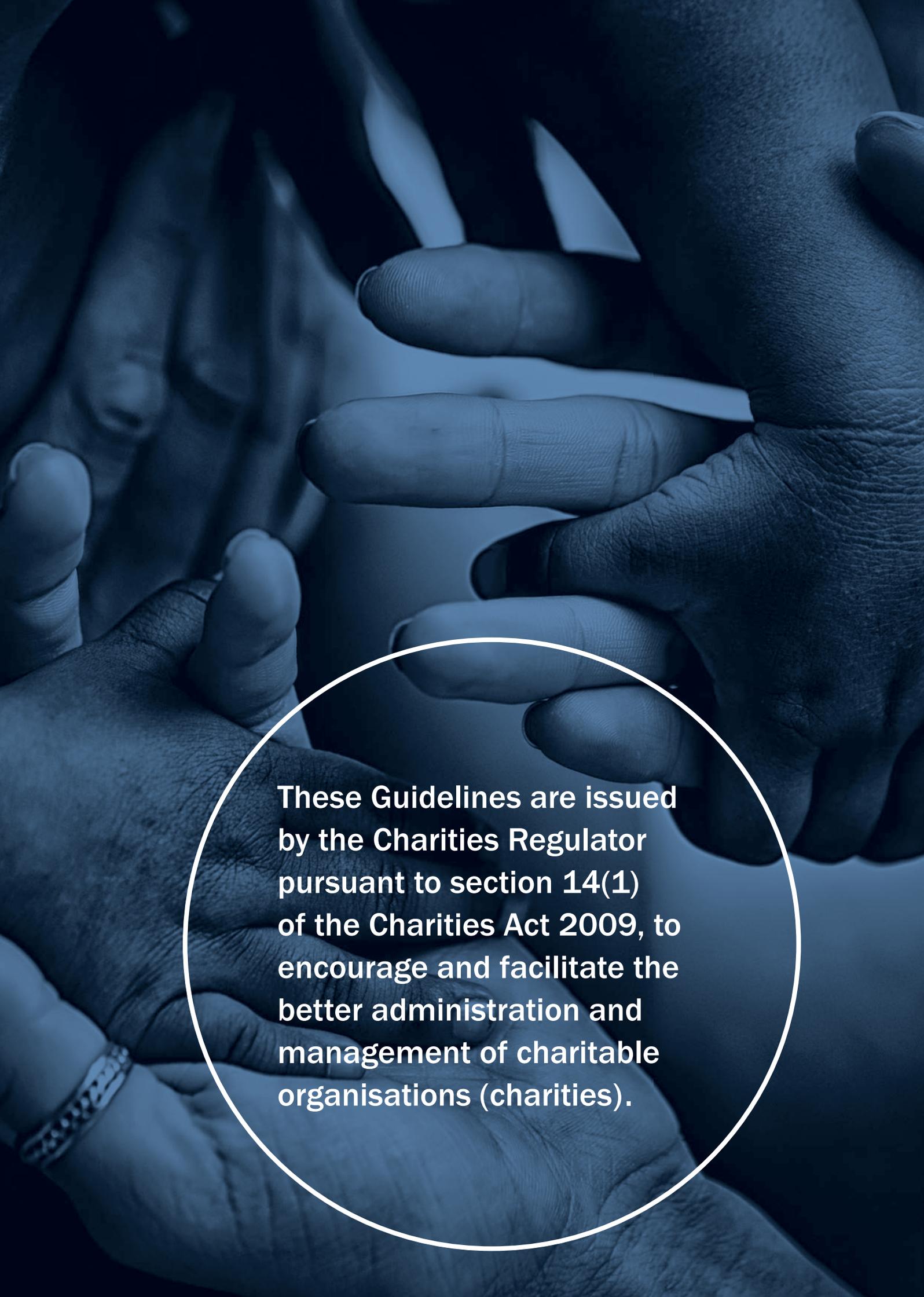


An Rialálaí
Carthanas
Charities
Regulator

Guidance on winding up a charity





These Guidelines are issued by the Charities Regulator pursuant to section 14(1) of the Charities Act 2009, to encourage and facilitate the better administration and management of charitable organisations (charities).

