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PART 18

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CHAPTER 1

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5 **1167.**—In this Part—

Definitions (*Part 18*).

“company limited by guarantee” or “CLG” means a company which does not have a share capital and which, as provided under *section 1171(2)(d)*, has the liability of its members limited by the constitution to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up;

“constitution” shall be read in accordance with *section 1171(1)*.

**1168.**—(1) The provisions of *Parts 1 to 14* apply to a CLG except to the extent that they are disapplied or modified by—

Application of *Parts 1 to 14* to CLGs.

15 (a) this section; or

(b) any other provision of this Part.

(2) For the purposes of that application, *section 10* shall have effect as if it read:

20 “Unless expressly provided otherwise, a reference in *Parts 2 to 14* to a company is a reference to a CLG.”.

(3) Any of *Parts 1 to 14* that makes provision by reference to—

(a) membership arising by virtue of a shareholding; or

25 (b) right or incidents of membership, including the right to vote or receive a distribution, arising by virtue of a shareholding,

shall be read, in the case of a CLG, as making such provision in the analogous context in which membership, or rights or incidents of membership, may arise in the case of a CLG.

30 (4) *Subsection (3)* is without prejudice to the generality of the application and adaptation of *Parts 1 to 14* provided by *subsections (1) and (2)* or any specific adaptation provided by a subsequent section of this Part.

(5) The provisions of this Act specified in the Table to this section shall not apply to a CLG.

35 (6) The specification in the foregoing Table of a provision (a “specified provision”) of *Parts 1 to 14* also operates to disapply to a CLG any other provision of those Parts (notwithstanding that it is not specified in that Table) that makes consequential, incidental or supplemental provision on, or in relation to, the specified provision.

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<i>Subject matter</i>	<i>Provision disapplied</i>	
Way of forming a private company limited by shares	<i>Section 17</i>	
Company to carry on activity in the State	<i>Section 18</i>	5
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Share qualifications of directors	<i>Section 137</i>	
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## CHAPTER 2

45

*Incorporation and consequential matters*

Way of forming a CLG.

**1169.**—(1) A CLG may be formed for any lawful purpose by any person or persons subscribing to a constitution and complying with the relevant provisions of—

(a) Chapter 2 of Part 2, as applied by this Part; and

(b) this Part,

in relation to registration of a CLG.

5 (2) Without prejudice to the means by which a CLG may be formed under the relevant provisions referred to in subsection (1), a company may be registered as a CLG by means of—

(a) the re-registration or registration as a CLG of a body corporate pursuant to Part 20 or 22;

10 (b) the merger of 2 or more companies pursuant to Chapter 3 of Part 9;

(c) the division of a company pursuant to Chapter 4 of Part 9; or

15 (d) the merger operation provided for by the European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).

(3) The certificate of incorporation issued under section 25(1) shall state that the company is a company limited by guarantee.

20 **1170.**—A CLG shall not be formed and registered unless it appears to the Registrar that the CLG, when registered, will carry on an activity in the State, being an activity that is mentioned in its memorandum. CLG to carry on activity in the State.

25 **1171.**—(1) Subject to subsection (3), the constitution of a CLG shall be in the form of a memorandum of association and articles of association which together are referred to in this Part as a “constitution”. The form of a CLG’s constitution.

(2) The memorandum of association of a CLG shall state—

(a) its name;

(b) that it is a company limited by guarantee registered under this Part;

30 (c) its objects;

(d) that each member undertakes that, if the company is wound up while he or she is a member, or within one year after the date on which he or she ceases to be a member, he or she will contribute to the assets of the company such amount as may be required for—

35 (i) payment of the debts and liabilities of the company contracted before he or she ceases to be a member;

(ii) payment of the costs, charges and expenses of winding up; and

40 (iii) adjustment of the rights of contributories among themselves,

not exceeding an amount specified in the memorandum.

- (3) The constitution of a CLG shall—
  - (a) be in accordance with the form set out in *Schedule 10* or as near thereto as circumstances permit;
  - (b) be printed in an entire format, that is to say the memorandum and articles shall be contained in the one document, being a document either in legible form or (as long as it is capable of being reproduced in legible form) in non-legible form; and
  - (c) either—
    - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature; or
    - (ii) be authenticated in the manner referred to in *section 889*.

Supplemental provisions in relation to constitution and continuance in force of existing memorandum and articles.

- 1172.**—(1) This section—
- (a) contains provisions as to the articles of a CLG;
  - (b) provides that, in certain circumstances, a default position shall obtain in relation to the articles of a CLG; and
  - (c) continues in force the memorandum and articles of a company limited by guarantee registered under the prior Companies Acts.

(2) In this section—

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision;

“optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that—

- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or
- (b) is otherwise of such import.

(3) The articles of a CLG may contain regulations in relation to the CLG.

(4) So far as the articles of a CLG do not exclude or modify an optional provision, that optional provision shall apply in relation to the CLG.

