

Contracting with charities

December 2009

Con Alexander
Partner
E-mail: calexander@vww.co.uk
DDI: 0117 314 5214
Reference: ca



Contracting with charities

During the course of its normal day to day activities, or as a result of a specific promotion or fundraising exercise, a business may end up contracting with charities. Similarly, individuals may contract with charities, for example in the context of a property transaction. There are issues that all businesses, and indeed individuals, should consider when doing so.

What type of charity is involved?

The first thing to determine when contracting with a charity is the type of entity involved. Is the charity a corporate entity, or unincorporated? If unincorporated, is the charity a trust or a unincorporated association? The way in which a charity is described in a contract and the way it will sign the contract will depend on the type of legal entity involved.

Corporate charities

Many charities are now companies limited by guarantee. These will be described in any contract in the same way as normal companies limited by shares (except that not all corporate charities use the word "Limited" after their name).

Unincorporated charities

If the charity is a trust or an unincorporated association, it will not have a separate legal personality. It will generally only be able to enter into contracts in the names of its individual trustees or the names of the members of its management committee, acting as charity trustees of that particular charity.

Execution requirements

Charitable companies

Charitable companies will generally execute agreements or deeds in the same way as commercial companies in accordance with the provisions of the Companies Act 2006. Be aware, however, that some corporate charities may have special provisions in their articles of association that govern how they execute documents and the necessary investigations should be made to establish whether this is the case and, if so, whether the Charity has complied with these restrictions.

Unincorporated charities

Unincorporated charities can only execute documents through their individual trustees or management committee members. Sometimes this can mean obtaining a large number of signatures - however, the Charities Act 1993 contains a mechanism that makes it easier for unincorporated charities to enter into documents. Under section 82 of the 1993 Act, charity trustees can delegate signing responsibilities to two or more of their number. Clearly this will make matters easier for the entities involved, but it is important to ensure that, if a resolution of this kind is being relied on, the business is provided with a copy of the charity's constitution and a copy of the resolution to enable it to check that whatever document it is entering into with the charity is executed properly.

Capacity

A second point to take into account is whether the charity involved has the legal power to enter into the arrangements that are proposed. This will depend on the terms of its memorandum and articles, its trust deed or its rules.

In the context of a charitable company, a person cannot rely on section 35A of the Companies Act 1985 and assume that the directors are not limited in their actions under the company's articles - this provision is specifically disapplied in the context of charitable companies. Instead, contractors should specifically ask the charity in question to confirm it has the power to enter into the relevant arrangements.

Neither are there any such assumptions for charitable trusts or unincorporated associations - if in doubt, the contractor should make all enquiries necessary to ensure that the charity is doing something it has the power to do within its trust deed or rules.

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.

To see our other publications visit our website at www.vwv.co.uk.