



solid foundations

a resource guide for building strong and effective organisations in the community and voluntary sector



preface We are delighted to present this publication *Solid Foundations*; a vital resource for the community and voluntary sector in Ireland.

In 2000, the government published the White Paper *Supporting Voluntary Activity*. Appendix 2 of the White Paper set out a series of good practice principles for community and voluntary organisations. These are the starting point for developing this guide. We undertook extensive research of currently available resources, both Irish and international, and we sought the views of the sector and its various parts through conferences, focus groups and questionnaires.

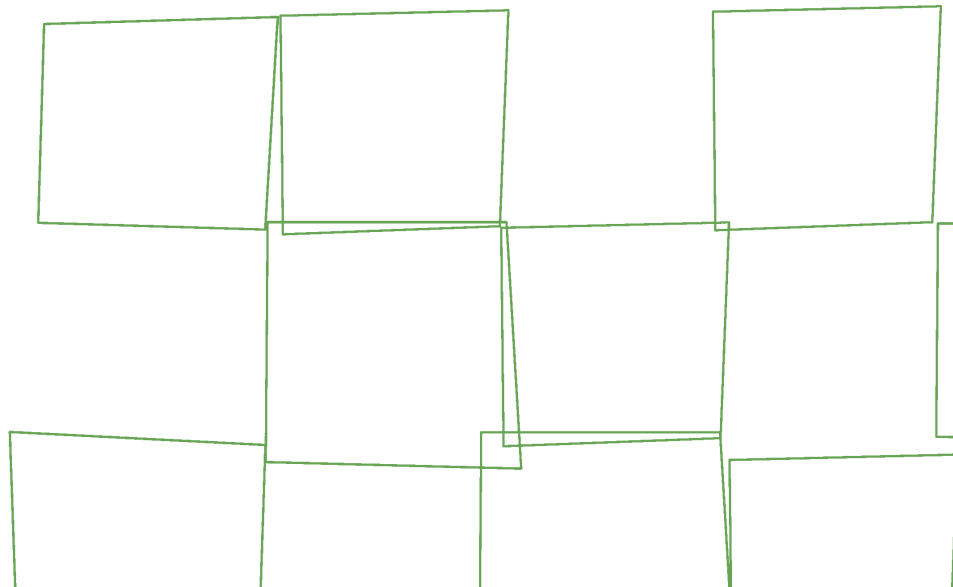
The resulting guide provides factual information about the legal obligations that organisations in the sector face, as well as practical advice on how they can run their organisations in line with good practice standards. This has been done in response to two main trends. Firstly, organisations are becoming increasingly aware of their own limitations and want to feel more confident about the internal challenges that they face on a day-to-day basis. Secondly, organisations are now facing increasing external demands, including a changing regulatory and legislative framework, and it is vital that they have access to accurate information about their obligations.

In essence, this guide is about building the capacity of organisations in the sector. In order to do their work well, it is essential that organisations get the basic building blocks right. These basic building blocks are structure, governance, direction, accountability, resources and equality; together they provide the 'solid foundations' of the title.

We hope you find this publication useful. If you have any additional information for future editions or any questions whatsoever, please do not hesitate to contact us.



Deirdre Garvey,
Chief Executive Officer The Wheel
January 2007



Disclaimer

Our goal is to provide comprehensive, timely and accurate information. This publication contains references and pointers to information kept or provided by other organisations. We therefore cannot guarantee their accuracy.

It is our policy to correct any errors brought to our attention. Comments and suggestions are always welcome.

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*In memory of Dave Ellis who co-authored
and devised the title of this guide.*

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how to use this guide This guide can be used by any community, voluntary and nonprofit organisation, any NGO, and any charity in Ireland, regardless of age, size, location or area of focus. You can read it from cover to cover, or more likely, you can use it as a reference tool as and when needed.

The guide distinguishes between what you **must do** by law and what you **ought to do**, or what you **could aspire to do**, in terms of good practice when setting up and running your group or organisation. As this will vary according to your legal structure, we have provided a system of symbols so that you can clearly identify what information and advice applies to your own particular situation:



This applies to organisations that are companies limited by guarantee



This applies to organisations that have a CHY (charity) number



This denotes a legal requirement



This is recommended good practice, but not currently required by law

(Some paragraphs have no symbols; these contain explanatory information for all.)

