

MINISTRY OF ECONOMIC DEVELOPMENT REQUIREMENTS AFTER INCORPORATION

REQUIREMENT AFTER INCORPORATION

The society/trust must act within its rules. It cannot engage in any activities beyond those set out in the objectives and rules of that society. There is a binding contract between each individual member and the incorporated society/Trust itself to obey the rules of that society in so far as they apply to members.

If there is a disagreement between members as to the meaning or application of the rules that cannot be resolved by the society, there is always a right to apply to the High Court for a judicial hearing. This is an expensive exercise.

A society cannot carry on activities resulting in monetary gain for its members

Should the organisation be found to be engaging in operations involving pecuniary gain both the society and the members are liable to be fined. In addition, all members involved in these operations can be personally liable for the debts and obligations incurred by the society in such operations.

WHAT IS PECUNIARY GAIN

What is pecuniary gain? No definition is provided in the Act, but usually pecuniary gain is making a profit with the intention of passing this profit on to some or all the members of the society.

It is permissible:

- That the organisation itself makes a pecuniary gain, unless that gain or some part thereof is divided among or received by the members or some of them;
- That the members of the organisation are entitled to divide between them the property of the society on its dissolutions;
- That the organisation is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, provided it does not engage or take part in any such trade, business, industry or calling, or any part or branch thereof;
- That any member of the organisation derives pecuniary gain from the society by way of salary as the servant or officer of the society;
- That any member of the organisation derives from the society any pecuniary gain to which the member would be equally entitled if not a member of the society;
- That the members of the organisation compete with each other for trophies or prizes other than money prizes.

ANNUAL FINANCIAL STATEMENT

Every society must deliver annually to the registrar a statement containing the following particulars:

- a. The income and expenditure of the society during the last financial year.
- b. The assets and liabilities of the society at the end of the financial year.
- c. All mortgages, charges and securities of any description affecting any of the property of the society at the close of the financial year.

The statement has to be accompanied by a certificate signed by an officer of the society saying the statement has been submitted and approved by the members of the society at a general meeting.

The office of the Registrar of Incorporated Societies recommends:

- a. having the accounts audited
- b. having the statements legibly written or typewritten on paper of A4 size using one side of the paper and entitled with the society's full name and the year to which the accounts are applicable.

The registrar also suggests the following documents and records are an aid to good administration:

- a. A minute book
- b. A registrar of members.
- c. A numbered receipt book with retained duplicate copy
- d. A file containing vouchers for all payments
- e. A bank deposit book
- f. A cash receipts and payments journal
- g. A file containing copies of all reports to members

In April 2005 the Charities Act 2005 (the Act) was passed and the Charities Commission (the Commission) came into being on 1 July 2005.

The Commission is to provide:

1. A registration and monitoring system for charitable organisations
2. Support and education to the charitable sector on good governance and management

The registration system is called the "Charities Register"(the Register) and opens in 2006 when the registration of charities will start. Even if an organisation is already a Charitable Trust or an Incorporated Society, it will still need to register with the Commission if it wishes to receive or maintain tax-exempt status and be deemed a 'registered charity'.

APPLYING FOR CHARITABLE STATUS

For an organisation to become a “donee organisation” or an “approved charity” for tax purpose, Inland Revenue must consider and approve its application.

The organisation will need to send to Inland Revenue:

- an up-to-date signed copy of its rules, constitution, trust deed or other founding documents
- a copy of its certificate of incorporation (if incorporated)
- a letter which states the type of exemption (s) requested
- details of how it has been (or will be) operating

If an organisation applying for donee and/or approved charitable status is a local organisation, its local Inland Revenue office can deal with the application. However, if an organisation carries on a business or is a nationwide organisation, a Regional Inland Revenue officer will review the application before it gets final approval.

INLAND REVENUE DEPARTMENT CRITERIA

The organisation’s aims should be clearly set out in its rules or constitution. Some circumstances that would make the aims unacceptable would be:

- clauses which are too vague, general or uncertain to clearly show a charitable aim (e.g. “to fulfil social needs”)
- personal benefit provisions as members, trustees or associates
- alteration of rules clause which would allow for changes to charitable purpose, benefits to members and winding up clauses
- purposes limited to New Zealand (applies only to Donee organisations)
- winding up clause which allows funds or assets to be distributed for other than charitable purpose
- business activity of non charitable nature - see IRD rules

TELECOM CONCESSION

Telecom sponsors certain voluntary organisations by providing assistance with Telecom communication goods and services.

Larger multi-site not-for-profit groups may qualify for the Loyalty Programme.

Smaller groups will be eligible for the Regional Programme (which starts in July 2006) if they meet the following criteria:

- It is willing to register as a registered charitable entity under the Charities Act 2005
- Is a community accountable not-for-profit organisation that is able to demonstrate that its primary focus is a social service benefit

- Is prepared to show loyalty in return to Telecom by moving its telecommunications and internet needs exclusively to Telecom for a period of at least 3 years
- Has other areas of focus that are aligned with Telecom's sponsorship priorities

WINDING UP AND DISSOLUTION

From time to time an incorporated society comes to an end. This can be because:

- it has achieved its purpose
- it cannot pay its debts
- it has ceased to operate
- it is found to be making a pecuniary gain for members
- The Court has ordered that the society be wound up

VOLUNTARY WINDING UP

When members of a society feel that the society should be wound up (i.e. brought to an end) they can do this by passing a resolution to that effect at a general meeting. The resolution needs only a simple majority of all the valid votes cast by members voting at the general meeting in person. A simple majority is half the votes plus one. The rules cannot change the requirement for a simple majority as this is specified by section 24 (1A) of the Act.

If such a resolution is passed, a second general meeting must be called not earlier than thirty days from the first meeting to pass a resolution confirming the earlier decision to wind up the society. Once again a simple majority is required to pass the resolution. If the resolution is lost then the earlier resolution will lapse. If the confirming resolution is passed the members must appoint one or more liquidators to wind up the affairs of the society.

The procedure and requirement of a voluntary winding up of a society are the same as for the voluntary winding up of a company under the Companies Act 1955.

FURTHER READING

“Clubs in Confusion” - Wellington City Council

Useful information on the preparation and style of the accounts is to be found in:

“Accounting for Clubs”, The Secretary
New Zealand Society of Accountants,
P O Box 10046,
WELLINGTON