

COMPANIES ACT 2014

TEMPLATE CONSTITUTION FOR A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

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Acknowledgements

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Disclaimer

The Template Constitution and guidance included herein is for information purposes only and does not purport in any way to be legal or other professional advice and is in no way to be construed as or considered a substitute for legal or other professional advice. All readers are recommended to seek legal and professional advice in relation to their individual organisations.

The contents of this document have been developed to assist entities in incorporating a Company Limited by Guarantee and Not Having a Share Capital ("CLG") and to assist those CLGs already established with considerations regarding updating their existing memorandum and articles of association to comply with the Companies Act 2014. Readers are advised that the Template Constitution and guidance contained herein is generic and may not be suitable for your specific organisation. All documentation should be tailored to the relevant circumstances, processes and procedures of your own organisation.

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All entities wishing to act as charitable organisations must apply to be registered with the Charities Regulator. In addition, many but not all organisations with a CLG company model also have or wish to obtain charitable exemption status from the Revenue Commissioners. There are specific requirements and provisions that must be met and reflected in the constitution in order to satisfy the Charities Regulator and the Revenue Commissioners. The template highlights key requirements for constitutions of companies with charitable tax exemptions and is expected to be updated with further information from the Charities Regulator when available. Every application to the Charities Regulator and the Revenue Commissioners for approval will be judged in the context of its individual circumstances and no assurance is given that a constitution in the form of the template will be automatically approved.

Introduction

The Irish Companies Act 2014 (the “Companies Act”) has brought in a comprehensive overhaul and consolidation of company law in Ireland. The Act will impact on the form of the Constitution (which is made up of the memorandum and articles of association) of all CLGs (the most common company model used by non-profit organisations) and other types of companies. The Companies Act sets out detailed structural and governance requirements and, through consolidation of requirements previously contained in memoranda and articles of association into the Companies Act itself, has removed the need for a “full set” of articles.

The Companies Act has also introduced the concept of “mandatory” and “optional” provisions, which allows companies the ability to tailor certain portions of their constitution to their relevant needs. The mandatory provisions will apply to the company whether or not they are stated in the company’s constitution. The optional provisions will apply “save to the extent that the constitution provides otherwise”. In other words, unless the company’s constitution excludes the statutory default provisions, they will be deemed to apply.

For companies in existence prior to the implementation of the Companies Act, the Companies Act should be considered as an impetus to review, revise and possibly replace your existing memorandum and articles of association to ensure it is up to date and compliant with the requirements of the Companies Act. If you do not update your documents and they are in conflict with the Companies Act after 30 November 2016, the laws of the Companies Act will take precedence over your documents to the extent they are mandatory provisions. As such, it is better to ensure that your documents are up to date rather than find out after the fact that you were working off of incorrect information.

Carmichael Centre for Voluntary Groups is a leading provider of governance training and support to non-profit organisations of Ireland. We have received a lot of queries from non-profit organisations who are concerned and confused about implications of the Companies Act for their organisation and for their constitution. We know from experience that reviewing and updating your company documents is a time consuming and often a costly exercise for non-profit organisations.

Carmichael Centre is therefore, delighted that through TrustLaw and Dechert we are making a Template Constitution available to the sector. The Template Constitution will provide a valuable aid to organisations in forming new CLGs and assisting existing organisations in reviewing and updating their existing memorandum and articles of association.

The approach adopted in developing the Template Constitution is to utilise the benefits of being able to adopt the Companies Act without further detail of the provisions so that the need to update the constitution each time a new amendment to the Companies Act is brought in will be reduced. Additionally, where appropriate, the Template Constitution recommends keeping detailed, organisation-specific matters such as terms of membership or election and rotation of directors out of constitution and instead described in a separate document (such as a Company Governance Handbook). Having such provisions in a separate document will help to remove the burden of requiring a member’s meeting and vote to make amendments to such provisions and the requirement to submit any revisions to the Companies Registration Office or in the case of charities with the Revenue Commissioners and the Charities Regulatory Authority.