We strongly advise you to read the information on **structures** (chapter 1) first, so that you are absolutely clear of your own structure and its legal implications. Please note that although there is much reference to the law, it is outside the scope of this guide to cover every law that could potentially apply to your organisation. We have identified the laws that are key for the greatest number of organisations, but are fully aware that our listing is not comprehensive. If you are unsure about any legal matters, you must seek formal legal advice.

Solid Foundations aims to cover all significant issues that groups and organisations must address, namely: **governance** (chapter 2), **direction** (chapter 3), **accountability** (chapter 4), **resources** (chapter 5) and **equality** (chapter 6). Yet at the same time, the guide aims to be as concise as possible. It cannot therefore go into significant detail on any one issue. Detailed **signposts** to further reading and other resources are provided at the end of each section, with a further section towards the end of the guide.

Finally, **checklists** are provided at the end of every chapter, which you can use in one of two ways. You can complete the checklists before you start reading the guide to identify the areas that you feel are adequately covered at present and those that require more attention from you. Alternatively, you can work through the guide chapter by chapter and tick items off as you complete them. You should aim to tick 'yes' to every question. If you do not know the answer to any question, make it your business to find out!

To keep this guide as user-friendly as possible, we have provided a **glossary** of 'jargon-busting' terms towards the end. Also, an **index** provides a quick search ability to locate topics of particular interest to you.

a note on good practice Although the terms ‘good practice’ and ‘best practice’ are often used in the community and voluntary sector and although most people agree good practice is a good thing, what does it really mean? Giving some examples of good and bad practice is perhaps the easiest way of demystifying it:

| Good practice | Bad practice |
|---|---|
| Aiming for high standards in all that you do | Cutting corners whenever you can |
| Finding out about laws and regulations affecting the organisation | Failing to find out about laws and regulations affecting the organisation |
| Assessing risks regularly and dealing with them | Ignoring risks and hoping for the best |
| Treating everyone with fairness and respect | Ignoring equality and allowing discrimination, harassment or bullying |

However, how do you turn intentions of good practice into concrete action? It can feel overwhelming, especially for smaller groups. You must always work within the law, but in terms of other measures, you should adapt what is best for your organisation at its particular stage of development. Written guidelines – such as terms of reference, policies, codes of practice and handbooks – that are reviewed regularly and distributed to all relevant people in the organisation are very useful. Finally, if you do not have the required expertise within your organisation for any particular issue, it is your responsibility to seek it elsewhere. There are many people, publications and services out there that can help you, both within Ireland and further afield, many of which are listed in the ‘**Signposting**’ sections of this guide.

The Wheel

The Wheel is a national support and representative network for the community and voluntary sector which works to strengthen organisations as well as the sectoral infrastructure and environment. We provide a wide range of information, support services, advice and advocacy to individuals and organisations in the sector as we believe they are vital components for a cohesive and healthy society.


Our strategic aims are to:

1. Improve the legal, political and operational environment for the community and voluntary sector.
2. Strengthen the capacity of organisations to get things done.
3. Build public support for the sector.
4. Strengthen The Wheel's own ability to deliver.

acknowledgements

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- All those representatives from community and voluntary organisations who attended focus groups in Cork, Dublin and Galway and who provided input before and after the focus groups
- The Steering Group who oversaw the initial development of the project
- The Department of Community Rural and Gaeltacht Affairs for part-funding this publication
- Bupa Ireland and Bupa Community Connections (UK) for their support in the funding of this guide
- Design by Gráinne Murray



CHAPTER 1: STRUCTURES choosing the external and internal make-up of your organisation

In this chapter, you will find out why having a legal structure for your organisation is recommended for the majority of organisations, and you will recognise which legal structure best suits your own organisation, given the options available at present. You will also find out the implications of being a 'charity'. Other areas covered in brief are tax reference numbers, internal structures and structural review.

1.1 Introduction



This chapter looks at all the options for the structure of a community and voluntary organisation and focuses on the benefits of having a legal structure. None of the current options for structuring organisations are completely ideal, and future changes are likely. At the time of writing, the General Scheme for the Charities Regulation Bill 2006 has been published, and the Law Reform Commission has recommended the creation of a new legal structure for charities called a Charitable Incorporated Organisation, to be regulated by a Charities Regulator. It is important that you keep abreast of developments in this field and, if necessary, change your structure in the coming years.

