

The Company Limited by Guarantee (“CLG”)

COMPANIES ACT 2014

The Companies Act 2014 (the “**Act**”) came into effect on 1 June 2015 and has introduced significant reforms in company law in Ireland.

The Act consolidates previous legislation on companies limited by guarantee not having a share capital (the “**CLG**”) although the previous law remains substantially the same. Although rare in practice, an existing guarantee company with a share capital will become a designated activity company limited by guarantee and not a CLG. This briefing deals exclusively with CLGs. See the separate McCann FitzGerald briefing on designated activity companies.

Key Features

- A CLG is a company limited by guarantee and which does not have a share capital.
- An existing guarantee company with no share capital is deemed to be a CLG on commencement of the Act.
- Unless exempted, an existing guarantee company will be required to change its name at the end of the transition period (ending on 30 November 2016) so that it ends in “company limited by guarantee.”
- Much of the law relating to a private company limited by shares will apply to a CLG subject to some important disapplications and additional provisions.
- A CLG can avail of an audit exemption but any one member may object to same.
- A CLG may have as few as a single member and no maximum number of members but the constitution of the CLG must specify the number of member(s) with which it is to be registered.
- The CLG has a single-document constitution, incorporating a memorandum of association and articles of association.
- The memorandum of association must set out the objects of the CLG and the CLG will have the capacity to do any act or thing stated in the objects.
- A CLG requires at least two directors.
- The AGM may be dispensed with if a CLG has a single member.

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Introduction

A company limited by guarantee is a company which does not have a share capital and the constitution of which provides that the liability of its members is limited to such amount as the members may, in the constitution, respectively undertake to contribute to the assets of the CLG in the event of it being wound up.

The users of these types of company include charities, sports and social clubs and management companies. Their key distinguishing feature is the absence of a share capital so that their members are not shareholders and do not have a distinct economic interest in their capital.

A person ceases to be a member of a CLG on death or bankruptcy but subject thereto the constitution of a CLG might provide for membership to be transferable. Each member usually has only one vote. A CLG may have certain debentures listed on an exchange.

A CLG which enjoys a charity exemption from the Revenue Commissioners (the “Revenue”) will also need to comply with those requirements as well as the Charities Act 2009.

The law applicable to the private company limited by shares (the “LTD”) will apply to a CLG save to the extent that provisions relating to an LTD are disapplied, modified or supplemented by Part 18 of the Act.

The Multi-Unit Developments Act 2011 may be relevant to certain CLGs and the 2011 Act has specific requirements which are not referenced in the Act.

Constitution

The constitution of a CLG must accord with the form set out in the Act and comprise of a memorandum of association and articles of association.

Memorandum of Association

The memorandum of association must state that the CLG is limited by guarantee and that the liability of the members of the CLG is limited to the amount specified in the memorandum as the amount which he or she undertakes to pay in the event that the CLG is wound up.

The memorandum must also set out the objects of the CLG and the CLG will have the capacity to do any act or thing stated in the objects (this extends to certain acts or things that appear to it to be advantageous or incidental to attaining the objects and which are not inconsistent with any enactment).

Articles of Association

The articles of association of a CLG may simply state that the provisions of the Act apply. Alternatively, a CLG may exclude or modify the application of optional provisions contained in the Act. In the event that the articles do not contain an express exclusion, the optional provisions contained will apply to the CLG. Subject to the requirements of the Act, the CLG can amend its articles of association by special resolution. Existing articles of association (using default rules in the Companies Act 1963) can continue to be used provided those provisions do not conflict with the mandatory provisions in the Act.

The CLG’s Name

The name of a CLG must end with the words “company limited by guarantee”, or “cuideachta faoi theorainn ráthaíochta”. The words “company limited by guarantee” may be abbreviated to “c.l.g.” or “clg”, and the words “cuideachta faoi theorainn ráthaíochta” may be abbreviated to “c.t.r.” or “ctr”, in any usage after a company’s registration.

