

# To incorporate or not to incorporate? That is the question!

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Whether you are starting a business from scratch or running an established company there are many ways in which a business can be constituted and the law governing legal structures is complex.

Interestingly, you are not required by law to adopt a legal structure. It is possible for a business to exist without being formally organised as long as it is only operating on a small scale. Doubtless, some businesses feel they have no need for rules but a formal structure can provide a framework in which the business can operate and can also provide more protection. The tax implications will, of course, depend on the circumstances and accountancy advice should be sought on these.

## **Unincorporated organisations**

This type of organisation has no legal identity except as a collection of individuals. The main consequence of this is that the organisation cannot sue or be sued in its own name. Instead the officers and members can sue and be sued on the organisation's behalf. This means that such individuals may be held personally responsible for the organisation's obligations and debts.

Serious thought needs to be given as to whether this is an appropriate way to trade. If it is felt to be suitable, then the organisation needs to ensure that its rules adequately protect both officers and members from personal liability and that adequate insurance is in place to cover potential liabilities. Bear in mind also that an unincorporated organisation cannot enter into contracts or hold property in its own name.

The main benefits of this structure are that it is cheap and quick to set up (the only people you need to contact are the Inland Revenue if you want to apply for charitable status), cheap to run and there is no requirement to notify changes in officers.

The Court of Appeal recently ruled that individual members of unincorporated organisations can be held liable for criminal offences. The case concerned a golf club where an underground pipe taking oil from a storage tank to the boiler was punctured by builders, causing 1,500 litres of oil to leak into a nearby water course. The Environment Agency prosecuted the chairman and the treasurer of the club. The court ruled that not only could the club be prosecuted, but also any of its 900 individual members. As it happens, the chairman and treasurer were acquitted but they could have ended up with criminal convictions. The ruling has led a number of unincorporated organisations to convert to limited company status in order to protect individual members.

## **Incorporated organisations**

Often referred to as limited companies, an incorporated organisation has a separate legal identity from its directors and employees and can therefore sue and be sued in its own name. Consequently, the directors' liability will be limited – they will only be personally liable if they commit some wrongdoing or if the company continues to trade when insolvent.

The company can also hold property and borrow money in its own name and needs to be formed and registered in accordance with The Companies Act 2006 which places certain statutory responsibilities on the directors. It is under a legal duty to file its annual accounts and annual return at Companies House.

Incorporation may be an appropriate status because of the different activities the business operates; because it has significant liabilities, because it has land, investments and employees or if it is thought necessary to

limit the liability of the officers or members.

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