

Setting up a charitable trust

ALAN KNOWSLEY
LEGAL MATTERS



Trustees of charitable trusts are personally liable for the trust's debts and obligations.

Essentially they are the "people" of the charitable trust, which means that they enter into obligations personally on behalf of the charitable trust.

In many circumstances a potential trustee doesn't want to sign up for this degree of liability.

A potential solution to this is for the trustees to incorporate as a charitable trust board under the Charitable Trusts Act 1957.

Why? Because a charitable trust board is a separate legal entity.

The officers of a charitable trust board are generally not personally liable for the charitable trust's activities, except in relation to their own wrongdoing, such as fraudulent activity or breaching the trust's rules.

The board, rather than the trustees, will enter into all obligations, and it, not the trustees, will be liable if a default

occurs.

A charitable trust board can continue into perpetuity until it is wound up, and is unaffected by changes to its membership.

When the charitable trust board is registered, any property that was previously held by the trustees personally is vested in the board as a whole.

This can be beneficial for entities with a large number of officers and/or who have several assets being acquired and changing hands, because the ownership records do not have to be updated every time an officer comes or goes from the charitable trust board.

The officers of a charitable trust board must continue to act to the high standards that the law requires.

They have similar obligations to that of company directors, including but not limited to, acting in good faith and in accordance with the applicable rules, exercising their powers for proper purpose and with reasonable care, and not creating a substantial risk of loss for the board's creditors.

To incorporate as a charitable trust board, a majority of the charitable trust's trustees must sign an application form and



Any property that was previously held by the trustees personally is vested in the board as a whole.

"A charitable trust board can continue into perpetuity until it is wound up, and is unaffected by changes to its membership."

submit this to the Registrar of Societies and Trusts, along with a copy of the charitable trust deed and a statutory declaration from one of the trustees.

Under the current Incorporated Societies Act 1906, a charitable incorporated society can incorporate as a charitable trust board, in which case the members or a group of members of the society become the board.

However under the proposed new Incorporated Societies legislation societies will no longer be able to incorporate as charitable trust boards. It is expected that those societies which have already incorporated as a board prior to the change of legislation will automatically transition to the new legislation

and will retain the benefits of incorporation.

If you think that your charitable trust would benefit from incorporating as a charitable trust board, or you are looking to set up a charitable entity, see your legal advisor for advice that suits your situation.

† Column courtesy of RAINY COLLINS LAWYERS, 0800 733 484, rainycollins.co.nz
‡ If you have a legal inquiry you would like discussed in this column, email Alan on aknowsley@raineycollins.co.nz