

ARTHUR COX

**Guarantee Companies:  
Part 18 of the Companies Bill**

## **Contents of Presentation**

- 1. Part 18 – Guarantee Companies**
- 2. Chapter 1 – preliminary and definitions**
- 3. Chapter 2 – incorporation and consequential matters**
- 4. Chapter 3 – share capital**
- 5. Chapter 4 – corporate governance**
- 6. Chapter 5 – financial statements, annual return and audit**
- 7. Chapter 6 – liability of contributories in winding up**
- 8. Chapter 7 – examinerships**
- 9. Chapter 8 – investigations**
- 10. Chapter 9 – public offers of securities etc**

## Part 18 – Guarantee Companies

- 54 sections of law in 9 chapters
- Guarantee companies (CLGs) are limited by guarantee but do not have a share capital; company limited by guarantee and having a share capital is a DAC (see Part 16).
- Not having a share capital, members of a CLG do not have a distinct economic interest in their capital: CLGs are a popular type of company for charities, sports and social clubs and management companies.

# Chapter 1 – preliminary and definitions

- Begins with a number of definitions used throughout Part 18, notably defining CLG as a company without a share capital in which members' liability limited to such amount as they undertake (in the constitution) to contribute to assets of the CLG in event of its winding up (*s 1167*)
- The architecture of the law applicable to CLGs is that the law applicable to LTDs (i.e. Parts 1 to 14) will apply to CLGs, save to the extent disapplied, modified or supplemented by any provision of Part 18 (*s 1168*)

## Chapter 2 – incorporation etc

- A CLG may be formed for any lawful purpose by a person subscribing to a constitution and complying with the Act; no limit on number of members (s 1169)
- A CLG must carry on some activity in the State (s 1170)
- Two-document constitution – memorandum and articles of association – including an objects clause (but see s 1178 below), in the form set out in Schedule 10 (s 1171)
- Where the Act provides that a provision will apply save to the extent the constitution provides otherwise, that provision shall apply to a CLG unless excluded or modified by its articles (s 1172)

## Chapter 2 – incorporation etc

- The name of a CLG must end with the words “company limited by guarantee”, or the abbreviation “CLG” (whether capitalised or lower case, and with or without punctuation marks – i.e. CLG, C.L.G., clg or c.l.g. are all acceptable) or the Irish equivalent (s 1173)
- It is an offence to trade under a misleading name or imply one is a body corporate other than a CLG (s 1174)
- A CLG shall be exempt from the requirement to use the suffix in s 1173 if it has a charitable object, is not-for-profit and has made the appropriate application to the CRO (s 1175)
- A provision in the constitution of a DAC purporting to give a person a right to participate in the profits of the company other than as a member shall be void (s 1176)

## Chapter 2 – incorporation etc

- CLG to have capacity only to do things stated in objects (s 1177)
- However the validity of an act done by a CLG shall not be called into question on the ground of lack of capacity by reason of anything contained in the CLG's objects (i.e. the Bill seeks to oust the operation of the doctrine of *ultra vires*) (s 1178)
- A CLG may by special resolution (with notice) alter its objects clause, but if 15% of the members, or holders of 15% of the CLG's debentures object to the court, the alteration shall not have effect (ss 1179, 1180 and 1183)
- A CLG may by special resolution alter the amount that each member of the CLG will contribute to the assets of the company in a winding up (s 1181)
- A CLG may alter its articles by special resolution (s 1182)

## Chapter 2 – incorporation etc

- A company limited by guarantee and not having a share capital which was in existence before the commencement of this section, shall from the commencement of this section be deemed to be a CLG (s 1184)
- At end of the transition period (18 months from commencement), the name of an existing guarantee company shall be deemed to be altered by replacing “limited” with “company limited by guarantee” (or the Irish equivalent where appropriate); transitional arrangements are set out if during the transition period the company has already made that change (s 1185)



## Chapter 3 – share capital

- CLG may (unlike an LTD) have its debentures (or interests in them) listed or traded, but shall not be permitted to have other securities (or interests in them) listed or traded (s 1186)
- S 1187 makes the necessary modifications for s 115 (which deals with the acquisition by a subsidiary of shares in its holding company), to apply where the latter is a CLG.
- S 1188 provides that s 1085 (power of the Minister to make Regulations for the transfer of securities) shall apply to securities of a CLG as it applies to securities of a PLC.

