



**THE COMPANIES ACT 2014 –  
CONSTITUTION TEMPLATE**



The Arts Council / An Chomhairle Ealaíon

70 Merrion Square,  
Dublin 2, Ireland

70 Cearnóg Mhuirfean,  
Baile Átha Cliath 2, Éire

t +353 1 618 0200

f +353 1 676 1302

Callsave 1890 392 492

e [info@artscouncil.ie](mailto:info@artscouncil.ie)

[www.artscouncil.ie](http://www.artscouncil.ie)

## INTRODUCTION

The Companies Act 2014 made a number of changes to Company law which impact on the form of the constitutional documents of all companies. Detailed governance provisions are stated in the Act, of which some are mandatory and others are optional. The mandatory provisions will apply to the company whether or not they are stated in the company constitution. The optional provisions will apply to the extent that the constitution does not provide otherwise.

Where existing companies limited by guarantee are concerned, the only action required by the Act is that the company change its name, by 30 November 2016, to substitute for the existing suffix “Limited” or “Ltd” the new suffix “Company Limited by Guarantee” or “CLG”, or their Irish equivalents. After that date, unless replaced, the pre-existing memorandum and articles of association will continue in force, but only to the extent that they are not inconsistent with a mandatory provision of the Act.

It can be seen that this arrangement makes it necessary for CLGs to review their constitutional documents, to decide which of the mandatory provisions should be specifically stated in the constitution and which of the optional provisions they wish to adopt.

### Caveat

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The template is for guidance only. There is no ‘one size fits all’ solution to the revision of the company constitution. Every organisation is different and it is imperative that the constitution should accurately reflect the way in which the company operates. The template can most appropriately be used as a basis for discussion between the company and its legal advisor and as an aid to drafting.

## BACKGROUND

Following the enactment of the Companies' Act 2014 and the establishment of the Charities Regulatory Authority in 2015, under the terms of the Charities Act 2009, the Arts Council committed in 2015 to assisting arts organisations in complying with the changes in legislation. A Compliance and Governance Conference was held in June, at which a revised *Practical Guide for Board Members of Arts Organisations* was launched.

One of the governance changes dictated by the Companies Act is to convert existing Memorandum and Articles of Association into a Constitution compliant with the Act. The Company Limited by Guarantee (CLG) is the structure that is considered by the Art Council to be the most appropriate for most arts organisations. This template has been therefore commissioned by the Arts Council, based on the CLG company structure, which may be used by arts organisations as a reference point in revising their memorandum and articles of association.

The template has been provided both to the Revenue Commissioners and the Charities Regulatory Authority for their comment. The Arts Council is grateful for their co-operation. The template incorporates requirements advised by the Revenue Commissioners for organisations with, or applying for, charitable status.

It is important to note that the template is offered for guidance only. Each organisation should review its constitutional documents in consultation with its legal advisor.

It is advisable to use the constitutional template in conjunction with the *Practical Guide for Board Members*.

### Key dates in 2016

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<b>16 April 2016</b>	organisations that were operating as charities before 16 October, 2014 to apply for registration with the CRA. Any new organisation established after 16 October, 2014 must be registered with the CRA before they can operate as a charity in the State;
<b>16 April 2016</b>	charities that held charitable tax exemption (CHY number) before 16 October 2014 to complete their first annual report with the Charities Regulatory Authority;
<b>30 November 2016</b>	latest date for existing companies limited by guarantee to change the suffix "Limited" in their names to "Company Limited by Guarantee" or CLG

## GUIDE TO USING THE TEMPLATE

While every effort has been made to make the template easy to follow, most organisations will find that it is more detailed and in slightly more formal language than their existing memorandum and articles of association. This is for the reason that it is advisable to reiterate, within reason, the new provisions of the Act. Not every applicable provision of the Act is included and in many cases the provisions are summarised. The document would otherwise be impossibly long. However, where it was judged that additional information in the Act might be useful or necessary, reference is made to a section number in the Act. In collaboration with the organisation's legal advisor, it will certainly be possible to shorten the document and to align it fairly closely with the existing memorandum and articles of the company.

Detailed footnotes are provided, as an explanatory aid. They contain some important information and should not therefore be overlooked.

