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IRELAND

COUNTRY REPORT FOR IRELAND
NGO LAWS AND REGULATIONS

I
INTRODUCTION

Ireland has a proud tradition of encouraging ngo activity and of respecting the independence of the sector. This virtue was born of necessity. However, the close working relationship between government and ngos, arguably a product of the initial mutual inter-dependency of Church and State, continues today.

Since before the formation of the State, the creation and maintenance of the institutional infrastructure of society was largely due to ngo activity, in particular to the significant contribution made by religious organizations. For most of the period since the nation achieved independence Ireland has been mainly an agrarian society with an undeveloped economy, characterised by high levels of poverty and a powerful Catholic Church. During this period two strands of ngo activity developed in Ireland and are still evident. Firstly, the activities of voluntary bodies, particularly religious organizations, provided a necessary supplement or substitute for scarce government resources. Initially, the State was wholly dependent upon such ngos for the nation-wide provision of hospitals, schools and universities together with the necessary trained staff. Other more secular bodies also contributed to establishing the framework of community facilities. St Vincent de Paul, for example, with its network of 1,000 local branches and approx 10,000 members, deployed its resources to alleviate the effects of poverty. Secondly, a somewhat separate strand of ngo activity developed to pursue a strong community development approach. Bodies such as Muintir na Tire supported many family farms on subsistence level income and promoted community development projects across the nation.

This fostering of ngo activity has not been confined to the jurisdiction. Ireland also has a well earned reputation for exporting ngo skill and resources to further charitable purposes overseas. As the missionary and educational role of its religious organisations fades this is being replaced by the highly professional poverty relief and community development roles of such secular ngos as Trocaire.

Ireland's tradition of reliance upon ngos has been unaccompanied by any evidence of interest in regulating the sector. Partly this is due to the entrenched doctrine of subsidiarity, itself a by-product of the delicate relationship between Church and State, characterised by the vigour with which the former constantly policed the latter's intrusion into matters it judged to be outside the remit of government. Whatever the reason, the consequences can be seen in the current absence of Irish legislation either governing the sector as a whole or providing for the registering and regulating of ngos.

In recent decades, however, Irish society has been transformed. An economy founded on the natural resources of agriculture and fisheries is now being driven by high tech industries accompanied by the activities of a diversified mix of for-profit, not-for-profit and government bodies. It is within this modern and sophisticated socio-economic context that ngo activity in Ireland must now be viewed. While the more traditional ngos continue to provide much of the buildings and staffing for hospitals, residential care facilities and educational establishments, the sector is also experiencing a new and wide-ranging proliferation of ngo activity. The dual strands of such activity have recently found formal recognition in the creation of the Community and Voluntary Pillar, which represents a wide range of organizations from both strands and now provides a structure and a strong voice for the sector in its negotiations with the State.

As elsewhere in modern Westernized societies, this re-invigoration of the sector is coinciding with a retraction in government service provision and leading to new partnership arrangements between the State and the sector, in particular to plan and deliver future social and health care services. In Ireland, the State and the sector are now recognized as full partners in maintaining health and social care provision, addressing the social inclusion agenda and in assisting rural regeneration.

II
PROVISIONS OF THE GENERAL LAWS

Ireland, is an independent nation with its own indigenous body of laws. However, as a member of the European Union, it is also subject to laws, regulations and court rulings emanating from outside the jurisdiction. In particular it must give effect to Declaration No 23 of the Maastricht Treaty which requires member States to facilitate closer relationships between government bodies and ngos:

> The Conference stresses the importance, in pursuing the objectives of Article 117 of the Treaty establishing the European Community, of cooperation between the latter and charitable associations and foundations as institutions responsible for social welfare establishments and services.

(A) Consistency and Clarity of the Laws.

The Republic of Ireland is a unitary State and a common law jurisdiction, the legal system and legislative foundations of which are largely a legacy from the time when it was ruled from Westminster. Its present government has recently articulated the principles which will guide the future development of a partnership between the State and the sector in *Supporting Voluntary Activity: a White Paper for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector*. This document notes that:

> Overall, however, there is an underdeveloped legal and policy framework in Ireland for the support of voluntary work and the context in which it takes place (para 2.15).

The present position, therefore, is that Ireland currently does not have the type of legal framework which other modern westernised societies find necessary to facilitate and regulate ngo activity. Instead it relies upon a patchy spread of common law and legislative provisions which address specific types of ngo and their activities.

(B) Constitution

The overarching legal authority for Ireland's various laws and regulations is derived from the Constitution of Ireland, Bunreacht na hEireann, adopted by the Irish nation in 1937. This contains a declaration of fundamental rights some of which are of importance to the ngo sector. The most relevant rights, to be found in Article 40.6, are as follows:

(i) The right of citizens to express freely their convictions and opinions.
(ii) The right of the citizens to assemble peaceably and without arms.
(iii) The right of citizens to form associations and unions.

The right to freedom of expression is pointedly stated to include the criticism of Government policy. The right to associate generally to form non-governmental organisations is given effect through the Companies Acts and the legislation relating to industrial and provident societies and to friendly societies. All laws regulating the right to form associations and unions and the right of free assembly are constitutionally required to contain no form of political, religious or class discrimination.

(C) Types of Organization

Ireland has a rich diversity of types of ngo organizations. While the customary broad division between mutual benefit and public benefit applies, this accommodates a range of ngos including co-operatives, charities, religious organizations, trade unions, residents associations, foundations, self-help groups etc.

Ngos require to be properly constituted with appropriate governing instruments but they can take a variety of forms: some may be informal having no legal status separate and distinct from the relationship between its members; others can adopt quite formal, legal structures which provide clearly for such a distinction. The following are examples of the former with no juridical status.

1. An unincorporated association. Most ngos in Ireland take this form. It is not a legal entity and its creation rests on an agreement, oral or written, between its members; usually its governing instrument is its constitution or rules. It has no legal personality and therefore no capacity, independent of its members, to enter into legal relations with other bodies.
2. A trust. This is an arrangement whereby one or more persons operating under the authority of a 'deed of trust' hold/s funds or property on behalf of other persons; its governing instrument is a trust deed or will and its executive power rests with trustees appointed under the terms of the trust. Again, it has no legal personality and it is the trustees rather than the body which must enter into legal relations and accept personal liability.

The following are the main ngo legal structures with their related type of governing instruments.

- A company limited by guarantee; its governing instrument being a memorandum and articles of association. Most incorporated ngos in Ireland take this form.
- An Industrial and Provident Society; the Rules of the Society is the governing instrument.
- A Friendly Society; again, the Rules of the Society is the governing instrument.
- A charitable company; the terms of the deed of trust or will, as embodied in its memorandum and articles and lodged in the Registry, constitute the governing instrument.

