



# Building blocks

With owners' management companies becoming a feature of the housing market, David Rouse provides an update on the regulatory issues of interest to accountants

Perhaps you or your clients have investment properties in apartment developments. You may have been asked to serve as an owners' management company (OMC) director. Your practice may provide professional services to OMCs.

As apartment numbers in Ireland increase, it can be expected that OMCs will become more commonplace. Residential density targets in the National Planning Framework require apartments as a proportion of the country's housing stock to treble, from 13% in 2019 to 39% by 2030.

Familiarity with the wider regulatory regime, together with an understanding of how areas of relevant law interact, can help to enhance the level of service delivered by professionals to the OMC sector. Current estimates indicate that there are around 8,000 such companies in operation in Ireland.

An OMC is a somewhat strange creature on the Irish corporate landscape. It is a hybrid of a property asset manager, a residents' association and a not-for-profit company. Boards are usually made up of unpaid directors, drawn from and elected by the residents of the apartment development or housing estate. The OMC owns the estate's common areas and arranges shared services such as block insurance, repairs and maintenance, and waste management.

Company directors endeavouring to keep up to date with regulatory developments rely on sound advice from key professionals. This is particularly true of OMC directors

without a business background. Independent guidance from the estate property services provider (or management agent), the OMC's solicitor, accountant or auditor is essential to the orderly running of the company.

Company law, property law, fire safety regulations, insurance obligations, health and safety rules, and employment law are just some components of the regulatory framework within which OMCs operate.

## Legal requirements

Since the coming into force of Companies Act 2014 on 1 June 2015, the financial statements of most OMCs do not require an audit. This is because the majority are incorporated as companies limited by guarantee (CLG). However the rigour of the audit process can provide a level of assurance to OMC members – the estate property owners – in relation to spending on the shared spaces and services affecting the value of their properties. Under sections 334

and 1218 of the Companies Act, a member of a CLG may in effect demand that the company's accounts be subject to an audit.

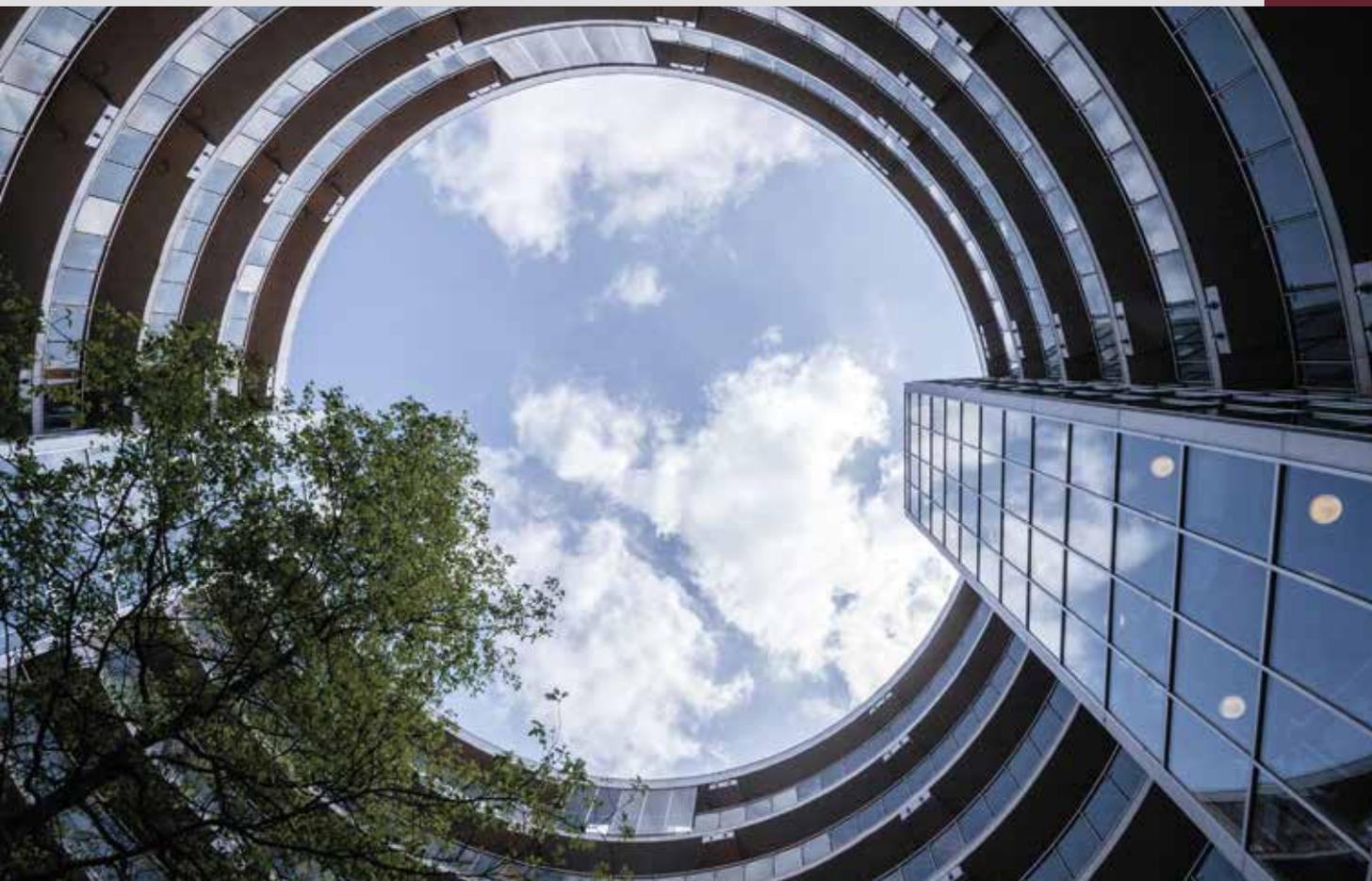
An auditor's letter to management is a valuable source of information and assistance for volunteer directors in their stewardship of the OMC's affairs. Consideration by an external party of financial trends, in particular progress with the recovery of service charge debts, and the accumulation of a sinking fund for future non-recurring expenditure, may help the directors with financial management.

