

Deregistration decision: Business in the Community Limited

The facts

1. Business in the Community Limited (the Company) is a company incorporated under the Companies Act 1993 on 15 November 1991. The Company was registered by the Charities Commission (the Commission) as a charitable entity under the Charities Act 2005 (the Act) on 7 July 2008 backdated to 30 June 2008.

2. The Company's purposes as set out in Clause 2.2 of the Constitution are:

2.2. Restricted Powers:

The objects for which the Company is established are to carry on or carry out all or any activities or undertakings which by law a company is permitted to carry on or carry out (including but without limitation the carrying on of any business) upon trust for purposes within New Zealand that are charitable according to the law of New Zealand and in particular (but without limiting the foregoing) as trustee in trust for the Trust, and in furtherance of the charitable purposes set forth in the deed establishing the Trust, which purposes comprise purposes within New Zealand that are charitable according to the laws of New Zealand.

3. "The Trust" referred to in Clause 2.2 is defined in Clause 1.1 as follows;

1.1 Definitions: In this Constitution, unless the context otherwise requires;

...

"Trust" means the Business in the Community Charitable Trust, a charitable trust created by deed of trust dated 8 October 1991 and made between Graham David Craig as settlor of the one part and the trustees therein named as trustees on the other part.

4. The Commission initiated a review of the Company's ongoing qualification for registration after it received information during the application process of another organisation that raised questions about whether The Business in the Community Charitable Trust (the Trust) carried out primarily charitable purposes.

5. The Company is wholly owned by the Trust and carries out its operational activities.

6. On 9 February 2010, a formal notice was sent informing the Trust that the Commission had reached a preliminary view the Trust was not qualified for registration as a charity and the Commission therefore intended to remove the Trust from the Charities Register. The Commission's view was based on there being insufficient public benefit arising from the Trust's primary purpose of providing business-mentoring services to owners of businesses.
7. On 24 June 2010, a formal notice was sent informing the Company that the Commission had reached a preliminary view that the purposes of the Trust were not charitable. Given the Company's primary purposes are expressed as being to carry out the Trust's activities, the Commission therefore intended to remove the Company from the Charities Register.
8. Submissions received by the Commission since that time have been made on behalf of both the Trust and the Company and as such are documented in the deregistration decision relating to the Trust.

The issues

9. The Commission must consider whether the Company remains qualified for registration as a charitable entity in terms of section 32(1)(b) of the Act.
10. In order to be qualified for registration, the Company must meet all of the essential requirements for registration under the Act. In this case the key issue for consideration is whether the Company is established and maintained exclusively for charitable purposes, as required by section 13(1)(b) of the Act.
11. In particular, the Commission must consider whether the Company's purposes fall within the definition of charitable purpose in section 5(1) of the Act, and if there are any non-charitable purposes, whether these are ancillary to a primary purpose.

The law on charitable purposes and deregistration

12. Under section 13(1)(b) of the Act, a society or institution must be established and maintained exclusively for charitable purposes.
13. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community.
14. In addition, to be charitable at law, a purpose must be for the public benefit.¹ This means that the purpose must be directed to benefiting the public or a sufficient section of the public.

¹ See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

15. In relation to non-charitable purposes carried on by an entity, section 5(3) of the Act provides that any non-charitable purpose that is merely ancillary to a charitable purpose will not prevent an entity from qualifying for charitable status.
16. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the Charities Register if the entity is not, or is no longer, qualified for registration as a charitable entity.
17. When considering whether a registered entity continues to qualify for charitable status, section 50(2) of the Act empowers the Commission to examine and enquire into matters in connection with charitable entities or persons, including:
 - (a) *the activities and proposed activities of the charitable entity or person:*
 - (b) *the nature, objects, and purposes of the charitable entity:*
 - (c) *the management and administration of the charitable entity:*
 - (d) *the results and outcomes achieved by the charitable entity or person:*
 - (e) *the value, condition, management, and application of the property and income belonging to the charitable entity or person.*
18. Under section 35(1)(a) of the Act, if an objection to the removal of an entity from the Charities Register is received, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.

Charities Commission analysis

19. The Company's registration as a charitable entity is predicated on the Trust's purposes being charitable.
20. The Commission has reached a view that the Trust's primary purposes are not charitable and has recommended it be removed from the Charities Register. The reasons underlying the Commission's view are documented in the de-registration decision for The Business in the Community Charitable Trust.
21. Given that the Company's purpose is to carry out the operational activities of the Trust, the Commission is of the view that it does not have charitable purposes and therefore, does not meet the requirements for registration under s13(1)(b) of the Act.

Public Interest

22. Section 10(1)(a) of the Act obliges the Commission to promote public trust and confidence in the charitable sector. Although the Commission has given consideration to representations made on behalf of the Company as outlined in the de-registration decision for the Trust, the Commission considers that public trust and confidence in registered charitable entities would not be maintained if entities which did not meet the essential requirements for registration remained on the Charities Register.
23. Accordingly, the Commission considers that it is in the public interest to remove Business in the Community Limited from the Charities Register.

Charities Commission's determination

24. The Commission determines that Business in the Community Limited is not qualified for registration as a charitable entity because it is not established and maintained exclusively for charitable purposes as required under section 13(1)(b) of the Act.
25. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Company's removal from the Charities Register and one ground for removal from the Charities Register has been satisfied, that is, the Company is not qualified for registration as a charitable entity.
26. The decision of the Commission is therefore to remove Business in the Community Limited from the Register, pursuant to section 31 of the Charities Act, with effect from 14 April 2011.

For the above reasons, the Commission determines to deregister the Company as a charitable entity by removing the Company from the Register.

Signed for and on behalf of the Charities Commission

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Trevor Garrett
Chief Executive

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Date