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LEGAL DISCLAIMER

This document sets out guidance of a general nature only. It is not, nor is it intended to be, a definitive statement of the law in this area and it is recommended that any charity or charity trustee should take appropriate advice on its, his or her own account before undertaking any action which may have significant legal, tax and/or other consequences.

1 Introduction

This guidance gives information on how a charitable organisation (“charity”) registered with the Charities Regulatory Authority (the “Charities Regulator”) may be wound up.

This includes both where a charity is wound up because it is being closed down and where a charity is winding up in order to continue its activities in a different legal form or as part of a larger charity.

A charity may be wound up for several reasons, including where it:

- ▶ has achieved or completed the specific charitable purpose for which it was formed;
- ▶ wishes to merge with another charity with similar objectives (e.g. to increase efficiency by avoiding duplication of administration);
- ▶ cannot afford to continue its activities;
- ▶ wishes to change its legal form, for example to convert from an unincorporated status to a body corporate to avail of limited liability.

It is crucial to understand that in all of these situations, even where it is intended to continue the same charitable activity, the original charity must be wound up so that, in the legal sense, the original charity ceases to exist. This ensures that a formal procedure has been conducted to ensure that all property and responsibilities and any unresolved “loose ends” of the original charity are fully and finally dealt with. This avoids risk of future problems, especially for former trustees or board members.



The particular issues which need to be considered in winding up a charity vary from case to case. They will often include:

- ▶ how to dispose of any remaining assets or funds;
- ▶ ensuring all of the charity’s remaining debts have been paid and all of its other commitments have been met or arrangements are in place to have them met or transferred to a successor charity;
- ▶ reviewing any contracts or other long-term arrangements to which the charity is a party (e.g. leases), which need to be brought to an end before the charity is wound up;
- ▶ closing the charity’s bank accounts;
- ▶ the position of any employees of the charity;
- ▶ communicating the plan to donors (especially those with periodic donation arrangements, by direct debit, standing order, deed of covenant etc.);
- ▶ communicating the plan to volunteers, supporters and other stakeholders;
- ▶ obtaining any necessary authority or approval from members or others to wind up;
- ▶ liaising with the Revenue Commissioners (“**Revenue**”) and the Charities Regulator to ensure the cessation is recorded and the charity is removed from the Revenue charities list and the Register of Charities (“**Register**”).

Winding up is a significant step and a charity should take appropriate advice on its own account if it is considering doing so.

The procedure for winding up a charity depends on the charity’s legal form. The main forms of registered charity are:

- ▶ **incorporated charity** (i.e. a limited company, which is typically a Company Limited by Guarantee or **CLG**: this is a type of company which does not have a share capital, which means that the company’s members have no economic interest in the company in the way that a trading company’s shareholders usually do);
- ▶ unincorporated association;
- ▶ charitable trust.

This guidance:

- ▶ first, sets out **general requirements** for winding up any charity, regardless of its legal form;
- ▶ then, addresses additional requirements which apply specifically to the winding up of each form of charity, i.e. **limited company, unincorporated association or charitable trust,**
- ▶ and finally provides general guidance on procedures for **converting a charity from one legal form to another** and for **mergers of charities.**

A charity considering any change which involves winding up should be aware that the specific procedure to be followed will also depend on the charity’s own constitutional documents and internal rules. The constitutional documents, which often specify procedures in the event of winding up, will typically be:

- ▶ for a limited company, the constitution or memorandum and articles of association of the company;
- ▶ for an unincorporated association, a governing document, likely to be named as a constitution, members’ agreement, rule book, or similar, and
- ▶ for a charitable trust, the deed of trust or declaration of trust.

A charity considering any change which involves winding up should first examine its constitutional documents to identify the relevant powers of the trustees and any relevant additional provisions relating to winding up.

