

# Corporate Governance and Compliance for CLG and Charities



Galway Rural Development Company

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Facilitator: Caroline Egan, CramdenTECH Ltd.



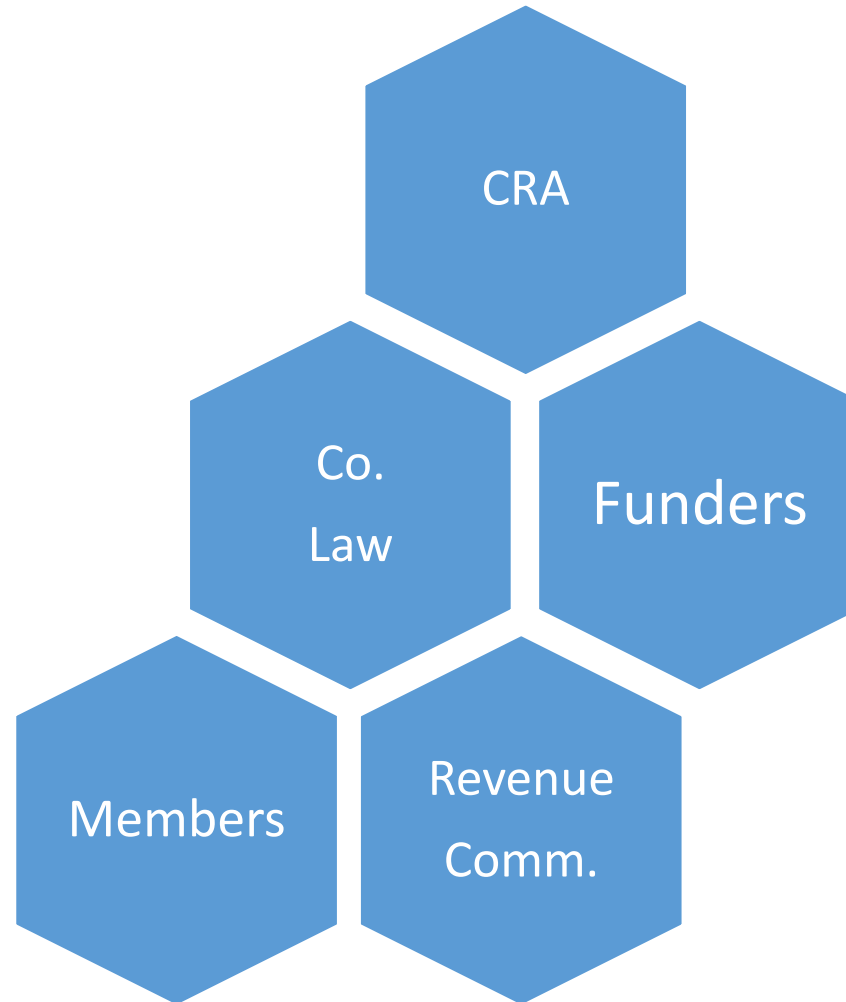
# Agenda - <http://bit.ly/2pMWAIO>

- Implications of the Companies Act 2014
- Legal Responsibilities of Company Directors and Company Secretaries
- Charities Regulation and Reporting
- What do you need to know about the Lobbying Act, Safeguarding Children and Vulnerable Adults, employing Staff

# Company Law in Context



# Other factors to consider ...



# The Companies Act 2014 – CLG Compliance

- Name ends in “CLG”. Name must include CLG. Exemption if Registrar of Companies accepts a CLG meets the criteria of a non-profit.
- Directors may not be paid, though reasonable expenses permitted
- Company secretary must be appointed
- Can have 1 member and no upper limit, but must still have 2 directors
- Initial subscribers are deemed to have agreed to become members
- AGMs are optional for CLGs which have only one member

# The Companies Act 2014 – CLG Compliance

- Obligation to prepare a Directors' Compliance Statement where both the balance sheet is > €12.5m and turnover is > €25 million
- Constitution made up of a Memorandum and Articles of Association
- 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
- Any new director or company secretary should sign a statement acknowledging that they have legal duties and obligations

# The Companies Act 2014 – CLG Compliance

- 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!

# Using the Constitution to manage the Board or Committee – Use the articles as rules!

*What issues might typically affect the functioning of a board or committee?*

- Minutes
- Quorum
- Membership criteria
- Powers of Directors
- Conduct of Meetings
- AGM and EGM
- Sub-committees
- Keeping Accounts
- Wind-up of Company



# Compliance. Reasons to amend constitution



# Role of Members

- Control the company and appoint the directors to act on their behalfs.
- Approve the appointment of auditors (where relevant) and have power to block directors obtaining an audit exemption.
- Directors are accountable to company members.
- Act as guarantors of the company in the event of a wind-up (typically limited to €1.)

## Point to Remember:

Be able to identify the members of your company and keep your register of members up-to-date

# 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?
- Question:  
Who may not act as a company secretary?



# Company Secretary

- Directors must ensure that the Company Secretary has the skills necessary to carry out their role.
- For companies other than PLC, discuss at board level and minute decision. Train the company secretary where necessary.

# The Company Secretary

## *Legal Duties of the Company Secretary - CLG:*

- Complete, sign and file the company's annual return to the CRO (mandatory online filing)
- 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
- Provide personal details: name, address, etc.

# 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

# Charities Regulation and Reporting

- If your main purpose is 'charitable' i.e. of public benefit, you must register with the Charity Regulator and make an Annual Return online
- Annual Reports are due within 10 months of the end of a charities financial year
- The Charities Regulator has powers to investigate and remove organisations from the list of charities in Ireland
- The Charities Regulator issues a Charity Registration Number. This is apart from the CHY number issued by the Revenue Commissioners

# Type of Profile Information Required by The Charities Regulator

- Details of Directors, Officers and Trustees
- Where you operate
- Bank account details
- Charitable purpose
- Fundraising details
- If working with vulnerable people (health, safety, risk assessment)
- Governing document/constitution
- Activities: of public benefit, beneficiaries, employee numbers, volunteer numbers, codes signed up to
- Financial accounts

# 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

# Other Compliance Considerations

- Organisation complies with obligations under the The Data Protection Acts 1988 and 2003
- Organisation complies with obligations under the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 – 2016
- Organisation complies with Children First Act 2015
- Organisation complies with Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons Act 2012)
- Central Register of Beneficial Ownership – Quarter 4 2017 – 3 months



# Employing Staff – The Essentials!

- Terms and Conditions of Employment – in writing
- Policies and Procedures to ensure compliance with legislation
- Deviating from T & C – custom and practice
- Record keeping – time sheets, data protection
- Performance management – appraisal, review, disciplinary, grievance
- Environment – health & safety, anti-bullying, discrimination free
- 5<sup>th</sup> Level Leadership – the right person for the right job – from recruitment to termination follow due process fairly!

# Review

- What are the next steps for your company or charity? Do you need to do anything differently?

Facilitator Caroline Egan contact details:

Email: [caroline@cramdentechsolutions.com](mailto:caroline@cramdentechsolutions.com)

Telephone: 087-2194541

URL: [www.cramdentechsolutions.com](http://www.cramdentechsolutions.com), [www.boardpass.ie](http://www.boardpass.ie)