

ISLE OF MAN CHARITIES CHECKLIST

Checklist for setting up a charity in the Isle of Man

This checklist provides a summary of the matters which should be taken into consideration when setting up a Manx charity.

1 Object / Charitable Purposes

Have the promoters of the charity determined precisely what its object is to be?

Is the object 'exclusively charitable according to the laws of the Isle of Man?'

To be a charity, an organisation must have purposes which are charitable (see Notes below). Voluntary organisations are not necessarily all eligible to register as charities, and organisations with paid staff may be eligible to register.

Charitable purposes are usually defined under 4 headings:

- Relief of poverty (now defined more broadly as relief of financial hardship)
- Advancement of education
- Advancement of religion
- Certain other purposes beneficial to the community

However for registration purposes it should be noted that the final decision regarding charitable status on the Isle of Man lies with the Central Registry.

Non-Charitable Purposes

Purposes which are not considered to be charitable

- Where they are for the benefit of one named person or a group of specified individuals
- Where the beneficiaries have a personal relationship, e.g. a family trust
- Where the beneficiaries have a contractual relationship, e.g. employees or members of a professional institute - except where there is financial hardship when beneficiaries can come from a more restricted group, an employer can set up a charitable trust to help former employees in times of need or a professional institute can set up a benevolent fund
- Purposes which are illegal or could assist or aid illegal purposes
- Political or propagandist activities
- Any purpose which is against the public interest

2 Name

If the charity is likely to be registered, have the promoters checked that the proposed name is acceptable to the Central Registry?

The [Charities Registration Act 1989](#) states that any institution which in the Island, or any Manx institution which in the Island or elsewhere *'takes or uses any name, style, title or description implying or otherwise pretends, that it is a charity; or holds itself out as a charity'* must be registered as a charity.

If a charitable company wishes to incorporate without a designated suffix (*Ltd* or *Limited*) the proposed company will also need to apply for a licence from the Attorney General (prior to incorporation).

The registration of companies in the Isle of Man is undertaken by the Companies Registry.

3 Area of benefit / Connection with the Isle of Man

Will the benefits of the charity be restricted to persons connected with a particular place or area?

All charities registered in the Isle of Man must have a *'substantial and genuine connection with the Island.'*

Examples of a substantial and genuine connection with the Island are:

- Raising funds on the Island to provide charitable services for people or animals resident on the Island
- Raising funds on the Island, by an Island-based committee, to send elsewhere where needed, e.g. help to third world countries
- Raising funds on the Island, by an Island-based committee, to send to a parent charity in another country, usually England. The parent charities can include medical research and aid charities, and charities raising funds for the relief of poverty and for other charitable purposes
- An Island-based committee receiving funds from outside the Island, for example from charitable trusts or foundations which have been specifically set up to use these funds for charitable purposes on the Isle of Man

The final decision regarding whether an institution applying for registration has a substantial and genuine connection with the Island lies with the Central Registry.

4 Finance

Will the charity be funded by:

- the gift or endowment of an individual donor or group of donors?
- casual or periodical donations or subscriptions made by members of the public?
- grant(s) from public or charitable funds?
- trading activities?

Commercial trading activities are permissible only if they are casual or irregular. Permanent trading is regarded as a non-charitable activity unless it is a direct means of achieving the main object of the charity; e.g. the sale of goods produced by the beneficiaries of a sheltered workshop.

- one or more of the above?

5 Trust instrument

Will the charity be established and governed by:

- a deed (or will) declaring charitable trusts?
- the memorandum and articles of association of a limited company?
- the rules or constitution of an unincorporated association?
- some other form?

6 Control and management of the charity

Are the 'charity trustees' to be:

- the individuals comprising the trustee body (charitable trust deed)?
- the board of directors (limited company)?
- the members of the managing council or committee (unincorporated association)?
- some other body?

7 Charity trustees

- Have the first trustees been selected?
- Have they all expressed their agreement to act?
- What will be their normal term of office?

It is preferable not to appoint trustees for indefinite terms. Continuity will be improved if the terms of office are staggered; e.g. by appointing some of the first trustees for periods of office longer than those of others.

- Is provision to be made for:
 - any 'ex officio' trustee?
 - the nomination of any of the trustees by any person or authority?
 - the election of all or any of the future trustees, e.g. by the members of an unincorporated association?
 - the co-option of trustees?
- Do any of the trustees reside overseas?

