

Imperial College Union
Finance, Audit & Risk / 27 March 2024

Corporate Structure Review – Discussion Paper

Author: Tom Newman (Managing Director)
Clem Jones (Governance & Executive Manager)

Purpose: To propose the key considerations for the Corporate Structure Review; to consult trustees on the proposed key considerations and next steps

Decision(s): To consider

1. Current Structure

ICU is currently an unincorporated charity, meaning we are governed by a constitution that acts as a contract between our members and ourselves. Our members can insist we comply with our constitution and decisions are made at formal meetings by majority vote – e.g., including referenda.

This structure leaves us open to potential risks for our trustees. We have no separate legal personality, meaning our trustees themselves take on legal relationships of the organisation.

A number of students' unions are also unincorporated, but some that were previously unincorporated have moved to incorporation of some form in the last decade or so – this doesn't necessarily mean that incorporation is what ICU should do, but it does suggest that the decision to undertake a corporate structure review at this time is apposite.

In February 2023, Board considered the requirement for a democracy and corporate structure review in support of the strategic enabler of "strong, accessible democracy and effective governance". A member of Board suggested that the Union may wish to engage a consultant earlier in the process of the corporate structure stream, suggesting that the Union may desire *recommendations* from a consultant, in addition to asking them to help with any supporting activity of putting into place whatever structure the Union chooses, should the Union wish to pursue change. It is therefore important that the Union outlines the criteria to be considered.

2. Considerations for Corporate Structure

In evaluating the best corporate structure for ICU, it is vital to ensure that each option is assessed objectively against defined criteria. The draft criteria are below. Trustees are asked to consider: do you agree these are the key and appropriate criteria to be considered as part of reviewing our corporate structure at this time? Are there any other considerations that you feel may be missing?

2.1 Trustee Risk

The risk to which trustees are exposed is affected by whether or not the organisation is a separate legal personality, as well as generally depending on financial and legal liability. The role of trustees can also change if they are required to become a company director in addition to their current role (for example under a CLG structure). It is worth noting that ICU holds a range of insurance policy (including indemnity insurance for Trustees) to help reduce these risks.

The evaluation to be undertaken should intend to understand which corporate structure reduces risk the most.

2.2 Legislative Requirements

Incorporation could potentially require us to comply with the Companies Act (2006) as well as the Charities Act. There is also variation in the degree to which membership rights are protected by the legislation being adhered to. These may depend entirely on the constitution or be partly/completely protected by company law or the Charities Act (2011).

Different forms of corporate structure also require different levels of regulation from various bodies. For example, a charitable company limited by guarantee has two regulatory bodies; Companies House and the Charity Commission. This can alter the number statutory requirements of the organisation, including how and to whom we report our financial performance.

2.3 Administrative Burden

The cost, set up and running of corporate structures varies enormously, it can take over twelve months to transition from one to another and administrative effort depends on the choice of legal form. Generally, running more than one legal entity will be most burdensome administratively, but this should not be a barrier to making the right choice.

2.4 Financial Implications

Not just the cost to transition versus remaining with the status quo, but also tax requirements dependent on structure.

2.5 Flexibility

The nature of Students' Unions means they require some level of flexibility and informality in their running. Examples of inflexibility in Corporate Structure can include stringent requirements under company law that must be complied with. These may restrict things like electronic communications or the right for members to appoint proxies.

3. Potential Structures

There are several options available, each briefly outlined below. In preparing to progress the review, FAR is asked: should all of these options be considered, or would FAR recommend any be discounted for ICU at this stage, when taking into account the advantages and disadvantages identified?

3.1 Unincorporated Charity (continue with our status quo)

An Unincorporated Charity (ICU currently) has a two-tier governance structure including a group of members who come together to entrust holding and asset management to a board of trustees. This was historically the most common format for Students' Unions, and it relies on a constitution.

