Appendix 2

Template submission response.

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What are the positive features of the Act?

- The fact that there is this act is a very positive outcome for Irish democracy. That the legislation is now in operation for over three and a half years is also hugely positive, as is the large number of returns and the number of people registered as engaging in lobbying.
- The legislations itself is fairly comprehensive.
- The online register – which is easily accessible and free, and updated regularly. The free element is critical when compared to what happened in the UK.
- That so many people have registered as engaging in lobbying in three and a half years post-enactment. This is a positive outcome, and a clear indication that the legislation and its implementation is widely recognised and accepted. This is impressive, especially when compared to other jurisdictions that introduced regulations before Ireland – such as Israel or the UK. In both places the number of registered lobbyists is lower than in Ireland, despite both countries having larger populations.
- Lobbyists are not permitted to self regulate, as was the case in the UK for decades, which never seemed to work.
- That the legislation falls into the 'medium category' of international lobbying laws – which is a solid foundation for the first, non-amended iteration of the legislation. In time, as issues arise with the Act and suggestions are put forward, the legislation should be amended with the aim of strengthening the law. We have seen this trend in other jurisdictions, particularly across North America.
- The law draws heavily from the legislation in place in Canada, at the provincial and federal levels, which shows a willingness to learn from the experience of others. This, although it may seem normal or even mundane, is something a lot of places that have experimented with introducing lobbying regulations and legislation have failed to do. For example, the regulations in place in Australia at the federal and state levels, in Israel and in the UK, seem to have been introduced with little reference to the vast

experience of regulating lobbying to be found across North America. These countries all appeared to want to reinvent the wheel when it came to their own lobbying regulations, whereas in Ireland they are willing to learn from the experience of others, and to model the legislation on law that has worked well elsewhere.

- That, while not as strong as it could be, the legislation has brought a level of transparency to Irish politics that was previously absent.
- That the legislation is seen to be working has removed some of the stigma associated with doing lobbying in Ireland. Being a lobbyists we would argue is no longer a pejorative term. The public is slowly coming to regard it as any other profession that is regulated by the state.
- The cooling off period to prevent the revolving door to some extent blocks public officials from immediately becoming lobbyists and using information they acquired while working on behalf of the public to be put to use for private profit, or other private gain.
- Of course the cooling off period does not prevent former DPOs from doing any other jobs apart from lobbying – so there is still a world of opportunity out there for them.
- The fact that the legislation is now being reviewed again, 30 months after the first review was carried out, is a positive, as any problems that arise, like loopholes, can be amended and/or eliminated quickly.
- The website is very good. It also works fairly well on mobile devices. This makes it readily accessible to any citizen across the country or the world.
- The introduction of a code of conduct is also a positive development in encouraging adherence to industry norms and proper practices.
- The fact that the penalties set out in the act are being enforced. An act that seeks to regulate without enforcement is useless.

Does the Act fulfil the objectives it set out to achieve?

- It is the case that the regulations as implemented largely fulfil the objectives of the act as currently presented.
- This is evidenced by the high number of registrations and returns that have occurred since its introduction. And also by the fact that there appear to have been few breaches of the legislation.
- The fact that there is an act in place, and the resulting regulations, is clearly being accepted as the "new normal". It is very positive that the regulations of lobbying are being accepted as the new normal, as it is crucial that citizens know who is trying to influence their public representatives – the people who work for and in their interests.
- Because of the law, people are genuinely asking themselves if they are lobbyists and are taking this matter seriously – as can be seen from the high number of registrations on the lobbyist registers website.
- If this inculcates a stronger sense of, and respect for, public service in Irish society then all the better for our society as a whole.
- The law does not interfere with citizens meeting with their representative on matters pertaining to their own personal concerns as constituents.
- The fact that the annual reports on the Regulation of Lobbying from SIPO discuss such matters as offenses under Sections 20(1) and 20(2) of the Act make it clear to the wider public and those engaged in lobbying activity that the Registrar of Lobbying is enforcing the legislation and making sure compliance is taking place. The fact that breaches of the regulations are being punished and fined will work *pour encourager les autres.*
- The Act introduced a new level of transparency in relation to how decision makers access pertinent information regarding the policy development process. This new level of transparency, which includes information about who the key influencers and policy entrepreneurs are, who they represent, who they choose to approach and the consequent actions/policy initiatives is an important piece of the policy development puzzle. It is very positive that the public now gain insights into these decisions and actions.
- The issue in relation to whether or not the objectives of the legislation could have been more ambitious is a different question, but it is something that we feel is important to consider for the future, and any future amendments.