What is a “Constitution” of a Company?

The constitution of a company (“Constitution”) is one of the most important documents for an organisation and must be drafted with particular care and attention. A Constitution must be filed with

the Companies Registration Office (“CRO”) to legally form a company and should be kept up to date on an ongoing basis with the CRO. A Constitution contains the fundamental conditions upon which a company is allowed to operate. It is the document that governs the relationship between the company and its members. By becoming a member of a legal company, the members are agreeing to the terms of operation of the company set out in the Constitution.

A constitution of a CLG consists of two parts, namely:

1. the Memorandum of Association; and
2. the Articles of Association

Prior to the Companies Act, these were two separate documents often referred to collectively as a “memo and arts” but which could be amended separately. However, the new Companies Act has jointed these documents together as one Constitution for CLGs and significantly reduced the information necessary for inclusion therein, which should help to reduce the need for amendments on an ongoing basis.

(1) Memorandum of Association

What is it?

The Memorandum of Association (“MOA”) is the primary document which sets out what the purpose of the company is and must be signed by the initial members who wish to form the company. A CLG cannot be incorporated with the legal status of a company without a MOA. The MOA contains the objectives of an organisation, or in legal terminology the objects, powers and scope of the company, beyond which a company is not allowed to engage, i.e. it limits the range of activities of the company.

(2) Articles of Association

What are they?

The Articles of Association (the “Articles”) define the rules and regulations made by the company for its administration and day to day management. In addition, the Articles establish the rights, responsibilities, powers and duties of the members and directors of the company, as well as information about the requirements to be met in relation to the accounts and audit of a company.

Every company must have its own Articles; however, the Companies Act provides that you may simply adopt the provisions of the Companies Act with little other detail to fulfil this requirement. The governance of a company is done according to the rules prescribed in the Articles, so if there are diversions from the Companies Act, these should be set out here. An organisation can frame its Articles as per their particular requirements, while having due regard to company law as set out in the Companies Act (a “full set of Articles”); however, where there are changes to the Companies Act or any changes to a change in the Articles desired by the members or directors, a full set of Articles will then have to be updated by shareholder special resolution (75% of the members present and entitled to vote at a general meeting).

Guide to using the Template

The Template Constitution sets out the standard clauses to be included in both parts of the constitution. Some of the clauses are optional and may not be applicable to your organisation. There are also some clauses that are specific to companies that are, or wish to be, registered as charities and

companies that wish to apply for the licence to dispense with including CLG or CTR from their day to day name.

It is important to bear in mind that the Template Constitution is for guidance only and has been developed as an aid to drafting a company constitution. Every organisation is different and will have its own circumstances and requirements. It is important that the template is customised to accurately reflect the way in which the company operates.

Detailed footnotes are provided as an explanatory aid. They contain important information and should not be overlooked.

Companies with or seeking charitable status should apply to the Charities Regulator for prior approval of a new constitution/amendments prior to submitting the new constitution/amendments to their members for vote to avoid the need to make amendments after the vote has already taken place.

Adopting or amending a constitution requires a special resolution of the members of the company. Following the passing of the resolution, filings with CRO are necessary. This process is explained on the website of the CRO, www.cro.ie.

COMPANIES ACT 2014

**CONSTITUTION OF [], A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A
SHARE CAPITAL**

AS ADOPTED BY SPECIAL RESOLUTION ON [•].

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MEMORANDUM OF ASSOCIATION OF [INSERT COMPANY NAME]

1. The name of the Company is [insert] Company Limited by Guarantee [or Cuideachta faoi Theorainn Ráthaíochta] (the “Company”).¹
2. The Company is a company limited by guarantee, registered under Part 18 of the Companies Act 2014.
3. The main object for which the Company is established is [insert].²

Subsidiary Object(s)³

¹ Insert the legal name of the company. Unless you have an exemption, you must use CLG or Cuideachta faoi Theorainn Ráthaíochta (CTR) as part of the full name of the company. An application for exception can be made to the CRO and clauses in this template memorandum must be included for that application. The objects of a company seeking the exemption require to be for promotion of commerce, art, science, education, religion and/or charity.

