

## Protecting Yourself: Becoming a Company

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A voluntary organisation will normally choose to become a company limited by guarantee after a management committee member returns from a training event or advice session with the dreadful news that they are currently liable *as individuals* for any debts the organisation may incur. In small organisations, unlikely to incur substantial debts, this is fine. However, if the organisation has paid staff, owns a building or has large contracts – say with a local authority, then usually we are keen to limit our liabilities. The usual way to do this is to set up a company limited by guarantee, where all members agree to pay a small amount (£1) if the organisation becomes insolvent.

In return for limited liability, your organisation must give information to Companies House each year. This includes:

- Annual Accounts
- Annual Return (sent in on Form 363)
- Notice of change to directors or secretaries and their particulars (sent in on form 288 a/b/c)
- Notice of change to registered office (sent in on form 287)

You have 22 months from the date your company is formed to get your first accounts to Companies House. From then on you have to send accounts to Companies House each year no later than 10 months after the end of your financial year. Why is this important? Not sending accounts to Companies House is a criminal offence, making the directors liable for a fine of up to £5,000 each. As well as the risk of prosecution, there is an automatic fine to the company for late filing. This fine rises from £100 for filing three late months or less, to £1000 for filing more than 12 months late.

So you must weigh up the benefits of limited liability, with the need to be adequately on top of your finance and administration to send the relevant information in on time.

The next question is how do we become a company? This leaflet outlines the steps. However, if you are unsure seek advice – if you have lots of money pay a solicitor to do it for you. If not, you will have to do it yourself, but contact your local council for voluntary service (IVAC in Islington) for advice.

The basic idea is a three step process. First of all you set up a new organisation – the company. Second, you transfer everything from your current organisation to this new company. Third, you shut down your current organisation. This sounds dramatic, but it is just a technical exercise. To the outside world the only change is the appearance of a company number in the bottom of your headed paper.

Make sure that you keep good management committee minutes during this process, and in each of them make clear if it is a meeting of the new company or the old organisation.

### Some company words

All organisations need a document which sets out what the organisation is for, what powers it has to act, who can join the organisation, and how it is run. This document is called a constitution. The particular name for a company's constitution is a **The Memorandum**, and the **Articles of Association** (sometimes shortened to Mem. & Arts) and has to conform to company law.

## AHEAD'S INFORMATION SHEETS FOR ORGANISATIONAL DEVELOPMENT

When your organisation becomes a not-for-profit company the people who run the organisation (the executive committee, management committee etc.) become **company directors**, and are bound by company law. If you register as a charity, the directors will also be charity trustees. *These are the same people.* In the following example Memorandum and Articles of Association the Directors are referred to as 'Trustees' because the draft is for a charitable company.

You will also need a **company secretary** (who can be a staff member or a director) who will take responsibility for some of the administration of the company, such as sending annual accounts to Companies House and telling Companies House when director's change.

### **Adapting our example Memorandum & Articles of Association**

Read the draft Memorandum and Articles enclosed. Like your constitution, they set out the rules by which the organisation runs.

### **The main parts to in the Memorandum and Articles for you to add / amend are:**

*Memorandum Clause 1: Name.* You can keep the same name for the company as the current organisation. However, check with companies house first as you cannot have the same name as another company, or use certain 'sensitive' words. (Like calling yourself a hospital if you're not one.)

*Memorandum Clause 3: Objects.* This clause states the purpose of the organisation. You will already have this clause in your constitution. It is important to get this right for two reasons. Firstly, your organisation can only (legally) further this aim, so if the aim is too narrowly defined, you may not be able to carry out work you want to a few years down the line. Secondly, if you want to gain charitable status later on, then the aim needs to be worded so that the organisation is 'charitable' in the legal sense.

*Memorandum Clause 5: benefits to trustees:* Whether trustees can be paid or not for specific services (such as an accountant or solicitor might offer) to the company. This draft enables directors / trustees to be paid for professional services offered to the company, but you may want to remove this clause. Please note that currently trustees can never be paid for their work as trustees, nor can the company employ them.

*Articles Clause 3.2: Number of Directors / Trustees.* You may want to have more or less trustees than is stated in this document. You need at least two directors and a company secretary.

*Articles Clause 3.5: b.* If you change the number of trustees, then you need to change this clause. You can also choose trustees in different ways. Please consult your professional advisor as to suitable selection methods.

