

---

# The Wheel

---

...useful information for setting up a voluntary organisation



## Introduction

When an organisation is starting up it is important for the members to consider the following points carefully:

- Whether the organisation needs to have legal status
- What activities are planned and what structure would encompass future as well as present activities.
- Having decided on the structure the group will need to decide whether or not to apply for charitable status. There are advantages to having charitable status if at all possible but care needs to be taken with the definition of the aims and objectives as it is important to try and frame them to come under one of the four definitions of charity listed below. As this will simplify the process when applying for recognition as a charity.

## Charitable Status

In Ireland when an organisation has charitable status this means that it is recognised as charitable by the Revenue Commissioners for tax purposes. There is no official 'Register of Charities' in Ireland. Groups can apply as above to the Revenue Commissioners for exemption from certain taxes and the Valuation Office for exemption from rates on buildings. This is important for both for fundraising and for exemption from certain taxes. Charitable status does not give legal status to an organisation. A group can have charitable status without having legal status and vice versa.

In order to be recognised as charitable an organisation must have:

- Legal status by means of a specific legal structure with its associated 'governing instrument' (see below). This means that it has a written constitution or a Memorandum and Articles of Association;
- The constitution must include a clause stating that the organisation will use its money for charitable purposes only;
- The aims of the organisation as set out in the constitution must be exclusively charitable and must come under one of the following headings or definitions of charity
  - The relief of poverty;
  - The advancement of education;
  - The advancement of religion; or
  - Other purposes beneficial to the community

When applying to be recognised as a charity for tax purposes the organisation must send in:

- a completed application form (see form CHY1 from the Revenue Commissioners, downloadable from the website: <http://www.revenue.ie/publications/leaflets/infolef7.htm#char>)
- its governing instrument [e.g. a constitution, deed of trust or Memorandum and Articles of Association]
- a statement of activities
- the latest financial accounts
- the names and addresses of its officers.

to the following address:

Office of the Revenue Commissioners,  
 Charities Section,  
 Government Offices  
 Nenagh,  
 Co. Tipperary.  
 Tel: 067-35533 or 6674211 (for Dublin callers)  
 Fax: 067-32916

There will usually be a delay of several weeks in dealing with applications and the application may take some time as the Revenue Commissioners may require the governing instrument to be amended before deciding whether they will recognise the organisation as charitable. If the organisation is recognised as a charity it will be allocated a CHY number by the Revenue Commissioners. This means that it is exempt from various taxes such as DIRT, income tax and corporation tax (if it is a company).

### **Legal requirements**

The charity must comply with the provisions of the legislation and any conditions set by the regulatory body (if any) responsible for overseeing the legal structure chosen by the charity.

### **Legal Status and Structures**

Every voluntary organisation needs to have a structure in order to work properly. A structure sets out the objectives and rules as to how the organisation will work, helps its management, and enables it to work more effectively. There are different legal structures to suit different kinds of organisation. Some groups become bigger and undertake more activities such as employing staff. This means that the members of the group need protection so they are not individually liable for the activities of the organisation.

The charity must decide what form of legal structure would best suit and facilitate its activities, and adopt an appropriate governing instrument or constitution. The form best suited to the function of any charity depends very much on the charitable purposes, the planned activities of the charity and how it is proposed to fund these activities.

Charitable organisations now mainly take one of three types of legal structures, each of which typically has its own 'constitution' of 'governing instrument':

<b>Type of legal structure</b>	<b>Governing Instrument</b>
Unincorporated Association	Constitution or rules
Charitable Trust	Trust deed or Declaration of Trust
Company limited by guarantee without share capital	Memorandum and Articles of Association

The following pages go into more detail as to the characteristics associated with each form and its advantages and disadvantages, however, the main difference between them is to do with accountability, i.e. whether it is held collectively by the members (e.g. trust, association) or whether it is held by a distinct legal entity separate from its members (e.g. company limited by guarantee).

**Governing Instrument (or constitution)**

This may take the form of a constitution, trust deed, or a Memorandum and Articles of Association and should set out the following information:

- The name of the charity;
- The main objects of the charity which should fall under one of the four charitable headings on the first page;
- The powers of the charity (which allow the charity to carry out its function, e.g. the power to fund-raise or hold property);
- Details of its geographic range or operation;
- Its rules, which should cover membership, appointments and dismissals, executive committees, meetings and any other rules required for the proper conduct of the organisation.

If a charity is seeking 'Charitable Status' (see section 3 below) there are certain clauses required by the Revenue Commissioners which should be included in the governing instrument.