This differentiation marks a legal distinction between ngos providing for member or mutual benefit and those providing for public benefit. The latter is given separate recognition by charity law legislation in which religious organisations are specifically presumed to be for the public benefit. Trade unions and political parties are regulated separately.

For any ngo the advantages of adopting a formal legal structure include:

(a) separation of members responsibilities from those of the ngo, including protection for members from liability for ngo debts;
(b) the ngo can own property, enter into contracts and employ people in its own name;
(c) the ngo can bring and defend court proceedings in its own name; and
(d) the ngo can apply for charitable recognition in its own name.

(D) Purposes

In general, the purposes of ngos are not subject to prescriptive laws; there is a presumption that they are being established for the pursuit of legal purposes.

A charity is a public benefit ngo, established exclusively for charitable purposes, these being purposes for: the relief of poverty; the advancement of education; the advancement of religion; and such other purposes, beneficial to the community, which are not accommodated under the previous headings. There are legal restrictions on trading and advocacy activities.
A Friendly Society is a member benefit type of ngo, a mutual assurance association, established under the Friendly Societies Act 1896. These include mutual insurance and assurance bodies, benevolent societies and other societies formed for purposes such as the promotion of science, literature and education.
An Industrial and Provident Society is a member benefit type of ngo, usually a commercial organisation. It must be formed "for carrying on any industries, businesses or trades" which includes agricultural producers, group water schemes and housing co-operatives.

(E) Registration or Incorporation Requirements
A limited company ngo is a body, incorporated under the Companies Acts 1963 - 1990, whose memorandum and articles of association are registered in the Companies Registration Office. Many ngos, as they grow in size and complexity, become incorporated and must then comply with statutory registration requirements and have their names entered in the Registry. The rules governing procedures for electing officers, holding annual general meetings etc in relation to limited companies are largely to be found in the Companies Act 1963 as amended. The fee for registration is £165.
An Industrial and Provident Society is required under the IPS Acts 1893-1978 to be registered in the IPS Register. Although an IPS and a Friendly Society are quite different both were established under the Friendly Societies Acts 1875 and 1896 (as amended), and the Registrar of Friendly Societies register both.
There are three types of Friendly Society, as identified in the 1896 Act: the friendly society; the cattle insurance society and the benevolent society which is the type relevant to ngos. The fee for registration with the Registrar, using standard forms for Rules, is £20; £100 if the body draws up its own Rules.
A charitable company is a ngo, entitled to charitable exemption from tax liability that has been incorporated under the Charities Acts 1961 and 1973. The Commissioners of Charitable Donations and Bequests for Ireland, a body whose members are all government appointees, has authority for the administration of charities. A charity, if incorporated, must comply with the registration requirements above for limited companies and the Commissioners will then provide standard forms for registration purposes.
Unincorporated associations are free from any registration requirements.
Ngo 'umbrella organisations' are legally permitted and recently formed organisations such as the Community and Voluntary Pillar, the Community Platform, and in particular the Wheel function in that capacity.

(F) NGO Register
In Ireland there is neither a legal registration requirement uniformly binding on all ngos, nor is there an informal list of all ngos. No body has a responsibility to compile such a formal or informal register. However, if a ngo subscribes to a particular legal structure such as a company then it will be required to comply with the registration requirements specific to that type. Also, in the course of processing applications for tax exemption, particularly applications for charitable exemption, the Revenue Commissioners maintain a list of applicant ngos.

(G) General Powers

Unincorporated ngos will have only those powers, such as to own property, as are provided in its governing instrument. Incorporated ngos are entitled to exercise the general rights and powers of juridical entities such as owning property and entering into contracts and they are amenable to court proceedings at the suit of an aggrieved person or other such body. Proceedings against charities, which may be instigated by possible or intended beneficiaries, require the Attorney General to be joined as a party.

(H) Membership Organizations

A professional association, representing the interests and charged with regulating the standards of practice of its members, has the authority to suspend or debar a member. Authority to do so and the grounds justifying such action will invariably be specified in the governing instruments.

III
GOVERNANCE

The legal form of a ngo is of considerable significance when it comes to applying the principles of governance. The liability of those involved is largely determined by how the ngo is formally constituted.

(i) Unincorporated associations

In general the governance rules for unincorporated ngos are to be found in their individual governing instruments, usually a constitution, in the 'Rules' section. The constitution should deal with the agreed structure of the organisation; provide for the procedure for appointing such office bearers as the secretary, treasurer and chairperson. The powers and duties of these office bearers and their terms of office should be clearly set out. Provision should be made for outlining the procedure for conducting committee meetings; how a quorum is to be formed, minutes taken, decisions made and records kept. An unincorporated association cannot hold property on its own behalf; it is necessary that trustees or representatives undertake this responsibility.

Internal decisions of members are governed by the contractual arrangements entered into when they established the association. External decisions, binding the association in relation to third parties, are governed by the normal obligations of contract law and carry the prospect of personal liability for debts incurred by the association or for contractual obligations entered into as a result of decisions taken by board or ordinary members without proper authority. The office bearers comprising the management board hold responsibility for the conduct of the affairs of an unincorporated association. Their roles and functions derive from the terms of their contractual relationship; usually expressed in the constitution. The board acts as agents for the members of the association. As such it is authorised, on their behalf, to enter into such contracts and arrangements as may be necessary to give effect to the association's purposes. Provided the office bearers act within the authority conferred by virtue of their office in furthering those purposes then their decisions will be binding upon the members. If the association has been formed for the benefit of its members, then any property or other assets acquired by the board on behalf of the association, will be owned by the members in equal shares. Conversely, where the association has been established for the benefit of others then it is deemed to be held in trust for the purposes of the trust.

Each member is held directly and personally responsible for any decision made or action taken by the organisation and is liable for any debt it may incur. Details of the organisation's membership or accounts are not a matter of public record; these are available only to its members. If branches of the association are established, the branch members serve as full

members of the association and are bound by its rules. The constitution or rules of the association will normally outline procedures for enrolling or expelling members.

(ii) Trusts

In trusts, like unincorporated associations, the internal legal relationships of office bearers and the management structure adopted are determined by the terms of their governing instruments. Similarly, external legal relationships are conducted by office bearers acting in a personal contractual capacity.

