

# SOCIAL ENTERPRISE - GOVERNANCE

Company Structure/ Compliance / Funding

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BDO

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# SOCIAL ENTERPRISE - GOVERNANCE

- Company Structure
- Compliance
- Funding

# SOCIAL ENTERPRISE - GOVERNANCE

## Company Structure

### ➤ Company Types Include:

- Limited Company
  - Private Company Limited By Shares (LTD)
  - Designated Activity Company (DAC)
    - Limited by shares / guarantee
  - Company Limited By Guarantee (CLG)
    - Limited by guarantee not having a share capital
- Unlimited Company
- Other
  - UCITS
  - EEIG
  - SE

# SOCIAL ENTERPRISE - GOVERNANCE

## Company Structure

- Legal Format used by Social Enterprise:
  - Designated Activity Company (DAC) [?]
  - Company Limited By Guarantee (CLG) [?]
  - Other [?]
  - Factors to be taken into account in deciding on the type of legal format include:
    - Separate legal status [Corporate]
    - Limited liability [Personal Protection]
    - Incorporated for a specific purpose for which the shareholders wish the capacity of the company to be clearly defined [Objects Clause]
    - Requirement to raise funds from members [Equity - Funding]
    - Individuals willing and able to act as Directors / Secretary [Governance]
    - Applying for Charitable Status / Exemption [Requirements]

# SOCIAL ENTERPRISE - GOVERNANCE

## Company Structure

### ➤ Comparison of CLG to a DAC:

CLG	DAC
It must have at least two directors.	It must have at least two directors.
It can have between 1 and the number of members authorised by the Articles of the company.	It can have between 1 and 149 members.
It is required to hold an AGM where there are 2 or more members.	It is required to hold an AGM where there are 2 or more members.
It has a constitution document which includes a memorandum and articles of association. It has stated objects for which the company was incorporated.	It has a constitution document which includes a memorandum and articles of association. It has stated objects for which the company was incorporated.
It can claim eligibility for audit exemption (and dormant company audit exemption).	It can claim eligibility for audit exemption and dormant company audit exemption.
It has limited liability but does not have a share capital.	It has limited liability. It has a share capital or is a private company limited by guarantee with a share capital.
Name of the company must end in " <i>Company Limited by Guarantee</i> " or " <i>Cuideachta faoi Theorainn Ráthaíochta</i> " unless exempted.	Name must end in " <i>Designated Activity Company</i> " or " <i>Cuideachta Ghníomhaíochta Ainmnithe</i> " unless qualified for an exemption.

# SOCIAL ENTERPRISE - GOVERNANCE

## Company Structure

### ➤ Registering a New Company:

- Form A1 submitted to Companies Registration Office ('CRO')
  - With Constitution / Memorandum & Articles of Association / Fee
  - Information on Form A1 includes:
    - Details of the company name
    - Registered office
    - Details of secretary and directors (including their consent to acting as such)
    - The subscribers and details of their shares (if applicable)
    - Declaration that the requirements of the Companies Act have been complied with

# SOCIAL ENTERPRISE - GOVERNANCE

## Company Structure

### ➤ Ongoing CRO Compliance Obligations:

- Notify the CRO of changes to its registered particulars (events based)
  - Registered Office [Form B2] / Directors - Company Secretary [Form B10] / Issue of Shares [Form B5] / Etc.
- Submit Annual Documents
  - Annual Return [Form B1] / Financial Statements
  - Missed Deadlines
    - Late filing penalty
    - Prosecution of the company and/or its directors
    - Loss of audit exemption
    - Involuntary strike-off and dissolution of the company

# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Corporate Governance

### ➤ Governance - Other Matters Include:

- Annual General Meeting / Extraordinary General Meeting
  - Duty to Convene / Notice
  - Information to be Presented / Business of the Meeting
  - Resolutions - Ordinary / Special [?]
  - Required CRO Filings
- Board Meetings
  - Agenda [Strategy / Financial Reporting / Project Updates / Corporate Governance / Risk / Etc.]
  - Requirement to Attend
  - Proper and Accurate Minutes, Approved and Signed Off
- Duties of Directors / Company Secretary
  - Companies Act 2014 / Common Law





# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Corporate Governance

➤ Useful Website:

- [www.cro.ie](http://www.cro.ie)

# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

### ➤ Social Enterprise Activities

- Can involve some form of activity that will generate income / profit from a source other than for example grant aid, sponsorship, donations etc.
- Commercial activities can provide for an element of financial independence
- Officers of the Company will need to review the tax registration, return and payment obligations for the Company and Comply with same
  - Corporation Tax
  - VAT
  - Employer Taxes [PAYE/PRSI/USC]

# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

### ➤ Social Enterprise Activities

- Is the Company carrying on a Trade [?]
  - “every trade, manufacture, adventure or concern in the nature of trade”
  - Corporation Tax / VAT
  - Exemption [?] - Charitable Status / Not for Profit [See Below]
- Does the Company Employ People [?]
  - Should be a matter of fact
  - Employer Taxes [PAYE/PRSI/USC]



