



ACCOUNTING SERVICES FOR THE VOLUNTARY SECTOR

FACTSHEET NUMBER 3 - FORMS OF LEGAL ENTITY

1. Unincorporated forms

The key point about unincorporated organisation is that they effectively has very little existence. It is little more than the members of its governing body working together; as such it cannot incur debts of itself; rather, any debts which arise during its activities which it cannot settle become those of the individuals comprising the organisation.

It should also be noted that unincorporated bodies cannot hold land in their own names; rather it has to be held in the names of trustees.

It is generally held that unincorporated carries more risks for the members for the governing body and is not therefore suitable for complex businesses.

There are two main forms of unincorporated bodies

(a) Trusts – these arise when a sum of money is provided for specific purposes. In the voluntary sector, trusts are often set up with minimal initial funding but with the intention of continuing to raise funds and operate for an indefinite period. The trust is managed by trustees and the body will not have a membership structure

This type of organisation is very common in the charitable sector, so much so that all directors and governing bodies of charities are generally referred to as trustees irrespective as to whether or not that is their proper name.

(b) Unincorporated associations – these are generally associations of members who elect committees to run the organisation. The governing document will be a rule book and it is the form that clubs and societies frequently take.

2. Incorporation by Company limited by Guarantee

This is a form very common in the voluntary sector. Companies are created without any share capital but with members who:

(a) Have ultimate power, exercised in general meetings, including the power to elect the board of directors

(b) Guarantee to pay a sum in the event of insolvency. This is invariably set at a very low level, so the liability of members and directors for the debts of the organisations in normal circumstances is effectively nil.

It is often believed that it cannot distribute its profits to its members but (depending on the provisions of the articles) this is not actually true. However a company limited by guarantee that distributes its profits to members would not be eligible for charitable status.

3. Other voluntary sector forms of incorporation

While company limited by guarantee is by far the most common form of incorporation, others are possible and these are briefly listed below:

(a) Chartered companies – charters are granted by the sovereign on the advice of the Privy Council creating prestigious organisation such as Universities or professional bodies. Many of these are registered as charities.

(b) Industrial and Provident Society - these organisations conduct business or trade, either as a co-operative or for the benefit of the community.

(c) Charitable Incorporated Organisation (CIO) – this is a new form of entity which should become available from late 2011. It is a form of incorporation designed specifically for charities and may well become important in the future. For the time being it is a structure that is untested legally and surrounding with uncertainty.

(d) Community Interest Company (CIC) - a relatively new form of organisation, positioned somewhere between charities and commercial organisations, an area often referred to as "Social Enterprise". The distinctive features are a "community interest test" and "asset lock", which ensures that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. CIC's cannot register as charities so will always be liable to Corporation Tax.

4. Incorporation in the commercial sector

Generally commercial bodies use forms of incorporation which involve issuing shares and distributing profits in the form of dividends.

5. Charitable status

Charities are organisations that operate for the public benefit as defined by the Charities Act 2006. Very small charities only have to register with HMRC but larger charities are required to register with the charity commission. Registering as a charity does not change the legal entity in any way.

There are restrictions on paying directors / trustees which can be relaxed with the permission of the Charity Commission.

6. Corporation tax

All of the above forms of organisation, including unincorporated forms, are potentially liable to Corporation tax, although charitable status does give rise to exemption provided income is applied for the purposes of the organisation.

Disclaimer

This checklist is for general information only and is not intended to be advice to any specific charity. Professional advice should be taken in respect of individual circumstances. The checklist represents my understanding of charity and company law and practice as at December 2010, which is subject to change.