It is preferable for the majority of the trustees to be resident in the Isle of Man so that the charity is clearly subject to the control of the Isle of Man Courts of Justice in the exercise of the court's jurisdiction with respect to charities and powers conferred on the Deemsters by the [Charities Registration Act 1989](#)

- Will new trustees be appointed:
 - by the donor or settlor only during his lifetime?
 - under the trustees' statutory powers?
 - by a resolution of the trustees recorded in their minutes and signed by the new trustee?
 - in some other way?
- Is provision to be made for the removal of a trustee?
- If so, in what circumstances and by what procedure?

8 Responsibilities as a Charity Trustee

- All officials of charities, whether they are members of a committee, trustees of a charitable trust, directors of a charitable company, or officials with any other titles, are Charity Trustees. Charity Trusteeship involves legal responsibilities and duties, and failure to carry out these duties may result in criminal prosecution
- Once a charity has been registered, it cannot be disbanded simply because the people running it decide that they no longer wish to continue. Charities can only be deregistered where there is no longer a need for the services provided by the charity, or if the charity has exhausted its endowment, i.e. no longer has any funds
- Accounts have to be filed at the General Registry, each year, within 6 months of the financial year end. It is essential to keep proper records of all the income and expenditure of the charity, so at least one of the team members should be competent and experienced in book-keeping and preparation of accounts
- The formal structure of the organisation should be carefully considered (see Type of Organisation below)
- A knowledge of the relevant legislation is essential to avoid breaking the law - the [Charities Registration Act 1989](#) is the most important Act to become familiar with. It is a good idea to become familiar with the contents of other charity legislation, so that you can ensure that your charity stays within the law at all times. Breaches of the charities legislation can lead to criminal prosecution of Charity Trustees, with the possibility of fines or imprisonment if convicted.

Charity Trustees should familiarise themselves with any legislation which may affect the charity (see Legislation below).

9 Type of Organisation

You will need to decide whether to set up your charity as an Unincorporated Association, a Charitable Trust, or a Limited Company.

Unincorporated Association

This is the most usual type of organisation for small to medium charities. The charity is run by a committee, and its governing instrument (the document which sets out the objects of the charity and how the charity will be run) is a constitution (or Rules).

A constitution should contain the following:

- Name of the charity
- Objects of the charity
- Management: Executive committee membership, meetings, administrative and organisational information
- Accounts: duties of Treasurer, preparation of accounts, appointment of auditor
- Restrictions on payments to committee members by the charity
- Property: should be vested in a small group of trustees, who should have specified duties in relation to the charity's property
- Powers of trustees to lend or borrow money, if appropriate
- Annual General Meetings and Extraordinary General Meetings: timing of meetings, calling meetings, agendas, notice to members of meetings
- Quorum: details of quorums required for committee and general meetings.
- Voting: eligibility to vote, method of voting - e.g. by show of hands or secret ballot
- Termination of membership of any member of the charity
- Complaints and disciplinary procedures
- Powers to amend the constitution
- Procedures for dissolving the charity

Trust

A Trust is run by trustees, and its governing instrument is a Trust Deed.

Limited Company

If a charity is a large organisation, which will own property, employ staff, provide charitable services under contractual agreements and enter into commercial contracts, it may be appropriate to form a limited company. Most charitable companies are Companies Limited by Guarantee.

10 Property

- Will proper arrangements be made for the banking of cash and the signing of cheques and orders?
- Will land and/or securities be vested in:
 - the charity trustees?
 - a nominee appointed by or on behalf of the charity trustees?

11 Powers

- What specific powers, if any, are to be given to the trustees?

These may include powers:

- to invest trust property or exercise investment powers in ways other than those authorised by statute;
- to acquire land and buildings for use in specie;
- to let or sell land which is settled for use in specie and to apply the rent received or the net proceeds of sale;
- to insure trust property to the full value;
- to employ staff;
- to appoint a committee and delegate powers of management to it;
- to borrow money whether or not on the security of trust property;
- to appeal for funds or invite contributions;
- to remunerate a trustee for his services either as a trustee of the charity or in some other capacity;

Remuneration is only possible in exceptional circumstances, and it must be expressly and clearly authorised in the trust instrument. Therefore a professionally qualified trustee may be authorised to charge for professional services rendered to the charity, but not for carrying out their normal duties as a trustee. In special cases, trustees may be appointed as salaried officers of the charity if they have particular qualifications for the work of the charity; e.g. teachers in training schools, medical advisers, actor-managers etc. Any unauthorised or excessive remuneration of a trustee may be regarded as an application of the charity's funds for a non-charitable purpose, and therefore a breach of trust.

- to make rules and regulations for the management of the charity;
- to vary the trusts of the charity or amend its rules and regulations.

