



Charities Working with Business Code of Fundraising Practice

Check-list: key questions to ask

- Is a clear policy in place for working with companies? (3.2)
- Has the company been researched? (3.1)
- Do the trustees hold final responsibility? (3.2)
- Are there any conflicts of interest? (3.3)
- Have any ethical issues been considered? (4.2)
- Have any risks involved been identified? (3.4)
- Are the participating rights, duties and obligations of all parties clear? (3.5)
- Is messaging clear and are communications agreed in advance? (3.6)
- How will money be raised? (4.1)
- Is it a fundraising relationship or just a donation? (5.2)
- Has a communications plan been established that all parties have agreed? (3.6)
- Does the relationship bring satisfactory benefits to all parties? (4.1)
- Have the terms of the relationships, such as duration and use of logos been established?
- How will the relationship be promoted? (3.6)
- Is a contract in place? (5.0)
- Have any potential tax and VAT liabilities been checked? (5.0, 5.4)
- Does the agreement constitute trading? (5.0)
- Do professional fundraiser or commercial participator regulations apply? (5.3)
- How will it be ensured that a commercial partner abides by the terms of the agreement? (5.6)
- Has it been agreed how success will be measured? (3.7)

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- 1.0 The Codes of Fundraising Practice Explained
- 2.0 Introduction
- 3.0 Preparation and Process
- 4.0 Relations with Stakeholders
- 5.0 Key Legal Points
- 6.0 Appendices

1.0 The Codes of Fundraising Practice Explained

The Institute of Fundraising's **Codes of Fundraising Practice** are structured in order to highlight what is mandatory at law, what the Institute regards as a mandatory requirement for its members and what constitutes advice on best practice.

In this Code a phrase where the word:

MUST is in bold indicates a requirement that is mandatory at law.

OUGHT in bold indicates a requirement that is mandatory for members and affiliated organisations of the Institute.

SHOULD in bold indicates a course of action that is recommended as best practice.

Organisations engaged in fundraising **SHOULD** join the Fundraising Standards Board and **SHOULD** follow their complaints procedure.

This **Code of Fundraising Practice** is intended to address fundraising

activity throughout the UK. Legal requirements can vary between different jurisdictions (England & Wales; Northern Ireland; Scotland).

In this Code, **MUST*** in bold indicates a legal requirement within one jurisdiction but not in others.

The Institute recommends that organisations adhere to the most rigorous interpretation of the law applicable to an activity.

Users should be aware that this Code addresses the law as it stands at the date of publication throughout the UK.

Reviews of the law relating to fundraising and fundraising activities, governance and charitable status are ongoing in Scotland, England and Wales.

This **Code** will be revised to take into account any developments or changes in the law that may result from these initiatives.

2.0 Introduction

Corporate Partnerships can bring many benefits. They can provide much needed funds from marketing or community budgets, good PR, brand awareness, awareness

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

of corporate social responsibility, volunteers and gifts in kind. However, without the correct preparation, they have the potential to bring with them problems and conflicts. Much will depend on how the relationship is set up and the preparation undertaken right at the beginning.

This Code is designed as a guide to how charities and other fundraising organisations can work with the commercial sector.

3.0 Preparation and Process

3.1. Research

In this competitive age the reasons for a company working with a charity are seldom purely philanthropic. Whether a charity is approaching a company or vice versa, it is important to learn as much as you can about the company and to undertake a full assessment to identify why it might be inclined to support you before making an approach and setting up a partnership. The process of due diligence is as important in the charity sector as it is in the corporate sector. As part of any assessment of the impact of a relationship, questions you might like to ask are:

- Is the company a PLC, private company or in fact neither; perhaps an unincorporated association or a partnership?
- If it is a company, does it have a parent company and who is it? Which organisations should the relationship be built with?
- Is the company financially sound? (A charity may want to take up credit references. Your auditors could offer advice.)
- Is it a new or start up business?
- Is there a history of charitable support or charitable giving within the company? If so what was it, when was it, and was it successful? (Check with the previous charity partner if possible).
- What are the company's motives for corporate giving?
- Do the values and ethics of the company and its subsidiaries complement those of the charity?
- Are you dealing at the right level, with the right department and is there high-level commitment to partnership with a charity?
- Is more than one level of company management committed to the partnership?
- Both the company's and the charity's brands should be regarded as valuable assets to protect. With this in mind, will the association enhance or damage the charity's brand?
- The company and the charity should be equal partners, although this may not always be feasible. Both charity and company should be clear about the benefits they expect to gain from the relationship
- Is what the charity is expected to bring to the partnership a fair exchange for what the company is offering in return?

