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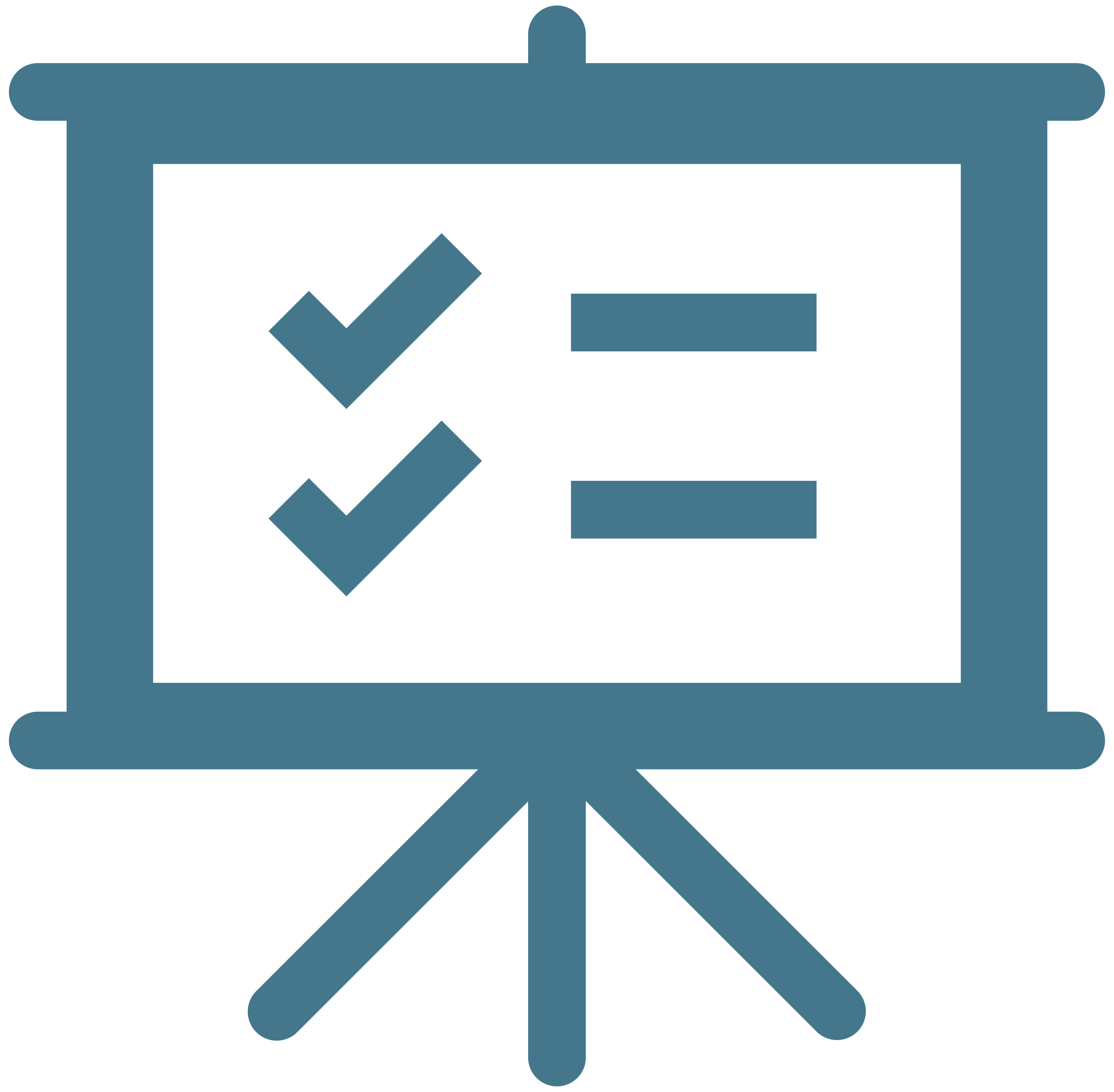
Charity structures and restructuring: choosing the best legal form for your charity

What we will cover in this webinar

1. Overview of common legal structures used by charities and not-for-profit organisations
2. Why might you want to change your legal structure?
3. How to change legal structure
4. Troubleshooting common issues
5. Questions



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Common legal structures used by charities

Main legal structures used by charities

Unincorporated	Incorporated
• Trusts • Unincorporated Associations	• Charitable Incorporated Organisations (**CIOs**) • Charitable companies limited by guarantee (**CCLGs**)

Less common structures
• Royal Charter Bodies • Charities incorporated by Act of Parliament • Charitable companies limited by shares • Community Benefit Societies (formerly Industrial and Provident Societies)

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Unincorporated structures:
Charitable Trusts

- Trustees agree to hold assets on trust to be applied for the purposes of the charity
- Governed by one or more deed or declarations of trust
- Single tier of governance

Advantages	Disadvantages
• Does not need to comply with company law – more flexible than a CCLG.	• No separate legal identity from its trustees and cannot own land or sign documents in its own name.
• No requirement to have a registered or principal office.	• Trustees jointly and severally (and personally) liable for charity's liabilities.
• Only regulated by the Charity Commission.	• No publicly available register of charges, which may result in it being more difficult to borrow.
• Established body of trust law that will be familiar to some trustees.	

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Unincorporated structures:
Unincorporated Associations

- Usually used for simple charities that are membership-based without any significant activities or liabilities.
- Executive Committee are (usually) the association's **trustees** for charity law purposes.
- Governing document usually consists of a set of rules.

