



NATURE & TYPES OF CLUBS

(reviewed June 2011)

NATURE OF CLUBS

A club is essentially an association of individuals who are drawn together by some common interest or purpose other than the acquisition of gain (or some mutual advantage directly associated with the acquisition of gain). Clubs usually display certain attributes such as free choice (and this involves the power of exclusion), corporate identity and permanence. It is the absence of the acquisition of gain which distinguishes clubs from business or professional partnerships.

CLASSIFICATION OF CLUBS

There are two main types of club: members' clubs and proprietary clubs. In a members' club the management of the affairs of the club is usually dealt with by the members themselves; in a proprietary club the control is exercised by the proprietor.

Members' Clubs

a) Introduction

In joining a club, the members create certain rights and liabilities between themselves based primarily on contract. The rights between members themselves appear inseparable from those relating to their joint rights to the property of the club and those rights arise as soon as a jointly owned fund is established by the payment of subscriptions or when a new member adds his contribution to the fund. The subscription of each member to this fund is the consideration in the contract made with all other members. In return for the consideration the member becomes entitled to whatever rights are agreed on at the time the contract is entered into. In practice, the rights and liabilities of the members are laid down in the club rules. Any liability of members is likely to arise between the club (or the members) and third parties rather than between members themselves.

b) Unincorporated Members' Clubs

Each member of the club contributes to the funds by way of entrance fees and subscriptions out of which the expenses of conducting the club are paid. The club is not recognised as having a legal existence apart from the members of which it is composed. It is like one large partnership with all members being jointly and severally liable for the debts incurred. Unless the rules provide to the contrary, the property and funds of the club belong to the members for the time being jointly in equal shares. The interest of a member in the property of the club is not transferable or transmissible and continues during membership only. The management of the club and its property is in the hands of the members and the business of the club is usually conducted by the various committees to which responsibilities are delegated in accordance with the rules.

c) Incorporated Members' Clubs

A members' club which is incorporated under the Companies Acts benefits from the advantages of being a legal entity quite separate from the members individually or as a whole. The company can be either limited by shares or by guarantee.

Companies limited by guarantee are those in which members undertake, on a winding up, to contribute (up to the limit of their guarantee) to the assets of the company for the payment of its liabilities. The limit of the guarantee is set out in the Memorandum of Association.

Companies limited by guarantee are chiefly trade associations, charitable bodies, professional and learned societies or social or sports clubs supported by the subscriptions of their members and not formed for the purpose of profit. While not requiring a trading capital, it is convenient for them to enjoy the advantage conferred by incorporation. Funds are usually obtained by annual subscriptions and the guarantee, which is frequently one pound a member, is available only in the event of winding up.

The rules governing the relationship of members themselves are usually contained in the Articles of Association and such rules therefore form the regulations of the company. The Articles of Association are difficult to alter requiring special resolutions and the filing of printed copies of such changes with the Companies Registry. A clause should be contained in the Articles of Association to the effect that the company shall make such rules or bye-laws as may be deemed necessary, expedient or convenient for the proper conduct and management of the Company (see draft Articles of Association). If the club is limited by shares, the Articles of Association largely take the place of the club rules and may be supplemented by bye-laws. Care should be taken to ensure that there is no conflict between the Articles and rules and bye-laws.

In both types of club the objects are recited in the Memorandum of Association.

Proprietary Clubs

The main difference between proprietary and members' clubs is that in proprietary clubs the question of membership is a contractual matter between the proprietor of the club and each member. The proprietor usually owns all of the club property and funds and usually conducts the club with a view to profit. The club may be unincorporated in which case the members, in consideration of the payment by them to the proprietor of entrance fees and subscriptions, are entitled to make use of the premises and property and to exercise such other rights as the contract between them and the proprietor allows. In a proprietary golf club there must be a clear agreement in writing between the proprietor and a group of members who for the purpose of golfing administration form themselves into a members' club in addition to and separate from the proprietor's club. The rights of play, organising competitions, house and course maintenance etc are of considerable importance in the initial negotiations if such members' clubs are to be affiliated to County Unions and the English Golf Union.

If the club is incorporated, the relationship between the members of the club and the company is the same as those outlined as between members and the proprietor.

CHOICE OF THE TYPE OF CLUB

a) **Purpose**

The purpose for which a club is being formed will dictate the particular type of club which is then constituted. There are points of general application which may be useful in deciding which type of club is likely to provide the best basis on which to achieve the particular objectives.

b) **Members' Club**

One of the most significant advantages of a members' club is that the members are responsible for the management and administration although in practice many of the administrative powers are delegated to committees. All members have the potential to play an active role in the management of the club. If the club is non-profit-making there may be tax and rating reliefs available.

If the club is registered under the Licensing Act 1964, the club has a degree of flexibility in fixing its licensing hours not enjoyed by a club operating under a justices licence. An application for renewal of registration may be specified to be for a period not exceeding ten years, nowadays invariably less - 3 years generally.

There is a reduced level of fees payable for registration under the Gaming Act 1968.

Members' clubs do not technically make a profit as they are considered to trade mutually. There may be a surplus of income over expenditure as distinct from "profit". However, income less expenses from non-members would be a profit and subject to taxation in the normal manner.

There are usually strict rules establishing the procedure for the election of members and the appointment of committees and regulating the rights of members to exercise control.

c) **Advantages of Incorporation**

If the club is incorporated, the general advantages of incorporation such as the avoidance or limitation of personal liability and corporate responsibility for tax on profits apply and there is the added advantage that the rules and regulations of the club are all committed to writing. The other useful advantage of incorporation is that property and other assets are held by the company which avoids documentation arising out of any change in club personnel.

d) **Disadvantages of Incorporation**

The disadvantages of incorporation are general ones such as the cost of formation and the adherence to the statutory rules regarding the filing of company accounts and the fact that company records are open to public inspection.