

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 (please quote "BVA Group Assistance" on title). www.bvaction.org.uk

In common law, a trust is where a person or persons (the *trustees*) have legal control over certain property (the *trust property*), but is/are bound to exercise that legal control for the benefit of other persons (the *beneficiaries*).

It is not a membership organisation but is run by a small group of people, known as trustees, although the trust deed can be written in such a way as to allow for members. The trustees make all the decisions and have all the responsibility. Trustees can be appointed for life when the trust is set up, or can be changed regularly. This means, for example, a representative of the local authority could be invited to become a trustee. Trustees must not receive any remuneration from the trust or receive any personal benefit from its activities.

A trust can be **private** (intended to benefit one person or a specific group of private individuals –such as a trust created by a will for the benefit of the deceased person's children) or **public** (intended to benefit the public or a section of the public), in which case **it must be charitable**.

A charitable trust must have wholly charitable objects, and it must benefit the public, or a substantial section of the public. Additionally:

- ✓ It must be clear that the donor intended to set up a trust
- ✓ It must be clear what the trust's property is
- ✓ A trust cannot be required to accumulate its income, without spending it, for more than 21 years after the death of the donor

Advantages:

- ✓ Simple, flexible, easy to setup and wind up.
- ✓ Relatively cheap to establish. There is no registration fee, although there is a small stamp duty to pay
- ✓ Number of trustees can be small – usually a minimum of three
- ✓ Trustees are appointed by existing trustees or by an outside body, which creates a self-perpetuating governing body
- ✓ Unlike unincorporated associations, property can be held in the name of individual trustees for use by the charity, though the charity cannot purchase property in its own name.
- ✓ Worth considering for a charity with more professional aims which wants to employ a very small number of workers or manage a building.
- ✓ Regulation by the Charity Commission gives a 'seal of approval' to its activities.
- ✓ Funders may find the more formal and stable structure reassuring. Some funders will give grants only to registered charities.

Disadvantages:

- ✓ A Charitable Trust is an unincorporated organisation, which means its Trustees are personally liable for the trust's debts
- ✓ As trustees are appointed rather than elected, the structure is undemocratic – not well suited for a membership organisation, although it can be adapted to give members the right to elect the governing body
- ✓ Trust governing documents cannot generally be altered, except by an order of the court or the charity commission.
- ✓ As a registered charity, the group has obligations. Among other things, you must draw up your annual accounts and report in a particular way and send a copy to the Charity Commission.
- ✓ it cannot carry out political or campaigning activities, but it can have educational aims.

When is it suitable to choose a trust structure?

- ✓ The organisation will have substantial assets, or
- ✓ The organisation will have very secure funding and/or it will not have long-term financial commitments, so it can with some certainty ensure it will be able to meet all its financial obligations, and
- ✓ It will not have a large membership

INCORPORATING THE GOVERNING BODY

Is a process by which the governing body (the charity trustees) of a charitable unincorporated association or charitable trust can incorporate, without incorporating the organisation as a whole, as a company limited by guarantee or industrial and provident society.

This gives them legal personality and permanent succession and the right to:

- ✓ own property,
- ✓ enter into legal agreements and
- ✓ take legal action in the name of the trustee body as a whole rather than in the names of individuals

It does not, however, limit the liability of members. They still have the same responsibilities and liabilities as in an unincorporated organisation.

Trustee incorporation might be appropriate if the organisation:

- ✓ Is a registered, exempt or excepted charity
- ✓ Owns or expects to own property or investments and/or is involved or expects to be involved in leases or long-term contracts, and
- ✓ Does not consider that it needs the additional protection it would get by incorporating the charity as a company or industrial and provident society