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- Will the company exercise due diligence on behalf of the charity and be responsible for all of the costs?
- What is the public's perception of the company and its brand?

Case Study

A cancer charity is approached by a leading confectionary brand. The company wants to donate a sizeable sum of money and establish an ongoing fundraising relationship. One of the company's aims is to get some publicity from making the donation and from an on going relationship. The company has a parent company that will be contributing towards the donation. A cheque presentation is requested and arranged.

It was then discovered on the day that the confectionary brand was actually owned by a major US cigarette manufacturer and their name was on the cheque.

A surprisingly large number of journalists turn up for the presentation.

3.2 Process

- A policy on working with companies is essential for a charity to be able to engage effectively with the corporate sector and **SHOULD** be agreed by the trustees.
- The policy **SHOULD** define the parameters of associations across all types of corporate and partnership activity (see Section 4.2).

However this is just the first step. There needs to be a process for decision-making, including a clear delegation of responsibilities, since working with companies is the classic example of where value judgements need to be made. All those responsible for the development of these relationships should be given specific instruction on the charity's boundaries on corporate engagement and at what point the decision-making body decides whether or not an initiatives should proceed.

The complexity of the issues that need to be addressed will define the process. However a good guide is to have a small group representing key parts of the organisation (fundraising, communications, relevant service departments, such as finance or legal, the charity's policy department, and departments concerned with delivery of services), which is chaired by either one of the trustees or a senior employee. This group then uses the policy as a guide to deciding on all potential engagements with business. This approach allows all interested parties to contribute, as well as the 'overall balance' of the proposed relationship to be

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

assessed. However, it should be recognised that this may not apply in all organisations where decision-making is not necessarily undertaken by committee.

Should a severe disagreement arise, then the charity's trustees, or a senior employee acting on clear guidelines agreed by the trustees (or sometimes a sub-committee, exceptionally a senior employee, each acting on clear guidelines laid down by the trustees) have the ultimate decision making power.

- Any decision taken by those with delegated authority **OUGHT** to be referred to the full body of trustees as soon as possible.

Case Study

A UK children's charity partners with a European clothing manufacturer. The relationship is diverse and includes sponsorship and cause related marketing. The company wants PR to highlight the relationship to its customers.

Without looking to far the charity finds that the company has its clothes made in a third world country largely by child labour. The charity has long fought against the use of child labour. Upon further investigation however it is revealed that the children are properly monitored and that the income brought into most families by children is vital within that economy.

The charity clearly has an ethical dilemma.

3.3 Conflicts of Interest

It is important that a charity is driven by some kind of mission. This will help define what its aims are as an organisation. It will also help establish which are the right kinds of companies to be associated with. When selecting a company a charity should establish that there are no conflicts of interest. Good partnerships often result from common interests and agendas. It can be a fine line between common interest and conflict of interest. The kinds of conflicts that can arise and that may affect a relationship are where:

- ethical considerations carry different weight with the charity and the company;
- a company is working with two charities in the same sector;
- a charity is working with two companies from the same sector;
- a company provides a product or service that helps achieve the mission of a charity (e.g. a pharmaceutical company supplying, in a commercial arrangement, anti cancer drugs to a hospice and supporting that hospice 'philanthropically' at the same time);

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- a company wants a partnership to be exclusive;
- the company wants access to charity supporters;
- a company is both a supporter and a supplier to a charity (for example, bank providing banking services and also fundraising for a charity);
- an employee or non-executive director is also a trustee of the charity, and wants to exercise influence over artistic aims/product; and
- a company wishes to link direct material benefits for their product through the association with the charity (for example, implying a health benefit from a product through the association with a medical charity).

3.4. Risk Assessment

- Using a clear process of risk assessment, a charity **OUGHT** to identify at an early stage the element of risk involved in any activity.