1.2 Legal status

Irish law gives adults 'legal status'; it recognises individuals in the legal system and offers them a certain amount of legal protection. However, it does not recognise a group of people as having legal status if they do not have a formal legal structure. This means that each of the individuals who make up the group have full legal liability if something goes wrong.

The process of 'incorporation' confers a separate legal status on a group, which means the liability of the individuals is limited and the group can commit legal undertakings, such as entering into contracts. Unless your group is very small and informal, it is usually recommended that you seek a legal structure (or 'personality' as it is increasingly referred to) for the group.

The following table outlines the different structures that are available to a group.

| | UNINCORPORATED | | | INCORPORATED | |
|--------------------------|--|--|---------------------------------|---|----------------------------------|
| Organisational structure | Unincorporated association | Trust | Benevolent society | Company limited by guarantee | Industrial and provident society |
| Legal personality | No | No | No | Yes | Yes |
| Governing document | Constitution | Deed of trust | Rules | Memorandum and articles of association | Rules |
| Relevant statutory body | None apart from Revenue Commissioners if a charity | Commissioners for Charitable Donations and Bequests in Ireland | Registrar of Friendly Societies | Companies Registration Office and Office of the Director of Corporate Enforcement | Registrar of Friendly Societies |

1.3 Unincorporated bodies

1.3.1 Unincorporated association

An unincorporated association is a group that does not have a separate legal personality of its own. Usually the group's activities are limited to, for example, holding social or community events. Any possible liability can be dealt with by having adequate insurance cover. For example, a bridge club might meet on a weekly basis in a local hotel. The hotel's public liability insurance will cover accidents happening on its premises. The bridge club organisers will incur any other liability, but the club's insurance policy should cover that sufficiently. The advantages of an unincorporated association are that it is relatively easy and inexpensive to set up, it is suitable for small organisations and the amount of regulatory requirements it has to deal with is minimal. The disadvantages are that the members of the association may find themselves personally liable for the actions or debts of the association. The association may also have difficulty establishing its credibility and entering into contracts, particularly if it wishes to employ staff or lease property.

Where an unincorporated association structure is appropriate, it is quite possible for a group of people to come together and undertake activities simply by verbal agreement. However, this is likely to be quite limiting. How can you confirm what has been agreed? How can you expect other people to take you seriously? Will a bank allow you to hold an account?



It is therefore a good idea to draw up a written constitution outlining the aims, activities and rules for running your group. The Revenue Commissioners have produced a standard template for a constitution.

A constitution will clarify issues such as:

- Who can be a member of your group?
- How does a person become a member?
- Is there any circumstance under which a person can have their membership taken away from them?
- Would the person losing their membership have a right to appeal?
- How often are meetings of the members held?
- How much notice of meetings should be given to the members?
- What is the quorum?
- Who has the right to vote?
- How will the management committee be elected?
- How often will the management committee meet and what will be the quorum?
- Are there any restrictions on how many terms a person can serve on the management committee?
- Can the management committee delegate any of its work to subcommittees?

1.3.2 Trust

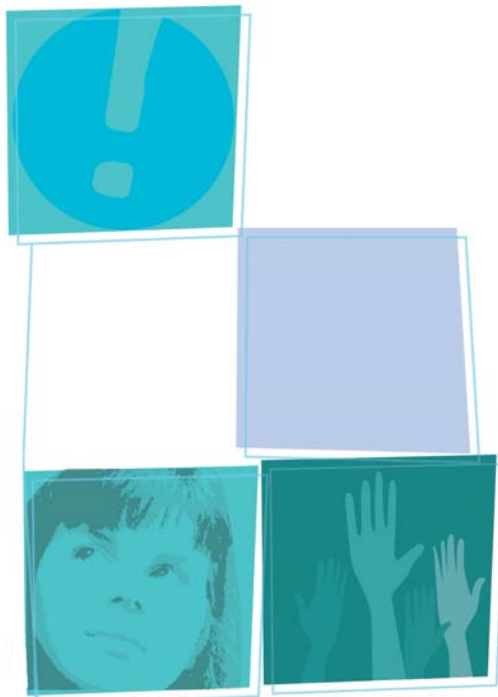
This is a structure where a number of people, known as 'trustees', are appointed under a legal document known as a 'deed of trust', usually in order to hold and administer funds or property on behalf of a group/beneficiaries. This does not confer legal status on the group and, given that the power rests with the trustees, the structure is considered to be less appropriate for community-based organisations. Trust law is also complex and may require the need to engage professional assistance. However, it