(5) Articles, instead of containing any regulations in relation to the CLG, may consist solely of a statement to the effect that the provisions of the *Companies Act 2012* are adopted and, if the articles consist solely of such a statement, *subsection (4)* shall apply.

(6) The memorandum and articles of a company limited by guarantee registered before the commencement of this section shall—



(a) save to the extent that they are inconsistent with a mandatory provision; and

(b) in the case of the memorandum, subject to *section 1185(6)*,

5 continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.

(7) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall  
10 be read as references to the corresponding provision of this Act.

(8) To the extent that a company limited by guarantee registered before the commencement of this section was, immediately before that commencement, governed by—

15 (a) the regulations of Table C in the First Schedule to the Act of 1963; or

(b) the regulations of any Table referred to in section 3(9)(b),  
(c) or (d) of the Act of 1963,

it shall, after that commencement, continue to be governed by those regulations but—

20 (i) this is save to the extent that those regulations are inconsistent with a mandatory provision;

(ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to; and  
25

(iii) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

30 **1173.**—(1) The name of a CLG shall end with one of the following: Provisions as to names of CLGs.

— company limited by guarantee;

— cuideachta faoi theorainn ráthaíochta.

35 (2) The words “company limited by guarantee” may be abbreviated to “c.l.g.” or “clg” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the CLG.

40 (3) The words “cuideachta faoi theorainn ráthaíochta” may be abbreviated to “c.t.r.” or “ctr” (including either such abbreviation in capitalised form) in any usage after the company’s registration by any person including the CLG.

45 (4) A CLG carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviations set out in *subsection (2) or (3)* shall not of itself render such registration necessary.

(5) This section is subject to *section 1184* (which makes transitional provision for an existing guarantee company as regards its name).

Trading under a misleading name.

**1174.**—(1) Subject to *subsection (5)*, neither a body that is not a CLG nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the words “company limited by guarantee”, or “cuideachta faoi theorainn ráthaíochta” or abbreviations of those words. 5

(2) If a body or individual contravenes *subsection (1)*, the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence. 10

(3) A CLG shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of a company other than a CLG or that it is any other form of body corporate. 15

(4) Those circumstances are circumstances in which the fact that it is a CLG is likely to be material to any person.

(5) If a CLG contravenes *subsection (3)*, the CLG and any officer of it who is in default shall be guilty of a category 3 offence.

(6) *Subsection (1)* shall not apply to any company— 20

(a) to which *Part 21* applies; and

(b) which has provisions in its constitution that would entitle it to rank as a CLG if it had been registered in the State.

Power to dispense with “company limited by guarantee” or Irish equivalent in name of charitable and other companies.

**1175.**—(1) A CLG shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this section) be subject to all the obligations of a CLG, where— 25 30

(a) its objects are the promotion of commerce, art, science, education, religion, charity or any other prescribed object; and

(b) its constitution—

(i) requires its profits (if any) or other income to be applied to the promotion of its objects; 35

(ii) prohibits the making of distributions to its members; and

(iii) requires all the assets which would otherwise be available to its members to be transferred on its winding up to another company whose objects comply with *paragraph (a)* and which meets the requirements of this paragraph; 40

and

5 (c) a director or secretary of the company (or, in the case of an association about to be formed as a limited company, one of the persons who are to be the first directors or the person who is to be the first secretary of the company) has delivered to the Registrar a statement in the prescribed form that the company complies or, where applicable, will comply with the requirements of *paragraphs (a) and (b)*.

10 (2) The Registrar shall refuse to register as a CLG any association about to be formed as a CLG by a name which does not include the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” unless a statement, as provided for under *subsection (1)(c)*, has been delivered to the Registrar.

15 (3) An application by a company registered as a CLG for a change of name, being a change that includes or consists of the omission of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”, shall be made in accordance with *section 30* and the Registrar shall refuse to accede to the application unless a statement, as provided for under *subsection (1)(c)*, has been delivered to the Registrar.

20 (4) A CLG which is exempt under *subsection (1)* and which is permitted to omit the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” from its name shall not alter its constitution so that it ceases to comply with the requirements of that subsection.

(5) If it appears to the Registrar that a CLG which is registered under a name not including the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”—

30 (a) has carried on any business other than the promotion of any of the objects mentioned in *subsection (1)(a)*;

(b) has applied any of its profits or other income otherwise than in promoting such objects; or

(c) has made a distribution to any of its members,

35 the Registrar may, in writing, direct the CLG to change its name within such period as may be specified in the direction so that its name ends with the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”, and the change of name shall be made in accordance with *section 30*.

40 (6) A CLG which has received a direction under *subsection (5)* shall not thereafter be registered by a name which does not include the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” without the approval of the Registrar.

(7) A person who—

45 (a) alters the constitution of a CLG in contravention of *subsection (4)*; or

(b) fails to comply with a direction from the Registrar under *subsection (5)*,

shall be guilty of a category 3 offence.

