



Michelmores

Charities and the Companies Act 2006 Legal Update

Shivaji Shiva
10 February 2009



Michelmores



More than just lawyers

Key Themes

- Reviewing the governing document
- Meetings - managing the AGM and streamlining administration
- An update on the CIO

Amending the Governing Document

Charities Act 2006 – clarity on regulated alterations

- Objects
- Dissolution
- Trustee payment and benefits

What changes are necessary?

Opportunities to:

- relax rules and streamline admin
 - e.g. AGMs
- clarify the articles and avoid confusion
 - e.g. proxies
- ensure ‘a good fit’

Periodic review advisable

Key changes

- Trustee remuneration
- Electronic communication
- Conflicts of interest
- Notice periods
- Proxies – notice requirements
- Company secretary and AGM optional

Trustee Remuneration

- New rules since 27 February 2008
- Trustees may be paid for services, subject to usual safeguards
- Trustee must not be involved in the decision.
- NOT – employment of trustees, acting a trustee

=> Remove express prohibition?

Electronic Communication

Sections in force January 2007 include:

- Electronic/website notice of meetings
- Provision of information about the company on order forms, fax/email footers, websites etc.
- Electronic communications by the members to the company

=> include express provisions?

Directors' duties

- New statutory duties for directors
- Overriding duty to:
“act in the way he considers in good faith,
would be most likely to achieve the
company's purposes”

Directors' duties

- Act within the powers of the company.
- Promote the success of the company. *
- Exercise independent judgment.
- Exercise reasonable care, skill and diligence.
- Avoid conflicts of interest. *
- Accept benefits from third parties. *
- Declare an interest in a proposed transaction or arrangement.

* from October 2008

Directors' duties

Having regard, among other things, to:

- The likely consequences of any decision in the long term.
- The interests of the company's employees.
- The need to foster the company's business relationships with suppliers, customers and others.
- The impact of the company's operations on the community and the environment.
- The desirability of the company maintaining a reputation for high standards of business conduct.
- The need to act fairly as between members of the company.

Conflicts of Interest

- Direct financial gain or benefit
- Indirect financial gain or benefit
- Conflicts of loyalty

Conflicts of Interest

- Increased obligations for charitable companies

Authorisation by

- charity's governing document
 - NOTE: Companies Act s181
- Charity Commission
- Charities Act 1993 (as amended)

Conflicts of Interest

Practical steps:

- Policy on conflicts of interest
- A register of interests (?)
- Identify potential conflicts for new appointees
- A standing agenda item?
- Induction training

Fit for Purpose?

An effective charity:

“Reviews its organisational and trustee structures”

...

“Regularly reviews its governing document to ensure that it is up to date and that the trustees have the powers they need in order to achieve the charity’s objects and manage its resources;”

CC60 – The Hallmarks of an Effective Charity

Common problems

- ‘Object drift’
- Powers inadequate
- Membership – complex or vague rules
- Voting procedures
- Nomination procedures
- Redundant or convoluted clauses

Identifying Members

- Charities Act 2006, S29 A – new power for Commission to determine the membership of a charity.
- Legal advice still needed in most cases but a substantial simplification.

Register of Charity Mergers

- In force since 28 November 2007
- Details of every ‘relevant charity merger’ of which Commission is notified
- Vesting declaration – must notify
- Other relevant mergers – may notify
- After registration, gifts pass automatically

Meetings

- AGM – optional
- Notice – 14 days as standard
- Proxies – notice and management
- Written resolutions – easier to use
- Company Secretary - optional

AGM Planning

- An annual calendar?
- Board review of governance issues:
 - retirement and nomination
 - membership
 - auditors
 - resolutions (Commission consent?)
 - voting
- Practicalities – from venue to security

Other Companies Act changes

- Disclosure of trustees' addresses
- Minimum age of 16 for directors
- Electronic filings with Companies House
- Time limit for filing accounts – 9 months
- Memorandum and articles – new format

Further Information

- www.charitycommission.gov.uk
 - CC3: The Essential Trustee
 - CC60: The Hallmarks of an Effective Charity
- Legal Update:
charities@michelmores.com

Shivaji Shiva
Head of Charity Law

01392 687542

tss@michelmores.com

Michelmores



More than just lawyers
