East Riding Voluntary Action Services (ERVAS) Limited

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Good Practice Guide:

19 – Becoming a Company:
The Accounting Requirements for small Charitable Companies

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Introduction

Usually organisations in the voluntary sector, when incorporating (ie becoming a company/separate legal entity from the Trustees) choose to become a company limited by guarantee; however there are other types of company (eg Industrial and Provident society), and legal advice should be taken in order that you make the right choice for your organisation. From January 2013, a new option of incorporation the Charitable Incorporated Organisation (CIO) was made available which is likely to become the preferred option for many voluntary sector organisations (see GPG18 – Charitable Incorporated Organisation).

This good practice guide is about the accounting implications of becoming a small charitable company limited by guarantee.

Changing from an unincorporated association or charity to being incorporated is not as straightforward a process as may initially be supposed. This is because in law, when a company is set up, it has a new legal identity (as distinct from the original organisation) and so becomes a separate organisation; so for example it has to re-register as a charity; it cannot just carry over the charity number that it held as an unincorporated association, it has to apply for a new one.

It follows that, legally, when the new company has been set up and registered with Companies House (ie when the new company legally exists), the assets and legal obligations of the original organisation have to be transferred to it, and usually the original organisation is dissolved; so there will be a period when the original organisation and the new company are running in parallel. The new company will have its own company number, and if it is a charitable company it will have to obtain a new charity number because legally it is a new charity, even if it has the same name as the unincorporated charity.

The original organisation will need to formally transfer all that it owns and owes (ie its assets and liabilities) to the new company. In order to transfer the assets and liabilities to the new company the original organisation needs powers to do so in its constitution. Most recent constitutions for unincorporated charities include a power to make payments and transfer assets to another organisation with the same or similar objects, and for dissolving the charity. If a charity does not have such a clause it should seek advice from the Charity Commission.

Ten Steps to Becoming Incorporated

Once you have taken legal advice and decided to become a company, there are a number of tasks regarding the finances and accounts to undertake before registering as a company

- Check the constitution to clarify the procedures for transferring assets/liabilities and dissolving the original organisation. If there are no procedures, discuss the way forward with the Charity Commission.

- Work through and discuss with relevant parties all the points in part 3 below to ensure there will be no hiccups. Complete any paperwork required.

- Register the new company with Companies House (the regulatory body for all registered companies) and agree the new company's financial year-end known as the Accounting Reference Date or ARD. (Companies House automatically sets the month end of the anniversary of incorporation as the ARD unless you send in a Form 225 to change it). At this point the new company and the original organisation will be running in parallel.

- Apply for charity registration for the new company. If you do not do this there will be tax implications for the new company.

- The new company passes a resolution that it will accept the assets and liabilities from the original organisation.

- The original organisation passes a resolution (according to the procedure in its constitution) to transfer its assets and liabilities at a particular date (this is ideally at the end of its financial year).

- The original organisation passes a resolution to dissolve itself at that date (according to the procedure in its constitution).

- Once the assets and liabilities have been transferred, all parties (see section 'Transfer of Assets, Liabilities and Responsibilities' below) are notified of the transfer of assets and liabilities and the date of transfer; any paperwork required is completed.

- The accounts of the original organisation are prepared and if necessary audited/independently examined, to the date of winding up.

- The original organisation notifies the Charity Commission (if relevant) of its dissolution, and files final accounts so that it can be de-registered.

Transfer of Assets, Liabilities and Responsibilities.

Before winding up, the original organisation must ensure that all assets, liabilities and responsibilities will be transferred to the new company or discharged. This may require a formal deed setting out the relationship of the two organisations and legal advice should be sought. Since the company is a new organisation this also has implications for its relationships with other parties and the following points need to be considered:

- Property and investments need to be transferred by legal agreement from the original organisation to the new company. Moveable equipment can be transferred by delivery, but guarantees should be checked to ensure that they are not invalidated by this process.

- Any staff of the original organisation should be consulted before any transfer to the new company. Their contracts of employment and rights will be transferred automatically under TUPE (Transfer of Undertakings Protection of Employment). They should be informed in writing of their new employer. There is no break in employment with regard to their rights.

- Other contracts, for example a maintenance contract for a photo-copier, should have the consent of all parties before transfer to the new company.

- Funding Arrangements should be discussed and agreed with the funders. Some grants may need to be formally transferred; for example the Community Fund requires grant-aided organisations to reapply for ongoing grants when changing over to being a company.

- Gift Aid and Covenants can be transferred if the donors are notified, provided the new company is essentially the same as the old.

- Ensure you speak to your bank before incorporating to find out their requirements which will typically be that the bank accounts of the original organisation will be closed and new accounts will be opened in the full name of the new company, exactly as it is on the certificate of incorporation. (If a charitable company, with annual income over £10,000, does not have 'charity' or 'charitable' within its name, cheques must say 'registered charity')

- Insurance companies should be contacted and insurance policies should be formally transferred to the new company; there may be a need for two policies in effect until the original organisation is dissolved.

- The liabilities or debts of the original organisation should be indemnified (ie agreed to be taken on) by the new company. This is in order to avoid the members of the governing body of the original organisation being personally liable, as the original organisation will have no funds of its own once it has transferred all its assets to the new company.

- Membership cannot be automatically transferred, so members of the original organisation must apply for membership of the new company.

- Notification of incorporation should be made to suppliers providing utilities, telephone, rates etc, as these suppliers need to know that they are now dealing with an incorporated organisation.

- Policies and procedures of the original organisation should be formally adopted (or changed) by the new company; this decision should be minuted at the first meeting of the directors of the new company.

Accounting requirements for Charitable Companies

Once the new company is set up it must keep accounting records and prepare its accounts under Companies Act requirements which includes accruals accounts; you should take advice on this from an accountant. The requirements for external scrutiny for company charities are the same as for non-company charities, GPG13 - Getting ready to have your accounts checked for external scrutiny covers these requirements.

The accounts and director's report must be approved by the board and signed on their behalf by a company director. They must be presented to a general meeting within 9 months from the end of the financial year to which they apply, unless the company has passed a resolution to dispense with the requirement for an AGM. They must also be submitted to Companies House within 9 months of the company's financial year end, known as the Accounting Reference Date or ARD. (NB if the FIRST set of accounts covers a period greater than 12 months - see earlier re submission of Form 225 to amend ARD - they must be delivered within 22 months of the date of incorporation). There are automatic fines for the company if the accounts are filed late; these range from £150, if the accounts are between one day and one month late, to £1,500 if they are more than 6 months late.

In addition to the Annual Accounts an Annual Return will need to be filed with Companies House within 28 days of its made-up date. The made-up date is usually the anniversary of the incorporation of the company; or the made-up date of the previous annual return registered at Companies House. The annual return is a snapshot of specific company information, for example the names and addresses of the company's directors at the made-up date. It is a criminal offence not to deliver the Company's annual return within 28 days of the made-up date, for which company secretaries and directors may be prosecuted.

There are a number of other non-financial records that have to be maintained by a registered company. You should consult the resources stated below on these or seek legal advice.

Further Information

This guide does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. Further information can be obtained by referring to the sources below.

Companies House	Tel 029 2038 8588 Website: www.companieshouse.gov.uk
Companies House Booklets	Accounts and Accounting Reference Dates Annual Return Auditors

There are other Companies House booklets; ring Companies House for further information.

For further information please contact:

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