² The objects clause lists the main objects or objectives of the company, i.e.:

- What does the company wish to achieve;
- What are the main objectives (primary objects) and what are the supporting objectives (ancillary objects)?; and/or
- What is the scope of your company’s activities? For example, does your company only operate in a particular geographic region or country?

If you are or wish to become a registered charity with the Charities Regulator, your “objects” must comply with the definition of a charity as set out in the Charities Act 2009. (the “Charities Act”). Under the Charities Act, to qualify as a charity you need to meet the following criteria;

- be a body that promotes a charitable purpose only
- be required under constitution to apply all of its property to further that charitable purpose, except for money used in its operation and maintenance (e.g., payments to staff) and, in the case of religious organisations or communities, money used for the accommodation and care of the members of the organisation or community; and
- none of the charity’s property is payable to the members of the charitable body, except in specific circumstances.

A charitable purpose is defined in Charities Act as the charitable purpose is a purpose that is of public benefit and involves:

- the prevention or relief of poverty or economic hardship;
- the advancement of education;
- the advancement of religion; and/or
- Any other purpose that is of benefit to the community.

An organisation cannot be a charity if there is no public benefit.

³ Insert any subsidiary or ancillary objects to the main object of the company. The company is free to draft its subsidiary objects as it thinks fit. However, if the company has or wishes to obtain charitable status, it should not include objects that the Charities Regulator would have an objection to or are not permitted by the Charities Act.

4. In furtherance exclusively of the main object, the Company will have the following subsidiary objects and any income generated from the subsidiary objects is to be applied to the main object only [insert].

5. To the extent that the same are essential or ancillary to the promotion of the main object of the Company, the Company may exercise all such powers and do all other such things as are incidental to the attainment of the main object of the Company.⁴

6. The Company shall not support with its funds any objects or endeavour to impose or procure to be observed by its members or others any regulations, restriction or condition which, if an object of the Company would make it a trade union.

7. The⁵ income and property of the Company shall be applied solely towards the promotion of main object(s) as set forth in this Constitution. No portion of the Company's Income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to members of the Company. No Director shall be appointed to any office of the Company paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the Company. However, nothing shall prevent any payment in good faith by the Company of:

- a) reasonable and proper remuneration to any member or servant of the Company (not being a Director) for any services rendered to the Company;
- b) interest at a rate not exceeding 1% above the Euro Interbank Offered Rate (Euribor) per annum on money lent by Directors or other members of the company to the Company;
- c) reasonable and proper rent for premises demised and let by any member of the Company (including any Director) to the Company;
- d) reasonable and proper out-of-pocket expenses incurred by any Director in connection with their attendance to any matter affecting the Company;
- e) fees, remuneration or other benefit in money or money's worth to any Company of which a Director may be a member holding not more than one hundredth part of the issued capital of such Company;
- f) nothing shall prevent any payment by the Company to a person pursuant to an agreement entered into in compliance with section 89 of the Charities Act, 2009 (as for the time being amended, extended or replaced).

8. The Company must ensure that the Charities Regulator has a copy of its most recent Constitution. If it is proposed to make an amendment to this Constitution which requires the prior

⁴ A Company may insert a company powers clause, but this is no longer required under the Companies Act 2014. There are a range of possible specific powers that a company may decide that to insert into the MOA. However, the drafting of such clauses should be careful not to limit the powers of the Company unless so desired.

