

## **Classes of Charity: Overview**

Charitable status is not dependent on organisational structure. All charities must have exclusively charitable objects and exist for the public benefit. New charities in most cases need to demonstrate £5,000 minimum annual income to register with the Charity Commission in England and Wales. This article outlines the main structures that charities can take and discusses their broad features.

### **Unincorporated Associations**

The Unincorporated Association is a common form for charities to take, particularly if the charity has been set up informally or has a small membership. Non-charitable unincorporated associations also exist. Groups of people who are working together outside the structure of an incorporated body will often form an unincorporated association, whether intentionally or otherwise.

An unincorporated association has been defined as "two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings, each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and on what terms and which can be joined or left at will" (*Conservative and Unionist Central Office v Burrell* [1982] 1 W.L.R. 522). They are organisations without separate legal personality and are governed by a contract which exists between the members of the association (*Dawkins v Antrobus* (1881) 17 Ch. D. 615).

The main advantage of an unincorporated association is that it is easy to set up and flexible. Whereas a company, for example, is bound by and regulated by the Companies Acts, an unincorporated association is regulated only by its own constitution and, of course, charity law if the association is a charity.

The main disadvantage of an unincorporated association is that it has no separate legal personality and, consequently, the members of the association can find themselves personally liable for the organisation's debts. Which members will be liable arguably depends on the circumstances of the relevant transaction, but the risk is there for every member and particularly those on the association's committee. The committee of a charitable unincorporated association are the charity trustees. Having no separate legal personality also causes problems when an association wishes to enter into a contract, hold property or pursue legal action, as the arrangement must be entered into by an individual or individuals. For example, if the association has a lease of property, the lease will usually be in the name of individual committee members. Every time one of these people cease to be connected with the charity, or die, it is necessary to transfer the property or lease to a new trustee. This can involve expense and difficulty.

An unincorporated association is not a recommended structure for charities that hold property, employ staff or enter into contracts.

### **Charitable Trusts**

The Charitable Trust is another unincorporated form a charity may take. Whilst all charities hold their assets on trust, and many charities include the word "trust" in their name, only some are set

up with the legal form of a trust. Although trusts can be created without any formality, charitable trusts tend to be formally created under the terms of a will, or through a Trust Deed or declaration of trust. The Charity Commission and the High Court have the power to enforce the terms of charitable trusts.

The advantages of a trust are the same as those of an unincorporated association in that they allow for flexibility and simplicity. Trusts can generally be easily created and easily wound up.

As with unincorporated associations, the trustees of charitable trusts are personally liable for the trust's debts if it cannot meet them. A trust may be a suitable legal form if a charity has substantial assets out of which to make grants. It does not tend to suit charities that operate on a day to day basis and employ staff, enter into contracts or own property and involve members in decision making.

### **Company Limited by Guarantee**

The Company Limited by Guarantee provides charities with a common alternative to unincorporated structures. Companies limited by shares are not appropriate as that model is designed for organisations where the members have a financial interest in the company, which is of course not the case in a charity. Note that charities which are companies limited by guarantee can opt out of the requirement to include the word "limited" in their name.

The key advantage of the company, and indeed all incorporated structures, is the existence of a separate legal entity. This means that the company itself enters into arrangements, rather than the individuals managing the charity. As a consequence, the members of the charity generally have their liability limited to the amount that they undertake to contribute should the company be wound up (usually £1). The directors of the company are also charity trustees. If they breach obligations under charity law or insolvency law, they can in some circumstances still be personally liable. Having separate legal personality also ensures that assets and contracts are held in the name of the charity and are not affected by changes of directors/trustees.

Company law requirements and the nature of the company structure are established and well understood. The model provides for trustees (directors) and members. Members broadly equate to shareholders in a share company (although there are no shares). The members could just be the trustees at any given time or could be a wider group. Flexibility is also a feature of the company model as Articles of Association can be amended to suit the organisation.

Disadvantages of a company structure include the costs of incorporating and the costs associated with meeting ongoing requirements such as filing obligations with Companies House as well as the Charity Commission. Failure to file information with Companies House on time can lead to penalties on the company and directors. Public access to the register of members and directors is also sometimes perceived as a disadvantage. However, company administration is generally felt to be straightforward and a small price to pay for the considerable benefits of limited liability.

### **Charitable Incorporated Organisation**

The Charitable Incorporated Organisation or "CIO" provides an alternative to the company structure for charities that are looking to incorporate. CIOs are registered with and regulated by the Charity Commission alone. Whereas charities in general do not have to register with the Charity Commission if their gross income is below £5,000 per annum, CIOs do. CIOs are similar to companies in their basic structure. Instead of directors they have trustees, who have similar

powers and duties to directors. Also, like companies, CIOs may have a distinct group of members or the trustees may be the only members. Companies limited by guarantee, community interest companies and charitable industrial and provident societies cannot yet convert into a CIO, but such conversions are expected to become permitted sometime in the near future.

CIOs have all the benefits of incorporation as outlined for companies above. Additionally, whilst charitable companies often have dual filing requirements with both Companies House and the Charity Commission, CIOs are regulated solely by the Charity Commission and so only have to file one set of documents. The rules governing proxy voting and communications with members are less rigid for CIOs than under company law. Finally, where a CIO's gross annual income is £250,000 or less, it can prepare simple receipts and payments accounts, rather than accrual accounts.

Disadvantages of a CIO, as compared to a company, include the fact that a CIO does not come into existence and no subsequent amendments to a CIO's governing document become valid until approved by the Charity Commission. Whilst the Charity Commission generally seems to approve changes that can be justified reasonably, this could prove a barrier in certain circumstances, particularly as the Charity Commission is operating on ever dwindling resources. There is also a legal duty on the members of a CIO to act in good faith when exercising their powers, which is not present for members of a company. There is no public register of charges for CIOs as there is at Companies House, which could make lenders slightly more wary when dealing with CIOs.

A general but highly relevant consideration is that CIOs have not been in existence for very long. As such, they remain somewhat of an unknown in comparison to charitable companies limited by guarantee, which are very much tried and tested.

### **Other Forms**

Other forms a charity may take include Community Benefit Societies and Royal Charter Bodies. A Community Benefit Society is a type of Industrial and Provident Society that exists to carry out a business which promotes the interests of the community at large. Any profit that the Community Benefit Society generates must be applied for the benefit of the community. Whilst they provide all the benefits of incorporation, their structure is not widely used and thus not widely understood. Royal Charters are granted by the Crown on the advice of the Privy Council and there are relatively few Royal Charter bodies. They, too, carry the benefits of incorporation, but can have long and archaic constitutions and are often little understood by anyone except specialist advisers.

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