## COMPLIANCE WITH REQUIREMENTS OF THE REVENUE COMMISSIONERS

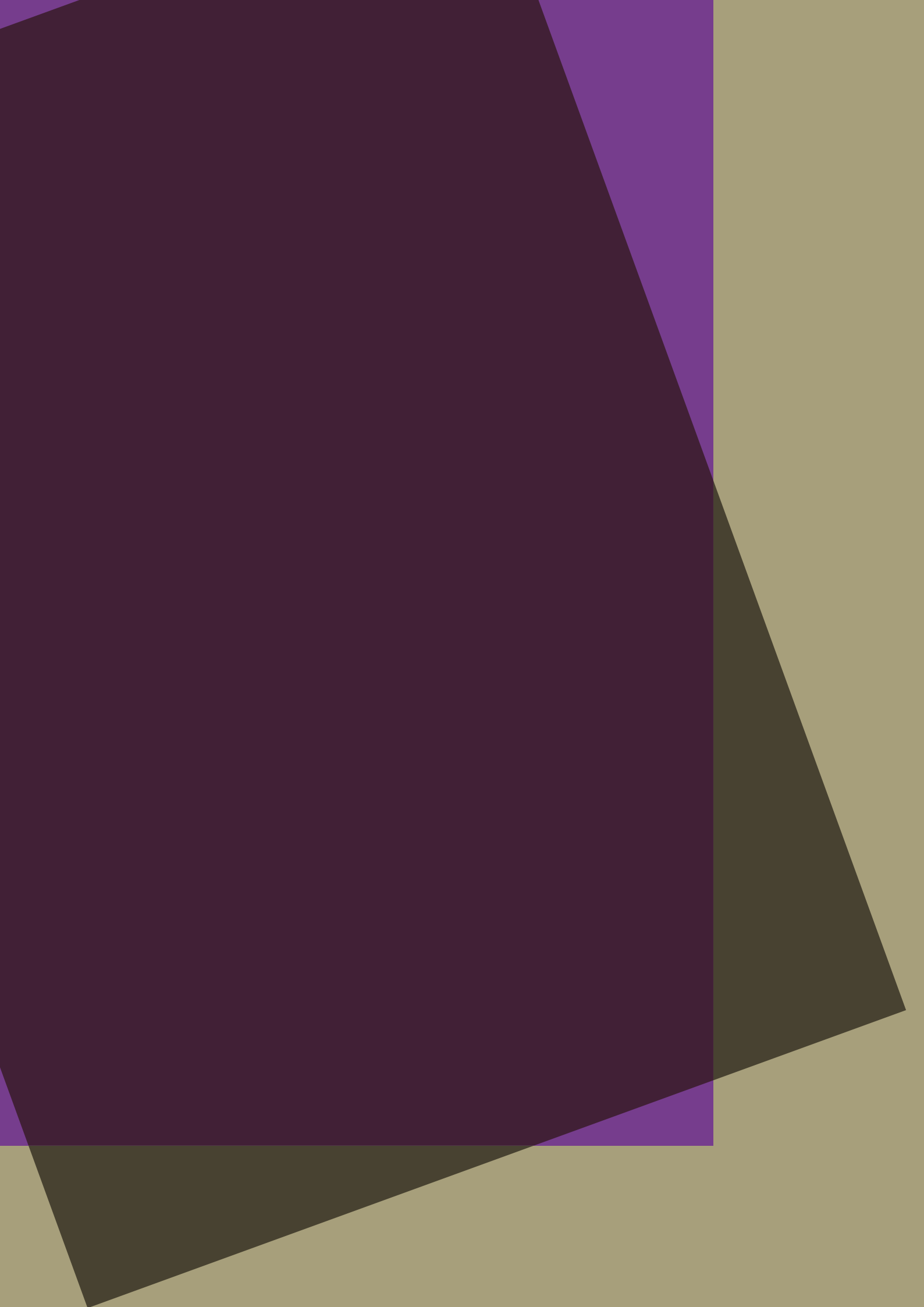
The Revenue Commissioners have provided valuable assistance in reviewing and commenting on the template, to help the Arts Council ensure that it is aligned with their requirements for constitutions of companies with charitable status. However, every application to the Revenue Commissioners for approval of a new constitution will be judged in the context of its individual circumstances, and no assurance is given that a constitution in the form of the template will be automatically approved.

## THE CHARITIES REGULATORY AUTHORITY

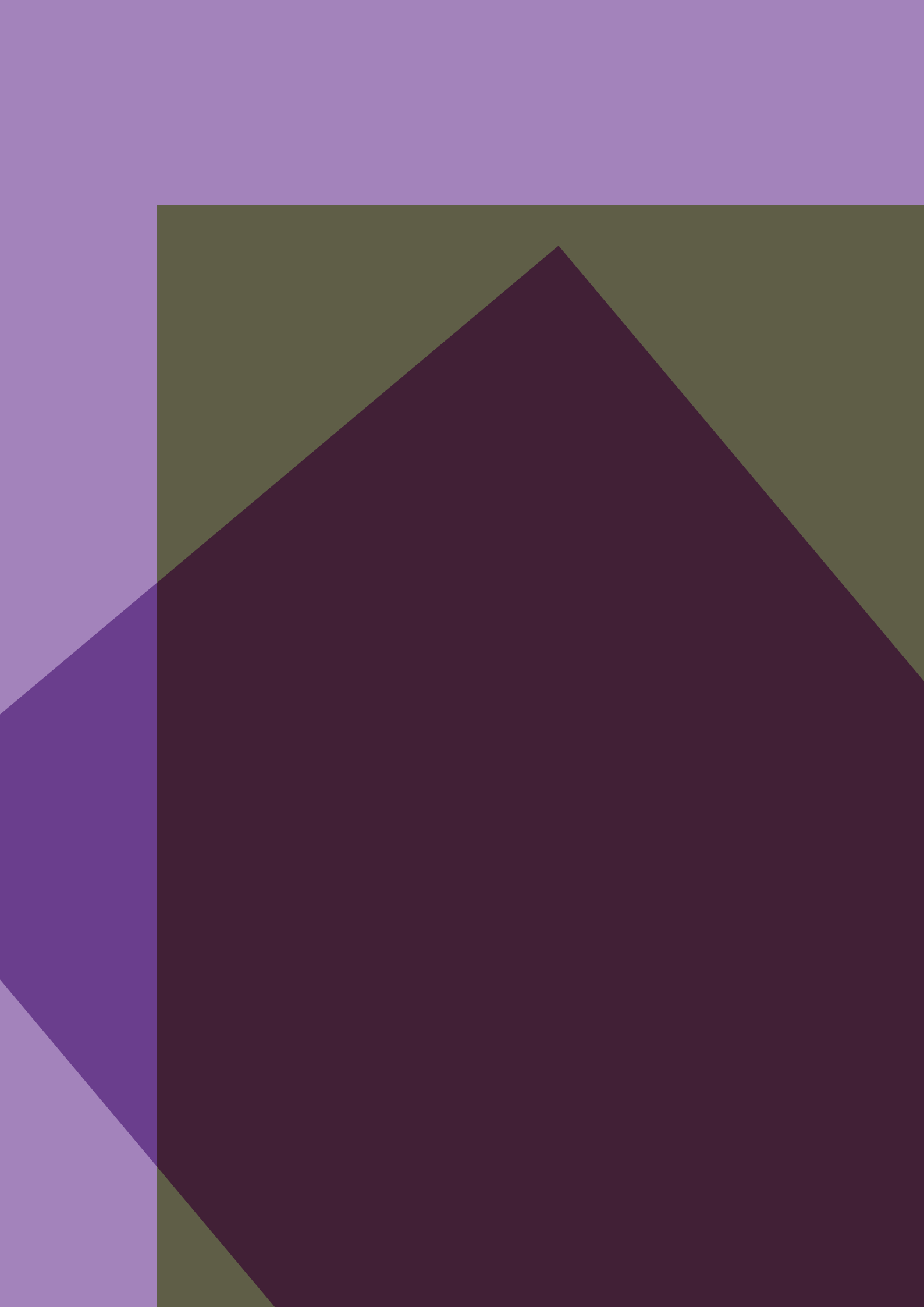
As the time of publication of the template, the Charities Regulatory Authority has no specific requirements that impact on the form of the CLG constitution.