A sample constitution is in the Revenue Commissioners' leaflet CHY1 which can generally be adapted to suit the needs of most voluntary or community groups. This leaflet can be downloaded from the Revenue Commissioners web-site at:  
<http://www.revenue.ie/publications/leaflets/infolef7.htm#char>

A standardised Articles and Memorandum of Association may be downloaded from the Revenue Commissioners site at:  
<http://www.revenue.ie/publications/leaflets/infolef7.htm#char>

## **Unincorporated Association**

**Overview** Many charitable organisations are constituted as unincorporated associations and are usually governed by a set of rules in the form of a constitution. Such organisations are like clubs, consisting of people bound together by mutual agreement, who meet on a regular basis to pursue a common interest. Many smaller charitable organisations are formed this way.

**Legal Requirements** There are no formal legal requirements for unincorporated associations. If charitable status for tax exemption is sought, a specific set of clauses defined by the Revenue Commissioners must be included in the governing instrument, which is usually a constitution or set of rules.

**Constitution** There are no specific rules but it is desirable to normally set out the following in a written agreement:

- The name of the association
- Its aims and objectives (which should fall under one of the four 'charitable' headings)
- Details of its membership and/or its management committee and the eligibility for same
- The role, function and contractual arrangement of the members of the board of management
- The appointment of the members of the board of management
- The terms of office of the members of the board of management; and
- The powers and duties of the board and meetings of the board

An unincorporated association is not a separate legal entity nor does it have limited liability or a legal personality of its own. This means that it cannot enter into contracts or own properties.

The constitution is binding between members of the organisation, but it has no legal effect in relation to non-members. Therefore anything done by the organisation is done by all members of the organisation who are responsible for all the activities of the organisation.

Any debts incurred by an unincorporated association can result in the members or the board being made personally liable for these debts or obligations.

**Board/management** The governing committee, members of the board or trustees are bound by the objects of the charity and they are under a duty not to do anything that is outside the scope of the objects of the charity.

The trustees act as agents for the members of the charity and are normally authorised under the constitution to enter into contracts and arrangements that are necessary for the purposes or activities of the charity. Once the trustees act within their authority for furthering the purposes of the charity, then their decisions are binding upon the

members. The trustees may be liable for the repayment of any debts that they have incurred on behalf of the charity and such debts can be met from the charitable organisation's own funds unless the trustees have not acted prudently, lawfully and in accordance with the charitable organisations' governing instrument.

### **Advantages**

- Charitable organisations often commence as unincorporated associations and become incorporated as they grow in size or acquire assets.
- There are no legal requirements for an unincorporated association, as it depends on the contractual relationship between its members.
- The biggest advantage is that it is easy and inexpensive to set up.
- It also has considerable discretion in the manner of its operation and administration and therefore appeals to small voluntary groups.
- It does not have to be registered with any governmental body, except if it seeks charitable status and the associated taxation exemption, in which case it would therefore have to include the Revenue Commissioners' requisite clauses in its constitution.

### **Disadvantages**

- The biggest disadvantage is that the members are not entitled to limited liability, making them personally liable for their actions including financial failures of the charitable organisation
- A group which decides to have a written constitution as its legal structure should take out adequate insurance cover for its activities. The state agency Comhairle runs a group insurance scheme for voluntary social service organisations which includes cover for employer's liability and public liability, property insurance, money insurance and personal accident.

## **Trusts**

### **Overview**

The principle distinction between trusts and other legal forms is that their *raison d'être* lies in the protection and use of designated property rather than in setting rules for how individuals may be best organised to act collectively.

### **Legal Requirements**

To establish a charitable trust, the requirements common to all trusts must be adhered to and all the formalities must be satisfied. Charitable trusts must adhere to the provisions of the Trustee Act 1893 and the Charities Act 1961 and 1973 and the trustees must abide by the duties and responsibilities set out in these statutes.

### **Constitution**

Called a Trust Deed' it sets out the key matters of the trust such as:

- The appointment of trustees
- The removal of trustees
- The objectives of the trust
- The powers of the trustees; and
- The power to amend the trust deed.

The internal relationships of a trust (like those of an unincorporated association) are established by the terms of the governing instrument, be it a trust deed or a declaration of trust.

### **Board/management**

The trustees conduct all external relationships in a contractual capacity. A trustee is a person who derives his or her appointment and responsibilities from the terms of a trust. There are no limitations as to who can be a trustee (even minors).