Authority to appoint a trustee will be found in the initial trust instrument or in the Trustee Act 1893. Trustees may be appointed by direction of the donor, by order of the court or by authority of the Commissioners. While there is no maximum limit to the number of trustees that may be appointed to administer a trust, there is a minimum limit of one and usually there are at least two.

Honouring the terms of the trust is the fundamental responsibility resting on a trustee and to that extent the obligations of all trustees are essentially the same. The powers of trustees emanate from the instrument which established the trust and provided for their appointment. They are also empowered by statute, in particular by sections 10 – 24 of the Trustee Act 1893 and by the Charity Act 1961. Trustees may commence legal proceedings and will have a duty to do so in circumstances, for example, where the trust property is under threat from the fraud, bankruptcy or incompetence of a third party. Two broad principles govern all trustee duties. In executing the terms of the trust the trustee is required to demonstrate both loyalty to the objects as set out in the governing instrument and impartiality when negotiating between the interests of trust beneficiaries. Their principle duties are to: execute the terms of the trust; manage trust assets; maintain proper records; apply trust assets for the benefit of beneficiaries; not to profit; and not to delegate

The courts have powers to control or remove trustees. Under s. 25 of the Trustee Act 1893 it may act to remove and replace a trustee. Alternatively, the court may exercise the discretionary powers available under its inherent jurisdiction to remove a trustee on the grounds of incompetence, dishonesty or being obstructive.

Trustees will be liable to a charge of breach of trust if they either fail to discharge the duties of their office or if their actions are in excess of the authority conferred by their office. Any loss incurred to the trust property resulting from such a breach of trust must be made good by the trustee; any improper profits gained, whether or not loss resulted to the trust, must be made over to the trust. Liability for a breach of trust is actionable even though the trustee has since retired; if dead the action will lie against the estate of the deceased. Breaches of trust or mismanagement may provide grounds for judicial removal of trustees. Where trustees act improperly or corruptly, the court will hold them fully accountable.

The term of office of a trustee may terminate due to voluntary resignation, or to sudden incapacity or death or due to the compulsory removal of a trustee. Traditionally, the power to remove and/or replace trustees was exercised by the Court of Chancery using its inherent jurisdiction. This power was, and continues to be, available in circumstances where trustees behave with incompetence or dishonesty where there is a conflict of interest or where a trustee obstructs the purposes of the trust. The bankruptcy of a testamentary trustee would not necessarily disqualify that person.

(iii) Companies Limited by Guarantee

All companies, whether ngos or not, are by definition required to adopt a corporate model of governance. This necessitates a clear distinction between the strategic planning functions of the board and the role of staff in implementing board decisions. The powers and duties of the board, as delineated in the articles of incorporation, should clearly give effect to this distinction. Legislation requires the Articles of companies to stipulate:

(a) membership details

(b) arrangements for meetings
(c) voting requirements
(d) arrangements for the appointment and removal of the management committee or Board of Directors
(e) powers and duties of the management committee, and
(f) accounting and auditing arrangements.

Companies limited by guarantee can have an unlimited membership but must have a minimum of not less than seven. When registered as required with the Companies Office in Dublin Castle, a company then becomes subject to the mandatory statutory rules necessitating the filing of annual returns and annual accounts etc with that Office.

The responsibility for organising and managing a company must be vested in a board of directors; every company must have at least two directors. Responsibility for the governance of an incorporated ngo rests with its members. This is achieved principally by two legal requirements: that the board of directors be elected by the members and that officers give an account of their term of office to the members at every annual general meeting when the officers may be returned or retired by the members.

Companies and their directors are subject to both common law and statutory law. At common law, the principal duties of company directors are fiduciary: they must exercise their powers for the benefit of the organisation and in good faith; they must not appropriate to themselves an opportunity which rightfully belongs to the organisation; and they must not put themselves in a position where their interests conflict, or may conflict, with those of the organisation. They are required to exercise due skill and care.

In addition, the Companies Acts 1963 and 1990 now afford protection to third parties by providing for transparency and accountability in relation to the appointment, decisions and discharge of company directors. The 1990 Act extended the provisions of the 1963 Act to place a heavy burden of proof on a company director for debts incurred by the company as a consequence of the manner in which it engaged in trading. Liability for fraudulent trading is not limited to company officers. Any person will be personally liable if he/she was knowingly a party to the carrying on of any business of the company with intent to defraud its creditors or for any fraudulent purpose. A director will be guilty of reckless trading where he/she:

- in the carrying on of the business, having regard to the general knowledge, skill and experience that might reasonably be expected of a person in this position, ought to have known that his/her actions or those of the company would cause loss to the creditors;
- allowed the contracting of a debt by the company and did not honestly believe on reasonable grounds that the company would be able to pay the debt when it fell due for payment as well as its other debts.

Liability for reckless trading is limited to company officers; its directors, secretaries, shadow directors, auditors, liquidators and receivers. Liability is unlimited for all debts of the company where it is apparent that, while an officer, he/she was knowingly a party to the carrying on of the business of the company in a reckless manner.

(iv) Industrial and Provident Societies

The governance regimes of an Industrial and Provident Society, a Friendly Society and an incorporated ngo are quite similar.

Industrial and Provident Societies, like companies limited by guarantee, can have an unlimited membership but must have a minimum of not less than seven. The Rules of the Society is the governing instrument wherein can be found the relevant details regarding how an IPS is to be organised and managed. The Rules provide for much the same issues as are addressed in the Articles of companies limited by guarantee. When registered as required by

the Registrar of Friendly Societies the IPS must then comply with the obligation to file annual returns with the Registrar.

IV
DISSOLUTION, WINDING UP AND LIQUIDATION OF ASSETS

The consequences of dissolution for a ngo will depend to some degree on whether it is an unincorporated association, a trust, or a company limited by guarantee.

(i) An Unincorporated Association

Dissolution of an unincorporated association often occurs because the members decide to substitute that legal structure for a limited company. Having transferred all trust funds to the company and vested it with full responsibility for giving effect to its purposes, the unincorporated association then terminates.

The voluntary dissolution of an unincorporated association may be achieved by activating a formal provision to that effect, written into the rules of the association at the time of its formation. When establishing an unincorporated association it is now customary for the members to ensure that the rules contain a provision allowing for such a voluntary dissolution. This would empower the executive committee to convene a special general meeting for that purpose, having served advance notice on all members. Then by resolution, usually requiring a two-thirds majority, the association may be formally dissolved. In the absence of such a formal procedure, the members may still achieve a voluntary termination simply by undoing the contractual agreement which forms the only legal basis for binding them into an association. This could be accomplished by the parties to the initial contract formally and specifically agreeing to dissolve their association.

