

The information below is an overview of requirements and for further more detailed information, support and guidance plus associated templates etc please contact the BVA Group Development Team via telephone 01256 423816 or email [admin@bvaction.org.uk](mailto:admin@bvaction.org.uk) (please quote "BVA Group Assistance" on title). [www.bvaction.org.uk](http://www.bvaction.org.uk)

*The Charity Commission announced a phased timetable in November 2017 beginning in January 2018 allowing charitable companies to convert to charitable incorporated organisations (CIOs). The [new legislation](#) also means that all charitable incorporated organisations (CIOs) will be listed on the Business names index, held by Companies House.*

An incorporated organisation is a **legal entity separate from its members**, which can own property, enter into contracts and take other legal action in its own name rather than having to do it in the name of individuals. Members (and, in most situations, directors) of an incorporated organisation have limited liability. Where organisations are planning on tendering for commissioned services, it will be a requirement that they are already incorporated.

#### **ADVANTAGES OF INCORPORATION**

- ✓ **Legal personality.** The organisation can, in its own name, enter into contracts, rent or own property, take legal action and be sued.
- ✓ **Limited Liability.** It is liable for its own debts. If it does not or cannot pay its bills, creditors can take legal action against the organisation (not its members). If the organisation ultimately cannot afford to pay its debts, and becomes insolvent, the organisation's members and, in most cases, governing body, are protected from any personal liability for the organisation's debts.
- ✓ **Permanent succession.** There is no need to transfer contracts, leases or other legal agreements to new signatories whenever the persons who signed them cease to hold their position in the organisation.
- ✓ **Permanence.** An incorporated organisation is permanent, which means it continues to exist until it is formally dissolved, even if its members do not meet for a period of time.

#### **DISADVANTAGES OF INCORPORATION**

- ✓ **Costs.** There will be legal costs in setting up the company, a registration fee and an annual filing fee. An audit, if required, may be more expensive than for an unincorporated organisation. Costs will be different depending on whether the organisation is a Company Limited by Guarantee or an Industrial or Provident Society (IPS).
- ✓ **Accountability.** Not only to members, funders and the Charity Commission, but also to the general public through the Registrar of Companies.

## Governance and Leadership

### 1.9. To incorporate or not to incorporate

- ✓ **Paperwork.** Detailed paperwork is required as well as compliance with the relevant legislation. For companies limited by guarantee this involves keeping various registers, notifying Companies House every time certain changes are made, sending in annual accounts and returns and operating according to company law. IPS has slightly less paperwork and rules to comply with.
- ✓ **Limitations on limited liability.** Ordinary members are protected from personal liability for the debts or actions of the incorporated body, but the members of the governing body may be personally liable if they act outside their powers, fraudulently or without due care, commit an offence or allow the organisation to carry on operating when they know or should have reasonably known that it is inevitably going to become insolvent.  
Incorporation does not protect directors from liability for their duties under company or IPS law nor does it protect the directors from liability for their duties as charity trustees.
- ✓ **Permanent endowment.** Assets subject to these conditions and held by a charitable company or IPS are not protected. If the company or IPS is in liquidation, the assets would be available for sale to meet the organisation's liabilities.
- ✓ **Winding up.** It must go through a formal process to bring it to an end. It cannot simply fade away or pass a resolution to dissolve itself, as unincorporated associations often do.

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#### **It would it be advisable to incorporate if the group:**

- ✓ Employs or expects to employ staff
- ✓ Owns or expects to own land, building, investments or other substantial property, or
- ✓ Is or expects to be involved in activities, leases, contracts or tendering for commissioned services where there is financial risk

#### **It would NOT be advisable to incorporate if the group:**

- ✓ Does not employ and does not intend to employ staff
- ✓ Does not own property or investments
- ✓ Does not have long term activities, leases or contracts
- ✓ Does not expect to last a long time
- ✓ Does not have the administrative capacity or the desire to comply with detailed paperwork requirements and external rules about how it operates, and
- ✓ Does not want to put onto the members of its governing body the extra responsibilities and liabilities involved with incorporation