(8) Notwithstanding the repeal of—

- (a) section 24, as originally enacted, of the Act of 1963 effected by section 88(1) of the Company Law Enforcement Act 2001; or
- (b) the Company Law Enforcement Act 2001 effected by this Act,

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a licence that—

- (i) had been granted to a company limited by guarantee by the Minister pursuant to section 24(1) or (2) of the Act of 1963, as that section was in force immediately before the commencement of that section 88(1); and
- (ii) is in force immediately before the commencement of this section,

10

shall, on and from whichever thing referred to in *section 1185(5)(a)* or *(b)* occurs first, continue to have effect but with the modification that it shall operate to exempt the company from the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name.

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(9) Subsections (4) to (7) of section 24 of the Act of 1963, as in force immediately before the commencement of section 88(1) of the Company Law Enforcement Act 2001, shall continue in force in relation to the foregoing licence, as if that section 24 had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be read as references to the Registrar.

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(10) *Subsections (8) and (9)* are without prejudice to *section 1185(4)* (which saves for a limited period the effect of provisions of the prior Companies Acts (including section 88(2) of the Company Law Enforcement Act 2001) that impose a requirement, or confer an exemption from a requirement, with regard to the use of “limited” or “teoranta” or their abbreviations).

25

(11) In relation to a CLG that avails itself of the exemption under *subsection (1)*, *section 152* shall have effect as if, in addition to the particulars specified in *subsection (2)(a) to (c)* of that section to be included on all business letters and order forms of the CLG, there were specified in that subsection the fact of the CLG being a limited company.

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35

Prohibition on certain provisions in constitution, etc. and issuing of shares.

**1176.—**(1) Any provision in the memorandum or articles of a CLG, or in any resolution of a CLG, purporting to give any person a right to participate in the divisible profits of the company, otherwise than as a member, shall be void.

(2) Nothing in *subsection (1)* invalidates any distribution by a company limited by guarantee registered before 1 January 1901, on foot of a provision or resolution referred to in that subsection, if the distribution was made before the commencement of this section.

40

(3) For the purposes of the provisions of this Part stipulating that a characteristic of a CLG is that it does not have a share capital and of this section, the following has effect—

45

- (a) every provision in the constitution, or in any resolution, of a CLG purporting to divide the undertaking of the CLG into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount

50

or number of the shares or interests is not specified thereby; and

(b) every such provision or resolution shall be void.

(4) A CLG shall not purport to issue shares.

5 (5) If a CLG contravenes *subsection (4)*, the CLG and any officer of it who is in default shall be guilty of a category 3 offence.

**1177.**—(1) A CLG shall have the capacity to do any act or thing stated in the objects set out in its memorandum. Capacity of a CLG.

(2) For the purposes of *subsection (1)*—

10 (a) the reference in it to an object includes a reference to anything stated in the memorandum as being a power to do any act or thing (whether the word “power” is used or not);

15 (b) if an object is stated in the CLG’s memorandum without the following also being stated in relation to it, the capacity of the CLG extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment,

20 and a subsequent reference in this Part to an object of a CLG shall be read accordingly.

**1178.**—(1) 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. Capacity not limited by a CLG’s constitution.

25 (2) A member of a CLG may bring proceedings to restrain the doing of an act which, but for *subsection (1)*, would be beyond the CLG’s capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the CLG.

30 (3) Notwithstanding the enactment of *subsection (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the CLG’s objects and action by the directors which, but for *subsection (1)*, would be beyond the CLG’s capacity may only be ratified by the CLG by special resolution.

35 (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such liability is to be conferred by the CLG it must be agreed to separately by a special resolution of it.

40 (5) A party to a transaction with a CLG is not bound to enquire as to whether it is permitted by the CLG’s objects.

**1179.**—(1) Subject to *subsection (2)*, a CLG may, by special resolution, alter the provisions of its memorandum of association by abandoning, restricting or amending any existing object or by adopting a new object and any alteration so made shall be as valid as if originally contained therein, and be subject to alteration in like manner. Alteration of objects clause by special resolution.

(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(3) Subject to *subsection (4)*, an application under this section may be made— 5

(a) by not less than 15 per cent of the CLG’s members; or

(b) by the holders of not less than 15 per cent of the CLG’s debentures, entitling the holders to object to alterations of its objects.

(4) An application shall not be made under this section by any person who has consented to or voted in favour of the alteration. 10

(5) An application under this section shall be made within 21 days after the date on which the resolution altering the CLG’s objects was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose. 15

(6) On an application under this section, the court may—

(a) make an order cancelling the alteration or confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit; and 20

(b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissenting members and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement. 25

Supplemental provisions in relation to *section 1179*.

