



## OPTIONS FOR GIG ROWING CLUBS: LEGAL STRUCTURES

This note guide sets out some of the options for gig rowing clubs as to their possible legal structure.

This guidance note does not constitute legal advice and we recommend that you speak to an expert when choosing your structure. Legal considerations only form part of the picture and so you may need to speak to different specialists i.e. accountants, grant funding specialists.

### Gig Clubs: possible legal forms

Gig clubs can take one of a number of different legal forms. The main ones are:

- Unincorporated association.
- Incorporated organisation:
  - Limited company;
  - Community Interest Company (CIC);
  - Co-operative and community benefit societies (registered societies);
  - Limited Liability Partnership (LLP); and
  - if the social enterprise is also a charity, **Charitable Incorporation** (CIO).

Key characteristics of the various legal forms available are set out below.

### Unincorporated associations

Unincorporated associations are groups that come together for a particular purpose, for example, to run a rowing club. The central features of most unincorporated associations are:

- A constitution that sets out the rules governing their relationship and a broad membership which elects the management committee.
- Personal liability for the members of the management committee. This is because unincorporated associations do not have a legal identity in their own right; the members of the management committee therefore enter into obligations (such as contracts) on behalf of the organisation and they are responsible for its debts and other liabilities. A member of the management committee may risk their personal assets if the assets of the business are not sufficient to cover all the debts and liabilities. This means that this form may not be appropriate if the organisation is

likely to have significant liabilities, such as those arising from undertaking major activities, employing staff or acquiring property. Two common approaches to guard against such risk are to take out appropriate insurance for the benefit of the management committee members in respect of such potential liabilities and/or to incorporate.

The main advantages of being unincorporated are the relatively "light touch" regulation (for example, no requirement to send and file annual returns or accounts with Companies House and some tax advantages (for example, sole traders and partners pay their tax in arrears rather than up front).

### **Incorporated organisations (including CICs)**

If the gig club is incorporated, the organisation itself is a legal entity liable for its own obligations. This limits the personal liability of individual management committee members, shareholders or members, which is not the case for unincorporated organisations.

Incorporation has the following benefits:

- As a separate legal entity in its own right, the gig club can enter into contracts, employ staff, lease property and will have the burden of those obligations and liabilities.
- "Limited liability". Incorporation limits the personal liability of the individuals involved (although it does not remove it altogether). This is particularly important if the gig club intends to employ staff, take on significant property interests or undertake major contractual obligations.
- Incorporation provides an established form of structure for stakeholder membership.
- With limited liability comes regulation disclosure requirements, which can increase public confidence in the organisation.
- Recognition by financial institutions. Many banks and other financial institutions will insist on incorporation before providing loan finance. Equity finance is only available to certain types of incorporated organisations.

### **Limited companies**

There are two types of company: companies limited by shares (CLSs) and companies limited by guarantee (CLGs).

CLSs have a "share capital", which is a nominal figure used to represent the total net assets of the company. Shares are issued to shareholders, who become the owners of the company. The shareholders' potential liability is limited to the amount of their investment.

By contrast, CLGs do not have a share capital and the members (equivalent to the shareholders in a CLS) give a nominal guarantee to cover the company's liability, normally limited to £1. By not having a share capital, as CLGs do not have the inbuilt "for-profit" framework which CLSs do allowing investors in the company to receive a return on their

investment, the CLG brand has been traditionally associated with charities, trade associations and not-for-profit companies.

CLSs are divided into private companies and public limited companies; the latter are subject to particularly stringent accounting standards. Many public limited companies offer their shares to the public by being listed on the stock market.

As both are companies, many of the features of CLSs and CLGs are the same or similar. The impact of the different legal forms is most clearly felt when considering the financing options, some of which require a share structure and are therefore unavailable to some organisations.