## ADOPTING A NEW CONSTITUTION

Adoption of a new constitution requires a special resolution of the members of the company. This is explained in footnotes in the template. Following the passing of the special resolution, filings with the Companies Registration Office are necessary. These are explained on the website of the CRO, [www.cro.ie](http://www.cro.ie)



<b>COMPANIES ACT 2014 CONSTITUTION</b>	<b>1</b>
Name	1
Main Object	1
Subsidiary Object(s)	1
Powers	1
Limited Liability	2
Income and property	2
Contribution by members on winding-up	3
Prohibition of distribution to members on winding-up	3
Additions, alterations or amendments	3
Keeping of accounts	3
<b>ARTICLES OF ASSOCIATION</b>	<b>4</b>
INTERPRETATION	4
OPTIONAL PROVISIONS OF THE ACT	4
ALTERATION OF THE CONSTITUTION	5
MEMBERS	5
TERMINATION OF MEMBERSHIP	5
OBLIGATIONS OF MEMBERS	6
GENERAL MEETINGS OF MEMBERS	6
PROXIES	8
VOTES OF MEMBERS	8
RESOLUTIONS	9
MINUTES OF GENERAL MEETINGS	9
THE BOARD OF DIRECTORS	10
ROTATION OF DIRECTORS	11
REMOVAL OF DIRECTORS	11
VACATION OF OFFICE	11
SECRETARY	12
REGISTER OF DIRECTORS AND SECRETARIES	12
POWERS AND DUTIES OF DIRECTORS	13
PROCEEDINGS OF DIRECTORS	13
CONFLICT OF INTEREST	15
MINUTES OF MEETINGS	15
AUDIT COMMITTEE	16
REMUNERATION OF DIRECTORS	16
USE OF COMPANY PROPERTY BY DIRECTORS	16
POWER OF DIRECTOR TO ACT IN A PROFESSIONAL CAPACITY FOR THE COMPANY	17
ACCOUNTS	17
AUDIT	18
SEAL	18
NOTICES	18
INDEMNITY	19
INSURANCE	19





# COMPANIES ACT 2014

## CONSTITUTION

### OF

#### [INSERT COMPANY NAME]<sup>1</sup>

#### MEMORANDUM OF ASSOCIATION

- 1. Name<sup>2</sup>**

The name of the company is: [insert] (“the Company”).
- 2. Main Object**

The main object for which the Company is established is: [insert].<sup>3</sup>
- 3. Subsidiary Object(s)**

In furtherance exclusively of the foregoing main object, the Company shall have the following subsidiary objects [insert].<sup>4</sup>
- 4. Powers<sup>5</sup>**

To the extent that the same are essential or ancillary to the promotion of the main object of the Company as heretofore set out, the Company may exercise the following powers:<sup>6</sup>

  - a. To solicit and accept grants, donations and any other form of voluntary contributions, and to administer, manage and expend such funds or other contributions in furtherance of the objects of the Company.

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1 Insert name, ending with “Company Limited by Guarantee” or “Cuideachta faoi Theorainn Rátháiochta”. Guarantee companies must now be described in this way. They may abbreviate the phrase to CLG or CTG, in upper or lower case. The adoption of a new constitution provides a convenient opportunity to review the name of the company.

2 Note that the headings in the Memorandum, i.e. “Name; Main object; Subsidiary object(s)” and so forth are only required when the Company has, or wishes to retain charitable status. There is otherwise more freedom in the drafting style.

3 A company which does not have, or does not intend applying for, charitable status, is free to state its objects here, in whatever way it wishes. If however the approval of the Revenue Commissioners is required, note that they insist on having one main object in this clause (which falls within the meaning of “charitable” for their purposes), followed by, if desired, “subsidiary object(s)” which must be regarded as strictly subsidiary and ancillary to the attainment of the main object”.

4 The company is free to draft its subsidiary objects, as it thinks fit, subject in the case of a company with charitable status, to the Revenue Commissioners having no particular objection.

5 Under the Companies Act 2014, the company has the capacity to do “any act or thing” stated in its objects, and this is deemed to include anything stated to be a “power”. It is also provided that, even if it is not specifically stated, the company has the capacity to do anything that is advantageous or incidental to its objects. The Revenue Commissioners require “powers” to be set out in the Memorandum. Those included in this draft are sample clauses only, chosen because either they are specifically required by the Revenue Commissioners (which is the case in relation to sub-clauses (e) and (f)), or because some entities with whom the company has dealings might wish to see them specified in the Memorandum. The list may be extended as desired. Companies may wish to retain their existing list of powers.

6 Again, this formula of words represents a requirement of the Revenue Commissioners.

- b. To purchase, lease or by any other means acquire any real or personal property and to sell, manage or otherwise deal with the same, in any lawful manner.
- c. To borrow and raise money in such manner and upon such security as the Company shall think fit.
- d. To invest the monies of the Company not immediately required for its purposes in such investments, securities or property as may be thought fit, subject to such conditions and consents as may be required by law.
- e. To accumulate capital for any purpose of the Company and to appropriate any of the Company's assets to specific purposes, either conditionally or unconditionally **SAVE HOWEVER** that prior permission shall be obtained from the Revenue Commissioners when it is intended to accumulate funds for a period in excess of two years.<sup>7</sup>
- f. To grant pensions and gratuities to any person who has served the Company as an employee, or to any dependent of such person, provided that the same shall not exceed that provided by a pension scheme covered by Part 30 of the Taxes Consolidation Act 1997; that such a pension scheme has been operated by the Company and that the beneficiary has been a member of the scheme while employed by the Company.<sup>8</sup>
- g. To subscribe or guarantee money for charitable objects.
- h. To undertake and execute any trusts which may seem directly or indirectly conducive to the attainment of the main object(s) of the Company.
- i. Other [insert]<sup>9</sup>

## 5. Limited Liability

The liability of the members is limited.

