Club Structures

Rowing Clubs can take one of several different legal forms, which are discussed below.
Clubs can also seek tax advantages by becoming a charity or a Community Amateur Sports Club ("CASC") details of which are also included below.

1. Unincorporated Associations

1.1 Introduction

Some rowing clubs are unincorporated associations, sometimes called private members' clubs. Unincorporated associations are a group of individuals who are bound together by the constitution or rules of the club. This means that the club is not a legal person in its own right, and so any contract of the club must be entered into by someone on behalf of the club. Normally a club has a committee to run the club and it will be a member or members of the committee who will enter into contracts and hold land on behalf of the club.

1.2 Advantages

Unincorporated associations are private members' clubs and do not have many of the legal requirements that apply to limited companies (such as the filing of accounts) and are not subject to outside scrutiny (unless they are charities) other than required by law. Within the constraints of the law, the rules or constitution of an unincorporated association can be whatever the members choose, and can usually be easily changed by the members.

1.3 Disadvantages

Because an unincorporated organisation is not legally a separate entity to the members, the members of the governing committee have to enter into contracts in their own names. This means that the members of the committee could be personally liable if the club breaches a contract or if a claim is made against the club and the club has insufficient assets to meet the claim. Also, if there is an uninsured accident or an employee, officer or member of the club performs an act for which the club is held liable then possibly all of the committee or even all of the members could have to pay. Members are jointly and severally liable for any liabilities meaning one member could be liable for all of the club's debts if other members cannot pay. It is essential that where possible insurance is purchased to cover all of the club's activities.
An unincorporated association does not have a separate legal identity from its members and so the members of the governing committee have to hold any land or investments of the club in their own name. This means that if the named individual leaves the club, all of the land or investments in their name needs to be transferred to someone else.

1.4 Updating your club constitution

If a club wishes to remain as an unincorporated association, it may want to update its constitution. As a minimum, its constitution should cover the following areas:

- name of the club;
- Its objects;
- The identity of the members and detail on the process of becoming a member, how membership comes to an end including disciplinary procedures for suspension or expulsion, payment of subscriptions and consequences of non-payment;
- Election of the management committee, any special roles e.g. president, chair, treasurer etc., the role of the management committee and regulations around how and when it meets, the power

of members of the management committee to bind all of the members of the association, how members of the management committee can be removed;

- Any other committees that the club has;
- Rules about management of the club's bank account and other finances and rules about payment of expenses (if relevant);
- Rules about the procedure for the club when buying goods or services from members;
- how the rules can be amended;
- What happens to the property of the club if it is dissolved.

British Rowing has a model constitution which covers all these

2. Companies Limited by Guarantee

2.1 Introduction

A company limited by guarantee is a company owned by its members but, unlike an unincorporated association, has a separate legal identity. Each member guarantees to pay a small amount if the club becomes insolvent, e.g. £1. The structure is very flexible and common among not-for-profit organisations such as clubs or charities where membership is frequently changing. The club's constitution will be set out in the articles of association of the new company. Often the members elect the directors, who will be re-elected in accordance with the company's articles. The directors are responsible for running the club. A company limited by guarantee has no shares and will not pay any dividends to its members. As such it is not suitable for clubs seeking to turn over a profit for its members (as opposed to making a profit for the club itself). As the company has a separate legal identity, it can enter into contracts and hold land in its own name.
Further information can be found at www.companieshouse.gov.uk.

2.2 Advantages

As a company has a separate legal identity, if it becomes insolvent then the members will not be liable for the company's debts other than the amount which each member has guaranteed to pay, typically £1. This means that, for example, if there is an uninsured accident and the club is liable in such circumstances, but unable to pay, the members and the directors will not normally have to pay unless they have broken company law (including, for example, not acted in the best interests of the company). Any land and investments can also be held in the name of the club rather than the members of the committee as is the case for an unincorporated association. As a limited company it will be required to file accounts and details of the directors at Companies house giving the club transparency to outsiders. no individual should have control of the club unless the articles allow.

2.3 Disadvantages

A company has to file annual accounts, an annual return and directors' details at Companies house, and has to file a form there every time a director is appointed or removed. There are fines for late filing. The directors of a company have duties and responsibilities in company law such as the duty to promote the success of the company, to act in the best interests of the company and to comply with its Articles of Association (ie the company's constitution). This may deter investment into the club by investors that may require control.

3. Other Incorporated Club Structures

3.1 Companies Limited by Shares

A company limited by shares is the same as a company limited by guarantee except that it is owned by the shareholders who elect the directors. Companies limited by shares are not normally used for

clubs that operate membership schemes because each time a member joins a share has to be issued to them and each time a member leaves their share has to be transferred to somebody else or redeemed.
A company limited by shares may be suitable for clubs which owners or investors who wish to invest in the club and want to operate as a profit making operation as they can benefit from payment of dividends and an increase in the value of their shares (which can be sold).

