



Public & Regulatory Law Update

March 2009

Reforming charity law

The Charities Act 2009 was signed by the President on 27 February 2009 but will not come into force until the Government makes the necessary commencement orders. It reforms the law relating to charities and provides protection against abuse of charitable status. It also defines "charitable purposes" for the first time in primary legislation in general terms as:

- (a) The prevention or relief of poverty or economic hardship;
- (b) The advancement of education;
- (c) The advancement of religion;
- (d) Any other purpose that is of benefit to the community.

The current Commissioners of Charitable Donations and Bequests for Ireland will be replaced by the Charities Regulatory Authority (CRA) and a Charity Appeals Tribunal will be created. All Irish operating charities will have to register with the CRA and submit annual activity reports. Non-Irish based charities may also register. It will be an offence under the Act not to comply with these requirements although existing Revenue-approved CHY charities may be deemed to be registered if they comply with the Act. The CRA's main functions will be:

1. Increasing public trust in the management and administration of charitable trusts and charitable organisations;
2. Promoting compliance by charity trustees with their duties and the effective use of the property of charitable trusts or charitable organisations;
3. Ensuring the accountability of charitable organisations to donors and beneficiaries of charitable gifts and the public;
4. Establishing a register of charitable organisations and monitoring compliance by charitable organisations with the Act;
5. Carrying out investigations;
6. Issuing (or approving) guidelines, codes of conduct and model constitutional documents.

The Act does not apply to certain trusts. The Act also regulates fundraising and allows the Government make regulations relating to the manner and conduct of fund-raising by, or on behalf of, charitable organisations, including collections and non-cash collections (for example, by way of direct debit).

Financial Emergency Measures in the Public Interest Act 2009

The Financial Emergency Measures in the Public Interest Act 2009 was enacted on 27 February 2009 and is now in force. It introduced a new deduction from public servants' pay where they are members of a public service pension scheme from 1 March 2009; and provisions to allow public bodies to reduce the professional fees paid by them to certain service providers. The Act allows any Government minister to make regulations to reduce payments for services provided to or on behalf of any Government department and this includes solicitors, barristers, accountants, architects and health professionals. Please see the February 2009 Public and Regulatory Law Ezine for more detail.



Emergency Budget

A supplementary emergency budget will be introduced in the Dáil on 7 April 2009 due to a continuing gap in the public finances. This budget is aimed at stabilising the public finances and will most likely entail severe taxation increases and cuts in public spending.

The National Pensions Reserve Fund: funding the banks

The purpose of the National Pensions Reserve Fund is to build up assets which will part-finance the cost of social welfare and public service pensions from 2025 onwards, when the State's pensions' bill is expected to rise significantly with the progressive ageing of the population.

The Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009 was enacted on 5 March 2009. This Act arose from the Government's €7 billion plan to recapitalise Allied Irish Bank and Bank of Ireland which is to be funded by the National Pension Reserve Fund. The State is to provide €3.5 billion in Core Tier 1 capital to both banks in return for €2 billion of perpetual non-convertible preference shares with a fixed annual dividend of 8%.

The Act enables the National Pensions Reserve Fund Commission to make investments in the public interest in listed credit institutions. It also enables the Minister for Finance to make additional payments into the Fund and to transfer into the Fund a shareholding or other interest held by him. These additional payments or transfers will count towards the requirement to make annual contributions to the Fund in future years.

Upcoming event

Beauchamps Solicitors' Corporate Governance Unit are hosting a breakfast seminar entitled, "*Corporate Governance - Challenges for the Public Sector*" on Tuesday 28 April 2009.

For details on the programme and speakers visit www.beauchamps.ie/events. To register for this event contact Maree Kirby on m.kirby@beauchamps.ie or 01 4180 600.

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