

## **Companies Act 2006 – The Impact on Charitable Companies**

Most of the Companies Act 2006 is already in force, and later this year the last set of its provisions will take effect. The Act's deregulatory measures may help with the administration of your charity – but there are some new laws your trustees may need to know about.

The main areas which affect charitable companies relate to directors' duties, conflicts of interest, and a company's constitution and administration.

The Act has already introduced a statutory code of duties for directors, who in the case of a charitable company are the same individuals as the charity trustees. The directors' duties are:-

- To act within their powers
- To promote the success of the company
- To exercise independent skill and judgement
- To exercise reasonable care, skill and diligence
- To avoid conflicts of interest
- Not to accept benefits from third parties
- To declare interests

In the case of a charity, the promotion of the success of the company means to promote it in order to achieve the success of its charitable purposes.

The duty to disclose and manage conflicts of interest in transactions or contracts is already an established duty for charity trustees and company directors. The Act introduces a new duty for directors to avoid a situation in which he has a direct or indirect interest that conflicts with the interests of the company.

This type of "situational" conflict might include one where a trustee/director is also on the board of another company which is a competitor of the charity; where he is also a professional adviser to the charity, and so is wearing "two hats"; or where he is married to an employee of the charity or owns land which could be affected by the charity's activities.

Under the Act the board of a charitable company can only authorise such conflicts of interest if permitted to do so by the charity's Memorandum and Articles. We are advising such charities to review their constitutions and if necessary adopt in their Articles the provisions to enable the board to authorise such conflicts if it is in the best interests of the charity to do so.

The Act also introduces enhanced proxy rights for members – they now have a statutory right to appoint a proxy to attend general meetings and to speak and vote on their behalf, a right which can no longer be excluded by the company's Articles.

A review of your company's Articles may also be worthwhile as the Companies Act 2006 also introduces several deregulatory measures which could reduce the administration costs of running the company. For example, it is no longer necessary to hold an annual general meeting every year or to have a company secretary. If you do hold general meetings of members, the notice period for all such meetings is reduced to 14 days, whatever type of resolution is proposed.

A written resolution no longer needs the unanimous approval of all the company's members – ordinary resolutions can be passed with a simple majority of over 50% and special resolutions with a 75% majority.

Companies can also now use electronic means to communicate with their members, for example, for the circulation of the annual directors'/trustees' report and financial statements, and notices to members. This could produce considerable savings in printing and postage for charities with large membership bodies.

From October 2009 directors should be able to use a service address instead of a private residential address for the Companies House public register. Also in October 2009 a new company's constitution will move to a single document format and consist only of the Articles of Association, which will include the company's objects. The traditional Memorandum of Association will comprise a simple formation document filed on incorporation.

**Lancaster Parr** is experienced in the review and revision of a company's Articles – To ensure compliance with the new regulatory provisions and to take advantage of the new deregulatory measures, contact us on 01749 850276, or e-mail [rhparr@lancasterparr.co.uk](mailto:rhparr@lancasterparr.co.uk) to discuss your requirements and obtain a good value costs estimate.