

Club Together?

Even before the promotion of a Big Society, business professionals were asked to “volunteer” in the running of clubs and societies. The form of legal entity chosen for such an organisation affects who is liable in the event of insolvency. In this briefing we help you consider the risks when asked to give your time in this way.

Unincorporated Association

This is the most common structure for clubs and societies. Members combine for a common goal, devise the rules for their club and elect Officers to manage it. Compliance costs are low and most clubs can insure against the risks that arise from its operations.

However, such an Association does not have a legal identity. Officers are liable for contracts they sign on the club’s behalf. This should be catered for in the club rules and an indemnity, out of the club’s assets or insurance, provided to Officers. Furthermore, in 2008, in a case where heating oil leaked from a pipe owned by a golf club, the Court of Appeal stated that members could be jointly and severally liable for a club’s actions.

This was an extreme example and, in our experience, parties contracting with clubs recognise the commercial risk involved. The lack of identity means that the Insolvency Act 1986 (“IA86”) does not apply to a club in the event of difficulty or closure. We can assist in such situations but require agreement from the club’s members regarding our role. This applies equally when a club closes and surplus assets need to be realised and distributed in accordance with its rules.

Community and Amateur Sports Clubs (“CASC”)

CASC were introduced in 2002. Unincorporated Associations that promote amateur sport for the public can register as a CASC with HM Revenue & Customs, subject to qualifying rules. CASC enjoy a variety of tax reliefs relating to their income and expenditure.

There are restrictions on the distribution of surplus assets when a CASC closes. Assets must be transferred to another CASC, a charity or governing body of the sport concerned rather than to members of the CASC.

Limited Company

If a club incorporates, being a company limited by guarantee is more common than by shares. The club can retain profits, own assets and contract in its own right. However, compliance costs are greater than for an Unincorporated Association. Also, the club must appoint responsible and competent Directors.

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IA86 applies to an incorporated club in the event of closure, whether solvent or otherwise. If liabilities exceed assets then members only contribute the sum that they agree to guarantee (generally a nominal amount). Also, action can be taken against the club's Directors under the Company Directors Disqualification Act 1986 ("CDDA").

Mutual Society

A club can register as a Mutual Society if it is in business as a co-operative or for the benefit of the community. Such Societies are registered under the Industrial and Provident Societies Act 1965 ("IPSA") and are administered by the Financial Services Authority ("FSA"). This covers Credit Unions and Cooperative Societies but it also includes Royal British Legion Clubs and Working Men's or Social Clubs that fall under the Clubs and Institute Union ("CIU"). The club's business is carried on in accordance with its rules, which have to be approved by the FSA. Day to day affairs are managed by a Committee.

A club must submit an Annual Return and accounts to the FSA but the cost of compliance is typically less than for a limited company. A Mutual Society can contract in its own right. Certain tax reliefs are available to it as a non profit making organisation.

Under IPSA a Mutual Society can be wound up in accordance with IA86. The liability of the club's members for its debts is as set out in the club rules. Usually this is limited to the amount due for a share on joining the club. CDDA does not apply to Mutual Societies.

We have advised a number of Mutual Society clubs. Many have been, "asset rich, cash poor" where the purpose of the club has ended and members have decided to close. We have helped the club secure protection from creditors while assets (for example the freehold buildings) are sold, creditors paid and surplus funds paid to members. Committee members have welcomed our involvement and it is refreshing to be involved in cases where the members are so engaged in the process and interested in the outcome.

As in many areas of life: - avoid danger when helping others. If you are volunteered to assist an organisation, however worthy, consider what the effects may be on your professional status and personal finances. Don't leap forward with your eyes wide shut.

If you have any queries on any issues arising from this briefing or on any insolvency related matters, please contact a member of the BRI Management Team.

Important Note: This Briefing is intended as information for the general professional adviser and is not a comprehensive statement of the law - we recommend that expert advice be taken on specific issues arising in practice.

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