⁵ This clause typically states that the income and property of the company can only be used solely for the promotion and achievement of the company's objectives. It is a specific requirement of the Charities Regulator for companies with or seeking charitable status and also a requirement of the Revenue Commissioners for companies with or seeking charitable tax exempt status.

approval of the Charities Regulator⁶, advance notice in writing of the proposed changes must be given to the Charities Regulator for approval, and the amendment shall not take effect until such approval is received.

9. No amendment of any kind shall be made to the provisions of clauses [7] and [12]⁷ of the memorandum of association and no amendments shall be made to the memorandum and articles of association to such extent that they would alter the effect of Clauses [7] and [12] of the memorandum of association, such that there would be non-compliance with the requirements of section 971/1180 and of the Companies Act 2014.

10. The liability of the members of the Company (the “Members”) is limited.

11. Annual audited accounts shall be kept and made available to the Revenue Commissioners on request⁸.

12. If ⁹upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the Company. The company or companies to which the property is to be given or transferred shall prohibit the distribution of their income and property among their members to an extent at least as great as is imposed on Company under or by virtue of Clause [7] hereof. Members of the Company shall select the relevant company or companies at or before the time of dissolution, and if and so far as effect cannot be given to such provisions, then the property shall be given or transferred to some charitable object with the agreement of the Charities Regulator. Final accounts will be prepared and submitted that will include a section that identifies and values any assets transferred along with the details of the recipients and the terms of the transfer

13. Every¹⁰ member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year afterwards, for payment of debts and liabilities of the Company contracted before he ceases to be a member and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding One Euro.

14. [Prior permission of the Revenue Commissioners shall be obtained where it is intended to accumulate funds for a period in excess of two (2) years.]¹¹

⁶ The types of changes requiring prior approval were not available at the time of publication of this document. However, charities intending on making changes should check with the Charities Regulator whether an update is available.

⁷ These clauses include the necessary language for applying for charitable tax exemption status and for the exemption of CLG in your company name. If these two clauses are moved, the updated clause numbers should be included here.

⁸ This clause is only relevant to companies with or seeking charitable exemption from the Revenue Commissioners. Although the audit exemption is now available to companies limited by guarantee, the Revenue Commissioners will require accounts to be audited if the gross annual income of the company exceeds €100,000.

⁹ This paragraph includes the necessary language for applying for charitable status and for the exemption of CLG in your company name.

¹⁰ A Revenue Commissioners requirement for companies with or seeking charitable status.

¹¹ This should be noted; however, it is not necessary to include if there is no intention to do so.

ARTICLES OF ASSOCIATION¹² TO COMPANY PRECEDING MEMORANDUM OF ASSOCIATION OF [NAME OF ENTITY].

The following regulations shall apply to the Company:

Interpretation.

1. In these Articles:—¹³

“Act” means the Companies Act, 2014;

“Board” means the board of the Company;

“Company” means [Name of the Company];

“Directors” means the Directors for the time being of the Company or the Directors present at a meeting of the board of Directors and includes any person occupying the position of director by whatever name called;

“in writing” means written or produced by any substitute for writing, or party one and party another;

“Ireland” means the territory of the Republic of Ireland;

“Member” means a member of the Company;

“Month” means calendar month;

“the Office” means the registered Office for the time being of the Company;

“the Seal” means the common Seal of the Company;

“Secretary” means any person appointed to perform the duties of the Secretary of the Company; and

“Year” means calendar year.

Expressions referring to writing shall be construed, unless the contrary intention appears, be construed as including references to email, facsimile, printing, lithography, photography and any other modes of representing or reproducing words in a visible form, provided, however, that it shall not include writing in any other electric form except as provided in these Articles and/or where it constituted writing in electric form sent to the Company, the Directors have approved its receipt in such Form. Expressions in these Articles referring to execution of any document shall include any mode of execution under Seal or under hand or any mode of electronic signature as shall be approved by the Directors.

¹² The Articles of Association is (the “Articles”) defines the rules and regulations made by the company for its administration and day to day management. In addition, the Articles contain the rights, responsibilities, powers and duties of the members and directors of the company, as well as information about the requirements to be met in relation to the accounts and audit of a company.

