

# 01 | MANAGING BETTER SERIES

# Good Governance



pobal

government supporting communities

## What is this guide about?

This is one of three guides that form part of the Pobal Managing Better Series. The guides have been written to assist board/committee members and management of community, voluntary and not-for-profit organisations in achieving high standards of decision-making, accountability and transparency, both in the context of the communities they seek to support, and in the context of meeting statutory and legal requirements. In other words, the guides seek to help organisations to operate effectively and achieve good practice.

This first of three guides relates to good corporate governance. Corporate governance is especially important for community, voluntary and not-for-profit organisations. Your governing body – whether it is called a management committee or board of directors – is responsible for ensuring that your organisation delivers its objectives, is well managed and delivers positive outcomes for your target group/community. It is responsible for ensuring that monies are appropriately spent and accounted for and that staff are properly employed, remunerated and work within the law. This guide will help you understand your responsibilities as a director or member of a management team, and ensure you have the structures and basic procedures in place to meet your legal responsibilities.

## How should I use this guide?

The guide is divided into 9 sections that cover various aspects of good governance including:

- An introduction to corporate governance
- Types of legal structures
- Setting up a Company Limited by Guarantee
- The board of directors
- Operation of the board of directors
- Legislation affecting your organisation

The guide may be read from beginning to end, or you may wish to dip in and out of relevant sections. Each organisation will need to interpret and apply the principles discussed in this guide according to its particular needs and circumstances. Further guides in this series will help with other aspects of management including financial management (volume 2) and human resources (volume 3). All guides and related support material are available to download from our website at [www.pobal.ie](http://www.pobal.ie)

## Preface

In the course of my job as CEO of Pobal, I meet a lot of board members from the community, voluntary and not-for-profit sector. One of the topics that is often raised with me is the challenge associated with ensuring good organisational governance.

There is little doubt that the regulatory environment in Ireland relating to corporate governance in the community, voluntary and not-for-profit sector has changed significantly in recent years, with a focus on greater transparency and accountability for the sector. Strong and effective corporate governance arrangements are key considerations when funders allocate resources within the sector.

While the focus on enhanced accountability and transparency in the sector is to be welcomed, there is also a need to recognise that those who volunteer their time as board members, and those who work in the sector, need guidance and support so that boards and management committees understand their statutory obligations and achieve good practice.

Pobal's 'Managing Better Series' seeks to support boards and management within the community, voluntary and not-for-profit sectors to understand the wider legal environment around good governance, while also offering guidance in how to effect good governance in practice.

Originally published in 2011, the series of three guides have been updated in 2018 to reflect recent changes in the governance landscape. We, in Pobal, understand the value of the community, voluntary and not-for-profit sector, and the contribution that the sector makes to promoting social inclusion, equality and reconciliation across the island of Ireland. Pobal is committed to supporting the sector to thrive, and we hope that this series of guides will contribute to the effective running of your organisation.

### **Denis Leamy**

CEO, Pobal, May 2018



A photograph of a person's hand pointing at a table covered with various documents, sticky notes, and charts. The scene is overlaid with a large orange gradient that covers the left and bottom portions of the image. The documents on the table include a circular chart with numbers, a grid of colored squares, and several sheets of paper with text and images. A white mug and a green folder are visible in the background.

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A woman with blonde hair and glasses, wearing a white blazer, is speaking at a meeting. She is gesturing with her hands. The image is overlaid with a large orange diagonal shape. In the foreground, there is a wooden table with a white spiral notebook, a smartphone, and some papers.

# 01 | Introduction to Corporate Governance



Good governance means that an organisation exhibits transparency, accountability, responsibility and participation in relationships with all of its stakeholders.

### 1.1 What is Corporate Governance?

Corporate Governance is the framework of structures, rules and processes by which organisations exercise their formal power and responsibilities. The term refers broadly to the rules, processes and laws by which companies, regardless of their purpose, are operated and regulated. In community, voluntary and not-for-profit organisations, corporate governance has another important function: to ensure that the organisation or group adheres to its purpose and serves the target groups or communities for which it was set up to support.

### 1.2 Why is corporate governance necessary?

Corporate governance is necessary to ensure:

- the long term relevance and viability of the organisation
- that the organisation operates legally and effectively, and to provide re-assurance to funders and statutory authorities that this is the case.
- that resources are managed effectively in meeting the purpose and objectives of the organisation.

### 1.3 What does 'good governance' look like in practice?

The 'governors' of an organisation are the members of its governing body. Depending on the legal status and custom of the company, they may be called 'Management Committee Members', 'Directors' or 'Trustees'. Regardless of their title, the people involved must be clear about their governance role, and related duties and responsibilities.

The main functions of governance include:

- being clear about the organisation's purpose, the benefits, and type of change the organisation is trying to achieve for its target group/communities.
- taking informed, transparent decisions about the organisation in areas such as financial viability, budgets, expenditure and financial control, employment and remuneration.
- ensuring that systems, policies and procedures are in place and implemented, and that they are reviewed and updated regularly. This will create the environment for the effective day-to-day operation of the organisation.
- monitoring the work of managers, staff and volunteers and ensuring that the organisation reaches its goals.
- meeting legal and statutory compliance requirements.

Good governance means that policies and procedures are in place to ensure an organisation is well run and in accordance with all relevant legislation. Good governance means that an organisation exhibits transparency, accountability, responsibility and participation in relationships with all of its stakeholders. Good governance promotes confidence amongst volunteers, staff, the wider community and funders, all of whom need re-assurance that organisations in the community, voluntary and not-for-profit sector are properly managed and governed by effective boards using best practice standards.

In this context, good governance requires a board to:

- ensure directors are clear about their role, what is expected of them, and how they conduct their business collectively
- promote values for the whole organisation and apply those values in practice
- develop the board by participating in training in order to discharge their role



A person wearing a white lab coat is looking down at a large stack of papers. The scene is overlaid with a large, semi-transparent orange shape that covers the left and top portions of the image. The text '02 | Legal Structures and Status' is written in white on the orange background.

## 02 | Legal Structures and Status



Company law has been overhauled in recent years with the commencement of the Companies Act 2014 on 1st June 2015. This Act consolidates the 18 Acts and 15 Statutory Instruments relevant to company law from the past 50 years into one single piece of legislation.

Once an organisation is incorporated i.e. gone through a formal legal process to make it into a company, it is treated as a separate legal entity distinct from its owners or directors.

As organisations grow larger, the need to protect individual members from the responsibility of the actions and activities of the larger group becomes more apparent. From the point of view of community, voluntary and not-for-profit organisations, legal structures:

- provide protection for members and directors
- separate company's finances from the personal finances of directors
- facilitate collective action such as employing staff, borrowing money and acquiring property
- facilitate management of the organisation

An organisation's constitution or other governing document will set out the objectives of the organisation and the rules by which it will operate. For incorporated entities, this will be named the memorandum of association and articles of association. Company law has been overhauled in recent years with the commencement of the Companies Act 2014 on 1st June 2015. This Act consolidates the 18 Acts and 15 Statutory Instruments relevant to company law from the past 50 years into one single piece of legislation.

### 2.1 Types of Legal Structures

The different types of company applicable to non-profit organisations are as follows:

- Company Limited by Guarantee (CLG)
- Company Limited by Shares (LTD Company)
- Designated Activity Company (DAC)
- Unlimited Company

#### Company Limited by Guarantee

It is estimated that almost three-quarters of charities/not-for-profits are companies limited by guarantee, without a share capital (CLGs). This is the most suitable structure for most not-for-profit organisations. CLGs are suitable for clubs, members' organisations and charities, as assets or financial surplus cannot be distributed to members. A CLG is not owned by its members and cannot be transferred by its members for value.



#### Company members

The minimum number of members for a CLG has been reduced in the Companies Act 2014 from seven to one. However, the Revenue Commissioners and the Charities Regulator require a minimum of three members in order to grant charitable tax exemption and charitable status. Members can also be directors.



## Directors

CLGs must have at least two directors. However, the Revenue Commissioners and the Charities Regulator continue to require that a charity have at least three independent unrelated directors for it to be granted charitable tax exemption and charitable status.

Part 18 of the 2014 Companies Act is specifically applicable to CLGs.

Features of a CLG include the following:

- It has a constitution document which includes a memorandum and articles of association.
- It has limited liability but does not have a share capital
- It must have at least two directors. All directors must be over eighteen.
- The name of the company must end in “Company Limited by Guarantee” or “Cuideachta faoi Theorainn Ráthaíochta” unless exempted. The exemption refers to the power to dispense with CLG in the name of charitable and other companies under section 1180. This exemption refers to not-for-profit companies only.
- It can claim eligibility for audit exemption and dormant company audit exemption.

Companies Limited by Guarantee have a constitution in the format set out in Schedule 10 to the Companies Act 2014.

