ORGANISATIONAL STRUCTURES AND LEGAL STATUS

A quick guide for food partnerships

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Contents

1 Introduction

This document represents our understanding of the different forms of organisational structure and legal status. However, we are not experts in this field and recommend that any food partnership considering adopting a particular structure seeks professional advice before acting to ensure that they are completely aware of requirements, responsibilities and limitations.

2 Option 1 - Unincorporated Association

An unincorporated association is a membership organisation and is the most common form of organisation within the voluntary sector. It can be whatever its members want it to be and carry out whatever activity the members choose.

2.1 Benefits

Quick and straightforward: It is the easiest and cheapest, and therefore quickest way, for a group to set up.

Limited reporting: There is limited obligation for reporting on activities only as defined by your governing document / constitution or funding obligations.

Charity status: Can be a charity.

2.2 Disadvantages

Full liability: Unincorporated organisations have no legal identity separate from their individual members. Members of the management committee are liable for all the actions of the organisation.

Lack of legal status: Can't enter into legal agreements / contracts / hold property or other assets in its own right.

Limited funding: Some funding, grant income, and contracts may be unavailable to organisations that are unincorporated.

2.3 When to choose

Choose this if your food partnership:

- will not own significant property
- will not employ staff
- will have a relatively secure income
- will not carry out risky or financially burdensome activities
- wants to be a membership organisation.

2.4 Food partnerships' experience

Wells Food Network and Cambridge Sustainable Food (although this is likely to change soon) are set up as unincorporated associations. Many independent food partnerships start out as unincorporated associations, although few remain this way, mainly to protect the liabilities of their members and to enable them to access funds.

3 Option 2 - Become an Incorporated Organisation

Incorporated organisations (companies, industrial and provident societies' (IPSs), community interest companies (CICs) and charitable incorporated organisations (CIO's)) have a separate legal identity and are entities in their own right, independent of their members. The liability of members of incorporated bodies is limited to the amount they have invested (companies limited by shares, and industrial and provident societies) or have guaranteed (companies limited by guarantee) to pay to creditors in the event of the organisation getting into financial difficulties.

An organisation developing trading activities that expose it to additional risks and liabilities, should seriously consider incorporation as a way of limiting those liabilities to an acceptable level.

3.1 Legal structures - incorporated organisations

Incorporated organisations can take the form of either:

- Limited liability companies (Company Limited by Guarantee or Company Limited by Shares)
- Industrial and Provident Societies (IPS)
- Community Interest Company CIC Charity
- Charitable Incorporated Organisation.

4 Limited Liability Companies

There are two types of limited companies. A company limited by guarantee is a non-profit distribution structure; often these are also charities or trade associations. A company limited by shares can be either a private company, which is the most common, or a public limited company (plc), which can offer its shares to the general public.

The key characteristic of limited liability companies is having a separate legal entity; therefore the company, rather than individuals, is responsible for debts. The two-tier structure of companies involves a board of elected directors and the members. Members have limited liability, which means they guarantee to put forward a sum of money (usually £1) towards the company's finances if the organisation is wound up.

All limited liability companies must have Articles of Association. These set the rules company officers must follow when running their companies. 'Model' articles are the standard default articles a company may use.

Articles include defining directors' powers and responsibilities, membership criteria and how the organisation will run internally.

4.1 Benefits

Straightforward: It is relatively easy, and usually inexpensive and quick to become a limited liability company.

Accountability: Because limited liability companies must register their address, file their constitution, and make public their annual accounts, they can show they are accountable. They also benefit from having a well-defined management structure.

Loans / grants: Limited companies are recognised by financial institutions and most funders, making it easier to secure a loan or to obtain funding.

Limited liability: To members of the organisation and governing body.

Legal entity: Can take on contracts, take legal action and hold property in own name.

Charity status: Can be a charity.

4.2 Disadvantages

Costly: Limited liability companies can be costly to operate. Annual accounts must be prepared and registered each year, and if the organisation earns over £1 million (£250,000 for a charitable company), the accounts must be audited. Some companies will choose to have their accounts audited even if they earn less than this to give assurance to their supporters.

More regulation: Changes in the constitution or changes of directors must be filed with Companies House within 14 days.

Winding up: This is a formal process.

Payment to directors: If company directors are paid it can make it difficult to get grant funding.

4.3 When to choose

Choose this if your food partnership:

- employs or expects to employ staff
- owns or expects to own land, building, investments or other substantial assets
- is or expects to be involved in assets, leases or contracts where there is financial risk
- is finding it difficult to recruit governing body members because they want the protection from personal liability that incorporation brings.

