



COMPANY SECRETARIAL AND CORPORATE GOVERNANCE

Establishing a Charity in Ireland: Company Secretarial Considerations

by **Colm Hanley**

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An organisation that wishes to engage in charitable activities in Ireland is required to register with the Charities Regulator in advance of any activity and will be subject to the Charities Act 2009. In order to register as a charity, an organisation must have a charitable purpose.

The Company Secretary often plays a key role in assisting with the registration of a charity, ongoing compliance and governance.

Choosing a Legal Structure

Once it is clear that an organisation should be registered as a charity, the next step is to decide upon the legal form of the organisation. Charities typically operate as incorporated entities, unincorporated entities or charitable trusts. Many charities choose to operate as a Company Limited by Guarantee (CLG).

Company Limited by Guarantee (CLG)

A CLG is a separate legal entity registered at the Companies Registration Office (CRO) under Part 18 of the Companies Act 2014.

As a CLG does not have a share capital, the members are not required to buy any shares in the company. Many charitable and professional bodies find this form of company to be a suitable vehicle as they wish to secure the benefits of separate legal personality and limited liability but do not need raise funds from the members.

Registering a CLG

Before you apply for charitable status, a Company Limited by Guarantee must be registered with the Companies Registration Office (CRO). This involves the following steps:

1. Choose a name for the organisation.
2. Draft the governing document of the CLG, known as its Constitution, which includes the Memorandum of Association and Articles of Association. The Constitution should clearly set out the following information:
 - The name of the charity.
 - The main objects of the charity which must be for a charitable purpose together with all ancillary objects which form the basis for everything that the organisation will do.
 - The powers of the charity.
 - Specific rules relating to income, property, membership, committees, appointments and removals, meetings, and other rules governing the operation of the charity.

3. Choose your company officers. There are specific requirements about the number of directors and their eligibility. All Irish companies are required to appoint a Company Secretary who must have the skills and experience necessary to fulfil the role.

4. Prepare the prescribed incorporation form to be signed by all related parties.

It is important that the incorporation form and constitution is prepared and executed correctly otherwise the application will not be accepted by the Registrar.

Applying for Charitable Status

Once the CLG is registered at the CRO, the process to apply to the Charities Regulator for charitable status can begin. Key policy documents must be prepared and submitted to the Regulator for approval. It is an offence under section 41 of the Charities Act 2009 for an unregistered charitable organisation to carry on activities in the State.

If the application is approved, the charity will be added to the public Register of Charities.

Ongoing Compliance

Annual Return: CRO

A CLG has must file an annual return at the CRO each year. The CLG will be also required to file annual financial statements with its second annual return and in subsequent years. The Charities Regulator may grant certain charities an exemption from the requirement to file financial statements with its annual return. Audit exemption may be available subject to the usual criteria.

AGM

A CLG with two or more members may not dispense with the holding of an AGM.

Statutory Records

As with all Irish companies, a CLG must maintain statutory registers, records of meetings and a company seal, which are usually maintained by the Company Secretary. The company must also maintain proper books of account.

Meetings

The Company Secretary is typically responsible for arranging and recording meetings including the Annual General Meeting (AGM) and Extraordinary General Meetings, where required. The minutes should be kept in the company's minute book. It is important that the procedures set out in the governing document or the Companies Act 2014 are followed.

Annual Report – Charities Regulator

Every charity registered in the State must provide an annual report to the Charities Regulator within 10 months of the charity's financial year end. Failure to file an accurate annual report within the prescribed timeframe may result in enforcement action.

Corporate Governance

The Charities Governance Code sets out the minimum standards to effectively manage and control charities. It is important that all board members and the Company Secretary are familiar with the Code.

To comply with the Code, charities must also complete a Compliance Record Form every year. The Regulator may ask to inspect the Compliance Record Form at any time.

If you require assistance with such an application, or with any other company secretarial matters, our highly

experienced Company Secretarial Team is on hand to assist. Please contact a member of our team:

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