



## An introduction to societies and trusts

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## What are the differences between incorporated societies and charitable trusts?

This table provides a quick comparison of some of the key differences between incorporated societies and charitable trusts.

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	Incorporated society	Charitable trust Form CT1	Charitable trust Form CT2
Suited to...	Not for profit organisations where members have a common interest (eg sport, hobby and community interest)	Not for profit organisations with a charitable purpose (e.g. education, religion, relief of poverty and other purposes that benefit the community)	Not for profit organisations with a charitable purpose (e.g. education, religion, relief of poverty and other purposes that benefit the community)
Charitable purpose	Can have a charitable purpose	Must have a charitable purpose	Must have a charitable purpose
Size	Minimum of 15 members	One or more trustees	Minimum of 5 members
Decision making	By members at general meetings and by the committee in accordance with the rules	By the trustees in accordance with the trust deed	By members at general meetings and by the committee in accordance with the rules
Members	Who can be a member is determined by the rules	No members – the trustees run the trust to benefit the beneficiaries	Who can be a member is determined by the rules
Accountability	Committee accountable to the members	Trustees are accountable to the beneficiaries and must comply with the trust deed and the Trustee Act 1956	Committee board accountable to the members
Liability	Limited liability - unless members run the society for their own profit (pecuniary)	Trustees not liable unless they fail to comply with requirements of trust deed or	Committee board not liable unless they fail to comply with requirements of the rules

	gain)	the Trustee Act 1956	requirements of the rules
Audit	No – unless required by the rules*	No – unless required by the trust deed*	No – unless required by the rules*
Profits	Must be used to run the society to achieve its purpose. Profits cannot be distributed to members	Must be used to run the charitable trust to achieve its purpose	Must be used to run the charitable trust to achieve its purpose
How to incorporate	Send applications to the Registrar: <ul style="list-style-type: none"> <li>an application form with</li> <li>one copy of the rules</li> <li>rules certification</li> <li>NZ\$102.22</li> </ul>	Send applications to the Registrar: <ul style="list-style-type: none"> <li>application form CT1</li> <li>a copy of the trust deed or rules</li> <li>statutory declaration</li> </ul>	Send applications to the Registrar: <ul style="list-style-type: none"> <li>application form CT2</li> <li>a copy of the trust deed or rules</li> <li>statutory declaration</li> </ul>
Maintaining registration after incorporation	Send this information to the Registrar: <ul style="list-style-type: none"> <li>annual financial statements</li> <li>rule changes (including names)</li> <li>change of contact details</li> </ul>	Send this information to the Registrar: <ul style="list-style-type: none"> <li>trust deed changes (including names)</li> <li>change of contact details</li> </ul>	Send this information to the Registrar: <ul style="list-style-type: none"> <li>rule changes (including names)</li> <li>change of contact details</li> </ul>
Winding up	According to the rules – surplus assets can be distributed amongst members	According to the trust deed – surplus assets must be distributed to other charitable organisations	According to the trust deed – surplus assets must be distributed to other charitable organisations

## How does my charitable organisation qualify for a tax exemption?

If an incorporated society or charitable trust benefits the community in a charitable way and meets certain criteria outlined by Inland Revenue, they may be granted a non-profit tax exemption.

If an incorporated society or charitable trust benefits the community in a charitable way and meets certain criteria outlined by Inland Revenue, they may be granted a non-profit tax exemption.

There are generally three main conditions that a charitable organisation must meet in order to qualify for an exemption:

- The organisation's aims and activities must be exclusively charitable
- None of the organisation's income or funds may be used (or be available for use) to benefit any of its members, trustees or associates
- From 1 July 2008 charitable organisations must be registered with Charities Services

For more information on tax exemptions for charitable organisations visit the [Inland Revenue website](#).

## Incorporated society FAQs

FAQs related to incorporated societies.

### What is an incorporated society?

An incorporated society is a group or organisation that has been registered under the Incorporated Societies Act 1908 and, when incorporated, is authorised by law to run its affairs as though it were an individual person.

An incorporated society is a group or organisation that has been registered under the Incorporated Societies Act 1908 and, when incorporated, is authorised by law to run its affairs as though it were an individual person. This means that the members are not personally liable for the society's debts, contracts or other obligations. Likewise, members do not have any personal interest in any property or assets owned by the society.

