

Need to know:

SETTING UP A CORPORATE FOUNDATION



Certified



Corporation

Setting up a corporate foundation connected with your business is a great way of amplifying the business' impact and delivering positive change for people, society, and the planet. We've done this ourselves (the Bates Wells Foundation – which works to support sustainable social change), and over the years we've helped numerous businesses, from SMEs to global corporations, to set up and manage their foundations.

Here are the main things we think you should think about.

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Benefits of setting up a corporate foundation

Establishing the foundation as a UK registered charity:

- Affords significant global credibility to the foundation.
- Provides unparalleled public reassurance that the foundation is doing good work to benefit the public.
- Enhances the business' philanthropic credentials through its connection with the foundation.
- Can be good for employee engagement.
- Carries significant tax advantages for the business and the foundation. In particular:
 - The business can tax-effectively fund organisations that are not charities but that are doing charitable work
 - The business can build up a charitable fund tax-effectively in good profit years without distributing it all immediately to end-user charities.
 - The foundation can make its grants repayable (eg if the grant is not used properly) but the business can't do that tax-effectively.



Disadvantages of a corporate foundation

- A foundation comes with its own administrative and regulatory burdens, so resources have to be devoted to addressing those. They are fairly easily managed by any sizeable business.
- Because the foundation board must act independently of the business, there is a risk that the two organisations drift apart in their thinking unless there is a strong, well-maintained relationship. If a drift becomes a rift, there can be reputational damage to both organisations.

Alternatives to a corporate foundation

Each of these alternatives might suit your business, although none gives all the advantages of a corporate foundation:

- The business could deliver its social purpose activities itself, either through a CSR division or via a non-charitable subsidiary company.
- The business could make donations each year directly to the charities it would like to support or it could enter into cause related marketing arrangements with those charities.
- You could set up an account with a donor advised fund (DAF), which is a type of charity that receives donations and (through custom but not legal obligation), applies them for charitable purposes as requested by the donor, charging fees for its administration of the funds. This has some of the benefits of the corporate foundation model but there is less legal and practical control over the operations.

Independence from the business

Corporate foundations normally work closely with the businesses that set them up. This usually involves the business providing the foundation with funding, back-office services, staff time, access to the business' premises and other facilities, and the IP/goodwill from the business. The business is also likely to exercise corporate control over the foundation, with the ability to appoint and remove the foundation's trustees. This strong relationship helps to ensure that the foundation and business share a view on how the foundation will achieve its charitable aims.

However, the foundation must retain its identity as a separate organisation, and the Charity Commission expects that separate identity to be real, practical and documented. To help ensure this, we recommend that:

- There is an agreement between the two organisations setting out how they will work together and how, in general terms, the foundation expects to be resourced and supported.
- There are some trustees who are independent of the business, who can take decisions when there are conflicts of interest, and periodically review the arrangements to ensure that they remain in the foundation's best interests.
- If the foundation and the business are sharing employees, you consider how the employee relations will be managed, and how the arrangements will be treated for corporation tax and VAT purposes.
- The trustees and the business consider the Charity Commission's **specific guidance** on the connection between charities and non-charities. It contains a **useful checklist** to help you ensure the connection between the organisations is managed in the best interests of the foundation. This includes managing risks, operating independently, managing conflicts, ensuring any private benefit to the business is incidental, and maintaining separate identities.

Other points to consider

If you proceed in setting up a corporate foundation, other points to consider are:

- The legal structure of the foundation, and what its constitution will look like. Typically, the business' rights to make decisions in relation to the foundation – e.g. to appoint and remove its trustees – are enshrined in the governing document. Typically, the choice is between a trust, a charitable company limited by guarantee (CLG) and a charitable incorporated organisation (CIO), with CLGs and CIOs far outstripping trusts in popularity for reasons of corporate control and limited liability.
- The charitable purposes: what is the charity's reason for existing – who will it help and why? Most corporate foundations will exist for all charitable purposes, even if they only ever pursue some of them.
- Governance (including managing conflicts of interest).
- Terms of the licence of the business' brand to the foundation and how quickly, and on what grounds, that can be terminated.
- Who will run the foundation, and whether and how it will share resources, with the company.
- Where the foundation will be based, and who will provide its legal and accountancy advice.
- Tax and VAT.
- Where will the foundation provide funding? If it funds organisations abroad or non-charities in the UK, rules on how this may be done must be carefully followed.

- Accounts: because it is a separate organisation, the foundation will need separate finances and accounts, which will need to comply with charity accounting requirements. The accounts may also need to be audited as the threshold for audit is far lower than for a non-charity. A question often arises as to whether the accounts should be consolidated with those of the business; the answer is almost invariably 'no'.
- Policies: what other policies does the foundation need? For example, on how beneficiaries or grant recipients are selected, managing conflicts of interest, data protection, safeguarding, expenses, reporting serious incidents to the Charity Commission, equal opportunities, and so on.



Talk with us

If you're thinking about setting up a corporate foundation, we'd be delighted to have an initial chat with you about it. Or if your business has a foundation already, you may be interested in our **corporate foundation health check**, which helps to bring corporate foundations up to date with the latest Charity Commission guidance and potential areas of risk to be managed. Either way, please do get in touch.

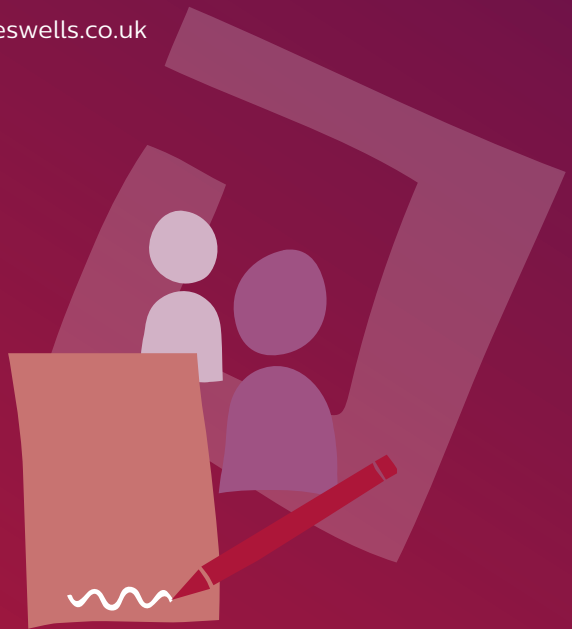


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This information is necessarily of a general nature and doesn't constitute legal advice.

This is not a substitute for formal legal advice, given in the context of full information under an engagement with Bates Wells. All content in this document is correct as of 22 August 2022.



Making a profit is core to all businesses but our goal is to combine this with a real social purpose. Our values are pivotal to us, they shape our decisions and the way we live and work.

We focus on positive social impact as much as we focus on being a successful law firm. Our top tier legal advice is coupled with a real desire to drive change and we were the first UK law firm to achieve B Corp certification, awarded to businesses that balance purpose and profit.

Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

Bates Wells challenges what is possible in legal expertise delivery.

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