Once incorporated, the company must file audited accounts with the Companies Registration Office (CRO). While audit exemptions can be granted in certain specific instances (the “size/abridgement exemption” section 352 of the Companies Act), many funders, including Pobal, require annual audited accounts irrespective of the size of company.

CLGs must hold an AGM, unless it is a single member company.

### Private Company Limited by Shares (LTD Company)

A Private Company Limited by Shares (LTD) is a new model form of a private limited company created under the Companies Act 2014. This company does not have an objects clause in its Constitution (unlike the Designated Activity Company), so therefore can trade in any type of business that the directors and shareholders see fit. The LTD Company is the most frequently incorporated entity for private, commercial business and ventures in Ireland. The LTD Company may have just one director, but in that case must have a separate secretary appointed. It may have between 1 and 149 shareholders (members) and is not legally required to hold an Annual General Meeting.

The shares in a limited company are owned by its shareholders. The shareholders’ liability, should the company fail, is limited to the amount, if any, remaining unpaid on the shares held by them. Part 2 of the Companies Act 2014 sets out the relevant rules in this respect.

### Designated Activity Company (DAC)

As part of the new Companies Act 2014, a new company type, the Designated Activity Company (DAC) has been created. The DAC can be a limited liability company with a share capital or a company limited by guarantee with an authorised share capital. This is applicable to companies who wish to outline and define a specific type of business in their Constitution, rather than have unlimited powers as per the LTD company type. DACs retain Memorandum & Articles of Association as part of an overall constitutional document.

A DAC must have at least two directors and the maximum number of members is 149. If the company is wound up, the members liability is limited to the amount unpaid (if any) on the shares they hold. Part 16 of the Companies Act 2014 is the relevant section in this regard.

### **Unlimited Company**

In an unlimited company, members do not have limited liability. Where an unlimited company is wound up / insolvent, its current members, and certain past members, will be liable to make good any financial shortfall. Unlimited companies are required to have at least two directors, and may have just one member. Where an unlimited company has two or more members, it must hold an AGM.

One common reason for using unlimited companies is that when they meet certain criteria, they are not required to file their accounts.

### **Company Limited by Guarantee having a Share Capital**

The CLG with a share capital is a private company whereby the shareholders have liability under two headings. Firstly, the amount, if any, that is unpaid on the shares they hold, and secondly, the amount they have undertaken to contribute to the assets of the company, in the event that it is wound up, being not less than €1. Its activities are limited to its objects as set out in its Memorandum of Association and it must have at least two directors. The maximum number of shareholders/members is 99.

## **Other types of legal structures**

### **Unincorporated Organisations**

- An unincorporated organisation is governed by a constitutional/governing document which sets out the rules of the organisation.
- The constitution will include the name of the group, the area where the group operates, the activities of the group, the membership, committee, officers, and details about finance, meetings and how the constitution can be altered.
- A sample constitution is available from the Revenue Commissioners and this can generally be adapted to suit the needs of most community and voluntary organisations.

This structure is informal and may be suitable for small scale action groups. However, such a group remains an unincorporated body. This structure is therefore not suitable for an organisation which is acquiring property or employing staff as all members are personally liable and responsible for the organisation's activities.

### **Trust**

- This is a structure where some people are appointed under a deed of trust to hold funds or property on behalf of a group of beneficiaries which is an unincorporated body.
- It does not give legal status to the group and the group does not directly control the property.

## **2.2 Industrial and Provident Societies (Co-operatives)**

Industrial and Provident Societies, better known as co-operatives, operate across a wide range of sectors, and have played an important role in social and economic development in Ireland.

### **What is a co-operative?**

A co-operative is an enterprise which is owned and controlled by its user members and operates for the benefit of its user members. The International Co-operative Alliance (ICA) defines a co-

operative as 'an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise'.

**A registered co-operative, like a company, is an incorporated legal entity with limited liability.**



The basis of choosing between registering as a co-operative under the Industrial and Provident Societies Act or as a company under the Companies Act should primarily be determined by the suitability of the corporate structure to the strategic plan and intent of the business being established. Co-operatives are uniquely associated with the idea of democratic control and being open, accountable businesses accessible to all those who are able to use their services and willing to accept the responsibilities that being a co-operative entails. If registered as Industrial and Provident Societies, co-operatives are required to submit audited accounts annually no matter what the size of the co-operative.

**How to register**

Co-operatives are registered under the Industrial and Provident Societies Act 1893-2014. The 1893 Act provides for a society to be registered to engage in any industry, business or trade authorised by its rules.

The Registrar of Friendly Societies (RFS) is the body responsible for the registration of co-operatives in Ireland. To register an industrial and provident society, the group involved must draw up a set of rules governing the operation of the society and submit them to the RFS, along with the prescribed application form and fee. The group must consist of at least seven people who have a common need and are willing to form a co-operative.

The rules must contain the matters required to be provided for by the second Schedule of the Industrial and Provident Societies Act 1893-2014. Once the rules are found by the RFS to be in accordance with the statute, the society is registered.

There are a number of representatives groups for co-operatives with whom the RFS has agreed forms of model rules which can be used in the registration of societies.

The Irish Co-Operative Organisation Society Limited (ICOS) acts as a co-ordinating organisation for most co-operatives in Ireland. ICOS can assist in the establishment and registration of a co-operative (for a fee).

The Registrar of Friendly Societies (RFS) is the body responsible for the registration of co-operatives in Ireland. The Friendly Societies and Industrial Provident Societies (Miscellaneous Provisions) Act 2014 was enacted on the 21st July 2014. This was introduced to reduce the red tape on co-operatives by easing financial reporting restrictions and extending the period for submission of annual returns and accounts.

**Friendly Societies**

Friendly Societies are registered under the Friendly Societies Acts 1896-2014. They are mutual associations established for various purposes, mostly to provide small life assurance benefits, sick benefits and death benefits to members, to provide benefits to non-members or to promote particular activities or interests.

In 2014 the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014 provided for the cessation of new friendly societies, as a result no new societies may be registered.

Further information can be found at:

The Irish Co-Operative Organisation Society Limited (ICOS): [www.icos.ie](http://www.icos.ie)

Registry of Friendly Societies (RFS): <https://www.cro.ie/Registration/Society-Union>



### 2.3 Charitable Status

The Charities Act 2009 gives statutory form to the definition of a charity. If you operate in the Republic of Ireland, have a **charitable purpose** only, and provide **public benefit** then your organisation is a charity. All charities are required by law to register with the Charities Regulatory Authority (CRA), the charities regulator.

Charitable purposes are defined in the Act as:

- the prevention or relief of poverty or economic hardship;
- the advancement of education;
- the advancement of religion;
- any other purpose that is of public benefit to the community. For an organisation to be a charity, it must provide a clear public benefit. A public benefit is something which is beneficial in an identifiable way to the general public, or a section of the public.

The Charities Act 2009 provides that public benefit includes:

- the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability;
- the advancement of community development, including rural or urban regeneration;
- the promotion of civic responsibility or voluntary work;
- the promotion of health including the prevention or relief of sickness, disease or human suffering;
- the advancement of conflict resolution or reconciliation;
- the promotion of religious or racial harmony and harmonious community relations;
- the protection of the natural environment;
- the advancement of environmental sustainability;
- the advancement of the efficient and effective use of the property of charitable organisations;
- the prevention or relief of suffering of animals and
- the integration of those who are disadvantaged, and the promotion of their full participation, in society.

The traditional legal structures used by charities include the company limited by guarantee (CLG), the charitable trust, or the unincorporated association.

Charitable trusts are subject to general trust law. Unincorporated associations are subject to general contract law, and charitable companies are subject to company law. Each structure is also subject to the Charities Act 2009 which requires all charities to register with the Charities Regulatory Authority.

To apply for charitable status, an organisation must register with the Charities Regulatory Authority.



## 2.4 The Charities Regulatory Authority (CRA)

The Charities Act 2009 established the Charities Regulatory Authority (CRA) which is charged with maintaining a register of charities, obtaining annual reports from charities, providing charity services and enforcement of compliance standards.

All charities are required to register with the Charities Regulator. Once an application to register is made and accepted, and the group is awarded charitable status, it will receive an Registered Charity Number (RCN). Registration with the CRA and having an RCN is separate to having a charity tax exemption number (CHY number) from the Revenue Commissioners. In principle, a community, voluntary or not-for-profit organisation should apply to the CRA to be on the charities register, and if accepted by the CRA and once it receives its CRN, it may then if it chooses to apply to the Revenue Commissioners for charitable tax exemption. If charitable tax exemption is granted, then the organisation will receive a CHY from the Revenue Commissioners. When allocated a CHY Number by the Revenue Commissioners, the registered charity is exempt from some taxes (DIRT, income tax, and corporation tax if applicable) and can apply to the Valuation Office for exemption from rates on buildings. If your charity wants to apply for charitable tax exemption, this is a separate process and can be completed using the Revenue Commissioner's leaflet and application form CHY1 available

<https://www.revenue.ie/en/companies-and-charities/documents/charities/form-chy1.pdf>

Visit the charity section of the Revenue Commissioner website for more information [here](#)

All charitable organisations are required to make annual reports on their activities to the CRA.

