

Understanding your constitution – what's REALLY important

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Charity legal structures

- Incorporated
 - Charitable company limited by guarantee
 - Charitable incorporated organisation
- Unincorporated
 - Trust
 - Unincorporated association

Key features of all governing documents

- Charitable objects
- Public benefit
- Non distribution/limited trustee benefit
- Prescribed dissolution clause

Objects

- The purpose for which an organisation is established
- Generally defines the beneficiaries and may include the area of benefit
- Must be wholly and exclusively charitable
- Satisfy public benefit test

Public Benefit

- Not defined in the Charities Act but based on case law
- Benefit aspect – a purpose must be beneficial and any detriment or harm that results from the purpose must not outweigh the benefit
- Public aspect – benefit must be to the public, or a sufficient section of the public

Altering Objects

- Need prior consent of the Charity Commission
- Good reason for change and any change must be as near as possible to the original objects
- Special resolution
- Change only takes effect on registration at Companies House

Trustee Benefits

- Expenses
- Interest on money lent to the organisation
- Payments to a company a trustee has an interest in
- Rent on premises
- Other payments with the consent of the Charity Commission
- Trustee indemnity insurance and indemnity provisions
- Payments to trustees for services and goods if:
 - A minority of trustees benefit, it is authorised at a Board meeting, the relevant trustee(s) do not vote and there is a written agreement

Connected Persons

- Provisions under the Charities Act and the Companies Act
- Examples of connected persons include: child, step-child, illegitimate child, parent, grandchild, grandparent, brother or sister of a trustee
- Spouse or civil partner of a trustee or any person above including a person they live with as if they were a spouse or civil partner
- A business partner of a trustee or any person above

Dissolution

- Charity with same/similar objects
- Specific charity/charities

Company Limited by Guarantee

- Legal personality and limited liability
- Members: key rights in law and under the Articles
- Directors/Trustees/Board/Council/
Management Committee: responsible in law for managing the organisation

Different Membership Models

- Foundation model – very restricted membership
- Moderately restricted membership
- Association model – extended membership

Key Documents

- Memorandum: company's name, registered office, objects, powers and liability
- Articles: contract between the members and the charity and essentially deals with the internal organisation of the company
- Standing orders/by laws/regulations: if any inconsistency with the Articles the Articles take precedence

General Meetings

- Purpose – what is your membership model?
 - Annual General Meeting (AGM)
 - General Meeting (GM)
- Quorum
- Calling
 - By directors
 - By 5% of members

Notice of General Meeting

- Standard 14 clear days notice period for GMs and AGMs
- 90% approval of meetings on shorter notice (previously 95% for GMs and 100% for AGMs)
- Shorter notice subject to the Articles

Electronic Communications

- Giving notice of meetings by email/fax/by website
 - Individual written or deemed consent required
 - Ordinary resolution/provision in Articles
 - All members entitled to hard copy within 21 days on request

Resolutions

- Types of resolution
 - Ordinary resolution – more than 50% of those voting
 - Special resolution – 75% of those voting
- Written resolutions require at least 75% for a written special resolution and more than 50% for a written ordinary resolution (irrespective of the Articles)
- Cannot be used to remove directors/auditors

Proxies

- Statutory right for proxy to attend, speak and vote at meeting irrespective of Articles
- Notices will need to enclose a statement that a proxy can be appointed – criminal offence not to include statement
- Proxy holding multiple proxies may vote once for a resolution and once against a resolution on a show of hands
- Proxy can cast multiple votes if there is a poll

Retirement of Trustees

- Terms
 - Indefinite
 - Maximum number of years in a lifetime or in a consecutive period
- Retirement
 - One third of the Board
 - Each Trustee resigns every “X” years

Removal of Trustees

- Companies Act provisions apply irrespective of whether contained in the Articles
- Ordinary resolution with special notice
- Cannot use a written resolution
- Additional provisions

Key features of the CIO

- Incorporated status
 - Legal personality
 - Limited liability
- Members
 - Key rights in law and under the Constitution
 - Members have a duty to exercise powers in the way in which “he believes in good faith would be the most likely to further the purposes of the CIO”

Different Membership Model

- Foundation model – very restricted membership
- Moderately restricted membership
- Association model – extended membership

General Meetings

- Purpose – what is your membership model?
 - Annual General Meeting (AGM)
 - General Meeting (GM)
- Quorum
- Calling
 - By trustees
 - By a percentage of members

Notice of General Meeting

- Standard 14 clear days notice period for GMs and AGMs
- 90% approval of meetings on shorter notice

Electronic

- Giving notice of meetings by email/fax/by website
- If email/fax given can be deemed as consent
- Provision in constitution
- No right to request hard copy

Resolution

- Types of resolution
 - Standard 50% + 1
 - Those required to be 75% at a meeting
 - Those as set out in the constitution
- Written resolution
 - Standard 50%
 - Those requiring unanimous decisions
 - Those as set out in the constitution

Proxies

- Optional – as set out in the constitution
- Could be prohibited
- Could be restricted

Retirement of Trustees

- Terms
 - Indefinite
 - Maximum number of years in a lifetime or in a consecutive period
- Retirement
 - One third of the Board
 - Each Trustee resigns every “X” years

Removal of Trustees

- As set out in the constitution
 - Voting percentages as you choose
 - Notice as you choose
 - If not in, no power

Common Problems with Governing Documents

- Complex membership joining rules
- Quorums for member meetings and Board meetings
- Nomination procedures
- Delegation powers to committees
- Inconsistent with current law e.g. proxy voting
- Conflicts of interest provisions

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