## 6. Income and property<sup>10</sup>

The income and property of the Company shall be applied solely towards the promotion of its main object as set forth in this Memorandum of Association. No portion of the Company's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever by way of profit to members of the Company. No director shall be appointed to any office of the Company paid by salary or fees, or receive any remuneration or other benefit on money or money's worth from the Company. However nothing shall prevent any payment in good faith by the Company of:

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7 This is a specific requirement of the Revenue Commissioners, for companies with charitable status.

8 This provision is another which the Revenue Commissioners indicate should be included in the Memorandum.

9 As desired.

10 Again, there is more freedom in the drafting of this, the "non-profit" clause, if the approval of the Revenue Commissioners is not required. It need not, for example, be tied to the "man object".

- a) reasonable and proper remuneration to any member, officer or servant of the Company (not being a director) for any services rendered to the Company;
- b) interest at a rate not exceeding 5% per annum on money lent by directors or other members of the Company to the Company;
- c) reasonable and proper rent for premises demised and let by any member of the Company (including any director) to the Company;
- d) fees, remuneration or other benefit in money's worth to any Company of which a director may be a members holding not more than one hundredth part of the issued capital of such Company.

#### **7. Contribution by members on winding-up**

Every member of the Company undertakes to contribute to the assets of the Company, if the Company is wound up while he or she is a member or is wound up within one year after the date on which he or she ceases to be a member, for the payment of the debts and liabilities of the Company contracted before he or she ceases to be a member; the costs, charges and expenses of winding up; and the adjustment of the rights of contributories among themselves, such amount as may be required, not exceeding one euro.

#### **8. Prohibition of distribution to members on winding-up**

If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other charitable institution or institutions having main objects similar to the principal object of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the company under or by virtue of clause 6 hereof, such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some charitable object.

#### **9. Additions, alterations or amendments**

No additions, alterations or amendments shall be made to or in the provisions of this constitution unless the same shall have been previously submitted to and approved in writing by the Revenue Commissioners.<sup>11</sup>

#### **10. Keeping of accounts**

Annual audited accounts shall be kept and made available to the Revenue Commissioners upon request.<sup>12</sup>

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<sup>11</sup> This clause is only relevant for companies with, or seeking charitable exemption.

<sup>12</sup> This is only applicable to companies with, or seeking charitable exemption. Although the audit exemption is now available to companies limited by guarantee, the Revenue Commissioners will require the accounts to be audited if the gross annual income of the company exceeds €100,000.

## ARTICLES OF ASSOCIATION<sup>13</sup>

### INTERPRETATION

1. (a) In these articles:

*“the Act”* means the Companies Act 2014, and any statutory amendment(s) thereof;

*“director”* means any director for the time being of the Company;

*“the Board”* means the board of directors of the Company;<sup>14</sup>

*“member”* means a member of the Company, admitted in accordance with article 5 herein;

*“the Registered Office”* means the registered office for the time being of the Company;

*“the Secretary”* means any person(s) or body corporate appointed to perform the role of company secretary.

- (b) Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to every mode of representing words in visible form.

- (c) Unless the contrary intention appears, words or expressions contained in these articles shall bear the same meaning as in the Act.

### OPTIONAL PROVISIONS OF THE ACT

2. To the extent that they are omitted from or modified by these articles, the optional provisions of the Act, as defined in Section 1177(2) thereof, are hereby excluded or modified, as the case may be.<sup>15</sup>

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<sup>13</sup> The company limited by guarantee retains articles of association under the new Companies regime. In the Companies Act these are called “regulations”. The Company can choose whether to use the term “regulations” in place of “articles” or to continue to use the term “articles”. In this draft the term used is “articles”.

<sup>14</sup> The terms “the directors” and “the Board” are used interchangeably in this draft.

<sup>15</sup> It is not necessary to state this in the articles but it may be useful to do so, to highlight that it is in fact the case.

## ALTERATION OF THE CONSTITUTION

3. Subject to the provisions of the Act, and the provisions of this constitution, the Company may by special resolution alter either or both its memorandum and articles of association. Any alteration or addition so made shall be as valid as if originally contained therein.<sup>16</sup>

## MEMBERS<sup>17</sup>

4. The Company shall have [insert] members.<sup>18</sup> The Board may from time to time register an increase or a decrease in the number of members.
5. The members of the Company shall be the subscribers and such persons [or bodies<sup>19</sup>] as the Board shall admit to membership in accordance with these articles, and whose names are entered on the register of members of the Company.<sup>20</sup>

## TERMINATION OF MEMBERSHIP

6. A member may resign his or her membership by serving notice to that effect upon the Company at the Registered Office.<sup>21</sup>
7. The Board may require a member to resign his or her membership by serving notice upon the member terminating his or her membership, such notice to expire no earlier than the date of service of the notice.<sup>22</sup>

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16 It is not necessary to state this in the articles. It may however be useful to do so, to draw attention to the fact that any alteration to either of the constitutional documents requires a special resolution. A special resolution is one which is passed by not less than 75% of the votes cast by the members of the Company, present and voting at a general meeting of the Company for which the required notice has been given.

17 The provisions relating to membership will need to be tailored to the circumstances. In some companies the same persons act as members and directors. If that is the case, provisions should be added to accommodate this. Equally, companies often have particular qualifications for membership, and if so, these should be stated here.

