

Thinking of forming a corporate foundation? Some points to consider

BRIEFING NOTE

There is a strong tradition of charitable giving and philanthropy in the UK and companies are part of this. Most large companies have a dedicated programme of corporate social responsibility (CSR), of which charitable giving can often form an important part. Companies give for many reasons, including the desire to make a difference in society, to enhance staff and customer engagement, and because of tax incentives.

There are many ways in which a company can support charities, one of which is to form a separate charity. These are often known as 'corporate foundations'. Establishing a corporate foundation allows your company to support the specific purpose or purposes in which it is interested in a measurable way, to demonstrate the company's interest and concerns both now and in the future and, if desired, to maintain a degree of strategic control. However, it is also important to ensure that a corporate foundation is established and run in a manner which complies with charity law (for example, so that the charity can make independent decisions, conflicts of interests can be managed and any cause-related marketing complies with the legislative requirements).

If you are thinking of consolidating your company's charitable giving and/or wider CSR activities into a separate charity, there are a number of things you will need to consider, and these are set out below. We would be delighted to discuss these with you further.

What will our corporate foundation do?

There are many charitable purposes, some of which are familiar to everyone, such as relief of poverty, advancement of education, health or the arts. A charity may be formed for one particular purpose, multiple specified purposes, or simply for "general charitable purposes". The latter is commonly used to support a variety of causes and gives maximum flexibility. Depending on what charitable purposes you select, your corporate foundation can be used to fund charitable activity locally, nationally or internationally.

What legal structures should we consider?

Corporate foundations, like all charities, can take a number of legal forms, the most common being the charitable company limited by guarantee, the charitable incorporated organisation (CIO) and the charitable trust. Which legal structure is most appropriate depends on the work to be done by the corporate foundation and how the corporate foundation will raise funds. If it is simply a grant-making organisation, a trust may be sufficient. However, if it is to enter into contracts, own land, have employees, or carry out any other activity which involves an element of risk, an incorporated charity such as a charitable company limited by guarantee or CIO is likely to be more appropriate.

What ongoing administration would there be?

As with every organisation, charities (including corporate foundations) must keep records and produce accounts and these must normally be filed at the Charity Commission (and Companies House if the corporate foundation is a company). Sometimes you may have to file a return with HMRC. The administrative burden varies according to the legal structure, the size of the charity, and type of activity undertaken. For a purely grant-making organisation, it is quite usual for the trustees to meet a few times a year to decide what donations to make. The administration of such a charity could be (and usually is) undertaken by staff of the company, or by the trustees themselves. Alternatively, you may wish, if the cost is justified, to employ an administrator, or use a trust administration service which undertakes the work for a modest fee.

Most corporate foundations receive regular requests for grants from other charities, because of the accessibility of the Charity Commission's website; so you will need to agree a grants policy and administer your grants programme in accordance with your grants policy.

What can we give the charity?

Donations to charities can be in the form of cash, land, shares or any other property. To register a new charity, the Charity Commission requires a minimum annual income of £5,000, unless the charity will be a CIO, for which there are no minimum income requirements.

A company might wish to "test the water" by settling a relatively modest amount in the first instance, and then adding more, generally by way of a tax deductible donation. There are no restrictions on who may donate to the new corporate foundation and it could, if you comply with the charity law requirements, become the recipient for the proceeds of cause-related marketing. One advantage of setting up a corporate foundation and staffing it with an experienced team is that it can allow you to keep an eye on the way the charities and other good causes you give to are performing in terms of their own policies, administrative costs, and other areas which can sometimes worry donors.

What are the tax benefits?

Corporate tax deductions are normally available on gifts to charities by companies of cash and stock, and, where individuals also make gifts, Gift Aid can usually be claimed on charitable donations of cash, listed shares, land, buildings and securities, which may reduce the donors' UK tax liabilities (provided they are

liable for UK tax). Gifts to charities are also exempt from capital gains tax, so gifts of non-cash assets can also have beneficial tax consequences for donors. Legacies made by individuals are free from inheritance tax.

What do public records show?

The charity's accounts will be available to the public. The Charity Commission publishes the names of trustees on their website, but not addresses. If you opt for a charitable company, Companies House keeps a record of service addresses, so there is no need to use individual addresses.

Charitable giving undoubtedly enhances the public profile of a company. The company may encourage employees, customers or suppliers to donate to the corporate foundation. The name of the corporate foundation can be chosen to demonstrate strong links with its founding company (although you must be careful to ensure that there is no confusion in the minds of the public as to which entity they are dealing with).

Who should the trustees be?

The Charity Commission recommends a minimum of three trustees, whatever legal structure is used. There are few restrictions on who can be a charity trustee, but you would generally expect a majority to be UK-resident. Corporate foundations will generally have officers of the company, or employees, as trustees. It is important to be able to manage conflicts of interest, so you are likely to need a number of independent trustees too.

How long will it take to set up?

This depends partly on the structure you select and partly on how quickly the Charity Commission deals with the registration. If you set up a charitable trust or a charitable company, it can 'exist' very quickly as a legal structure, so that you can start using it as soon as it exists, but registration with the Charity Commission (to obtain the 'registered charity' status) is currently quite unpredictable and whilst we still see some charities registered within a week, it can sometimes take five or more months).

Set up costs

Costs vary depending on the legal structure adopted, the type of work the organisation will be conducting and what the relationship with the company will be. To discuss which structure is right for your company and how best to bring your vision of a corporate foundation to fruition, please contact one of the Wrigleys team, who will be happy to speak with you about our experience in this area and provide you with an estimate of costs.

For further information please speak to your usual contact or one of our partners:

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