4.4 Food partnerships' experience

Several food partnerships are currently structured this way including: Brighton and Hove Food Partnership (Company Limited by Guarantee, not for profit); Lambeth Food Partnership (Company Limited by Guarantee, not for profit); Liverpool Food People (Company Limited by Guarantee, not for profit).

5 Industrial and Provident Societies (Societies)

There are two categories of society able to register under the Industrial and Provident Societies Act 1965 (ISPA).

Community benefit society: business must be conducted for the benefit of the community and not the group's members. In order to register, the group must demonstrate why they want to be a society, and not a company. Usually this is done by showing that the benefits of business are not for members, but for the community. Community benefit societies are not required to have an open membership, but often do. Profits are not distributed amongst members, but returned to the community.

Bona fide co-operative: set up to conduct business through member participation for mutual benefit. The organisation's rules must reflect the principles of being a co-op, which are communicated in the 'International Co-operative Alliance – Statement on the Co-operative Identity'. Co-ops are jointly owned and run democratically; they must have an open membership policy.

Societies and companies share many features. For example, members have limited liability and can hold shares, and there is a constitution (written as a set of rules) and an elected board of directors.

A major difference is that societies are regulated by the Financial Services Authority (FSA), not the Registrar of Companies. The FSA's role is to ensure that societies are continually complying with the Act, and therefore, the FSA must approve any constitutional changes.

5.1 Benefits

Democratic: IPSs are democratic; they are run and managed by their members. IPSs can offer incentives for participation such as an active membership or, where appropriate, profit distribution.

Can issue shares: IPS can be a good form for social enterprises and not-for-profit organisations. Because IPSs, and particularly community benefit societies, can issue shares to the public, this can be a good way for such organisations to raise substantial funds.

5.2 Disadvantages

Costly to register: It can be costly to register as a society. The registration fee for a new set of rules will cost £950. It is less expensive to register using a set of model rules - a fee of £40 will be charged to a society with a set of model rules from another organisation; this fee will increase for every change made to the model set of rules.

5.3 Food partnerships' experience

There are no food partnerships with this structure that we know of in the SFC Network although Greenwich Cooperative Development Agency which houses Good Food Greenwich is a Community Benefit Society.

6 Community Interest Companies (CICs)

The CIC formed under the Companies Act 2006 to provide a flexible alternative to charities and industrial and provident societies and is designed for social enterprises that want to use their profits and assets for the public good. CICs are intended to be easy to set up, with all the flexibility and certainty of the company form, but with some additional features to ensure they are working for the benefit of the community. A CIC is registered with Companies House as a company limited by guarantee or by shares as incorporated structures are, but differs in two important ways:

1. They have an asset lock, under which assets can only be distributed to a specified community interest company or charity – not to members or investors
2. They must pass a community interest test, to show that the activities of the company will be in the interest of the community it serves.

CICs differ from charitable companies in that they can be established for any purpose which benefits the community, whereas a charity must have exclusively charitable purposes. Like other limited companies, the directors of a CIC may be paid. Bear in mind though that some funders choose not to fund organisations with paid directors.

6.1 Benefits

Quick to set up: CICs are easy quick and inexpensive to set up.

Legal identity: Can take on contracts, take legal action and hold property in its own name.

Limited liability: To members of the organisations and governing body.

Can pay governing body members.

Asset lock: protects assets for the community.

Reputation: Additional regulation from the CIC regulator and provides a brand as a social enterprise.

6.2 Disadvantages

Some costs: registration fee, annual filing fee. Paperwork includes keeping registers and annual returns to companies House.

Limitations on limited liability: (for governing body members) remain personally liable for fines, acting outside of powers, allowing company to continue when insolvent.

Must pay taxes: on profits, must pay stamp duty, no gift aid, and no mandatory rate relief.

Some limits on funding: Some funders may not want to fund CICs.

Charity status: Can't be a CIC and a charity.

Reporting requirements: There are more onerous reporting conditions than regular incorporated organisations although less that charities.

6.3 When to choose

Choose this if your food partnership:

- wants to be clear it is not for profit and working for the community (usually call itself a social enterprise)
- employs or expects to employ staff
- owns or expects to own land, building, investments or other substantial assets
- is or expects to be involved in assets, leases or contracts where there is financial risk wants to preserve its assets for the community benefit
- wants to pay or be able to pay the governing body members
- is finding it difficult to recruit governing body members because they want the protection from personal liability that incorporation brings.