## Chapter 4 – corporate governance

- CLG (unlike LTD) must have at least 2 directors (s 1189)
- A person may not be a director of more than 25 companies (one or more being a CLG) (s 1190)
- The directors of a CLG shall be required to retire by rotation, unless the constitution states otherwise (s 1191)
- Unless the constitution states otherwise, remuneration of directors will be determined in general meeting (s 1192)
- S 147 (whereby an LTD may by ordinary resolution remove a director before the expiration of his or her period of office) shall apply to a CLG, with the omission of the reference to a director holding office for life (s 1193)

## Chapter 4 – corporate governance

- *S 1194* limits membership of CLG to subscribers and such other persons as the directors admit to membership and as are entered on the register of members.
- It shall be an offence to personate a member of a CLG to receive moneys or vote at a meeting (*s 1195*)
- *S 170* (obligation on LTD to keep register of members) to apply to CLG with necessary modifications (*s 1196*)
- CLG may not dispense with holding an AGM (even, it seems, where it has only one member (*s 1197*))

## Chapter 4 – corporate governance

- *S 1198* applies provisions with regard to requisitioning a general meeting (*s 179*), modified by removing references to share capital, requirement instead being based on members holding not less than 10% of total voting rights.
- *S 1199* applies *s 181* (entitlement to notice of general meetings) with appropriate modifications.
- *S 1200* applies *s 184* and empowers members to appoint a proxy, save where the constitution provides otherwise.
- *S 1201* applies *s 189* (votes of members) with appropriate modifications

## Chapter 4 – corporate governance

- *S 1202* applies *s 190* (right to demand a poll), with appropriate modifications.
- *S 1203* applies *s 194* on unanimous written resolutions (but not *s 195* regarding majority written resolutions), save where the constitution provides otherwise.
- *S 1204* applies *s 199* (registration of, and obligations of a company to supply copies of, certain resolutions and agreements) with appropriate modifications.
- *S 1205* applies Chapter 5 of Part 5 relating to disclosure of interests in shares and debentures.

## Chapter 5 – financial statements, annual return and audit

- Part 6 shall not apply to CLG that is credit institution or insurance undertaking, being subject to specific requirements (s 1206)
- Requirement in Part 23 for a corporate governance statement shall apply to a CLG with debentures admitted to trading (s 1207)
- S 1208 provides that a CLG may not avail of an audit exemption where it has debentures admitted to trading.
- The disclosure obligations on a PLC that is a licensed bank shall apply equally to a CLG that is a licensed bank (s 1209)
- CLG must disclose in its financial statements any changes in the interests of its members in the financial year (s 1210)

## Chapter 5 – financial statements, annual return and audit

- Ss 326(1)(c) and 330, relating to acquisition/disposal of shares and so inapplicable, disapplied (s 1211)
- Ss 335 and 363 (right of members to require audit) shall apply to CLGs, with appropriate modifications (s 1212).
- Statutory financial statements of CLG need only be circulated to persons entitled to notice of general meetings (s 1213).
- A CLG which is not-for-profit shall be exempted from annexing financial statements to its annual return; this seems to intend to re-enact s 128(4)(c) of the Companies Act 1963 (s 1214)
- Requirement on auditors to report to CRO and ODCE applied to CLG with appropriate modifications (ss 1215-1216)

## Chapter 6 – liability of contributories in winding up

- In the event of a CLG being wound up, members shall be liable, but liability shall be limited to the amount of the guarantee; in limited circumstances, past members shall also be liable (s 1217)



## Chapter 7 - examinerships

- *S 1218* provides that the provisions in *s 511* in relation to petitioning for a LTD to be put into examinership shall apply with necessary modification to a CLG (save that where the CLG is a bank or building society, only the Central Bank may bring the petition)

## Chapter 8 - investigations

- *S 1219* removes reference, in respect of persons who may apply to court for appointment of inspector to a CLG, to persons holding  $\frac{1}{10}$  or more of share capital, not being applicable in context of CLG.

## Chapter 9 – public offers of securities etc

- *S 1220* provides that the provisions of Chapters 1, 2 and 4 of Part 23 (which relate to prospectus law, market abuse law, and transparency law) shall apply, in so far as those provisions are applicable to companies other than PLCs, to CLGs.

## For Further Information Contact

**Dr Tom Courtney, Partner**

**[tom.courtney@arthurcox.com](mailto:tom.courtney@arthurcox.com)**

**Direct line – 01 618 0584**

**Dáibhí O’Leary, Associate**

**[daibhi.oleary@arthurcox.com](mailto:daibhi.oleary@arthurcox.com)**

**Direct line – 01 618 1120**

**or your usual Arthur Cox contact**

*This document contains a general summary of developments and is neither a complete nor definitive statement of the law. Specific legal advice should be obtained before taking action.*

# Thank You.

## Dublin

---

Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland  
**tel:** +353 (0)1 618 0000 | **fax:** +353 (0)1 618 0618  
**email:** [dublin@arthurcox.com](mailto:dublin@arthurcox.com)

## London

---

12 Gough Square, London EC4A 3DW, England  
**tel:** +44 (0)20 7832 0200 | **fax:** +44 (0)20 7832 0201  
**email:** [london@arthurcox.com](mailto:london@arthurcox.com)

## Belfast

---

Capital House, 3 Upper Queen Street, Belfast BT1 6PU, Northern Ireland  
**tel:** +44 (0)28 9023 0007 | **fax:** +44 (0)28 9023 3464  
**email:** [belfast@arthurcox.com](mailto:belfast@arthurcox.com)

## New York

---

300 Park Avenue, 17th Floor, New York NY 10022, USA  
**tel:** +1 (1)212 705 4288 | **fax:** +1 (1)212 572 6499  
**email:** [newyork@arthurcox.com](mailto:newyork@arthurcox.com)

[www.arthurcox.com](http://www.arthurcox.com)