Where a charity has a gross income in a financial year of €100,000 or more, the CRA requires the accounts to be audited. If a charity is incorporated as a company, it is required to have its accounts audited regardless of its size and the Companies Registration Office will provide the CRA with the organisation's annual returns.

### Information supplied by charities to the CRA and available publicly from the Charities Register

- charity name, number, country of establishment, address;
- trustees names;
- governing form;
- countries within which the charity operates and whether it operates in Northern Ireland;
- charitable purpose and objects;
- activities, beneficiary groups, average number of employees and volunteers and
- gross income and expenditure in the last financial year.

Information supplied by charities to the CRA but not publicly available include details such as Trustee home addresses, key administrative personnel, governing document or constitution, bank accounts, most recent set of accounts/annual report, main sources of income, professional advisers, future fund-raising agents and sign up to relevant codes.

The Charities Regulator launched a Charities Governance Code in November 2018 and registered charities will be expected to comply with the Code in 2020, with reporting on compliance with the Code to commence in 2021. The Code consists of 6 principles of governance and 32 core standards that all charities should meet when putting the principles into action. Download a copy of the Charities Governance Code [here](#) The Regulator will provide a suite of guidance to charities to assist with meeting the core standards contained in the Code.

Visit the Charities Regulatory Authority at [www.charitiesregulatoryauthority.ie](http://www.charitiesregulatoryauthority.ie)

03

## Companies Limited by Guarantee – setting up







## Constitution of a Company Limited by Guarantee

The Constitution of a CLG consists of two parts: the Memorandum of Association and the Articles of Association.

### 3.1 Setting up a company limited by guarantee

As explained in Section 2, a company limited by guarantee (CLG) offers community, voluntary and not-for-profit organisations a structure with a legal identity and status which protects its members and directors from incurring personal liability. In order to set up a company limited by guarantee, the organisation must do the following:

- check with the Companies Registration Office (CRO) that the proposed name of the company is acceptable;
- draw up a constitution for the company in the form of two documents: the Memorandum of Association and the Articles of Association. The function of both documents is outlined below; and
- obtain the signature of three subscribers, at least two of whom will be Directors (also see Section 4.7 regarding good practice in the size of a voluntary board).

#### Constitution of Company

The Constitution of a CLG consists of two parts: the Memorandum of Association and the Articles of Association.

#### Memorandum of Association ('Memorandum')

This document sets out the conditions upon which the company is granted incorporation. Its provisions include:

- name of the company
- declaration as to liability - e.g. "The liability of the members is limited"
- objects clause - states the principal activity of the business and its subsidiary activities, including the company powers (Powers Clause)
- capital clause [Relevant only to CLGs with Share Capital] - This will state the nominal capital of the company, i.e. the value in money of the shares which the company is authorised to issue and the number of shares into which it is divided together with the amount of each share. For example: "The nominal share capital of the company is €100,000 divided into 100,000 shares of €1 each"
- Association clause - The founding members declare that they wish to be formed into a company and agree to take shares. The names and addresses of the founding members are listed in one column and a corresponding column will list the number of shares they each hold.

#### Objects Clause

- This is the most important aspect of the Memorandum of Association. It defines the purpose for which company is formed and it further determines and limits or restricts the powers of the company.

Typical 'power' clauses include:

- to collect and to receive voluntary contributions, donations or bequests or money for any of the purposes aforesaid;
- to invest company money;
- to acquire any other similar business;
- to act as or employ agents;
- to receive money on deposit, lend money, guarantee contracts.

#### **Articles of Association ('Articles')**

The Articles of Association set out rules for the internal management of the company and cover the following areas:

- electing the board of directors;
- keeping the books of accounts;
- roles of officers;
- running meetings;
- number of members;
- who are the members?

The Articles of Association can be altered as the need arises by special resolution. See link below to a model constitution for a CLG development by the Charities Regulator.

<https://www.charitiesregulatoryauthority.ie/en/cra/pages/wp16000065>

**Form A1** – this is the application form to the CRO used for incorporation of a company. It is available to download from: <https://www.cro.ie/Publications/Company-Forms>

This form requires:

- details of company name, registered office, company secretary and directors
- details of consent from secretary and directors to act as such
- details of the subscribers to the company and their shares (in a company limited by guarantee, each board member is only required to pay €1 should it be dissolved)
- details of the general nature of the activity and the place in the State where it is proposed to carry on the activity
- a signed statutory declaration that requirements of the Companies Acts have been complied with.

The Memorandum and Articles of Association, together with a completed form A1, should be sent by the organisation, (or its solicitor or accountant) to: Companies Registration Office, Parnell House, 14 Parnell Square, Dublin 1. Tel: (01) 8045200. Website: [www.cro.ie](http://www.cro.ie)

**Certificate of Incorporation** – upon receipt of this certificate from the CRO, a company can commence trading.

Further Information about Company set-up and regulation is available from:

- Companies Registration Office [www.cro.ie](http://www.cro.ie)
- Office of the Director of Corporate Enforcement [www.odce.ie](http://www.odce.ie)
- The Financial Regulator <https://www.centralbank.ie/regulation>
- Irish Auditing & Accounting Supervisory Authority [www.iaasa.ie](http://www.iaasa.ie)

### 3.2 Post Incorporation

Section 5 of this guide provides details of the annual returns and other information which must be submitted to CRO in order to comply with company law and retain incorporated status. The most commonly filed forms and documents are:

- Form B1: Annual Return
- Form B2: Change of registered office
- Form B10: Change of Directors and Secretary or in their details
- Form G1/G2/G1Q: Special / Ordinary Resolutions

Forms B1, B2 and B10 must be filed on line.

### 3.3 About the Companies Registration Office (CRO)

The Companies Registration Office is the central repository of public statutory information on Irish companies. The CRO operates under the aegis of the Department of Business, Enterprise and Innovation.

The CRO houses the register of companies, business names and restricted/disqualified persons, all of which can be searched via their website. Certain searches will require a fee. A lot of documents are scanned and available electronically, but older documents are stored and require the files to be ordered.

#### **The CRO has a number of functions:**

- the incorporation of companies and the registration of business names. A business name is a trading name that differs from the official company name;
- the receipt and registration of post incorporation documents;
- the enforcement of the Companies Acts in relation to the filing obligations of companies and
- making information available to the public.

Companies have an obligation under law to file certain documents with the CRO. These documents include details of changes of registered office, changes of company officers (director or company secretary), or a number of other changes which affect the company. Companies are also required to file annual returns, and in most cases they must also file annual accounts. The CRO also keeps details of mortgages and charges imposed on companies.

The CRO can take a number of measures to deal with companies who fail to file their annual returns, including prosecution of the company or directors, or striking the company off the Register. Companies who fail to file annual returns may be struck off the register of companies. If a company is struck off, the protection of limited liability no longer exists and individuals can be held personally liable for any debts incurred after strike off. Also, the assets of such a company will become the property of the State.

While it is usually possible to reinstate companies which have been struck off, this can be an expensive process. Companies wishing to avoid such a fate should ensure that their annual returns are filed on time.

#### **Making information available to the public**

Almost all of the information filed with the CRO is available for public inspection, usually for a small fee. Certain vital information, such as the company name and registered office address, may be checked free of charge on the CRO's web search facility. A more detailed synopsis of a company is available by ordering a company printout or a copy of any document filed. This again can be obtained using the web search facility on the CRO website and a fee applies.

A group of diverse people are gathered around a large wooden table in a meeting. In the foreground, a man with a beard and a turban is looking at a laptop. Other people are visible in the background, some looking at documents and others talking. The scene is lit with warm, orange-toned light. A large, semi-transparent orange shape is overlaid on the right side of the image, containing the text.

# 04 | The Board of Directors



Regardless of whether it is referred to as the board of directors, board of management, trustees or management committee, the governing body of a community and voluntary organisation must ensure it is both accountable and effective.

#### 4.1 Boards, directorships and the law

In general the board is:

- normally elected by the members of the company at the AGM;
- responsible for ensuring that the organisation keeps to the rules of the limited company as described in the Memorandum and Articles of Association;
- legally required to act in the best interests of the company, its members and its employees.

Companies and/or directors are liable to be prosecuted or struck off the Companies Register by the Companies Registration Office if they do not fulfil all their legal obligations as a company limited by guarantee.

