

EXEMPTION FROM USE OF COMPANY TYPE AS PART OF COMPANY NAME

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1. Legislative provisions regarding company name

Under the Companies Act 2014, an exemption is available to Designated Activity Companies and Companies Limited by Guarantee from including the company type suffix from the end of the company name. The exemption is only available to such companies which meet certain criteria.

The exemption is **not available to LTD companies** (companies registered under Part 2 of the Companies Act 2014), Public Limited Companies, Unlimited Companies or Investment Companies.

Company Name Suffix

Section 969 Companies Act 2014 provides that the company name and related memorandum of association of every designated activity company which is limited by shares/guarantee and section 1178 Companies Act 2014 every company which is limited by guarantee, not having a share capital, must state the name of the company, with the relevant company type as the last words of the name. Unlimited companies must include the type suffix at the end of the name under section 1237 Companies Act 2014.

Pursuant to section 49 Companies Act 2014, every company is obliged to publish its name, among other things, in all business letters, notices and other official publications of the company and in all cheques, invoices and receipts. The use of the abbreviation of the relevant company type does not constitute a breach of sections 969/1178/1237.

Designated Activity Company (DAC) or a Company Limited by Guarantee (CLG), however, may be exempt from the requirement to include the company type in its name, and from the requirements imposed by section 49.

Note that under section 151 Companies Act 2014, a company that is exempt from the obligation to use the words describing the company type in its name must show on its letters and order forms **the legal form of the company**.

Under the Companies Act 2014, the suffix must be included at the end of the company name:

- A Private Company Limited by Shares must state "Limited/Teoranta" at the end of its name.
- A Designated Activity Company, limited by shares, must state "Designated Activity Company/Cuideachta Ghníomhaíochta Ainmnithe" at the end of its name.
- A Designated Activity Company Limited by Guarantee must state "Designated Activity Company/Cuideachta Ghníomhaíochta Ainmnithe" at the end of its name.
- A Public Limited Company/Investment Company must state "Public Limited Company/Cuideachta Phoiblí Theoranta" at the end of its name.
- A Guarantee company without share capital must state "Company Limited by Guarantee/Cuideachta faoi theorainn Ráthaíochta" at the end of its name.
- An unlimited company (both private and public) must state "Unlimited Company/Cuideachta Neamhtheoranta" at the end of its name.

2. Requirements

2.1 Designated Activity Companies/Companies Limited by Guarantee

Under sections 971/1180 Companies Act 2014, a **designated activity company limited by shares/guarantee or company limited by guarantee not having a share capital** may claim an exemption from the provisions of the Companies Act relating to the use of the words "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe" or "Company Limited by Guarantee" or "Cuideachta faoi theorainn Ráthaíochta" as part of its name and the publishing of its name, while enjoying all the privileges and being subject to all the obligations of limited companies.

A company is entitled to the exemption where:

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

- i) require its profits (if any) or other income to be applied to the promotion of its objects,
 - ii) prohibit the payment of dividends to its members, **and**
 - iii) require 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 of Companies a statement in the prescribed form (see Appendix 2) that the company complies or, where applicable, will comply with the requirements of paragraphs (a) and (b) above.

The Registrar will refuse to register as a DAC limited by shares or by guarantee, any association about to be formed as a limited company by a name which does not include the word “Designated Activity Company” or “Cuideachta Ghníomhaíochta Ainmnithe” unless a statement pursuant to (c) above has been delivered.

The Registrar will refuse to register as a CLG, Company Limited by Guarantee, any association about to be formed as a limited company by a name which does not include the word “Company Limited by Guarantee” or “Cuideachta faoi theorainn Ráthaíochta” unless a statement pursuant to (c) above has been delivered.

Section 971(4)/1180(4) provides that a company which was exempt, pursuant to section 24(1) Companies Act 1963 (as amended), from including the company type in its name is prohibited from altering its constitution so that it ceases to comply with the requirements of section 971(1)/1180(1).

Section 971(5)/1180(5) provides that if it comes to the Registrar's attention that a limited company which has claimed the exemption from using the company type has carried on any business other than the promotion of any of its objects, or has applied any of its profits or other income otherwise than in promoting such objects, or has paid a dividend to any of its members, the Registrar may in writing direct the company to change its name within such period as may be specified in the direction so that its name ends with the relevant company type and the change of name shall be made by the company in accordance with section 30 Companies Act 2014.

A person who provides incorrect, false or misleading information in the statement furnished pursuant to section 971(1)(c)/1180(1)(c), or alters its constitution in contravention of section 971(4)/1180(4), or fails to comply with a direction from the Registrar under section 971(5)/1180(5), shall be guilty of a category 3 offence, prosecutable in the District Court by the Registrar.

A reduced rate of tax may apply in the case of a company which is precluded by its constitution from distribution of any part of its profits among its members. This is a matter for decision by Revenue, which may be contacted at the Charities Section, Revenue Commissioners, Government Offices, Nenagh, Co. Tipperary (tel 067 63400, lo call 1890 666 333). Please note that if a company wishing to avail of the section 971/1180 exemption also intends to seek charitable status from Revenue, the main object of the company must be charitable and a specific clause must also be inserted in its memorandum of association. (See Appendix 1, clause 7, for the alternative wording.)

2.3 Exemption procedure DAC/CLG

NEW COMPANY

Applicants should furnish the following documents, all of which must be filed together, to the CRO in respect of a company which is applying for incorporation:

- Form G5 (declaration of compliance)
- Form A1 (application for incorporation)
- Bond (if there is no European Economic Area-resident director)
- A clear print of the constitution containing the original signatures of the members of the proposed company.