Much of the intent in relation to transparency and professionalization of lobbying activity appears to have been met, but it is timely to review this intent and to raise the bar even higher with every review of this legislation. Instead of looking to Canada again when it comes to amending the legislation, we would encourage you to look to the US and the more highly regulated jurisdictions there, such as Washington DC, California, New York and Washington State.

- It has been recognised that since the Act came into force, some companies are no longer lobbying for themselves, but instead are choosing to go through their industry associations in order to hide their presence in the lobbying process. While this form of camouflaging of lobbying activities is perfectly legitimate under the law, it points to how lobbyists are changing up their tactics and strategies. This trend will persist as lobbying tactics continue to evolve in the context of the new normal that came with the 2015 legislation, and as a result the legislation may need to be amended in order to ensure that transparency in lobbying is maintained.
- The 2015 Act was not a silver bullet that at one stroke resolved all of the issues Ireland has had with lobbying, transparency and accountability over the years. Instead, the Act needs to be seen as the first step in an iterative process, wherein amendments will follow as lobbying tactics and strategies evolve, some of which are aimed at circumventing the objectives and requirements of the legislation.
- While the introduction in late 2018 of the code of conduct is good, the danger with the code of conduct is that it gets bogged down in generalizations and vagueness. This is a problem we have seen with other codes of conduct in general.

Have any unintended consequences occurred, in your view?

- Nothing serious. And if there were any, the fact that the legislation will be regularly reviewed should prevent any problems from persisting for too long, provided there is a willingness to deal with them.
- We think that there was initially some confusion as to who was lobbying and who was not, and what was lobbying exactly. However, this is normal under the circumstances – in a country that had never before regulated lobbying or lobbyists. This led some to demand immediately, in a knee jerk fashion, that the act be watered down, which of course is the wrong response. But, we feel that the lobbying register has done a good job in informing the public as to what is and what is not lobbying, and in being seen to enforce the legislation.
- One of our considerations revolves around those bodies that are exempt from the legislation. Future iterations of the Act should consider fewer exceptions, and endeavour to try to include all representations, including those of particular interest and importance to public and state bodies. The principle of all policy influencers being identified in a clear and transparent way should be embraced. Future iterations of the legislation should seek to include state bodies, semi state bodies, and other publicly funded organisations so that the public and citizens of the country might be reassured that all policy development, review and implementation uses an approach that is transparent, equitable, fair and open. As such, a consultative process, similar to the process engaged in prior to the introduction of the legislation might need to be engaged in prior to an amendment of the legislation.

Do you think the Act can be improved in any way and, if so, how?