**1180.**—(1) Where an order under *section 1179* requires the CLG not to make any, or any specified, alteration in its constitution, then, notwithstanding anything in this Act, but subject to the provisions of the order, the CLG shall not have power, without the leave of the court, to make any such alteration in contravention of that requirement. 30

(2) Any alteration in the constitution of a CLG made by virtue of an order under *section 1179*, other than one made by resolution of the CLG, shall be of the same effect as if duly made by resolution of the CLG and the provisions of this Act shall apply to the constitution as so altered accordingly. 35

(3) Notice of the meeting at which the special resolution altering a CLG’s objects is intended to be proposed shall be given to any holders of the CLG’s debentures that entitle the holders to object to alterations of its objects; that notice shall be the same as that given to members of the CLG, so however that not less than 10 days’ notice shall be given to the holders of any such debentures. 40

(4) If the written resolution procedure is used in the matter, notice, which shall not be less than 10 days, of the proposed use of that procedure shall, together with a copy of the proposed text of the resolution, be given to the debenture holders referred to in *subsection (3)*. 45

5 (5) In default of any provisions in the CLG's constitution regulating the giving to the foregoing debenture holders of notice referred to in *subsection (3) or (4)*, the provisions of *Part 4* or, as the case may be, of the CLG's constitution regulating the giving of notice to members shall apply.

(6) Without prejudice to *subsections (3) and (4)*, in the case of a CLG which is, by virtue of *section 1175*, permitted to omit the words "company limited by guarantee" or "cuideachta faoi theorainn ráthaíochta" from its name, notice of—

10 (a) the meeting at which the special resolution altering a CLG's objects is intended to be proposed; or

(b) if the written resolution procedure is used in the matter, notice of the proposed use of that procedure, together with a copy of the proposed text of the resolution,

15 shall be given to the Registrar and *subsections (3) to (5)* shall apply as respects such notice as they apply as respects notice of the meeting or resolution to debenture holders.

(7) Where a CLG passes a resolution altering its objects—

20 (a) if no application is made under *section 1179* with respect to the alteration, it shall, within 15 days after the end of the period for making such an application, deliver to the Registrar a copy of its memorandum of association as altered; and

(b) if such an application is made, it shall—

25 (i) forthwith give notice of that fact to the Registrar; and

(ii) within 15 days after the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a copy of the memorandum as altered.  
30

(8) The court may by order at any time extend the time for delivery of documents to the Registrar under *subsection (7)(b)* for such period as the court may think proper.

35 (9) If a CLG makes default in giving notice or delivering any document to the Registrar as required by *subsection (7)*, the CLG and any officer of it who is in default shall be guilty of a category 4 offence.

40 **1181.**—(1) Other than in respect of making an amendment of the type specified in *subsection (2)*, *section 32(1)* shall not apply in relation to a CLG. Restriction of *section 32(1)* in relation to CLGs.

(2) The amendment referred to in *subsection (1)* is an amendment of the amount referred to in *section 1171(2)(d)* that is specified in the CLG's memorandum.

45 **1182.**—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a CLG may, by special resolution, alter or add to its articles. Alteration of articles by special resolution.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

Power to alter provisions in memorandum which could have been contained in articles.

**1183.**—(1) Subject to *subsection (2)*, *sections 32(4)* and *(5)* and *213*, any provision contained in a CLG’s memorandum which could lawfully have been contained in articles instead of in the memorandum may, subject to the provisions of this section, be altered by the CLG by special resolution. 5

(2) If an application is made to the court for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court. 10

(3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the foregoing provisions, and shall not authorise any variation or abrogation of the special rights of any class of members. 15

(4) *Section 1179(3)* to *(6)* (other than *subsection (3)(b)*) and *section 1180* (other than *subsections (3)* to *(6)*) shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under those sections. 20

Status of existing guarantee company.

**1184.**—(1) In this section “existing guarantee company” means a company limited by guarantee, and not having a share capital, which—

(a) was incorporated under any former enactment relating to companies (within the meaning of *section 5*); and 25

(b) is in existence immediately before the commencement of this section.

(2) An existing guarantee company shall, on and from the commencement of this section, continue in existence and be deemed to be a CLG to which this Part applies. 30

(3) *Section 1185* contains provisions—

(a) for enabling such a company to continue to use, for a limited period, “limited” or “teoranta” in its name despite the foregoing status that it has assumed; and 35

(b) deeming the name of such a company, after a specified period and in default of its having changed its name in that fashion, to be altered by the replacement of—

(i) “company limited by guarantee” for “limited” at the end thereof; or 40

(ii) “cuideachta faoi theorainn ráthaíochta” for “teoranta” at the end thereof,

as the case may be.

(4) Reference, express or implied, in this Act to the date of registration of a company mentioned in a preceding subsection shall be read as a reference to the date on which the company was registered 45



under the Joint Stock Companies Act 1862, the Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be.

**1185.**—(1) In this section—

Transitional provision— use of “limited or “teoranta” by existing guarantee company.

5 “existing guarantee company” has the same meaning as it has in *section 1184*;

10 “new provisions” means the provisions of this Part (and the relevant provisions of *Part 2* as applied by this Part) relating to the use of either of the required sets of words (or their abbreviations) set out in *subsection (2)*;

“transition period” means the period of 18 months beginning after the commencement of this section.