The involuntary dissolution of an unincorporated association may occur by direction of the court either in response to a petition from a majority of members requesting such action or on evidence provided by any person that the association can no longer properly function. The High court, exercising the discretionary powers available under its equitable jurisdiction, can then direct the winding-up of any such unincorporated association.

Where a power to dissolve by member resolution is provided in the rules of an unincorporated association this will invariably be accompanied by a clause addressing the matter of disposal of residual assets. If dissolution occurs in any other way and the ngo is a charity then a cy-pres scheme will be drawn up either by the Commissioners of Charitable Donations and Bequests or by the court to dispose of any remaining assets.

(ii) A Trust

The dissolution of a trust may be voluntary or involuntary. Most usually, in either case, it occurs because the trust no longer has funds.

A trust may cease to have funds not because these have been wholly expended in addressing its objects but because its trustees have chosen to transfer all funds to another trust. This may be achieved at trustee initiative where authority to do so has been provided by an express power in the governing instrument. Such a transfer of funds is most likely to occur when a ngo wishes to transform its legal status from a trust to a company. On completion of transfer, the trust will then cease to exist.

Where a transfer of distribution of funds is contemplated, trustees must first meet all trust liabilities. A full settlement of all accounts must precede any trustee action likely to place trust assets beyond the reach of possible claims by creditors. Where trustees are operating within the legal framework of a trust, as opposed to a company, they are then personally liable for debts incurred by and on behalf of the trust. They may avoid personal liability where those debts were properly incurred and where no action has been taken to obstruct creditors access to trust assets.

A trust may cease to have funds because its property is wholly liable to the claims of creditors. Termination of a trust will occur involuntary in circumstances that would amount to bankruptcy if it had been constituted as a company. Where there are no remaining trust assets, the trustees of a trust will be personally and individually liable to the creditors for debts incurred by the charity.

(iii) Company Limited by Guarantee

The dissolution of any company follows the same pattern and is governed by the same body of company law and accompanying rules and regulations. The governing instruments of a company limited by guarantee usually provide that in the event of its dissolution or winding up the members agree to pay a nominal amount to defray any debts.

Where the ngo is a charity then, despite the rule that charities never die, the property of the charitable company is usually construed as being held beneficially rather than on trust for the purposes of the company. The dissolution of the company will therefore also cause the termination of the charity. The exception is the company limited by guarantee that is holding some or all of its property on trust for either general or specific purposes. Then the dissolution of the company will not necessarily cause the termination of the charity.

V
REGULATION

As stated above, not only is there no system for the mandatory registration of all ngos, but neither is there any such regulatory system. Again, only if a ngo subscribes to a particular legal structure will it then be obliged to comply with the regulatory requirements, if any, specific to that type.

(i) The Registrar of Companies

A ngo seeking incorporation must satisfy the Registrar that it meets the requirements stipulated in the 1963 Act, as amended, before it can be registered. Once registered, other statutory requirements then have to be met; for example, annual returns detailing accounts and notification of any change in name or of board membership. These statutory obligations assist in the process of encouraging a degree of transparency and public accountability.

The Registrar will apply the same regulatory powers in relation to an incorporated charity; that is to say such a charity will be subject to regulation as a company not as a charity.

(ii) The Registrar of Friendly Societies

An Industrial and Provident Society has to satisfy the IPS Registrar that its purpose can be defined as 'industry, business or trade' before its name is entered in the IPS Register. The regulatory powers of the IPS Registrar also apply to Friendly Societies.

(iii)The Commissioners of Charitable Donations and Bequests for Ireland

In theory this is the body charged with a supervisory role in respect of charities. In practice it assumes a facilitative rather than a regulatory function. As evidenced by the Costello Report in 1990, the Board has no statutory power of investigation in relation to charities and whereas it does have certain statutory powers with regards to the administration of charity law, there are no corresponding duties imposed on charities in terms of accountability or transparency. Indeed the statutory powers of the Commissioners are seldom if ever exercised. This applies, for example, to the power of the Commissioners: to seek directions from the High Court in respect of the administration of any trust for charitable purposes (1961 Act, s 51); to require any person having custody of documents relating to any charity to produce them upon request (s 42); and to sue for the recovery of any charitable gift 'intended to be applied in the State which is improperly withheld, concealed or misapplied' provided the Attorney General consents (s 23). Access to the courts is provided in s 26 by enabling the Board to certify cases to the Attorney General but, while this power has been used by the Board on a number

of occasions, the Attorney General has always exercised his statutory discretion (under ss (2)) not to proceed.

Perhaps one of the most important powers available under s 8 of the 1973 Act is the Board's ability to apply a charitable fund cy près, without the necessity of a High Court application. Up until 1995, the Board's jurisdiction in this area was limited to a monetary ceiling of £25,000. Section 52 of the Courts and Court Officers Act, 1995, however, extended the upper limit of the Board's jurisdiction to £250,000. This resulted in a virtual doubling of the number of schemes framed by the Board.

(iv)The Revenue Commission

The Revenue Commission performs a regulatory function insofar as it has the responsibility for confirming or rejecting the *bona fides* of a ngo applying for recognition as a charity. It can also withdraw recognition where it appears that purposes are no longer exclusively charitable. Whether the body claiming such exemption is constituted as a company, unincorporated association or a trust it will have to submit governing instruments which clearly state that its resources are being used solely for public benefit purposes as defined within one or more of the four *Pemsel* heads of charity. However, in terms of accountability, the Revenue Commission has no function in relation to the supervision of the bodies that have been granted charitable status for tax purposes.

Under the Freedom of Information Act 1997, the Revenue Commission is now obliged to make publicly available the information it routinely gathers. Since 1999 it has made publicly available a list naming some 5,666 organisations which have been granted charitable exemption from tax; but it acknowledges that there are no systems in place for verifying the accuracy of that list.

(v) TheValuation Office

Again, this body has no general regulatory function. A ngo successfully claiming exemption from taxes and/or rates is under no corresponding obligation of public accountability. The Valuation Tribunal does, however, rule on matters affecting the rateability of individual charities and its register of judgments provides valuable guidance to circumstances where charities are not fully compliant with eligibility criteria

(vi) The Garda Siochána

Unless it has evidence that a crime has been committed, such as fraud or embezzlement, the Gardaí, or police force, will have no cause to be involved in the affairs of a ngo.