Working with a company brings with it many benefits but there is almost certainly an element of risk. Research will unearth issues that could adversely affect the charity and action can then be taken at an early stage to negate any risk. Activities and associations that could constitute a risk are:

- dangerous sports;
- negative PR;
- financial commitment by the charity to a corporate campaign;
- misuse of funds;
- a clash between the activities of the company and the mission/aims of the charity;
- perception of the company working with a charity;
- natural disaster/loss of premises or equipment;
- the nature of the company's subsidiary;
- the nature of the ultimate holding company;
- general risk assessment issues for charities; and
- SORP 2005 requirements.

The key way of mitigating risk in these relationships ought to be addressed by the contract governing the partnership (see Section 5.0).

Case Study

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

A charity wishes to run an open air concert. It enters into an agreement with a concert organiser and tickets are sold to members of the public. Two weeks before the concert, the organiser goes into receivership and is unable to continue with the concert. Ticket monies will need to be refunded to the attendees. The charity's insurance policy does not cover this risk. Had the charity undertaken a risk analysis when starting work on the concert, this would have highlighted the need to check the solvency and trading record of the organiser and to cover the charity's potential exposure through events insurance.

3.5 Participating Duties, Obligations and Rights

Within a corporate/charity relationship, like any other, there are both legal and moral obligations. The Charities Acts put commitments on both the charity and the company in such a partnership (see Section 5 Legal Issues).

Where the law does cover the position, the issues are clear cut (i.e. the need for a commercial participator agreement where financial gain is evident for the corporate) but clarity may be required where the law does not cover the position. In setting up an association with a company it is still necessary to make clear certain issues at the outset and their implications such as, for example:

- the use of the brand and the charity's name and logo;
- who owns what; copyright, events, services, products, brands and logo's;
- who is going to do what, and when it is to be done;
- how the relationship is going to be presented to the outside world and what is going to be said about the company and the charity; and
- the duration and clear terms of the relationship (for instance whiter that should include exclusivity agreements or allow access to a supporter database).

Case Study

A charity's trading subsidiary enters into an agreement with an insurance company pursuant to which the charity receives a payment for each insurance policy sold. The insurance policy is in fact marketed as being the charity's product, which leads members of the public into believing that the policy is being provided by the charity itself. This increases the charity's risk of receiving complaints from members of the public.

3.6 Communicating and Marketing Plans

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- Assuming part of the reason for going into a corporate/charity relationship is publicity, thought **SHOULD** be given as to how it is to be communicated externally and internally within both of the organisations.
- A communications plan **SHOULD** be written at an early stage that gives the necessary amount of information to the necessary amount of people. Both sets of employees should be informed about the relationship and nature of the partnership.
- In the plan the messages **OUGHT** to be agreed by all concerned and adhered to. It **SHOULD** be clear what both the company and the charity do independently and what they are trying to achieve together.
- Communications to the public and customers **SHOULD** always include the aims of the partnership and what the relationship is about.
- Each party **SHOULD** respect the other's branding guidelines.
- Both parties **SHOULD** agree the final procedure for press releases and media liaison, being aware of each other's needs and timescales.

Case Study

The decision of Barclaycard to sponsor the FA Premiership (for a fee of £48 million for three years) resulted in speculation that they will spend a further £100 million to leverage the sponsorship

In the charity sector, a charity had a sponsorship with a coffee company, who spent twice the first year sponsorship fee in advertising to launch the product.

3.7. Success Factors and Measurement

As with all fundraising activities, it is important at the start of the relationship that the criteria for success should be defined. This can be any number of the following:

Quantitative:

- sales enquiries/actual product sales;
- website hits;
- PR coverage;
- staff participation;
- income raised; and
- new supporters.

Qualitative:

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- staff motivation;
- feel good factor;
- good networking opportunities;
- corporate hospitality;
- longevity of relationship; and
- consumer perception of the brand.

In every case the objectives will be different. However, by defining at the beginning what is expected from both parties, everyone involved will have a proper focus on the activity.

The other important reason to set criteria is that they help the charity to renew partnerships. At the end of a contract if the charity can demonstrate that the targets have been achieved and that the charity has delivered the activities core to the company customers' needs, then it has a strong case to renew the association.

