

A Basic Guide to Running a Small Charitable Company

Wright Hassall LLP

Olympus Avenue
Leamington Spa
Warwickshire
CV34 6BF

Tel: 01926 886688
Fax: 01926 885588
Email: mark.lewis@wrighthassall.co.uk



INVESTOR IN PEOPLE



Contents

	HEADING	PAGE
1.	What are the Constitutional documents of a company?	1
2.	Limited by shares or limited by guarantee?	2
3.	What administration is required?	2
4.	Who is responsible for company administration?	3
5.	Do we have to have a company secretary?	3
6.	If we do have one, who can we appoint as company secretary?	3
7.	If we appoint a company secretary, are they also a director?	4
8.	Who can sign administrative documents on the company's behalf?	4
9.	Who does a company secretary report to?	4
10.	Can we outsource the filing and record-keeping requirements in the Companies Act?	5
11.	What information do we need to send to Companies House?	5
12.	What are the requirements for company stationery?	7
13.	What are the requirements for the company's registered office?	7
14.	What are the company's statutory books and records?	8
15.	What legal documents need to be kept?	8
16.	How are board meetings organised?	9
17.	How are members (general) meetings organised?	9
18.	Who is responsible and what happens if the law is broken?	10
19.	How do you register as a charitable company and what additional considerations exist?	10
20.	How do I wind up a dormant company?	11
21.	How do I wind up a charitable company?	12
22.	Further information.	13

1. WHAT ARE THE CONSTITUTIONAL DOCUMENTS OF A COMPANY?

The constitutional documentation of a company, which governs how the company should be run, is made up of two documents: the memorandum of association and the articles of association.

For companies incorporated prior to 1st October 2009 whose constitutional documents have not been updated in accordance with the Companies Act 2006, the memorandum of association sets out:

- the company's name;
- where the registered office of the company is to be situated (i.e England and Wales);
- what the company will do (otherwise known as its “objects”). The object of a company may simply be to carry on business as a general commercial company;
- that the liability of its members is limited;
- the identities of the original members of the company; and
- where applicable, the amount of share capital with which the company proposes to be registered and details of the numbers of those shares.

The articles of association set out the rules for the running and regulation of the company's internal affairs and the contents will vary greatly from company to company and depending on whether or not the company is limited by shares or limited by guarantee (see section 2).

For companies incorporated on or after 1st October 2009 (or for companies incorporated prior to 1st October 2009 whose constitutional documents have been updated in accordance with the Companies Act 2006), the memorandum of association sets out simply the company's name and the identities of the original members of the company.

The articles of association set out the rules for the running and regulation of the company's internal affairs and the contents will vary greatly from company to company and depending on whether or not the company is limited by shares or limited by guarantee (see section 2). The articles of association also set out:

- what the company will do (otherwise known as its “objects”). Commercial companies may have unlimited objects and powers but charitable companies are subject to restrictions imposed by the Charity Commission; and
- that the liability of its members is limited.

2. LIMITED BY SHARES OR LIMITED BY GUARANTEE?

Private limited companies fall into two categories: companies limited by shares and companies limited by guarantee.

The main difference between a company limited by shares and a company limited by guarantee is that a company limited by guarantee does not have a share capital. The members do not make any contribution to the capital of the company during its lifetime as they do not purchase shares. Instead, their liability is limited to the amount that they each agree to contribute to the company's assets if it is wound up (which will be set out in the company's memorandum and articles of association).

The company limited by shares has a share capital and the liability of each member (also referred to as shareholders) is limited to the amount unpaid on shares that a member holds. A private company cannot offer its shares for sale to the general public. Whilst the specific activities of this type of company will vary, businesses adopting this structure are usually engaged in some form of profit seeking enterprise.

In contrast, companies limited by guarantee tend to be "not for profit" organisations, such as charities and societies. Their articles of association must be in a prescribed form or as near to that form as circumstances admit. The articles of association will not normally permit the company to distribute excess income to the members but rather any surpluses should be retained for future activities (or given back to the original source if no such projects were available).

