
Briefing Note

Royal Charters

Introduction

A Royal Charter or Charter of Incorporation can only be granted by the Crown. Historically, Royal Charters were used prior to the introduction of incorporation by registration. That type of registration is now contained in the Companies Acts. Prior to registration under the Companies Acts, Royal Charters were the most common method of incorporation, the other method being by a Special Act of Parliament.

Effect of Incorporation by Royal Charter

A body incorporated by Royal Charter has all the powers of a natural person, including the power to sue and be sued in its own right. The fundamental difference between a body created by Royal Charter and a company registered under the Companies Acts is that, at common law, a body created by a Crown charter has power to deal with its property, to bind itself by contracts, and to do all such acts as an ordinary person can do. So complete is this corporate autonomy that it is unaffected even by a direction contained in the Royal Charter purporting to place a limitation on the body's corporate powers.

Although the Crown can grant a charter, it is questioned whether the Crown can revoke one unilaterally. The Privy Council has commented that it is not aware of any Royal Charter being revoked unilaterally by the Crown since the time of Charles II. The general position for seeking a revocation in the modern day would seem to be to seek the consent of the original grantees or their successors to the revocation of the Royal Charter in question and then to liaise with the Privy Council, who will advise on further process. It should be noted that if the Royal Charter body is a registered charity, it will also need to follow the processes set down under charity law for removing a charity from the relevant Charity Register.

Once incorporated by Royal Charter a body gives up significant aspects of the control of its internal affairs to the Privy Council. Amendments to Charters can be made only with the agreement of The Queen in Council, which requires the approval of Her Majesty in person. Amendments to a body's byelaws usually also require the approval of the Privy Council, though not normally of Her Majesty, which means that amendments to byelaws can usually be dealt with in a more informal manner without the presence of The Sovereign. This effectively means a significant degree of Government/Crown regulation of the affairs of the body. The Privy Council will wish to be satisfied that such regulation accords with public policy.

Members

Members of a Royal Charter body have no liability for the debts of the body. The reason for this is that the Crown has no power at common law to attach liability to individual members of such a corporation. As a result, debts owed either to or by a Royal Charter body would be totally extinguished by the body's dissolution. The members cannot recover or be charged with them in their natural capacity.

Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act")/Office of the Scottish Charity Regulator ("OSCR")

In addition to the Privy Council and the Crown, Scottish Royal Charter bodies which have charitable status are also subject to the terms of the 2005 Act since by definition a charity includes any body entered in the Scottish Charity Register, whether created by Royal Charter or not. The charity trustees in terms of the 2005 Act are the persons having the general control and management of the administration of the charity. These are normally always the directors of the Royal Charter body, however they are described in the Charter. The Companies Acts do not apply to Royal Charter bodies.

The definition of "constitution" in the 2005 Act includes any Royal Charter establishing a Scottish charity. Therefore, in addition to the consent of the Privy Council to changes in the Royal Charter (including consent from Her Majesty in person, where necessary), OSCR's consent will be required in advance in relation to any amendments of a Royal Charter so far as they relate to purposes, amalgamation with another body, winding up or dissolving, or applying to the court in relation to any of these actions. Certain other changes will require to be notified to OSCR after the event, although they may not require the consent of OSCR in advance.

For detailed information or advice on the creation of a Royal Charter body, or on petitioning the Privy Council to amend a Royal Charter, contact our Charities Legal Team at charities@turcanconnell.com.

This document is intended for general information purposes only. The individual circumstances of each client must always be taken into account. Legislation is subject to change. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

© Turcan Connell August 2018

EDINBURGH Princes Exchange, 1 Earl Grey Street, Edinburgh, EH3 9EE T 0131 228 8111 F 0131 228 8118 DX 723300 Edinburgh 43
GLASGOW 180 St Vincent Street, Glasgow, G2 5SG T 0141 441 2111
LONDON 12 Stanhope Gate, London, W1K 1AW T 020 7491 8811

Turcan Connell is a Partnership of Scottish Solicitors regulated by The Law Society of Scotland.

www.turcanconnell.com