2

General requirements for winding up a charity

The requirements in this section apply to the winding up (including in the context of a conversion or merger) of any charity regardless of its legal form:

- ▶ Because the winding up of any charity may raise important questions for the Charities Regulator, the charity must always, before starting a winding up, notify the Charities Regulator of its intention to wind up (as required by section 39(11) of the Charities Act 2009 (“the Act”)) and must provide the Charities Regulator with any information the Charities Regulator requires (the Charities Regulator is likely, as a minimum, to ask the charity for copies of its audited accounts and for a clear plan of how the charity intends to deal with any surplus or remaining assets or funds, including the details of any intended recipient charity and will seek confirmation of receipt from such named recipient charity);
- ▶ Further to section 92 of the Act, any surplus in the charity’s assets or funds may not be paid to the members of the charity without the Charities Regulator’s prior consent, even if such payment is permitted by the charity’s own constitutional documents or internal rules;
- ▶ Further to section 47(8) of the Act, the trustees of the charity (or where relevant, the liquidator) must retain the financial statements of the original charity for at least six years after the winding up is completed, unless the Charities Regulator consents to the records being destroyed or disposed of in another way;
- ▶ Where the charity has an entitlement to a charitable exemption under section 207 or 208 of the Taxes Consolidation Act 1997 i.e. holds a valid CHY number, the charity will need to ensure that it complies with the requirements of the Revenue, which currently require a charity that is winding up to complete and submit to Revenue a **‘Notice of Winding up for Charities’** available on the Revenue website¹.

¹ The ‘Notice of Winding up for Charities’ is available from www.revenue.ie

3 Additional requirements for winding up an incorporated (limited company) charity

A company is a separate legal entity, which exists independently of its members. As such, a charity which operates in the form of a company must be wound up in accordance with the Companies Act 2014.

When considering winding up, a charity that is a **limited company charity** should also always have regard to any provisions in its constitution relating to winding up.

The principal ways to wind up a limited company are by **voluntary strike-off**, **involuntary strike-off** or by **liquidation**.

3.1 Voluntary strike-off

A company may apply for strike-off if its assets do not exceed €150. The constitution of a CLG which is a charity, will typically specify that any surplus on winding up should not be transferred to the members but should be transferred to another charity with a similar purpose. If the constitution does not contain such a provision, the company **must apply to the Charities Regulator by way of a cy-près application, to request that it establish a scheme for the application of the surplus assets for a charitable purpose as close as possible to the applicant's charitable purpose.** In such cases, the cy-près application must be made before the special resolution to apply for voluntary strike-off, so that the charity can ultimately meet the conditions to qualify for voluntary strike-off.

This approach is sometimes the most suitable for small incorporated charities which have not been very active. Where an incorporated charity has ceased its activities, it may apply to the Companies Registration Office (CRO) to have the company struck-off. Voluntary strike-off is possible where **each of the following conditions is satisfied:**

- ▶ the company has ceased its activities;
- ▶ the company's assets do not exceed €150 (the company should dispose of its assets in order to satisfy this requirement, for example by donating to a charity with similar charitable purposes and objectives);
- ▶ the company's liabilities do not exceed **€150**;
- ▶ all of the company's annual returns are up to date and any late filing fees paid;
- ▶ the company is not party to any ongoing or pending litigation.

Where these conditions are met, voluntary strike-off may be the cheapest way to wind up an incorporated charity.

Having taken advice on whether this is a suitable approach for your charity, you should first establish your plan to deal with the issues identified above, then notify the Charities Regulator of your intention to wind up using the voluntary strike-off procedure before proceeding.

The **procedure** for voluntary strike-off is then as follows:

- ▶ the company must pass a special resolution (CRO Form G1-H15) resolving to apply to have the company struck-off on the ground that it has ceased its activities, and file the resolution with the CRO **within three months before the application for strike-off**;
- ▶ the company must obtain a 'letter of no objection' from Revenue;
- ▶ an advertisement must be placed in one national daily newspaper advertising the application to have the company struck-off **within 30 days prior to the application for strike-off**.

The Charities Regulator now also requires that an incorporated charity seeking voluntary strike-off must send a copy of the special resolution to the Charities Regulator within three months prior to the application for strike-off.

