

## Procedure for incorporation

This is a summary of the main steps which need to be taken to incorporate an existing registered charity - a different procedure applies to new charities. It is intended as a general introduction only - additional steps may be required depending on the particular circumstances of your charity. We can, if required, assist with all of these steps and prepare all of the necessary documentation.

The list may look daunting, but incorporation is a well-trodden path which delivers a number of benefits.

- (i) The existing charity's existing contracts and arrangements need to be reviewed to determine the need for third party involvement in the incorporation process. For example, the existing constitution to determine whether there is any need for Charity Commission assistance, the terms of any existing leases to determine whether landlord's consent is required and any ongoing equipment hiring agreements and other contracts which may not be freely assignable. It may also be appropriate to consult with substantial supporters and/or grant providers.
- (ii) The proposals should be reviewed with the existing charity's auditors at an early stage to identify any tax and accounting implications. Incorporation does not normally have any adverse UK tax implications.
- (iii) A new charitable company needs to be incorporated. Once the memorandum and articles have been agreed, they will need to be signed by the first members (usually some or all of the existing trustees). The first directors and secretary of the charitable company will need to sign consents to act as officers of the company.
- (iv) The new charitable company is registered as a charity. This involves completion of two Charity Commission forms and typically takes about 2 months. Recently introduced Charity Commission requirements on CRB checks are currently delaying applications.
- (v) The necessary administrative arrangements need to be made to accommodate the transfer. These include:-
  - (a) Consultation with (and/or approval from) members.
  - (b) Consultation with staff: The contracts of employment of existing employees are normally transferred to the new charitable company automatically by virtue of the Transfer of Undertakings (Protection of Employment) Regulations. Continuity of employment is preserved. TUPE requires employees to be consulted about the change of employer.

- (c) Pensions: The agreement of pension fund/scheme providers/managers may be required to vary the arrangements to include the new charitable company as employer.
  - (d) Insurance: Insurance policies will need to be amended to include the new charitable company as insured.
  - (e) PAYE/NI: The existing charity's local tax office will be able to advise on how to deal with the transfer of the existing charity's PAYE/NI records; practice varies from district to district.
  - (f) Banking: As the new charitable company is a different legal entity from the existing charity, new bank accounts will need to be opened. Anti-terrorism and money-laundering procedures can make this a lengthy process.
  - (g) Data Protection Act: The new charitable company will need to be registered in its own right as it is a different legal entity from the existing charity.
  - (h) Investments: Arrangements will need to be made for their transfer from the existing charity to the new charitable company.
  - (i) Leases: Landlord's consent may need to be obtained for the assignment of any leases, unless they can be left in the name of the existing charity until expiry.
  - (j) Contracts: third party consents to transfers may be required, as appropriate.
  - (k) Schemes/restricted funds: Charity Commission involvement may be required if assets are held under Charity Commission schemes or as restricted funds.
  - (l) Reprinting letterhead and other documentation.
- (vi) The existing charity either passes a resolution to transfer substantially all of its assets to the new charitable company or enters into a short transfer agreement with the new charity. NB there are technical reasons why some assets should/must be excluded from the transfer.
  - (vii) The assets are formally transferred across where necessary (eg funds are paid from the existing charity's bank account to the new charitable company's bank account and leases are assigned, if appropriate).
  - (viii) If appropriate, the incorporation is publicly announced eg by means of a press release and/or newsletter to supporters/beneficiaries.
  - (ix) It may be appropriate to amend the constitution of the existing charity so as to simplify the arrangements for its future administration eg by replacing the existing trustee structure with the new charitable company as a sole corporate trustee. NB dissolving the existing charity normally causes any

unvested legacies to fail.

## **Documentation**

We can provide all of the necessary legal documentation, including incorporation papers for the new charitable company, model TUPE notices to staff, lease assignments (if required), transfer agreement/resolutions, pro forma minutes of first CLG board meeting and variation to the existing constitution.