

# Incorporation – the case for becoming a non-profit company



22 November 2023

## Objectives

- identify the key features of a company limited by guarantee
- explain the process of setting up a company limited by guarantee
- outline the administration requirements involved in setting up and running a company limited by guarantee

<b>Legal Structures</b>	<b>Governing Documents</b>
Association (unincorporated)	Constitution
Trust	Trust Deed
Company (incorporated)	Memorandum and Articles of Association
Industrial and Provident Society	Rules
Community Interest Company (CIC) <i>(NB non-charities only)</i>	Memorandum and Articles of Association

<b><u>UNINCORPORATED –</u></b> <b>Associations</b>	<b><u>INCORPORATED –</u></b> <b>Company limited by guarantee</b>
<p>Organisation does not exist in the eyes of the law (like a ‘person’). The law recognises only the persons who make up the organisation eg ‘the members of X Community Association acting together’</p>	<p>Exists (like a ‘person’) in the eyes of the law</p>
<p>Contracts are entered into by individuals – the signatories and/or the members of the committee</p>	<p>Can enter into contracts in its own name</p>
<p>Cannot hold property in the name of the Association - Must have a holding trustee to hold property</p>	<p>Can hold property in its own name</p>
<p>Committee are potentially personally liable for organisations’ obligations.</p>	<p>Committee are not normally personally liable – limited liability</p>
<p>Register with Charity Commission</p>	<p>Must register with Companies House and Charity Commission</p>
<p>Charities under £250K can prepare receipts and payments accounts</p>	<p>Companies must prepare accruals accounts</p>

## Types of incorporated structures

- Private company limited by guarantee
- Private company limited by shares
- Private unlimited (share) company
- Public company
- Community Interest Company (CIC)
- Charitable Incorporated Organisation (CIO) (not available as yet)

## Company limited by guarantee

- most common type in the sector
- does not issue shares
- members liability is limited to the amount that they promise to contribute;
- usually a nominal sum such as £1

## Private company limited by shares

- most common type in the commercial sector
- members own shares in the company
- trading subsidiaries are most commonly set up as this structure

## Charitable Incorporated Organisations (CIO)

- New with the Charities Act
- For charities only
- Not available yet or near future
- Similar to limited by guarantee company
- Protects trustees from personal liability
- No need for dual registration
- Will be regulated by the Northern Ireland Charity Commission.



## Community Interest Companies (CIC)

- Non charitable
- Designed for social economy enterprises
- Use profits and assets for public good
- Regulated by Companies House and CIC regulator



# Key features of a company

## Legal identity

- Company has a legal identity separate from the members
- It can own property, enter into contracts, can sue and be sued, in its own name
- It is like a person in the eyes of the law
- The law governing companies is clearer and more detailed than that applying to unincorporated associations



## Limited Liability

The members of the Company are not normally legally responsible for its debts beyond the amount they have guaranteed, usually a nominal amount of £1



## Democratic Structure

- Members have rights and responsibilities and can elect directors
- Directors have powers and responsibilities under the Companies Act 2006
- The Directors of a charitable company may simply be called 'the Committee'

## Cost

- Registration fee of £40 when registering the company on paper
- Ongoing costs of money and time in the administration of the Company eg annual fee of £40 (£14 for online filing) for making annual returns
- Cost of preparing company accounts
- Dissolving a company also involves time and expense

## Bureaucracy

- Need to comply with company law
- Can appoint an employee as the Company Secretary
- Takes time to ensure that company administration is dealt with efficiently

## Public Accountability

- Company details are stored on the Company Register which is open to the public
- Filing history



# NORTHERN IRELAND COUNCIL FOR VOLUNTARY ACTION - THE

Company number **NI001792**

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Overview

[Filing history](#)

[People](#)

