

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

1180. (1) A CLG shall, notwithstanding its registration as a company with limited liability, be exempt from the provisions of this Act relating to the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name, but shall enjoy all the privileges and shall (subject to this section) be subject to all the obligations of a CLG, where—

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

(b) its constitution—

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

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

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

and

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

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

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

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

(5) If it appears to the Registrar that a CLG which is registered under a name not including the words

“company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta”—

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

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

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

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

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

(7) A person who—

(a) alters the constitution of a CLG in contravention of subsection (4), or

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

shall be guilty of a category 3 offence.

(8) Subsections (9) to (12) have effect notwithstanding—

(a) the repeal by the Act of 2001 of section 24, as originally enacted, of the Act of 1963 (the “original section 24”), or

(b) the repeal by this Act of section 24, inserted by section 88(1) of the Act of 2001, of the Act of 1963 (the “substituted section 24”) or of the Act of 2001.

(9) A licence that—

(a) had been granted by the Minister pursuant to subsection (1) or (2) of the original section 24 to a company limited by guarantee, and

(b) is in force immediately before the commencement of this section,

shall, on and from whichever thing referred to in section 1190 (5)(a) or (b) happens first, continue to have effect but with the modification that it shall operate to exempt the company from the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name.

(10) Subsections (4) to (7) of the original section 24 shall continue in force in relation to the foregoing licence as if that section 24 had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be read as references to the Registrar.

(11) An exemption that immediately before the repeal of the Act of 2001 operated, by virtue of the substituted section 24, in favour of a company limited by guarantee shall, on and from whichever thing referred to in section 1190 (5)(a) or (b) happens first, continue to have effect but—

(a) with the modification that it shall operate to exempt the company from the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name; and

(b) subject to subsection (12).

(12) Subsections (4) to (7) shall, with the necessary modifications, apply to a foregoing exemption as they apply to an exemption under subsection (1).

(13) Subsections (9) to (12) are without prejudice to section 1190 (4) (which saves for a limited period the effect of provisions of the prior Companies Acts (including section 88(2) of the Act of 2001) that impose a requirement, or confer an exemption from a requirement, with regard to the use of “limited” or “teoranta” or their abbreviations).

(14) In relation to—

(a) a CLG that avails itself of the exemption under subsection (1) or continues to avail itself of a licence or exemption referred to in subsection (9) or (11), and

(b) an existing guarantee company ) that avails itself, during the period specified in section 1190 (4), of an exemption conferred by a provision of the prior Companies Acts with regard to the use of “limited” or “teoranta” or their abbreviations,

section 151 shall have effect as if, in addition to the particulars specified in subsection (2)(a) to (c) of that section to be included on all business letters and order forms of the CLG, there were specified in that subsection the fact of the CLG being a limited company.

(15) In this section “Act of 2001” means the Company Law Enforcement Act 2001 .