



An Rialálaí  
Carthanas

Charities  
Regulator

# Changing a charity's legal form

Information note

# Introduction

There are many reasons why a charity that is an association may wish to change its legal form to become a company. In most cases, the association has grown over time, and the charity trustees wish to avail of some of the benefits that come with being a company such as limited liability.

A charity that is an association has no legal personality. This means it cannot undertake transactions in its own right or enter into contracts in its own name. Instead, some or all of the charity trustees, also known as committee members, board members or directors, must undertake transactions on behalf of the charity. For example, if a charity, ABC association, wants to contract an IT supplier to provide IT services, the contract must be in the name of the charity trustees. It cannot be in the name ABC association. As the contract is between the charity trustees and the IT supplier, the charity trustees are personally liable for any financial losses that might arise. However, a company can enter into contracts in its own right.

The more formal legal structure that comes with a charity being a company can also assist in making the ownership of assets and bank accounts more readily identifiable.

# Things to consider

If your charity is thinking of changing its legal form from being an association to a company, there are a number of important points to consider when making the decision.

## Apply to register the company as a charity

The new company will be a separate legal entity from the association. As a result, the new company will have to apply to be registered as a charity and obtain its own Registered Charity Number (RCN) from the Charities Regulator before any of the assets or activities of the charity can be transferred from the association to the company.

## Ensure compliance

Charity trustees are in breach of their duty to safeguard the assets of a charity if they transfer charity's assets to an entity that is not a registered charity, and they can be held personally liable for any resulting financial loss to the charity.

## Consider tax implications

There can also be tax consequences where assets are transferred to an entity that does not have charitable tax exemption (that is a CHY number which is issued by the Revenue Commissioners). In addition to getting its own RCN, the new company will also need to get its own CHY number from Revenue and set up a new bank account(s). None of these can be transferred from the association to the new company.

## Employee transfers

Care also needs to be taken where employees transfer from being employees of an association to a company. Appropriate professional advice should be obtained to ensure that the charity's obligations to its employees are fulfilled.

## Account for setup costs

Setting up a new company incurs costs.

## Understand filing requirement

Unlike an association, a charity that is a company has to make filings to the Companies Registration Office, separate, and in addition to, the filings that a charity has to submit to the Charities Regulator.

## Additional trustee duties

Where a charity is a company, the charity trustees, who are the directors of the company, have additional duties under company law and common law in their capacity as company directors. For further information on the responsibilities of a company director, please refer to the website of the Corporate Enforcement Authority.

## Company type

The most common company type for charities is a company limited by guarantee. This is a type of company which does not have a share capital. Instead of having shareholders who have invested money in the company by purchasing shares, a company limited by guarantee has members who have no economic interest in the company. The rights of members are stated in the Companies Acts and in the company's governing document. There must be clarity as to who the members of the new company are, as they normally have the power to appoint directors who will be the trustees of the charity. A company is required to maintain a register of members in which new members are recorded, and old members are removed.

## Register of Charities

There may be a short period of time when both the association and the company will be on the Register of Charities to facilitate the transfer of assets. Once the new company has been registered with the Charities Regulator, and all the assets and activities have been transferred, the association must then be dissolved and all bank accounts held by the association closed.

## Professional advice

Charity trustees contemplating changing from an association to a company should consider getting professional advice to inform their decision on incorporation, to avoid possible pitfalls, and to receive support during the process, especially where property or employees are involved.

Guidance on [registering a charity](#) and [winding up a charity](#) is available from the Charities Regulator website.

# Key steps to changing your legal form

The main steps when changing from an association to a company are:

- 1** A meeting of the members of the association should be held to discuss and approve any decision to wind up the association and establish a company.
- 2** Any such decision should be recorded in the minutes of the meeting, together with any decision regarding obtaining professional advice.
- 3** Setting up a new company with the [Companies Registration Office](#). The constitution of the new company will have to comply with charity law and the requirements of the Charities Regulator.
- 4** Submitting an [application for charitable status](#) for the new company to the Charities Regulator. A copy of the resolution winding up the association will be required as part of the application.
- 5** The completed application will be considered and a decision will be made by the Charities Regulator to grant or refuse registration, which may take a period of time. No assets or activities should be transferred to the new company until registration with the Charities Regulator is complete and the RCN for the new company has been issued.
- 6** When the new company has completed the registration process with the Charities Regulator it can then apply to the Revenue Commissioners for a CHY number, if required.
- 7** The association can then begin the transfer of the charity's assets, employees and activities to the company in line with any professional advice received.
- 8** Once the transfer is complete, the association must then be dissolved in line with the resolution that was passed for winding up and any rules set out in its governing document, and the bank accounts of the association must be closed. Our guidance on [winding up a charity](#) provides information on how a charity may be wound up.
- 9** The CHY number of the association should be cancelled with the Revenue Commissioners.
- 10** The Charities Regulator should be notified that the association is being wound up by the submission of a Voluntary Deregistration Form via the Charities Regulator's [MyAccount](#) customer portal.



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