Where a company has completed the steps set out above, it may apply to the CRO for strike-off. The application for voluntary strike-off must be completed by all of the directors of the company (CRO Form H15) and submitted to the CRO. The application is accompanied by the letter from Revenue and a copy of the advertisement.

If the CRO is satisfied that the conditions are satisfied and the correct procedure has been followed, it will give public notice of the application in the CRO Gazette. If no objection is received, the company will be dissolved 90 days after this notice, when it ceases to exist.

A full list of the conditions for voluntary strike-off, procedures and forms that the company is required to file with the CRO is set out in the 'Registrar of Companies Information Leaflet Number 28' which is available on the CRO website².

3.2 Note on involuntary strike-off

The CRO may also strike off a company where the company has failed to fulfil its statutory obligations (e.g. by not filing annual returns), regardless of whether the company itself intends to continue its activities. The consequences of involuntary strike-off include that the company ceases to exist from the date notice of strike-off is published in the CRO Gazette, and any remaining assets of the company formally become the property of the State. Allowing a charity's assets to become the property of the State in this way would be inconsistent with the duties of charity trustees. Additionally, there may be adverse consequences for officers where a company is struck off, where the affairs of the company have not been properly concluded, and in some cases a High Court application to restore the company becomes necessary. For these reasons, incorporated charities should take all necessary steps to avoid risk of involuntary strike-off.

3.3 Liquidation

Liquidation involves appointing a liquidator who is responsible for managing the winding up of a company. A liquidator is usually a professional accountant familiar with the winding up process. A benefit of liquidation is therefore that the members can rely on the professional liquidator and have a less active role in the winding up; however, the liquidator's fees must be met and this will reduce any remaining charitable assets, so it is important to be clear about what fees are likely to arise.

² Available from the CRO website - www.cro.ie/Publications/Publications/Information-Leaflets

As noted above, the constitution of a CLG which is a charity, will typically specify that any surplus on winding up should not be transferred to the members but should be transferred to another charity with a similar purpose. If the constitution does not contain such a provision, the company **must apply to the Charities Regulator by way of a cy-près application, to request that it establish a scheme for the application of the surplus assets for a charitable purpose as close as possible to the applicant's charitable purpose.** Therefore, it is usually advisable for a solvent CLG charity, before proceeding to Members Voluntary Liquidation, to set aside a sufficient amount to cover the costs of the liquidation and to form a plan for the distribution of its remaining surplus in accordance with its stated purposes, or for a cy-près application to be made to the Charities Regulator.

Where a charity operates or holds property through more than one company (for example, where a property holding company has been established to hold the legal interest in certain charitable property, with the beneficial interest held by a CLG charity), it is very important to consider fully the potential consequences for the other bodies concerned of liquidating one of the companies. This may involve a risk of interests in charitable assets transferring in a way that is not permitted by law, or may give rise to a tax liability. In more complex cases, professional advice should be taken, and the Charities Regulator should be consulted, before proceeding to implement any plan.

There are two forms of voluntary liquidation of a company: **Members' Voluntary Liquidation** is possible where the company is solvent (i.e. its assets exceed its liabilities). Where a company is insolvent (i.e. it is unable to pay its debts as they fall due), the appropriate procedure is **Creditors' Voluntary Liquidation**.

3.3.1 Members' Voluntary Liquidation (MVL)

As with other forms of winding up a solvent charity, the charity should notify the Charities Regulator, providing it with a clear plan for the transfer of any surplus in its assets before the winding up begins.

