

Tessa Hennessy Solicitor

Spring 2010 newsletter

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Charitable incorporated organisations

what's happening

The implementation of the much talked about new corporate legal form for charities, the charitable incorporated company (CIO), has been delayed yet again. It is now unlikely to be available before early 2011. CIOs will allow charities to incorporate (and to limit the liability of trustees) with the Charity Commission. Currently, charities which want the protection of limited liability have to set up a charitable company and are subject to dual regulation by both Companies House and the Charity Commission.

It will be possible for charitable companies (and community interest companies) to convert to a charitable incorporated organisation once CIOs are available. That said, it should be remembered that this is a new structure and there may well be teething problems. Unincorporated charities wishing to benefit from limited liability protection in the meantime should consider becoming a charitable company and possibly converting to a CIO in the future if there are clear benefits in doing so.

Charity Commission

changes to website

The Charity Commission has a new look website. It contains all the usual wealth of information including the on-line register of charities and appears to be user friendly. The Commission is positively encouraging more on-line communication with them, from registering a new charity on-line (there is no longer a facility for downloading the application form) to making annual returns and emailing rather than telephoning them. Of course for those of us used to the old site it is taking some time to find our way around the new one!

The Charity Commission's new web site can be viewed at:
www.charity-commission.gov.uk

Collaboration and merger

a growth area

Collaboration remains a hot topic in these tough economic times. Working with other organisations with similar aims can be an attractive proposition and can help reduce costs and ensure survival. The Charity Commission takes a permissive approach to collaboration and actively encourages charity trustees to look at opportunities to collaborate with other charities. Collaboration can take many forms from sharing premises/back office functions to delivering a contract jointly and other income generation initiatives.

Collaboration is often a precursor to merger; it is certainly a good way to get to know another organisation. Both the Charity Commission and NCVO have produced guidance on collaborative working and mergers which can be accessed on their respective websites.

There are a number of legal and governance issues which charity trustees should consider before entering into any form of collaboration; we can provide further guidance at Tessa Hennessy Solicitor.

Community interest companies *5 years on*

Community interest companies (CICs) will soon celebrate their 5th birthday; so far over 3,600 have been registered. CICs are a popular company form for social enterprises, a descriptive term for businesses which trade to meet a social need. CICs (which cannot be charities) must pass a community interest test which means their activities must benefit the community or a section of it. They are subject to "light touch" regulation by the Regulator of Community Interest Companies.

CICs have a statutory asset lock which ensures that profit distribution to investors and lenders is restricted. For CICs set up as share companies (as opposed to CICs limited by guarantee), the cap on dividends payable to investors has recently been raised. CICs can be used where a charity wishes to set up a trading subsidiary or as a joint venture vehicle when collaborating with another organisation.

A makeover for co-operative and community benefit societies

Industrial and provident societies have been re-named under the Co-operative and Community Benefit Societies and Credit Unions Act 2010 as:

co-operative societies

(formerly bona fide co-operatives); and

community benefit societies

(formerly societies for the benefit of the community)

The new Act also brings in some welcome regulatory changes but fundamental modernisation of the law governing this corporate form is still a long way off.

Is your governing document fit for purpose?

With so many changes to the law in the last few years, organisations may find that their governing document is out of date and no longer fit for purpose. Charitable companies may find that they are not complying with or taking advantage of new provisions in the Companies Act 2006 (these include important changes to directors' conflicts of interest). Charities (incorporated or not) may not be able to take advantage of the new regime brought in by the Charities Act 2006 such as statutory powers to allow payments to trustees for goods and services provided to their charity (subject to meeting various conditions set out in the Act).

Trustees should review their governing document at least once every five years to ensure that they have an up to date constitution which helps (and not hinders) them to achieve their mission. Trustees of unincorporated charities should also consider whether to incorporate to limit their personal liability and avoid possible claims by unpaid creditors if the charity becomes insolvent.

We can help you review your governing document and advise you on suitable legal structures so do contact us.

About us

Tessa Hennessy Solicitor

Tessa Hennessy Solicitor is a specialist legal practice providing advice on a range of constitutional, governance and regulatory issues for voluntary, community and co-operative organisations. Based in Oxford, the firm provides a responsive, personal and friendly service which includes legal advice and bespoke training for directors and trustees.

You can find out more information about Tessa Hennessy Solicitor by visiting www.tessahennessy.co.uk or by telephoning us on **01865 723727**.

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