Different Structures Explained

This document is designed as a brief guide only; please contact the Community Regeneration Team for advice and guidance on both the selection and establishment of the most suitable structure for your organisation.

Contact details at the end of the document.

Unincorporated Association

This is the most common structure used by community and voluntary organisations. It is usually suitable for groups with low incomes, which are not employing staff or acquiring property. However there are significant risks to the individuals concerned if things don't proceed as anticipated and a member may have unlimited liability in severe situations.

Constitutions are sometimes referred to as 'rules'. The terms are interchangeable but the type of governing document is the same. A constitution or rules will create an **unincorporated association**.

The 'association' part of this description means that it is an organisation consisting of a group of people who have decided to co-operate in furthering what the organisation is set up to do, and who have certain parts to play in its administration.

The 'unincorporated' part of the description tells you that the organisation is not a company (which is incorporated). This means that the association will not:

- (unlike a company) have limited liability and a legal personality of its own (ie the charity trustees may be liable for the repayment of any debts which they have incurred on behalf of the charity: such debts can be met from the charity's own funds (if they are sufficient) unless the charity trustees had not acted prudently, lawfully, and in accordance with the charity's governing document);
- be able to own land (and usually investments) in its own name. It will need to appoint either a custodian or holding trustee(s) to do this.

Which organisations use this type of structure?

It may be appropriate to establish an unincorporated association where any one or more of the following applies:

- the organisation is to be relatively small in terms of assets –
- the organisation is to be a local branch of a national charity, and an approved constitution exists for branches;
- it has a membership;
- the charity trustees are elected or appointed to hold office for a fixed period of time - usually one year;

- the charity trustees are to be elected by members;
- the views of local residents, local councils, and other bodies need to be represented through membership, or as users of the facilities; and
- the objects of the organisation are to be carried out wholly or partly by, or through, the members

Companies Limited By Guarantee

Companies limited by guarantee are private limited companies where the liability of the members is limited. A guarantee company does not have a share capital, but has members who are guarantors instead of shareholders. Limitation of liability takes the form of a guarantee from its members to pay a nominal sum in the event of the company being wound up while they are a member or within one year of their ceasing to be a member. In most cases this sum is £1.

Guarantee companies are useful for non-profit organisations that require corporate status. This means that its profits are not distributed to its members but are retained to be used for the purposes of the guarantee company. Of course this does not mean that the guarantee company cannot make a profit, as indeed it is almost paramount that it can and does so. Where an organisation is likely to enter into contracts it may need the benefit of limited liability to protect its Board of Directors and its members, who may be involved on a voluntary basis.

A guarantee company provides a clear legal identity. This provides the ability for the company to own property in its own name and a democratic structure where its participants are required to adhere to the strict laws and regulations governing limited companies generally.

IT IS IMPORTANT TO BE AWARE THAT AT THE HEART OF A CHARITY OR CIC WILL PROBABLY BE A COMPANY LIMITED BY GUARANTEE FIRST.

Charity Registration

There are a number reasons to consider full charity registration

Taxation - Particularly from a Corporation Tax or VAT registration viewpoint. Exemptions to either may apply

Asset Lock – Of distinct benefit should the organisation own its principle asset, especially a building.

Raising Funding - the most common reason for registration. However most larger funders (with the notable exception of Lloyds TSB) don't particularly place Registered Charity registration as a mandatory condition on their funding, as long as the organisation is charitable in intent.

Gift Aid – charities are the only organisations that can claim gift aid on any donations they receive which could entitle them to a payment from HMRC commensurate to the basic rate of tax

For many organisations though the choice to be a registered charity is one of simply wanting to be, not necessarily because of financial motivation.

Charitable Incorporated Organisation

A charitable incorporated organisation (CIO) is a new form of legal entity designed for non-profit organisations in the United Kingdom.

Up until now Charities wishing to protect their members personal interests have had 2 reporting lines as in order to do so charities would have to be formed as companies, but then they must be registered with both Companies House and the Charity Commission. In contrast, the CIO only needs to register with the Charity Commission. This is expected to reduce bureaucracy for the charity

The main intended benefits of the new entity are that it has legal personality, the ability to conduct business in its own name, and limited liability so that its members and trustees will not have to contribute in the event of financial loss.

Potential downsides of this are the inability for a lender to register a legal interest in the assets of the organisation with Companies House; the Charities Commision does not have this ability. This may prove to be a deterrent to lenders; a principle yet to be established locally in practice (April 2018).

Charitable Trust

In England and Wales, charitable trusts are a form of express trust dedicated to charitable goals. There are a variety of advantages to charitable trust status, including exception from most forms of tax and freedom for the trustees not found in other types of English trust. To be a valid charitable trust, the organisation must demonstrate both a charitable purpose and a public benefit. Applicable charitable purposes are normally divided into four categories; trusts for the relief of poverty, trusts for the promotion of education, trusts for the promotion of religion and all other types of trust recognised by the law, which includes trusts for the benefit of animals and trusts for the benefit of a locality. There is also a requirement that the trust's purposes benefit the public (or some section of the public), and not simply a group of private individuals.