Unpaid directors have the same duties in law as directors who are paid for their services, and they should ensure they are familiar with their obligations under the Companies Act. Section 228 of the act sets out a director's fiduciary duties. Of particular relevance are the requirements to avoid conflicts of interest, and to act in the interests of the company and its members as a whole.

Conflicts of interest can arise where persons connected with the estate developer or the management agent sit on the board of the OMC. The consequences of a breach of duties, including the potential for personal liability for a company's debts, should be understood by directors. Parts of the Multi-Unit Developments Act 2011, often referred to as the MUD Act, overlap with Companies Act 2014 provisions: for example, both require the holding of an annual general meeting.

Under section 8(3) of the MUD Act, home owners must provide the OMC with particulars including their name

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and address. In effect, this replicates the register of members required by section 169 of the Companies Act 2014.

The MUD Act governs voting rights within an OMC, while the Companies Act contains detailed provisions dealing with the conduct of meetings at which voting is undertaken.

An annual report that documents matters including OMC expenditure and budgets is required under section 17 of the MUD Act. This report mirrors aspects of a company's statutory financial statements.

The Office of the Director of Corporate Enforcement is responsible for encouraging compliance by companies (including OMCs), directors or other officers with the Companies Acts, identifying suspected misconduct, and taking enforcement action in cases of serious breaches. Legislation that

proposes a new Corporate Enforcement Authority is currently in draft format.

### Financial challenges

Evidence indicates that many OMCs face grave financial challenges. Research in 2018 by the Society of Chartered Surveyors Ireland points to a considerable gap in funding for the long term. In many OMCs, building maintenance or sinking funds are wholly inadequate or non-existent. This can be due to poor service charge collection rates, a failure to budget correctly for future capital commitments or a combination of both factors.

A recent report, *Owners' Management Companies, Sustainable apartment living for Ireland*, commissioned jointly by the Housing Agency and Clúid Housing, draws comparisons with equivalent apartment management

structures in four other countries and sets out recommendations for reform of the Irish regime. Removal of the audit exemption for OMCs is recommended, as is mandatory training for directors. A further recommendation is the prescription of a standard format for OMC financial statements.

The report also sets out measures aimed at improving the financial health of OMCs – for example, the exclusion of dispute resolution and debt recovery from the courts system – in favour of more cost-effective methods under the aegis of a regulatory authority. <sup>AB</sup>

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