(2) For the purposes of this section, each of the following is a required set of words—

15 (a) company limited by guarantee;

(b) cuideachta faoi theorainn ráthaíochta.

(3) The reference—

(a) in the preceding definition of “new provisions”; and

(b) in *subsection (4)*,

20 to provisions relating to the use of any words includes a reference to provisions conferring an exemption from the use of those words.

(4) During—

(a) the transition period; or

25 (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change,

30 the provisions of the prior Companies Acts relating to the use of limited or teoranta (or their abbreviations) shall apply as respects the name of an existing guarantee company in place of the new provisions.

(5) On and from—

(a) the expiry of the transition period; or

(b) the company changing its name to include either of the required sets of words,

35 whichever happens first, the new provisions shall apply as respects the name of an existing guarantee company.

40 (6) Without prejudice to the generality of *subsection (5)*, on the expiry of the transition period (and the company has not changed its name before then to include either of the required sets of words), the name of an existing guarantee company, as set out in its memorandum, shall be deemed to be altered by the replacement of—

- (a) “company limited by guarantee” for “limited” at the end thereof; or
- (b) “cuideachta faoi theorainn ráthaíochta” for “teoranta” at the end thereof,

as the case may be. 5

(7) Where an existing guarantee company’s name, as set out in its memorandum, is altered by virtue of *subsection (6)*, the Registrar shall issue to the company a fresh certificate of incorporation in respect of it, being a certificate of incorporation that is altered to meet the circumstances of the case. 10

### CHAPTER 3

#### *Share capital*

Limitation on offers by CLGs of securities to the public. **1186.**—*Section 69* shall apply to a CLG as if the following subsection were substituted for *subsection (2)*:

- “(2) A company shall— 15
  - (a) neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor
  - (b) have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere; however nothing in this subsection prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of *paragraphs (a) to (e) of subsection (3)*.”. 20

Application of *section 115* in relation to CLGs. **1187.**—In its application to this Part, *section 115* shall apply as if each reference in it to the acquisition and holding of shares in a company included, in a case where the holding company is a CLG, a reference to becoming, and being, a member of the company otherwise than by means of acquiring and holding shares. 25

Uncertificated transfer of securities. **1188.**—*Section 1085* shall apply to securities of a CLG as it applies to securities of a PLC. 30

### CHAPTER 4

#### *Corporate governance*

Directors. **1189.**—A CLG shall have at least 2 directors.

Limitation on number of directorships. **1190.**—For the purposes of this Part *section 143* shall apply as if the following subsection were substituted for *subsection (1)*: 35

- “(1) A person shall not, at a particular time, be a director of more than –
  - (a) 25 companies limited by guarantee; or

(b) 25 companies, one, or more than one, of which is a company limited by guarantee and one, or more than one, of which is any other type of company capable of being wound up under this Act.”.

5 **1191.**—(1) Each provision of this section applies save to the extent that the CLG’s constitution provides otherwise. Rotation of directors.

(2) At the first annual general meeting of the CLG all the directors shall retire from office.

10 (3) At the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third shall retire from office.

15 (4) The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(5) A retiring director shall be eligible for re-election.

20 (6) The CLG, at the meeting at which a director retires in any of the foregoing instances, may fill the vacated office by electing a person to it.

(7) In default of the CLG doing so, the retiring director shall, if offering himself or herself for re-election, be deemed to have been re-elected, unless—

25 (a) at such meeting it is expressly resolved not to fill such vacated office; or

(b) a resolution for the re-election of such director has been put to the meeting and lost.

**1192.**—(1) Each provision of this section applies save to the extent that the CLG’s constitution provides otherwise. Remuneration of directors.

30 (2) The remuneration of the directors of a CLG shall be such as is determined, from time to time, by the CLG in general meeting and such remuneration shall be deemed to accrue from day to day.

(3) The directors of a CLG may also be paid all travelling, hotel and other expenses properly incurred by them—

35 (a) in attending and returning from—

(i) meetings of the directors or any committee referred to in *section 161(9)*; or

(ii) general meetings of the CLG,

or

40 (b) otherwise in connection with the business of the CLG.

Removal of directors.

**1193.**—*Section 147* shall apply to a CLG with the omission of *subsection (2)* (exclusion of section’s application to a director holding office for life).

Membership.

**1194.**—(1) The subscribers to the memorandum of association of a CLG shall be deemed to have agreed to become members of the CLG, and, on its registration, shall be entered as members in its register of members. 5

(2) Such other persons as the directors admit to membership, and whose names are entered in its register of members, shall be members of the CLG. 10

(3) The articles of a CLG shall state the number of members with which the company proposes to be registered.

(4) Where a CLG has increased the number of its members beyond the registered number, it shall, within 15 days after date on which the increase was resolved on or took place, deliver particulars of the increase to the Registrar. 15

(5) If default is made by a CLG in complying with *subsection (4)*, the CLG and any officer of it who is in default shall be guilty of a category 4 offence.

