Charitable Entities Raising Money from Investors

Many charities and not-for-profit entities want to explore different forms of funding. We are also increasingly seeing a blurring of the lines between charitable entities and commercial entities. Examples include the rise of such concepts as social enterprise, impact investing, & integrated reporting to name a few. This article explores some recent activity in relation to the ability of charities and other NFPs to raise money from investors, challenges faced, and a helpful resource from the Financial Markets Authority.

What's happening at the leading edge of the charitable sector in NZ

Achieving meaningful impact in the charity world continues to evolve. It is truly refreshing and inspiring to see charities and NFPs doing some great work but not always in the way it has been done before. We are also fortunate in the sector to have some very smart and restless minds constantly seeking innovative new ways to approach seemingly intractable old problems.

Whether these problems are social, environmental or other societal issues, thankfully some of our brightest and bravest are seeking new solutions. Driven partly perhaps by that famous saying along the lines of: ***Doing the same thing and expecting a different result is actually a definition of insanity!***

Some of these new solutions are examples of big thinking – really making an impact by solving issues at scale. And some of them deal with expensive problems. Take social housing for example. No matter how innovative and inexpensive one can make housing designs, you cannot escape the fact that any attempt to make a noticeable difference involving the property market will be an eye-wateringly expensive exercise.

Also think big and all of a sudden some commercial enterprises start to take an interest. They generally want to be involved to assist but in doing so are heavily, or sometimes totally, motivated by furthering their own commercial businesses and interests.

Then there is the Government - wanting to promote innovation and sometimes fund solutions, but also understandably seeking to get the best leverage from their involvement and investment. Hence the Government appears keen on possible solutions that can harness a range of different parties such as charities, philanthropists and other funders, as well as commercial interests and others.

But is this approach schizophrenic from the Government?

On one hand we appear to have a Government keen on promoting innovation and new approaches. That's great. But as we've noted already many of these new approaches also require considerable funding.

Then on the other hand we have a Government implementing a range of new regulations which can be seen by some to restrict innovation, or at the very least, be a considerable disincentive to those brave souls pouring all their energies into trying to get some innovative solutions off the ground.

And with respect, while generally sound at a policy level, the level of increased or new regulation across a range of areas and its impact is considerable. Take a charity involved in social housing provision. In the past few years they will have been impacted by a host of new legislation and regulation such as new:

- Charities legislation
- Financial reporting legislation
- Anti-money laundering and counter financing of terrorism legislation
- Building code changes specifically regarding leaky buildings and earthquake strengthening
- Health and safety legislation
- Responsibilities and liabilities on directors and governing body members
- Upcoming incorporated societies legislation (if that is their legal structure)

And that is just to name a few.

If that charity wanted to raise some funds other than donations to help fund their activity then they will also likely have been impacted by our new financial markets legislation and regulation.

What's been happening in the financial regulation world in NZ

A few years ago we got a new financial markets regulator in New Zealand; the Financial Markets Authority, or FMA as it is commonly referred to - www.fma.govt.nz

The FMA is an independent Crown entity and took over the roles of a number of previous agencies, most notably the Securities Commission. The FMA's stated mandate is that they are "responsible for ensuring public confidence in our financial markets and supporting the growth of New Zealand's capital base through effective regulation." This mandate is interesting when one thinks about charities and why they exist.

Much of our financial markets legislation such as the old Securities Act has now been repealed and in 2014 the FMA began working under a much wider mandate with the introduction of the Financial Markets Conduct Act 2013 (FMC Act). This is new legislation with, in some respects, quite a different policy approach to regulation of markets compared to the old Securities legislation and regulation it replaces.

As such prior to Christmas 2015 the FMA issued a discussion document on their intention to revoke the previous Securities Act (Charity Debt Securities) Exemption Notice 2013. While applying to a relatively small number of charities this was in our view a useful, pragmatic exemption for charities wishing to raise funds from the public. RSM assisted The Tindall Foundation to jointly submit on this. (Come on folks; we know it is hard and time consuming but we live in a democracy. If you don't like something, or otherwise want to make some observations, you have to exercise your right to be heard).

Not surprisingly the FMA concluded there was no reason to keep this exemption. They operate under the FMC Act and anything they do must fit under that Act. The exemption, while useful, was a leftover from old revoked Securities legislation and didn't really fit into their mandated framework going forward.

However hopefully useful points were still made in the consultation process including that:

- Charities do have different features including a layer of regulation and transparency from being registered charities already
- Charities have entirely different motivations, to profit seeking issuers
- If regulation is too "one size fits all" and heavy handed it will stifle fledgling innovation

Where to from here?

So without the old exemption what can charities do? And how can they navigate what to many are the complex options under the FMC regime?

Helpfully the FMA has attempted to answer this question by producing a helpful information sheet outlining the different options for community and voluntary organisations wanting to borrow money from investors. see http://fma.govt.nz/assets/Guidance/160202-Guide-for-charities.pdf

While not being the Holy Grail perhaps hoped for by some in the sector this guide at least provides a helpful explanation of what is possible as regards existing avenues of raising funds from investors in New Zealand.

About the Author

Craig Fisher FCA is an Audit Partner and Chairman of RSM.
Craig is a specialist regarding not-for-profit and charitable entity issues.

Contact Craig on:
D: +64 (9) 367 1654
E: craig.fisher@rsmnz.co.nz
W: www.rsmnz.co.nz