

CHARITIES

Parapluie Flam

Presenté par Shabir Djakiodine

Trésorier/Trustee

15 Novembre 2015

Decide if a charity is the right option

Charities exist to benefit the public.
Because of this, charities:

- pay reduced business rates
- receive tax relief
- can get certain types of grants and funding

Check that being a charity won't stop you doing things you want to do.

For example:

- charity trustees are normally unpaid volunteers
- charities can't usually benefit anyone connected with the charity, for example giving work to a trustee's family member or company, unless it is authorised
- charities can't take part in certain political activities

CHARITIES – REGISTERED OR NOT REGISTERED

- The existing legal framework sets out a scheme for when and how charities are required to register with the Charity Commission.

- While inclusion on the register entitles organisations to a registered charity number, **it is not necessary for an organisation to be registered in order to be a charity**; there are a large number of unregistered but entirely legitimate charities.

- If a **charity's annual income is under £5,000**, it is defined as a 'small unregistered charity' - **not registered with the Commission, but still subject to its regulatory powers** - and such charities are still usually eligible to be recognised as charitable for tax purposes by application to HMRC. A small unregistered charity must not hold itself out as being registered, but can still refer to itself as 'a charity.'

CHARITIES – REGISTERED OR NOT REGISTERED

- It is, however, **a legal obligation for all charities with an annual income over £5,000 to register with the Charity Commission**.
- Failure to register does not mean that the organisation is not a charity, but that the charity is in breach of its legal obligations.

TYPES OF CHARITY STRUCTURES

There are four main types of charity structure:

1. Charitable incorporated organisation (CIO)
2. Charitable company (limited by guarantee)
3. Unincorporated association
4. Trust

CORPORATE STRUCTURE: UNINCORPORATED OR INCORPORATED

Some charity structures are corporate bodies. If you choose a structure that forms a corporate body, the law considers your charity to be a person in the same way as an individual.

This gives your charity the legal capacity to do many things in its own name that a person can do, such as:

1. employing paid staff
2. delivering charitable services under contractual agreements
3. entering into commercial contracts in its own name
4. owning freehold or leasehold land or other property

If a charity structure is a corporate body, generally its trustees aren't personally liable for what it does.

CORPORATE STRUCTURE: UNINCORPORATED OR INCORPORATED

If your charity isn't a corporate body ('unincorporated'):

1. The trustees are personally liable for what it does

2. It won't be able to enter into contracts or control some investments in its own name

3. Two or more trustees, a corporate custodian trustee or the charities' land holding service will have to 'hold' any land on your charity's behalf.

CORPORATE STRUCTURE: UNINCORPORATED OR INCORPORATED

UNINCORPORATED

- Unlimited personal liability (joint & several)
- Ownership of property by individual people
- No statutory framework – no governing Clear statutory
- No real accountability

INCORPORATED

- Limited personal liability
- Ownership of property by the organisation
- Clear statutory framework (with penalties for non compliance & automatic fines)
- Clear accountability both to members/ shareholders and to a regulatory body
- Set up and ongoing costs.

CHARITIES WITH A CORPORATE STRUCTURE

1. Charitable incorporated organisation (CIO)

2. Charitable company (limited by guarantee)

CHARITABLE INCORPORATED ORGANISATION (CIO)

The Charitable Incorporated Organisation (CIO) is a new legal form for a Charity designed for non-profit organisations in the UK.

It has been created in response to requests from the charitable sector. It is a **new incorporated form of charity which is not a limited company or subject to company regulation.**

CHARITABLE INCORPORATED ORGANISATION (CIO)

The main intended benefits of this entity are that it has

- legal personality
- the ability to conduct business in its own name
- a limited liability so that its members and trustees will not have to contribute in the event of financial loss.

These are already available to limited companies; charities can 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.

ASSOCIATION MODEL OF CHARITABLE INCORPORATED ORGANISATION (CIO)

- Set up an association CIO if you want your charity to be a corporate body and have a wider membership, including voting members other than the charity trustees. You must:
- Have a constitution as your governing document – use the Charity Commission's model association CIO constitution
- Register your CIO with the commission for it to legally come into existence
- Send its accounts and annual return to the commission each year, regardless of its income.

CHARITABLE COMPANY LIMITED BY GUARANTEE

- A private company limited by guarantee is an alternative type of corporation used primarily for non-profit organisations that require legal personality.

  A company limited by guarantee does not usually have a share capital or shareholders, but instead has members who act as guarantors.

  The guarantors give an undertaking to contribute a nominal amount (typically very small) in the event of the winding up of the company.

- There will generally **be no profits distributed** to the guarantors as they will instead be re-invested to help promote the non-profit objectives of the company.

- If any profits are distributed to the owners, then the company will forfeit its right to apply for a charitable status.

CHARITABLE COMPANY LIMITED BY GUARANTEE

- A company limited by guarantee is a distinct legal entity from its owners, and is responsible for its own debts.
- The personal finances of the company's guarantors are protected.
- They will only **be responsible for paying company debts up to the amount of their guarantees**.

UNINCORPORATED ASSOCIATIONS CHARITABLE TRUST

- Charities have historically been run as unincorporated associations. A trust is the 'classic' form under which charities have operated for many years and is a type of unincorporated body governed by a document called a trust deed.

- The people who run the charity and are responsible for its finances are called the trustees.

- As the charity is not a body corporate, and therefore is unable to own property in its own right, it is up to the trustees to hold any property 'on trust' for the charity. This means that the trustees have legal title to the property, but the 'real' (i.e. the 'equitable') owner is the charity.

Just for your information

COMMUNITY INTEREST COMPANIES (CIC)

COMMUNITY INTEREST COMPANIES (CIC)

- A community interest company (CIC) is a new type of company introduced by the UK government in 2005 designed for social enterprises that want to **use their profits and assets for the public good**.
- CICs are intended to be easy to set up, with all the flexibility and certainty of the company form, but with some special features to ensure **they are working for the benefit of the community.**

- The trustees can become personally liable for any debts incurred in the course of the charity's business.

- It cannot sign documents in its own name and it does not have the legal title to any of the property or funds used in its day-to-day running.

COMMUNITY INTEREST COMPANIES (CIC)

- A community interest company is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. CICs tackle a wide range of social and environmental issues and operate in all parts of the economy.

- CICs are diverse. They include community enterprises, social firms, mutual organisations such as co-operatives, and large-scale organisations operating locally, regionally, nationally or internationally.

COMMUNITY INTEREST COMPANIES (CIC) LEGAL FORM & SOCIAL OBJECTIVES

- CICs must be limited companies of one form or another.
- Regular limited liability companies that do not have charitable status find it difficult to ensure that their assets are dedicated to public benefit. The community interest company is intended to meet this need.
- 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.
- 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.


THE END