The inclusion of a power to amend the charitable object itself is normally undesirable. It may result in the loss of charitable status (if the amended object is not exclusively charitable) or in the creation subsequently of two separate charities (where the existing funds continue to be held on the original trusts).

- Is any power to be given to the trustees to dissolve the charity and reallocate its funds to other charitable purposes? If so, by whom and in what manner is such a power to be exercised? In particular, what voting or majority rights are to be secured in this connection?
- As to the trustees' power of delegation it is often useful for a large trustee body to delegate specific investment decisions to a committee, but the entire responsibility for the management of a charity's funds cannot be delegated. Any committee appointed should consist of all or a representative number of the trustees and should report its proceedings to the trustee body.

12 Indemnity Insurance

Is it intended to include provision for insurance to protect the trustees from personal liability? If so, can this be justified:

- because of the size of the risks involved in administering the charity?
- because of the nature of the activities?
- because trustees cannot be found unless such insurance is provided?

13 Registration

Is the charity exempted from the requirement to register (see Charities (Exemption) Regulations 2008)?

The Central Registry is the joint regulator of charities in the Isle of Man in conjunction with HM Attorney General's Chambers.

The Central Registry has specific statutory roles in relation to the registration of charities and the receipt of statutory statements, accounts and other documents in relation to charities.

HM Attorney General's Chambers has specific statutory roles in relation to acting for the protection of charities, taking action to enforce legal requirements placed on Trustees and exercising his statutory powers to authorise certain steps by charities.

Once a charity has been registered its constitution can only be changed following an application to the Court.

A charity may apply to be deregistered in the following circumstances:

- There is no longer a need for the services provided by the charity;
- The charity has exhausted its endowment, i.e., it no longer has any funds.

14 Legislation

The most relevant legislation in relation to Charities and Charity Trustees in the Isle of Man includes:

- [Charities Act 1962](#)
- [Charities Act 1986](#)
- [Charities Registration Act 1989](#)
- [Charities \(General\) Regulations 1990](#)
- Trustee Act 1961
- Trustee Act 2001
- Recreational Charities (Isle of Man) Act 1960
- Charitable Collections (Regulations) Act 1939
- Interpretation Act 1976, Section 3

Charitable Purposes

Relief of Financial Hardship

To be classed as charitable, financial assistance may only be given to people in genuine financial need. Financial need may arise for a variety of reasons, which include old age, illness, disability, unemployment, accident, family problems. The need may be long-term and ongoing, or temporary.

In this category, it is permissible for a charity to restrict benefits to a smaller group of beneficiaries, for example, to help ex-employees of one employer.

Benefits may include financial help, food, clothing, assistance with or provision of housing, advice, or help to other organisations providing help directly to people suffering financial hardship.

The Advancement of Education

Education is a charitable purpose, whatever the financial status of the beneficiaries, and whether fees are or are not charged. Thus, schools, colleges and universities may be charitable as long as they are not run for profit.

Other educational purposes include:

- Provision of playgroup facilities
- Provision of facilities for physical education, i.e. sports facilities (Note that the promotion of sport itself is not a charitable purpose.)
- Provision of facilities for recreational education, including hobbies (to be charitable they must have educational value)
- The arts, e.g. museums, art galleries, concert halls, libraries, arts festivals (There must be public educational benefit, recognisable standards of artistic merit, and they must not be run for profit)
- Conservation, where education is a significant part of the organisation's activities - this can include zoos and other animal charities, e.g. rare breed societies; preservation of endangered species of animals and plants; industrial museums; steam railways; collections of various artefacts e.g. toys, musical instruments, vintage farm machinery, etc. (To qualify as an educational charity, there must be educational benefits to the public)
- Research, as long as there is public benefit

The Advancement of Religion

1. The religion must be founded in a belief in a supreme being or beings. However, Buddhism is also regarded as a religion, even though there is no belief in a supreme being.
2. The belief must be expressed through worship of the supreme being or beings.
3. There must be a benefit to the public. Thus, enclosed orders may not be registered as charities, unless their activities include practical benefits to the community, for example, where members are involved in good works and/or advancement of religion in the community; parts of the building in which they live are open to the public for religious and other charitable purposes.
4. It must not undermine accepted bases of religion and morality, and must not be in any other way against the public interest. Thus, for example, organisations involved in Satanism or black magic could not obtain charitable status.

Other Purposes Beneficial to the Community

This is a very wide heading, and covers many different activities, as long as they can be shown to provide a public benefit.

