Devon Voluntary Action

A Devon-wide partnership building vibrant, healthy communities

Full Guide:

Get Legal: Choosing a legal structure

Legal structures

In law there are basically two types of organisation, unincorporated and Incorporated. The main differences are around how assets and liabilities are treated and the legal status of the organisation.

Unincorporated organisations

Many voluntary groups begin as unincorporated organisations, and may stay that way, particularly if they are small. A group of people can form one easily, without any special formalities. They simply decide for themselves how to run it. In practice, it is worth agreeing some basic rules and writing these down so that everyone is clear about the aims for the organisation and how it will be managed.

The law looks on an unincorporated organisation as a collection of individuals. This means that the group cannot hold property in its own right, enter into contracts or take part in lawsuits. Its committee members, or trustees, have to do these things as individuals. If the organisation ends up by owing money, they can be personally liable to meet any outstanding debts from their own pockets. This is called unlimited liability.

If charitable in nature the association is subject to a public benefit test and an asset lock. These ensure the assets and profits of the association are dedicated to the purposes for which it was set up. Registration of the association has to be approved by the Charity Commission, who also has a monitoring and enforcement role.

If your organisation is currently unincorporated, you may want to consider using one of the following types of incorporated structure. This is particularly important if you want to employ staff, take on contracts, own or manage a significant asset, work with vulnerable adults or children or undertake work which involves any sort of significant risk.

Corporate bodies

A corporate body enjoys limited liability and can hold property and contracts in its own right. There are several types of corporate body which may be suitable for voluntary organisations. In this sheet we will look at:

- Company limited by guarantee (CLG)
- Community Interest Company (CIC)
- Industrial and Provident Society (IPS)
- Charitable incorporated organisation (CIO)

Company limited by guarantee (CLG)

A company limited by guarantee does not have shares or shareholders and cannot distribute profits. Instead it has members, who may pay a subscription and are each liable for a limited sum if it is wound up. This is the guarantee. The members elect a committee, or board, and can remove them - but the committee has managerial responsibility and control of the organisation. A limited company's rules are set out in a legal document called the Articles of Association.

There are a number of free, legally sound, models available, so there is no need to draft your own. However if a group wishes to draft its articles it must be carefully drafted, preferably with legal advice, because the company has no power to do anything not covered by it. Companies House and the Charity Commission both review the validity of the articles and the Commission can pass on legal costs it incurs in doing so. There is a registration fee of £40 (£100 for 24 hour service) and £15 a year to file annual reports.

The type of structure, and how it works, is widely understood. It is quick and easy to set up and the costs involved in registering with Companies House are low. If the company is charitable, all the usual charity tax reliefs are available. However, the requirements to file annual returns, accounts and independent financial checking are more strictly enforced by Companies House, and there are penalties for a failure or delay to filing the annual report.

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This means having to report to two regulators with slightly different requirements.

For more information about registration, visit **www.companieshouse.gov.uk**
or telephone **0870 33 33 636**.
The Charity Commission also has guidance on establishing a charitable company limited by guarantee **www.charity-commission.gov.uk**

Community Interest Company (CIC)

Community Interest Companies are limited companies with special additional features. They were created for businesses which are conducted for community benefit and not purely for private profit. These types of business are often called social enterprises.

To make sure the company is run for community benefit, a CIC is subject to a community interest test and an asset lock. These ensure the assets and profits of the CIC are dedicated to the purposes for which it was set up. Registration of a company as a CIC has to be approved by the CIC regulator, which also has a monitoring and enforcement role.

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The advantage of this structure is that it has much of the flexibility enjoyed by the private sector. CICs can have shareholders and pay directors and they are not restricted to purposes which qualify as charitable. However, unlike a private company, a CIC cannot be taken over and diverted away from the social vision of its founders.

The main disadvantage of this structure is that CICs do not receive the tax advantages extended to charities and they are not recognised by all funders.

More information about CICs is available at **www.cicregulator.gov.uk**

Industrial and Provident Society (IPS)

This type of organisation carries on a business or a trade either as a bona fide co-operative or for the benefit of the community. Co-operative societies are run for the mutual benefit of their members with any surplus usually being ploughed back into the organisation to provide better services and facilities. Societies run for the benefit of the community provide services for people other than their members. An IPS is eligible for many of the tax-breaks available to charities.

The main disadvantage of this structure is that IPS cannot register with the Charity Commission, so cannot take advantage of the benefits of registered charity status. The FSA is the regulator rather than Companies House and administration procedures are quite different to those of companies. There is a registration fee from £40 (no changes to model document) to £950 (with 11 or more changes or not using a standard model).

The main disadvantage is that this type of organisation is not widely understood by funders or members of the public.

For more information visit **www.fca.gov.uk** or telephone **020 7066 1000**.

Charitable Incorporated Organisation (CIO)

CIOs are a new legal form of incorporated charity which came into effect in 2012. CIOs have all the benefits which currently come from incorporating as a company. These include limited liability for trustees and a separate legal personality.

The advantage is that CIOs are only regulated by the Charity Commission, so there is no need to report to Companies House. This simpler process will benefit smaller organisations considering incorporation more than the CLG model and is the Charity Commissions preferred form.

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You are strongly recommended to choose and complete one of the Charity Commission's model constitutions. There are two models: the Foundation model where the Trusts are the only members and the Association model where there is a body of members beyond the Trustees with the power to elect and remove Trustees.

The Charity Commission publishes a large range of information and guidance about CIO implementation and requirements at **www.charity-commission.gov.uk**

Which one is best?

There are no easy answers to this question. If the organisation is charitable and the arguments for prompt incorporation are strong, joint registration as a charity and company limited by guarantee is likely to be appropriate (with the option of conversion to a CIO later if desired). If incorporation is not urgent it may be worth waiting for the CIO.

If the organisation is not charitable but social investment is important and the drawbacks of the Industrial and Provident Society are not a problem for your organisation, the IPS may be a good choice. If you would prefer a degree of familiarity through a company structure, the CIC may be appropriate.

Please note: This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice.

For more information or support in choosing a legal structure, or if your questions aren't answered in this, or other, information sheets, please contact DeVA (Devon Voluntary Action) on 0845 6099901or by emailing support@devonva.org.