18 The Companies Act states that it is mandatory to state the number of members “with which the company proposes to be registered”. The language used suggests that this applies only to new CLGs, but this is not entirely clear. The Act also, inconveniently, provides that where the number is increased beyond the “registered number” the Company must make a return to the CRO within 15 days.

Note also that it was previously necessary for a guarantee company to have a minimum of seven members. This number was reduced to one by the Companies Act. The Arts Council requires that companies funded by it maintain a minimum of five members. The Revenue Commissioners require a minimum of three members unconnected by business or familial relationship.

19 Some companies have corporate members; others do not. If there are members who are companies (or other types of organisation), provision needs to be made in the articles for the manner in which the organisation will be represented at members’ meetings. If the member is, in addition, entitled to nominate one or more directors, this will need to be dealt with later in the articles, in the section dealing with appointment of directors.

20 This clause states the legal definition of a member. It is important to note the requirement to keep a register of members. The Companies Act specifies that the register must contain the name and address of each member, the date on which he or she became a member and the date upon which he or she ceased to be a member. These entries must be made within 28 days of the relevant event.

21 This is a mandatory provision of the Act.

22 This an optional provision, but potentially useful.

8. The death or bankruptcy of a member shall terminate his or her membership.<sup>23</sup>

## OBLIGATIONS OF MEMBERS

9. Every member shall, as a continuing condition of membership, be bound by the provisions of the constitution of the Company and any amendment thereof, and shall observe all (if any) any rules or regulations made from time to time by the Company in general meeting or by the Board.<sup>24</sup>

## GENERAL MEETINGS OF MEMBERS<sup>25</sup>

10. The Company shall in each year hold a general meeting as its annual general meeting, in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it and not more than 15 months shall elapse between the date of one annual general meeting of the Company and that of the next. So long as the Company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
11. The business of the annual general meeting shall include<sup>26</sup>:
- (a) consideration of the Company’s statutory financial statements and the report of the directors, together with the report of the statutory auditors on those statements and that report;
  - (b) the review by the members of the Company’s affairs;
  - (c) the authorisation of the directors to approve the remuneration of the statutory auditors;
  - (d) the election and re-election of directors;
  - (e) the appointment or re-appointment of statutory auditors;
  - (f) the remuneration of the directors
12. All general meetings of the Company, other than annual general meetings, shall be known as “extraordinary general meetings”.
13. The Board may, whenever it thinks fit, convene an extraordinary general meeting and extraordinary general meetings may also be convened as provided by Section 1203 of the Act. If at any time there are not sufficient directors in Ireland capable of acting to form a quorum, any director or any member of the Company may convene an extraordinary

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23 This is a mandatory provision of the Act.

24 In the event there is a membership fee payable, reference can be made to it in this part of the draft.

25 These provisions relating to general meetings (articles 10-23) are in general very similar to the provisions to be found in the existing articles of arts bodies. However some refinements, or useful additions based on the provisions of the Act have been made/added.

26 It has not been customary to state the business of the AGM in the articles in this way. However as this is a new, mandatory provision, it may be a useful addition to the articles. References to the statutory auditors in sub-clauses (a), (c) and (e) assume that the Company will not avail of the audit exemption, now available to CLGs. Sub-clause (f) will be omitted unless the Company is one of a small number of guarantee companies that remunerates directors. It will be omitted in the case of a company with charitable status.

general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.

14. General meetings of the Company shall be held in the State at such time and at such place as the Board shall appoint.
15. A meeting, other than an adjourned meeting shall be called, in the case of an annual general meeting or an extraordinary general meeting for the passing of a special resolution, by not less than 21 days' notice, and in the case of any other extraordinary general meeting, by not less than 7 days' notice. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given. It shall be given in the manner specified in these articles to such persons as are under these articles entitled to receive such notices from the Company.
16. The notice of a general meeting shall specify –
  - a) the place, the date and the time of the meeting;
  - b) the general nature of the business to be transacted at the meeting;
  - c) in the case of a proposed special resolution, the text or substance of the resolution.<sup>27</sup>
17. The statutory auditors of the Company shall be entitled to:
  - a) attend any general meeting of the Company;
  - b) receive all notices of, and other communications relating to any general meeting which any member of the Company is entitled to receive;
  - c) be heard at any general meeting which they attend, on any part of the business of the meeting which concerns them as statutory auditors.<sup>28</sup>
18. A meeting of the Company, notwithstanding that it is called by shorter notice than that specified at article [insert<sup>29</sup>], shall be deemed to have been duly called if it is so agreed by all of the members entitled to attend and vote at the meeting, and the statutory auditors of the Company.
19. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. [Insert number] members present in person [or by proxy<sup>30</sup>] shall be a quorum.
20. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

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27 If the company permits proxy voting, additional information must be added in this article

28 This is a mandatory provision, assuming that the Company will not avail of the audit exemption.

29 Article 15 in this draft

30 If proxy voting is permitted.

21. The chairperson of the Board shall preside as chairperson at every general meeting of the Company. If he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
22. The chairperson may with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting) adjourn the meeting from time to time and from place to place.
23. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

## PROXIES<sup>31</sup>

### VOTES OF MEMBERS

24. Where a matter is being decided (whether on a show of hands or on a poll) every member present shall have one vote.
25. A vote shall take place on a show of hands, unless a poll is demanded before or on the declaration of the result of a show of hands.
26. A demand for a poll may be made by –
  - a) the chairperson of the meeting; or
  - b) at least three members present in person; or
  - c) any members present in person representing not less than 10% of the voting rights of members entitled to vote at the meeting.
27. Unless a poll is demanded, a declaration by the chairperson that a resolution has on a show of hands been carried, or lost, an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against such resolution.
28. If a poll is demanded it shall be taken in such manner as the chairperson directs and the result of the poll shall be deemed to be the resolution, in relation to the matter concerned, of the meeting at which the poll was demanded.
29. Where there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting shall be entitled to a second or casting vote.<sup>32</sup>

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<sup>31</sup> The Act contains detailed provisions relating to the use of proxies. As proxies are not generally used by arts bodies, the provisions are not imported into this draft.