Some key characteristics of companies are:

- **Power structure:** companies have a two-tier power structure consisting of a small group of individuals responsible for the day-to-day running of the organisation (the board of directors), which is accountable to the members (in a CLG) or the shareholders (in a CLS), who may or may not be the same people as the board. The members or shareholders have a number of fundamental powers: in particular, the power to dismiss the board and to change the constitution.
- **Constitution** (Memorandum and Articles of Association): the rules of the company are contained in the Articles, which set out the internal management structure and procedures, such as roles of members and directors, procedures for appointment and removal, conduct of meetings and so on. The Memorandum records the initial members on the company's establishment. Standard forms of Articles of Association may be used, although it is often advisable to check with a legal expert to ensure that the constitution is appropriate to the organisation.
- **Purposes:** the "objects" clause sets out the company's aims or purposes, which could be simply to carry on business as a "general commercial company" or, for a gig club, will be narrower and focused on the particular objective. For a charitable gig clubs, the objects must be exclusively charitable.
- **Limited liability:** the directors benefit from the protections of limited liability due to the company form, except in exceptional circumstances (for example, where a director has acted fraudulently or continued to run the company when it is insolvent, known as "wrongful trading"). It is possible to take out appropriate directors' and officers' liability insurance to cover such potential liabilities, but not in the event of fraud or other bad faith.
- **Accountability:** companies are required by law to make public certain information, such as an annual return (referred to as a Confirmation Statement) and financial accounts, which need to be filed with the Registrar of Companies, the regulator of companies established in the UK. Details of changes of directors and the company secretary, constitutional amendments and other disclosable matters also need to be filed.

- **Registration:** this is a straightforward process, requiring the completion of standard administrative forms and payment of a fee.

### **Community Interest Companies (CICs) Non-Charitable Gig Club**

A CIC is a form of company which has been available since 2005, developed in order to address the lack of a legal vehicle for non-charitable social enterprises. Fundamentally, CICs are normal companies – they can be established either as CLGs or as CLSs. However, CICs have some particular features to safeguard the social mission, namely:

- A CIC has to carry out activities which fulfil a "community purpose". This purpose will be defined on applying to set up the CIC, for example, the promotion of healthcare for the inhabitants of a particular area.
- A CIC also has a lock on its assets. This prevents profits from being distributed to its members or shareholders other than in certain limited circumstances (for example, a CIC which is a CLS provides the flexibility for shareholders to receive limited dividends).

The CIC form allows for a lock on the company's assets while allowing the board of directors to be paid; for this reason, it is an increasingly popular vehicle for gig clubs where the social entrepreneur establishing the organisation wishes to remain in control and receive a salary from it. CICs cannot be charities.

CICs are regulated by the CIC Regulator, which is intended to be "light-touch" (for example, in comparison with the often perceived "heavy" regulation of charities by the Charity Commission). A CIC is required to file a community interest report each year, which will include details of how it has pursued the community interest and involved stakeholders.

CICs can be registered with Companies House in the same ways as normal companies, with the completion of an additional form (form CIC 36) setting out the community interest and how it will be pursued.

### **Co-operative and community benefit societies (registered societies)**

This legal structure tends to be used where it is appropriate to give a wide membership an equal stake in the organisation and an equal say in management and other affairs, for example, by co-operatives and credit unions.

They can take two forms: community benefit societies (CBSs) and co-operative societies (co-ops). The difference between the two is in the stakeholder groups that the society is set up to benefit: a co-op is set up to benefit its members, whereas a CBS is set up to benefit the community more widely (whether people are members or not).

The regulator of registered societies is the Financial Conduct Authority (FCA), which has a significant regulatory function. For example, registered societies need to file an annual return and audited accounts (if over the statutory threshold).