Such trusts will be invalid in several circumstances; charitable trusts are not allowed to be run for profit, nor can they have purposes that are not charitable (unless these are ancillary to the charitable purpose).In addition, it is considered unacceptable for charitable trusts to campaign for political or legal change, although discussing political issues in a neutral manner is acceptable. Charitable trusts, as with other trusts, are administered by trustees, but there is no relationship between the trustees and the beneficiaries. This results in two things; firstly, the trustees of a charitable trust are far freer to act than other trustees and secondly, beneficiaries cannot bring a court case against the trustees. Rather, the beneficiaries are represented by the Attorney General for England and Wales as a parens patriae, who appears on the part of The Crown.

Jurisdiction over charitable disputes is shared equally between the High Court of Justice and the Charity Commission. The Commission, the first port of call, is tasked with regulating and promoting charitable trusts, as well as providing advice and opinions to trustees on administrative matters. Where the Commission feels there has been mismanagement or maladministration, it can sanction the trustees, removing them, appointing new ones or temporarily taking the trust property itself to prevent harm being done. Where there are flaws with a charity, the High Court can administer schemes directing the function of the charity.

Community Interest Company

Community Interest Companies (CICS) are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", which ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator who is similar to the Charity Commissioner and who also has a continuing monitoring and enforcement role.

1. Asset Lock – is very similar to that which benefits a charity including that the Regulator must give any permission for the disposal of any asset.

2. Community Interest Test - all companies applying to be registered as CICs must provide the Regulator with evidence that they will satisfy the community interest test. To enable the Regulator to decide whether they will satisfy the test, applicants are required to deliver a community interest statement to the Registrar.

When the Regulator considers whether a company will satisfy the community test, a view is taken about the likely course of its future activities, and what reasonable people might think of them. Once a company has been registered as a CIC, it must continue to satisfy the test for as long as it remains a CIC. In order to determine whether the company satisfies (or will satisfy) the test, it needs to consider:

the purposes for which it is set up;

the range of activities in which it will engage; and
who will be seen as benefiting from its activities.

The community interest test is a test of the motivation or underlying purpose of a company's activities. In order to satisfy the test a company must show that a reasonable person might consider that the purpose towards which its activities are ultimately directed is the provision of benefits for the community, or a section of the community.

On an annual basis a CIC must produce a Community Interest Statement illustrating how they have fulfilled the Community Interest Test during the previous period.

CIC's are being recognised more and more as an effective legal form for social enterprises. They are particularly attractive to those wishing to enjoy the benefits of limited company status and to make it clear that they want to be established for the benefit of the community rather than their members but are not able, or do not wish to become charities.

The different available formats of companies (limited by guarantee, public or private companies limited by shares) and the ability in some cases to pay limited dividends give a flexibility to tailor the CIC form to particular needs.

The familiar structure of shareholders and directors is an easily understood corporate governance system and the people you deal with such as banks, suppliers and advisers will be used to dealing with a company. The ability to pay salaries to directors may assist in obtaining the right quality managers.

CICs AND CHARITIES

Differences between charities and CICs

Charities must be established exclusively for charitable purposes: CICs can be established for any lawful purpose, as long as their activities are carried on for the benefit of the community

Charities have certain tax advantages that CICs do not have. In return for those advantages, charities are subject to more onerous regulation than CICs

The CIC legal form was specifically designed to provide a purpose-built legal framework and a "brand" identity for social enterprises that want to adopt the limited company form.

CICs will be free to operate more commercially than charities (e.g. CICs limited by shares can pay dividends to individual shareholders, subject to a cap), but stakeholders in CICs will still have the assurance of community benefit provided by the asset lock and transparency about their activities ability through the community interest report.

A charity may, however, own a CIC and the CIC would be permitted to pass assets to the charity. This for example enables a CIC to run a charity shop and pass all the profits to the charity that owns it.

Why would an organisation want to be a CIC instead of a charity?

There is no doubt that charitable status is exactly right for many who wish to further charitable objectives and it is likely that most organisations operating for the public benefit (and who are eligible for charity status) will choose to be charities, not least for the fiscal advantages.

The sort of people who will want to set up a CIC will typically be entrepreneurs who want to do good in a form other than charity.

This may be because:

- They are looking to work for community benefit with the relative freedom of the non-charitable company form to identify and adapt to circumstances, but with a clear assurance of not-for-profit distribution status.

- Members of the board of a charity may only be paid where the constitution contains such a power and it can be considered to be in the best interests of the charity. It means that, in general, the founder of a social enterprise who wishes to be paid cannot be on the board and must give up strategic control of the organisation to a volunteer board, which is often unacceptable.

- The definition of community interest that applies to CICs is wider than the public interest test for charity. CICs are specifically identified with social enterprise. Some organisations may feel that consequently this is a more suitable option than charitable status.

Please contact the Northumberland County Council Community Regeneration Team for advice and support with selecting the correct structure for your Community Housing Organisation and its establishment. This service is free of charge to Northumberland based groups.

Anne Lawson
07917 266 866
anne.lawson@northumberland.gov.uk

Tony Kirsop
07917 266 864
tony.kirsop@northumberland.gov.uk