- Points that **SHOULD** be noted:
 - it is important to set realistic and achievable targets when working with a company;
 - if possible, it is good to broaden a sponsorship to include employees and customers, as long as it is done with the full knowledge and co-operation of management. There are many points of entry into a company, and utilising as many as possible will help create a bigger and better relationship for both parties. However, care should be taken when assessing a company at different points not to alienate the first point of contact;
 - where sponsorship includes donated time or expertise it is important to establish that skills offered meet the employment criteria and needs of the charity;
 - it is useful to build into the process regular reports to the company. This then allows the charity to demonstrate progress, and achievements to date;
 - inevitably relationships take time to establish. Thus targets for the first year should be modest, as the first year is required to refine the best way to work, overcome teething issues, and set the basis for future activity; and
 - a high level of resource may have been involved in setting up relationships. It is crucial to recognise the importance of continuing to develop relationships in successive years. Many charities lose sponsors because they do not continue to invest as much time in maintaining relationships as they were prepared to investing in establishing them.
- Dedicated account management for delivery by both sides **SHOULD** form part of the agreement.

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

Case Study

Charity/affinity credit cards emerged in the late 1980s and early 1990s. In most cases they took time to establish both as a new concept, and as a new partner for charities. Over ten years later - for some charities - they are a major source of income. Some large charities generate over £1/2 million a year from credit cards.

4.0 Relations with Stakeholders

4.1 Types of Associations

Having asked the questions and had satisfactory answers you can then look at the most appropriate type of partnership. A corporate partnership can be made up of many component parts and could consist of one or all of the following:

- staff fundraising;
- supplier fundraising and fundraising from other stakeholders;
- licensing - i.e. use of charity name and/or logo in conjunction with the sale of goods/services;
- cause related marketing - i.e. 'A commercial activity by which businesses and charities or causes form a partnership with each other to market an image, product or service for mutual benefit' (Source: Business in the Community (BITC));
- sponsorship - i.e. cash or in kind fee paid in return for access to exploitable commercial potential;
- Payroll Giving;
- donations/matched giving;
- secondments;
- employee involvement and volunteering;
- gifts in kind;
- royalties
- affinity relationships;
- product endorsement;
- events; and
- recycling.

Having done the research and established that a relationship is viable for both parties the charity and the company can look at bringing both organisations together and providing mutual benefits. Types of benefit may include

Charity	Company
<ul style="list-style-type: none"> ● Raising levels of donation 	<ul style="list-style-type: none"> ● Being seen as a good corporate

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

	citizen/Corporate Social Responsibility
• Cause related marketing / licensing*	• Sell more product / test product *
• PR / branding / charity awareness and positioning *	• Raise company profile / corporate citizenship *
• Sponsorship *	• Brand awareness *
• Gifts in kind	• Non financial support
• Volunteers	• Employee satisfaction
• Staff fundraising	• Binding staff together / staff morale

(* Those marked will bring tangible commercial benefits to both parties and will generally require a formal contract - see Section 5.)

It is important to regard the relationship as one between equals. *Both* parties will have scope to negotiate.

- The charity **SHOULD NOT** just accept without question the terms proposed by the company.

It is important to be aware that the value of an association may far outweigh the direct cost to a company.

An agreed understanding the nature of the association to be formed is imperative and a proper contract recording the terms of the association must be put in place.

Case Study

A leading homeless charity had received a large donation from a financial services company. However, as the relationship progressed, the company asked for more and more 'commercial' benefits from the organisation. As a result the charity felt it had to formalise the relationship with a contract - with VAT being due. The company would not pay, and so the charity effectively 'lost' 17.5% of the income.

4.2 Ethical Issues

Working with business (see Section 3.2) can bring huge benefits to a charity in terms of revenue, awareness, and profile. However it also is probably the most challenging area in terms of ethics, and one that needs a clear procedure in order to address the issues thrown up, which can be very complex, and potentially damaging.

The two key requirements are a clear policy, and a clear procedure:

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

Policy

- Except in rare cases it is important that a charity defines its policy for working with business. This **SHOULD** cover:
 - the overall rationale for working with business. Why does the charity want to work with the corporate sector? How does it fit with its mission?;
 - whether working with companies could assist the charity in terms of helping to achieve its core objectives (for example, awareness raising);
 - the basis and limit on which it will work with companies. Some charities may decide not to receive income from companies and just influence/advise on their behaviour. Others will outline their desire to influence, fundraise, and also challenge companies. These intentions should be outlined in a policy; and
 - which companies it will or will not work with. For many charities there will be industry sectors which are incompatible with the charity's aims (tobacco and cancer charities for example). These need to be clearly defined. It may also be appropriate to outline sectors of 'caution' and extreme caution', where in depth consultation and analysis would be required before proceeding.

