

**BY EMAIL ONLY TO: [unincorporatedassociations@lawreform.ie](mailto:unincorporatedassociations@lawreform.ie)**

15 May 2023

**RE: Law Reform Commission Consultation Paper (LRC CP 68 – 2022)('the Paper')**  
**Liability of clubs, societies, and other unincorporated associations**

Dear Sirs,

Attached below is the submission of the Corporate Enforcement Authority ('CEA') to the LRC on the above paper. Before offering the CEA's submissions I wish to highlight its statutory mandate which informs the following submission.

### **Statutory Mandate**

Established in July 2022 under the Companies (Corporate Enforcement Authority) Act 2021, the CEA's statutory mandate derives principally from the Companies Act 2014('the 2014 Act'). The 2014 Act governs company law, Part 14 concerns compliance and enforcement and Part 15 concerns inter alia, the functions of the CEA.

The CEA has also been conferred with statutory functions in respect of certain investment vehicles under the Irish Collective Asset-management Vehicles Act 2015 and is the competent authority for the purpose of imposing sanctions on company directors under Chapter 3B of Part 15 of the 2014 Act.

The CEA's primary functions are:

- encouraging compliance with the Companies Act 2014,
- assessing the behaviour of insolvent companies' directors and take associated enforcement action,
- investigating instances of suspected breaches of company law and, as appropriate:
  - taking civil enforcement action (including issuing warnings, requiring that steps be taken to bring about compliance with company law, and making applications to the High Court as necessary),
  - taking summary prosecutions in the CEA's own name,
  - referring matters to the Director of Public Prosecutions for consideration as to whether charges should be directed on indictment.

Of most note regarding the above is the investigative and enforcement functions devolved to the CEA, particularly regarding company law criminal offences. The submission also bears in mind the categorisation of offences in section 871 of the Companies Act 2014, with Category 1 carrying the greatest tariff of potential penalties and Category 4 carrying the least severe tariff of penalties.

## **The Paper**

The CEA has carefully considered both the existing model highlighted and the three model proposals contained in the paper as to which proposal would be most conducive to compliance with legal obligations generally, and investigation and enforcement in the event of suspected default.

The CEA offers no view as to whether there should be a positive obligation to incorporate [4.10], however the potential chilling effect of having to incorporate on civil society suggested in the paper appears to be somewhat overstated and reference to non-democratic countries in support of this argument does not chime with the relative ease of incorporation in Ireland.

By virtue of the issues raised in the paper regarding the attribution of responsibility to individuals and the lack of a separate legal personality of an unincorporated association, it appears to the CEA that a system that can fix individuals with responsibility for their actions (or target the appropriate persons for attribution) is desirable.

For the reasons that follow, the CEA is supportive of the proposition that detailed consideration should be given to utilising the 'existing solution' referred to in the Paper and extending the applicability of the Company Limited by Guarantee ('CLG') regime to address the issues raised with unincorporated associations.

The CEA agrees with the reform objectives identified by the LRC at page 118 of the Paper and supports its opinion above by reference to them.

Regarding the objective of bringing clarity to the law on unincorporated associations, Part 18 of the Companies Act 2014 provides significant clarity in terms of CLGs and, along with the relevant provisions of the 2014 Act regarding directors' statutory and fiduciary duties, could provide an instant high level of certainty to actors and clarity to the law. The extension of this regime to unincorporated associations would also render these associations liable to investigation and enforcement under the existing statutory scheme.

Regarding the objective of minimising regulatory burdens, it is submitted that the annual filing obligations on small and micro companies, (who are ordinarily audit exempt) do not represent a significant impediment to business or activity and the exercise of preparing these returns ensures regular scrutiny of the body and the opportunity for participation by members. It is also suggested that the obligation of a CLG with 2 or more members to hold an AGM could not be considered a significant burden.

Regarding the protection of the interests of third parties, it is also submitted that the incorporation of such bodies opens up a suite of enforcement mechanisms and investigations, including the possibility of making complaints to the CEA, making protected disclosures to the CEO as a prescribed person under section 7 of the Protected Disclosures Act 2014, and permitting members of a CLG to petition

the Circuit or High Court to have inspectors appointed to investigate the affairs of the company (section 1225 of the 2014 Act).

Regarding the objective of making provision that the assets of an unincorporated association are available to meet its legal responsibilities it is submitted that section 1223 of the 2014 Act "*Liability as contributories of past and present members and provision concerning winding up after certain re-registration*" offers a template for liability in certain instances and could be amended as required to address the issue of liabilities.

Regarding the objective of providing that unincorporated associations can be sued in their own name, it is submitted that the conferral of separate legal personality comprehensively addresses this issue.

Regarding the objective of clarifying the law on the personal liability of members, it is submitted that incorporation of unincorporated associations as CLGs engages the provisions of the 2014 Act regarding attribution of personal liability e.g. under section 232 regarding certain breaches of fiduciary duty, and under sections 609 and 610 (all the 2014 Act) in winding up situations.

The objective of clarifying the applicability of existing legislation to unincorporated associations and ensuring that existing law is enforceable against unincorporated associations is also addressed if unincorporated associations are CLGs - as Chapter 18 of the 2014 Act applies.

Regarding the final objective of removing the impediment to suing a club of which you are a member, the 2014 Act regarding e.g. oppression of members, and the fact of separate legal personality, addresses this issue.

The CEA view is that the extension of the 'existing solution' provides clarity, facilitates the use of existing mechanism and State resources, and facilitates investigation and enforcement mechanisms that the other three options would require time to develop and apply i.e.

1. Legislate to create a "non-profit registered association" by which separate legal personality could be gained by registration.
2. Confer separate legal personality on unincorporated associations that fulfil specified criteria
3. Do not confer separate legal personality, but specify how unincorporated associations are to be held liable in contract, tort and for offences, with a series of focussed reforms that do not alter the legal status of unincorporated bodies.

The CEA is willing to further engage with the LRC regarding the above submission.

Yours faithfully,

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