Charities Aid Foundation

Regulatory Update for Charities
Update on charity law and regulation for investors

Richard King
Introduction

• A horror story!
• C (P & S I) Act 2016
• Charity Governance Code
• Charities Bill
• CRS
• MiFID II
KI - a horror story!
Kingsway International

- invested via trustee (unregulated)
- speculative, high risk investment
- fixed 55% p.a. return!
- loss of £3.9M out of £5M invested
- conflict of interest
- Trustee Act – wide powers **but** needs: care, suitability, diversify, advice, review
- restitution
C (P & S I) Act 2016
C (P & S I) Act 2016

- fund-raising
- disqualification
- CC powers e.g. to ‘warn’
- social investment
Social Investment

- statutory power (subject to constitn.)
- consider need for advice
- consider interests of charity:
  - advancing purposes
  - achieving financial return (care with PE)
- risk to bens if default?
- keep under review
- CC14
Charity Governance Code 2017
Charity Governance Code

- principles and recommendations
- 2 versions – ‘large’ and ‘small’
- no mention of investments, but...
- principle 4: decision-making, risk and control
- values and agreement with supplier
- in interests of charity
Charities Bill?
Charities Bill?

- Law Comm. Report
- ‘technical issues’
- ‘inefficient and unduly complex’
- not wholesale reform
- draft Charities Bill
- investment reform
Investment reform

- looser restrictions on PE
- portfolio offsetting
- easier social investments
- statutory power to borrow from PE
- spend up to 25% PE
- must recoup PE within 20 years
Common Reporting Standard
CRS

- NFEs: ‘non-financial entities’
- FIs: ‘financial institutions’
  - unincorporated
  - discretionary management agreement
  - investment income > 50% of gross
  - separate calculation for PE
- donations to overseas beneficiaries
- annual report to HMRC
- grants to non-charities
Charities funding non-charitable organisations: at a glance

- Monitoring spending of the grant
- Know your charity’s purposes
- Setting the terms and conditions
- Systems to consider grant applications
- Limits on funding non-charities
- Risk assessment/due diligence
- Is the other organisation a charity?

Deciding to award a grant

Tozers Solicitors LLP
MiFID II
MiFID II (1)

• 3.1.18
• transparency
• no ‘inducements’ for indep. advice
• quarterly valuations
• notification if >10% fall in ¼
• detailed info on best execution
MiFID II (2)

• NPIs
• LEIs
Further information


Copyright and Disclaimer

Tozers LLP’s workshop guidance is intended to help delegates keep up-to-date with information which may interest them, without necessarily addressing particular individual circumstances which could affect that guidance. It does not constitute legal advice. Delegates should, therefore, seek advice on any specific matter if proposing to take action in consequence of any such guidance.

You must not reproduce, sell, license, broadcast or disseminate any part of these materials in any format without the written consent of Tozers LLP. To the maximum extent allowed by law, Tozers LLP denies liability for loss or damage howsoever arising in respect of these materials.
Charities Aid Foundation
Investing for Charities