

COMPANY TYPES & REGISTERS

Charitable Companies: Running a Charity as a Company

What changes when a company is also a charity: two regulators, the directors as trustees, and the extra reporting and consent requirements.

A company and a charity at once

A charitable company is a company, usually limited by guarantee, whose purposes are exclusively charitable and for the public benefit. It is regulated twice. Companies House and the Companies Act 2006 govern it as a company. The Charity Commission and the Charities Act 2011 govern it as a charity. It must meet both sets of rules, and where they differ, the stricter requirement usually decides the practical answer.

The main attraction is limited liability for the trustees together with the legal personality of a company, so the charity can own property and sign contracts in its own name. Charitable status also opens tax reliefs and funding that other bodies cannot reach.

Directors are trustees

The directors of a charitable company are also its charity trustees. They owe their company law duties and their charity law duties, and the second set often runs further. They must act only in the interests of the charity, avoid and manage conflicts, take care over money, and apply the charity's property solely for its purposes. A trustee cannot be paid for being a trustee, and may be paid for other services only where the law and the governing document allow it and the proper steps are followed.

Registration

A charitable company registers with the Charity Commission once its annual income exceeds £5,000, or earlier if it wishes to. Registration is a separate step from forming the company, and the Commission must be satisfied that the purposes are charitable and for the public benefit. A registered charity shows its charity number, and the company must state that it is a charity on its main documents.

The articles

The articles must contain charitable objects, restrict benefits to members and trustees, and say where assets go on a winding up, normally to another charity. Changing the objects clause needs the Commission's consent, and so do some other changes, such as any provision that would authorise a benefit to trustees. A template written for an ordinary guarantee company will usually fail on these points.

Key points

- Two regulators apply: Companies House and the Charity Commission.
- Directors are charity trustees as well as directors.
- Objects must be exclusively charitable and for the public benefit.
- Changes to the objects need Commission consent.
- Annual reporting goes to both regulators.
- A charity cannot also be a CIC.

Reporting twice

A charitable company files its accounts at Companies House and sends its annual report, accounts and return to the Charity Commission. The accounts follow the Charities Statement of Recommended Practice, and the trustees' annual report must explain the public benefit delivered. Audit or independent examination depends on the size of the charity and its structure, so the thresholds should be checked each year.

A charitable company also keeps its company records. It holds meetings, keeps a register of members, files a confirmation statement and keeps its registered information current. The identity verification requirements for directors and people with significant control apply in the same way as for other companies.

Trading and tax

Charities may trade, but trading outside the charity's purposes is usually done through a subsidiary, which can gift its profits back. Charitable income and gains are generally relieved when applied for charitable purposes, and Gift Aid is available on qualifying donations, but the reliefs depend on registering with HMRC and meeting the conditions. They are not automatic.

Choosing a structure

STRUCTURE	REGULATOR	DIRECTORS OR TRUSTEES	WHERE IT FITS
Charitable company	Companies House and Charity Commission	Directors are trustees	Established charities with staff and assets
CIO	Charity Commission only	Trustees	Charities that want one regulator
Unincorporated charity	Charity Commission	Trustees, personally liable	Small, simple charities

Common problems

Typical faults include articles that lack proper charitable restrictions, trustee payments made without authority, and accounts prepared for one regulator and not reconciled to the other. A regular review of the governing document and the registers avoids most of them.

Questions to ask the client

- Are all the purposes exclusively charitable?
- Can the public benefit requirement be shown?
- Who are the trustees and are any to be paid?
- Does the income justify registration yet?
- Will trading need a separate company?
- Would a CIO be simpler?

How MTM can help

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We incorporate charitable companies, work with your client's charity law adviser on the articles, and take on the company secretarial side: registers, confirmation statements and the Companies House accounts. Charity law advice on purposes and registration should come from a charity specialist.