<sup>32</sup> This is an optional provision. Some organisations prefer to omit it.



30. No member shall be entitled to vote at a meeting of members of the Company if there are monies due and outstanding by such member to the Company.
31. No objection shall be raised to the qualification to vote of any voter except at the meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.

## RESOLUTIONS

32. Notwithstanding article [insert<sup>33</sup>], a special resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given, if the conditions specified in section 191 of the Act are satisfied.
33. The terms of any resolution (whether special or otherwise) before a general meeting may be amended by ordinary resolution at the meeting, provided that the resolution, as amended, will still be such that adequate notice of the same can be deemed to have been duly given.
34. Subject to compliance with the conditions in section 193 of the Act, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of the Act.<sup>34</sup>
35. When a resolution is passed at an adjourned general meeting, it will be treated as having been passed on the date of that meeting and not on any earlier date.

## MINUTES OF GENERAL MEETINGS

36. The Company shall, as soon as may be after the holding of a meeting, cause minutes of the proceedings of the meeting and the terms of all resolutions to be entered in books kept for the purpose. All such books shall be kept in the same place.
37. Any minute referred to in article [insert<sup>35</sup>], if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or the chairperson of the next succeeding meeting, shall be evidence of what occurred at the meeting.

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33 In this draft, article 15.

34 Note that this provision is optional. Some companies may prefer to omit it. It is really only suitable for companies with a small number of members.

35 In this draft, article 36.

## THE BOARD OF DIRECTORS

38. The Company shall have a minimum of [insert] and a maximum of [insert] directors. Within this range, the Board may from time to time by ordinary resolution increase or reduce the number of directors.<sup>36</sup>
39. Vacancies for the position of director shall be filled by election at the annual general meeting of the Company.<sup>37</sup>
40. No person shall be eligible for election as a director at a general meeting, unless not less than 3 nor more than 21 days before the day appointed for the meeting there shall have been left at the Registered Office –
- a) notice in writing signed by a member of the Company entitled to attend and vote at the meeting, of his or her intention to propose the person concerned for such election; and
  - b) notice in writing signed by the person concerned of his or her willingness to be elected.<sup>38</sup>
41. No person may be a director of the Company unless he or she has attained the age of 18 years.<sup>39</sup>
42. Any purported appointment of a director without that person's consent shall be void.<sup>40</sup>
43. At a general meeting of the Company, a motion for the appointment of two or more persons as directors by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.<sup>41</sup>
44. The Board shall have the power at any time and from time to time, to co-opt a person to be a director to fill a casual vacancy arising in the number of elected directors. Any director so appointed shall hold office only until the next annual general meeting and shall be eligible for election thereat.

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36 This arrangement is optional. The company may decide on a specific number of directors. It may decide not to permit the Board to alter the number, or may allow the Board complete control over the numbers. However it is imperative to note the requirement of the Revenue Commissioners that companies with charitable status must have at least three directors who are not connected to each other either by a business or a familial relationship.

37 The clauses relating to the appointment of directors will need to be tailored to the practice of the company. In some companies, some or all positions are filled by nomination. Some like to permit the Board to fill one or more positions by co-option. Most allow the Board to fill a casual vacancy by co-option until the next following AGM, when the co-opted director can go forward for election.

38 This is an optional provision, but desirable from the perspective of good order. The length of notice can be shortened, for example, to 24 hours before the meeting.

39 This is a new, mandatory provision.

40 This is a new, mandatory provision. It helps to avoid directors nominating friends or associates, without the persons being properly canvassed and briefed before making a decision.

41 This is a new, mandatory provision. It occasionally happens at an AGM that two or more people are elected "on the nod". The provision helps to bring more focus to the decision. As already mentioned at note 34, it should be noted that the Revenue Commissioners require companies with charitable status to have a minimum of three directors, who should not be connected to each other by a business or familial relationship.

## ROTATION OF DIRECTORS<sup>42</sup>

45. At the annual general meeting of the Company in each year, one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one third shall retire from office.
46. The directors to retire in every year shall, subject to article [insert<sup>43</sup>], be those persons who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they agree otherwise among themselves) be determined by lot.
47. A retiring director shall be eligible for re-election for a further term or terms of office which, when aggregated with the terms already served, shall not exceed six years, but not for any longer period. A “year” for this purpose shall mean the period from one annual general meeting of the Company to the next.

## REMOVAL OF DIRECTORS

48. The Company may by ordinary resolution remove a director before the expiration of his or her period of office. Such a resolution shall not be effective unless the provisions of section 146 of the Act are observed.
49. A vacancy created by the removal of a director under this article may be filled at the meeting at which he or she is removed and, if not so filled, may be filled as a casual vacancy.

## VACATION OF OFFICE

50. The office of director shall be vacated if the director:
  - a) is adjudicated bankrupt or, being a bankrupt, has not obtained a certificate of discharge in the relevant jurisdiction; or
  - b) becomes or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act; or
  - c) the director resigns his or her office by notice in writing to the Company; or
  - d) the health of the director is such that he or she can no longer be reasonably be regarded as possessing an adequate decision-making capacity; or
  - e) a declaration of restriction is made in relation to the director and the Board,

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42 The articles relating to rotation of directors and/or their term of office must be tailored to the circumstances. In this draft, articles 45-47 are intended to apply only to elected directors. Some organisations fill the position in other ways. Articles 45 and 46 represent optional provisions of the Companies Act. The possibility of re-election is also an optional provision of the Act. The limitation period of six years in this draft is not contained in the Act but is a preference of the Arts Council. When term limits are introduced for the first time, or rotation provisions are introduced or altered, it is necessary to provide what will happen in the years immediately following the change. Yet another possibility that may have to be handled is that a chairperson may have been appointed for a period which over-reaches his or her term of office as a director. An exception can be created for this.