may be useful if a number of organisations wish to buy premises together or for smaller charities, where a property or properties are held for particular charitable purposes and overseen by the trustees.

A charitable body that is a trust can, in theory, apply for incorporation under the Charities Acts 1961 – 1973 through the Commissioners of Charitable Donations and Bequests in Ireland, but this is very expensive and very rare.

1.3.3 Benevolent society

A friendly society is a mutual association for its members. There are three types of 'friendly society', all regulated by the Registrar of Friendly Societies. The one which is generally charitable in nature and applies to voluntary associations, is known as the 'benevolent society' which has a governing document known as the 'rules'. It does not provide a separate legal entity. It is very little used, with only around a dozen such societies registered.



1.4 Incorporated bodies

1.4.1 Company limited by guarantee



For community and voluntary groups wishing to incorporate, the most

commonly used structure is as a company limited by guarantee without share capital under the Companies Acts 1963 – 2005. The advantages include limiting the liability of members and allowing the organisation to enter into contracts in its own name. It is therefore suitable for larger organisations and also any wishing to employ staff, lease property, etc. Disadvantages include the costs associated with forming and maintaining the company and compliance with company legislation, which can be onerous in terms of administration.



Company members control the company, but elect officers known as 'directors' who govern the company.

Liability of members is limited, usually to a token amount of €1 or so. Guidance for setting up and running a company limited by guarantee is available from, amongst others, the Companies Registration Office and the Office of the Director for Corporate Enforcement. Incorporation requires the drawing up of a memorandum and articles of association that lay down the 'objects' of the company (its aims) and the rules by which it will work. You may only do what is in your 'memo and arts'! There is a standard template in the Companies Act 1963 (Table C), and the Revenue Commissioners have also produced a standard template.



To form a company limited by guarantee, you must:

- Finalise your memorandum and articles of association.
- Have the end of both these documents signed and dated by the first members of your company. These members are known as the 'subscribers', and you must have

at least seven such members. They must also give their names and occupations (usually referred to as their 'descriptions'). The signatures must be witnessed, co-signed and dated by someone other than one of the subscribers, together with their address.

- Complete a Companies Registration Office (CRO) A1 form. Carefully read the notes provided with the form and complete the form in black ink. Watch out for the following:
 - 'Registered office': the official address of the company to which, for example, CRO notifications can be sent.
 - 'Secretary': every company must have a company secretary who is responsible for ensuring that the company complies with its legal requirements, for example, to keep minutes, send in annual returns, etc (see section 2.4.5)
 - 'Presenter': the person who is sending in your company application should complete this section.
 - 'Directors': each director of the company should complete and sign this section. You must have at least two directors. The directors are usually two or more of the subscribers.
 - 'Subscribers': the people who signed your memorandum and articles of association must also sign the A1 form.
 - 'Company capital etc': this is not relevant to a company limited by guarantee.
 - 'Declaration of compliance': one of your directors or your company secretary must complete this section, unless you have engaged a solicitor to do the work. Normally community and voluntary groups complete the section; *'or (b) that the activity cannot be so classified but is precisely described as follows'* by inserting the main object of the company as set out in your memorandum of association. The person making the

declaration must have his/her signature witnessed by one of the people listed, such as a Commissioner for Oaths or a practising solicitor.

- Submit the completed A1 form, your signed memorandum and articles of association and the €100 registration fee (lower if the application is made on-line).