Advantages:

- It is cheap(er) to set up (and run)
- Flexible and informal
- Small administrative burden
- Constitution can be changed easily
- Simplified disclosure agreements: disclosure on letterheads/other docs not needed.
- Tried and tested form
- Express consent of members for electronic communication not needed

Disadvantages:

- Unlimited liability for Trustees
- The organisation has no separate legal personality (as explained above) making Trustees personally liable
- If the Union was ever to have its own property, property would be held in a personal capacity e.g., a number of trustees would have to hold property as individuals and then transfer ownership of property/leases when they leave the board.

3.2 Incorporated Charity (CLG)

A company limited by guarantee (CLG) does not have share capital but members sign up to contribute a set amount to the assets, should the company be dissolved (usually £1). Its purposes must be solely charitable under charity law.

It has a two-tier governance structure of directors (trustees) and members (company law members). Trustees are responsible for day to day running. The governing document is a Memorandum of Association and Articles of Association, these set out day to day running and regulation as well as appointment and removal of trustees.

Advantages:

- Separate legal personality
- Limited liability for trustees
- Membership rights protected by legislation: the rights of company law members are protected under company law, for example the right to vote at a meeting or send a proxy
- Potential greater independence from parent organisation (i.e. Imperial College London) due to being a legal person in own right
- Tried and tested legal structure
- Recognition by external stakeholders, e.g. banks
- Potential greater transparency due to disclosure requirements relating to public accountability

Disadvantages:

- Two regulators: Companies House and Charity Commission
- Dual role of trustees: Trustees and Company Directors
- Two lots of key governing legislation: Charities Act and Companies Act (2006)
- Time and Cost of set up, around twelve months of work, transferal of assets and obtaining permission from ICL
- Lack of flexibility, express consent needed to electronically contact members
- Stringent requirements of company law
- Disclosures needed on letterhead and other documents

3.3 Charitable Incorporated Organisation (CIO)

This type of corporate structure has been available since January 2013, it is similar to a CLG but created on registration with the Charity Commission rather than Companies House. It has a structure of trustees and members, which can be the same people. It is governed by its constitution.

Advantages:

- Separate legal personality
- Limited liability of trustees
- Single regulator (Charity Commission)
- Permissive Constitution, e.g. giving the chair a vote at members' meetings
- Flexibility for holding meetings
- Express statutory duty for members, to act in good faith to the CIO
- Potential independence from parent institution
- Deemed consent of members can exist in constitution for electronic communications

Disadvantages:

- Untested legal structure due to relatively new existence
- Difficulties borrowing money due to absence of Register of Charges
- Longer process for obtaining legal status
- Fewer members' rights protected by legislation, no protected rights to call a meeting, vote by proxy, call for a poll or remove a trustee
- Changes made by members are not immediately effective upon passing of the members' resolution
- Lack of recognition from external bodies
- Time and cost of set up are large
- Need to disclose name and status as CIO (registered charity status)

3.4 Trading Subsidiary (limited company)

This would involve having two entities: a limited company that houses all of our trading operation, and the main charity. Trustees are protected from the risks associated with running the limited company (with the exception of the contribution it makes in terms of gift-aided profits). The charity could take the form of any of the above structures.

Advantages:

- Clearly separates the trading and charitable elements of the organisation
- Protects the charity and its Trustees from significant events affecting the trading operation
- May provide structural clarity in the way we view the organisation
- Allows the company to enter into contract

Disadvantages:

- Significant increase in administrative burden (financial and employment)
- Two regulators: Companies House and Charity Commission
- Dual role of trustees: Trustees and Company Directors
- Two lots of key governing legislation: Charities Act and Companies Act (2006)
- Time and Cost of set up, around twelve months of work, transferal of assets and obtaining permission from ICL
- Disclosures needed on letterhead and other documents
- Slower decisions if needed to be approved by two boards

4. For consideration

As a discussion / "to consider" paper, FAR is asked to discuss the questions in sec 2 and sec 3 of this paper at the meeting (or by email). Paper TB/23-24/36 is included as an appendix.