Some other areas for which individual directors remain personally liable, despite being a limited company are:

- fraudulent business conduct;
- breaches of health, safety and welfare at work.

#### 4.2 Role of the Board of Directors/Governors

Regardless of whether it is referred to as the board of directors, board of management, trustees or management committee, the governing body of a community and voluntary organisation must ensure it is both accountable and effective. For the purposes of this guide, the prime governors of an organisation will be called the 'board of directors'. Depending on the custom and legal status of an organisation, these individuals are sometimes called 'management committee members', 'directors', or 'trustees'.

In smaller organisations, the directors may be pre-occupied with their role as a management committee and in the day-to-day operations of the entity. However, even in these circumstances, the board has a governance or "stewardship" role which all boards of directors are required to undertake. The scope of this role is set out below:

- the board of directors must clearly direct the organisation ensuring that it has proper plans, procedures, policies, structures and resources in place to achieve its objectives.
- the directors are entirely accountable for the organisation which they govern and must manage risk and be accountable to funders, members and other stakeholders for both its financial affairs and activities, and ensure the organisation's procedures are reviewed regularly.



Attending to these areas entails the following responsibilities:

- complying with all statutory obligations;
- regularly reviewing and confirming on an annual basis the adequacy of internal financial controls;
- overseeing items of expenditure;
- establishing and monitoring procedures for the retirement and re-appointment of board members;
- employment of the CEO and other employees;
- establishing and implementing procedures for managing potential conflicts of interest;
- publishing annual reports and financial statements;
- maintaining an appropriate relationship with the external auditor;
- establishing a procedure for 'confidential reporting' and meaningful follow-up of matters raised;
- preparing a strategic plan within the requirements set down by the CEO and Board members; and
- reviewing the board's operation and effectiveness.

### 4.3 Conduct of the Board of Directors

- The board of directors are able to make decisions and have due authority in line with their articles of association. The articles will usually specify what makes up a quorum for meetings and what form of voting rights there are.
- If there is a necessary quorum for board business, this will be a valid and enforceable decision. So whilst the board does act as a whole unit, it doesn't mean every single director will be involved in every decision.
- There is therefore a requirement for meetings to be held regularly and for decisions to be reached collectively.
- When members of the board act alone or in small groups, such as a sub-committee, they must do so with the board having first delegated authority to that individual or sub-committee to act on its behalf.
- The board is responsible for securing the company's compliance with its obligations under Irish tax law and obligations under the Companies Act 2014, specifically in relation to accounting records, audits and financial statements.
- Absence from a board meeting does not absolve one from their responsibility or liability.
- The behaviour of one member of the board is the concern of all other members.
- The board must declare conflicts of interest and abide by its common law and fiduciary duties.
- Ultimately the board decides and acts collectively and all directors are legally bound by the decisions of the board.

### 4.4 Duties of Directors

Before the Companies Act 2014, the responsibilities of directors were derived from common law and included the duties of skill, care and diligence. Under the new Act, the definition of director has been extended to include de facto and shadow directors (i.e. those not officially appointed but nonetheless acting as directors or those who influence the decision making board of directors).

The duties of the directors are now enshrined in the new act (Section 228) which provides that a director must:

- act in good faith in what the director considers to be in the interests of the company;

- act honestly and responsibly in relation to the conduct of the affairs of the company;
- act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;
- not use the company's property, information or opportunities for his or her own or anyone else's benefit;
- not agree to restrict his/her power to exercise an independent judgment;
- avoid any conflict between his/her personal interests and company duties;
- exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person;
- in addition to the general duty, to have regard to the interests of its members of the company; and
- familiarise themselves with their new and varied obligations to ensure both they and their companies are in compliance with the Act.

A new requirement under the Act is the preparation of a compliance statement which should be included in the Directors' Report in the financial statements. This is a requirement for directors to acknowledge their responsibility for meeting the company's relevant obligations under law (Companies Acts and Tax Acts). The three items that directors are required to address in the compliance statement are that:

- they confirm that a company policy statement has been drawn up
- they confirm what structures or arrangements have been put in place to ensure the company's compliance with its relevant obligations; and
- they confirm that a review of these structures and procedures have been conducted during the course of the financial year.

#### 4.5 The Company Secretary

The role of the Company Secretary is to make sure that the company keeps to the rules set out in the Articles of Association, which includes the requirements of the CRO as well as the rules of the organisation. It is a legal requirement for limited companies to appoint a company secretary. The company secretary is appointed by the board of directors and may be a director or member of staff. The main responsibilities of the company secretary include:

- to ensure that the company makes all of the necessary annual returns and submission of the company accounts to the CRO on time.
- to keep minutes and records of all board decisions and procedures.
- to keep a register of directors and their interests, including their other directorships.
- to induct a new director upon their appointment to the board ensuring they understand the duties and activities required from them including their legal obligations.
- to notify the CRO of any changes to the board of directors by submitting a B10 form when necessary.

The Companies Act 2014 imposes new duties on directors when appointing the company secretary in that they must ensure that the 'person appointed as secretary has the skills or resources necessary to discharge his or her statutory and other duties.'

Statutory responsibility to ensure compliance with the Companies Acts, which was previously the role of the company secretary, is now the responsibility of the directors. However, the company secretary may still be open to prosecution as an officer in default for failure of the company to comply with a relevant requirement. Like directors, the company secretary must make a public declaration on appointment acknowledging that s/he has legal duties under the Companies Acts, other statutes and common law.

## 4.6 Other Officers of the Board

### Officers of the Board

The Articles of Association sets out the officers of the company. This will always include a company secretary and may, in a not-for-profit company, include the Chairperson and other officers. Even if not specified in the Articles, the board may choose to create an office and appoint an individual to it. These could include: Chairperson, Vice-Chair, Treasurer or Committee Chairs. The roles may vary across companies in the community, voluntary and not-for-profit sector, but two roles stand out in all circumstances:

**Chairperson:** The chairperson provides leadership and has a particular support role to play with the CEO or Manager, and s/he is often the main link person with the Board between meetings. It is essential therefore that this office is vested in an individual. The duties of the Chairperson include: chairing effective meetings, preparing agendas for meetings; ensuring that decisions made at meetings are implemented, acting as spokesperson for the governing body and/or the organisation; and resolving conflict within or on behalf of the governing body.

**Treasurer:** In small community, voluntary and not-for-profit organisations, the treasurer has a critical role to play in ensuring that the finances of the company are administered correctly and that the finance and related systems are fit for purpose, and develop as the company grows. In medium to large organisations, the treasurer should not be directly involved in keeping books and records, making payments or in the other day to day financial administration. Pobal strongly recommends that the treasurer has a professional background in accounting and financial management. Duties of the Treasurer include: preparing and presenting financial reports to the board; ensuring that appropriate accounting procedures and controls are in place; preparing the annual accounts to be passed to an independent auditor and presenting the annual accounts at the annual general meeting.

## 4.7 Size of the Board

While some organisations have a governing body with as few as two members, it is always preferable in the context of community, voluntary and not-for-profit organisations to have a larger group. Indeed, boards of directors of anywhere between seven and ten members are common to ensure that there is a range of skills and knowledge necessary for effective governance and to promote community ownership/representation. Some board members are recruited because of specialist skills or knowledge, or because of their links with other agencies and groups (see also the conflict of interest section in this guide).

## 4.8 Board induction and training

Board induction is of critical importance for new board members. Organisations should have a documented board induction policy and process. A checklist for inducting new Board members is appended to this document.

Each new board member should receive an induction pack. The induction pack should include:

- this guide;
- copy of the company Memorandum and Articles of Association;
- the most recent set of audited financial statements;
- standing orders of Board meetings;
- agenda and minutes of the last Board meeting;
- the most recent set of management accounts;
- list of Board members; and
- a copy of their own B10 form.



A number of support agencies provide formal training for board members in the community, voluntary and not-for-profit sector, and boards should have a training policy for members. There are also other ways to help keep board members informed and skilled such as:

- specifying in your auditor's engagement letter that they attend a board meeting to explain a set of audited accounts and the CRO's function with new board members.
- Inviting other board members or guests with specialist knowledge (for instance on health and safety, working with young people, personnel management) to give a briefing before or after board meetings.
- circulating publications from community, voluntary and not-for-profit sector support bodies/networks and from other relevant bodies (e.g. CRO, Charities Regulator, Health & Safety Authority).

#### 4.9 Shadow Directors

Where a person who is not a director exerts influence over the company's directors to the extent that those directors are accustomed to acting in accordance with that person's instructions, that person is a 'shadow director'. The significance of being a shadow director is that a shadow director has many of the legal responsibilities of a director.

Situations have arisen in the community, voluntary and not-for-profit sector where a group has incorporated as a company limited by guarantee and where only two or three management committee members have registered as directors, but where all committee members continue to operate on the management committee. In this instance, the management committee members who are not Directors may be considered shadow directors. This is provided for under paragraph 221 of the Companies Act 2014.