Examples of charitable purposes under this heading include:

- Provision of recreational facilities which are open to everyone
- Provision of recreational facilities for particular groups, such people with disabilities, elderly, etc.
- Protection of heritage, where the public has reasonable access to the property
- Protection of the environment, including prevention of pollution, promotion of better methods of dealing with waste
- Animal charities, e.g. organisations aiding animals, providing homes for stray animals, promoting better standards of care towards animals etc. (Note that anti-vivisection groups cannot be charitable because achieving their objects could result in disbenefits to human beings)
- Mental and moral improvement of the public
- Promotion of racial harmony
- Promotion of industry, commerce, agriculture and art, as long as the purposes are for the general benefit of the public, not for the benefit of individuals
- Improvement of standards of craftsmanship and design
- Relief of problems brought about by old age, sickness, disability, where there is no financial need
- Resettlement and rehabilitation of offenders and drug abusers
- Help for disaster victims, where help is given on the basis of proven need

The Role of Charity Trustees

The trustees have ultimate legal responsibility for the direction and strategic leadership of a charity. In that capacity they have significant legal duties and if they fail to carry out those duties, they have potential legal liabilities.

Charity law imposes duties on trustees because they hold a position of utmost trust, which must be carried out with honesty and integrity. Trustees are subject to the overriding general legal duty to act in what they honestly believe to be the best interests of their charity, and that charity's charitable purposes.

The trustees must ensure that the charity remains solvent and is able to meet its financial obligations.

It is worth noting that designated businesses which are defined by the Isle of Man Financial Services Authority as "any person who undertakes the business as defined in Schedule 1 of the Designated Business (Registration & Oversight) Act 2015" such as "the activity of a specified non-profit organisation as defined by Schedule (1) (1) (f) of the Proceeds of Crime Act 2008" (means a body corporate or other legal person, the trustees of a trust, a partnership, other unincorporated association or organisation or any equivalent or similar structure or arrangement, established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social or fraternal purposes with the intention of benefiting the public or a section of the public which has –

(a) an annual or anticipated annual income of £5,00 or more; and

(b) remitted, or is anticipated to remit, at least 30% of its income in any one financial year to one or more ultimate recipients in or from one or more higher risk jurisdictions;

Such designated businesses are required to submit completed registration forms by the 26th April 2016.

What forms can an incorporated charity take?

The short answer

An incorporated charity has a legal personality distinct from its members and trustees. It has the legal capacity to do many things that a natural person can do. It often has rights, liabilities and obligations separate to and independent of its members. The liability of individual members is usually limited. The term includes company charities, Industrial and Provident Societies and companies formed by royal charter or other instrument. It is anticipated that incorporation as a Charitable Incorporated Organisation will become an option for charities in 2012. Most charities that incorporate do so as companies limited by guarantee.

In more detail

This guidance focuses on incorporation as a company limited by guarantee under the Companies Act. At present this is the most common form of incorporation adopted by charities.

Incorporation as a company limited by shares is not generally a suitable structure for charities as shareholders are usually entitled to dividends and to a share of the net assets of the company on dissolution. In a charity, all the assets are held for charitable purposes and must not be distributed to the members of the company.

Most incorporated charities are therefore constituted as companies limited by guarantee. The members of a company limited by guarantee do not buy shares in the company in the way that shareholders do. Instead, they agree to contribute a small amount, the guarantee, usually £1 to £10 in the event of the company going into insolvent liquidation. The articles of association of such company charities also include an 'asset lock' which prevents members withdrawing value from the company for their own benefit

When should a charity consider incorporation as a company?

The short answer

It may be appropriate to establish a company where some or all of the following apply:

- the charity is or will be quite large
- the charity has or will have employees
- the charity does or will deliver charitable services under contractual agreements
- the charity does or will regularly enter into commercial contracts
- the charity is or will be the owner of freehold or leasehold land or other property

In more detail

As the scale and complexity of a charity's activities increase so will the financial risk. The main advantage of a company is that it offers some protection from personal liability to trustees and members.

A company charity is a legal person in its own right, quite separate from the trustees/directors and the members of the company. When a company enters into a contract, unless the trustees/directors were negligent or acted improperly in setting up the contract, the company will be liable for any debts arising out of the contract. The trustees/directors are only likely to be liable themselves for debts if they have acted wrongfully or fraudulently or entered into personal guarantees with the charity's creditors.

Incorporating the charity as a company will not protect charity trustees from any personal liabilities incurred by them on behalf of the charity prior to the date of its incorporation, or incurred using out-of-date pre-incorporation stationery.

As a legal person in its own right, a company can hold land, investments or other property. Once a company is registered as the owner of a property, then that title will continue until the property is sold or otherwise disposed of, or until the company is wound up.

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