

## Contracts

Your organisation's capacity to enter into contracts will depend on the legal form the organisation has adopted. Any organisation entering into a contract should understand the legal consequences for the organisation itself and for individual officers and members.

This section explains:

- legally enforceable contracts and how they can be entered into
- when a person or organisation will be liable for contracts made by someone else
- how an organisation can give authority for contracts to be made on its behalf
- which types of organisation can enter into contracts in their own name.

### What is a “contract”?

A contract is a legally enforceable private agreement in which each side promises to provide a benefit to the other. An “agreement” is another word for a contract.

### When will an agreement be a legally enforceable contract?

Not every agreement between two people or organisations amounts to a legally enforceable contract. For the agreement to be enforceable there must be:

- a clear offer by one side, and clear acceptance of it by the other.
- “consideration” given by each side, which means that each side must provide, or promise to provide, something of benefit to the other (unless the agreement is made by deed). A gift is therefore not legally enforceable, because only one side gives something of benefit.
- certainty about the terms of the contract.

## **Entering into a contract**

### **Methods of entering into contracts**

Most contracts don't have to be in writing to be valid. There are exceptions – for example, any contract for the sale of land, or a hire-purchase agreement. However, it's good practice for any contract involving substantial amounts of money or property to be in writing.

A written contract must be signed by a person who has the explicit or implied authority of your organisation. Written contracts usually specify that they can't be amended except by a later written agreement between the parties.

When a contract isn't required to be in writing (a contract to buy a car for example), the contract can be made orally by any person who has been given explicit or implied authority by your organisation to make the contract.

### **Agreements in the form of a deed**

An agreement will be enforceable if it's in the form of a deed, even if it wouldn't otherwise be legally enforceable as a contract because only one side provides something of value ("consideration") – for example, a gift made in the form of a Deed of Gift. To be legally enforceable as a deed, the transaction must be in writing and be formally witnessed, and the person making it must intend it to have effect as a deed.

## **Liability for contracts made by others**

### **When will an organisation be bound by a contract made by individuals?**

There are several ways in which your organisation may be bound by a contract:

- if the person who made the contract had actual or apparent authority to bind the organisation (see "Authority to enter into contracts" below)
- if the organisation later guarantees the obligations under the contract of the person who made it, or
- if the organisation later ratified (formally confirmed) the contract.

## **Authority to enter into contracts**

Whether a person has authority to enter into contracts on someone else's behalf is governed by the ordinary law relating to agents. Under those laws, any person who is legally competent to do an act (which includes an incorporated body) may authorise another person as their agent to perform that act on the first person's behalf.

It's necessary, however, to distinguish between "actual" authority and "apparent" authority, as explained below.

### **"Actual" authority**

Person X has express actual authority to enter into contracts with a third party on behalf of an organisation Y if X is given this authority by:

- organisation Y's rules or constitution, or
- a resolution passed by Y, or
- a contract between person X and organisation Y.

Person X will then also have implied actual authority to do whatever is necessary for, or incidental to, effectively carrying out the organisation's express authority.

It's advisable for the organisation to specify the precise limits of the authority in the authorising document, and in as much detail as possible, rather than relying on implied authority.

### **"Apparent" authority**

Person X has "apparent" authority to enter into contracts with a third party on behalf of organisation Y if Y represents to the third party that X is authorised to do this on Y's behalf. Organisation Y might do this by telling (or implying to) the third party that X has this authority, or simply by acting as if X has this authority.

To minimise the risk to your organisation that other people or organisations will appear to have apparent authority to legally bind it, your organisation should avoid making explicit statements to third parties that a particular person X has general authority to bind the organisation. When telling a third party of X's authority, the organisation should precisely specify the limits of the authority and make it very clear X has no authority to enter into contracts outside those limits.

Your organisation should also avoid creating any implication that a person has general authority to bind it. It shouldn't knowingly permit a person to act in a way that suggests he or she has the authority to bind it – for example, it shouldn't allow a person to use the organisation's name, letterhead, logo or seal when negotiating or executing contracts or when carrying out business generally.

## **Contracts and different types of organisations**

### **Unincorporated groups**

An unincorporated group doesn't have a separate legal identity and therefore can't enter into contracts in its own name. Instead, contracts must be entered into by some or all of the group's members personally (or in the name of an incorporated umbrella or parent body: see "National and other parent structures" below), and those members will then be personally liable (responsible) for the obligations in the contract.

### **Incorporated societies**

#### **Incorporated Societies Act 1908, s 15**

An incorporated society can enter into a contract in its own name, if the society's rules or constitution allow this. The Incorporated Societies Act sets out explicit rules for how a society may enter into contracts.

### **Trusts**

#### **Trustee Act 1956, ss 13A, 14, 15, 24, 29**

A trust is not an incorporated body (unless it has registered as a charitable trust board) and therefore it can't enter into contracts in its own name. Instead, the trustees are given powers under the Trustee Act 1956 to enter into contracts for various purposes (selling trust property for example), and also usually under the particular trust deed (see "Choosing the right legal structure for your group / Trusts / Trustees: Their powers, duties and liabilities" in this chapter).

The trustees are personally liable for the obligations they incur through a contract, but usually the trust deed will grant the trustees a right to be indemnified (compensated) out of the trust property for that liability. Trustees can also include a term in a contract to limit their liability under it.

## **Charitable trust boards**

### **Charitable Trusts Act 1957, ss 13, 19**

Charitable trust boards are incorporated under the Charitable Trusts Act and can therefore enter into contracts in their own name. The members of the board will usually not be personally liable for the board's contractual obligations, but they may be liable if, for example, they've been negligent or acted illegally.

## **Companies**

### **Companies Act 1993, s 16**

A company, as an incorporated body, may enter into a contract in its own name.

The personal liability of the shareholders will usually be limited to the value of their shareholding. The company's directors aren't liable for the company's obligations unless they've breached their duties as directors or given personal guarantees.

## **National and other parent structures**

In national structures with incorporated local groups, the national/parent body and each local organisation is an incorporated body with its own legal identity and can therefore enter into contracts in its own name (see "Choosing the right legal structure for your group / National bodies and local organisations" in this chapter).

Whether a parent body and an incorporated local organisation can bind each other to contracts is governed by the general rules for liability for contracts entered into by others (see above, "Liability for contracts made by others").

In national structures where the local groups are unincorporated, the local groups cannot enter into contracts in their own name. Instead, contracts must be entered into by some or all of the local group's members personally, and those members will be personally liable for the obligations in the contract.

An unincorporated local group will be taken to have implied actual authority to enter into any contract (through its members) on the parent body's behalf if:

- the parent body could itself have entered into that contract, and
- the parent body's rules don't explicitly limit the authority of the local group to do this.

The local group can also enter into contracts that bind the parent body if it has apparent authority.

It's good practice for the rules of all parent bodies that operate unincorporated local groups to contain:

- detailed provisions covering the type of contracts that the local groups are authorised to enter into on behalf of the parent body, or
- a provision requiring the consent of the parent body before it can be bound by a contract entered into by a local group, or
- a combination of the two.

A national or other parent body on whose behalf an unincorporated local group has entered into an unauthorised contract can later ratify (formally confirm) the contract and become legally bound under it.

An unincorporated local group may be liable (responsible) under a contract it has entered into on a parent body's behalf if:

- this is explicitly stated in the contract
- the local group has stated while negotiating or executing the contract that it will be solely or jointly liable, or
- the local group has acted outside its express or implied actual authority, or acted without apparent authority to bind the parent body.