Once you have the draft of the memorandum and articles agreed, then the people who are to become the first Trustees / Directors sign both the Memorandum and the Articles. They are the 'first subscribers'.

### **Filling in the forms**

You will need three more forms. Please call Companies House (0870 3333636) to get copies.

## AHEAD'S INFORMATION SHEETS FOR ORGANISATIONAL DEVELOPMENT

- Form 10 The Directors and company secretary fill in their names and addresses and sign, and you give the registered office of the company (i.e. its address)
- Form 12 Fill in the company name and address, and get the form witnessed by a commissioner of oaths or solicitor
- Form 30 5 (a) exempts you from having the word "Ltd." in your companies name, (even though you will be a limited company.) This is also to be witnessed by a commissioner of oaths or solicitor.

You then send off your forms and memorandum and articles to Companies House, with a £20 cheque, and they send you back a certificate of incorporation. This takes a couple of weeks.

You now have a new company. Well done. You have 18 months to hold its first AGM.

### Transferring to the new company

The next job is to transfer everything from your current organisation to the new company, on the same day. This day is called the 'Date of Transfer'.

Given that you must produce accounts both for your current organisation and for the new company, most organisations choose the end of the financial year as the date of transfer so no extra sets of accounts need be produced. Alternatively, some choose half way through the financial year, and produce an 18 month set of accounts for the first 'year' of the new company. Check with your accountant before deciding on the date of transfer.

### Before the date of transfer,

- The 'first subscribers' who signed the memorandum and articles need to meet to **elect officers**: treasurer, chair and secretary
- The first subscribers need to get **members** to join the new company
- Open **bank accounts** in the name of the new company.
- If you are a registered charity contact the **charity commission** to apply for a new charity number for the new company. Do this quickly, because you want the new number before the date of transfer because...
- You will need to use a **new letterhead** with the company registration number on it after the date of transfer. This will also need the new charity registration number on it if you are a registered charity.
- Discuss with the landlord **transfer of leases**, or if you own the building, discuss transferring the mortgage with the mortgages company. Get legal advice if they refuse to transfer.
- Check guarantees on **equipment**, to see if they will be invalidated by transfer of ownership. If so, consider keeping them in the name of the trustee.
- Contact your **funders** about transferring funding agreements to the new company
- Contact your **insurance** broker about getting new insurance for the company

### On the date of transfer:

- Send letter to all **employees** stating employment contracts have been transferred, to the new company, that they have continuity of service, and give the name and address of the new employer.

## AHEAD'S INFORMATION SHEETS FOR ORGANISATIONAL DEVELOPMENT

- Transfer **money** into the new bank or building society accounts
- An officer from the old organisation and one from the new company sign a letter agreeing to the transfer of all **equipment** (unless guarantees prevent this) to the new company.
- The **lease** will transfer on this date (This will have been agreed in advance)
- Responsibilities for outstanding cheques and liabilities will transfer

### Winding down the old organisation

You now have the company up and running. Well done. All you need to do now is wind down the remnants of the old organisation.

You need to

- Prepare the final set of accounts for the old organisation in the normal way
- Hold an AGM for the old organisation

At the AGM you need to

- Approve the final accounts
- Approve a resolution to wind up the old organisation. This resolution needs to follow the dissolution clause in the constitution of the organisation.

Next year your AGM will be the first AGM of the new company.

### So, in brief:

- 1) Read the memorandum and articles
- 2) Make draft amendments
- 3) Call Companies House for the 3 forms and also ask for leaflets for new companies
- 4) Fill in the forms and return them with the Memo. & Arts. and £20 to Companies House
- 5) Transfer assets to the new company
- 6) Wind up the old organisation

### A couple of Useful contacts

#### Companies House

21 Bloomsbury Street,  
London WC1B 3XD

#### Advice Line 0870 3333636

<http://www.companieshouse.gov.uk/>

The advice line is very helpful, and they have lots of good publications to help you register as a company.

#### Charity Commission

Hamsworth House  
13-15 Bouverie Street  
London EC4Y 8DP

#### 0870 333 0123 (General Advice)

<http://www.charity-commission.gov.uk/>

The charity commission also has example Memorandum and Articles of Association for a charitable company.

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**The information in this leaflet should not be taken as a statement of the law and is no substitute for legal advice**

This information has been taken from IVAC web site:

<http://www.ivac.org.uk/resources.asp?cat=48&par=0>