#### 4.10 Succession Planning

It is considered good practice that the governing body changes over time with some individuals leaving and others joining. The organisation's Memorandum and Articles of Association will detail the rules regarding directors' retirement and re-election.

**In planning for the appointment of new members to the board, the organisation must consider the skills, knowledge and experience required on the board to allow it to meet its strategic vision.**

Many community, voluntary and not-for-profit organisations will also need to give due consideration to representation of target groups/communities, and other stakeholders, on their board. Recruiting new board members involves reviewing the skills and knowledge available on the current board, identifying gaps, and then seeking people who will fill those gaps.

Many organisations have found that a three-year term works well for board members. Rotation allows people with fresh ideas, abilities, or networks to provide their support for the organisation. Staggered replacement is advisable, to ensure a certain level of continuity. Planning for succession provides a way to maintain the balance of wisdom and work.



**05 | Operation of the Board**



A conflict of interest may arise where an individual director has multiple competing interests and where a personal or professional interest may get in the way of making a decision in the best interests of the organisation.

### 5.1 Meetings of the Board of Directors

A set of written 'standing orders' bring clarity to the operation of board meetings. A set of standing orders should cover the following points of business:

- frequency of meetings
- quorum and voting rights
- attendance at board meetings
- disclosure of interests (see below)
- agenda
- board papers
- minutes of board meetings
- establishment of committees

### 5.2 Managing conflicts of interest

Directors of the company are legally obliged to act in the best interests of the company. A conflict of interest may arise where an individual director has multiple competing interests and where a personal or professional interest may get in the way of making a decision in the best interests of the organisation. A conflict of interest may arise for a board member in many different situations, including the following examples:

- directorships of other companies;
- family relationships between board members and/or staff members;
- personal ownership of assets e.g. property which may be rented to or otherwise used by the company; and
- where representatives on the board from other bodies such as an external agency, community organisation, local authority or other public body contribute to a decision that might impact directly on that body.

Depending on the circumstances, different approaches may be taken to avoid conflicts of interest and to maintain the integrity of the company.

- Standing orders for Board meetings can require a "declaration of interests" as a standard item on the agenda.
- It is not considered good practice to have paid members of staff of the organisation on its board of directors.

### 5.3 Working through Sub-Committees

It is common practice for a governing body to set up sub-committees and/or working groups. A board can set up committees with particular terms of reference when it needs assistance or when an issue requires more resources and attention. They can be established on a short-term or temporary basis, or they can be formed as a permanent body for ongoing work.

A board can either delegate some of its powers to the committee, enabling it to act directly, or can require the recommendations of the committee to be approved by the board. The board will normally depend heavily on the findings and recommendations of its committees, although final decisions to accept or reject these recommendations will be made by the board.

Committees should have input from staff and volunteers to maintain links to the organisation's support base and to provide a 'reality check' as to what is likely to be supported by the general members, or what is feasible in terms of time, money and resources. Committees are also a good way to train potential board members and get future community leaders involved.

To ensure the accountability and success of sub-committees, each requires an up to date terms of reference that clearly lays out its:

- purpose;
- membership;
- powers and responsibilities; and
- reporting procedures.

Important sub-committees to establish are:

- **Finance sub-committee**
  - to ensure that the organisation efficiently manages its services within its identified financial resources. In particular, this sub-committee oversees the organisation's performance to ensure that it maximises its financial and other resources and uses these resources efficiently and effectively in support of the achievement of organisations strategic goals and corporate objectives; has adequate financial management systems and internal control structures to discharge their corporate governance and financial management responsibilities; undertakes effective and efficient planning, monitoring, reporting and controlling of finances and other resources; complies with accounting policies and standards, applicable laws and regulations, and policies and procedures.
- **Audit sub-committee**
  - to oversee and advise the board and CEO (where applicable) on matters relating to the operations and development of the internal audit function; the financial accounting and annual reporting processes; corporate governance issues, and the effectiveness of, and the relationship with, the external auditor.
- **HR sub-committee**
  - to periodically review terms, conditions, policies and practices relating to the employment of staff within the organisation and to recommend to the board any substantive amendments required

Other committees are formed for a range of reasons, including:

- Selection committees
  - to select board members, to select a CEO
- Fundraising committees
  - to decide on and implement fundraising strategies
- Organisational review committees
  - to review the functioning of the organisation

- Committees of inquiry
  - to inquire into particular questions (disciplinary, technical, etc)
- General administration committees (made up of, for instance, the treasurer, the secretary, and perhaps senior staff)
  - to manage the business of the organisation between board meetings
- Special event committees
  - to be responsible for co-ordinating a particular event

Committees need clear goals, objectives, and terms of reference in order to function efficiently, and boards should ensure that these are developed before establishing the committee.

## 5.4 Main areas of Board-level administration

### Minutes of Meetings

Minutes must be kept of all general meetings, board meetings and sub-committee meetings

### Annual Returns

- must be made to the CRO after the first AGM and in each calendar year after that using Form B1.
- must be completed within 28 days of the company's Annual Returns Date (ARD) The ARD will have been set when the company was first registered.
- audited financial statements must be attached to the annual return unless the company is entitled to an audit exemption
- a new company is exempt from the obligation to attach financial statements to its first annual return. This return is required to be made up to a date that is six months from its date of incorporation. It is, however, required to attach financial statements to its second annual return.
- a missed deadline will result in a late filing penalty and the loss of audit exemption availability and may ultimately result in the prosecution of company directors and the company being struck off.
- a company may be struck off the register and dissolved for failure to file an annual return
- if a company is struck off, the assets of the company become vested in the Minister for Finance, and if the business continues to trade, the owners will no longer enjoy the benefit of limited liability and are personally responsible for any debts incurred so long as the company remains dissolved.
- any person, who was a director of a company at the date of issue of a strike off notice relating to the non-filing of annual returns, may be disqualified from acting as director by the High Court, where the company is struck off leaving outstanding liabilities
- such an order may be made by the court on the application of the Office of the Director of Corporate Enforcement.

### Accounts

- The annual return to CRO must be accompanied by the company's audited accounts, auditor's report and Directors' report (where the company is not exempt from audit).
- Companies are required to keep proper books of account which give a true and fair view of the company's financial affairs with records of all income and expenditure.
- Companies are also required to disclose details of their accounts at the Annual General Meeting (AGM), which have been approved and adopted by the board at a previous meeting.
- In addition, they are required to observe certain standards in the preparation of accounts, follow specific formats and disclose certain information by way of notes to the accounts.

**Mortgages and Charges**

- Details of certain mortgages or charges created by a company must be delivered to the CRO and registered within 21 days of creation of the charge.
- Failure to register the charge within 21 days of its creation has the effect of making the charge void against a liquidator of the company and any creditor of the company.

**Stationery**

Company stationery must show:

- the full registered name of the company;
- the names of its directors;
- the country of registration and address of registered office; and
- the registered number of the company.

**Company Seal**

A company seal is required by law and is used on any legal documents such as leases, contracts and indentures. A seal can be obtained via most stationery shops.

**5.5 General meetings (AGMs and EGMs)**

- All members are entitled to attend general meetings of the company.
- The company must call general meetings at the request of directors and/or members, according to the rules in the Articles of Association.
- The company must give due notice of all general and board meetings.

**Annual General Meeting (AGM)**

- Chapter 6, Part 4 of the Companies Act 2014 deals with general meetings and resolutions.
- An AGM must be held within 18 months of becoming a company and at least every 15 months from then on.
- The company must give notice in writing of the AGM as set out in the Articles of Association (a minimum of 21 days)

**Extraordinary General Meeting (EGM)**

- An EGM is a meeting other than the annual general meeting.
- An EGM is usually called on short notice and deals with an urgent matter.
- Notice for the EGM is usually dealt with in the company's Articles of Association but those articles must be consistent with minimum limits set out in the Companies Acts. Those minimum limits are 21 days notice in the case of an EGM convened to pass a special resolution, and for other EGMs, 14 days' notice where the company is limited by guarantee and does not have a share capital, and 7 days where the company is a private company limited by shares.

## 5.6 The Board and the CEO

The Chief Executive Officer (or Manager) is responsible for leading the development and execution of the company's long term strategy. The CEO is ultimately responsible for all the day to day management decisions and for communicating on behalf of the company to shareholders, employees, government authorities and the public.

In a larger organisation, the CEO will have oversight and responsibility for the areas of management listed below.

- articulating the vision;
- implementation of operations;
- planning, monitoring and improving;
- financial and physical resources (e.g. premises) management;
- income generation and fundraising; and
- risk management, including health and safety and reputational risk.

In a smaller community organisation, some management functions may be undertaken in conjunction with, or by, board members. In drafting a CEO/manager's job description, it is recommended that the board considers these functions and ensures that responsibility for each area is clearly assigned and documented.