VI
FOREIGN ORGANIZATIONS

Ireland has traditionally welcomed UK ngos that have opted to establish branches within the jurisdiction. There are very many such ngos, particularly in the area of health and social care service provision. As a nation sharing a land boundary with an adjoining UK jurisdiction, Ireland has become accustomed to dealing with practical issues relating to cross-border ngo activity, such as fundraising. Further, as a full member of the European Union, Ireland is obliged to facilitate the freedom of movement of ngos within member States.

(A). Registration etc

Given the absence of any registration and regulatory systems for indigenous ngos, it is not surprising that no special rules exist for the registration/regulation/dissolution of foreign organizations.

(B). Foreign Grants

There are no known special rules for domestic organizations to receive foreign grants. However, the reverse situation applies in relation to tax. The Taxes Consolidation Act 1997, s

848, allows third world charities to claim a rebate on income tax paid by individual donors where the donations amount to between £200 and £750 per annum.

VII
MISCELLANEOUS

There are no rules for mergers and split-ups that are specific to ngos. Incorporated ngos are subject to the Companies Act 1963 as amended in the same way as other companies.
Ngos can invest abroad.
Ngos may engage in political or legislative activities, but if they do they will then be unable to claim charitable exemption from tax.
Note that in Ireland the test as to whether or not a donor intended to establish a charitable trust is subjective; that is the court will ask - Did the donor believe that he/she was making a charitable gift? - and a finding that the belief existed will result in judicial confirmation of charitable status. In the UK, it is a strictly objective test; that is the court will substitute its assessment for the donor's and if it believes that the gift could not be construed as charitable then it will deny charitable status.

VIII
TAX LAWS

Charities

Income Tax Exemption
Section 207 and 208 of the Taxes Consolidation Act 1997 grant exemptions from income tax in respect of income accruing to charitable bodies or trusts established for charitable purposes subject to certain conditions. To be regarded as charitable for tax purposes the applicant must be engaged in an activity under either one or more of the following headings, relief of poverty, advancement of education, advancement of religion and other works of a charitable nature beneficial to the community. The Revenue Commissioners will not normally consider the following to be charitable:

- lobbying for the reform of law or political activities;
- an organization whose main object is to benefit the members rather than a section of the community;
- provision of social and recreational activities;
- an organisation set up solely to fundraise; and
- illegal activities.

In addition, the applicant must:

- have its centre of management and control and be legally established in Ireland. The majority of its directors must be resident within Ireland and the applicant must have a permanent establishment and some operations within Ireland;
- ensure that its objects and powers are so framed that every object to which its income or property can be applied is charitable; and
- be bound, as to its main objects and the application of its income or property, by a Governing Instrument e.g. memorandum and articles of association, deed of trust constitution or other rules.

The Revenue Commissioners require that four standard clauses are included in the governing instrument of a charity:

- a winding up clause which provides any remaining assets be distributed to a body having similar main objects, or failing that to some other charitable body;

- an income and property clause which provides that all the income and property of the organisation is to be applied solely towards its charitable main objects. Directors, trustees or officers are not allowed to receive any remuneration or other monetary benefit.
- Any proposed alterations to the governing instrument must be notified to the Revenue Commissioners for approval.

Recognized charities are exempt from paying income tax on interest, annuities, dividends and shares, rents on property, profits from trade or land owned and occupied. Use of the income to meet the normal running expenses of a charity, including proper remuneration for its employees, is treated as an application for charitable purposes.

Tax exemption will only apply to funds, or the proportion of funds that are used exclusively for charitable purposes. If funds are to be accumulated for more than 2 years, the prior permission of the Revenue Commissioners must be obtained

A body which is recognised as a charity will be issued a charity reference number and be entitled to tax exemptions. Reviews are conducted by the Revenue Commissioners to ensure that the body continues to satisfy the conditions for exemption. Within 18 months of the date the exemption was granted, a copy of the first year's financial accounts together with a report on activities must be submitted to the Revenue Commissioners. Financial statements normally include a Statement of Income and Expenditure as well as a Statement of Assets and Liabilities. Accounts must be audited if the annual income exceeds IR£20,000. In addition to the initial 18-month review, the Revenue Commissioners may conduct ongoing periodic reviews.

A body refused exemption has the right to appeal to the Appeal Commissioners (who are independent of the Revenue Commissioners) in accordance with the procedure prescribed in the Taxes Consolidation Act, 1997. Before a formal determination is issued the appellant must:

- be legally established;
- have an identified source of chargeable income; and
- have incurred a charge to tax.

Exemption from VAT

As Ireland is part of the European Economic Community the national VAT laws are framed within the parameters of the European Union's Sixth Council Directive on VAT (77/388/EEC (as amended)) which sets out the structure for a common system of VAT in the EU. Organizations which have been granted charitable tax exemption are not, in the normal course, either obliged or entitled to register and account for VAT on their income (output VAT) and are therefore not entitled to a credit on the VAT they incur.

A taxable person is defined by Section 8(1) of the VAT Act 1972 (as amended) as one who acts "in the course or furtherance" of business. The definition of business is very wide and includes "farming, the promotion of dances and any trade, commerce, manufacture or any venture or concern in the nature of trade, commerce or manufacture, and any profession or vocation, whether for profit or otherwise". Some activities of charitable organisations, such as a coffee shop run by a charity, are brought within the VAT net because they are considered to be supply of taxable goods and services for consideration in the course or furtherance of a business. If these charities exceed the threshold for registration (currently IR£40,000 for the sale of goods) they are obliged to register for VAT in respect of these business activities. Section 6 of the VAT Act, 1972 exempts certain activities which would otherwise be considered taxable. Some of the exemptions listed in the First Schedule to the VAT Act, 1972 relate to charities including exemptions in respect of supply of goods and services closely related to welfare and social security by non-profit-making organisations, the issue of tickets or coupons for the purpose of a lottery.

Article 13.A.2.(a) of the EC Sixth Directive allows member states to impose conditions on the granting of exemptions in relation to charities in individual cases and Article 13.A.2(b) provides that the supply of goods and services by a charity will not be granted exemption if "..its basic purpose is to obtain additional income for the organisation by carrying out transactions which are in direct competition with those of commercial enterprises liable for value added tax."

The exemptions in the First Schedule are to a large degree at the discretion of the Revenue Commissioners. Section 11 (1B) (b) of the VAT Act, 1972 gives the Revenue Commissioners the authority to determine whether an activity of any particular kind is an exempted activity or the rate at which VAT is chargeable. Generally the Revenue Commissioners allow exemption if they consider that the activities carried on by the charitable organisations either fit within the exemptions in the First Schedule of the VAT Act, 1972 or the activities are not carried on in the course or furtherance of business or the activities do not conflict with Article 13.A.2 (b) of the EC Sixth Directive.

