

LEGAL STATUS PROS AND CONS

WHY BOTHER ABOUT LEGAL STATUS?

Anyone can get together and agree to start a group without legal formalities. In law, this is called “an unincorporated association” i.e. it is not a corporate body or company. There are other kinds of legal structures which you may wish to choose. The following list gives the advantages and disadvantages of the main types. Please note you can be A and B or B and C! You are then subject to both sets of requirements; however there is a new structure which will make this simpler.



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A. UNINCORPORATED ASSOCIATION

The advantages of this kind of group are:

- ◆ flexible, quick and cheap to set up
- ◆ can have any aims and rules – easy to change these from time to time
- ◆ members can have a say in day-to-day decisions
- ◆ paid staff can be on the committee
- ◆ no limits on political activity
- ◆ no limits on trading
- ◆ no rules re format of accounts or where they have to be submitted
- ◆ easy to wind up

The disadvantage of this kind of group are:

- ◆ the groups is not a legal identity
- ◆ property cannot be held in the group's name
- ◆ there is no limit to the financial liability of individual members
- ◆ no automatic relief from Corporation Tax
- ◆ no automatic relief from business rates
- ◆ may not impress funders or donors
- ◆ individual members of the committee are jointly and severally liable for contracts
- ◆ people may be unclear about liabilities

B. CHARITIES

A Charity is a 'body or trust which is for a charitable purpose that provides benefit to the public'. Charitable Purposes – there are 12 specific headings and one general heading.

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity; the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or the ambulance services; and
- other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognised as charitable.

The advantages of this kind of group are:

- ◆ automatic relief of 80% business rates
- ◆ usually automatic relief from Corporation Tax
- ◆ more respectable in the eyes of the public
- ◆ may be easier to raise money from many different types of funders and donors
- ◆ some charitable trusts will only fund charities
- ◆ easier to attract committee members
- ◆ support from Charities Commission

The disadvantages of this kind of group are:

- ◆ objects and activities must be exclusively charitable
- ◆ must register with the Charity Commission if turnover above £5,000
- ◆ paid staff cannot be on the committee
- ◆ committee members (trustees) cannot be paid
- ◆ constitution must follow charity rules
- ◆ accounts must be in a prescribed format & submitted to the Charity Commission
- ◆ limits on political activity & campaigning
- ◆ limits on who can be a trustee

C. INCORPORATION (LIMITED COMPANY)

The advantages of this kind of group are:

- ◆ the organisation is a legal entity
- ◆ can enter into contracts, rent or own property in own right, no need for holding trustees
- ◆ limited liability for members & governing body
- ◆ paid staff can be on the committee*
- ◆ no limits on political activity*
- ◆ no limits on trading*
- ◆ transparency – details of directors public
- ◆ written models of Memorandum of Agreement and Articles of Association
- ◆ company status is respected by public and funders
- ◆ Company Secretary can be a member of staff or a Board member
- ◆ Company accounts format provides structure
- ◆ permanent succession – no need to transfer contracts or leases when someone leaves who signed originally
- ◆ permanent – company exists until dissolved even if dormant

The disadvantages of this kind of group are:

- ◆ false sense of security e.g. limited liability disappears if technically insolvent
- ◆ company directors are still personally liable if negligent
- ◆ in practice, most landlords require named individuals to be liable for leases
- ◆ most lenders would require named sureties
- ◆ details of directors and members public
- ◆ language of “Memo and Arts” not user friendly
- ◆ restrictions on who can be a company director
- ◆ need a Company Secretary
- ◆ administration requirements heavy
- ◆ company law requirements: registered number and where registered must be on publicity, must hold an AGM, submit annual accounts, company returns and resolutions
- ◆ risk of fines and imprisonment if company requirements not followed – over 200 criminal offences within company law
- ◆ formal process needed to bring it to an end –
- ◆ cannot just pass a resolution to dissolve.

* not if also a charity

D. CHARITABLE COMPANY

This has the advantages and disadvantages of B and C combined with the added complication of having to follow two different sets of rules, charity law and company law.; two registration processes with two different bodies – the Charity Commission and Companies House – two returns to be submitted each year.

E. COMMUNITY INTEREST COMPANIES

Community Interest Companies are specially designed for social enterprises and the not-for-profit sector. They register with Companies House as a company limited by guarantee or a company limited by shares, then apply for CIC status to the new Regulator of Community Interest Companies. The regulator will need to be satisfied that the organisation meets "a community interest test" and will genuinely operate for the benefit of the public.

Community Interest Company must be included in the title, limited cannot be used in its name. CICs must produce an annual community interest company report with information relevant to CIC The constitution must contain an asset-lock clause, which ensures that its assets can never be distributed to private individuals or companies.

Community Interest Companies can pay their directors salaries providing they are not trustees. The Community Interest Companies Regulator imposes strict rules and organisations will be monitored on a regular basis.

A charitable company based in England or Wales can convert to a CIC, but only if the Charity commission agrees that it is in the charity's interest. Social Enterprises may use this as the most appropriate legal structure.

The advantages of this kind of group are:

freedom to trade
able to pay Directors
retains benefit within the community
can bring in investment
tax benefits for investors
not having to comply with company & charity law

The disadvantage of this kind of group are:

no tax benefits - rates etc.
some Charitable Trusts cannot fund
auditing the Community Interest statement
additional costs
will not necessarily attract investors

F. THE CHARITABLE INCORPORATED ORGANISATION (CIO)

This is the first legal structure created exclusively to meet the needs of charities. It has the benefits of incorporation, but organisations need only register with the Charity Commission and not Companies House as well.

There are advantages of CIOs over charitable companies.

- Single registration
- Less onerous requirements when preparing accounts.
- Less onerous reporting requirements
- Only one annual return
- Less onerous filing requirements
- Less onerous requirements relating to the reporting of constitutional and governance changes
- Lower costs
- Simpler & more constitutional forms
- More straightforward merger arrangements