There are a wide range of groups and organisations that have become incorporated societies. These include sports clubs, social clubs, music and cultural groups, special interest and activist organisations.

An incorporated society will continue to exist as long as it files certain documents with the Registrar of Incorporated Societies or until its members, or a creditor, decide to bring the society to an end.

### What are the advantages of becoming an incorporated society?

There are several advantages of becoming an incorporated society - some of the main ones are outlined here.

There are several advantages of becoming an incorporated society:

- A society becomes a separate legal entity once incorporated.
- An incorporated society can lease, rent, buy and sell property, borrow money and enter contracts in its own name. No member of the society can have personal rights or interests in any of the assets of the society.
- An incorporated society will continue as a separate entity even though its membership changes.
- Members will not be personally liable for the debts, contracts or other obligations of the society unless:
  - The debts or obligations are incurred from activities undertaken to obtain money for pecuniary gain (profit), in which case every member involved will be personally liable for those debts or obligations; or
  - The debts and obligations are incurred through unlawful activities, in which case every member involved will be personally liable for those debts or obligations
- Because the rules governing the incorporated society must meet the minimum requirements set out in the Incorporated Societies Act 1908, members can be assured that there will be certainty to the way the society is run.
- An incorporated society may be entitled to an income tax exemption. Contact Inland Revenue on 0800 377 774 or visit their website at [www.ird.govt.nz](http://www.ird.govt.nz) for more information.

## What can an incorporated society do?

Any activity carried out by a society must fall within the objects for that society as set out in its rules. There are also some restrictions that affect what an incorporated society can do.

There are some restrictions on what an incorporated society can do. Its activities must:

- be lawful
- not make money to be distributed amongst its members, and
- be in accordance with its rules.

### Lawful activities

As with any person or organisation, an incorporated society must comply with the laws of New Zealand. This includes not undertaking criminal activities, meeting any tax obligations and complying with any Government agency requirements that may apply to the society's activities.

Some activities undertaken may require approval or a licence from either a central or local Government agency. For example:

- Fundraising that involves the sale of liquor (contact the District Licensing Authority at your local Council)
- Running housie, casino evenings or raffles (contact the Gaming Licensing section in the Department of Internal Affairs)
- Holding street stalls (contact your local Council).

### Restriction on distributing money to members

An incorporated society can raise money to help achieve its purpose (as set out in its rules). It is not able to make money (profits) to distribute to its members. For example, a society can raise money to send a sports team to a tournament (if that type of activity is allowed by its rules), but it cannot raise money and give it to its members to use as if it were their own.

An incorporated society can employ people, including society members, and pay them for the work they do or it can make payments to members to which they would be entitled if they were not members of the society.

### Activities in accordance with the rules of the society

The rules of the incorporated society must include a section detailing the 'objects' of the society. This is the purpose of the society or the reasons why it is being established. Any activity carried out by a society must fall within the objects for that society as set out in its rules.

The rules will also set out how the society is to be run.

## Who can apply to become an incorporated society?

Any group of 15 or more people may apply to become incorporated under the Incorporated Societies Act 1908.

Any group of 15 or more people can apply to become incorporated under the Incorporated Societies Act 1908. This means natural people (that is, individuals) or other corporate bodies.

If some members of your group are corporate bodies then each of these bodies counts as three people for the purpose of making the minimum number of 15 members. An unincorporated body cannot be a member of an incorporated society.

Corporate bodies include:

- incorporated societies
- companies incorporated under the Companies Act 1993
- charitable trusts incorporated under the Charitable Trusts Act 1957 or
- a city, district or regional council.

## What if a society is not incorporated?

A society does not have to be incorporated for its members to operate. Before you decide whether to incorporate or not, you should consider the following issues.

A society does not have to be incorporated for its members to operate. Before you decide whether to incorporate or not, you should consider the following issues.