EXISTING COMPANY

Applicants in respect of a company that is already formed, i.e. which has already registered a constitution with the CRO and obtained a certificate of incorporation, should furnish to the CRO the

following documents, all of which must be filed together:

- Form G5 (declaration of compliance)
- A clear copy of the amended constitution.
- As the company is changing its name to delete the company type, the company should file Form G1 in relation to the amendment of the constitution of the company and Form G1Q in relation to the change of name.

The forms, and associated fees, can be downloaded from www.cro.ie. **It is not the function of the Registrar of Companies to ensure that the constitution of a company is framed so as to express the intentions of the members/proposed members.**

4. Further information

Enquiries in connection with the section 971/1180 exemption procedure and inquiries in connection with company incorporation or registration of a change of name may be directed to:

Eileen Geoghegan - 01 804 5388

APPENDIX 1

Standard memorandum of association clauses required in order to qualify for exemption pursuant to section 971/1180 Companies Act 2014

Proviso to the objects clause(s):

Provided that the company shall not support with its funds any object nor endeavour to impose on, or procure to be observed by its members or others any regulation or restriction which, if an object of the company, would make it a trade union.

[3] The objects for which the company is established are:

(A)...

(B)...

[insert details of company's objects, which must be the promotion of commerce, art, science, education, religion and/or charity]

[4] The income and property of the company, whencesoever derived, shall be applied solely towards the promotion of the main objects of the company set forth in this memorandum of association and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the members of the company.

Nothing herein shall prevent the payment in good faith of:

- reasonable and proper remuneration to any member, officer or servant of the company in return for services actually rendered to the company, or
- interest at a rate not exceeding [] percent per annum on money lent by any member to the company, or
- reasonable and proper rent for premises demised or let by any member to the company. However, no member of the company's Board of Directors, Council of Management, or Executive Committee, by whatever title called, shall be appointed to any salaried office of the company or to any office of the company paid by fees. No remuneration or other benefit in money or money's worth shall be given by the company to any member of such Board, Council or Committee, other than:
- the repayment of out-of-pocket expenses, or
- interest at the rate aforesaid on money lent to the company, or
- reasonable and proper rent for premises demised or let to the company, or
- a payment to a company of which a member of the Board, Council or Committee may be a member holding not more than one per cent of the capital of that company, such member not to be bound to account for any share of profits he may receive in respect of such a payment.

[5] No amendments of any kind shall be made to the provisions of clauses [4 and 8] of the memorandum of association and no amendments shall be made to the memorandum and articles of association to such extent that they would alter the effect of Clauses [4 and 8] of the memorandum of association, such that there would be non-compliance with the requirements of section 971/1180 and of the Companies Act 2014

[6] The liability of the members is limited.

[7] **(Required only where Company is Limited by Guarantee, not having a share capital.)**

Every member of the company undertakes to contribute to the assets of the company, in the event of the company being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding **[insert amount of guarantee per member]**.

[8] 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 another company whose objects comply with paragraph (a) of section 971(1)/1180(1) of the Companies Act 2014 and which company meets the requirements of paragraph (b) of section 971(1)/1180(1) of the Companies Act 2014, such company to be determined by the members of this 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.

Alternative wording for [8] which must be used if the company intends to apply to Revenue for charitable status:

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 another company whose objects are the promotion of charity and which has main objects similar to the main objects of the company, which other company also meets the requirements of paragraph (b) of section 971(1)/1180(1) of the Companies Act 2014, such company to be determined by the members of this company at or before the time of dissolution, or in default thereof by such Judge of the High Court as may have or acquire jurisdiction in the matter, and if and so far as effect cannot be given to such provision, then to some charitable object.

APPENDIX 2

Checklist

It will speed up the exemption process if the promoters ensure that the memorandum and articles of association contain up to date references to company law and generally comply with the following:

- A signed declaration (Form G5) fully and properly completed, is essential for Designated Activity Companies or Companies Limited by Guarantee.
- The title to the constitution (memorandum and articles) should indicate, as applicable and the constitution should follow the format set out in the Schedules to the Companies Act 2014:

Companies Act 2014

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL (schedule 10)
DESIGNATED ACTIVITY COMPANY LIMITED BY SHARES (schedule 7) or
DESIGNATED ACTIVITY COMPANY LIMITED BY GUARANTEE (schedule 8)

- The CRO requires good general print quality for scanning purposes with adequate margins of 1 inch all round the page. Covers or binding should not be used on any document submitted to the CRO.
- The company's main objects, subsidiary objects and powers should be separately identified in the memorandum of association.
- If the company intends seek charitable status from the Revenue Commissioners, please note that (a) the company must have charitable objects and (b) a specific clause must be inserted in the memorandum (see Appendix 1, alternative clause [8]).
- Form G1 (special resolution amending provisions in memorandum and articles) – the proviso to the objects is not usually numbered.
- The mandatory clauses required by section 971/1180 (1)(a) and (b) of the Companies Act 2014 should be inserted and stated exactly in the memorandum of association. The clauses in Appendix 1 that are in square brackets may need to be renumbered, depending on other text contained in the memorandum.
- The company is responsible for ensuring that the mandatory income and property clause in the memorandum is not compromised in the articles of association by any provision for payment of any income, fees, salary, remuneration etc. to directors.
- The subscribers' details should appear on the final page of the constitution (memorandum and articles of association).
- References to the Registrar should be to the Registrar of Companies.

AN OIFIG UM CHLÁRÚ CUIDEACHTAÍ
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