

Company Status: Advantages & Disadvantages

Advantages of a Company Limited by Guarantee

Separate legal identity

A company limited by guarantee is what is known as an 'incorporated organisation'. This means that it has a separate legal identity as distinct from that of its individual committee members. Therefore an organisation with this status can:

- buy and sell property in its own name
- take or defend legal proceedings in its own name

offer a degree of protection from personal liability for individual members and members of the managing body.

Liability

There is a difference between the liability of individual members (people with a right to vote at an AGM) and the liability of the Directors (also known as the Board, the management committee or the committee)

The extent of members' personal liability is limited to the amount they agree to guarantee. Therefore individual members are almost totally protected against personal liability in an incorporated organisation

The Board of directors (also known as committee members) is responsible for running the company. The directors / committee members generally have no personal liability unless they:

- Act fraudulently
- Act in breach of trust
- Continue to run the company when they know or ought to know it has no reasonable chance of avoiding insolvent liquidation.

Democracy

Companies are generally democratic organisations. Required to have a membership with the power to elect and the power to remove officers and / or committee members. The structure works well for any size of group

Ownership of property

Because a company has a separate legal identity, owning and transferring property is relatively simple. Even when the committee or membership changes, ownership of the property remains in the name of the company, so there is no need for any documents transferring ownership.

Borrowing money

It is relatively easy for a company to borrow money because the lender knows that the organisation, rather than a changing group of individuals, is responsible for the repayment.

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Registration process

Once the organisation's constitution is agreed, company registration (with the registrar of companies) takes two to three weeks provided there are no complications. The registration fee is low (£20 March 2002)

Disadvantages of a Company Limited by Guarantee

Accountability

Companies are subject to more controls and bureaucracy than other legal structures. The Companies Acts regulates their activities.

Annual returns and accounts must be submitted to the registrar of companies (the charge for this was £15 in Dec 1997). These are open to the public. Registers of members and directors / committee members must be kept for public inspection.

Changes of committee members

Companies Limited by guarantee have to notify the registrar of companies whenever a Director leaves or another one is appointed. Companies must also notify the registrar of companies if they enter into any legal charge (e.g. if they borrow money from a bank and the bank has a mortgage over the company's property).

Constitution

For an organisation thinking of changing from unincorporated to incorporated, it will have to change its constitution to a memorandum and articles of association. This will consist of two parts:

- The memorandum of association which describes the company's aims, powers and the extent of members' liability
- The articles of association, which describes the company's rules, including procedures for electing the management committee and keeping accounts.

Further reading:

G4 - Charitable status
G5—Constitutions