Other areas where ethics may have an impact are:

- purchasing;
- trading (sales of goods by charities and other subsidiaries);
- investments;
- pension funds (noting, however, that a charity's pension fund may be a separate entity with its own trustees, so may not necessarily share the same ethical policies);
- commercial ventures;
- donations; and
- conflicts with any other areas if corporate sponsorship undertaken by a partner.

5.0 Key Legal Points

- A charity **OUGHT** to always consider the following points.
- There **MUST** be a written agreement governing the relationship between the company and the charity/trading subsidiary concerned (even where this is not strictly required by the relevant Acts). This **OUGHT** to be approved and understood by all parties.
- Tax and VAT issues **MUST** be considered very carefully to ensure that the charity does not unwittingly undertake taxable trading. A good basic test is

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

to ask whether the commercial third party concerned will receive any benefit from the relationship – for example, increased profile for the company's activities or products.

- VAT can be a minefield and a charity **MUST** seek to identify circumstances where VAT will be chargeable (broadly where taxable supplies can be identified): if sums are paid to a charity without charging VAT, and VAT is subsequently discovered to be payable, the amount actually received by the charity will be reduced (see the case study on page [11] above).
- Above all, a charity **OUGHT** to take advice if at all unsure about any tax or legal aspects arising out of a fundraising campaign

5.1 The Charity Commission's Approach

The Charity Commission in its publications echoes much of what is said above: extracts from the Commission's publications dealing with charities and fundraising are included in Appendix 6.3.

5.2 Some basic legal issues for consideration

The fundamental point to consider first is whether there is a 'fundraising' relationship between the parties as opposed to simply a charitable donation. If a company is doing nothing more than simply donating funds then there is no such relationship and the position is relatively straightforward. However, as mentioned before, the likelihood is that most arrangements will involve more than pure altruism. For instance, if a company is going to be selling products and representing that a proportion of proceeds will go to the charity then an agreement is needed. Another fundamental question to be determined early on is whether just the charity or just the charity's trading company should be involved in such an arrangement, or should both? Remember that:

- a charity cannot undertake permanent non-charitable trading (except within the limits prescribed by Her Majesty's Revenue and Customs (HMRC) and only then if permitted by the charity's constitution); and
- an event or an activity where the name and logo of a charity is licensed, or publicity is given to the charity in return for a 'donation', is trading.

In general, if the relationship is purely altruistic and the charity is simply receiving funds then the charity alone need be a party to the arrangement. Most arrangements will, however, be more complicated and will involve something being done on the part of the charity. This will often necessitate the involvement of the charity's trading company. It is normally sensible for the charity, in addition to the trading company, to be made a party to such agreements. If both a charity *and* its trading company are involved in such an arrangement, the role of the charity is generally limited to acknowledging the terms of the arrangement and to ensuring

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

compliance with fundraising regulations. Such an arrangement can also include termination rights given to the charity.

5.3 The Charities Act

Fundraising on behalf of charities is governed by Part II of the Charities Act 1992. This sets out basic criteria which must be applied whenever a professional fundraiser or a commercial participator acts in conjunction with a charity.

Under the 1992 Act and the Charitable Institutions (Fund Raising) Regulations 1994 the percentage of sale/donation that goes to charity must be stated when a professional fundraising or commercial participator raises funds by sale or solicitation. It is also unlawful for a professional fundraiser or a commercial participator to act as such without there being in place an appropriate written agreement between the parties satisfying the prescribed requirements. Such an agreement must contain, as a minimum:

- the names and addresses of the parties to the agreement;
- the date of the agreement;
- the period for which the agreement is to subsist;
- any terms relating to the termination of the agreement prior to the date on which that period expires;
- any terms relating to the variation of the agreement during that period;
- a statement of the agreement's principal objectives and the methods to be used in pursuit of those objectives;
- if more than one charity is involved, how the proceeds will be divided between the charities;
- provisions for the remuneration, or payment of expenses, of the professional fund-raiser. In addition, where a commercial participator/professional fund-raiser solicits funds, then a statement must be made clearly indicating:
 - the name (or names) of the charity involved and, if more than one, the proportions in which the charities are to benefit; and
 - in the case of commercial participators, in general terms the proportion of sums paid, or the amount to be donated, which will pass to the charity; or
 - in the case of professional fund-raisers, in general terms the method by which the fundraiser's remuneration is to be determined.