A CLG may acquire an exemption from the requirement to include such a suffix at the end of its name if its objects are the promotion of, *inter alia*, religion, education or charity, it is not-for-profit and it completes the necessary application to the CRO. In practice, many companies seeking an exemption from the requirement to include the equivalent “limited” suffix required under the previous Companies Acts will also apply for charity status with the Revenue. Revenue require such applicants to contain certain provisions in their memorandum and articles of association.

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Capacity

The Act provides that the validity of an act done by a CLG will not be compromised by virtue of anything contained within its objects. The doctrine of constructive notice has also been removed so that a third party is not bound to enquire as to whether the CLG is acting within its objects. Consequently, persons dealing with a CLG will not be prejudiced in circumstances in which the CLG acts beyond the scope of its objects. A CLG may not be formed unless it carries on an activity in the State that is mentioned in its memorandum.

Corporate Governance

Directors

A CLG must have at least two directors (every director aged at least 18 years, one EEA-resident) and a person may not have more than twenty-five (25) directorships in CLGs or other types of Irish company (subject to certain group-related exceptions). One of these directors will be permitted to be the company secretary.

Unless its constitution provides otherwise, the remuneration (if any) of directors of a CLG must be determined in general meeting by its members. The Charities Act 2009 (and Revenue rules currently) restricts the ability of charities to pay directors.

Proceedings of Directors

Unless the constitution of a CLG provides otherwise a director of a CLG (i) may not vote in respect of any contract, appointment or arrangement in which he or she is interested and shall not be counted in the quorum, (ii) may not hold any such position in conjunction with his or her office of director and (iii) must retire by rotation.

Members

Unless its constitution provides otherwise, a CLG can avail of powers in the Act to pass unanimous resolutions of members instead of holding physical meetings. A CLG with two or more members may not dispense with the requirement to hold an Annual General Meeting.

A CLG cannot use the majority members written resolution and can, in its constitution, remove the right of members to appoint proxies.

Other

Compliance statements may be required to be prepared by a CLG if certain financial thresholds¹ are met (see McCann FitzGerald Briefing on Directors’ Compliance Statements).

If a CLG has debentures traded on a market a corporate governance statement is required annually (to outline which corporate governance code applies, whether the CLG complies with the requirements of the code, what internal controls and risk policies are in place, etc).

The summary approval procedure can be used by a CLG (See McCann FitzGerald Briefing on Summary Approval Procedure).

For more detail on corporate governance topics applicable to a CLG please read the McCann FitzGerald Briefings on Members’ Meetings and Directors’ Meeting.

Auditing, Financial Statements and Accountability

Audit Exemption

A CLG will now benefit from an audit exemption vis-à-vis its financial accounts (subject to certain modifications²). This reverses the previous position whereby guarantee companies did not qualify for this exemption. Any one member of a CLG may object and require an audit to be performed pursuant to the Act.

¹ Some provisions of the Act will not apply to a company until its first financial year beginning on or after 1 June 2015. These provisions include the obligation to prepare a Directors’ Compliance Statement.

² A CLG acting as a credit institution or insurance undertaking may not benefit from the audit exemption.

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Filing of Financial Statements

A CLG which is formed for charitable purposes may be exempted from filing financial statements in the companies registrations office (the “CRO”) although an auditor’s report will be required (save where the audit exemption is availed of). Filings may be required to be made with the Charities Regulator.

Disclosure Obligations

The provisions of the Act, which deal with financial statements, annual return and audit, will not apply to a CLG which is a credit institution or insurance undertaking that is subject to alternative requirements.

Re-Registration as, and by, a CLG

For the first time in Irish company law it is possible for any other company type to re-register as a CLG and for a CLG to re-register into any other company type.

Transitional Provisions

During the transition period (ending on 30 November 2016), an existing guarantee company can use the word “limited” or “ltd” in its name but, at the end of that period, must comply with the new requirement that its name end in “company limited by guarantee” unless it has or can claim an exemption.

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Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.

This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting or refraining to act on any of the matters discussed.

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