- An unincorporated society is based on an agreement (contract) between the members, that changes when people join or leave. The society does not have an existence separate from its members.
- Members of an unincorporated society can be held liable for the debts of the society.
- A society that is not incorporated cannot sue or be sued in Court. Any Court action would either be taken by, or against, the members individually.
- An unincorporated society cannot own property or enter into contracts.
- If a society is not incorporated it is not required to have rules to govern it. This can become a problem if there are disputes about how the society is run.
- There are problems in gifting property (including money) to a society that is not incorporated.
- A society that is not incorporated cannot use the word 'Incorporated' at the end of its name.

## Who can see the information provided in an application for incorporation?

Except where specifically noted on the form, the details you provide in an application for incorporation will be made publicly available.

Except where specifically noted on the form, the details you provide in an application for incorporation will be made publicly available on the Societies and Trusts Online website. That includes details and signatures of the members and witnesses provided with the application.

Anyone searching for the incorporated society on the Register will be able to see these details.

## Charitable trust FAQs

FAQs related to charitable trusts.

## What is a charitable trust?

Setting up a charitable trust is a way you can leave a lasting legacy to a cause that means something to you - and it can last forever so that your generosity continues to benefit others long after you have gone.

A person or persons may decide by

- Will,
- entering a deed of trust, or
- making a declaration

that certain property is to be applied in a particular way.

The person making a Will is called a 'testator'. A person creating a trust while he or she is alive is called a 'settlor'. The persons entrusted with carrying out the wishes of the testator or settlor are called 'trustees'. In family and other private arrangements, the persons who will benefit are called 'beneficiaries'. If someone declares publicly that they hold certain property for others, that person is equivalent to a trustee and those who will benefit are the beneficiaries. In all these - a Will, a deed of trust or a declaration - the beneficiaries might be named (for example, my children A and B) or might be identifiable by description (for example, my grandchildren living at the date of my death).

Private arrangements of this nature are not registrable. The trustees will administer the trust for the benefit of the named beneficiaries within the maximum time of 80 years that the law allows.

All trusts must make it clear what the purpose of the trust is, what property is the subject of the trust and who the trustees are to be.

## What happens when the trust will benefit the community in a charitable way

If the testator or settlor or the person declaring that he or she holds property wishes to benefit the community instead of named or identifiable beneficiaries in a way that the law considers to be charitable, some different considerations apply.

If the testator or settlor or the person declaring that he or she holds property wishes to benefit the community instead of named or identifiable beneficiaries in a way that the law considers to be charitable, some different considerations apply.

The term 'charitable' traditionally covers four areas - that is, trusts for

- advancing religion,
- advancing education,
- relief of poverty and
- purposes of public utility such as establishing a fire brigade.

The law considers that charitable trusts benefit the community in a greater way than having the trust conclude with a final distribution within 80 years; they will not be affected by that time limitation.

The Government, through Inland Revenue, may also grant a non-profit tax exemption, on the basis that the trust will benefit the community more than taxing its income will do.

Charitable trusts can also register with Charities Services. The websites for Inland Revenue and Charities Services have further information on these aspects. Importantly, the Government also permits the trustees of a charitable trust to apply to incorporate.

## What can a charitable trust do?

Charitable trusts are normally formed to undertake charitable activities and are less suitable for commercial activities. A charitable trust may make profits on their trading activities but the profits must be used for their charitable purposes and cannot be distributed to members.

A trust can operate in almost exactly the same way as an individual person can. A trust can hold property, raise mortgages, hold bank accounts and generally hold all types of assets and investments as long as it operates according to the powers set out in the trust deed.

To be registered under the Charitable Trust Act 1957, a trust must exist principally or exclusively for:

- a charitable purpose according to the law of New Zealand, or
- any purpose that is religious or educational whether or not such purpose is charitable according to New Zealand law.

A charitable purpose may be the object of a trust or the purpose for which a society is formed. The following purposes may be the basis of registration as a charitable trust:

- the promotion of education
- the promotion of religion
- the relief of poverty
- other purposes of benefit to the community.

It is also charitable to establish facilities for recreation and other leisure-time activities if those facilities are provided in the interests of social welfare and are of public benefit.

Charitable trusts are normally formed to undertake charitable activities and are less suitable for commercial activities. A charitable trust may make profits on their trading activities but the profits must be used for their charitable purposes and cannot be distributed to members.