The above represents a brief summary of some of the relevant provisions of the Act and its regulations. In all cases, reference **OUGHT** to be made to the legislation itself. In particular, note that a professional fundraiser and a commercial participator are catered for separately under 1992 Act: in addition to a written agreement being in place for both, each are subject to differing requirements, which must be adhered to.

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- Commercial participators in England and Wales and Scotland **MUST** make statements declaring the proportions of the sale which is being donated to charity. See the specific produced by the Office of the Third Sector in England and Wales and the Office of the Scottish Charity Regulator in Scotland.

Standard forms or agreement are available on the Institute of Fundraising website.

5.4 The Tax Framework

It should be emphasised that this is a 'grey' area which is constantly changing. Bearing that very much in mind, the general principles are as follows:

5.4.1 Direct tax:

A charity cannot undertake non-charitable trading without paying tax on the profits of such trading unless:

- it amounts to a small scale trading activity with the meaning of the Finance Act 2000 rules – these, broadly, involve a reasonable expectation at the start of a financial year that income from such trading will not exceed £50,000 or 25% of the charity's total income for the year, whichever is lower;
- it is primary purpose trading, for example, a religious charity selling religious material;
- it is a trade conducted mainly by the charity's beneficiaries, i.e. it is carried out in the course of directly achieving the objects of the charity (for example a workshop for disabled people);
- it represents a fund-raising event falling under Extra Statutory Concession C4 that:
 - is organised for charitable purposes *by a charity* or jointly with other charities;
 - has as its primary purpose the raising of money;
 - is promoted as being primarily for the raising of money provided that:
 - no more than 15 such events are held in the same place in any one year. Events with gross takings of less than £1,000 are excluded from the 15 event limit whilst events which are "likely to create distortions of competition such as to place a commercial enterprise carried on by a taxable person at a disadvantage" are excluded from benefiting from this exemption; or
 - a commercial organisation supports a charity in return for which it is agreed that the charity will display the company's name and logo but only if the name and logo are *not displayed prominently* (please note that – confusingly – VAT is payable

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

when the logo is displayed, although there may be an exemption in relation to a one-off fundraising event). Advertisements for the company's products or large and prominent use of corporate colours would amount to taxable trading, although advertisement space in an event brochure may be zero-rated for VAT.

Case Study

This question frequently arises when preparing programmes for concerts etc. A simple thank you within the programme will certainly not attract VAT or direct tax but a one page advertisement for a company's products would amount to taxable trading and payments by the company to the charity would be subject to VAT. Between these extremes, the display of the company's logo at the foot of the front page may not attract direct tax but will attract VAT.

5.4.2 Indirect tax –VAT:

HM Revenue and Customs' (HMRC) view is that a charity will make taxable supplies if there is a written or oral agreement or understanding that, in return for a sum of money, goods or other services, a sponsor will receive from the charity some publicity or other form of benefit. A donation will only qualify as such if it is freely given and secures nothing in return.

For example, simple acknowledgement of support such as

- inclusion in a list of supporters in a programme or on a notice; or
- putting the donor's name (but not logo) on fundraising literature; and
- will not constitute a VATable supply.

However, HMRC would generally regard the following as giving rise to a taxable supply:

- display of the company's logo or trading name (whether or not prominently displayed); and
- marketing (or even assistance with marketing) the fundraising event or commercial participator's product by the charity and/or its trading company.

If there is, or may be, a taxable supply involved in an arrangement, it is essential to ensure that the fundraising agreement makes it clear on the face of it that VAT is payable in addition to amounts agreed to be paid to the charity/trading company. If this is not done, the receipts will be deemed to be VAT-inclusive, therefore reducing the net receipts by the amount of the tax. VAT is generally charged at the current rate - to make payments subject to VAT should not generally be a problem for VAT

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

registered commercial participators or professional fund-raisers. Some problems may, however, arise when dealing with VAT-exempt organisations, such as banks. In such cases, for instance that of affinity credit cards, special rulings may apply.

