



# CORPORATE NEWSLETTER

Autumn 2009



*Welcome to the first edition of CFR's Corporate Newsletter, in which we, the Corporate Team at CFR, provide insight and commentary on legal developments which may interest or concern the local business community.*

*Prevailing economic conditions are reflected in some of the articles along with a guide to the changes occurring at Companies Registry on 1 October. We conclude this Newsletter with a profile of Northern Ireland's new Lord Chief Justice, Sir Declan Morgan which will be of general interest to all our readers.*

Stephen Cross, Head of Company Commercial

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## Liability of Guarantors



*by Stephen Cross*

Following the collapse in the property market and given the difficult trading conditions faced by many businesses presently, financial institutions and other creditors are increasingly looking to enforce whatever rights and remedies they have available against debtors and customers struggling to keep up with debt repayments and other commitments.

As the likelihood of guarantees being called and the requirement for guarantees to be given increases we have set out below some of the key issues for anyone taking, giving or facing a call under a guarantee.

### When taking a guarantee:-

- Does the guarantor have sufficient net worth to meet the potential liabilities?
- Does the guarantor have assets which could be mortgaged to secure his liability?
- Has the guarantor taken independent legal advice on his obligations under the guarantee?
- Does the guarantor have a benefit to be gained by providing support to the debtor?

### If giving a guarantee:-

- Is the liability that you are to guarantee to be limited in any way, to a specified sum or for specific debts?
- Do you have control over the debtor so as to ensure that you can minimise the risk of your guarantee being called?
- If you are giving a guarantee to the bank, do you already have accounts with that bank or have you already given it security for other purposes which the bank might be able to use if it made a call on your guarantee?
- Are you giving the guarantee along with other guarantors and what happens if the other guarantors don't pay their share?

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- Do you expect the guarantee to be released on a condition being met or at the end of an agreed time period?

If you have already given the guarantee then it is important to bear in mind some of the following common features of guarantees:-

- A bank might call in a guarantee regardless of the efforts it might have made to recover its liabilities from the debtor directly.
- Although the guarantee is for a fixed amount there might also be interest and costs to be added to that amount.
- If you try and terminate your guarantee you will not necessarily be released from your liabilities, in fact termination might simply have the effect of fixing your liability at a specific amount depending on the liabilities due from the debtor at that point in time.
- If you are also a director of the debtor you must not confuse your duties to creditors of the debtor with your own desire to minimise your expose as guarantor, to take action that puts you as guarantor in a better position compared to other creditors is likely to be invalidated by a liquidator or receiver if appointed and lead to a directors disqualification order being made against you.

## Integration of Companies Registry Northern Ireland



*by Naomi Gaston*

Companies Registry Northern Ireland is currently part of the Department of Enterprise, Trade and Investment Northern Ireland, but from 1 October 2009 it will integrate with Companies House, Cardiff as part of the Department for Business Enterprise and Regulatory Reform. This is due to changes proposed under the Companies Act 2006 which will introduce a new company law regime for all of the United Kingdom.

Northern Ireland will continue to have a registry function and the office will remain in Belfast, also the Registrar for Northern Ireland will be retained.

### How will the integration of Companies Registry Northern Ireland affect Northern Ireland Companies?

#### Contact Details

The method of getting in contact with Companies Registry Northern Ireland will change with new contact centre numbers, email address and website. However, the Northern Ireland office will remain at its current address.

#### New Forms

The current Companies Registry Northern Ireland forms will no longer be applicable from 1 October 2009. There will be new forms based on the Companies Act 2006.

#### Online Filing and Searching

Northern Ireland companies will have access to an online filing service through Companies House to enable individuals to search and file information online.

#### Fees

The fees currently paid for filing and searching information will be amended from 1 October 2009. Please note that from 1 October 2009, all cheques must be made payable to Companies House.

#### Registered Office

A Northern Ireland company must still have a registered office in Northern Ireland even though there will be a common company law regime for the United Kingdom.

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## Northern Ireland Company Number

Northern Ireland companies will retain their current company number prefix, NI, as will all companies incorporated in Northern Ireland after 1 October 2009.

## Survival During the Recession - Some Issues for Charitable Companies



by Jennifer Ebbage

This is a pressurised time for charities. The underlying value of many charities' reserves and investments has diminished significantly, the income and interest earned from such investments is now much reduced and on top of all that, other sources of funding from government and private benefactors have also been under strain.

Many charities are conducting more vigorous legacy giving campaigns and taking steps to highlight the benefits of Gift Aid, which are often overlooked by potential donors or not fully understood. Some charities are reporting an increased number of challenges from family members to legacies left to charities following the death of a loved one so it becomes all the more important to ensure that a will is drafted effectively to ensure that the donor's wishes are carried out.

A significant reduction in corporate giving, corporate sponsorship combined with pressures on individuals, changes to the Gift Aid Scheme and a reduction in bonuses are all leading to additional pressures on charity funding. Many charities have also lost considerable funds where they had invested in Icelandic banks. Other charities are experiencing pressure on their ability to deliver services, in particular to meet the rising demand for relationship counselling and advice on managing debt.