There are some matters which apply to CEO and manager regardless of the size of the company including:

### **Providing a link between the staff and the board**

It is the CEO/manager's role to manage the staff – this is not the Board's role. The board should never undermine the authority of the CEO in this regard.

### **Representing the organisation and setting standards**

The board and the CEO have a dual role in representing the organisation to the outside world and setting the standards for the organisation. This includes setting a good example when it comes to ethical behaviour, loyalty, commitment and efficiency.

### **The Board's Role in overseeing the CEO**

One of the most important roles of a not-for-profit board is the selection and monitoring of the CEO. The CEO's job description should set out who the CEO reports to on a day to day basis. This is typically the Chairperson of the board.

### **Setting the CEO's pay**

An important part of the recruitment process involves setting the CEO's pay. The package the board offers must be capable of attracting a suitable candidate but must not demand such a large proportion of the organisation's resources that it compromises its ability to realise its plans and programmes. Setting the pay must be a matter for the board; as the CEO cannot be allowed to set his/her own salary. Ideally a salary scale should be in place for all paid staff but this may not be possible given due to funding limitations.

### **Monitoring and Reviewing the CEO**

The Board, in partnership with the CEO, should decide the process, time and form of the CEO's performance reviews. Reviews must be based on the CEO's job description and the requirements included in it.

A photograph of a group of people at a social gathering, possibly a community event. The scene is lit with warm, orange-toned lighting. In the foreground, a woman with short, light-colored hair is smiling broadly, wearing a light blue sweater and a grey shawl. She is holding a white paper cup. To her left, another person is partially visible, also holding a cup. The background shows other people in a social setting, some in conversation. A diagonal line runs across the image from the top left to the bottom right, separating the image into two sections.

06

## Relevant Legislation for Community and Voluntary Organisations





To ensure compliance, all community, voluntary and not-for-profit organisations should have a data protection policy in place which relates to data protection, record retention, access requests and data security breaches.

### 6.1 Overview of Legal Responsibilities

Directors of companies have a range of legal responsibilities. This section does not offer legal advice, but aims to indicate some of the key areas of law of relevance to a board of directors, and to suggest where further information can be obtained.

### 6.2 Companies Act 2014

The Companies Act 2014 commenced on 1st June 2015. The Act consolidates the existing Irish Companies Acts and many of the related statutory instruments into a single statute while simultaneously introducing significant reforms to Irish company law.

#### What the Act means for organisations

The introduction of the Act means that organisations need to look at their constitutive documents and decide whether they are fit for purpose. For directors, it means a more focused regime of directors' duties which are now on a statutory basis and for the company secretary, it means becoming familiar with a completely new framework for the governance of companies.

#### Directors' Responsibilities

Directors' Duties is covered in Section 4.4 above. A useful summary of Directors' responsibilities, including an information booklet, is available from the Office of the Director of Corporate Enforcement, available at:

<http://www.odce.ie/Portals/0/Information%20Booklets%202014%20Act/Directors%20Lo%20Res%20Update%20Oct%202016.pdf>

#### Company Secretary

The Companies Act 2014 also specifies a number of legal responsibilities that relate to the role of Company Secretary, whose roles it is to oversee the company's day-to-day administration and to ensure that the company complies with the law and observes its own regulations. Specific legal requirements include providing relevant information on the company and its directors to the Companies Registration Office, keeping minutes of Board meetings, notifying members of AGMs, and providing legal and administrative support to directors.

Further information is available from the Office of the Director of Corporate Enforcement, where you can download an information leaflet on the role of the Company Secretary at

<http://www.odce.ie/Portals/0/Information%20Booklets%202014%20Act/Secretaries.pdf>

Careful adherence to company law is important for good governance and also to avoid the imposition of penalties. The Companies Registration Office can impose a range of penalties for late submission of relevant returns, and the Office of the Director of Corporate Enforcement has a range of legal powers to enforce company law.

### 6.3 Charities Act 2009

#### Introduction & Background

The Charities Act was enacted in Ireland in 2009. The purpose of the Act is to reform the law relating to Irish charities and to bring about a greater degree of transparency and accountability to the charity sector in Ireland.

An important part of the act was the establishment of a Charities Regulatory Authority. This provides for a register of charities in which all charities operating in the state must register and submit annual activity reports. Each organisation must make itself aware of the registration process and assess their systems and processes in accordance with the new regulations. See Section 2.4 for additional detail on the Charities Regulator.

You can download a copy of the Act at:

<http://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/html>

### 6.4 Data Protection Legislation

Data protection legislation applies to any organisation that keeps personal information about individuals on computer or in a filing system.

Most not-for-profit organisations and charities collect, use and keep 'personal data' about individuals which can include members, subscribers, employees and volunteers, and this information can be kept in paper format in a filing system or in digital form. If your organisation collects such information and decides how it will be processed, the organisation is a 'data controller' with obligations under data protection law.

Additional legal requirements apply to what is called 'sensitive information' which includes information about a person's race, ethnic origin, political opinions, religious beliefs, trade union membership, physical health, mental health, sex life or sexual orientation.

Charities and voluntary organisations must become fully aware of data protection requirements, and comply with the law and be totally transparent and accountable for how data is processed within the organisation. The organisation's staff, volunteers and clients must all understand their responsibility towards data protection.

To ensure compliance, all community, voluntary and not-for-profit organisations should have a data protection policy in place which relates to data protection, record retention, access requests and data security breaches.

According to the legislation, an individual has a number of rights, including the right to:

- be informed about the purpose for which the data about them is kept.
- obtain a copy of all personal data about them by making a written 'access request'.
- have incorrect information rectified and, in some cases, erased.
- prevent data being used for some purposes.
- make complaints to the Data Protection Commissioner, who will investigate and has legal powers to ensure that rights are upheld.

Further details on the legislation and its implications can be obtained from the Data Protection Commissioner, , LoCall: 1890 252 231

### **The General Data Protection Regulation (GDPR)**

This new data protection law will come into force across the EU on 25th May 2018, replacing and repealing national data protection law. While encompassing existing data protection concepts, the GDPR will introduce significant changes including enhanced rights for individuals and compliance obligations for data controllers.

The GDPR provides six principles that must be followed when processing personal data:

- 1) Lawfulness, fairness and transparency
- 2) Purpose limitation
- 3) Data minimisation
- 4) Accuracy
- 5) Storage limitation
- 6) Integrity and confidentiality

The GDPR introduces a new accountability principle which will mean that data controllers must be able to demonstrate compliance. This will involve putting policies, record-keeping and audits in place so that organisations can prove compliance. Data Controllers will be required to take a proactive method of collecting, using and keeping personal data and how this is documented.

### **How to prepare for the GDPR**

Your organisation should:

- be aware of its obligations under the GDPR which comes into law in Ireland from 25th May 2018;
- your organisation must be able to 'demonstrate' compliance with the GDPR;
- carry out an information audit to identify the personal data your organisation holds, why and what basis you hold it, how secure it is and who it is shared with;
- put in place, or review your privacy notice on your website which normally gives people information such as your identity and how you intend to use and share their information. The GDPR requires for additional information to be communicated to the individual, such as the data retention period and that there is a right to complain;
- check your organisation's policies with regard to the individual's rights. The GDPR provides an individual with enhanced rights (e.g. to object to direct marketing, to object to certain types of processing to prevent profiling.) Consent forms and privacy statements should be reviewed to take into account these new rights;
- adhere to the new timescale for subject access requests whereby individuals are entitled to see the personal data your organisation holds about them. You have a month to comply with these requests and may no longer charge a fee;
- ascertain the legal basis for all of your data processing activities as under the GDPR this must be identified (for example consent, or legitimate interest). The legal basis should then be documented in your privacy notice; and
- review how your organisation looks for and obtains consent as the GDPR contains strict conditions for obtaining consent as a basis for processing data. Ensure that your organisation has an effective audit trail. Consent must be freely given, specific, informed and unambiguous. Consent must be explicit for sensitive data and the data controller must be able to demonstrate that consent was given.

- Regarding data breaches, your organisation must ensure that appropriate training procedures and policies are in place to prevent, detect, report and investigate personal data breaches.
- Some organisations may be required to appoint an independent Data Protection Officer (DPO). This applies to public bodies and organisations whose core activities involve large scale monitoring of people or who process a large amount of special categories of data.
- Review contracts your organisation holds with any external data processor. If your organisation uses third party data processors then the onus is on your organisation to ensure that the external data processor is in compliance with the GDPR.