3. WHAT ADMINISTRATION IS REQUIRED?

Under the Companies Act 2006 (the "Companies Act"), the officers of a company are responsible for:

- ensuring that all the legally required information is filed with Companies House (see section 11);
- maintaining the company's registered office (see section 12);
- keeping the company's statutory books and records (see section 14);
- looking after the security of key legal documents (see section 15);
- organising and recording board meetings (see section 16);
- organising and recording general meetings of the members of the company (see section 17); and
- disclosing company details on premises and stationery, including the company's website (see section 12).

The officers of the company are also responsible for complying with a host of other laws, such as employment, health and safety, tax, data protection, distance selling, etc. Someone must also deal with administrative tasks such as managing buildings, arranging insurances, maintaining domain name and trade mark registrations, etc.

4. WHO IS RESPONSIBLE FOR COMPANY ADMINISTRATION?

The directors are ultimately responsible for ensuring the company complies with the law, including the Companies Act.

The company secretary (if appointed - see section 5), is an officer of the company and shares legal responsibility for Companies Act compliance with the directors.

The directors will usually delegate day-to-day responsibility for administrative tasks under the Companies Act to the secretary (if one has been appointed), although the directors remain jointly responsible with the secretary for any default.

The directors may also give the secretary responsibility for legal compliance in other areas of law, and for other administrative tasks. The company secretary's Companies Act responsibilities apply automatically, but any other responsibilities will depend upon the secretary's contract of employment.

5. DO WE HAVE TO HAVE A COMPANY SECRETARY?

From 6 April 2008 the requirement for private limited companies to have a company secretary was removed.

The duties of the person responsible for company secretarial matters are not defined specially within the Companies Act. However, they may be divided into three broad categories:

- organising meetings and preparing the paperwork dealing with minutes and resolutions;
- completing and filing statutory forms at Companies House; and
- maintaining the statutory registers of the company.

Where there is no company secretary responsibility for all of this will fall solely on the directors. Many companies may, therefore, continue to have a secretary, and entrust the same responsibilities and tasks to them as they have always done.

6. IF WE DO HAVE ONE, WHO CAN WE APPOINT AS COMPANY SECRETARY?

The company secretary is not legally required to have any formal qualifications. Nevertheless, it is a good idea for the company secretary to have some experience or

training.

The following persons cannot be the company secretary:

- the company's auditor; and
- an undischarged bankrupt (unless given permission by the court).

7. IF WE APPOINT A COMPANY SECRETARY, ARE THEY ALSO A DIRECTOR?

A company secretary is not automatically a director, though there is nothing to stop them from being appointed as a director as well.

Unless a company secretary is also appointed as a director, they do not have the powers of a director. They are, however, an 'officer' of the company. This means that they share the legal responsibilities for administrative tasks such as filing at Companies House and maintaining registers and minutes (see sections 11 and 14), with the directors.

8. WHO CAN SIGN ADMINISTRATIVE DOCUMENTS ON THE COMPANY'S BEHALF?

Anyone who is authorised to do so by the directors, or is empowered to do so under the law. For example, if the company has a company secretary:

- a secretary can sign most of the forms required by Companies House;
- a secretary can sign documents, such as the minutes of a board meeting, to authenticate them;
- if a secretary and a director sign a document, it has the same validity as if two directors sign the document; and
- if a secretary signs a contract of an administrative nature (such as an insurance contract), it is likely to be binding on the company.

9. WHO DOES A COMPANY SECRETARY REPORT TO?

A company secretary will normally work most closely with, and report to, the chairman of the board. However, it is good practice for ultimate authority over the secretary to lie with the board of directors as a whole, rather than any individual director. For example, any decision to remove the company secretary from office should be taken by the board as a whole.

This is because a company secretary has a role in providing impartial advice and ensuring that the company is properly governed by the board. This could be compromised if the chairman (or some other director) can exert undue influence on them.

10. **CAN WE OUTSOURCE THE FILING AND RECORD-KEEPING REQUIREMENTS IN THE COMPANIES ACT?**

Yes, but the directors and, if the company has one, the company secretary, will also continue to be responsible for the proper administration of the company (see section 4).

Nevertheless, it can be useful to delegate routine administration to a specialist service provider (such as Wright Hassall), freeing the company's officers for other tasks. An inexperienced or unqualified company secretary may find that they need support in carrying out the role.