3.1.1 Advantages
As a company it has a separate legal identity, if it becomes insolvent then the members will not be liable for the company's debts other than to the extent that they have not fully paid the company for the shares that they hold. Shares in the company can be bought and sold, subject to any restrictions in the articles of association.

3.1.2 Disadvantages
In addition to the disadvantages shown in 2.3 shares cannot be advertised and sold publicly and shares have to be issued each time a new member joins and transferred or redeemed each time a member leaves or dies. If anyone holds over 50% of the shares then they can control the board of directors, and if they hold 75% of the shares then they are able to change its constitution and are therefore in complete control of the company.

3.2 Community Interest Company
A Community Interest Company is a special type of company. It has a separate legal identity and so, as with a company limited by guarantee, the members are protected from liabilities. Only companies can apply for Community Interest status, i.e. this is not available to unincorporated associations. Community Interest Companies are incorporated in the same way as normal companies but must demonstrate that they are acting for the benefit of the community. Many rowing clubs would be able to meet this test. The constitutions of Community Interest Companies must comply with certain rules which restrict the way in which the assets can be used (i.e. an "asset lock"). They have no special tax advantages.
Further information can be found at www.cicregulator.gov.uk.

3.2.1 Advantages
It provides a limited company structure for a social enterprise with a secure asset lock and focus on community benefit. The assets, in particular a ground or training ground, are protected and if it is wound up, any residual assets, after satisfying its creditors, will be transferred to another asset-locked body, such as a charity or another Community Interest Company.

3.2.2 Disadvantages
There are no tax reliefs, but there is additional regulation from the Regulator of Community Interest Companies including a requirement to produce an annual community benefit report which is publicly available. Community Interest Companies have only recently been available and are still relatively rare. A company limited by guarantee may be more straightforward and cheaper to administer and more familiar to banks, local authorities, accountants etc.

3.3 Charitable Incorporated Organisations
A Charitable Incorporated Organisation, or CIO, is a new legal form for a charity. A CIO:
- is an incorporated form of charity which is not a company
- only has to register with the Charity Commission and not Companies House
- is only created once it is registered by the Commission

- can enter into contracts in its own right and its trustees will normally have limited or no liability for the debts of the CIO

The CIO was created in response to requests from charities for a new structure which could provide some of the benefits of being a company, but without some of the burdens.
Further information can be found at www.charity-commission.gov.uk.

3.3.1 Advantages
Charitable Incorporated Organisations can adopt a very flexible corporate structure but just report to the one regulatory body, the Charity Commission. The charity will have the advantages of incorporation, as well as all the tax benefits of being a charity. The CIO structure has several benefits over unincorporated structures, such as:

- the members and trustees are usually personally safeguarded from the financial liabilities the charity incurs, which is not normally the case for unincorporated charities
- the charity has a legal personality of its own, enabling it to conduct business in its own name, rather than the name of the trustees

3.3.2 Disadvantages
They are new and unfamiliar to banks, local authorities, accountants etc, and untested in practice. This may mean increased time and costs for a club, and some risk, at least in the early stages. In addition, charitable status means of course a significant restriction in permitted activities as well as an asset lock (see section 5). The two sets of regulations, which set out much of the legal framework for CIOs, have not yet been agreed by Parliament, so there may be changes to the regulations and to this guidance.

3.4 Industrial & Provident Society
An IPS is an organisation registered with the Financial Services Authority which conducts an industry business or trade. An IPS can either be a cooperative, run for the benefit of its members, or a community benefit society, which is run for the benefit of the wider community. A company can convert into an IPS or a new IPS can be set up.
Further information can be found at www.fsa.gov.uk.

3.4.1 Advantages of an IPS which is a Cooperative
A cooperative is a flexible legal structure which can run a rowing club and has a separate legal identity, so that if it becomes insolvent then the members will not be liable for the co-operative's debts.

3.4.2 Advantages of an IPS which is a Community Benefit Society
A Community Benefit Society is a flexible legal structure which can run a club and has a separate legal identity, so that if it becomes insolvent then the members will not be liable for the cooperative's debts. It has a social objective of benefitting the community, and its assets are protected so that if the Society is wound up, the assets will be applied for the benefit of the community.

3.4.3 Disadvantages of an IPS which is a Cooperative or a Community Benefit Society
A fee from £40 - £950 is payable on establishment, with the fee level dependant on the drafting of the constitution, and annual fees are also payable.
Only those clubs which can demonstrate that there is a reason why they should be an IPS instead of a company will be permitted to register by the FSA.