### **Advantages**

- It is not a suitable form for a charity which is a members organisation, nor for one likely to engage in providing services, nor to employ substantial members of staff.
- It is well adapted to the management of assets held for charitable purposes either as a grant-making trust or as a trust ancillary to a service-providing charity constituted in another form.
- It can be best described as a "charity vehicle" where the tasks to be performed are the management of substantial assets and the distribution of cash grants and where the administration of the trust will be undertaken by a small body of experienced trustees with ready access to professional advice.
- The main advantages are the relative speed, simplicity and lack of cost involved.

### **Disadvantages**

- It can be quite cumbersome and undemocratic in that once the trustees are appointed, they are difficult to remove and therefore the group or charitable association only has indirect control over its own property.
- Trustees have no limited liability and can be sued in their personal capacity for breach of trust and can be held personally liable for third party debts.
- There are far greater restrictions placed on the trustees

of a trust than on directors of a company.

- The alteration or change of trustees is complex.
- The trustees have no power to alter or amend the trust deed unless the trust deed specifically provides such authority.
- A charitable trust and its trustees must abide by the Trustee Act 1893, the Charities Acts 1961 and 1973.

## **Companies limited by guarantee and not having a share capital**

### **Overview**

A company is an association of people formed for the purpose of some business or undertaking carried on in the name of the group. A company is a separate legal entity and exists separately or independently of its members. There are various types of companies, but the type of company most commonly used by charities is 'the company limited by guarantee and not having a share capital'. A company limited by guarantee is required to have a minimum of seven members and a maximum of fifty.

It may be appropriate to establish a company where some or all of the following apply:

- The unincorporated association has grown in size and organisational activity;
- The organisation is to be quite large;
- It will employ staff;
- It will deliver charitable services under contractual agreements;
- It will regularly enter into contracts; and
- It will be an owner of freehold or leasehold land or other property.

### **Legal Requirements**

The law governing the requirements of companies is the Companies Acts 1963 – 2001 (The Companies Acts) and applies generally to all forms of companies, including charitable organisations. The body responsible for overseeing the operation of the Companies Acts is the Companies Registration Office. The Companies Registration Office is responsible for ensuring that applications for registration as a company comply with the requirements of the Companies Acts which include making annual returns and the submission of annual accounts.

The basic requirements which apply to charities incorporated under the Companies Acts are:

- To keep a register of members and directors
- To keep minutes of all meetings
- To hold an annual general meeting within 18 months of incorporation and at least every 15 months thereafter
- To make an annual return to the Companies Registration Office within 28 days of the company's Annual Return Date
- To notify the Companies Office of any special resolutions and of any changes to the Memorandum and Articles of Association
- To notify the Companies Office of any changes in the directors, secretary, the auditors or the registered office within 14 days of the changes and of any change in the name
- To keep proper accounts and submit audited accounts with the annual return.

## **Constitution**

Called the Memorandum and Articles of Association this document is effectively the governing instrument of the company.

The Memorandum of Association sets out the objects of the company and the Articles of Association set out the rules and regulations of the company.

The Memorandum of Association must state the following:

- The name of the company
- The main objects of the company
- The limited liability clause
- The capital clause
- The association clause

The Articles of Association are the regulations by which a company can be governed and managed and set out the internal management of the company and the particular areas covered will include:

- Members of the company
- Annual general meeting and extraordinary general meetings
- Board of directors
- Appointment and removal of the directors
- Meeting of the directors
- Chairperson/vice-chairperson/company secretary
- Minutes of meeting
- Company seal
- Accounts and audits

The use of this type of structure is eased by the availability of a standard model of Memorandum and Articles of Association as prepared by the Revenue Commissioners and therefore automatic compliance with the their requirements in seeking charitable exemption from tax.

## **Board/management**

It is required to have a minimum of two directors, one of whom must be resident within the State. There is no maximum number.

The Revenue Commissioners require that there be at least three directors if the company is seeking the charitable tax exemptions.

The Directors are usually elected by the members of the company at the AGM.

## **Advantages**

- It provides its members and Directors with the protection of limited liability.
- It provides the machinery for involving the members in the actual running of the charity.
- It is a legal entity distinct from its members and will continue to exist despite changes in its membership.
- Once incorporated, assets may be transferred to the company, by donation or purchase and will be held in the name of the company rather than in the name of an individual. The company can hold property and enter into contracts in its own name.

- It can enter into legal agreements in respect of its assets.
- The company structure provides a good management format for charities particularly the larger ones and provides a degree of transparency and accountability.
- Where a charity is applying for funding from a governmental agency it is the mode of legal structure preferred by nearly all governmental agencies where state funding is being sought.

