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**CHARITY BEGINS AT HOME**

The insolvency of a charity can be all the more difficult due of the impact of its loss on the beneficiaries which it serves. However, of equal importance, is the effect upon those persons operating the charity, many of whom will be offering their services free of charge.

Many of you will have clients who, whilst well meaning, are blissfully unaware of the consequences which they may face in the event of the charity's failure. The level of exposure very much depends upon the nature of the charity's structure and outlined below are some of the more common legal forms.

A substantial proportion of the charities operating in England and Wales today are companies limited by guarantee. These companies have members and directors and are similar to the more familiar companies with share capital. Should the charity fail, a member's liability is limited to the extent of their guarantee which is usually between £1 and £10. The company's directors will also be the charity's trustees and will have the same duties and liabilities as a director of an insolvent non-charitable company. Providing the trustees have acted prudently and lawfully, it is unlikely that they would be held personally liable for any shortfall in the winding- up of the charity. A company limited by guarantee falls under the provisions of the Insolvency Act 1986 ('IA 1986') and can therefore be wound up either voluntarily or compulsorily, placed into administration or can put forward a proposal to its creditors for a company voluntary arrangement.

Membership-based charities that have a lower level of activity such as clubs and societies may be structured as unincorporated associations and are usually governed by a set of rules or a constitution. Unincorporated associations have no separate legal entity and it is the members of the committee who enter into agreements on behalf of the charity. Great care should be taken when a committee member enters into a contract or obligation as not only is that individual potentially personally liable but also all other members (regardless of whether or not they sit on the committee). Personal liability should be specifically excluded from the contract wherever possible and members should also ensure that they have authority to enter into contracts thus ensuring at least that other members of the committee bear equal liability. Unincorporated associations do not fall under the provisions of the IA 1986 and hence there is no formal procedure for winding up. Members may therefore be forced to conduct an informal wind up of the charities affairs, bearing in mind that all creditors should be treated equally, and with the knowledge that they may well face personal liability for any shortfall.

A final brief note about Charitable Incorporated Organisations (CIOs) which were introduced last year. CIOs possess the advantage of limited liability for trustees and members without requiring registration at Companies House. A CIO is a separate legal entity and is governed by its constitution. The Charity Commission solely regulate CIOs under a bespoke statutory regime which includes regulations for insolvency and dissolution based upon the provisions of the IA 1986. These regulations set out a dissolution procedure for CIOs which may also be wound up in accordance with their constitution.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.