6.4 Food partnerships' experience

Food Partnerships set up like this include: Bristol Food Network CIC and Food Plymouth CIC.

7 Charities

A charity is an organisation which:

- Has exclusively charitable purpose (as defined by law) and
- Exists for the public benefit (as defined by law)

It is the law which determines whether an organisation is a charity. If your food partnership's aims are exclusively charitable and it exists for public benefit then it is a charity in the eyes of the law. Registering with the Charity Commission simply turns an unregistered charity into a registered one.

There are 13 broad categories of charitable purpose. A charity's objects or aims as set out in its constitution must fall within one of these purposes. They include: prevention or relief of poverty; advancement of education; advancement of health; advancement of citizenship or community development; enhancement of environmental protection and improvement. The Charity Commission provides examples of charitable objects. Several different types of organisation can become a charity: unincorporated association, trusts, charitable incorporated organisation, company limited by guarantee, company limited by shares.

7.1 Benefits

Financial benefits: Charities can find it easier to attract grant funding. Charities receive tax relief on profits applied to the purposes of the charity. These profits must have been made in achieving the charity's primary purpose. Charities do not pay tax on bank interest, do not pay stamp duty, and receive tax relief on donations, through Gift Aid for example. Charities also receive an 80% reduction on business rates for the property used to conduct business.

7.2 Disadvantages

Costly and time consuming: It can be costly and time consuming to seek registration as a charity, as some groups will need to obtain professional advice on the registration process.

Additional reporting and auditing: Once established, a charity must file annual reports, accounts and an annual return. Charities with a gross annual income of £25k or over must have the accounts independently examined or audited, which can add extra expense to the costs of filing the annual return.

Limits on campaigning work: Charity regulations limit involvement in political or campaigning work.

7.3 Food partnerships' experience

Several SFC Network food partnerships have applied to the Charity Commission to become a Charity but have been rejected. The reason for their rejection is because their objects include the promotion of local food businesses and this is not considered charitable. Some food partnerships are now seeking to align their work with Objects designed by the Charity Commission for charities working in sustainable development with an emphasis on promoting 'sustainable food systems' as opposed to 'local food systems'. None have yet achieved charitable status but this may change.

8 Charitable Incorporated Organisation

A charitable incorporated organisation is a new structure that came into being in 2013. It is an incorporated organisation which means that it has a legal identity separate from its members. It can be a membership organisation or be governed by a small group. It is a charity which is incorporated so it is recognised in law as a legal entity. There are two different types of CIO:

- An Association CIO is suitable for groups that have a wider membership who have voting rights
- A Foundation CIO is run solely by its trustees and doesn't have voting members.

A model constitution is available from the Charity Commission.

8.1 Benefits

Straightforward and free: Registration for new organisations wishing to become a CIO is relatively straightforward and free. There are no fines for late submissions to the Charities Commission.

Legal identity: Can enter into contracts and have debts and obligations in its own right. Can buy and lease property and employ people and enter into other contracts.

Limited liability: Trustees have some protection, as they have limited liability and any claim is made against the CIO rather than the individual trustees.

Recognition: Being a charity gives you public recognition.

Funding: Some funders will give grants only to registered charities.

Simple accounting: Accounts for CIOs with an income below £250,000 are simpler with correspondingly reduced accountancy fees.

No need for members: the CIO structure is available to organisations which do not have members. (Whereas charitable companies have to have a membership structure)

8.2 Disadvantages

Difficulty accessing loans: It may be difficult to get loans from banks because, unlike charitable companies, CIOs don't need to keep a public record of liabilities.

Could be forced to close: If a CIO stops being charitable, under the Charity Commission's criteria, it will cease to exist and be forced to close, unlike a charitable company, which would still continue to be a non-charitable company even if it lost its charity registration.

Limits to political and campaign activities: All charities have to comply with Charity Commission guidelines on political and campaigning activities.

Reporting: Need to submit annual report and accounts to the Charities Commission regardless of income bracket.

8.3 When to choose

Choose this if your food partnership:

- employs or expects to employ staff
- owns or expects to own land, building, investments or other substantial assets
- is or expects to be involved in assets, leases or contracts where there is financial risk
- is finding it difficult to recruit governing body members because they want the protection from personal liability that incorporation brings
- wants to only be registered with and regulated by one regulator, the Charity Commission

8.4 Food partnerships' experience

Brighton and Hove Food Partnership is in the process of applying to become a Charitable Incorporated Organisation.