Further information can be found at [www.dataprotection.ie](http://www.dataprotection.ie) or [www.gdprandyou.ie](http://www.gdprandyou.ie)

### 6.5 Freedom of Information Act 2014 (FOIA)

The Freedom of Information Act 2014 requires public bodies to respond to requests from the public for information they hold. The Act asserts the rights of members of the public to obtain access to official information to the greatest extent possible, while remaining consistent with the public interest and the right to privacy. The purpose of the FOIA is to encourage greater transparency between public bodies and members of the public.

The FOI Act 2014 provides that every person has the following legal rights:

- the right to access official records held by government departments and all public bodies that conform to the provisions of Section 6 of the Act;
- the right to have personal information held on them corrected or updated where such information is incomplete, incorrect or misleading; and
- the right to be given reasons for decisions taken by public bodies that affect them.

Each FOI request should be considered in accordance with the exemptions provided for which include records relating to:

- personal information (other than information relating to the person making the request);
- information supplied in confidence;
- law enforcement and public safety issues;
- commercially sensitive information;
- deliberations of public bodies;
- functions and negotiations of public bodies; and
- consultation procedures.

The meaning of 'public body' is set out in section 6(1) of the FOIA. This provides that certain entities shall be public bodies, including departments of State, bodies established by enactment and higher education institutions receiving public funding. It also includes all bodies listed as public bodies in the First Schedule to the FOIA.

Pobal is a public body under Section 6 and is bound by the Act to respond to FOI requests. In each Pobal grant agreement, the grantee is advised that Pobal is subject to freedom of information requests.

While Pobal will seek to protect the privacy of personal information and commercially sensitive information, in certain circumstances it may be in the public interest to release such information. Where these matters exist, there is an opportunity for the third party affected by any potential release of records to appeal such a decision.

## 6.6. Child Protection

The state child protection and welfare guidelines “Children First” were updated and revised in 2017 and have now been placed on a legislative footing. If your organisation works with children or has ongoing contact with children, please ensure that you read and understand the guidelines and that the recommended child protection arrangements are in place in your organisation.

As of 11th December 2017, there is now a legal responsibility on professionals who work with or have ongoing contact with children to report to Túsła any concerns they have regarding a child’s welfare and protection. There is also now an obligation on all services working with children to devise a Child Safeguarding Statement outlining measures being taken by the service to mitigate any potential risk to a child in their service. Further information and details are available from the Túsła website <http://www.tusla.ie/children-first>

## 6.7 National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016

The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 sets out statutory obligations on employers in relation to Garda vetting requirements for persons working with children and vulnerable persons. Under these Acts, it is compulsory for employers to obtain vetting disclosures in relation to anyone who is carrying out relevant work with children or vulnerable persons.

The Acts create offences and penalties for persons who fail to comply with their provisions. Since the commencement of the new Act it is an offence to employ anyone to work with children or vulnerable persons before receiving a Garda vetting return, punishable from a €10,000 fine up to 5 years in prison. Your organisation should ensure that it fully complies with all the requirements of this legislation.

### What is Garda Vetting?

Garda vetting is an important part of staff/volunteer recruitment but should be seen as one part of a much wider process of making sure that an applicant is suitable to work with children and/or vulnerable persons.

The work or activities where people working with children and vulnerable persons will require vetting include:

- childcare services (see vetting of childcare workers below)
- schools
- hospitals and health services
- residential services or accommodation for children or vulnerable persons
- treatment, therapy or counselling services for children or vulnerable persons
- provision of leisure, sporting or physical activities to children or vulnerable persons
- promotion of religious beliefs

The National Vetting Bureau of An Garda Síochána is responsible for issuing vetting disclosures to organisations employing people who work in a full-time, part-time, voluntary or student placement basis with children and/or vulnerable persons. Garda vetting is a procedure through which An Garda Síochána is asked, with a person’s permission, to disclose any information held on garda file. Within the current disclosure policy, details of all convictions and pending prosecutions or a statement that there is no criminal record relating to the person being vetted is disclosed to the authorised liaison person in the registered organisation.

The National Bureau does not decide on the suitability of any person to work in this respect. Instead, in response to a written request for vetting, the National Bureau releases criminal history and other specified information on the relevant person to the prospective recruiting organisation.

Garda vetting is not done for individuals on a personal request basis. Applicants must be processed through an organisation that is already registered with the Garda Unit. Many of the organisations funded by Government through Pobal are involved in work with children, older people and vulnerable persons and do not have access to The National Vetting Bureau. Pobal is a registered organisation with the Garda National Vetting Bureau (GNVB) since 2009 and currently has 2 liaison persons who work with the GNVB on behalf of organisations in receipt of significant funding from Pobal. The service is offered to groups and organisations funded through programmes that Pobal manage on behalf of government. Pobal also provides information and support to organisations that are implementing Garda Vetting procedures for their own staff and volunteers.

### **Vetting of childcare workers**

The Child Care Act 1991 (Early Years Services) Regulations 2016 require pre-school services to obtain references and Garda vetting for all staff, students and volunteers who have access to children.

## **6.8 Regulation of Lobbying Act 2015**

### **Lobbying Act – Introduction**

The Regulation of Lobbying Act 2015 commenced on 1st September 2015. The purpose of the Act is to provide a web-based register of lobbying to make information available to the public on the identity of those communicating with designated public officials on specific policy, legislative matters or prospective decisions. The aim of the act is to bring about greater openness and transparency with respect to lobbying activities.

Organisations such as charities, interest groups, representative bodies and civil society organisations all provide necessary input and feedback to politicians and public servants through communication of their views and concerns.

In essence, the act seeks to provide information to the public about:

- who is lobbying
- who is being lobbied
- what are the issues involved in the lobbying
- what is the anticipated result of the lobbying

The Act applies to commercial organisations which have more than 10 full-time employees; representative bodies with at least one full time employee, and advocacy groups, non-governmental organisations and charities which have at least one full time employee and which promote particular interests or causes. It also applies to professionals engaged in lobbying on behalf of a client who fits within the above criteria.

It is the responsibility of the board of directors or management committee to determine whether your organisation should register. A three-step process that your organisation can use to determine whether you need to register or not can be accessed [here](#)

The first step is for your organisation to review arrangements for recording relevant communications which might fall within the scope of the Act and identify the key personnel involved. Put in place arrangements to record such information and identify key individuals who will be responsible for registration and compilation of returns.

There are 3 prescribed reporting periods each year. All who are registered must submit a return of lobbying activity for each period in which they are registered. The three periods and their deadlines are outlined below:

1. 1st Jan to 30th April with a deadline of 21st May.
2. 1st May to 31st August with a deadline of 21st September.
3. 1st September to 31st December with a deadline of 21st January

For further information, go to [www.lobbying.ie](http://www.lobbying.ie)

### 6.9 Employment Equality Law

The Employment Equality Acts 1998 and 2004 prohibit discrimination within employment on nine grounds (gender, marital status, family status, sexual orientation, religion, age, disability, race, and membership of the Traveller community). Aspects of employment that are covered by the legislation include advertising, equal pay, access to employment, work experience, terms and conditions of employment, promotion, classification of posts, and dismissal. The legislation covers full-time, part-time and temporary employees. It also prohibits sexual harassment and harassment that occurs in the workplace related to any of the nine grounds.

In addition, the Employment Equality Acts oblige employers to take appropriate measures to enable people with disabilities to have access to employment, to participate or advance in employment, and to undertake training, provided the measures do not impose a disproportionate burden on the employer. Appropriate measures may include the adaptation of premises or equipment, patterns of working time, distribution of tasks, etc. Further information on the Employment Equality Acts is available from the Irish Human Rights and Equality Commission <https://www.ihrec.ie/your-rights/>

The Workplace Relations Commission (WRC) now deals with all complaints of discrimination in employment. These complaints were formerly handled by the Equality Tribunal whose functions were transferred to the WRC on 1 October 2015.

The WRC provides advice on any matter relating to workplace relations to employers, their representative bodies and to employees, trade unions or other representative bodies of employees. Further information is available in this guide:

[https://www.workplacelrelations.ie/en/Publications\\_Forms/WRC-Quick-Guide-Booklet-Eng-.pdf](https://www.workplacelrelations.ie/en/Publications_Forms/WRC-Quick-Guide-Booklet-Eng-.pdf)

### 6.10 Health and Safety Legislation

Health and safety legislation requires the employer to ensure, as far as is reasonably practicable, the safety, health and welfare at work of employees. If the employer neglects to fulfil its legal responsibilities, it runs the risk of being found liable for offences under the legislation.

The main legislation of relevance is the Safety, Health and Welfare at Work Acts 2005 and 2010. Some of the specific requirements that are imposed on employers include:

- ensuring that the place of work and any equipment are safe and do not pose health risks.
- identifying hazards in the place of work, and maintaining an up-to-date, written 'risk assessment', and a 'safety statement' based on the risk assessment.
- providing the training and supervision needed to ensure the health, safety and welfare of employees.
- having adequate plans and procedures in the case of emergencies.
- reporting accidents or dangerous occurrences.