(6) The articles of a CLG may state the maximum number of persons who may be members of the CLG, subject to the power of the directors to register an increase in the number of members. 20

(7) A member may resign his or her membership by serving notice to that effect upon the directors at the registered office of the CLG, such notice to expire no earlier than the date of service of the notice of resignation. 25

(8) Save where the constitution of a CLG provides otherwise, the directors may require a member to resign his or her membership by serving notice upon the member terminating his or her membership to expire no earlier than the date of service of the notice of termination. 30

(9) Save where the constitution of a CLG provides otherwise, every member shall have one vote.

(10) The death of a member shall terminate his or her membership. 35

Personation of member: offence.

**1195.**—If any person falsely and deceitfully personates any member of a CLG and thereby –

(a) receives or endeavours to receive any money due to any such member; or

(b) votes at any meeting as if the person were the true and lawful member, 40

he or she shall be guilty of a category 2 offence.

Register of members.

**1196.**—*Section 170* shall apply to a CLG with the following modifications—

(a) the following paragraph shall be substituted, in *subsection (1)*, for *paragraph (a)*:

“(a) the names and addresses of the members;”;

and

5 (b) *subsection (5)* shall be omitted.

**1197.**—*Section 176(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a CLG.

CLG may not dispense with holding of a.g.m.

**1198.**—*Section 179* shall apply to a CLG with the following modifications—

Convening of extraordinary general meeting on requisition.

10 (a) *subsections (1)(a) and (2)* shall be omitted; and

(b) the following subsection shall be substituted for *subsection (3)*:

“*(3)* The directors of a company shall, on the requisition of one or more members holding, or together holding, at the date of the deposit of the requisition, not less than 10 per cent of the total voting rights of all the members having, at the date of the deposit, the right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.”.

15

20

**1199.**—*Section 181* shall apply to a CLG with the omission of *subsections (2) to (4)*.

Persons entitled to notice of general meetings.

**1200.**—*Section 184* shall apply to a CLG with the following modifications—

Proxies.

25 (a) in *subsection (1)* there shall be inserted “and save to the extent that the constitution provides otherwise” after “Subject to *subsection (3)*”;

(b) in *subsection (8)*, the words “or the transfer of the share in respect of which the proxy is given” shall be omitted; and

30 (c) in *subsection (9)*, there shall be substituted “such death, insanity or revocation” for “such death, insanity, revocation or transfer”.

**1201.**—*Section 189* shall apply to a CLG with the following modifications:

Votes of members.

35 (a) the following subsection shall be substituted for *subsection (2)*:

“*(2)* Where a matter is being decided (whether on a show of hands or on a poll), every member present in person and every proxy shall have one vote, but so that no individual member shall have more than one vote.”;

40

(b) *subsection (3)* shall be omitted; and

(c) the following subsection shall be substituted for *subsection (6)*:

“(6) No member shall be entitled to vote at any general meeting of a company unless all moneys immediately payable by him or her to the company have been paid.”. 5

Right to demand a poll. **1202.**—*Section 190* shall apply to a CLG with the omission of *subsection (2)(d)*.

Application of *section 194* in relation to a CLG. **1203.**—*Section 194* shall apply to a CLG as if, in *subsection (1)*, after “Notwithstanding any provision to the contrary in this Part or in *Parts 1 to 3* or *5 to 14*”, there were inserted “and unless the constitution provides otherwise”. 10

Application of *section 199* in relation to a CLG. **1204.**—*Section 199* shall apply to a CLG with the following modifications:

(a) the following paragraph shall be substituted for *paragraph (c)* of *subsection (4)*: 15

“(c) resolutions or agreements which have been agreed to by all the members of some class of membership but which if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of membership though not agreed to by all those members;”;

and

(b) *paragraphs (d)* and *(e)* and *(g)* to *(k)* of *subsection (4)* shall be omitted.

Application of *Chapter 5* of *Part 5* to a CLG. **1205.**—(1) Subject to *subsection (2)*, *Chapter 5* of *Part 5* shall apply to a CLG. 30

(2) For the purposes of that application, *Chapter 5* of *Part 5* shall operate, so far as it relates to shares in a company, or shares in a body corporate of the same group as that company belongs to, as if it excluded references to—

(a) that company where that company is a CLG; and 35

(b) such a body corporate where that body corporate is a CLG.

## CHAPTER 5

### *Financial statements, annual return and audit*

Non-application of *Part 6* to CLGs that are credit institutions or insurance undertakings. **1206.**—*Part 6* shall not apply to a CLG that is a credit institution or an insurance undertaking— 40

(a) to the extent provided by regulations made under *section 3* of the European Communities Act 1972 to give effect

to Community acts on accounts of credit institutions and insurance undertakings, respectively; or

(b) to the extent provided by any other enactment.

