



Choosing a legal structure

CORE02

This information sheet looks at the most common types of legal structure for voluntary and community organisations in England, and sets out the main advantages and disadvantages of each one.

Incorporation

In the eyes of the law, an organisation is either:

- Unincorporated - in other words a collection of individuals working together

or

- Incorporated - for example a limited company. These are known as corporate bodies. A corporate body is a separate legal entity from the individuals belonging to it.

Most voluntary groups begin as unincorporated organisations, and may stay that way, particularly if they are small. A group of people can form one easily, without any special formalities. They simply decide for themselves how to run it. In practice, it is worth agreeing some basic rules and writing these down, so that everyone is clear about the aims for the organisation and how it will be managed.

The law looks on an unincorporated organisation as a collection of individuals. This means that the group cannot in its own right hold property, enter into contracts or take part in lawsuits. Its committee members, or trustees, have to do these things as individuals. If the organisation ends up by owing money, they can be personally liable to meet any debts from their own pockets. This is called unlimited liability.

If your organisation is currently unincorporated, you may want to consider using one of the following types of incorporated structure. This is particularly important if you want to employ staff, take on contracts or undertake work which involves any sort of risk.

Corporate bodies

A corporate body enjoys limited liability and can hold property and contracts in its own right. There are several types of corporate body which may be suitable for voluntary organisations. In this sheet we will look at:

- Company limited by guarantee
- Community interest company (CIC)
- Charitable incorporated organization (CIO)
- Charitable Industrial and provident society (CIPS)

Company limited by guarantee

A company limited by guarantee does not have shares or shareholders, and cannot distribute profits. Instead it has members, who may pay a subscription and are each liable for a limited sum if it is wound up. This is the guarantee.

The members elect a committee, or board, and can remove them - but the committee has day-to-day control. A limited company's rules are set out in a legal document called the Memorandum and Articles of Association. This must be carefully drafted, preferably with legal advice, because the company has no power to do anything not covered by it. A model document is available free of charge from the Charity Commission.

The structure and how it works is widely understood. It is quick and easy to set up and the costs involved in registering with Companies House are low. If the company is charitable, all the usual charity tax reliefs are available.

However, there are strict legal requirements about annual general meetings, accounts, and audit. This all involves quite a lot of paperwork and there are penalties for a failure or delay to file information. If a company is charitable it is necessary to register with both Companies House and the Charity Commission. This means having to account to two regulators with different requirements.

For more information about registration, visit www.companieshouse.gov.uk or telephone **0870 33 33 636**

Community Interest Company

Community Interest Companies (CIC) are limited companies with special additional features. They were created for businesses which are conducted for community benefit, and not purely for private profit. These types of business are often called social enterprises.

To make sure the company is run for community benefit, a CIC is subject to a community interest test and an asset lock. These ensure the assets and profits of the CIC are dedicated to the purposes for which it was set up. Registration of a company as a CIC has to be approved by the CIC regulator, who also has a monitoring and enforcement role.

The advantage of this structure is that it has much of the flexibility enjoyed by the private sector. CICs can have shareholders and pay directors, and they are not restricted to purposes which qualify as charitable. However, unlike a private company, a CIC cannot be taken over and diverted away from the social vision of its founders.

The main disadvantage of this structure is that CICs do not receive the tax advantages extended to charities.

More information about CICs is available at www.cicregulator.gov.uk

Charitable incorporated organisation

CIOs are a new form of incorporated charity brought in by the Charities Act 2006. CIOs have all the benefits which currently come from incorporating as a company. These include limited liability for trustees and a separate legal personality. The advantage is that CIOs are regulated by the Charity Commission only, so there is no need to report to Companies House.

This will benefit many organisations considering incorporation, as well as those which are already incorporated and struggle with the current system of dual regulation. However, due to the complex regulation required, CIO provisions will not be in effect until early 2011.

The Charity Commission publishes up to date information about CIO implementation at www.charity-commission.gov.uk

Charitable Industrial and Provident Society

These are co-operative societies which are charitable as defined by the law.

Charitable Industrial and Provident Societies are made up of members who all have a share in how the organisation is run. A CIPS is eligible for many of the tax-breaks available to charities, but does not have to submit to Charity Commission regulation.

The main disadvantage of this structure is that CIPS cannot register with the Charity Commission, so cannot take advantage of the benefits of registered charity status. There is also a registration fee of £40 - £950, payable to the Financial Services Authority. The FSA is the regulator which means that administration procedures are quite different to those of companies.

For more information visit www.fsa.gov.uk or telephone **020 7066 1000**.

The information in this sheet does not give a full statement of the law and is not intended as a substitute for legal advice. No responsibility can be taken by any member of DACVS for action taken on the strength of information in this sheet.

We strongly recommend that you seek professional advice before acting.

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