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Registered office address

**61 Duncairn Gardens, Belfast, County Antrim, BT15 2GB**

Company status

**Active**

Company type

**Private Limited Company by guarantee without share capital use of 'Limited' exemption**

Incorporated on

**1 August 1944**

## Accounts

Next accounts made up to **31 March 2023**  
due by **31 December 2023**

Last accounts made up to **31 March 2022**

## Confirmation statement

Next statement date **5 July 2024**  
due by **19 July 2024**

Last statement dated **5 July 2023**

## Nature of business (SIC)

94990 - Activities of other membership organisations not elsewhere classified

## Previous company names

Name

Period



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Capital

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Officers

Date	Description	View / Download
30 Aug 2023	Termination of appointment of Una Mckernan as a secretary on 30 August 2023	<a href="#">View PDF</a> (1 page)
30 Aug 2023	Appointment of Ms Celine Mcstravick as a secretary on 30 August 2023	<a href="#">View PDF</a> (2 pages)
05 Jul 2023	Confirmation statement made on 5 July 2023 with no updates	<a href="#">View PDF</a> (3 pages)
23 Jan 2023	Appointment of Ms Marie Cavanagh as a director on 9 December 2022	<a href="#">View PDF</a> (2 pages)
19 Dec 2022	Appointment of Mrs Sharon Elizabeth Didrichsen as a director on 9 December 2022	<a href="#">View PDF</a> (2 pages)
19 Dec 2022	Appointment of Miss Ashleigh Roberts as a director on 9 December 2022	<a href="#">View PDF</a> (2 pages)
13 Dec 2022	Termination of appointment of Dermot Mccluskey as a director on 9 December 2022	<a href="#">View PDF</a> (1 page)
13 Dec 2022	Termination of appointment of Michael David Briggs as a director on 9 December 2022	<a href="#">View PDF</a> (1 page)
24 Nov 2022	Full accounts made up to 31 March 2022	<a href="#">View PDF</a> (45 pages) <a href="#">Download iXBRL</a>

# Annual Audit

- Accounts must be kept in accordance with Company Law
- Small companies may choose NOT to have their accounts audited but may choose an independent examination instead
- If registered as a charity then must follow charity law
- Accounts whether audited or not must be returned to Companies House each year ON TIME (if not fines may be levied)

## Accounting arrangements

- Deadline for filing annual accounts and reports - within 9 months from the accounting ref. date
- No longer required to send out their annual accounts prior to an AGM however
- Must be sent to members by the time they are due to be filed with Companies House



# How to set up a company

## Process of change

- consult and seek approval of all stakeholders
- secure formal consent internally (externally?)
- draft suitable memorandum and articles of association
- request charity registration - complete CCNI's [expression of intent form](#) and special circumstances
- inventory all the assets and legal obligations of the unincorporated body
- inventory property, track down holding trustees
- follow the procedures in the existing constitution
- adopt memorandum and articles at a General meeting

## Process of change

- Transfer staff to new company - employees should be notified of the identity of new employer - employment rights are not affected
- Effect of The Occupational Pension Schemes (Employer Debt) Regulations 2005
- Notify those you have business dealings with
- Notify any relevant statutory body
- Transfer bank accounts, donor accounts, insurances etc.
- Members re-apply for membership of new company

## Process of change

The TRANSFER of assets should not take place until:

- Legal advice has been sought and the new company has been registered at Companies House and with the Charity Commission
- The new company has passed (at a directors meeting) or at a General Meeting of the company's members, an ordinary resolution to accept the transfer of the original organisation's assets and to take responsibility for its debts and employment responsibilities.



## Company's House registration process

Memorandum & articles (signed) send to Companies House along with:

- £40 registration fee
- Form IN01 - application to register a company
- Form NE01 – exemption from using the word 'Ltd' in name
- Form AA01 - change of accounting reference date

Companies House will issue a Certificate of Incorporation if satisfied.

