



Legal Structures

Why do you need to consider legal structures and status?

Your legal status is the way your organisation is defined in law, based on the way it is set up and the rules and regulations that govern it. All organisations have some kind of legal status whether they're aware of it or not, if there is an underlying intention to create a legal relationship (even if they do not have a written governing document). Here is some general information. If you are considering your legal status you'll need to obtain further detailed information and expert advice in order to make such an important decision.

There are two main types of legal structure:

Unincorporated—e.g. Associations and Trusts

Incorporated—e.g. Companies Limited by guarantee, Industrial and Provident Societies, Community Interest Companies, Limited Liability Partnerships, Charitable Incorporated Organisations (once introduced under the Charities Act 2006)

Incorporated—Unincorporated: what's the difference?

An incorporated organisation has a legal identity of its own. In other words, it's a corporate body that can legally act as a single entity. This means that it can own property, enter into contracts and employ people in its own name.

An unincorporated organisation, on the other hand, remains a collection of individuals, and if it wants to own property and so forth, it must rely on individuals to do so on its behalf.

Incorporation also means the liability of the organisation to third parties is limited to the total amount of the member's guarantees or share capital, depending on the nature of the organisation. This affords protection to those running the organisation and its members in most cases.

So what's best for your organisation?

There are pros and cons to both types of legal structure. Factors that you need to consider include: the size of your organisation, setting up and running costs, the level of risk involved, and democratic decision-making processes.

Typically organisations will opt for incorporation where they are undertaking inherently risky activities such as buying premises, employing staff, raising large scale finance, entering into large contracts etc.

It's important to get your legal structure right, because the wrong structure can get in the way of doing your work effectively and may increase the risk of personal liability. It can be a good idea to see professional legal advice.

Charitable Status

The legal status of your organisation is quite separate from its charitable status. Charities can be either incorporated or unincorporated. If your organisation has charitable objects (these are outlined by the Charity Commission) and meets the minimum criteria it has to register with the Charity Commission.

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If an organisation is charitable, no matter what its legal structure, members of the governing body are known as TRUSTEES. You can think of charitable status as something laid on top of your existing legal structure.

See information on Charitable Status

What you need to consider before deciding?

For most voluntary organisations the choice is usually between being an unincorporated association or a company limited by guarantee.

Unincorporated structure—unincorporated association

- It's a group of people who have decided to work together to pursue a common agreed non-commercial purpose - e.g. a club, society, local group, community association. There must be an intention to create a legal relationship but this does not have to be set out in writing.
- Unincorporated businesses involving two or more persons with the object or earning profit for them or others, is a partnership rather than an association.
- It is not regulated by an external regulator or subject to specific legislation, although some case law does exist. If it is charitable it will be subject to general charity law and regulated by the Charity Commission if it is a registered charity.
- It's a common structure for voluntary groups, especially small scale organisations.
- It's relatively easy and cheap to set up and run. It faces few regulations, so there's less bureaucracy.
- It's free to make up its own rules (as long as the rules don't break the law).
- It's not legally required to have a written governing document, but it's good practice to have one and prerequisite if it's a registered charity.
- Because it is unincorporated, it does not have a separate legal personality so ownership of an association's assets lies with individuals acting on its behalf, usually governing members. This means that each time one of these individuals leaves, the assets must be legally transferred to another. The same goes for any legal agreements the association has entered into in this way.
- Its governing body members will be personally liable for any of the association's debts which can't be met out of its own resources. This could be of concern if the organisation starts to run up large bills or enter in potentially risky activities such as taking on a lease.

Incorporated Structure—company limited by guarantee

- It's a membership organisation formed and registered under the provisions of the Companies Acts.
- It's incorporated and enjoys limited liability.
- It's a private limited company that has guarantors rather than shareholders, so it's suitable for voluntary organisations. The members agree to pay a fixed amount known as a Guarantee, in the event the company winds up or can't pay its debts (usually between £1 to £10).
- It's a structure usually chosen by voluntary organisations that employ staff, regularly enter into contracts, manage investments, and/or own property and other assets, etc because limited liability helps to minimise the threat of personal liability for the directors.
- It's more heavily regulated than an association, so it's usually more expensive and complicated to set up and run.
- Its governing body is made up of the Directors who have legal responsibility for the company and ensure it carries out its activities properly.

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- It's able to hold contracts and assets in its own name as it has a separate legal identity to those who run it.
- It doesn't matter if the directors change because it is the company and not the directors that holds title to land, enter into contracts etc. but changes must be notified to Companies House.
- Its directors will not be personally liable for the company's debts, provided they don't act negligently or improperly.
- It is regulated by Companies House and subject to the Companies Acts and other legislation.

Incorporated structure—Community Interest Companies (CIC)

- It's a new type of company designed for social enterprises which can be limited by shares or guarantee. It is formed in the same way as an ordinary company with additional restrictions, including the need to meet an ongoing community interest test.
- It's subject to an 'asset lock' which ensures that profits are retained for community purposes, but it can raise finance via borrowing and the issue of shares within statutory limits.
- It cannot register as a charity but a charity can convert to a CIC with Charity Commission approval.
- It's regulated by the Regulator of CIC's at Companies House and subject to the Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Companies Acts.

Incorporated Structure—Charitable Incorporated Organisation (CIO)

The CIO is a proposed new incorporated legal structure created exclusively for registered charities. It is intended that these provisions will be available Spring 2010. A CIO will enjoy all of the benefits of incorporation as it is a charitable company. In addition, it will only be regulated by the Charity Commission thus doing away with the traditional burden of dual regulation for ordinary charitable companies. Existing organisations will be able to convert.

Changing your legal status

You can change your organisational status, but seek advice before doing this. The most common change is to become incorporated.

Why Change?

- Because your organisation has grown and employs staff.
- Because your organisation has acquired property and / or other major assets.
- Because your organisation is undertaking activities that increase the risk of liability to third parties (e.g. entering into large-scale contracts)
- Because your organisation's financial turnover has substantially increased.

However, incorporation of an existing organisation does not merely involve registering with Companies House and changing your name. In fact, a new corporate organisation of your choosing has to be registered and assets, staff etc transferred over before dissolving your existing organisation. Professional legal advice should be sought as it is a complex process.

For further information on this topic contact Evesham Volunteer Centre

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