It is a legal requirement for a company limited by guarantee to use 'Limited' (or 'Ltd'), or in Irish 'Teoranta' (or 'Teo'), after its name in all its business letters, notices, other official publications, cheques, invoices and receipts. In certain circumstances, a company may be exempt from this requirement. The exemption is granted to a company whose objects are the promotion of commerce, art, science, education, religion or charity. The company must use its income to promote these objects and not pay a dividend to its members. In addition, if it is being wound up, its assets must go to another company having one of the objectives listed above. The CRO provides an application form (G5) and information leaflet (number 24) with full details of what possible amendments may be required to the memorandum and articles of association for such an exemption to be granted.

1.4.2 Industrial and provident society

Organisations may incorporate under the Industrial and Provident Societies Acts 1893 – 1978. As the legislation requires that an industrial and provident society must intend to carry on an 'industry, business or trade' very often such societies will be profit-making and allow distribution of profits amongst members. An example is a cooperative formed to supply fruit and vegetables to its members. This structure is less common within the community and voluntary sector and not generally suitable for campaigning groups. The governing document of an industrial and provident society is known

as the 'rules' which has many features in common with the memorandum and articles of association of a company limited by guarantee. Contact the Irish Cooperative Organisations Society for further information about co-operatives and their structures.

1.5 Charity (CHY) status



There is a widely held belief that having a CHY number from the Revenue Commissioners confers a legal status of being a 'registered charity' – this is not so. It is a tax designation, providing certain tax exemptions for organisations, including capital gains, corporation, gift, inheritance, stamp duty, probate and savings taxes, but not value added tax (VAT) or payroll taxes. Having a CHY number is also very useful for fundraising purposes, and many funders will not provide you with money unless you have one.



Both unincorporated and incorporated bodies may apply for a CHY number, although it can be difficult for an industrial and provident society to obtain one, because of the possible distribution of profits to members. It is essential to have some sort of governing document (constitution, trust deed or memorandum and articles of association). In order to qualify as a charity you must ensure all your funds are spent on charitable purposes which are currently defined by case law as:

- Relief of poverty
- Advancement of education
- Advancement of religion
- Other purposes of a charitable nature beneficial to the community.

As a charity you may not engage in lobbying, campaigning or party political activity in such a way as to compromise your charitable purposes.

The regulatory environment is changing, and the introduction of the General Scheme for the Charities Regulation Bill 2006 proposes the first statutory definition of charity and the broadening of the existing list of charitable purposes. It will also establish a Charities Regulator to whom all charities must report.



To apply for recognition as a charity with the Revenue Commissioners you must do the following:

- If you are a new organisation, it is useful to apply for charitable status before finalising your governing document, as the Revenue Commissioners may require you to make some changes. Making these changes before formally adopting your constitution or registering as a company can save you time and money.
- Acquire the CHY1 form from the Charities Section of the Revenue Commissioners. Explanatory information is provided with the form.
- Send your completed CHY1 form to the Charities Section, together with your governing document (or if setting up a new organisation, your draft governing document), a statement of activities and plans for the next 12 months, copies of annual reports and your latest financial statement. There is no fee for this application.

Please note that if you have to pay rates on your premises, you are not automatically entitled to rate relief by virtue of having a CHY number. You will have to make an application for exemption to the Valuation Office.

1.6 Tax reference number

If your organisation is interacting with the tax system it will need a tax reference number. This would be the case, for example, if you intend to employ staff or if you are applying for a tax exemption as a charity. You should apply for the tax number at your local tax office. Registration forms are available from the Revenue Commissioners. If your organisation is not a company, the appropriate form is TR1. If your organisation is a company, you will need to complete form TR2; this includes registering for PAYE and PRSI purposes as an employer. If you do not employ staff and are registering, for example, to apply for charity status, complete the registration form for voluntary non-profit making organisations.

1.7 Internal structures



Once you have made a decision on your overall external structure, there is an infinite range of internal structures to choose from. This means deciding on who reports to whom, whether there should be different 'departments' or 'teams', whether staff (if any) and volunteers ultimately report to a single person at the head of the organisation, or whether there is more than one person responsible for managing the day to day activities.

Some of the points you need to consider are:

- You should decide what structure best meets the needs of your organisation now, bearing in mind that you will probably need to change this structure as your organisation develops.
- Looking at the structures of other organisations will help, but in the end you need a structure that suits your organisation.
- You need to consider whether you wish to have a structure based on a management committee or board which broadly speaking runs the organisation on behalf of the members.