Another related issue is the use by the company of the charity's name and logo. This link will usually mean that there is a tangible benefit to the company, given the expectation that the link will raise the business/charity profile and this boosts sales - the company is therefore getting something in return for its payment. The supply of the use of the charity's name and logo to promote the activity may then be seen by HMRC as a supply of advertising services by the charity, in return for the 'donation', and therefore be liable to VAT.

If in doubt, take professional advice.

5.5 Some basic points to remember when dealing with such arrangements

Under the Charities Act 1992 the obligation is, strictly, on the commercial participator/professional fund-raiser to have in place an agreement satisfying the Act's minimum requirements. If there is no such agreement in place, a criminal offence is committed by the commercial participator/professional fundraiser (not by the charity) and any agreement in place will not be enforceable. However, such a situation puts the charity at risk (e.g. no contractual ability to terminate the arrangement) and will hardly reflect creditably on the charity nor encourage other such commercial participators/professional fund-raisers to do business with the charity.

Whatever the terms of the Act, it is essential in all arrangements with commercial partners that there is a written agreement covering all relevant points (not just the bare minimum of the statutory requirements) in order to protect the interests of the charity and to help avoid problems in the future. Where a Scottish Charity has a contract covering the activities of a commercial partner operating in England and Wales, or the reverse situation applies, it **MUST** ensure that the contract covers potential liabilities under all jurisdictions.

Other important points to cover may include:

- VAT status;
- payment terms;
- sign off procedures for use of logo;
- data protection and ownership of data;
- confidentiality;
- access to the accounts;
- variation/review/termination of the agreement and the right of the charity to redress where its reputation is affected (noting that any termination clause should also identify those elements that need to survive the termination of the agreement in order to secure the long-term future of the charity's interests; for example, accounting access, indemnity clauses and confidentiality); and

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- liability (what you are, or are not, responsible for), for instance, copyright - who owns what? What goes out of copyright, when and why? It is important never to pass on to someone else an asset which you may wish to control/earn money from in future. This is another area where help/advice may be needed.

5.6 Beyond the initial agreement

A charity and/or its trading company must ensure its commercial partner abides by the terms of the agreement. If there is any breach of the agreement, it will usually be a matter of serving notice (in writing) to complain of the breach, giving a reasonable period in which to rectify problems. If, however, the breach persists, then the charity and/or its trading company must review its ability to terminate the arrangements in accordance with the relevant provisions contained in the agreement.

Typical problems may include:

- failure to make payments on time, if at all;
- failure to meet agreed responsibilities;
- unsuitable products; or
- failure to put details of the charity and the method of calculation of the payments to the charity on fund-raising materials

A charity's rights will include:

- access to the commercial partner's books and records relating to the promotional venture; and
 - an ability to refer the situation to the Charity Commission, which takes an active interest in identifying commercial participators/professional fundraisers who do not comply with the legislation.
- Detailed specialist advice **SHOULD** be obtained before taking or refraining from any action as a result of the comments made above which are only intended as a brief introduction to the subject.

6.0 Appendices

6.1 Useful Contacts

- Arts and Business
Phone: 020 7378 8143
www.aandb.org.uk
- Arts and Business in Scotland
Phone: 0131 556 3353
www.aandb.org.uk

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- Association of Fundraising Consultants
Phone: 01582 762446
www.afc.org.uk
- Business in the Community
Phone: 0207 566 8650
www.bitc.org.uk
- Charity Law Association
Phone: 01634 373253
www.charitylawassociation.org.uk
- Charities Aid Foundation
Phone: 03000 123 222
www.cafonline.org
- Charity Commission
Phone: 0845 3000 218
www.charity-commission.gov.uk
- HM Revenue and Customs
Phone: 0845 302 0203
www.hmrc.gov.uk
- Heart of the City
Phone: 020 7332 3643
www.theheartofthecity.com
- Office of the Scottish Charity Regulator
Phone: 01382 220 446
www.oscr.org.uk
- Scottish Business in the Community
Phone: 0131 451 1100
www.sbcscot.com/better-business

6.2 Glossary of Terms

6.2.1 Charities Acts

The Charities Acts 1992, 1993 and 2006 together with the Charitable Institutions (Fund-Raising) Regulations 1994, contain most of the specific rules and regulations which apply to charitable fundraising with business in England and Wales. In Scotland, the Charities and Trustee Investment Act (Scotland) 2005 applies.