43 In this draft, article 47

- f) at any time during the currency of the declaration, resolves that his or her office be vacated; or
- g) the director is sentenced to a term of imprisonment (including a term that is suspended) following conviction of an indictable offence; or
- h) the director is absent from Board meetings held during a period of more than 6 months, without the permission of the directors.<sup>44</sup>

## SECRETARY

- 51. The Company shall have a Secretary, who may be one of the directors.<sup>45</sup>
- 52. The Secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any Secretary so appointed may be removed by it.<sup>46</sup>
- 53. Without derogating from the applicable statutory and other legal duties, the duties of the Secretary shall be those delegated to the Secretary from time to time by the Board.
- 54. The directors shall ensure that the Secretary has the skills or resources necessary to discharge the statutory and other duties associated with the position, including to maintain (or to procure the maintenance of) the Company records (other than accounting records) required to be kept in relation to the Company.<sup>47</sup>

## REGISTER OF DIRECTORS AND SECRETARIES

- 55. The Company shall keep a register of its directors and secretaries, and shall enter in the register the information specified in Section 149 of the Act.

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44 Sub-clauses a) and b) are mandatory provisions. The remainder are optional and the company may decide which, if any, of them it wishes to incorporate in the articles. The last of them can be useful to weed out directors who do not have sufficient interest in the position. A variation of it might provide that the office will be vacated if the director is absent from a certain number of consecutive meetings.

45 The secretary need not be a director. The appointee may be an individual, or a company, appointed to provide the service on a paid basis.

46 In the case of a company with charitable status, the Secretary may only be remunerated for acting in the role if not also holding the position of director.

47 This is a new legal duty imposed on directors by the Act. It is not necessary to state it in the articles.

## POWERS AND DUTIES OF DIRECTORS

56. The business of the Company shall be managed by the Board, which may exercise all such powers of the Company as are not by the Act or by these articles required to be exercised by the Company in general meeting, subject nevertheless to the provisions of the Act and of these articles and to such directions, being not inconsistent with the aforesaid provisions as may, by special resolution<sup>48</sup>, be given by the Company in general meeting but no direction given by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that direction had not been given.
57. The Board may exercise all powers of the Company to borrow money and to mortgage or charge its undertaking, property and assets or any part thereof.
58. The Board may delegate any of its powers to such person or persons as it thinks fit, including committees; any such committee shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
59. The Board may from time to time and at any time by power of attorney appoint any Company, firm or person or body of persons, to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding its own powers) and for such period and subject to such conditions as the Board thinks fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him or her.
60. All cheques and other negotiable instruments, and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed by such person or persons and in such manner as the Board shall from time to time determine.

## PROCEEDINGS OF DIRECTORS

61. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
62. Questions arising at any meeting of the directors shall be decided by a majority of votes and where there is an equality of votes, the chairperson shall have a second or casting vote.<sup>49</sup>
63. A director may, and the Secretary on the requisition of a director shall, at any time, summon a meeting of the directors.

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<sup>48</sup> This clause is, with one exception, identical to the clause to be found in the existing articles of most guarantee companies. The exception is that, in the event the members, in general meeting, seek to give directions to the Board, a special resolution is required.

<sup>49</sup> This is an optional provision. Some organisations prefer to omit it.

64. The quorum necessary for the transaction of the business of the Board may be fixed by the directors and, unless so fixed, shall be [insert number].
65. The directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the continuing director or directors may act for the purpose of increasing the number of directors to that number of or summoning a general meeting of the Company, but for no other purpose.
66. The directors may elect a chairperson of the Board and determine the period for which he or she is to hold office, but if there is no such chairperson or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of the meeting.<sup>50</sup>
67. The directors may establish one or more committees consisting of members of the Board<sup>51</sup>. A committee so established may elect a chairperson of its meetings; if no such chairperson is elected or, if at any meeting the chairman is not present within 15 minutes after the time appointed for holding it, the members of the committee present may choose one of their number to be chairperson of the meeting.
68. A committee may meet and adjourn as it thinks proper. Questions arising at a committee meeting shall be determined by a majority of votes of the members present, and when there is an equality of votes, the chairman shall have a second or casting vote.
69. A resolution in writing signed by all of the directors of the Company, or by all of the members of a committee of them, and who are for the time being entitled to receive notice of a meeting of the directors, or, as the case may be, of such a committee, shall be as valid as if it had been passed at a meeting of the directors or such a committee duly convened and held.
70. A meeting of the directors or of a committee referred to in article [insert<sup>52</sup>] may consist of a conference between some or all of the directors or, as the case may be, members of the committee, who are not all in one place but each of whom is able (directly or by means of telephonic, video or other electronic communication) to speak to each of the others and to be heard by each of the others. Such a meeting shall be deemed to take place where the chairperson of the meeting then is.<sup>53</sup>

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50 Some organisations provide for annual election of the chairperson, or specify in the articles the term of office of the chairperson.

51 This is an optional provision. This draft envisages that committees will be populated by directors.

52 In this draft, article 67.

53 This is a new, optional, provisions and is unlikely to be found in most organisations' existing articles. It is potentially very useful.

## CONFLICT OF INTEREST

71. A director may not vote in respect of any contract, appointment, or arrangement in which he or she is interested and he or she shall not be counted in the quorum present at a meeting at which the matter is considered.
72. A director who is in any way, directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his or her interest at the Board meeting at which the question of entering into the contract is first raised, or at the next meeting held after he or she became so interested.
73. A copy of every declaration shall, within 3 days of making it, be entered into the register of disclosable interests maintained by the Company.<sup>54</sup>

## MINUTES OF MEETINGS

74. The Company shall cause minutes to be entered in books kept for that purpose of –
  - a) all appointments of officers made by the directors;<sup>55</sup>
  - b) the names of the directors present at each meeting of its directors and of any committee of the directors;
  - c) all resolutions and proceedings at all meetings of its directors and of committees of directors.
75. Such minutes shall be entered in the foregoing books as soon as may be after the appointment concerned is made, the meeting concerned has been held or the resolution concerned has been passed.
76. Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.
77. Where minutes have been made in accordance with articles [insert<sup>56</sup>] to [insert<sup>57</sup>] inclusive, then, until the contrary is proved-
  - a) the meeting shall be deemed to have been duly held and convened;
  - b) all proceedings had at the meeting shall be deemed to have been duly had; and
  - c) all appointments of officers made by its directors at the meeting shall be deemed to be valid.

