If the company had an exemption from using the "LTD" designation this will continue to apply to the CLG designation
- An existing charitable company may still apply for the exemption
- The Companies Registration Office (CRO) will issue a new certificate of incorporation at this time
- The CRO will refer to the governing document as the Constitution

The Wheel recommends that existing charitable companies review their Constitutions and ensure that they remain fit for purpose in light of this substantial legislative change.

**Any changes to the Constitution of a charitable company must be approved by the Charities Regulator;
AND if the company has charitable tax exemption be approved by Revenue BEFORE amending and filing with CRO.**

You must also ensure that you are also following your own Constitutions guidelines.

Please see the [Companies Registration Office](#) and [Office of the Director of Corporate Enforcement](#) for more information

This information Sheet was prepared from publically available sources with the support of



APPENDIX 1: SUMMARY OF SOME KEY DIFFERENCES BETWEEN COMMONLY CONFUSED TERMS:

Members

- Have the right to attend and vote at General Meetings.
- Liability is limited to the amount of their guarantee to contribute to the company's assets in a winding up.
- Less responsibilities, obligations and duties than Directors.

Directors

- Elected by the Members.
- Look after the day-to-day management of the business of the company.
- There must be a minimum of two Directors (3 for charitable company)
- Subject to limited exception at least one Director must be Irish resident.
- A Director can be a member. However, there is no requirement for a Director to be a member.
- Numerous legal responsibilities and obligations attach to the post of Director.
- Directors owe duties to the company and to any employees, Members and creditors of the company.

Member Meeting

- A meeting of the Members of the company.
- With the exception of the AGM, the holding of member's meetings is at the discretion of the company.
- Can take the form of an AGM or EGM (see next table).
- Members voice their opinions and wishes.
- Members formally provided with certain company information.

Board Meeting

- A meeting of the Directors of the company.
- Usually more frequent than Members meetings.
- Must take place in order to make particular decisions.
- The Directors make the ongoing decisions of the company at board meetings.

Annual General Meeting (AGM)

- All Members of the company are entitled to attend.
- Required to be held in each calendar year (with no more than 15 months elapsing between AGM's).
- At an AGM, a company will generally consider ordinary business, such as:
 - the financial statements;
 - the Directors' report and the Auditor's report;
 - the election of persons as Directors in the place of those retiring;
 - the re-appointment of the outgoing Auditors or the appointment of new Auditors and the fixing of Auditors' remuneration;
 - Other business, such as the amendment of the memorandum or articles of association of the company, is known as special business.

Extraordinary General Meeting (EGM)

- Any meeting of the company which is not an AGM is known as an EGM.
- Directors may generally call an EGM where they see fit.
- Directors are obliged to convene an EGM in certain circumstances.

with acknowledgement to the Citizens Information Board