- We feel that the cooling off period for DPOs to become lobbyists could be extended further. It could also be a weighted cooling off period – 12 months for TDs, 24 months for ministers of state, and 36 months for cabinet ministers. For instance, there is a 2 year cooling off period for legislators in the state of Florida in the US and the province of Quebec in Canada. This extends up to 5 years at the Canadian federal level based upon their 2008 law. The longer the cooling off period the less incentive there is for public office holders to use what they learned as public servants for their own and other companies' private gain. Of course, this cooling off period in no way prevents them for taking up any other profession in the world, apart from being a lobbyist in the jurisdiction over which they had a key role in policy development/ review/ implementation.
- It could be a requirement for lobbyists and their employers to disclose their spending on lobbying activities. This is standard practice in the more strongly regulated jurisdictions across the US. For example, in states such as Washington State and California etc. this is standard practice. This is a higher level of transparency than exists in most other jurisdictions and something that Ireland could aspire to reach.
- A list of lobbyists who breached the regulation, and were penalised, should be put online for the public to see. This will serve as a warning to the public as to the practices of certain lobbyists, it will also encourage those lobbyists to act more ethically in future. The transgressions could be treated like a driver's penalty points system, and, in addition to fines, those points could be assigned to the profiles of the lobbyists when viewed on the register. Of course, the penalty points will eventually be wiped from the lobbyists' records – provided they do not transgress further in future. But, if a lobbyist beaches a certain threshold, like 12 points, automatic and significant fines could be imposed, as well as prison terms if justified.
- The level of fines in the current Act should be reviewed: €500 or €2,500 fines are just not enough to act as a real deterrent to misbehaviour. When we look at the Canadian federal legislation of 2008 we see that fines range from $50,000 up to $200,000, for failures to file returns or to deliberately file false information. Similar fines exist under the federal legislation in the US

– the Honest Leadership and Open Government Act 2007 – but the prison sentence is up to a maximum of 5 years. You need to have real disincentives for breaking the law, not a slap on the wrist. Even in Washington State, with some of the stronger regulations in the world – there are breaches of the rules, but offenders know that there are serious consequences if they are caught – which acts as a deterrence.

What suggestions for changes, if any, would you make?

- An app for the register's website might be a good idea, considering how much the internet is now accessed through mobile devices. This might make things even more user friendly and accessible.
- We think that the office of the Regulator of Lobbying could more fully utilise the YouTube channel they possess. In addition to providing guidance through the channel, they could make important announcements, and provide insights into how they plan to improve and evolve their office and the regulation of lobbying. Such a channel, one that is added to much more regularly than currently, could be a handy resource for lobbyists to subscribe to. The lobbying.ie Twitter account is already doing that, being regularly updated which is great.
- Lobbyists could be provided with identification cards by the regulator, with the proviso that they will expire after 5 years. These cards could be used as a form of ID by genuine lobbyists, and could be presented to any DPOs they approach on an issue in person.
- Fewer exceptions under the Act so that public bodies, state and semi state bodies etc. who perceive themselves to have a unique role in relation to how

they advise and lobby policy makers should be considered. **Greater transparency regarding who influences public policy needs to be the fundamental rationale for reviewing the legislation.** All influencers should be declared, along with an identification of their constituent bodies/ members so that there is increased transparency for all policy development; policy review, and policy implementation activities.

- This is not a change, but an important issue to hold the line on - it is vital to ensure that the cost of registration is kept free. Otherwise, the problems that exist in the UK, high costs to register, and as a result few registrations, could be imported here. Although the UK law was introduced a year before the Irish law, there have been less than one tenth the registrations there than we have had here. We have to hold to the North American standards – which have been proven to work.
- As the economy is in recovery and the national debt is declining, more resources could be devoted to the office of the Regulator of Lobbying. A slightly enlarged staff could have the ability to audit lobbyists as a means of spot checking their bona fides.
- Now that the law is in place and working, and the fact that it seems to draw heavily from the lobbying laws in place in Canada at the provincial and federal levels – all of which are medium strength regulations – consideration should be given to the stronger regulations in place in the US at the state and federal levels. This is because the US regulations are stronger than those in place in Canada, and the US has a much longer history of regulating lobbyists, going far back into the 19th century at the state level.
- An amendment to the legislation might be that former TDs and ministers who become lobbyists would not be entitled to use their access passes to Dáil Éireann for the duration of their time employed as lobbyists. This would withdraw from these former public representatives, now in private employment, a unique privilege that the public bestowed upon them as public representatives. They would not be entitled to use this public privilege for private gain, but they could take it up again once they had left the lobbying industry.

Please remember to include in your submission

* specific examples from your own experience which confirm your position where you are making points regarding the Act, and

* reasons for any suggestions for changes or improvements to the Act and sufficient and appropriate current evidence / data / examples to support these suggestions.