

Charities Regulation and Compliance

Implications for Community and Voluntary Groups

Leitrim Development Company

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AGENDA

- Implications of the Companies Act 2014
- Legal duties of Directors and Company Secretaries
- Implications of charities regulation for annual reporting, fundraising, grant applications and financial accounting
- Information required to register as a charity and make annual returns to the CRA
- Circumstances in which a voluntary group may have to register as a lobbyist

Introductions

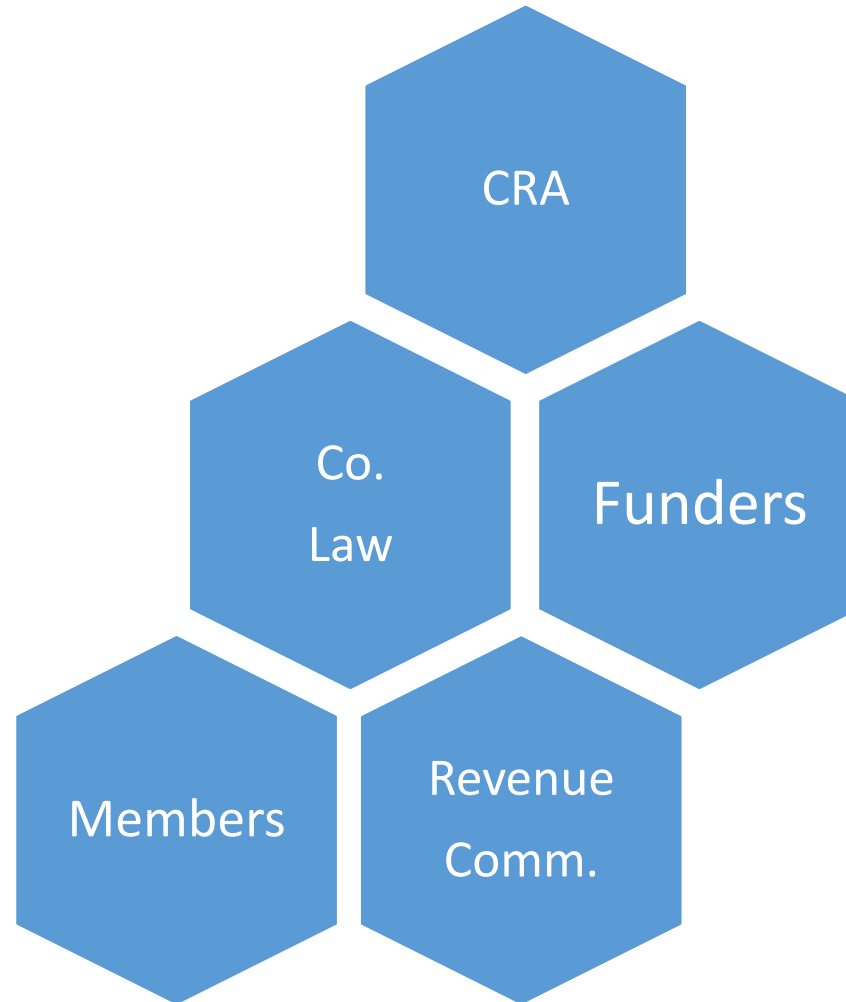


- Welcome! What are you especially interested in learning about this evening?

Company Law in Context



Other factors to consider ...



Companies Directors

Duties of Directors under the Act:

- Act in good faith in what the director considers to be the interests of the company
- Act honestly and responsibly in relation to the conduct of the affairs of the company
- act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law

Companies Directors

Duties of Directors under the Act:

- Not use the company's property, information or opportunities for his or her own or anyone else's benefit unless – permitted by constitution or approved by company resolution in general meeting
- Not agree to restrict the director's power to exercise an independent judgment
- Avoid any conflict between the director's duties to the company and the director's other (including personal) interests

Companies Directors

Duties of Directors under the Act:

- Exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—
 - (i) the knowledge and experience that may reasonably be expected of a person in the same position as the director; and
 - (ii) the knowledge and experience which the director has
- Have regard to the interests of its members (and employees in general)

Companies Directors

Required to:

- Disclose Personal Information: name etc.
- Disclose interests in contracts or proposed contracts
- Keep Financial Records and arrange audits unless exempted
- Report to Members – each financial year

Companies Directors

Required to:

- Hold Meetings: AGM each year, 21 days notice
- Record Minutes of Meetings
- Keep Registers (Members, Directors, Interests)
- Comply with Filing Obligations: Annual Returns to CRO, changes in office address or directors and company secretary, details of charges/mortgages on the company's property and repayment of same

Company Secretary

- Directors must ensure that the Company Secretary has the skills necessary to carry out their role.
- Question:
Who can act as a company secretary?

