

## **Guidelines for making an application to the Commissioners' to incorporate a charity under Section 2 of the Charities Act 1973**

The two principal methods whereby a Charity can be established are:-

- (i) By Incorporation as a Company Limited by Guarantee and not having a Share Capital and
- (ii) A Deed of Trust appointing Trustees and setting forth the objects of the Charity.

As the Commissioners have no role in the Registration of Charities they cannot establish charitable trusts. However, they provide a service to Charitable Trustees set up by Deed. The Commissioners may on the application of the Trustees frame under their Seal a Scheme incorporating the Trustees mentioned in the Deed of Trust thereby establishing them as a Corporate Body. The Commissioners practice in this respect is to include in the appropriate Deed of Incorporation provisions requiring accounts and other information relating to the administration of the Charity to be furnished to the Board whenever the Commissioners so require.

The Scheme will set out the terms of the Trust and will provide effective machinery for vesting the Charity property in the Corporate Entity. On the framing of the Scheme the Trust Property will automatically vest in the Charity on the trusts applicable subject to any prior rights and liabilities.

An application to the Commissioners to frame under their Seal a Scheme establishing the trustees as a body corporate and vesting the property of the Charity in that body is made under Section 2 of the Charities Act, 1973.

The Commissioners requirements in respect of such an application is to be furnished with the following:-

- (i) A copy of the Trust Deed.
- (ii) A copy of case to Counsel to advise together with Counsel's advice on the charitable nature of the trust.
- (iii) A letter from the Revenue Commissioners confirming that the organisation has exemption from tax being established for charitable purpose only.

For your assistance I am enclosing a Precedent Scheme of Incorporation framed by the Commissioners which incorporates the Revenue requirements. A copy of these requirements is annexed:

## **REVENUE CLAUSES**

### **A. WINDING UP CLAUSE**

If upon the winding up or dissolution of the trust Corporation there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members but shall be given or transferred to some other charitable institution or institutions having main objects similar to the main object of the Corporation and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as it imposed on the trust under or by virtue of Clause            hereof, such institution or institutions to be determined by the members at or before the time of dissolution, and if and so far as effect cannot be given to such provisions, then to some charitable object.

(The inclusion of this clause is designed to ensure that in the event of a body winding up, all of its remaining assets shall not be distributed among its members but rather than they should be given to a body which has similar charitable objects)

### **B. INCOME AND PROPERTY CLAUSE**

The income and property of the Corporation, whencesoever, derived, shall be applied solely towards the promotion of the main objects of the trust as set forth in this Scheme and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit, to the members.

Provided that nothing herein shall prevent the payment, in good faith, of reasonable and property remuneration to any officer or servant of the Corporation, or to any member in return for any services actually rendered to the member, nor prevent the payment of interest at a rate not exceeding five per cent per annum on money lent or reasonable or proper rent for premises demised or let by any member; but so that no member shall be appointed to any salaried office of the Corporation nor any office of the Corporation paid by fees and that no remuneration or other benefit in money or money's worth shall be given by the Corporation to any member, except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Corporation; provided that the provision last aforesaid shall not apply to any payment to any Company of which a member may be a member and in which such member shall not hold more than one hundredth part of the capital and such member shall not be bound to account for any share of profit/s he may receive in respect of any such payment

(This clause provides that all the income and property of the body is to be applied solely towards its charitable main object/s. It also provides that no director of any Incorporated Body or member of the Management Committee in the case of an unincorporated organisation should hold a salaried position within that Company or Organisation.

This rule may however be relaxed in certain circumstances and any relaxation is dependant upon a care in writing being submitted to and accepted by the Revenue Commissioners).

**C. ADDITIONS, ALTERATIONS OR AMENDMENTS CLAUSE**

No addition, alteration or amendment shall be made to or in the provisions of this Scheme for the time being in force unless the same shall have been previously approved in writing by the Revenue Commissioners.

(As it is important that any change of a Governing Instrument does not result in a body being no longer regarded as being established for charitable purposes only, the Revenue Commissioners require that they be informed of any proposed changes).

**D. KEEPING OF ACCOUNTS CLAUSE.**

That proper books of accounts shall be kept and an income and expenditure account and a balance sheet shall be prepared and audited each year and presented to the Corporation for adopting at the first meeting of the Corporation occurring after the completion of the audit. Within four months after the end of each accounting period the Corporation shall send a copy certified by the Auditor of such accounts to the Commissioners. The Corporation shall at all times allow any persons nominated by the Commissioners to inspect and take copies of any or all of their books of account and other records. Annual audited accounts shall be made available to the Revenue Commissioners.

(This clause requires a body to keep full up to date audited accounts which should include a detailed breakdown of sources of income and how it was obtained, and a detailed breakdown of expenditure and how this related to the activities undertaken)