11. **WHAT INFORMATION DO WE NEED TO SEND TO COMPANIES HOUSE?**

Each year, the company must send a standard form '**annual return**' to Companies House, containing the following information:

- the name of the company;
- its registered number;
- the type of company it is, for example, private or public;
- the registered office address of the company;
- the address where the company keeps certain company registers if not at the registered office;
- the principal business activities of the company (see Principal Business Activities);
- the name and address of the company secretary, where applicable;
- the name, service address, date of birth, nationality and business occupation of all the company's directors;
- the date to which the annual return is made-up (the made-up date).

If the company has a share capital, the annual return must also contain:

- information about the issued share capital; and
- details of the shareholders – addresses do not have to be included (or confirmation that there have been no changes since the date of the previous return).

The annual return is made up to a 'return date' and must be sent to Companies House within 28 days of that date.

You are also required to file a copy of your **annual report** and **accounts** at Companies

House each year. Private company reports and accounts for financial years must be filed within nine months of the company's accounting reference date. Generally (for a small company) the accounts must include:

- profit and loss account;
- full balance sheet signed by a director; and
- notes to the accounts.

However, a small company taking benefit of the audit exemption (if it is available) only needs to file either a copy of the balance sheet or an abbreviated balance sheet and notes with the Registrar of Companies.

The balance sheet must contain a statement in a prominent position stating that the accounts have been prepared in accordance to the special provisions applicable to companies subject to the small companies' regime.

There are automatic civil penalties for late filing of annual accounts at Companies House, depending on how late they are. For persistent failure the penalties will double.

Other filings which you must make with Companies House include:

- changes to the memorandum or articles, and some members **resolutions**;
- changes to directors or their details (**Forms AP01, TM01 and CH01**);
- changes to the registered office address (**Form AD01**);
- if the company has one, changes to the company secretary or their details (company secretaries are optional for private companies from 6 April 2008) (**Form AP03, TM02 and CH03**);
- any change to the company's accounting reference date (ie your year end) (**Form AA01**);
- certain changes to shareholdings or the company's share structure (**Form SH01, SH02 and SH03**); and
- if the company grants a mortgage or charge over an asset (**Form MG01**).

Failure to file documents on time can lead to penalties for the company and its officers. You should also be aware that it is a criminal offence not to file some of this information.

If you are uncertain whether you need to file information as the result of a change you are making, take advice. In many circumstances, your legal or financial advisors will already be involved.

12. WHAT ARE THE REQUIREMENTS FOR COMPANY STATIONERY?

A company must state its name, in legible lettering, on all of the following:

- business letters and order forms;
- notices and other official publications;
- cheques and orders for money or goods;
- invoices, receipts and letters of credit; and
- its website(s).

In addition, a company must show, in legible lettering, on all of its business letters, order forms or any of the company's websites:

- its place of registration;
- its registered number;
- its registered office address;
- and if it is being wound up, that fact.

Whenever an e-mail is used where its paper equivalent would be caught by the stationery requirements, then that email is also subject to the requirements.

13. WHAT ARE THE REQUIREMENTS FOR THE COMPANY'S REGISTERED OFFICE?

Every company is required to have a registered office. This is an official address to which Companies House will send any correspondence. It can also be used by anyone wishing to send you a legal document, such as a statutory demand for payment.

The registered office address may be a post office box but only if the full address is given, including the postcode, and it is validated by the Royal Mail. It's important that you do receive any documents sent to the registered office address. A simple option is to use your business premises as your registered office. Companies which outsource filing and record-keeping tasks to an external service provider sometimes use that service's address as their registered office.

As well as having a registered office, you are legally required to display the company's name at the registered office (and every other place of business). You are also required to file a return telling Companies House if you want to change your registered office.

From October 2008, the requirement to display a company's registered name at its registered office was extended to include display at an 'inspection place', which is defined as any location other than a company's registered office at which a company keeps

available for inspection any company record, such as its statutory registers, required under the Companies Act.

The signs at the registered office or inspection place must be displayed in a prominent position, so visitors can easily read them.

A company must respond within five days to enquiries from any person who, in the course of business, requests in writing the address of the registered office or any other place where that person can inspect company records.

14. WHAT ARE THE COMPANY'S STATUTORY BOOKS AND RECORDS?

The statutory books and records are records which you are legally required to keep. They normally include:

- a register of past and present directors and company secretaries;
- a register of directors' addresses;
- a register of members (and, if relevant, their shareholdings);
- a register of debenture holders (if the company has issued any);
- a register of any mortgages or other charges over company assets;
- minutes of board meetings; and
- minutes of general meetings of the members of the company.