### **Disadvantages**

- The costs of formation of a company as opposed to establishing an association are marginally higher and there are also recurring administration costs to do with audits, membership maintenance and filing annual returns.
- The annual returns and accounts of the company must be filed in the Companies Registration Office every year.
- The organisation of a company is more complicated and imposes a regime of legal requirements and procedures for meetings of the company which must also at all times adhere to the complex provisions of the Companies Acts 1963 – 2001.

## TAX RELIEFS ON DONATIONS TO CHARITIES

### Tax Reliefs for Individual and Corporate Donations to Charities

**NOTE: This only applies to charities which are in receipt of a CHY charity number from the revenue commissioners for more than 36 months, and who have received a further classification as an 'eligible charity' from the revenue Commissioners.**

The Finance Act 2001 brought good news for Charities in relation to tax effective giving. From the 6th April 2001 tax relief is available on donations of £200 (€250) or more in any one tax year to eligible charities from both **individual** and **corporate** donors. Tax relief is applied to these donations at the donor's marginal rate of tax. How the tax relief is applied depends on which taxpaying category the donor falls into:

1. In the case of **PAYE taxpayers**, the tax relief is applied at the marginal rate and is paid directly by the Revenue Commissioners to the Eligible Charity or Approved Body on receipt of the relevant "appropriate certificate" (an official form that is completed by the donor and the charity receiving the donation).
2. Individual taxpayers on **self-assessment** benefit directly from relief at the marginal rate by claiming the donation as a tax-deductible expense.
3. **Corporate donors** simply claim a deduction for the donation as if it were a trading expense.

So in the first case the tax relief is paid directly to the Charity whilst in cases two and three the donor receives the tax relief. The following examples will help to illustrate how the tax relief works in practice.

#### Who Claims the Tax Relief

##### Example 1 PAYE Donor

Tom is a PAYE taxpayer who donates £200 to his favourite eligible charity. His marginal rate of tax is 42%. Tom fills in a form sent to him by the charity giving details of his donation together with his PPS No. (new name for RSI No.) The charity then uses the form to claim back the tax which Tom has already paid on this £200 directly from Revenue -  $£200 \times 100/58 = £345 - £200$  (donation) = £145 (tax associated with the donation) bringing the total value of the donation to the charity up to £345

##### Example 2 Self-assessment Donor

Siobhan is self-employed and makes tax returns on a self-assessment basis. Her marginal rate of tax is also 42%. Siobhan makes a donation of £200 to her favourite charity over the course of the tax year by monthly standing order of £16.67. Siobhan receives a receipt from the charity and when she fills out her tax return she deducts the donation of £200 from her taxable income thus reducing her tax bill by £84. It is Siobhan who benefits directly from the tax relief in this case.

##### Example 3 Corporate Donor

XYZ Ltd makes a company donation of £200 to their favourite eligible charity and receives a receipt. The company can claim a deduction for the donation as if it were a trading expense. The company pays corporation tax at 20% so their corporation tax bill is reduced by  $£200 \times 20\% = £40$ . The company gets the benefit of the tax relief in this case.

## **Other points to remember**

To qualify for the tax relief a donation must satisfy a number of conditions:

1. It must be in the form of money.
2. It must not be repayable.
3. It must not confer any benefit on the donor or any person connected with the donor.
4. It must not be conditional on, or associated with, any arrangement involving the acquisition of property by the charity or approved body.

## **What is an "Eligible Charity" and how do you apply?**

The tax relief detailed above is only available for donations to **Eligible Charities** or **Approved Bodies**. What does this mean?

An **Eligible Charity** is defined by the legislation as any charity within the State, which is authorised in writing by the Revenue Commissioners for the purpose of this Scheme. In order to qualify for **eligible charity** status, the charitable organisation:

- a)** must have a charitable tax exemption number or CHY No. and
- b)** must have been in operation for at least three years since being granted the CHY No.
- c)** must make a formal application to Revenue on the form provided *Form of application to Revenue for Authorisation as an "Eligible Charity" for the purposes of Section 45, Finance Act, 2001 (donations to eligible charities)*.
- d)** must meet any other conditions that Revenue may require from time to time

Authorisations issued under the scheme will be valid for periods ranging up to five years and can be renewed upon expiry by completing a fresh application.

**Approved Bodies** are educational and other named organisations details of which are available on the Revenue website.

The Revenue website also posts up-to-date listings of charities who have a CHY number and separate listings of both Approved Bodies and Charities that have been granted Eligible Charity status.