

Incorporating with limited liability

Incorporating with 'Limited' status gives you two legal privileges

- The members have 'limited liability.' Each member is personally responsible only for the amount of money they agree to. In many cases, this is as little as ten pence
- The company is a 'legal person.' It can sign contracts as a company - not as a group of individuals

The management committee is often called the Board. The members of the Board or management committee are legally called the Directors.

What are the duties of Directors?

Directors (Board members) have a legal duty to

- act together
- act in the interests of the company, not in the interests of any particular organisation or section of the community.

Why should we be 'limited'?

Incorporating is strongly advisable if you do any of these:

- Manage significant sums of money
- Own land and buildings
- Enter into contracts with outside bodies, or employ staff

How can we become 'limited'?

There are normally three options to consider:

- **Company** registered with Companies House (www.companieshouse.gov.uk). Their rules are called the 'Articles of Association.' The Articles say how the organisation is run, and if you wish these can give you a lot of flexibility to give different rights to different groups.

- **Industrial and Provident Society** registered with the Financial Conduct Authority (previously with the Financial Services Authority, before that with the Registrar of Friendly Societies). These are either for the ‘benefit of the community’ or for the ‘benefit of members’ (co-operatives) and work on a one member, one vote basis. For historical reasons, most housing associations are registered I&PSs (they have only been allowed to be companies since 1996).
- **Charitable Incorporated Organisation** registered only with the charity commission – see more under ‘What is a charity?’ below.

Another possible option is:

- **Limited Liability Partnership.** This option was created in 2001, especially for businesses trading for profit and planning to distribute profit among partners. It is not designed for community groups so is not considered further here. For more information see <http://www.companieshouse.gov.uk/infoAndGuide/llp.shtml>.

Mostly, community groups have chosen to register as a company. The main reasons are:

- Company law is more flexible than Industrial and Provident Society law. For example it is easy to give rights to different sections of the community (e.g. giving tenant members a set number of places on a board) under company law
- It is much cheaper and quicker to register a company than an I&PS
- It is much easier to amend the constitution of a company than for an I&PS. Usually companies can change their constitution by a resolution. An I&PS has to register changes with the Registrar and pay a fee.

What does “limited by guarantee” mean?

Companies are **either**

- Limited by shares: The members buy and own shares in the company, **or**
- Limited by guarantee: this means that the members guarantee to pay some of the debt if the company winds up (decides to pack in)

In a typical company limited by guarantee, a member guarantees to pay ten pence towards any debts left over when the company packs in. This is a sort of “membership token.”

Non-profit community associations usually register as a Company Limited by Guarantee.

What are the ‘Memorandum and Articles of Association’?

Before the 2006 Companies Act came into force, the constitution of companies included both of these and:

- The Memorandum sets out the purposes of the company
- The Articles of Association say how the company is managed

Existing companies continue to use their old ‘Mem & Arts’ as the Memorandum and Articles of Association are known

However NEW companies now follow the new law. The Memorandum is just a statement by the founder members that they wish to form a company. The ‘Articles of Association’ is the constitution of the company.

What is a ‘community interest company’?

The ‘CIC’ is a special form of company allowed since July 2005. It may be limited by shares or by guarantee. It is especially created for ‘social enterprises.’

The main features allowed by the CIC model (and subject to each one’s own rules) are:

- It is a trading company with a social or community purpose
- There is an ‘asset lock’ to ensure that the business and its assets must always be used for the social purpose.
- Investors can get a ‘dividend’ (a share of the profit) but there is a limit on how much this can be. There is also a limit on the interest that can be paid to lenders
- The directors can be paid
- A CIC can never be a charity

CICs are very attractive to community groups and activists. For example a CIC could be a business set up to provide profits to the community (such as community shops). It could be a trading company set up to provide jobs and services for local people (such as furniture recycling). It is becoming

increasingly common for Tenant Management Organisations. There are many ways to use the CIC model. For more details go to www.cicregulator.gov.uk

What is a 'co-operative'?

There is no legal definition of a co-operative in English law. Generally a co-operative is defined by the [international Co-operative principles](#). A co-operative runs for the benefit of its members, who may be the service users ('consumer co-op'), or employees ('worker co-op') or another group. It is run on a one-member-one-vote basis and any financial gain is shared out equitably among the members.

To use the word 'co-operative' in a company title needs special permission with evidence that the company is in fact running as a co-operative.

What is 'charitable'?

A charity is any organisation that works **only** for charitable purposes. A list of charitable purposes is attached.

A charity can be:

- A trust
- An unincorporated association
- An incorporated association - including companies and Industrial and Provident societies
- A 'Charitable Incorporated Organisation' (CIO) which needs to register only with the Charities Commission and not with Companies House (a new model launched in 2013)

As a general principle, a charity works for the benefit of the public, not just for one particular section or group.

The benefits of charity are:

- exemption from many taxes including corporation tax
- ability to receive gifts and claim back the tax that the giver has paid
- exemption from stamp duty
- relief from a large portion of council rates

The conditions of being a charity are:

- You must use all your funds and assets only for charitable purposes
- Unless you have a small turnover, you must register with the charity commission (except for “exempt charities” such as registered industrial and provident societies)
- Your directors or committee members (whoever is in charge) are **trustees** who must stick to certain rules

For more information on charities go to www.charitycommission.gov.uk

What must the trustees do?

Trustees must

- Act together
- Keep control of the organisation
- Stick to their rules
- Keep proper financial records and accounts
- Give clear instructions to staff and agents

Where can I get more help?

Advice on incorporation and charitable status is usually available from your local council for voluntary service.

Many community groups can use standard model rules available from the CIC Regulator (for community interest companies) or the charity commission (for charities). There is generally no need to pay a solicitor to incorporate a normal community organisation.

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*This handout is produced by the
PAUL LUSK Consultancy
4 Old Worcester Road, Albrighton, Wolverhampton, WV7 3EZ
01902 375603 / 07977 517334
paul@lusk.org.uk www.lusk.org.uk*