Members have the right to inspect minutes of a general meeting, but not minutes of board meetings (unless, unusually, the articles of association or an agreement such as a members' or shareholders' agreement gives them that right). Registers are generally open to inspection by any member of the public - the exceptions are the register of members and the register of directors' addresses. The register of members can only be inspected for a 'proper purpose'. If a request is made to inspect the register, the company must decide whether it is for a proper purpose within five working days.

Companies should have a formal policy to help them decide whether a request to inspect their register of members is for a proper purpose or not, within the five-day time limit. If you are unsure - seek advice.

A company must also respond within five days to enquiries from any person who, in the course of business, requests in writing the type of documents kept at these locations.

15. WHAT LEGAL DOCUMENTS NEED TO BE KEPT?

As well as the statutory books and records (see section 14), you also need to keep other legally important documents. These include:

- the company's certificate of incorporation;
- copies of the company's memorandum and articles of association;
- any directors' service contracts; and
- any other important contracts with employees, customers or suppliers.

16. HOW ARE BOARD MEETINGS ORGANISED?

Generally, a board meeting should be arranged if any director asks for one and all the directors should be given reasonable notice of the meeting. However, the articles of association may set out more stringent requirements.

Someone responsible must be mandated to take formal minutes of the meeting. If the company has a company secretary, this is usually entrusted to them. Once approved, they should be signed by the chairman of the meeting. They are then kept in the company's minute book as the official record of the meeting and any resolutions which were taken.

17. HOW ARE MEMBERS (GENERAL) MEETINGS ORGANISED?

The board is responsible for calling general meetings if it wants the company to take a decision which requires the approval of a general meeting (for example, changing the company's articles of association). In addition, any member or group of members with at least 5 per cent of the company's voting rights (or in certain circumstances, 10 per cent) can require the board to call a general meeting.

All directors and members must be given written notice of any general meeting well in advance. The notice period is usually 14 days, although the articles can require a longer notice period, such as 21 days.

A meeting can usually be held on shorter notice if members carrying 90% of the company's voting rights agree (although the articles of association may specify a higher percentage approval rate).

Decisions at general meetings are passed either as ordinary resolutions (that can be passed by a simple majority of votes cast), or special resolutions (that require a 75% majority of votes cast). Copies of all special resolutions, and some ordinary resolutions, passed at a general meeting must be filed with Companies House within 15 days.

In most circumstances a resolution for approval by the members in general meeting can, as an alternative, be passed by the members as a written resolution which has been circulated to all of the members for approval.

18. WHO IS RESPONSIBLE AND WHAT HAPPENS IF THE LAW IS BROKEN?

The officers of the company have primary responsibility for ensuring that the company meets the requirements of the Companies Act. The directors and any company secretary can be held jointly liable for failing to do so. However, if the company fails to file accounts, the directors are solely responsible, not the company secretary.

The directors owe seven statutory duties to the company, which are:

- to act within powers;
- to promote the success of the company;
- to exercise independent judgement;
- to exercise reasonable care, skill and diligence;
- to avoid conflicts of interest;
- not to accept benefits from third parties; and
- to declare interests in proposed transactions or arrangements with the company.

19. HOW DO YOU REGISTER AS A CHARITABLE COMPANY AND WHAT ADDITIONAL CONSIDERATIONS EXIST?

Charitable companies are regulated by company law as well as charity law.

As mentioned in section 2, the company limited by guarantee is a vehicle that is used for “not for profit” organisations, such as charities and societies.

The Charity Commission requires the constitution of a charitable company to preclude the distribution of profits to members and for all the property of a charitable company to be applicable for charitable aims.

A charitable company (as opposed to an unincorporated charity structure) is desirable where some or all of the following apply:

- the organisation is quite large;
- it will have employees;
- it will deliver charitable services under contractual agreements;
- it will regularly enter into commercial contracts;
- it will be an owner of freehold or leasehold land or other property (which is not permanent endowment).

The company will have the benefit of being a separate legal personality that is able to hold property in its own name.

It also has the benefit of the veil of incorporation, meaning that the directors are agents of the company and as such are not normally liable personally for its debts.