¹³ This sets out the definition of key terms in the articles.

Under the contrary intention appears, words or expressions contained in these Articles shall bear the same meaning as the Act, or any statutory modification thereof in force at the date at which these Articles become binding on the Company.

Unless the contrary intention appears, words or expressions contained in these Articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these Articles become binding on the Company.

The Act

2. The provisions of the Act are adopted subject to Article 3 and the modifications contained herein.

3. The Company notes the sections of the Act specifically disapplied in respect of companies limited by guarantee under Part 18 of the Act and further disapplies the following Sections of the Act: 188 (2)(b), 618(1)(b), 1196, and 1198.

Members¹⁴.

4. The number of Members the Company proposes to be registered with is [insert]¹⁵; however, the Directors may increase this number and, where an increase is made, it shall notify the Companies Registration Office of the details of the increase within 15 days of the date on which the increase was resolved or took place.

5. The subscribers to this Constitution and such other persons¹⁶ and categories of eligible entities as determined by the Directors [who meet the membership terms as set down in the

¹⁴ Members of the company are those persons or entities which hold an interest in the company (in companies with share capital e.g. limited or PLC companies; they would be shareholders). In the case of companies that are already existing, it is possible that your members are the same as your directors and where a director is replaced that membership interest should be passed to the new member.

It is important to note the difference between members of the legal company and members of your organisation. Each company must determine whether members of your organisation should also be members of the company, noting that members of the company have voting rights in relation to general meetings and director elections, etc.

You can choose, where members are to also hold a membership interest in the company, to have membership terms set out in a separate document. This is to easily facilitate changes to that document as changes to the Articles of Association require 75% member approval and filing with the Revenue Commissioners and the Charities Regulator.

¹⁵ This number must be at least 3 for companies with or seeking charitable status from the Charities Regulator and it is also a requirement of the Revenue Commissioners for companies with or seeking charitable tax exempt status.

¹⁶ This clause sets out who the members of the Company are and provides that the detailed requirements and provisions relating to membership can be specified in the Company's Governance Handbook. If desired, it can cover the criteria to be used to determine member eligibility and the categories of membership for your company. Whether in the Governance Handbook or in the Articles, these matters should cover, for example; if you have full members and associate/affiliate member membership categories? If so, what are the differences between the categories of members in terms of their powers, rights etc.? For example, membership of a community organisation might be restricted to those living/working in a specific geographic area. Also you may need to specify if there is a membership fee payable. The membership provisions need

document entitled the [Company Governance¹⁷ Handbook/Terms of Membership of COMPANY], as may be amended by the Directors from time to time (the “[Company Governance Handbook/Terms of Membership of COMPANY]”), shall be the members of the Company and shall be entered in the register of members kept in accordance with the Act.

Obligations of Members

6. Every member shall as a continuing condition of membership be bound by the provisions of the Constitution of the Company and any amendment thereof, and shall observe all (if any) rules or regulations made from time to time by the Company in general meeting or by the Board.

7. Membership of the Company shall cease:

- (a) on the Member’s death or bankruptcy;
- (b) if the Member resigns by notice in writing, to the Secretary at the Company’s Office; or
- (c) if the Directors determine that such member has failed to observe the membership terms as set down in the [Company Governance Handbook/Terms of Membership of COMPANY].]

General Meetings.¹⁸

8. The quorum for a general meeting shall be **[insert (must be at least 2)]** Members present in person or by proxy¹⁹.

to be tailored to circumstances and requirements of the Company. For example, in some companies, the same persons act as members and directors. If that is the case, provisions should be added to accommodate this. Equally, companies often have particular qualifications for membership and if so they should be specified either in the company’s constitution or in the company’s governance handbook.