5 **1207.**—Chapter 3 of Part 23 has effect in relation to, amongst other companies, a CLG that has debentures admitted to trading on a regulated market in an EEA state.

Requirement for corporate governance statement and modification of certain provisions of Parts 5 and 6 as they apply to CLGs.

**1208.**—Section 298 shall apply to a CLG as if the following paragraph were substituted for paragraph (a) of subsection (8):

Application of section 298 to a CLG.

10 “(a) any debentures or other debt securities of the company or any shares, debentures or other debt securities of a subsidiary undertaking have been admitted to trading on a regulated market in an EEA state; or”.

15 **1209.**—In addition to its having effect in relation to a public limited company, section 1115 shall have effect in relation to a CLG.

Disclosures by CLG that is licensed bank.

20 **1210.**—Section 319 (details of authorised share capital, allotted share capital and movements) shall not apply in relation to the financial statements of a CLG but where there are changes in the interests of members of a CLG in the financial year to which the financial statements of the CLG relate then particulars of those changes shall be given in the notes to those financial statements.

Disclosure of membership changes in CLG’s financial statements.

**1211.**—Sections 326(1)(c) and 330 shall not apply to a CLG.

Disapplication of sections 326(1)(c) and 330 to a CLG.

**1212.**—(1) Section 335 shall apply to a CLG with the following modifications—

Application of sections 335 and 363 to a CLG.

25 (a) the following subsection shall be substituted for subsection (1):

30 “(1) Any member of a company may serve a notice in writing on the company stating that that member does not wish the audit exemption to be available to the company in a financial year specified in the notice.”;

(b) subsection (3) shall be omitted; and

(c) the following subsection shall be substituted for subsection (4):

35 “(4) For the avoidance of doubt, the reference in subsection (1) to the member’s not wishing the audit exemption to be available to the company in a specified financial year is, if the company is a subsidiary undertaking, a reference to the member’s not wishing the audit exemption to be available to the subsidiary undertaking irrespective of whether its holding company and any other undertakings in the group avail themselves of the audit exemption in that year.”.

40

(2) *Section 363* shall apply to a CLG as if the words “(in so far as applicable to a private company limited by shares)”, in each place where they occur, were omitted and the cases specified in that section in which the audit exemption, as referred to *section 359(1)* or (2), as the case may be, is not available to a company, or a holding company and its subsidiary undertakings, included a case in which the company or holding company, as appropriate, is a credit institution or an insurance undertaking. 5

Qualification of section 339 in the case of a CLG.

**1213.**—*Section 339* (circulation of statutory financial statements) shall apply to a CLG with the following modifications— 10

(a) in *subsection (1)(a)*, there shall be substituted “(but only if that person is entitled to receive notices of general meetings of the company)” for “(whether that person is or is not entitled to receive notices of general meetings of the company)”; and 15

(b) in *subsection (1)(b)*, there shall be substituted “(but only if that person is so entitled)” for “(whether that person is or is not so entitled)”. 15

Exemption from filing with Registrar financial statements, etc.

**1214.**—(1) *Sections 348* and *349* shall not apply to a CLG that does not trade for the acquisition of gain by its members. 20

(2) The following provisions have effect in relation to a CLG referred to in *subsection (1)* –

(a) unless the CLG is entitled to and has availed itself of the audit exemption conferred by *Chapter 15* or *16* of *Part 6*, the statutory auditors of the CLG shall prepare a separate report to the directors which— 25

(i) confirms that they audited the relevant statutory financial statements for the relevant financial year; and

(ii) includes within it the report made to the members of the CLG pursuant to *section 392*; 30

and

(b) a copy of the report prepared under *paragraph (a)* shall be annexed to the annual return delivered by the CLG to the Registrar.

(3) The reference in *subsection (2)* to a copy of the report prepared under *paragraph (a)* of it is a reference to a copy that satisfies the following conditions— 35

(a) it is a true copy of the original save for the difference that the signature or signatures on the original shall appear in typeset, and not written, form on the copy; and 40

(b) it is accompanied by a certificate of a director and the secretary of the company, that bears the signature of the director and the secretary in electronic or written form, stating that the copy is a true copy of the original (and the foregoing statement need not be qualified on account of the difference permitted by *paragraph (a)* as to the form of a signature). 45



(4) An existing guarantee company that, immediately before the commencement of this section, stood exempted from the requirements of section 128 of the Act of 1963 by virtue of subsection (4)(c) or (5) of that section, shall be deemed, for the purposes of *subsection (1)*, not to be trading for the acquisition of gain by its members, but this is subject to *subsections (5) and (6)*.

(5) If, by reason of a change of circumstances set out in section 128(4) of the Act of 1963 relating to the company concerned (were that section 128(4) to remain in force after the commencement of *section 4* (repeals and revocations)), an existing guarantee company would no longer comply with that section 128(4), then *subsection (4)* of this section shall cease to apply to that company.