To register as a charitable company the Charity Commission will require:

- an application form (**form CC5a**);
- a trustee declaration (**form CC5c**);
- a copy of the memorandum and articles of association;
- a copy of the certificate of incorporation;
- a copy of any special resolution(s) showing amendments to the memorandum and articles after incorporation; and
- evidence of the required level of income.

If the annual income of the charity is greater than £10,000 a separate annual return (in addition to the Companies House annual return) will need to be filed at the Charity Commission.

At present, a charity must have a turnover in excess of £5,000 to be registrable at the Charity Commission. However, there are plans to allow voluntary registration for charities below the registration threshold.

20. HOW DO I WIND UP A DORMANT COMPANY?

A private company limited by shares that is not trading may apply to Companies House to be struck off the register. It can do this if, in the previous three months, it has not:

- traded or otherwise carried on business;
- changed its name;
- for value, disposed of property or rights that, immediately before it ceased to be in business or trade, it held for disposal or gain in the normal course of its business or trade.

A company cannot apply to be struck off if it is the subject, or proposed subject, of:

- any insolvency proceedings (such as liquidation, including where a petition has been presented but has not yet been dealt with); or
- a Section 1005 scheme (that is a compromise or arrangement between a company and its creditors or members).

You apply to be struck off the register by completing a **Form DS01**, which will need to be signed and dated by a majority of the directors.

Any loose ends should be dealt with **before** the application is made. As soon as the company is dissolved, any assets remaining in the dissolved company will belong to the Crown.

Seven days after sending Form DS01 to the Registrar, you must provide copies of the form to the following:

- members;
- creditors;
- employees;
- managers or trustees of any employment trust fund; and
- any directors who have not signed the DS01 form.

The dissolution can be objected to by any interested party. The party can object by sending an objection to the Registrar of Companies House with any evidence as to why it shouldn't be struck off, e.g. any of the declarations on the form are false.

The Registrar will advertise and invite objections to the proposed striking-off in the London Gazette. The Registrar will strike the company off the register not less than 3 months after the date of this notice if he sees no reason to do otherwise and the application has not been withdrawn.

The company will be dissolved when the Registrar publishes a notice to that effect in the Gazette. (At the time of striking-off, a letter will be issued to the contact name on Form DS01 confirming the proposed date of dissolution.)

Where the company is a company limited by guarantee extra consideration may need to be given to the articles of association. The articles will contain provisions preventing any person from having the right to participate in the divisible profits of the company otherwise than as a member.

21. **HOW DO I WIND UP A CHARITABLE COMPANY?**

Dissolving or winding up a charitable company can be a very complicated task. You may be able to bring the charity to an end by:

- spending all the assets to further its purposes; or
- donating them to another charity with similar purposes.

This will depend on the constitution of the charity.

If you choose the second option, you can specify how the receiving charity may use the assets.

When all the assets have been used either for the purposes of the charity or donated to another charity in accordance with the dissolution clause, the charitable company should be removed from the Companies House Register. This needs to be done before the charitable company is removed from the Charity Commission's Register.

The trustees/directors are responsible for notifying the Charity Commission of the dissolution and removal of the charitable company from the Companies House Register.

The trustees must notify the Charity Commission by sending them either:

- a declaration using form CSD-1077 (if you choose this option you must ensure you have complied, or are able to comply, with all the statements in part 2 of the form); or
- a copy of the charity's final accounts showing where the assets have gone and a nil balance, along with either a certified copy of the minutes of the meeting at which the decision to dissolve the charity was taken, or certified copies of the relevant resolutions.

After a charity has been dissolved or wound up, the trustees/directors must arrange for its accounting books and records to be kept for at least three years after the year they were made. The accounting records that must be kept include cash books, invoices, receipts and any similar record of the charitable company's financial activities.

22. FURTHER INFORMATION

If you would like any further information or advice on running a small charitable company, please contact:



Mark Lewis

Tel: 01926 880700

Email: mark.lewis@wrighthassall.co.uk



Paul Guyver

Tel: 01926 884688

Email: paul.guyver@wrighthassall.co.uk

This publication contains material for general information purposes and does not constitute legal or other professional advice. Every effort is made to ensure that the content is accurate and up to date but users should always seek specific advice before taking, or refraining from, any action or relying on the legal information given here.