

Commercial participators

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Commercial participators

Any business that enters into a fundraising venture with a charity may be a "commercial participator". If this is the case, there are various rules both in the Charities Act 1992 (the "**1992 Act**") and the Charitable Institutions (Fund-Raising) Regulations 1994 (the "**1994 Regulations**") that will affect both the contractual documentation between the two entities, as well as the statements that the business must make to its customers.

What is a commercial participator?

A commercial participator is defined in the 1992 Act as "in relation to any charitable institution, any person (apart from a company connected with the institution) who (a) carries on for gain a business other than a fund-raising business, but (b) in the course of that business, engages in any promotional venture in the course of which it is represented that charitable contributions are to be given to or applied for the benefit of the institution".

This catches a number of arrangements, for example:

- a promotion by a Christmas card manufacturer that a percentage of the proceeds of sale of their cards will be paid to a named charity
- the sale of goods by a company that states a certain amount of money paid for a specific item will be paid to a named charity
- a "charity of the year" type promotion
- the sale of raffle tickets by a commercial entity, where a representation is made that a certain amount per ticket will be paid to a named charity.

What is the effect of being a commercial participator?

There are two main effects of being a commercial participator for a business:

- the business must have a contract in place with the charity or charities with which it is involved - this agreement must contain certain prescribed information as set out in the 1994 Regulations
- the business must make a clear statement to its customers that contains the information prescribed by section 60 of the 1992 Act.

It is an offence for a commercial participator not to comply with these rules. Therefore any business intending to enter into an arrangement of this kind should familiarise itself with these requirements to ensure they comply at all times.

What do the 1994 Regulations say?

Under the 1994 Regulations, contracts between commercial participators and charities must include the following information:

- the name and address of each party
- the date on which the agreement was signed by or on behalf of each party
- the period for which the agreement is to last
- any terms relating to the termination of the agreement prior to the expiry date of the agreement

- any terms relating to the variation of the agreement during the relevant time period
- a statement of the principal objectives of the agreement and the methods to be used to pursue those objectives
- if there is more than one charity involved, the proportions in which the various charities are to benefit from the commercial participator's promotion
- the proportion of the consideration for goods or services sold or supplied by the commercial participator during the course of a promotional venture that are to be given or applied for the benefit of the charity (if relevant)
- the sums by way of donations by the commercial participator in connection with the sale or supply of any goods or services sold or supplied by him which are to be given or applied for the benefit of the charity (if relevant)
- provision for any remuneration or expenses for the commercial participator and how these are to be calculated.

Any funds or property due to the charity must be paid over to the charity within 28 days (or such other period agreed between the parties) and must be securely held by the commercial participator in the meantime.

The 1992 Act

The area that many commercial participators find harder to comply with is the statement required under section 60 of the 1992 Act which has recently been amended by the Charities Act 2006 and is intended to make it clear to the general public how much of their money will be going to charity.

This section requires a commercial participator to state:

- the name of the charity or charities which will benefit from the promotion
- the proportions in which different institutions are to benefit (if more than one)
- the method by which this remuneration is to be determined and the "notifiable amount" of that remuneration.

In this context, "notifiable amount" means:

- the sum representing however much of the money paid by the public for goods or services sold or supplied by the commercial participator is to be given to or applied for the benefit of the charity concerned
- the sum representing so much of any other proceeds of a promotional venture undertaken by the commercial participator as is to be so given or applied to the charity concerned
- the sum of the donations by the commercial participator in connection with the sale or supply of any such goods or services which are to be so given or applied to the charity.

This means that it is not sufficient to indicate that a vaguely worded percentage of proceeds will be donated to the charity - a specific sum must be mentioned. This can prove awkward in some situations, where it is difficult to determine how much a promotion will raise for a charity, but a commercial participator must at least provide a realistic estimate of how much the charity can expect to receive.

The Office of the Third Sector has produced guidance on the phrasing of such statements - this is available on their website:

www.cabinetoffice.gov.uk/third_sector/law_and_regulation/fundraising_and_collections.aspx

Other guidance

Many larger charities will be members of the Institute of Fundraising. As part of their membership, they will have to comply with the various codes of practice produced by the Institute, which provide guidance for charities on how they should deal with commercial participators. As a result of this, commercial participators are often obliged under their commercial participator agreements to comply with relevant codes of practice. Even for those charities who are not members of the Institute, the codes of practice are useful guidance on best practice in this area. Copies of all the codes are available on the Institute's website at:

<http://www.institute-of-fundraising.org.uk>.

Further advice

This note provides general guidance only. You should not rely or act upon it without taking advice on your specific circumstances.

For further information please contact Con Alexander (calexander@vwv.co.uk / 0117 314 5214) or your usual contact at Veale Wasbrough Vizards.

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