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54 Note the requirement to maintain a register of disclosable interests.

55 Some organisations appoint officers, other than a chairperson and secretary. Provision can be made for this in the articles.

56 In this draft, article 74

57 In this draft, article 76

## AUDIT COMMITTEE<sup>58</sup>

78. The Board may establish an audit committee, constituted as it shall think fit.
79. The responsibilities of an audit committee shall include:
- a) The monitoring of the financial reporting process;
  - b) The monitoring of the effectiveness of the Company's systems of internal control, internal audit and risk management;
  - c) The monitoring of the statutory audit of the Company's financial statements;
  - d) The review and monitoring of the independence of the statutory auditors and the provision of additional services to the Company.
80. If an audit committee is established, any proposal of the Board with respect to the appointment of statutory auditors to the Company shall be based on a recommendation made to the Board by the audit committee.

## REMUNERATION OF DIRECTORS

81. Directors shall not be remunerated for acting as such.<sup>59</sup>
82. Subject to compliance with any rules or protocols laid down by the Board, directors may be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board, any committee established by the Board, general meetings of the Company, or otherwise incurred in connection with attending to the business of the Company.

## USE OF COMPANY PROPERTY BY DIRECTORS<sup>60</sup>

83. No director shall use Company property for his or her own use or benefit SAVE HOWEVER that de minimis use of Company property may be made by a director for the exclusive purpose of carrying out his or her duties as a director, when such use is sanctioned at a meeting of the Board.

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58 There is no arts organisation in Ireland large enough to require, by law, an audit committee. The Companies Act sets the threshold at a balance sheet total of not less than 25m and a turnover of not less than 50m. However larger organisations may consider that such a committee would be beneficial.

59 This is a requirement of the Arts Council. It is also a requirement of the Revenue Commissioners in relation to companies with charitable status.

60 There is a strict prohibition in the Companies Act precluding the use of company property by directors unless sanctioned by the company constitution or approved by the members in general meeting. This clause tempers the prohibition, to permit, for example, the use of a company mobile phone.



## **POWER OF DIRECTOR TO ACT IN A PROFESSIONAL CAPACITY FOR THE COMPANY**

84. Any director may act by himself or herself, or his or her firm, in a professional capacity for the Company, and shall be entitled to remuneration for professional services rendered, as if he or she were not a director.<sup>61</sup>

## **ACCOUNTS**

85. The Company shall keep or cause to be kept adequate accounting records in accordance with Chapter 2 of Part 6 of the Act.
86. The accounting records shall be kept on a continuous basis and shall be sufficient to explain the Company's transactions and facilitate the preparation of financial statements that give a true and fair view of the assets, liabilities, financial position and profit or loss of the Company.
87. The accounting records shall include:
- a) entries from day to day of all monies received and expended by the Company;
  - b) a record of the assets and liabilities of the Company;
  - c) a record of all transactions whereby goods are purchased and sold;
  - d) a record of all transactions whereby services are provided or purchased by the Company.
88. The Company's financial records shall be kept at the Registered Office or at such other place as the Board shall direct.
89. The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the financial statements and accounting records of the Company shall be open to inspection of its members, not being directors of the Company.
90. The Board shall from time to time in accordance with the provisions of Part 6 of the Act cause to be prepared and to be laid before the annual general meeting of the Company such financial statements and reports of the directors and statutory auditors as are required by those provisions to be laid before the annual general meeting.

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<sup>61</sup> While this is an optional provision of the Companies Act, and is also contemplated by the Charities Act, it comes within the ambit of the prohibition of the Revenue Commissioners on payments to directors. They indicate that they will consider applications to permit such payments on a case by case basis.

## AUDIT

91. Statutory auditors shall be appointed by the Company and their duties regulated in accordance with Part 6 of the Act.<sup>62</sup>
92. The Board shall arrange for the statutory financial statements of the Company for each financial year to be audited by the statutory auditors.

## SEAL

93. The Company shall have a common seal that states the Company's name in legible characters.
94. The seal shall be used only on the authority of the Board, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the Secretary or by a second director or by some other person appointed by the Board for the purpose.

## NOTICES

95. A notice convening a general meeting shall be delivered by the Company to every person entitled to attend the same by hand/courier, by sending it by post to him or her to his or her registered address, or, in the event that the intended recipient has authorised it in writing, by fax or e-mail to the fax number or e-mail address provided by the intended recipient.
96. A notice of any other description, including a notice convening a Board meeting may be delivered by hand/courier, by ordinary pre-paid post, by fax or by e-mail.
97. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been received at the expiration of 24 hours after the letter containing the same is posted. Where a notice is served by fax or e-mail, the service shall be deemed to have been effected at the expiration of 24 hours after the fax or e-mail has been sent, unless there is a notified failure or error in delivery in that period.
98. The accidental omission to give notice of any meeting convened pursuant to these articles, or the non-receipt of such notice by any person entitled to receive notice shall not invalidate the proceedings at that meeting.
99. Notice of every general meeting shall be given in the manner herein before authorised to: every member, every director, the Secretary and the statutory auditor for the time being of the Company.

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62 Although a CLG may now avail of the audit exemption previously only available to small private limited companies, it is a requirement of the Arts Council that companies funded by them continue to be audited. The Revenue Commissioners also insist that companies with charitable status be audited if their turnover exceeds €100,000.

## **INDEMNITY**

100. The Company indemnifies each officer of the Company against any liability incurred in relation the Company, to the extent permitted by Section 235 the Act.

## **INSURANCE**

101. The Company may, as the Board may determine from time to time, purchase and maintain Directors' and Officers' insurance for its officers, on such terms as the Board shall decide.