¹⁷ Throughout this template document, references are made to the “Company’s Governance Handbook” The approach adopted in developing the template is to keep the constitution as concise as possible, while still meeting the requirements of the Act. Where appropriate, the template framework recommends keeping detailed governance requirements and provisions out of constitution document and to have them specified in a “Company Governance Handbook. This handbook will have an important role in detailing the governance arrangements and policies of the company. It has the advantage of being more easily updated and amended compared to amendments to the company’s constitution. However, there should be clear and agreed rules in place governing the permitted procedure to approving additions, alterations or amendments to the Handbook. For example, can they be approved by the Board of Directors or should they require approval of members at a general meeting?

¹⁸ The terms relating to general meetings are as set out in the Companies Act (including notice requirements, requirements for the annual general meeting, adjournments, voting, etc.) however, the quorum (minimum number of members present to hold a general meeting) and the amount of persons needed for an EGM to be called by members (an EGM can be called by the directors at any time) are included here as they are terms that are able to be tailored to your entity.

The Company Governance Handbook can be used to set procedures to be followed for general meetings, the rules regarding voting, who is eligible and who is not eligible to vote and whether or not proxies can be used.

¹⁹ Proxies are not required to be permitted, but for ease, they typically are. This is a question for each company to determine as to whether you want to allow proxies or not. The requirements for appointing a proxy can be set out in the Company’s Governance Handbook

9. An extraordinary general meeting may be called at any time by the Secretary on request from at least [10%]²⁰ of Members entitled to vote at a general meeting.

***Votes of Members.*²¹**

10. Every Member shall have one vote.

***Directors.*²²**

11. The number of the Directors shall be [insert]²³, but shall never be less than 3.
12. [The requirements for directorship, election rules and provisions supplemental to the requirements of the Act in relation to removal and vacation of the office of Director are as set out in the ["Company Governance Handbook/Terms of Elections of COMPANY"].]²⁴
13. The quorum for a meeting of directors shall be [insert (at least 2)] directors [present in person or by suitable electronic means to allow them to actively participate in the board meeting].
14. [The Directors may be paid travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or General Meetings of the Company or in connection with the business of the Company.]²⁵

Powers and Duties of Directors.

15. In addition to their powers and duties as set out in the Act, the Directors shall ensure []²⁶.

²⁰ This number can be increased.

²¹ Votes are the number of votes applicable to each member at a general meeting. Unlike a company with shares where each share is worth one vote, a member in a CLG is entitled to one vote.

²² These clauses cover:

- the maximum and minimum number of Directors;
- The legal rules in relation to directors and dismissal of directors are contained in the Act and are set out in the document accompanying these articles.

Like the terms of company membership, it is often preferable to have the terms of rotation and election of directors in a separate document which is easier to amend.

If you do not want a separate terms of election document, provisions should be included here for rotation of directors.

Note that the memorandum for a charity prohibits payment of salaries to a director.

²³ There is no maximum, but it is typical that 5 -10 directors might be appointed.

²⁴ The Company's Governance Handbook should specify the company's requirements and procedures in relation to the notification of meetings, information to be provided in the board member's meeting pack, development of meeting agenda, minutes of meetings, any role and duties of the board chairperson outside of what is covered in the Companies Act, secretary and any other officer positions in addition to the chairperson and secretary. For example, treasurer or vice chairperson.

²⁵ This is an optional provision.

²⁶ If there are separate terms of governance (e.g. from an international organisation) which the company endeavours to follow, they can be referenced here. Otherwise this clause does not need to be included

16. The Directors may delegate any of their powers to committees consisting of such Member or Members of the board as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Directors. The membership structure and terms of reference of any committee established by the Directors shall be as set out in the Company's Governance Handbook

Voting on Contracts.²⁷

17. A director may not vote in respect of any contract in which he is interested or any matter arising thereout.

Rotation of Directors.

