

CHECKS FOR CHARITIES

Cormac Brennan and Carol Hogan discuss the regulation of charities and the impact of new companies legislation in Ireland

It may surprise readers to learn that the charities sector in Ireland was unregulated until late last year. The long-awaited commencement of the *Charities Act 2009* (the CA 2009) has finally arrived, so 2015 promises to be a year of upheaval for charities, and progress towards attaining full transparency and accountability in the charities sector.

The Charities Regulatory Authority (the CRA) was established on 16 October 2014 under the CA 2009. This new authority is an independent agency of the Department of Justice and Equality and is charged with increasing public trust and confidence in charitable organisations.

The CRA has a range of statutory functions. These will be introduced incrementally, starting with the compilation and registration of all charities operating in Ireland. All charities operating in Ireland must now be on the Register of Charities. Those charities with a valid tax exemption (CHY number) will be automatically registered with the CRA. However, if a charity does not have a CHY number, it must apply to the CRA to be registered. Charities will be required to provide information on their activities and how they are funded. This information will be available to the public in line with the CRA's duty to increase transparency and confidence in the sector.

NEW REGISTRATION OBLIGATIONS

The Register of Charities is in place and can be viewed on the CRA website (www.charitiesregulatoryauthority.ie). Entries on the register are not yet complete, and the CRA will be adding to the information available on the register in the months ahead. The CRA is writing to all charitable organisations that are deemed

registered to obtain certain information to complete the registration process.

Charities operating in Ireland that do not have a CHY number, including those foreign charities with a DCHY number (a determination from the Irish Revenue enabling a foreign charity to avail of charitable exemptions available to Irish charities), are required to register within six months of the establishment of the CRA (mid-April 2015). Charity trustees will need to sign a declaration form, available for download on the CRA website.

The information and documentation that charities must now provide to the CRA includes:

- copies of governing instruments and details of all officers;
- financial information, including balance sheet date, gross income and sources, total expenditure and expenditure on salaries;

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- copies of financial accounts for the 12 months immediately preceding the application;
- details of the charity's purpose and objects;
- details of activities, and how activities directly support the objectives of the charity, and how the public benefit test is satisfied;
- details of how the charity intends to raise money; and
- details of risk-assessment procedures, safety checks and safeguards employed by the charitable organisation, where its activities include working with vulnerable people (including the elderly, children and young people, sick people and disabled people).

All information set out on the Register of Charities will be accessible to the public, and there is an ongoing obligation to ensure all particulars are correctly entered and updated. All charities are obliged to state on the telephone and in all public literature, including the internet, that they are registered charitable organisations, and charities may be required to provide further information as may be prescribed by regulations in due course.

ACCOUNTING AND AUDIT

All charities are required to keep proper books of account, and there are detailed provisions in the CA 2009 setting out the obligations of charities to prepare statements of accounts and to have their accounts audited. However, those provisions do not apply to charitable organisations that are incorporated under the various *Companies Acts 1963 to 2014* (the *Companies Acts*).

The obligations of corporate charitable organisations in relation to accounting, annual returns and audit will continue to be governed by the *Companies Acts* solely, and the Registrar of Companies will provide a copy of the annual returns of incorporated charities to the CRA, together with all documents annexed to the annual return. The intention here is to avoid dual reporting for corporate charities.

Subject to regulations to be issued by the CRA, charitable entities should also be aware that, in relation to accounting periods ending on or after 1 January 2015, they will generally be required to apply the new *FRS 102, the Financial Reporting Standard Applicable in the UK and Republic of Ireland*, and also the charities *Statement of Recommended Practice (SORP)*, which has been updated to reflect the provisions of *FRS 102*.

ANNUAL REPORTS

All charitable organisations, including those established as companies, will have an obligation to prepare and submit to the CRA an annual report on their activities in that financial year. The CA 2009 provides that charity trustees must submit the report no later than ten months, or such longer period as the CRA may specify, after the end of each financial year. The content of the annual reports will be determined by regulations in due course, and it is likely the requirements will include an activities report element and a finance reporting element.

