

## EVANGELICAL ALLIANCE IRELAND

# GUIDELINE No. 01: Legal Structures for Churches

## Contents

- 1.0 Introduction
- 2.0 Unincorporated Associations
- 3.0 Trusts
- 4.0 Companies Limited by Guarantee (CLG)
- 5.0 Charitable status
- 6.0 Additional resources

### 1.0 Introduction

Every Irish citizen is recognised under Irish law and this recognition automatically confers the rights and obligations of citizenship on that individual and all the legal protection available to any citizen. When individuals combine together as a group, they retain those individual rights but do not automatically gain additional rights for the group.

It is important for all churches or Christian groups to adopt the correct legal status if they wish to move beyond simple gatherings and establish their own identity. This will also mean considering the question of liabilities: do we need to protect individual members for the liabilities of the group?

When considering what is the most appropriate legal structure for your church or organisation, there are three common alternatives: Unincorporated Associations, Trusts and Companies Limited by Guarantee.

Unincorporated bodies (which include both associations and trusts) are recognised as groups but are not legal companies and do not have separate legal status. Companies Limited by Guarantee are incorporated companies and are regulated by company law.

### 2.0 Unincorporated Associations

2.1 Unincorporated Associations are suitable for clubs or small groups without a legal status. The main advantage of this structure is that it is easy to set up and is not subject to a lot of regulation or oversight.

2.2. The main disadvantage is that Individual members may find themselves personally liable for the actions taken by the group. Some cover for this liability may be taken in the form of a liability insurance policy. Members may, however, be personally liable for the debts of the group. It may also be difficult to open a bank account in the name of the group but this can generally be accomplished if the group is set up correctly. Again, there will be personal liability for any bank debts.

2.3 Unincorporated Associations are easy to set up. The association should draw up a formal, written constitution which outlines the aims and activities of the group and the rules for running the group. The constitution will vary from group to group but should include detailed rules for membership, holding meetings, making decisions, etc. Once this constitution is in place there are no further requirements. A template for such a constitution can be found on the Revenue website:

<http://www.revenue.ie/en/business/charities.html>

### 3.0 Trusts

3.1 Trusts are useful where the management of property or significant assets is involved but are not considered to be appropriate for community based organisations.

3.2 In a trust, a number of people are appointed as “trustees” under the rules of a document known as a “Deed of Trust”. This group is known as the Board of Trustees. All the power in a trust is conferred on the trustees and they assume full responsibility for the operations of the trust. This does not confer legal status on the group itself and the trustees remain individually and personally liable.

3.3 Trusts are complicated, can be expensive to set up and are not entirely suitable for churches or charitable groups unless they are put in place to manage or disperse significant assets. A solicitor must be engaged to draw up the Deed of Trust and it may be advisable for trustees to obtain independent legal advice before undertaking this level of responsibility.

### 4.0 Companies Limited by Guarantee

4.1. The most common form of incorporation used by churches and voluntary groups, and the one that is generally recommended, is a **Company Limited by Guarantee without share capital** (CLG)

4.2 This form of legal structure is suitable for churches and organisations wishing to have full legal status in their own right and thus having the ability to enter contracts, hire staff, lease premises and open bank accounts in their own name.

4.3 The main advantage of this structure is that a group incorporated in this way is treated as if it were a distinct legal personality with the power to act in its own right. The personal liability of individual members or guarantors of the company is limited to a pre-specified amount, usually a nominal €1. (A “member” or “guarantor” in this instance is defined one of the original seven people who set up the organisation. They should not be confused with the general membership of the church.)

4.4 The disadvantages of this type of structure include the cost of setting up and maintaining the company including the reporting and compliance requirements in accordance with company law. For example, a full set of accounts must be prepared and audited each year and a return filed with the Companies Office. This filing can be done on-line and fines can be imposed if this return is not filed on time. Companies limited by guarantee cannot avail of the audit exemptions normally available to small companies.

4.5 Once a name has been chosen, this name must be used on all official documents and cannot be changed without reference to the Companies Office.

4.6 Every company must have its own Constitution which contains both the Memorandum and the Articles of Association. The Constitution sets out the name of the organisation and its objects or aims. The Articles of Association set out the rules by which it will be governed. A model template for the constitution is available from the Charities Regulatory Authority at

<https://www.charitiesregulatoryauthority.ie>

For churches who wish to also register as charities, and this will most likely be all churches, there are three standard clauses (No's 6, 7 and 8) contained in the model constitution. These are obligatory and must be inserted in whatever form of constitution is chosen.

4.7 How to form a Company Limited by Guarantee (CLG)

**Step One:** Draw up your Constitution (Memorandum and Articles of Association) and have them signed and dated by the first two members of your company who are known as subscribers. They must submit their names, and occupations. The signatures of the subscribers must be witnessed and co-signed by non-subscribers. You must have at least seven originating members.

**Step Two:** Complete a Company's Registration Office (CRO) form A1.

**Step Three:** Submit the completed A1 form, your signed Memorandum and Articles of Association and the registration fee of €100 to the Companies Office. The fee is reduced to €50 if the application is made on-line at [www.cro.ie](http://www.cro.ie).

Be aware of the meaning of the following terms and sections.

- **Registered Office:** This is the official address of the company and the address where all official correspondence should be sent. Be careful to choose a permanent stable address. If it changes, you must inform the companies office.
- **Secretary:** The company secretary is nominated and must ensure that the company fulfils its legal obligations e.g. to keep minutes of meetings and file annual returns.
- **Presenter:** the presenter sends in your company application. It is possible to engage a specialist company to set up your company and handle all the above. This can be done for relatively minor expenditure
- **Directors:** Every company must have at least two directors who can be the original subscribers.

- **Company Capital Section:** This is not relevant to a company limited by guarantee.
- **Declaration of Compliance:** This must be signed by the company secretary, a director or your solicitor and witnessed by a Commissioner for Oaths or a practicing solicitor.

Full guidance on the setting up of companies can found on the Companies Office website at [www.cro.ie](http://www.cro.ie).

#### 4.8 Derogation from the use of CLG

Churches opting for this form of structure may apply for a derogation from using the suffix CLG after their name. If this is done at the time of incorporation then a CRO form G5 must be submitted along with all other documents required. If it is done after incorporation, then the Form G5 must accompanied by forms G10 and G1 along with an amended constitution. Note that this derogation applies to common usage of the churches name but the term CLG must still be used in formal documentation, on the bottom of letterheads and on purchase order forms.

### 5.0 Charitable Status

When an organisation has charitable status it means that it is recognised as a charity by the Revenue Commissioners for tax purposes. Charitable status is different from Legal Status. Charitable status does not give legal status to a group or organisation and does not confer incorporation. A group can have charitable status without being incorporated and can be incorporated without having charitable status. Churches and organisations who wish to obtain charitable status must contact both the Revenue Commissioners and the Regulator of Charities authority and register with both of them. EAI Guidelines No.05 and No. 10 set out the process for both of these applications.

### 6.0 Additional Resources

Additional resources and information on the above topics can be found on the following websites.

The Wheel: [www.wheel.ie](http://www.wheel.ie)

Revenue Commissioners: [www.revenue.ie](http://www.revenue.ie)

The Companies office: [www.cro.ie](http://www.cro.ie)

The Charities Regulatory Authority: <https://www.charitiesregulatoryauthority.ie/>