## Incorporating under the Charitable Trusts Act 1957

A Board is a body corporate of the same nature as a company or an incorporated society. These are created by an Act of Parliament (the Charitable Trusts Act 1957, the Companies Act 1993 and the Incorporated Societies Act 1908) to give a group of people a single identity for legal purposes.

A board is a body corporate of the same nature as a company or an incorporated society. These are created by an Act of Parliament (the Charitable Trusts Act 1957, the Companies Act 1993 and the Incorporated Societies Act 1908) to give a group of people a single identity for legal purposes.

A body corporate can hold property, sue and be sued and with the exception of companies, will have a common seal that is affixed to serious contracts as evidence of its agreement to honour its commitments.

A body corporate will continue to exist until brought to an end as the relevant Act provides. So it makes sense for trustees of a charitable trust that can continue indefinitely to apply to incorporate as a board. In that way, a body corporate that never dies can administer a trust that might never end.

## What are the advantages of incorporating as a charitable trust board?

It is not compulsory to incorporate as a board. There are, however, advantages to becoming incorporated.

If the trustees apply to incorporate as a board, they need not be concerned about retirements and appointments over time, as the board will hold the trust property in its name and the trustees – now members of the board – will decide how the board should administer it to benefit the charitable purpose.

The board, not the trustees, will enter into all obligations, and it, not the trustees, will be sued if some default occurs. The trustees will continue to act to the high standards that the law requires whether or not they decide to incorporate as a board.

The procedure for incorporating is set out below, after a note on another category of applicants who can become a board.

## What if a charitable trust is not incorporated?

It is not compulsory to incorporate as a board. The trustees of a charitable trust can continue to hold the trust property in their joint names for the benefit of the charitable purpose.

It is not compulsory to incorporate as a board. The trustees of a charitable trust can continue to hold the trust property in their joint names for the benefit of the charitable purpose. Part I of the Charitable Trusts Act 1957 helps them by treating the trust property as vesting automatically in 'the trustees for the time being', as inevitably trustees will come and go over time. This is unlike private trusts, where the vesting of the trust property has to be properly documented each time someone retires or is appointed.

## What are the differences between incorporation of trustees as a board or of a society as a board?

The Charitable Trusts Act 1957 has different procedures for trustees who apply and for members of a society who apply to incorporate as a charitable trust board.

The Charitable Trusts Act 1957 has different procedures for trustees who apply and for members of a society who apply to incorporate as a charitable trust board. All applications are made to the Registrar of Incorporated Societies.

## Applications by trustees

A majority (or all) of the trustees must complete a form that states

- the name to be given to the board,
- the address of its registered office,
- an address for communications from the Registrar

They must also attach a copy – certified by a trustee – of the document that created the charitable trust. If there have been subsequent amendments to that document, those amendments should also be attached.

One of the applicants must also complete a statutory declaration that, in effect, says that all the documentation relating to the trust and the trust property has been provided.

An application cannot be made if the trustees are already incorporated.

## Applications by members of a society

- The Charitable Trusts Act 1957 also allows the members of an unincorporated association called a 'society' that has rules that express a charitable purpose to incorporate as a board.
- This kind of society has nothing to do with an incorporated society under the Incorporated Societies Act 1908.
- There must be at least five members in the society.
- On incorporation, the members of the society become members of the board.
- Where a society has numerous members, it could be inconvenient to have them all on the board, so they might prefer to transfer the property that they hold jointly to trustees who will hold it for them, called trustees for the general purposes of a society. Those trustees can then apply instead to incorporate as a Board.
- An application cannot be made if the society or trustees for the general purposes of the society are already incorporated.

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## How do you apply?

### Complete an application form

At least five members of the society must complete a form that states:

- the name to be given to the board
- the address of its registered office
- an address for communications from the Registrar
- a note on how the applicants were authorised to apply.

Usually the majority of members will have approved this application or the members have met and resolved to apply or a specific rule permits this application.

### Attach a copy of the rules

They must also attach a copy of the rules. The rules must be certified by one of the applicants. On rare occasions there are no rules, in which case the Act requires a statutory declaration that sets out:

- the charitable purpose,
- how people become and cease to be members and
- how the society operates.

### Complete a statutory declaration

One of the applicants must also complete a statutory declaration to the effect that the members of the society have authorised the application and how this came about.