For their constitution, registered societies adopt a set of model rules registered by one of the recognised sponsoring bodies or a bespoke set with the FCA. In co-ops, it is mandatory for voting to be on a one member, one vote basis. In CBSs, it is standard for this to be the case (although not necessarily). Any member can own up to £100,000 of the withdrawable share capital in a registered society, though in a charitable CBS the members usually only hold a nominal amount. The constitution may allow for the registered society to issue "withdrawable shares", which can be bought back or "redeemed" from members. This can provide a straightforward and cheap way to raise equity finance from its members, as withdrawable share capital is exempt from certain regulations applicable to conventional share issues (such as the publication of an appropriately drafted prospectus for potential investors).

Unlike companies, registered societies have the ability to merge through resolutions of their members into an existing or new society or company (known as a "Transfer of Engagements"). This is a cheap and convenient process for corporate change.

Currently, all charitable CBSs are exempt charities. This means that they are recognised as charities by HM Revenue & Customs (HMRC) for tax purposes but are not currently required to register with the Charity Commission, nor are they directly regulated by it.

### **Limited Liability Partnerships (LLPs)**

The LLP legal form retains the organisational flexibility of a traditional "partnership" and is taxed as a partnership, but members have the benefit of limited liability. In particular, the LLP has the advantage of being tax "transparent", which means that the members are taxed directly in their capacity as the individual or corporate body in accordance with their tax status. It has a single-tier structure (the LLP "members" are the equivalent of directors of a company).

The rights and duties of members have to be given by agreement between them (and the LLP). These are usually set out in a master written agreement (the "LLP Agreement"). However, in the absence of an LLP agreement, there are default provisions under the Limited Liability Partnerships Act 2000 (as amended). The LLP Agreement does not have to be filed with Companies House.

Many LLPs are used by two or more individual or corporate bodies to carry on a lawful business with a view to profit; however, gig clubs can adapt the LLP form to their needs, in particular, by having protections for the social mission set out in the LLP Agreement.

An LLP can be straightforwardly incorporated by filing an application form together with a registration fee to the Registrar of Companies.

Members are liable in the winding up of an LLP up to the amount they have agreed (which can be nothing). Certain "designated members" have the same rights and duties as any other member but have extra responsibilities, such as signing the accounts on behalf of the members and delivering documents to the Registrar of Companies.

The price of limited liability is disclosure; accounts must be prepared in accordance with the relevant accounting rules and filed at Companies House. They must disclose the highest paid member's profits and the annual return must be completed. In addition, as for limited

companies, there is certain information which must appear on the LLP's correspondence, such as the full name of the LLP, the place of registration, registered number, and so on.

## **Gig Clubs as charities (including CIOs)**

### **Key features of charities**

Many social enterprises are also charities; the key feature of a charitable social enterprises is that it is established with exclusively charitable objects, such as the advancement of education or the relief of poverty. Being a charity is a status; it is possible to establish a charity using a variety of legal forms, including a charitable trust, an unincorporated association, a company limited by guarantee (CLG), a community benefit society and a CIO. The most common legal form increasingly is the company limited by guarantee.

A large number of charities are not required, or are not able, to register with the Charity Commission and it is not necessary for an organisation to be registered in order to be a charity.

Other key features of charities are:

- Governance: the management committee of a charity (its ***charity trustees***) are responsible for the charity's administration and management, and are normally unpaid.
- Asset lock: a charity's assets must always be used to further the charity's purposes, and any profits or surpluses generated cannot be paid out to the trustees or members but have to be reinvested in the charity.
  - Constitution: regardless of the legal form, the constitution will contain;
  - a statement of its exclusively charitable objects;
  - a list of the powers the trustees have in furthering the charity's objects;
  - a list of any benefits trustees are authorised to receive from the charity; and
  - a "not-for-profit distribution clause", requiring that all residual assets on dissolution are applied for charitable purposes (and not distributed to private interests).
- Public/private benefit: as public benefit organisations, charities have to be careful about not giving disproportionate levels of private benefit to any particular group or person.
- Tax relief: charities benefit from a number of tax advantages.
- Gift Aid: gifts to charities by companies and organisations which pay Corporation Tax are tax deductible as charges on income. Donations by individuals attract Gift Aid

relief, which means that, provided the individual is a UK taxpayer, the charity can recover the amount of basic rate tax that the donor had paid on the amount of gift).