Reports are coming in that legacy giving is still holding up but some think this may be due to a more speedy administration of estates as the fall in property transactions has made way for solicitors to focus on other areas of work! It is probably also fair to say that there is a lag between the recession and the impact being felt by charities. However you look at it, it is important for charity directors/trustees to be aware of their duties and ask themselves whether they really know the state of their charity's financial position.

Many charity directors/trustees are reluctant to dip into reserves but the fact remains they have a duty to apply the charitable funds they are holding to achieve the charitable purposes of the charity. Some reserves are in a special category such as special trusts or permanent endowment. It is always hard to know what is around the corner but there is a balancing act to be carried out and where there is an immediate need to be met, a charity's trustees/directors could be open to criticism for not making use of available reserves. However they should only do so after taking specialist advice and after due consideration. Many of the charities in Northern Ireland are companies limited by guarantee and their trustees also have the legal duties of company directors. Most charity boards meet only 4 - 6 times a year but may have a Finance Committee which has been appointed from amongst those on the board with more specialist skills who are entrusted with detailed scrutiny of the charity's financial position.

If you are a director or a trustee of a charitable body you should make it your business to find out the financial position and if you are not satisfied with the information presented to you or you are unable to interpret it to fully understand its implications you should be asking for some training and for an explanation to be given to you from the Finance Director or from the charity's professional advisors, such as its accountants.

Other activities that can be undertaken by charity directors/trustees are to review the strategic plan and to look at the projects and business that the charity has undertaken - could you reduce some of the overheads or are there things that you can buy in more cheaply from another body rather than carrying all these things out yourselves? A thorough review of the charity's outgoings, perhaps some direct debits or standing orders that have long been forgotten and may be overdue. Re-negotiation of contracts that have been entered into might be possible or even negotiating a moratorium on rent.

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## Sir Declan Morgan Is New Lord Chief Justice of Northern Ireland



by Breandán Kearney

The third of July 2009. Another footnote in history for Sir Declan Morgan.

Clients of CFR may be interested to know more about the man who on that date became the ninth Lord Chief Justice since the creation of Northern Ireland in 1922.

Sir Declan is no stranger to involvement with historical institutions. His CV reads like a checklist of the most prestigious establishments in the United Kingdom. He attended St. Columb's grammar school in Derry, a school which boasts alumni such as former MP and MEP John Hume, poet Seamus Heaney, playwright Brian Friel, and Aston Villa manager and former international footballer Martin O'Neill.

He moved from St. Columb's to the University of Cambridge, one ranked in the top five universities in the world which has produced 83 Nobel Laureates to date, more than any other academic institution in the world. His fellow alumni include 15 British Prime Ministers and twenty three heads of state or heads of government. Moreover, Sir Declan was educated at Peterhouse, a particularly special place being the oldest of Cambridge's constituent colleges and also the smallest of the university's traditional colleges.

Sir Declan's progression as a lawyer continued by being called to the Bar in 1976 and took Silk in 1993. He was Senior Crown Counsel for Northern Ireland until his appointment as a High Court Judge in May 2004. He was appointed to the Family Division in January 2007. In September of last year he became one of two judges with responsibility for judicial review. He was appointed Chairman of the Law Reform Advisory Committee for Northern Ireland in 2004. In April 2007 he was appointed Chairman of the Northern Ireland Law Commission. And now, he is the head of the judiciary presiding over the courts of Northern Ireland.

As well as being immersed in history, Sir Declan has also made it. He has delivered judgements in a number of high-profile cases, none more so than the recent 14 month civil action lodged by the six Omagh families of the victims of the 1998 Omagh bomb. The original criminal case became a protracted nine year affair after which the defendants were found not guilty although when delivering his verdict the presiding Judge, Mr Justice Weir was highly critical of police evidence and said they were guilty of a "deliberate and calculated deception". Whilst the criminal case was ongoing, the families of the Omagh bomb victims decided to bring the civil action against the alleged perpetrators.

No-one has ever been convicted in a criminal court of causing the deaths. As civil cases have a much lower burden of proof, Sir Declan was able to reach his verdict on the balance of probabilities rather than the standard required in criminal law, where guilt must be proved beyond reasonable doubt.

In a landmark decision, Sir Declan ruled that Michael McKeivitt was responsible for the 1998 Omagh bomb and also found Liam Campbell, Colm Murphy and Seamus Daly liable for the attack. Seamus McKenna was cleared. The 12 relatives were awarded more than £1.6m in damages for the attack. That momentous ruling now forms part of the history books. With a new Lord Chief Justice of Northern Ireland a new chapter is beginning. And as he has always been, Sir Declan Morgan is set to be a central character.

### The Corporate Team

Please visit our website at [www.cfrlaw.co.uk](http://www.cfrlaw.co.uk).

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