Governance

Section three Organisational structures

RCOs, like other Voluntary Community Organisations (VCOs), need to have an organisational structure. Every charity has a **legal status** which is based on the form of legal structure it chooses to adopt. This legal status is quite different from its **charitable status.** A voluntary organisation can have one of two types of legal structure:

- **Unincorporated** or
- **Incorporated**

Which organisational structure you choose, will be reflected in the kind of governing document that you use. The first thing your organisation has to decide is whether it wants to be unincorporated or incorporated.

This section looks at the most popular forms of legal structure: unincorporated association and company limited by guarantee.

> **! Legal fact**
> Under English law, charitable status is determined by an organisation's aims rather than its organisational structure. A number of different legal structures are acceptable provided that all the basic conditions for charitable status are met.

3.1 Unincorporated associations

Unincorporated associations are a group of people who have agreed to follow certain rules and procedures set out in a constitution in order to achieve their aim or purpose. It has no separate legal identity from the individuals involved in the organisation. In most cases, individuals hold the property of the organisation on its behalf, and individuals, generally the management committee (MC), represent the organisations in legal proceedings and are those named if the organisation signs a contract or lease.

These types of organisations must have a written document which details the aims of the organisation, management procedures and how it will achieve its aims. Most RCOs in this category have a **constitution** or set of **rules** as their governing document.

Advantages:

- Quick and cheap to establish and you do not need the approval of any agency, unless you apply for charity status
- Can register as a charity
- Yearly accounts need to be presented to the members or supporters of the organisation including funders. Do not have to submit accounts to the Charity Commission if it has not registered. When the organisation is a registered charity then yearly accounts and reports should be submitted to the Charity Commission
- Suitable for organisations with low income that do not employ paid staff or face other risks of claim or loss
- Can generally be dissolved (closed) more easily than companies.

Disadvantages:

- **Individuals**, generally the MC, are legally responsible for the actions taken (be it debt, contracts, and so on) and so can be held personally liable for debts created by the organisation
- Has no separate legal existence
- Cannot buy, sell or own property in its own name – property must be held by individuals or through some other means
- Cannot take legal action in its own name – must be taken by individuals representing the organisation
- Individual members as well as the MC can be held personally responsible for any debts created by the organisation.

3.2 Incorporated organisations

Company limited by guarantee

Incorporated organisations have a separate legal identity from the individuals involved in running them. This means that the organisation can hold property, take or defend legal proceedings and enter into contractual arrangement in its own name. They can also protect members of their MC from personal liability.

The most common legal structure for incorporated organisations in the voluntary and community sector (VCS) is a company limited by guarantee. These companies are organisations that have no shareholders and require members to pay (usually) between £1 and £10 but only if the company cannot pay its debts/becomes insolvent.

Companies limited by guarantee must also register as charities with the Charity Commission (charitable companies) if they want to become a charity, and they will have to meet requirements of charity legislation (see Section two on charities). The governance document of companies limited by guarantee is called the **Memorandum and Articles of Association**.

Advantages:

- The MC has limited liability – members of the MC are generally only liable if they are in breach of trust or a statutory duty or if they continue to run the company when they know or should know that the company has no reasonable chance of avoiding bankruptcy

- Members' liability is limited to a small amount, usually no more than £1 - £5 if the organisation runs into debt
- Can contract in the name of the organisation
- Can buy, sell or own property in its own name
- Appropriate structure if the organisation is going to be fairly large and employ paid staff.
- Company law is well developed and most situations are clearly dealt with in it.

Disadvantages:

- The memorandum and articles are longer and generally more complex than a constitution
- There is a formal registration process and small registration and annual fee
- If the organisation fails to send reports within required period it will be fined
- Company law is extensive and can be intimidating.

Community Interest Companies (CIC) (another form of incorporated organisation)
As defined by the Community Interest Companies Regulator (www.cicregulator.gov.uk):

Community Interest Companies (CICS) are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", which ensures that the CIC is established for community purposes and the assets and profits, are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator who also has a continuing monitoring and enforcement role. Their big disadvantage is that since CICs cannot be charities they get no tax or rate relief.

Charitable Incorporated Organisation (CIO)

From April 2010, it should be possible to choose a new way of incorporating by becoming a CIO. This will have all the advantages of a charitable company limited by guarantee. In addition, it should be simpler to form and run as it will only be registered with the Charity Commission, not Companies House as well. This structure is likely to be a sensible structure for many new organisations. However, it is not yet available and there may be some operational changes once it is tried out in practice – see the Charity Commission website for more details.

© Refugee Council and Refugee Action 2009

British Refugee Council, (commonly called the Refugee Council) is a company limited by guarantee registered in England and Wales, [No 2727514] and a registered charity, [No 1014576]. Registered office: 240-250 Ferndale Road, London SW9 8BB, United Kingdom

Refugee Action, The Old Fire Station, 150 Waterloo Road, London SE1 8SB, UK
Refugee Action is a registered charity
Charity no. 283660

This information has been produced by the Basis Project, run in partnership by the Refugee Council and Refugee Action, supported by the Big Lottery Fund (BIG). It is not intended to be comprehensive or to provide legal advice. No legal responsibility is attached to the publisher. It can be reproduced free of charge for non-commercial use, but credit must be given to the Basis Project and Refugee Council and Refugee Action.