6.2.2 Commercial participator

A commercial participator is any person (or organisation, other than a charity's trading subsidiary) who:

- carries on for gain a business other than a fund-raising business;
- in the course of that business engages in a promotional venture; and
- represents either that a donation will be made to charity in connection with the sale or supply of goods or services or that some or all of the amounts paid for such goods or services will be passed to charity.

6.2.2. Professional fund raiser

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

A professional fundraiser is any person (or organisation, other than a charity's trading subsidiary) who:

- carries on a fund-raising business (generally this involves soliciting funds for "charitable, benevolent or philanthropic purposes"); or
- without carrying on such a fund-raising business, for reward (£500 per year at least) solicits money or other property for the benefit of a charitable institution.

6.3 The Charity Commission's Approach

The Charity Commission's publication 'Charity and Commercial Partners' **SHOULD** be referred to in conjunction with this Code. Additional Commission guidance includes:

"The choice of fundraising methods is a matter for trustees to decide. However, charities need to be alert and sensitive to public opinion and criticism. Fundraising methods which meet with disapproval can damage the charity and reduce public confidence in the sector as a whole." **(CC20 Charities and fundraising - <http://www.charitycommission.gov.uk/publications/cc20.asp>)**

"A charity's name is precious. It is the means by which a charity is known and by which its reputation will be judged. We therefore strongly recommend that trustees be careful how they allow it to be used especially by a commercial participator during a promotional venture." **(CC20 - <http://www.charitycommission.gov.uk/publications/cc20.asp>)**

"As an asset, the name of a charity can be used to further the overall interests of the organisation; commercial participation is a valid way of achieving this." **(Charities and Commercial Partners - <http://www.charity-commission.gov.uk/publications/ccpubs3.asp>)**

The Commission recommends the formation of written criteria to judge the acceptability or otherwise of any proposed arrangement for fund raising. Points to consider include:

- "whether such joint ventures will fit with the charity's fundraising and other policies, strategies and values. They will need to consider whether the charity's best interests, overall, will be served by seeking, and/or accepting approaches from potential commercial partners. However tempting the immediate benefits on offer, no charity is obliged to enter into an agreement which its trustees do not feel is in the charity's best interests overall;
- where trustees are confident that joint ventures with commercial companies **are** appropriate for their charity, and a particular company is chosen, they will need to consider if the company is a suitable partner bearing in mind what the charity knows of the company's products, activities, public image, and financial position. The closer the perceived association will be between the company and the charity, the more important it is that the charity should be confident beforehand in the company's suitability as a partner;

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- whether they are confident that the company will be able to discharge its financial and other obligations under the proposed agreement;
- whether they are confident that they can identify and assess the benefits that will be received and the risks and costs associated with the agreement;
- how the charity's decision to associate itself with that company in that joint venture will be seen by employees, donors and supporters, the wider public, institutional funders, other charities working in the same field, and other bodies that the charity may hope to influence;
- what the charity will do to anticipate and answer any complaints or criticisms that could be made of its association with a particular company or product. Preparation in this area will prove especially valuable if public or media concern arises unexpectedly."(CC 20 - <http://www.charitycommission.gov.uk/publications/cc20.asp>)

The Commission's approach therefore:

- recognises the importance of fund-raising;
- equally, is concerned about the use (and misuse) of the Charity's name and logo in connection with certain fund raising activities and by certain fund-raising partners. Such concerns lead to the introduction of the Fund Raising Regulations within the Charities Act 1992 and the Charitable Institutions (Fund Raising) Regulations 1994.

6.4 Working Party

- Edward Hodgkins - Macmillan Cancer Relief
- Graham Minton - WWF
- The Charity Group of Nabarro Nathanson - Solicitors

Institute of Fundraising Code Working Parties provide advice and make recommendations to the Institute's Standards Committee in the process of Code development.