The procedure for putting a company in MVL is as follows:

- ▶ a majority of the company's directors must make a declaration which summarises the company's assets and liabilities and states that the company will be able to pay all of its debts in full within 12 months of the commencement of the liquidation;
- ▶ the declaration must be filed with the CRO within 21 days of the resolution to wind up being passed under the Summary Approval Procedure in Part 4 Companies Act 2014;
- ▶ a copy of the declaration must be sent to the company's members together with notice of a meeting of the members;
- ▶ the Charities Regulator now also requires that an incorporated charity intending to enter MVL must send a copy of the notice of the members' meeting and directors' declaration to the Charities Regulator at the same time as it is sent to the members;
- ▶ the members' meeting must take place within 30 days of the directors' declaration;
- ▶ 75% of the members must pass a resolution approving the MVL and appointing a liquidator;
- ▶ the resolution approving the MVL and appointing a liquidator, and the CRO 'Notice of appointment of Liquidator(s) (Form E2)' must be filed in the CRO;
- ▶ the liquidator conducts the formal winding up of the company's affairs;
- ▶ three months after registration of the final documents by the liquidator, the company is deemed to be dissolved, and it then ceases to exist.

A full list of the forms to be filed in a MVL with the CRO is set out in the Registrar of Companies Information Leaflet Number 38 which is available on the CRO website³.

3 Available from the CRO website at www.cro.ie/Publications/Publications/Information-Leaflets

3.3.2 Creditors' Voluntary Liquidation (CVL)

A CVL is appropriate for winding up an incorporated charity where the charity is insolvent. As the company's liabilities will be greater than its assets, it is unlikely that there will be assets available for distribution or donation to another charity. However, the charity should notify the Charities Regulator as soon as it is clear that the charity is insolvent or is at serious risk of becoming insolvent. Insolvent charities should be aware that funds will be required to pay the liquidator's charges. These funds could potentially be raised through the sale of the charity's assets.

The procedure for putting a company into CVL is as follows:

- ▶ the directors must hold a meeting to agree that the company should be placed into liquidation and that notice should be given to all members and creditors;
- ▶ the directors must then convene meetings of the creditors and of the members to consider the proposal to put the company into liquidation; the Charities Regulator now also requires that an incorporated charity which is convening meetings of the creditors and of the members, must send copies of the notices of the creditors' meeting and members' meeting to the Charities Regulator at the same time as they are sent to the creditors and members;
- ▶ the creditors must be given at least 10 days' notice of their meeting and the creditors' meeting must take place on the same day or within one day of the members' meeting;
 - notice of the creditors' meeting must be advertised at least 10 days before the meeting in two daily newspapers circulating in the district of the company's registered office;
- ▶ the creditors must be presented with a Statement of Affairs at the meeting, specifying all of the company's assets and liabilities;
 - at the creditors' meeting, the creditors may decide to appoint a Committee of Inspection, made up of members and creditors, to assist the liquidator and supervise the conduct of the liquidation;
- ▶ the members' resolution to wind up the company and appoint the liquidator must be published in Iris Oifigiúil within 14 days of the passing of the resolution⁴;
- ▶ the company must then file the members' resolution; notice of appointment of the liquidator and the creditors' resolution (or a notice that no resolution was passed at the creditors' meeting) in the CRO;
- ▶ the liquidator conducts the formal winding up of the company's affairs;
- ▶ three months after the filing of the final documents by the liquidator in the CRO, the company is deemed to be dissolved.

A full list of the forms to be filed with the CRO in a CVL is set out in the Registrar of Companies Information Leaflet Number 38⁵.

3.3.3 Note on involuntary winding up

Under section 569 of the Companies Act 2014, a company may be wound up by the High Court in a number of circumstances, including where a creditor establishes that the company is unable to pay its debts (which can in turn be established by showing that a statutory demand for a debt of above €10,000 has not been settled within 21 days after the demand). Where the High Court appoints a liquidator, matters come outside the control of the company concerned. Any registered charity which is served with a winding up petition under section 569 of the Companies Act 2014 must notify and copy the papers to the Charities Regulator immediately.

⁴ Iris Oifigiúil is the official Irish State gazette available from: <https://www.irisoifigiuil.ie/>

⁵ Available from the CRO website - www.cro.ie/Publications/Publications/Information-Leaflets

4 Additional requirements for winding up an unincorporated charity

An unincorporated body or association is a group that (unlike a company) does not have a separate legal personality from its members.