There are very specific reliefs from input VAT which are made available by VAT Regulation and VAT Ministerial Orders to organisations which have been granted charitable tax exemption. The Revenue Commissioners control the grant of reliefs and the value of refunds made.

Currently the only regulation which provides relief to charitable organisations and certain categories of persons is the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulation 1994. Broadly speaking, this provides for the refund of VAT incurred on the acquisition of a motor vehicle (subject to certain criteria being satisfied) where the driver is a disabled person or the vehicle is to be used for the transportation of disabled persons.

Section 20(3) of the VAT Act 1972 authorises the Minister (of Finance) to make any order for the refund of any tax referred to in the order which does not qualify for deduction under Section 12 of the VAT Act (as most charities will not be carrying on taxable activities they will not be able to avail of an input credit under Section 12 of the VAT Act 1972). A limited number of Orders have been made granting full or partial relief and in respect of very specific circumstances. Examples of VAT Orders include VAT (Refund of Tax) (No. 21) Order 1981 which enables a refund of VAT to be made in respect of any goods which have been exported from Ireland within four months of their acquisition by qualifying persons (i.e. a non-profit making organisation involved in humanitarian, charitable or teaching activities abroad) and VAT (Refund of Tax) (No.23) Order 1992 which provides for a refund of VAT paid on goods (excluding means of transport) used by the operators of a hospital where the VAT exclusive amount exceeds IR£20,000 and the goods are used solely in medical research, diagnosis, or the prevention or treatment of illness.

Exemption from Import Duties and Customs Excises

Charities are exempt from Dividend Withholding Tax under Chapter 8A, Part 6, Taxes Consolidation Act, 1997.

Tax Relief for Donations

Tax relief for donations is only available under Section 848A of the Taxes Consolidation Act, 1997 in relation to donations to "approved bodies" which include "eligible charities" and various educational and other named organisations. An "eligible charity" is defined in Part 3 of Schedule 26A of the Taxes Consolidation Act 1997 as any body in Ireland which is currently authorised by the Revenue Commissioners. Authorisation is subject to making a formal application and satisfying the Revenue Commissioners that the organisation has held charitable exemption for at least three years prior to making the application. Authorisations

issued under the new scheme will be valid for periods of up to five years and upon expiry may be renewed by fresh application.

The minimum donation in any year that must be made to any one approved body is IR£200 (IR£148) for the short tax year from 6th April, 2001 to 31 December, 2001). This donation may be paid in instalments. There is no maximum qualifying donation.

A donation must also satisfy the following conditions:

- it must be in the form of money,
- it must not be repayable,
- it must not confer any direct or indirect benefit on the donor or any person connected with the donor, and
- it must not be conditional on, or associated with, or part of an arrangement involving the acquisition of property by the approved body, otherwise than by way of gift, from the donor or any person connected with the donor.

The Revenue Commissioners have advised that as a general rule of thumb donations should be at arms length and with no strings attached.

The application of the tax relief depends on whether the donor is an individual PAYE (Pay As You Earn) taxpayer or an individual on self-assessment or a company.

- *Individual PAYE taxpayer*: the donation will be treated as having been received by the approved body "net" of income tax and the approved body may subsequently reclaim the tax from the Revenue Commissioners. The tax refund paid to the approved body will be limited by the amount of tax actually paid to the Revenue Commissioners by the donor.
- *Individual on Self-Assessment*: the individual will claim the relief in his or her tax return for the year of assessment in which the donation is made.
- *Company*: the donation is treated as a deductible trading expense or as an expense of management in computing the total profits of the company. The company may make a claim with its tax return for the accounting period in which the donation was made.

In the case of donations by individuals, relief will be given at the donor's marginal rate of income tax.

The tax relief is paid directly to the approved body only in the case of a donation by a PAYE taxpayer. The individual PAYE donor must complete and send a certificate in the prescribed form (the "Appropriate Certificate") in respect of the donation to the approved body. At the end of the tax year in which the donation was made, the approved body may submit the Appropriate Certificate together with a declaration that the details are all correct and complete to the Revenue Commissioners.

Commercial/Business/Economic Activities

Irish tax law provides for a "trading exemption" in respect of profits which charities derive from trading income.

The Revenue Commissioners define trading as "generally involving the sale of goods or services to customers with a view to generating a profit".

To qualify for a trading exemption:

- the relevant body must have charitable exemption; and
- the income derived from trading must be applied solely to the purposes of the charity;

and normally one of the following conditions must also be satisfied:

- the trade must be a primary purpose of the charity; or
- the work in connection with the trade must be carried on mainly by beneficiaries of the charity.

A primary purpose trade is one that is carried on solely to fulfill the main or primary purpose of the charity as set out in the charity's governing instrument such as a theatre selling tickets for a play that it is staging or a hospital providing health care services on a fee paying basis. Trades may also qualify for trading exemption if they are ancillary to the carrying on of a primary purpose of a charity such as a theatre selling food and drink in a bar to members of the audience attending a play that it is staging or a hospital selling flowers and toiletries to patients and their visitors.

Where a trade is carried on but not solely for or ancillary to the primary purpose of the charity profits will only be exempt where:

- that part of the trade which is not a primary purpose activity is small relative to the overall trading activity, and
- the turnover of that part of the trade which is not a primary purpose activity is not greater than 10% of the entire trading turnover.

If these conditions are not satisfied, all of the profits arising from both the primary purpose and non-primary purpose trade will be taxable.

To establish that the greater part of the work carried on by the charity is undertaken by beneficiaries of the charity the trade does not have to be a primary purpose activity and the beneficiaries may receive remuneration so long as they retain their capacity as both beneficiaries and employees.

In practice, profits arising from trading activities, which do not otherwise qualify for exemption, may not be treated as taxable if they satisfy the following conditions:

- the activities are small-scale in terms of level of both turnover and profit, the degree of commercial organisation involved and the level of input by outside bodies including professional fundraisers and well known personalities (whether they give their time voluntarily or not);
- the trading activities are not carried on regularly;
- the trading activities carried on are not in competition with other commercial traders;
- the public support the trading activities because they believe that the profits are intended for application to charitable purposes only; and
- the profits are applied for charitable purposes only.

The sale of donated goods is not regarded as being a trade for tax purposes. However, if the donated goods undergo a major refurbishment or their condition is altered fundamentally such as the conversion of donated material into items of clothing, then the subsequent sale of those goods will amount to a trade.

The profits derived from the sale of produce by a farm operated by a charity will be exempt from tax provided that the profits are applied for charitable purposes only. It is not necessary for the farm to be a primary purpose activity or that work on the farm be carried out by beneficiaries of the charity.