Advantages	Disadvantages
• Simple to create and can be flexible to run.	• No separate legal personality.
• Only have to make annual filings with the Charity Commission.	• Members of the Executive Committee will generally have to hold any land or assets on the unincorporated association's behalf and enter into contracts as individuals.
	• Issues can arise around liability, proper authorisation and agency.

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Incorporated structures:
Charitable Companies Limited by Guarantee (CCLGs)

- Widely used by charities and (non-charitable) non-profits.
- Incorporated at Companies House but regulated by the Charity Commission as well.
- Two-tier governance structure comprising members and directors/trustees

Advantages	Disadvantages
• Liabilities of the **company** are limited to the amount guaranteed by the members.	• A charitable company must make annual filings with Charity Commission and must also notify Companies House of certain changes.
• Liabilities of the **trustees** are also limited (with some exceptions).	• Registered office must be a physical address (unlike a trust).
• Has legal personality, meaning that it can hold land, enter into contracts in its own name	• Subject to company law as well as charity law, which can sometimes have unintended consequences.
• Public register of charges at Companies House gives additional security for lenders.	• The directors are directors for company law purposes and trustees for charity law purposes, with legal obligations in each capacity.

Incorporated structures:
Charitable Incorporated Organisations (CIOs)

- New corporate structure designed specifically for charities.
- Two-tier governance structure – can be the same (Foundation model) or different (Association model).
- CIOs are charities so can only spend their funds in a manner that is charitable.

Advantages	Disadvantages
• Only have to make filings with the Charity Commission (and not with Companies House).	• No central register of charges (but can charge land at the Land Registry).
• Charity and its trustees have the benefit of limited liability protection.	• Not as well-known outside the UK charity sector / overseas.
• Separate legal personality means they can contract and hold property in their own name but are not subject to company law.	• Some uncertainty due to the lack of a body of established case law (unlike companies and trusts).

Which is the best choice of structure for these charities?

Charity A

- Family charity
- Sole activity of making grants
- No property or significant contracts

Charity B

- Educational charity
- Has become more sophisticated over time
- Employs staff
- May want to expand overseas in future

Charity C

- Museum with some significant assets
- Has leasehold interest in its building
- Does not anticipate needing to seek finance in the future

Non-profit structures that aren’t charities

Non-profit organisations that are not charities:

- Non-charitable social enterprise companies (businesses with social as well as commercial objectives).
- Community Interest Companies (**CICs**)

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Why might you want to change your legal structure?

Why become a registered charity?

- Reasons why non-charitable organisations become charities include:

Access to funding

- Public recognition as a charity can assist charities with fundraising.
- Some foundations will **only** fund charities, and they **won't** fund organisations that aren’t registered charities.

Beneficial tax treatment

- Exemptions from corporation tax on profits if applied for charitable purposes.
- Business rate relief (80% mandatory, 20% discretionary).
- Gift Aid relief on donations from individuals.
- Stamp duty land tax relief on freehold property and leases.
- No VAT payable on some goods and services.

Why move from an unincorporated form to an incorporated one?

- Reasons to incorporate include:

Simplification of administration due to having a separate legal identity

- Charity in its corporate name (rather than the trustees individually) enters into contracts, holds assets and may sue and be sued.
- Helps to simplify the general administration of the charity in relation to holding assets and contracting with third parties.

Limited liability protection

- Generally only the assets which comprise the corporate property of the charity are available to meet the liabilities of the charity – not those of the trustees or members.
- However, there are a number of exceptions to the principle of limited liability under charity law and other regulatory regimes.

Why move from one incorporated (charitable) form to another?

- Reasons to change incorporated structure include:

Simplification of administration

- CCLG to CIO takes the charity outside the scope of company law and regulation by Companies House.

Greater flexibility / capacity

- Conversely, CIO to CCLG may be appropriate if a charity finds its operations have become significantly more sophisticated.

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Mechanisms for changing structure

Standard “charitable incorporation” (1)

Phase 1: initial planning

- Decide which structure you wish to move to.
- Constitutional matters: objects and powers and who needs to participate in decision-making.
- Conduct due diligence on the existing charity’s assets and liabilities.
- Note in particular: employees, property, finance and pensions arrangements (if any).
- Third party consents?

Phase 2: establishing the new charity

- Draft a Constitution / Articles for the new (incorporated) charity.
- If a CCLG, incorporate at Companies House.
- Prepare an application for registration with the Charity Commission on the basis of replacing an existing charity.
- Apply to HMRC for recognition for tax purposes.

Standard “charitable incorporation” (2)

Phase 3: transfer assets and liabilities

- Deed of transfer for all assets and liabilities to be transferred into the new structure.
- TUPE process with any affected employees.
- Assignment or novation of significant contracts.
- Notify banks / investment managers of changes that may affect bank accounts and/or lending.

Phase 4: post-transfer

- Update regulators.
- Register of mergers.
- If retaining the old charity, apply for a linking direction to link the charities for accounting and registration purposes.

Pre-merger vesting declarations under s310 Charities Act 2011

Benefits	Issues
Can be a simplified procedure – operates to vest the legal title to all of the transferor’s property in the transferee, without the need for any further document transferring it	Doesn’t apply to certain types of asset
Confers trust corporation status (but only if transferee is a CIO)	Only applies to permanent endowment and special trust property if transferee is a CIO
	No provision for transfer of liabilities or giving of indemnities
	Can only be used in connection with a “relevant charity merger”

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Troubleshooting common issues

Common issues

- Objects and powers
- Permanent endowment
- Legal title to property
- Section 190 Companies Act 2006 / Section 201 Charities Act 2011
- Managing conflicts of interest
- Legacies and retaining a shell charity

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Questions

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