In order to be registered with the Charities Regulator, it must operate under a written **governing document**, which may be a constitution, members' agreement or rule book. While it is relatively easy and inexpensive to set up an unincorporated charity, it is very important to ensure that all outstanding matters and issues are fully dealt with if it is wound up, because members or trustees could be made personally liable for any unsatisfied debts or obligations.

The board or trustees should ensure that the general requirements set out above, including notifying the Charities Regulator in advance of taking any action and the Revenue requirements, are satisfied. They should also carefully follow any procedure set out in the governing document for winding up, as the governing document operates as a contract among all of the members (and any specific provisions would prevail over the recommended steps described below).

A specified winding up procedure in a governing document will usually address the following matters; if there is no specified procedure, the following steps are recommended (however, any charity contemplating such a course of action should take advice appropriate to its own circumstances before proceeding):

- ▶ the charity should issue notice to members of an extraordinary general meeting (EGM) proposing to wind up the charity (usually 28 days' notice is standard);
- ▶ the motion to wind up the charity should authorise the board or trustees to deal with matters including donation of any surplus assets or funds to a similar charitable purpose to that specified in the charity's governing rules; payment of all the charity's remaining debts; closing the charity's bank accounts; liaising with Revenue and the Charities Regulator to de-register the charity and ensuring all other necessary steps to fully and finally wind up the charity's operations are taken;
- ▶ the Charities Regulator now also requires that an unincorporated charity intending to wind up must send a copy of the notice of the members' meeting to the Charities Regulator at the same time as it is sent to the members;
- ▶ the members should vote to pass the motion to dissolve the charity, either by a special (75%+) or ordinary (50%+) majority.

The board or trustees should be conscious that after an unincorporated charity is dissolved, they will still hold any of the charity's remaining assets on trust to be used for charitable purposes. They should remain aware of the danger of acting in breach of trust, for example by donating the charity's assets to a charity with charitable purposes which are inconsistent with those of the dissolving charity. Intentions in this regard should be established at initial contact with the Charities Regulator (and included in the plan). As noted above, charities which are winding up may apply to the Charities Regulator which has the power to establish a scheme for the application of the surplus assets to the nearest charitable purpose of the charity (Further information is available on the Charities Regulator website www.charitiesregulator.ie/en/information-for-charities/charity-services).⁶

⁶ Available from the Charities Regulator's website - <https://www.charitiesregulator.ie/en/information-for-charities/charity-services>

5

Additional requirements for winding up a charitable trust

The principles which apply to the winding up of unincorporated bodies and trusts are broadly similar.

The trustees of a charitable trust should ensure that the general requirements set out above, including notifying the Charities Regulator in advance of taking any action and Revenue requirements, are satisfied. The trustees must also pay particular regard to the **governing document** of the charity, usually a **deed of trust or declaration of trust**. The trustees should carefully follow any procedure set out in the governing document for winding up, as the governing document is the source of both legal powers and legal duties of the trustees (and any specific provisions would prevail over the recommended steps described below).

A specified winding up procedure in a governing document will usually address the following matters; if there is no specified procedure, the following steps are recommended (however, any charity contemplating such a course of action should take advice appropriate to its own circumstances before proceeding):

- ▶ the charity should issue notice to the trustees of an extraordinary general meeting (EGM) proposing to wind up the charity (usually 28 days' notice is standard);
- ▶ the Charities Regulator now also requires that a copy of the notice of the trustees' meeting be sent to the Charities Regulator at the same time as it is sent to the trustees;
- ▶ the motion to wind up the charity should authorise the trustees (or identified trustees) to deal with matters including donation of any surplus assets or funds to a charity with a similar charitable purpose to that specified in the charity's governing rules; payment of all the charity's remaining debts; closing the charity's bank accounts; liaising with Revenue and the Charities Regulator to de-register the charity and ensuring all other necessary steps to fully and finally wind up the charity's operations are taken;
- ▶ the trustees should vote to pass the motion to dissolve the charity, either by a special (75%+) or ordinary (50%+) majority.