18. The rotation of Directors shall be in accordance with the provisions of the ["Company Governance Handbook/Terms of Elections of the COMPANY"].

and the powers of directors are as set out in the Act (which are very broad) and described in the accompanying document to these articles.

²⁷ Note that this is not a required clause, however, it is typically viewed favourably in a charitable context. Directors need to declare if the director has an actual or may have a potential conflict of interest in regard to any matter being discussed or to be decided upon or any contract or proposed contract to be approved or any initiative to be taken by the company.

On appointment, each director must provide full details to the Company Secretary of the interests that the director has. This includes details of:

- employment;
- any business interests. For example, being a director of a company or shareholder in a company;
- any involvement other charities or community/voluntary work; and
- any interest that might involve a conflict of interest or materially influence the director in the performance of his or her duties as a director of the Company.

At each board meeting, directors need to declare if the director has an actual or may have a potential conflict of interest in regard to any matter being discussed or to be decided upon or any contract or proposed contract to be approved or any initiative to be taken by the company. The policy and procedures for dealing with conflict of interest should be included in the governance policy handbook of the company.

Secretary²⁸.

19. The Secretary shall be appointed by the Directors for such term and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.

20. A provision of the Act or these Articles requiring or authorising a thing to be done by or to a director and the Secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the Secretary.

The Seal.²⁹

21. The Seal shall be used only by the authority of the Directors or of a committee of Directors authorised by the Directors in that behalf, and every instrument to which the Seal shall be affixed shall be signed by a director and shall be countersigned by the Secretary or by a second director or by some other person appointed by the Directors for the purpose.

Audit.^{30 31}

22. Auditors shall be appointed and their duties regulated in accordance with Sections 333 to 337 of the Act.

²⁸ There is a legal duty for a company to have a Secretary who has the skills or resources necessary to discharge his or her statutory and other duties. The Secretary can be but does not have to be one of the directors. If one of the directors is appointed secretary, they cannot be remunerated for acting in the role if the company has or wishes to obtain charitable exemption from the Revenue Commissioners. It is also possible to procure the services of a suitable external person or body to perform certain company secretarial duties on behalf of the company. For example, maintaining the register of members or filing statutory returns. The Charities Regulator is aware of complex issues relating to the relationship between the definition of charity trustees in the Charities Act 2009 and further clauses, particularly around remuneration of charity trustees. These issues are being considered further by the Charities Regulator and this template will be updated as needed in this regard.

²⁹ The seal has legal significance because the affixing of the seal signifies that the document was the act and deed of the company, whereas when a document was merely signed by a director, then that was deemed to be an act carried out on behalf of the company by its agents, which was subject to applicable restrictions and limitations under the ordinary law of agency.

³⁰ The Directors must:

- ensure that proper accounts records are kept covering all income, expenditure, sales, purchases and the assets and liabilities of the company;
- the accounting records needs to give a true and fair view of the company's affairs; and
- the accounting records must be kept of the company's offices or at a location approved by the directors.

³¹ Companies, which meet specific criteria, may, under the terms of Chapter 15, Part 6 of the Companies Act, avail of an exemption from the requirement to have the financial statements which are appended to its annual return audited. A company must qualify as a small company.

We³², the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution³³.

Names, addresses and descriptions of the original subscribers

Witness to the above signatures:

Name:

Occupation:

Address:

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³² This clause states that the persons subscribing with their signatures at the end of the Constitution work to legally establish a company towards the pursuance of the objects specified in the Constitution.

³³ The minimum number of members for a CLG has been reduced in the Companies Act from seven to one. However, the Revenue Commissioners are unlikely to grant charitable tax exemption or the Charity Regulator grant charitable status to companies having one single member. They both require the company to have at least three members.

³⁴ The Constitution must be signed by at least 3 subscribers for registration as a Charity (this is reduced to two or more persons in the case of a CLG which is not a charity). The subscriber signatures need to be witnessed. There may be one witness for all signatures but one subscriber cannot be a witness to the signatures of another.