<u>Taxes on Real Estate</u>

(a) Stamp Duty:

Section 82 of the Stamp Duties Consolidation Act, 1999 provides for exemption from stamp duty in respect of instruments involving the transfer or lease of assets for charitable purposes in both Ireland and Northern Ireland to a body of persons or trust established for charitable purposes only or to the trustees of a trust established for charitable purposes only. A claim for exemption cannot be considered in advance of the execution of the document.

(b) Rates:

In Ireland rates are levied by the relevant local authorities on the occupiers and, in some cases, the owners of property. Rates assessment is based on the annual value of the property. The Commissioner of Valuations is responsible for ruling on entitlement to charitable

exemption from rateability in Ireland. The Valuation Tribunal was established by the Valuation Act 1988 to hear appeals against disputed rulings.
The Irish courts have held that the grounds for exemption from rates are to be found in Section 63 of The Poor Relief (Ireland) Act 1838 and Section 2 of The Valuation (Ireland) Act, 1852 and 1854.
Section 63 of the 1838 Act specifies the hereditaments deemed to be rateable subject to the following exemption clause:
"*Provided also, that no church, chapel, or other building exclusively devoted to religious worship or exclusively used for the education of the poor; nor any burial ground or cemetery; nor any infirmary, hospital, charity, school, or other building used exclusively for charitable purposes, nor any building, land or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom, in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.*"
The relevant provision of Section 2 of the 1854 Act is as follows:
"*In making out the Lists or Tables of valuation ... the Commissioner of Valuation shall distinguish all hereditaments and tenements, or portions of the same, of a public nature, or used for charitable purposes or for the purposes of science, literature, and the fine arts ... and all such hereditaments or tenements, or portions of the same so distinguished, shall, so long as they shall continue to be of a public nature, and occupied for the public service, or used for the purposes aforesaid, be deemed exempt from assessment for the relief of the destitute poor in Ireland and for Grand Jury and County Rates.*"
Therefore, in the context of exemption from rates, the expression "charitable purpose" has a much more narrow meaning than the meaning given to those words in *Income Tax Special Purposes Commissioners -v- Pemsel.*
The first category of exemption is a "church, chapel or other building exclusively dedicated to religious worship or exclusively used for the education of the poor". The exemption does not extend to a building used "for the advancement of religion", one of the four *Pemsel* categories. Because of this narrow construction, the words "other buildings used exclusively for charitable purposes" have been held not to include a building used for the advancement of religion. An education institution will only be exempt from rates if it benefits the poor exclusively. It is well established that the expression "the poor" will be interpreted in accordance with prevailing norms.
The next category of exemption is "any infirmary, hospital, charity school or other building used exclusively for charitable purposes." It is clear from case law that the words "used exclusively for charitable purposes" qualify the words "infirmary, hospital and charity school and are not confined to "other building".
In an important Valuation Tribunal decision, *Rehab Lotteries Ltd v. Commissioner of Valuation* (Appeal No. VA89/229, 1991), it was contended that organising and running lotteries on behalf of charities, to facilitate their fundraising, was not in itself a charitable purpose. The Tribunal refuted this argument and held that third parties who facilitate fundraising on behalf of charities are viewed as doing so as agents of those charities, are thereby fully complicit in the charitable purposes of those charities and therefore entitled to charitable exemption from rates. Another major issue for the Tribunal in that case was whether the partial use of the premises for ticket sales (a non-charitable purpose) was fatal to the appellant's claim for rates exemption in respect of premises where the user was otherwise charitable. On the basis that the proportion of the premises and related staff activity dedicated to ticket sales was small the Tribunal directed an apportionment be made and that the portion of the premises not involved in ticket sales would be exempt from rates.

The final category exempts "any buildings, land or hereditament dedicated to or used for public purposes ... ". After considerable judicial discussion regarding this exemption it now seems clear that property is "used for public purposes" only where it belongs to the government or each member of the public has an interest in the property.

Gift and Estate Tax

Section 112(b) of the Finance Act, 1993 provides that property, real or otherwise, which is given by the will of the deceased for charitable purposes, will be exempt from tax, to the extent that the Revenue Commissioners are satisfied that it has been or will be applied for charitable purposes.

(a) Capital Acquisitions Tax

The Capital Taxes Division is responsible for the administration of Capital Acquisitions Tax. A discretionary trust which is shown to the satisfaction of the Revenue Commissioners to have been created exclusively for charitable purposes in Ireland or Northern Ireland is exempt from tax pursuant to section 108(1)(a) of the Finance Act, 1984.

Under section 54(2) of the Capital Acquisitions Tax Act, 1976 a gift or inheritance which is taken for charitable purposes is exempt from tax and is not taken into account in computing tax, to the extent that the Revenue Commissioners are satisfied that it has been or will be applied to purposes which in accordance with the laws of Ireland are charitable.

Miscellaneous

(a) Corporation Tax

The position regarding Corporations Tax is similar to that for Income Tax with the same exemptions applying. Section 76 and 78 of the Taxes Consolidation Act 1997 are the relevant legislative provisions.

(b) Capital Gains Tax

Section 609 of the Taxes Consolidation Act 1997 provides, in general terms, that a capital gain which accrues to a charity is not chargeable to capital gains tax provided that it is applied for charitable purposes. Where the consideration for the disposal of an asset exceeds 150,000 it is necessary for the vendor to obtain a clearance certificate (CG50A). In the absence of a clearance certificate the purchaser is required to withhold 15% of the purchase price.

(c) Deposit Interest Retention Tax (D.I.R.T.)

Charities may obtain an exemption from D.I.R.T. under Section 266 of the Taxes Consolidation Act, 1997 subject to certain conditions. The conditions include the making of a declaration to a relevant financial institution on a prescribed form that the interest to which the exemption relates forms part of the income of the charity (as defined in the Taxes Consolidation Act 1997) and will be applied for charitable purposes only. The charity must be granted charitable exemption before it can obtain exemption from D.I.R.T.

Charities may claim a refund of any D.I.R.T. paid during periods in which the charity held charitable exemption.

Other Exempt Bodies

(a) Sport/Games Exemption

Exemptions are available to sports and games organisations for income and corporations tax under section 235 of the Taxes Consolidation Act, 1997 and for dividend withholding tax under Chapter 8A, Part 6 of the Taxes Consolidation Act, 1997. Relief from capital gains tax is also available under Sections 597 and 652 of the Taxes Consolidation Act, 1997 provided that the proceeds of the gain are reinvested in new assets for the promotion of the relevant game or sport.