There are likely to be distinctions made in the regulations in terms of the obligations of different classes of charitable organisations, which may depend on the level of annual turnover. The content of the annual report will be made available to the public, and all charities will be required to provide the CRA with any other information that it may reasonably require to enable it to perform its functions.

IMPACT OF THE COMPANIES ACT 2014 ON CHARITIES

The *Companies Act 2014* (CA 2014) represents the most significant change in Irish corporate law in two generations. A large number of Irish charities are companies limited by guarantee without share capital, and the boards of those charities will need to become conversant with the main issues arising.

The CA 2014 is a state-of-the-art law applicable to companies, from their formation, administration and management to their winding-up and dissolution, incorporating the rights and duties of their officers, members and creditors. From the perspective of directors of charitable companies limited by guarantee, the actions that will need to be taken during the transitional period of 18 months from the commencement date should be manageable, and it is expected that existing charitable companies limited by guarantee will continue their existence within that statutory form.

Below is a summary of the main changes and issues that charity trustees of Irish corporate charities will need to be aware of:

- The CA 2014 is confined to company law and does not address matters in relation to the taxation or residence of companies or their directors, or the administration and regulation of charities.
- The indicative date of commencement of the CA 2014 is 1 June 2015, which will be followed by an 18-month transitional period to allow directors to ensure compliance with the new legislation.
- Companies limited by guarantee without share capital (CLGs) are



likely to continue to be the legal form of choice for charities.

- All CLGs will now be governed by a 'constitution', although this will comprise a memorandum of association and articles of association, similar to the existing position.
- To all intents and purposes, a CLG's constitution will look like a memorandum and articles of association, save that it will be one document and the word 'constitution' will appear before the start of the memorandum of association.
- The memorandum of association of a CLG will contain much of the same information as that of an existing CLG. In particular, it must contain an objects clause.
- Under the CA 2014, CLGs can now have one single member (in contrast to the previous requirement to have seven members), although the Revenue Commissioners are unlikely to grant charitable tax exemption to charitable companies with one single member.
- CLGs must, under the CA 2014, have at least two directors. However, the Revenue Commissioners are likely to continue to apply their condition, for charitable tax exemption to be granted, that a charity have at least three independent directors.
- Unless the constitutional documentation provides otherwise, the directors shall retire by rotation.
- CLGs can now avail of audit exemption. However, this will not change the condition imposed by the Revenue Commissioners, in the context of granting charitable tax exemption, that the accounts of charities must be audited where the annual income exceeds EUR100,000. This is a lacuna in the legislation governing charitable companies, given that the new audit requirements of charities under the CA 2009 do not apply to companies.

CHARITIES SPECIAL INTEREST GROUP

The Charities Special Interest Group works to promote best practice and further technical understanding within the field.

Find out more at www.step.org/charities

- While the CA 2014 sets out a series of statutory default provisions for the constitutions of all companies, many CLGs are likely to disapply the standard provisions and write their bespoke articles long form, as is the current practice for many charities.
- The corporate name of a CLG must end in 'Company Limited by Guarantee' or 'CLG', although many charities will have liberty to dispense with having 'Limited' in their name, and this dispensation may be carried forward.
- Similarly to the other types of company under the CA 2014, CLGs now have a duty to ensure that the person appointed as company secretary 'has the skills or resources necessary to discharge his or her statutory or other duties'.
- There are no changes to the obligations of multi-member CLGs to hold an annual general meeting.
- It would appear that foreign charities constituted as companies and granted charitable tax exemption (DCHY numbers) whose presence constitutes a 'place of business' in Ireland, but not a branch, will no longer be required to file accounts in the Companies Registration Office. It remains to be seen how the Companies Registration Office will deal with this aspect.

MOVING AHEAD

The simultaneous introduction of a modernised company law with its updated compliance obligations and the CRA, with its corresponding registration and reporting obligations, may seem a heavy administrative burden for entities in the charitable sector. However, the motive of increasing public trust and confidence in charitable organisations is an important one, and one that most charitable organisations will support, particularly in light of recent negative media commentary on the sector.



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