- ensuring that employees are adequately informed regarding their health, safety and welfare at work.
- consulting with employees in relation to issues that relate to health, safety and welfare at work.

Most of the specific health and safety regulations which apply to workplaces are contained in the Safety, Health and Welfare at Work (General Application) Regulations 2007, which came into effect on 1 November 2007.

Further information can be obtained from the Health and Safety Authority, [www.hsa.ie](http://www.hsa.ie).

### 6.11 Public Procurement Guidelines

Expenditure incurred using publicly funded grants awarded to community, voluntary and not-for-profit organisations must comply with public procurement requirements. It is very important when a group or other entity purchases or procures goods or services using public funds that this function is discharged honestly, fairly, and in a manner that secures best value for public money.

It is a basic principle of public procurement that a competitive process should be used unless there are justifiable exceptional circumstances. In general, a competitive process carried out in an open, objective and transparent manner can achieve best value for money in public procurement. This process must be non-discriminatory, ensure equal treatment and be transparent. Where there is significant procurement to be carried out, and where appropriate, groups should ensure that staff involved in purchasing or placing contracts are familiar with the rules that may apply and are aware of the legal and policy framework within which procurement must be conducted.

The competitive process guidelines can be found at

<http://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services/>

Groups should ensure that tenderers have regard to statutory provisions relating to minimum pay, legally binding industrial or sectoral agreements and relevant health and safety issues when preparing tenders. An appropriate reference to the need for compliance with such provisions should be included in tender documents and consideration should also be given to including this in the final contract to be signed between the group and the successful supplier. Groups must also ensure that there are appropriate procedures in place to deal with conflicts of interest.

The Department of Finance website <http://www.etenders.gov.ie/> provides more detailed guidance in this regard.

### Retention of Records

Subject to the Data Protection Acts 1988 and 2003, where specific rules apply to the retention of personal data save in respect of personal data, an organisation should keep on their files all reports, records, accounts and other documentation (i.e. all quotations, tenders, accounting books and records etc.) relating to the project and/or the use by them of the grant monies. It is your organisation's responsibility to be aware of the length of time records (relating to various stakeholders) must be retained. This information should be obtained from the relevant funder. In no circumstances should any of the documentation be destroyed or otherwise disposed of before the relevant retention period has expired or without the prior consent of the relevant party.





**07 | Legislation affecting public  
and state bodies**

### 7.1 Ethics in Public Office

Some companies are designated public bodies under the Ethics in Public Office Acts 1995 and 2001. Details are available in the Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001: Public Servants (Tenth edition, March 2017), available on the SIPO website at: <http://www.sipo.ie/en/Guidelines/Guidelines-for-Public-Servants/Public-Servants-Guidelines-10th-Edition-Updated-March-2017-.pdf>

The Ethics Acts provide for the giving of advice by the Standards in Public Office Commission to persons who have obligations under the legislation. Such advice, where given, is binding on the person. Contact details are provided at <http://www.sipo.gov.ie>

### 7.2 Official Languages Act 2003

The Official Languages Act was enacted in 2003 with an aim to increase and improve the quantity and quality of services provided by public bodies for the public through the Irish language.

The Official Languages Act 2003 sets out the duties of public bodies regarding the provision of services in Irish and the rights of the public to avail of those services. It established the office of An Coimisinéir Teanga to monitor and enforce compliance by public bodies with the provision of the Act.

Public Bodies include government departments, offices and other state agencies specified under the Official Languages Act (First Schedule to the Act) as revised by any appropriate Statutory Instrument. Details are available from Office of An Coimisinéir Teanga at [www.coimisineir.ie](http://www.coimisineir.ie)

### 7.3 Codes of Conduct

The Department of Finance requires that all State bodies should have a written Code of Conduct for directors and employees. A framework code from the Department of Finance is available in Appendix C of the Code of Practice for the Governance of State Bodies, available at <http://www.per.gov.ie/en/revised-code-of-practice-for-the-governance-of-state-bodies/>

### 7.4 Public Sector Equality and Human Rights Duty

All public bodies have a legal obligation under Section 42 of the Human Rights and Equality Act 2014 to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans. This obligation is known as the 'Public Sector Equality and Human Rights Duty'. The duty is relevant to public sector and state bodies, but in some instances may apply to community and voluntary sector organisations if an organisation is prescribed as a public body by a Minister as a result of being partly or wholly funded by the State, and where it is deemed that there is a public interest in being prescribed as such. Further information and advice on implementing this duty is available at <https://www.ihrec.ie/our-work/public-sector-duty/>

A photograph of a woman with curly dark hair and a man with grey hair sitting and talking. The woman is on the left, wearing a green scarf and a patterned cardigan. The man is on the right, wearing a light blue shirt and jeans. They are both smiling and looking at each other. The background is a plain wall with a white shelf. A large orange diagonal shape is overlaid on the image, containing the text.

**08 | Supplementary information  
for Boards and Board members**



## While good communication is not a legal responsibility for boards of directors, protecting and enhancing the reputation of an organisation is an important element of the board's responsibility for the interests of the company as a whole

### 8.1 Insurance

In its role of protecting the interests of the company, the board of directors may choose to obtain insurance cover for a range of eventualities, including the specific case of legal action being taken against members of boards of directors. In addition to general office contents insurance, relevant types of insurance cover include:

- employer liability and public liability insurance, to cover accident and/or injuries to employees and to members of the public.
- professional indemnity insurance, to cover the organisation against legal claims made in relation to advice or information provided by the organisation to clients.
- directors' and officers' liability insurance, to cover the organisation against legal claims made against individual directors, officers or committee members of the organisation. (In a company limited by guarantee, the personal assets of directors are not liable where a legal claim is made against the organisation as a whole, but they are liable where a claim is made against an individual director).
- if your company is in receipt of funding through Pobal then it is a condition of this funding that your insurances indemnifies both Pobal and the sponsoring Department. This should not increase the cost of your insurance. The indemnification must be kept up to date and will be checked by Pobal auditors/verification officers in the event of an audit/verification visit. You should also check the requirements of any other funders in this regard.

See also a special issue of the Wheel's newsletter focusing on insurance for community and voluntary organisations, available at: <http://www.wheel.ie/content/insurance>

### 8.2 Communications and Reputation Management

While good communication is not a legal responsibility for boards of directors, protecting and enhancing the reputation of an organisation is an important element of the board's responsibility for the interests of the company as a whole. Risks can arise, including legal risks, if a company does not pay sufficient attention to its communications. Elements of a communications strategy, which may encompass not just external communications but also internal communications within the company, may include:

- identification of relevant audiences
- specifying objectives for communications with different audiences
- key messages to be communicated

In addition, it is beneficial for a company to specify procedures in relation to communications, in order to safeguard the organisation's reputation and to ensure that its communications are consistent and in line with its ethos and strategy. For example, it may be specified that all external communications and all formal internal communications between the board and staff should be channelled through the Chairperson and the Manager.

# 09 | Useful Resources



Charities Regulatory Authority	<a href="http://www.charitiesregulatoryauthority.ie">www.charitiesregulatoryauthority.ie</a>
Pobal	<a href="http://www.pobal.ie">www.pobal.ie</a>
Governance Code	<a href="http://www.governancecode.ie">www.governancecode.ie</a>
Boardmatch	<a href="http://www.Boardmatchireland.ie">www.Boardmatchireland.ie</a>
The Carmichael Centre	<a href="http://www.carmichaelcentre.ie">www.carmichaelcentre.ie</a>
The Wheel	<a href="http://www.wheel.ie">www.wheel.ie</a>
The Employers Resource Bureau	<a href="http://www.erb.ie">www.erb.ie</a>
Revenue Commissioners	<a href="http://www.revenue.ie">www.revenue.ie</a>
The Companies Registration Office	<a href="http://www.cro.ie">www.cro.ie</a>
Charities Institute Ireland	<a href="http://www.charitiesinstituteireland.ie">www.charitiesinstituteireland.ie</a>
Oireachtas	<a href="http://www.oireachtas.ie">www.oireachtas.ie</a>
Standards in Public Office	<a href="http://www.sipo.ie">www.sipo.ie</a>
An Coimisinéir Teanga	<a href="http://www.coimisineir.ie">www.coimisineir.ie</a>
Data Protection Commission	<a href="http://www.dataprotection.ie">www.dataprotection.ie</a>
Freedom of Information	<a href="http://www.oic.gov.ie">www.oic.gov.ie</a>



## About Pobal

Pobal is a not-for-profit company that manages programmes on behalf of the Irish Government and the EU. We are an intermediary that works on behalf of Government to support communities and local agencies toward achieving social inclusion, reconciliation and equality. In 2017, we provided management and support services to 23 programmes for four different Government departments and EU bodies.

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