- **Regulation:** most charities in England and Wales are regulated by the Charity Commission. The Charity Commission is often viewed as a relatively "heavy" regulator and exercises considerable scrutiny over charities, particularly those turning over more than £250,000 per annum. Charities with an annual income of more than £10,000 have to file annual reports, accounts and an annual return.
- **Trading:** as an overarching principle of charity law, charities can only trade in the fulfilment of their primary purpose, that is, what the charity is set up to do. If the charity wishes to undertake further trading activities in order to raise money but which will not fulfil the charity's primary purpose, unless the trading is minimal (that is, within the permitted statutory threshold, currently 25% of a charity's total incoming resources, subject to a minimum allowance of £5,000 and overall cap of £50,000) and does not expose the charity to significant risk, the charity will have to set up a separate, for-profit trading company owned by the charity to undertake the activities. This arrangement is approved by the Charity Commission and HMRC. The rules around trading by charities or through their trading companies are complex and legal advice should be sought to ensure the trustees comply with the various rules and regulations.

To register as a charity, the gig club must apply to the Charity Commission. The main part of this process involves completion of a detailed application to establish that its activities in promoting its charitable objects will provide sufficient benefit to the public (without producing more than incidental private benefit): the "public benefit test". Depending on the activities of the gig club, correspondence with the Commission can be lengthy and incur significant legal fees, with no guarantee of success. Organisations with exclusively charitable objects and an income of more than £5,000 are required to register with the Commission.

### **Charitable incorporated organisations (CIOs)**

A new legal form, the charitable incorporated organisation (CIO), has been designed specifically and exclusively for charities.

The CIO combines the benefits of being a corporate body, with a separate legal identity and limited liability for its charity trustees and members, while being regulated solely by the Charity Commission and, unlike CLGs, not by Companies House as well.

### **Funding: finance and tax implications**

There are a range of sources of finance available to gig clubs, aside from the organisation generating its own surpluses to reinvest. Although some types of funding can be obtained by any legal form, other types are only available to certain legal forms.

The principle financing options are:

- **Grants.** Any legal form is able to accept a grant. However, charities tend to find funders more receptive due to the guarantee that all funds will be applied to its exclusively charitable purposes. CICs are likely to find more success than

straightforward commercial enterprises because of their asset lock. Common sources of grants are charitable foundations, government and EU funds.

- Debt finance. This source of finance is available to any legal form, usually in the form of loans from banks or other specialist finance providers. However, it is preferable to use an incorporated legal form as the obligation to repay the loan is a substantial liability and many lenders will in any event insist on incorporation.
- Equity finance. This involves a company ceding part-ownership and selling shares in itself to a third party in exchange for capital. Not all legal forms will allow a company to receive equity investment. In particular, as it does not provide for a share structure, the CLG form does not allow for the possibility of equity finance (however, it may be possible to secure equity investment in a trading subsidiary wholly owned by the charity).

When choosing a legal form, it is important that appropriate professional advice is obtained as to the tax implications of adopting a particular model, particularly as the gig club is likely to be dependant on its surpluses.

A wide range of tax reliefs and exemptions are available to charities. For example, a charity can obtain Corporation Tax relief on profits provided that these are applied solely to the purposes of the charity and the trade is exercised in the course of carrying out the primary purpose of the charity. Charities may also benefit from Capital Gains Tax relief (on disposals of assets) and Stamp Duty Land Tax relief (on land transactions).

The law surrounding tax, particularly VAT, is complex requiring careful analysis of the detail, and specialist advice should be sought when considering which legal form to adopt.

If you would like to discuss your options with one of our expert team, please call:

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