- Alternatively you may wish to have a 'flatter' structure based on consensus building and greater participation by the members.
- If you have members, how wide a membership do you want? Remember that you will need to strike a balance between maintaining a degree of continuity and at the same time allowing for new blood to come into the organisation.
- At all times, try to keep your structures as clear and simple as possible. For example if you are a membership organisation, you may need different forms of membership, such as full, associate and honorary members with different voting rights. However, unless this is absolutely necessary, keep it simple, with one type of membership with equality of voting rights.
- As you grow, you may have different sections or departments, based on geography, function, service or some other criteria. You need to plan for such changes. Structures designed for smaller organisations are unlikely to be able to deal with a wider scenario that may involve local branches, semi-autonomous projects within large organisations, consortia made up of several organisations, and so on.

1.8 Reviewing your structures



When did you last review your structures? You should evaluate your structures regularly as part of your strategic planning processes (see section 3.4). If there are inconsistencies and inflexibilities in your structures that are hindering the way that you work, you should deal with these as openly and swiftly as possible. However, beware of ad hoc changes that are not reflected in your governing document!

1.9 Checklist

| Questions for the organisation | Yes | In progress | No |
|---|-----|-------------|----|
| Are you keeping yourself informed about changes to legal structures for community and voluntary organisations? | | | |
| Have you discussed and agreed that you currently have the most appropriate type of structure for your organisation? | | | |
| Do you have a written governing document (constitution, memorandum and articles of association, trust deed or rules)? | | | |
| Do you have CHY status or if not, do you know the reasons why? | | | |
| Do you have a tax reference number, or if not, do you know the reasons why? | | | |
| Are you confident that your organisation's internal structures meet your needs? | | | |

1.10 Signposts

Please contact **The Wheel** for further information:

The Wheel

ISFC, 10 Grattan Crescent,
Inchicore, Dublin 8

Tel: 01 – 454 8727

www.wheel.ie

info@wheel.ie

Additional signposts:

Carmichael Centre for Voluntary Groups

Carmichael House,
North Brunswick Street, Dublin 7

Tel: 01 – 873 5702

www.carmichaelcentre.ie

- *Setting Up a New Voluntary or Community Group, 2006*

Combat Poverty Agency

Conyngham Road,
Islandbridge, Dublin 8

Tel: 01 – 670 6746

www.cpa.ie

- *Cousins, Mel, A Guide to Legal Structures for Voluntary and Community Organisations, 1994*
- *Clarke, Jane, Becoming a Limited Company, 1996*

Commissioners of Charitable

Donations and Bequests

12 Clare Street, Dublin 2

Tel: 01 – 676 6095

www.pobail.ie/en/CharitiesRegulation/CommissionersofCharitableDonationsandBequestsforIreland

Companies Registration Office

Parnell House,
14 Parnell Square, Dublin 1

Tel: 01 – 804 5200 or

Locall 1890 – 220 226

www.cro.ie

Irish Cooperative Organisations Society

The Plunkett House,
84 Merrion Square, Dublin 2

Tel: 01 – 676 4783

www.icos.ie

Irish Statute Book

www.irishstatutebook.ie

- *Standard memorandum and articles of association (on the website, go to 'Acts of the Oireachtas 1922 – 2005', click on '1963' and then 'Companies Act 1963'; towards the end of the contents click on 'First Schedule' and scroll to 'Table C')*

Law Reform Commission

35-39 Shelbourne Road,
Ballsbridge, Dublin 4

Tel: 01 – 637 7600

www.lawreform.ie

- *Charitable Trusts and Legal Structures for Charities, 2006, www.lawreform.ie/publications/reports.htm*

Office of the Director of Corporate Enforcement

16 Parnell Square, Dublin 1

Tel: 01 – 858 5800 or

Locall 1890 – 315 015

www.odce.ie

Office of the Revenue Commissioners

Charities Section, Government Offices,
Nenagh, Co. Tipperary

Tel: 067 – 44301/2/3 or

callers from Dublin 01 – 677 4211

www.revenue.ie

- *Standard constitution, www.revenue.ie/forms/stancons.pdf*
- *Standard memorandum and articles of association, www.revenue.ie/leaflets/stanmemo.pdf*