There is uncertainty as to who is going to regulate IPSs in the future, and what impact this may have on annual fees and reporting requirements.
For most clubs, a company limited by guarantee may be more straightforward, cheaper to administer and more familiar to banks, local authorities, accountants etc.

4. Community Amateur Sports Club Status (CASC)

Following Government and Charity Commission consultation in 2001 new legislation was introduced providing community based amateur sports clubs with an opportunity to take advantage of valuable tax reliefs by registering as a Community Amateur Sports Club (CASC) with the Inland Revenue (now HM Revenue & Customs).
Further information can be found at www.cascinfo.gov.uk including how to register as a CASC.

4.1 Can my club become a Community Amateur Sports Club?

Unincorporated associations, companies limited by guarantee and community benefit societies can become a CASC. To qualify as a CASC, a club must, as its main purpose, provide facilities for and promote participation in one or more eligible sports. A club is eligible if it meets the following criteria, or is willing to change its constitution so that it will meet the criteria:

- Open to all of the community;
- main purpose of the club is to promote sport;
- The club is amateur and non-profit making. This means that it cannot pay its members; and
- If the club is wound up, its property will be distributed to a sports governing body, another CASC or a charity.

4.2 Advantages

Local Authority business rate relief of at least 80% is available to a CASC, with some Local Authorities giving 100% relief.
Gift Aid can be claimed on donations from individuals to the club (but not on membership fees). Even if your club doesn't own its own facility, it can still benefit from Gift Aid. Gift Aid means the Government adds 28.5p to every £1 received as a donation to a charity or CASC.
CASCs are exempt from various taxes including taxes on the club's fundraising or trading turnover (such as receipts from a bar or sales of branded clothing) if they are under £30,000. They do not pay tax on interest earned in bank accounts and no inheritance tax is payable on legacies left to a CASC.

4.3 Disadvantages

A club must register with HMRC. Normally this involves changing the club's constitution. Once it has become a CASC, a club cannot undo the process.
The club must continue to comply with CASC rules as to, amongst other things, the criteria set out in paragraph 4.1. This compliance will need to be under continuous review, particularly as the club progresses or grows, and a serious transgression of CASC status could lead to an investigation by HMRC into claimed tax relief.
The club must allow anybody to become a member, unless they would be a disruptive influence or the level of facilities means that the club cannot physically accept any more members. If the club has two or more classes of member then the club must allow anybody to become the class of member which enjoys the main voting rights.

5. Charitable Status

5.1 Can my club become a charity?

Unincorporated associations, companies limited by guarantee and community benefit societies can be charities. A Charitable Incorporated Organisation must be a charity.
A club will normally have to amend its constitution before it becomes a charity, as it must have objects which are exclusively charitable in law. It will only be charitable if it promotes amateur sport (and/or other healthy amateur recreations) e.g. by providing facilities, or promotes education or community participation by reference to sport. In all cases the club must exist for the public benefit.

5.2 Advantages
Charities have more tax advantages than CASCs.
They have full exemption from tax on profits that they may make from their membership fees, bank interest or investment income. Gift aid can be claimed on donations from companies as well as donations from individuals. Local authority business rate relief is the same as for CASCs, and there is similarly no inheritance tax payable on legacies left to charities.
People are more willing to fundraise for a charity, and charities are allowed to run certain types of lottery and other fundraising activities that are banned or licensed for non-charities.

5.3 Disadvantages
Once a club has become a charity, it cannot stop being a charity.
All members of the club must be active members and it cannot have "social members". Members must be amateur and may not be paid.
The club must have membership open to all. Although there can be competition to get into, for example, the first team, everybody must have an equal opportunity to use the club's facilities. The level of fees must be low enough so that everyone has the opportunity to join the club.
A subsidiary company should be set up to run any bar that the club has, but this is not difficult to do. Any profits from the bar can be paid under gift aid to the charity to avoid payment of corporation tax by the subsidiary.
A charity must register with the Charity Commission if its annual income is over £5,000. This means that it must submit annual accounts and an annual return to the Commission. It must also comply with charity law, although there is a lot of guidance on the Commission's website www.charitycommission.gov.uk to help clubs to comply with these requirements.
So what is the best structure for my Club?
It is a matter for each club to determine the most suitable legal form based on its circumstances. Clubs should consult with their professional advisors in this respect and seek independent legal advice.
Clubs (even relatively small ones) may wish to pay the small one-off cost of changing from an unincorporated association to a company limited by guarantee because of the advantages listed, especially acquiring legal identity and protecting members from possible liabilities. They should also consider registering the company as a CASC if they own land or may receive donations from members, so as to benefit from the tax reliefs available to a CASC (See 4.2 for details).
Any club which receives substantial donations from companies (donations do not include sponsorship payments) should consider the benefits of becoming a charity, for example, taking advantage of the Gift Aid scheme.