# **SOCIAL ENTERPRISE - GOVERNANCE**

## **Compliance - Revenue Commissioners**

- Tax Registration
  - Form TR2
  - Revenue Online Services (ROS)

# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

### ➤ Corporation Tax

- Form CT1
- Return Deadline: Generally 8 months 23 days from accounting period end, e.g. return for year ended 31 December 2016 due by 23<sup>rd</sup> September 2017
- Payment: Preliminary Tax - Payment amounts and dates will depend on whether the company is a '*small*' or '*large*' company
  - Small (CT Liability < €200,000): Amount - One Instalment - At least 90% of liability for current period or 100% of liability for previous corresponding period / Date, e.g. 23<sup>rd</sup> November 2016 for year ended 31 December 2016
  - Large (CT Liability >= €200,000): Amount - Two Instalments - Total must equal at least 90% of liability for current period / Dates, e.g. 23<sup>rd</sup> June 2016 [45%] and 23<sup>rd</sup> November 2016 [Balance] for year ended 31 December 2016
  - Balance of CT - By the Return Filing Deadline

# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

### ➤ Corporation Tax

- Charitable Status
  - Exemption - Income Tax / Corporation Tax / Capital Gains Tax / DIRT / Capital Acquisitions Tax / Stamp Duty / Dividend Withholding Tax [Not VAT or PAYE/PPRSI/USC]
  - Form CHY1
    - Relief of Poverty
    - Advancement of Education
    - Advancement of Religion
    - Other works of a charitable nature beneficial to the community
  - Standard Clauses to be included in the Governing Instrument
    - Income and Property
    - Additions, Alterations or Amendments
    - Winding Up
    - Keeping of Accounts

# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

### ➤ Corporation Tax

- Charitable Status
  - It is for the Charities Regulatory Authority to grant charitable status accordingly bodies should firstly apply to the Charities Regulatory Authority for charitable status prior to making an application to Revenue for Charitable Tax Exemption
  - Useful Websites
    - <http://www.revenue.ie/en/business/charities.html>
    - <http://www.charitiesregulatoryauthority.ie/>

# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

### ➤ VAT

- VAT Rates: (Exempt / 0% / 9% / 13.5% / 23%)
- Rate will depend on the Activity being carried on
- Registration is obligatory where certain turnover thresholds are exceeded or are likely to be exceeded in any twelve-month period
  - Goods: €75,000
  - Services: €37,500
  - Other
- Form VAT 3: Sales / Purchases / Intra EU Details
- Return Period and Filing / Payment Deadlines:
  - Standard Period: Bi-Monthly (J/F, M/A etc.) - 23<sup>rd</sup> day of the month following period end
  - Annual Liability: €3,000 or less: Half yearly - 23<sup>rd</sup> day of the month following period end
  - Annual Liability: Between €3,001 and €14,400: Four-monthly return - 23<sup>rd</sup> day of the month following period end
  - 1 Annual Return - Pay by Direct Debit
- Form RTD: Return of Trading Details - 23<sup>rd</sup> of Month following period end



# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

### ➤ Employer Taxes - PAYE/PRSI/USC

- Registration is obligatory where the company has an employee(s)
- Obligations
  - Register all new employees of the company (Tax Credits / Tax Bands)
  - Issue payslips to all employees
  - Issue Form P45 to an employee who is leaving the company's employment
  - Issue Form P60 to all employees in the employment of the company as at the calendar year end, i.e. 31 December
  - File and pay PAYE/PRSI/USC withheld from each employee to the Office of the Revenue Commissioners
- Form P30: PAYE/PRSI/USC
- Return Period and Filing / Payment Deadlines:
  - Standard Period: Monthly (J, F, M etc.) - 23<sup>rd</sup> day of the month following period end
  - Annual Liability: €28,800 or less: Quarterly (J/M, A/J etc.) - 23<sup>rd</sup> day of the month following period end
  - 1 Annual Return - Pay by Direct Debit
- Form P35 - Annual Return - 23<sup>rd</sup> February (*following 31 December year end*)



# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

- Non Compliance
  - Interest on Late Payment
  - Penalty
  - Surcharge for Late Filing
  - Revenue Intervention
  - Publication of Default
  - Prosecution



# SOCIAL ENTERPRISE - GOVERNANCE

## Compliance - Revenue Commissioners

➤ Useful Website:

- [www.revenue.ie](http://www.revenue.ie)

# SOCIAL ENTERPRISE - GOVERNANCE

## Funding

### ➤ Sources / Types of Funding can include:

- Equity [*e.g. Benefactor*]
- Loan [*Initial funding but to be repaid over time*]
- Grants [*e.g. Government etc.*]
- Donations [*e.g. Public / Corporate*]
  - Charitable Donation Scheme / Tax Relief / Individual & Corporate Donations
  - Must hold a Charitable Tax Exemption for at least 2 years before becoming eligible for this scheme!
- Sponsorship
- Events
- Collections
- Etc.



# SOCIAL ENTERPRISE - GOVERNANCE

## Questions & Answers

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