(6) If—

(a) circumstances arise affecting an existing guarantee company that stood exempted, immediately before the commencement of this section, from the requirements of section 128 of the Act of 1963 by virtue of subsection (5) of the latter; and

(b) those circumstances are such as would, but for the repeal of that section 128, warrant the Commissioners of Charitable Donations and Bequests for Ireland exercising the power of revocation that but, for that repeal, would have been available to them in relation to the particular order that had subsisted, under that subsection (5), in relation to that company,

then those Commissioners shall, by virtue of those circumstances, be empowered to declare in writing that *subsection (4)* shall, on and from a date specified in the declaration, cease to apply to that company and, where those Commissioners so declare, *subsection (4)* shall cease to apply to that company on and from the date so specified

(7) In *subsection (8)*—

“electronic means” means those provided for under the Electronic Commerce Act 2000 and effected in compliance with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act;

“required documents” means the copy of the report referred to in *paragraph (a)* of *subsection (3)*, accompanied by the certificate referred to in *paragraph (b)* of that subsection;

“required period” means the period referred to in *section 344(2)* or (3), as the case may be, or, where that period stands extended in accordance with *section 344(5)* and (6), that period as it stands so extended.

(8) Where a CLG makes its annual return by electronic means to the Registrar within the required period then, notwithstanding that the required documents have not been annexed to the annual return, the annual return shall be deemed to have been delivered to the Registrar within the required period with the foregoing documents annexed to it if those documents are delivered to the Registrar within 28 days after the date on which the annual return has been delivered to the Registrar by electronic means.

(9) In this section “existing guarantee company” has the same meaning as it has in *section 1184*.

Application of section 393 to a CLG.

**1215.**—*Section 393* (report to Registrar and Director: accounting records) shall apply to a CLG as if, in *subsection (6)*, there were substituted “its members” for “its shareholders”.

Application of section 394 to a CLG.

**1216.**—*Section 394* (report to Registrar and Director: category 1 and 2 offences) shall apply to a CLG as if, in *subsection (4)*, there were substituted “its members” for “its shareholders”. 5

## CHAPTER 6

### *Liability of contributories in winding up*

Liability as contributories of past and present members and provision concerning winding up after certain re-registration.

**1217.**—(1) Subject to *subsection (2)*, in the event of a CLG being wound up, every present and past member shall be liable to contribute to the assets of the CLG to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves. 10

(2) The following qualifications apply in relation to *subsection (1)*: 15

- (a) no contribution shall be required from any member exceeding the amount undertaken to be contributed by him or her to the assets of the CLG in the event of its being wound up;
- (b) a past member shall not be liable to contribute if he or she has ceased to be a member for one year or more before the commencement of the winding up; 20
- (c) a past member shall not be liable to contribute in respect of any debt or liability of the CLG contracted after he or she ceased to be a member; 25
- (d) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (e) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the CLG are alone made liable in respect of the policy or contract; 30
- (f) a sum due to any member of the CLG, in his or her character of a member, by way of distributions, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself or herself and any other creditor not a member of the CLG, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. 35 40

(3) Without prejudice to the application of that section to a CLG, and its adaptation generally, by *section 966* of *section 666* (winding up of company that had been an unlimited company before re-registration), *paragraph (c)* of *section 666* shall apply as if the reference in it to *section 656(2)(a)* were, in the case of a CLG, a reference to *subsection (2)(a)* of this section. 45



## FORM OF CONSTITUTION OF COMPANY LIMITED BY GUARANTEE

## CONSTITUTION

## OF

5 [name of company as below]

## MEMORANDUM OF ASSOCIATION

1. The name of the company is: THE UNIVERSITY FOUNDATION LIMITED.

10 2. The company is a company limited by guarantee, registered under Part 18 of the Companies Act 2012.

3. The objects for which the company is established are the raising of funds for the furtherance of education and research carried out by Irish universities and the doing of all such other things as are incidental or conducive to the attainment of the above object.

15 4. The liability of the members is limited.

5. Every member of the company undertakes to contribute to the assets of the company, if the company is wound up while he or she is a member or is wound up within one year after the date on which he or she ceases to be a member, for—

20 (a) the payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges and expenses of winding up; and

(b) the adjustment of the rights of contributories among themselves,

25 such amount as may be required, not exceeding €1.

## ARTICLES OF ASSOCIATION

The following Regulations shall apply to the company:

*[or, instead of the immediately foregoing words, the following sentence:-\*]*

30 The provisions of the Companies Act 2012 are adopted.

\*See section 1172(5)

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

<i>Names, Addresses and Descriptions of Subscribers</i>	
1. Francis McMaster Address: Description:	5
2. Colleen D. Cahill Address: Description:	10
3. Guy Tabarie Address: Description:	10
4. Akosa Martins Address: Description:	

As appropriate:

signature in writing of the above subscribers, attested by 15  
witness as provided for below; or

authentication in the manner referred to in *section 889*.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Witness to the above Signatures:

Name: \_\_\_\_\_ 20

Address: \_\_\_\_\_