



## THIRD SECTOR LAW NEWSLETTER – WINTER 2011

**WELCOME** to the winter edition of **Third Sector Law** covering issues affecting Charities, CIC's, CIO's, Trusts and Associations.

With the economic situation continuing to cause concern, many third sector organisations are having to find more creative solutions to plug gaps in funding. In this issue we are looking at two key areas; Working in Partnership and Governing Documents.

We hope you enjoy reading the newsletter and that the articles are of use. Our next issue will be out in Spring, if there is any particular issue you would like covered, or any jargon you want "busting", please email us at [thirdsector@jstlaw.co.uk](mailto:thirdsector@jstlaw.co.uk)

### WORKING IN PARTNERSHIP

As a result of the economic climate many organisations are looking at new ways of working together. This can be a one off partnership for a specific project or a more permanent amalgamation, such as merger.

Partnering is a complicated area of law and organisations can unwittingly find themselves subject to legislation such as the Partnership Act 1890 without even realising it. Getting agreement in writing is important if organisations don't want to find themselves liable for failures of their partners, inevitably leading to financial and reputational damage.

Firstly organisations should check that they have the legal power to enter into a partnership arrangement. For charities this will include ensuring that the collaboration furthers their own charitable objects.

Organisations will also need to consider what type of collaboration will work for them as there are a variety of options available.

A straight forward Memorandum of Understanding ("MoU") may suffice if there is little risk and you are simply collaborating on, for example, best practice. However there is a common misconception that MoU's are not legally binding. Whether a contract has been formed will, amongst other things, depend on the

intentions of the parties. Therefore careful drafting of the document is required.

Many organisations are considering a Consortia Model. As partners can become liable for the actions of other partners it is important to have a partnership agreement in place. In addition if funding is being sought then it is likely that one of the partner organisations would need to act as accountable body whilst they subcontract (often through service level agreements) the delivery by the other partners.

An alternative model is a joint venture company. This means that the partner organisations set up a wholly separate legal entity of which the partners are either members or shareholders. This can be a particularly useful option where there is significant reputational or financial risk.

For some organisations, merger offers the best way forward and directors and trustees should take professional advice early on as there is a raft of legislation that they will need to comply with to achieve it.

This is obviously a very simplified version of what is a very complicated area of practice. If you need advice or help with your partnership working then please contact us at [thirdsector@jstlaw.co.uk](mailto:thirdsector@jstlaw.co.uk)

## GOVERNING DOCUMENTS

Reviewing a charity's governing document is far down the list of priorities for today's charities. But trustees should be aware that charities ignoring these important documents can find themselves operating unlawfully.

The 'objects' of a charity essentially set out what the organisation was set up to do, who its beneficiaries are and where it is permitted to operate geographically. Trustees need to know these restrictions when they are seeking to develop new income streams to tackle the latest round of funding cuts.

Good practice dictates that a charity and its trustees should be familiar with their governing document (referred to as the Memorandum and Articles if it is a limited company\*). Not only should trustees ensure they understand the organisation's objectives, but also the powers the organisation has to attain those objectives and how the powers can be exercised. The governing document will set out important operating rules, such as how many people need to attend meetings in order for decisions to be valid and how the management committee is elected. Essentially the document dictates much of the charity's operational framework.

The recently implemented 2006 Companies Act and the 2006 Charities Act may also offer an opportunity for many charities to update their governing document and take advantage of some of the changes introduced. For example: electronic communication of resolutions can speed up decision-making but many older governing documents will not allow for this automatically.

A review of your governing document is a useful way of familiarising yourself with your charity's rules and also consider whether they can be updated to make the operation of your charity smoother in these tough economic times. A good starting point are the following questions:

1. What can you do and what do you want to do?
2. How easy is it to convene meetings?
3. Do you know who your members are; do you have a register of members?
4. Do the assets of the charity carry restrictions e.g. - in law (endowment) or funding conditions (specific purpose)?
5. Does the organisation trade lawfully?

(\* Recently constituted limited companies will have all of their rules contained within their Articles)

## JARGON BUSTER – What is a CIC?

With so many acronyms these days, clients are often confused about what different terms mean. In this issue we are giving a quick once over on CIC's.

A CIC is a Community Interest Company and is a new type of legal structure that was introduced in 2005 to assist organisations that wanted to be identified as social enterprises. Generally it is used by organisations that are driven by public or community benefit rather than by profit although that is not to say they are not profitable!

A CIC is set up in a similar way to a normal limited company and can be either Limited (Ltd) by shares or by guarantee.

CIC's, unlike charities, can pay their board members and can also be useful structures to attract investment. However there are also special restrictions for CIC's such as an asset lock which restricts what you can do with assets of the organisation, a limit on distribution of dividends and a requirement to pass a community interest test which requires approval by the CIC regulator.

If you would like more information or advice on becoming a CIC please contact us.

## BREAKFAST WORKSHOP

JST are running a free breakfast workshop on Understanding your Memorandum and Articles on Thursday 10<sup>th</sup> February 2012 at their offices in Liverpool. Please visit our [website](#) or email [events@jstlaw.co.uk](mailto:events@jstlaw.co.uk) to book a place.

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