The Company Secretary

Legal Duties of the Company Secretary - CLG:

- Complete, sign and send the company's annual return to the CRO
- 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 if the company goes into liquidation or receivership

The Company Secretary

Typical Administrative Duties of the Company Secretary:

- Maintaining director personal details: name, address, etc.
- Maintaining the company's registers (and available to the public)
- Sending documents to the CRO and publishing legal notices in media
- Organising the logistics of board meetings and arranging AGM/EGM
- Preparing meeting minutes and holding company seal
- Providing directors with legal and administrative support

The Companies Act 2014 – CLG Compliance

- Name change from “Ltd.” to “CLG”. Name must include CLG. Exemption-Registrar of Companies accepts a CLG meets the criteria of a non-profit:
 - The constitution must state that the objects will be the promotion of commerce, art, science, education, religion or charity. And:
 - The profits of the company (if any) or other income are required to be applied to the promotion of the objects;
 - Payment of dividends/distributions to its members are prohibited
 - All assets which would otherwise be available to its members are required to be transferred on its winding up to another company whose objects are the promotion of commerce, art, science, religion or charity.

The Companies Act 2014 – CLG Compliance

- Transition period – from June 1st 2015 for 18 months
- Name change from “Ltd.” to “CLG” will impact on stationery, publications, letterheads, contracts, cheque books etc. These documents must be changed once the new certificate of incorporation is issued. Electronic issue.
- Can have 1 member and no upper limit, but must still have 2 directors
- Revenue Commissioners (CHY) still require a minimum of 7 members and 3 directors and certain clauses as per existing Memorandum to be met. Minimum of 3 members & trustees for new charity registrations required by CRA & CHY.
- Constitution made up of a Memorandum and Articles of Association
- Existing companies should submit form N3 to CRO with amended constitution, otherwise name deemed to have been changed at end of the 18 month period – November 30th 2016.

The Companies Act 2014 – CLG Compliance

- CLG will continue to have an objects clause (which explains the company's principle activity and purpose)
- No Table C, but 87 statutory default provisions will apply to its internal administration, unless the constitution provides otherwise. Companies should check their existing Memorandum & Articles of Association to see if any statutory default provisions conflict with existing company rules/articles.
- Obligation to prepare a Directors' Compliance Statement where both the balance sheet is > €12.5m and turnover is > €25 million
- AGMs are optional for CLGs which have only one member

The Companies Act 2014 – CLG Compliance

- Any new director or company secretary should sign a statement acknowledging that they have legal duties and obligations
- Audit exemption now available subject to thresholds. Satisfy 2 or more of the following criteria in the current or preceding financial year:
 - Turnover < €8.8 million and/or
 - Balance Sheet total < €4.4. million and/or
 - Average number of employees < 50

BUT all members must agree to the audit exemption! Also check Charity Regulatory Authority and Funding Agency requirements for audited accounts
- De facto and shadow directors are bound by director duties too!

Existing CLG – What Happens Next?

- Name change
- Amending the Memo and Arts – Sample Constitution
- Obtaining new Certificate of Incorporation
- Updating documentation (if relevant)

Charities - Implications of Freely Available Information

- Register accessible – available to donors, funders and the media
- Greater levels of transparency required from charities – explain what the numbers mean!
- A greater need to communicate clearly the benefits arising from the work of charities
- Check out www.benefacts.ie



Charities Regulation – Important Dates

- April 16th, 2016
 - Existing Charities with CHY: update profile & make return online
 - New Charities: register online
 - Existing Charities no CHY: simplified process for organisations with turnover below €10,000 per annum
- Annual Reports due within 10 months of the end of a charities financial year.



Making Returns on the CRA website

- The Charities Regulatory Authority has prepared a guide to updating profiles and making annual returns on its website.



Type of Profile Information Required by Regulator

- Details of Directors, Officers and Trustees (min. 3 trustees, unrelated, unpaid)
- Where you operate
- Bank account details
- Charitable purpose
- Fundraising details (policy details for registrants)
- If working with vulnerable people (health, safety, risk assessment)
- Governing document/constitution with specific clauses/articles
- Activities: of public benefit, beneficiaries, employee numbers, volunteer numbers, codes signed up to
- Financial accounts (audited over €100,000 – watch out for SORP recommendation?)

Regulation of Lobbying Act 2015

- Who needs to register?
- You are carrying on lobbying activities.
- The person being lobbied is a Designated Public Official.
- You are making a relevant communication.
- That communication is about a relevant matter.
- That communication is not an excepted communication.

Use the Three Step Test!

Returns – Three Times per Year

- Reporting Periods and Deadlines:
 - 1 September – 31 December: Return made by 21 January
 - 1 January – 30 April: Return made by 21 May
 - 1 May – 31 August: Return made by 21 September

Details Required for Returns

- Names of those lobbied
- Subject matter of lobbying and the intended result of the lobbying
- Type and extent of lobbying activity
- Name of any person in your organisation who is or was a designated official and carried out lobbying activity
- If relevant – client information

Review

- What actions does your organisation need to take arising from this evening's discussion?

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