## Charity Commission registration process

- [Expression of intent form](#)
- Online registration process
- Don't have to complete in one sitting
- Help information available on line
- Certain information will be available on public register

## Not everyone permitted to be a company director/charity trustee

- un-discharged bankrupts
- people with unspent convictions for offences involving dishonesty
- those that have been removed as a charity trustee by Commission or the court for misconduct or mismanagement of a charity
- Commission can waive disqualification in exceptional cases

## Directors duties (Companies Act)

- Duty to act within powers
- Duty to promote the success of the company
- Duty to exercise independent judgement
- Duty to exercise reasonable care, skill and diligence
- Duty to avoid conflicts of interest (includes connected person)
- Duty not to accept benefits from third parties
- Duty to declare interest in proposed transaction or arrangement (includes connected person)

## Potential Liabilities of Directors

- Negligence
- Fraudulent trading
- Wrongful Trading
- Breach of statutory or fiduciary duty
- for ultra vires acts
- in breach of the charitable objects

## Shadow Directors

- Senior staff might be deemed to be shadow directors in circumstances where they dominate a passive board
- The board should ensure that they do not simply 'rubber stamp' decisions made by senior staff but make independent decisions (with the **ADVICE** of senior staff)



# Company administration

## Disclosure of company details

All stationery, emails, websites, order forms of a company must contain:

- The company's full registered name
- It must state that it is a limited company
- The country where the company is registered
- The company's registration number
- The address of the registered office
- Must state that it is a charity (recognised or registered)



## Company details cont'd

A company is required to write its **full registered name** on all notices, official publications, cheques, endorsements, invoices, receipts, promissory notes, bills of exchange, letters of credit and conveyance whether in hard copy, electronic or other form.

## Registers and Record Books

- Register of Members
- Register of Directors
- \*Register of Directors Service Addresses
- Register of Secretaries
- Register of Charges
- Accounting Records
- Minute Books

## \*Service Addresses

Since 1 October 2009 directors can use service addresses instead of their home address, but a separate register of directors' residential addresses will still have to be kept by the company (not open to the public)

## Company resolutions

Private companies are only required to pass:

- An **ordinary resolution** requires a simple majority vote 50%. It can be used for any decision (not requiring a special resolution) such as electing directors.
- A **special resolution** needs a 75% majority vote (eg to change the name of the company)

## Written resolutions

- No longer necessary for companies to have unanimous approval
- Written resolutions may now be passed on the same basis as if the resolution was put to a general meeting
- 75% of members signing a written resolution to pass as a *special* resolution
- 50% of members signing a written resolution to pass as an *ordinary* resolution

## Written resolutions cont'd

- Cannot be used to remove directors or auditors
- Companies can also use electronic communications to seek and receive agreement for a written resolution

## Notices

- If Articles state 21 days notice then -you must give this but you are now permitted to change Articles to 14 days
- Now 90%, rather than 95%, of members can agree to hold a general meeting on short notice (whichever is written in the articles).
- With notice send
  - Annual report
  - List of directors and who will be up for re-election
  - Proposed ordinary/special/extraordinary resolutions
  - Proxy voting papers

## Proxy voting

- All company members now have a statutory right to appoint a proxy to attend, speak and vote (either on a show of hands or on a poll) on their behalf at general meetings of the company - even if the Articles say otherwise.
- Must communicate this information to its members on the notice of the meeting





## Electronic communications

The wider use of e-communications is permitted:

- Any information or documents can be communicated by email or any other electronic form including websites
- Could result in savings for those companies which have large numbers of members

## Electronic communications - Consent

- The company must acquire the consent of the intended recipient to receive the information
- Consent can relate to all general information or in specific circumstances and it can be withdrawn at any time.

## Additional administrative requirements

- Display certificate of incorporation at office
- Send a copy of certificate sent to CCNI
- Display full registered name at offices
- Send directors details to Companies House (AP01)
- Draw up company membership application form
- Minutes and records of written resolutions to be kept (10 yrs)
- Run the organisation in accordance with the Articles



# Useful online resources

[Setting up a Charitable Company | NICVA](#)

[Running a Charitable Company | NICVA](#)

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

[www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk)



# Governance and Charity Advice Service

For further advice and information please contact:

[denise.copeland@nicva.org](mailto:denise.copeland@nicva.org) Governance and charity advice manager

[donna.semple@nicva.org](mailto:donna.semple@nicva.org) Governance and charity advice officer

Tel: 028 9087 7777

Questions?





## Evaluation

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