To be eligible for exemption under Section 235 of the Taxes Consolidation Act, 1997 an organisation must:

- be established and existing for the sole purpose of promoting an athletic or amateur game or sport;
- have applied or will apply its income, as is shown to the satisfaction of the Revenue Commissioners, for that sole purpose;
- be a not for profit and member controlled and owned organisation; and
- be legally established and have its centre of management and control in Ireland and the majority of its trustees or directors must be resident within Ireland.

The exemption does not extend to include a trading exemption.
The standard interpretation of the wording in Section 235 is that exemption will be available to an organisation that is established for the sole purpose of promoting:

(a) an athletic game or sport; or
(b) an amateur game or sport.

Therefore a body promoting athletic games or sports will benefit from exemption even where that body has a level of professional participation. In the second category, the word "amateur" applies equally to both games and sports.

Friendly Societies

Section 211(1) to (4) of the Taxes Consolidation Act, 1997 provides that, subject to certain conditions, a friendly society shall be exempt from income tax under Schedules C, D & F.

Trade Unions

Section 213(1), (2) of the Taxes Consolidation Act, 1997 provides that income from interest and dividends which are applied to provident benefits paid to members are exempt from income tax under Schedules C, D and F.

Agricultural Societies

Agricultural Societies are exempt from income tax under Section 215 of the Taxes Consolidation Act, 1997 in respect of any gains or profits arising from an agricultural show provided that such gains or profits are applied for the purposes of the society.

Certain Lotteries

The profits of a lottery which holds a licence under Part IV of the Gaming and Lotteries Act, 1956 are exempt under Section 216 of the Taxes Consolidation Act, 1997.

IX
COMPLIANCE

It is generally considered that the rules applicable to ngos are poorly understood and tend to be properly known only to a handful of solicitors who undertake this work as an area of specialist interest. No studies have been undertaken on ngo compliance with the law.
There is a perception that perhaps ngos may have been used to avoid taxes that ought to be paid in regard to family trusts but not particularly in regard to business or commercial profits.

There is the usual suspicion that politicians use good causes and associate themselves with the related ngos in order to capitalise on the good name of a charity but there is no evidence that they may do so for financial gain.
Where a ngo is suspected of criminal activity then this gives rise to a police investigation by the Garda Siochána in the normal way. This is really the only form of regulatory intervention that an unincorporated ngo is likely to encounter. Where a ngo is registered as a limited company then where the Registrar is able to confirm improper, irregular or illegal behaviour (usually following police investigations) then sanctions as provided by the Companies Acts may be applied. Again, the Registrar may take similar action where such behaviour involves an IPS or Friendly Society. The Charities Act 1961 provides powers for the Commissioners of Charitable Donations and Bequests to intervene in such circumstances and, with the consent of the Attorney General, apply certain sanctions. These powers are seldom if ever exercised. In practice it would fall to the police to bring court proceedings.

X
GOVERNMENT FUNDING

Government funding is given to community and voluntary ngos to provide an enabling environment for their activities. There are multiple funders and programs (including most government departments), regional and other statutory bodies (Health Board, Local Authorities, FAS, VECs, Comhairle, CPA), EU programs (NOW, INTEGGRA, Urban, Leader, Peace). National lottery funding is also significant and national foundations, such as the Foundation for Investing in Communities are gradually acquiring a prominent role. Government funding may take the form of: multi-annual 'core' funding; project funding; once-off grants for equipment or premises etc; and for training programs.
Ngos are also permitted and often encouraged to place bids in a competitive tendering process for government contracts. In addition they may solicit and acquire government funding for their activities; more so if they are charities. The tendering process, coupled with government funding of certain ngos, tends to end up favouring some at the expense of others. There is a perception that some government bodies are in effect 'colonising the sector'. The directed flow of government funds into the sector is creating a very competitive marketplace for some ngos resulting in the same type of takeover/merger activity that is usually associated with commercial organizations. It may also be shaping the sector and channelling its resources into a clearer alignment with the government's current agenda.

XI
PRIVATIZATION

The privatization of government services is not uncommon in Ireland, assets would most usually transfer at the time of severance with the expectation that further government funding would not be necessary. Certainly, some such initiatives could be construed as government attempts to outsource activities by contract to ngos. However, this perspective is currently counterbalanced by one that views the government as eager to form a strategic alliance with the sector in a social partnership to pursue social inclusion goals. The recent government policy document *Supporting Voluntary Activity: a White Paper for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector* would seem to be sketching the parameters for dialogue with the sector. This may be setting the stage for formal negotiations regarding possible future matched commitments of resources in agreed programmes to combat social disadvantage.

XII
CONCLUSIONS

In Ireland it is probable that the tradition of State dependency upon the ngo contribution to creating and maintaining much of the social infrastructure explains the lack of any willingness to create a regulatory framework. However, the increased secularising of the State and the emergence of the 'Celtic tiger' phenomenon in recent years has been accompanied by great changes in the socio-economic context for ngos. Ireland would now benefit from a fundamental overhaul of its legal framework for ngo activity.

The first steps in this direction have already been taken. In 1991 the Programme for Economic and Social Progress was agreed between the government, trade unions, employers and the farming community. This was followed in 1997 with the government's Green Paper which set out proposals as a basis for consultation with the sector. This in turn led to the publication in 2001 of the government's paper *Supporting Voluntary Activity: a White Paper for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector*. This precursor to legislation outlines the policy and principles that will govern the future partnership between State and the sector.

The next steps need to address the adjustments necessary to make the legal framework an appropriate means of giving effect to the policy and principles articulated in the White Paper. Again, a beginning has been made. The Dept of Social, Community and Family Affairs has now embarked upon a review of charity law. Hopefully, in time this will extend to a fuller examination of the legal context for all ngo activity. There needs to be a seamless web of legislative provisions to differentiate between and govern in a coherent fashion all ngos, not just charities. Although this should be designed to provide a facilitative and sustainable environment for ngos it must also include regulatory and registration systems. Consideration will also have to be given to how the range of existing ancillary legislation, such as the Companies Act 1963 as amended, impacts upon ngos and again this will need to be revised and shaped into a more unified coherent body of law. Any such overhaul of the law relating to ngos would be deficient if it did not also address the legal structures that house ngo activities. The continued appropriateness of unincorporated associations, trusts, IPS, and Friendly Societies etc as effective and sufficient legal vehicles for delivering ngo activity must be examined. The underpinning of any large-scale revision of the law relating to ngos must entail a clearer understanding of the public benefit principle.