The charity trustees should be conscious that after a charitable trust is dissolved, they will still hold any of the charity's remaining assets on trust to be used for charitable purposes. They should remain aware of the danger of acting in breach of trust, for example by donating the charity's assets to a charity with a charitable purpose which is inconsistent with the dissolving charity's purpose. Intentions in this regard should be established at initial contact with the Charities Regulator (and included in the plan). As noted above, charities which are winding up may apply to the Charities Regulator which has the power to establish a scheme for the application of the surplus assets to a charity with a similar charitable purpose. Further information is available on the Charities Regulator website www.charitiesregulator.ie/en/information-for-charities/charity-services⁷.

⁷ Available from the Charities Regulator's website - <https://www.charitiesregulator.ie/en/information-for-charities/charity-services>

6 Incorporation: conversion to a company

Unincorporated body or charitable trust

Incorporated company (e.g. CLG)

The trustees of a charitable trust or board or members of an unincorporated charity may decide to incorporate to avail of the benefits of limited liability. However, doing so may involve a risk of interests in charitable assets transferring in a way that is not permitted by law, or may give rise to a tax liability. In more complex cases, professional advice should be taken, and the Charities Regulator should be consulted, before proceeding to implement any plan.

A charitable trust or an unincorporated charity wishing to convert to a company must ensure that its governing document includes a power to do so (including by an amendment made for that purpose) and that the charitable purposes of the newly-formed company are consistent with the purposes of the trust or unincorporated body. Failure to do so may constitute a breach of trust.

Where a charitable trust or unincorporated charitable body converts to a company, the newly incorporated charity will be a **separate legal entity**. Prior to the transfer of assets, the new company must be registered with the Charities Regulator and will have its own registered charity number (RCN). The assets of the trust or unincorporated charitable body must be transferred to the new company before the trust or unincorporated charitable body is dissolved as outlined above. The trust or unincorporated charitable body should notify the Charities Regulator well in advance of implementing any plans of its intention to convert to company form. This will help ensure that the trust or unincorporated charitable body may be removed from the Register at the appropriate time in the sequence. Furthermore and from a taxing perspective, the transfer of assets to the new company may have tax consequences for the charities in question if the new company has not been assigned a CHY number by Revenue and so appropriate professional advice should be sought before proceeding to transfer any assets.





Merger between charities

A charity may wish to merge with another charity having a similar charitable purpose.

Doing so is likely to have many advantages, including increased efficiencies, economies of scale and the greater impact of being able to pursue a common cause in a unified manner. Charities should always notify the Charities Regulator as soon as the decision is made to merge, and well in advance of implementing any plans to merge as a merger will result in one of the charities ceasing to exist.

Additionally, a merger may have significant tax and/or accounting consequences for the charities (which are outside the scope of this guidance) and any charity contemplating a merger should take appropriate professional advice before proceeding. The procedure for the merger of two or more charities depends on the legal form of each charity.

7.1 Merger of two companies

Where both merging charities are companies (most likely CLGs), the legal framework will depend on how the merger is put into effect.

It may be simpler and more cost effective for the two companies to decide to transfer all of the assets of one of the charities to the other (provided that the charitable purposes of both charities are sufficiently aligned) and to wind up the charity whose assets are transferred. In this case, the charity winding up should ensure that its constitution includes powers to wind up and to donate surplus assets to the charitable purpose pursued by the surviving company (including by amendments made for those purposes).

It is also possible for both companies to formally merge under the Companies Act 2014, but the merger may involve a court application. The merging charities should seek legal advice on the process in such cases. Both charities should ensure that the constitutions of each company contain the power to merge and that the charitable purposes of the charities are sufficiently aligned (including by amendments made for those purposes).

7.2 Merger by unincorporated body

When an unincorporated body is considering merging with another charity, the trustees should firstly ensure that the governing rules of the charity include a power to merge (including by amendment made for that purpose).

The merger of unincorporated associations can be put into effect by transferring the assets of one of the charities to the other charity and dissolving the first charity in accordance with its rules. The charity transferring its assets should ensure that the purposes of the charity with which it is merging are sufficiently aligned with its own purposes (including by amendment made for that purpose).

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