Incorporating a Charity

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WHAT IS COVERED

- What are the reasons to incorporate?

- What practical issues need to be considered on incorporation.

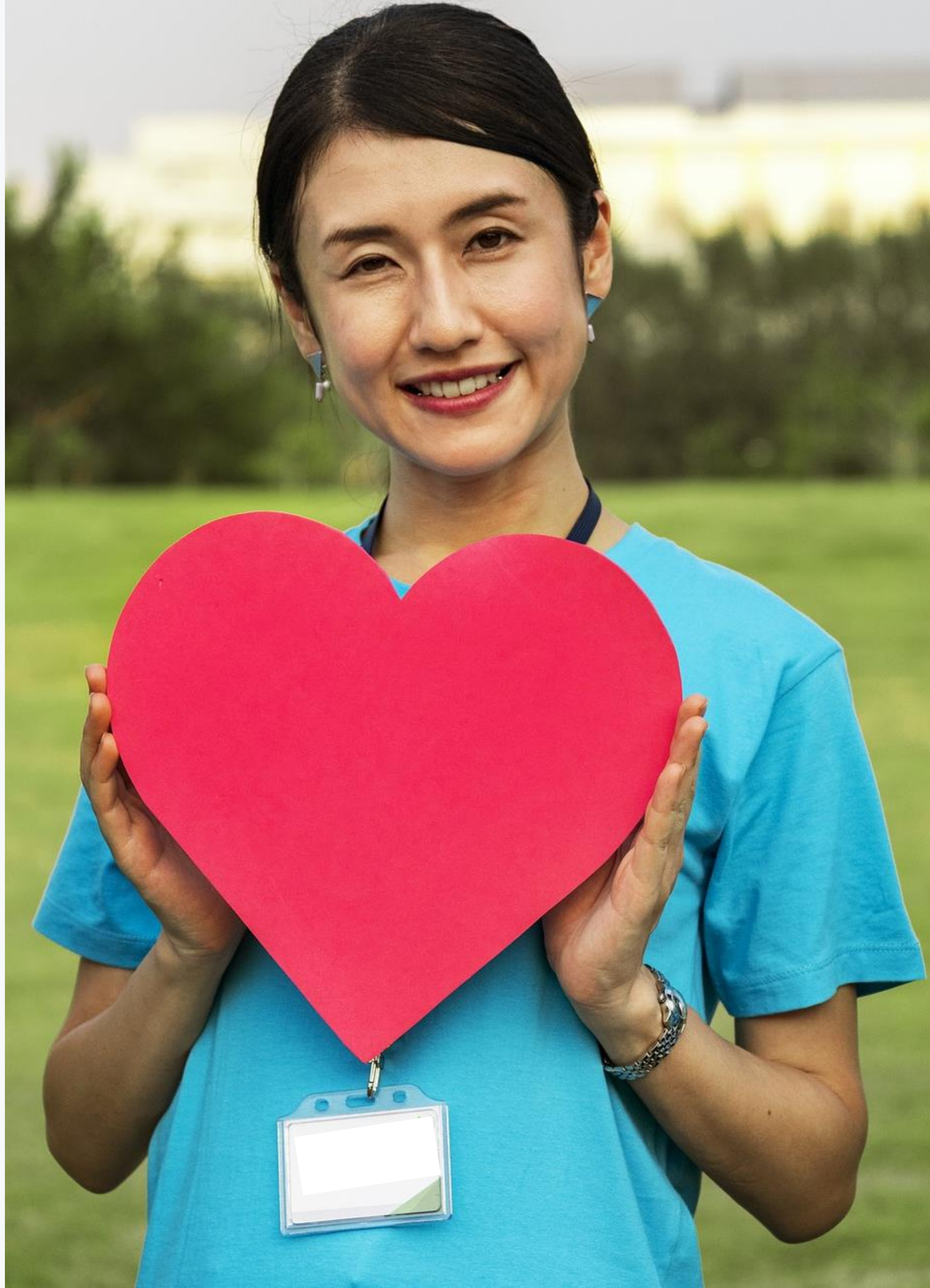
WHY INCORPORATE?

- To provide limited liability to the trustees and members of the charity.
- To enable the charity to do things in cannot as an unincorporated charity.

UNINCORPORATED CHARITIES

- These are represented by groups of people acting together who do not form a separate legal body or corporation. They can operate by way of a trust or association.

- A trust is an arrangement whereby two or more people "declare" they own certain property on trust for charitable purposes. e.g. trust deed.



UNINCORPORATED STRUCTURE

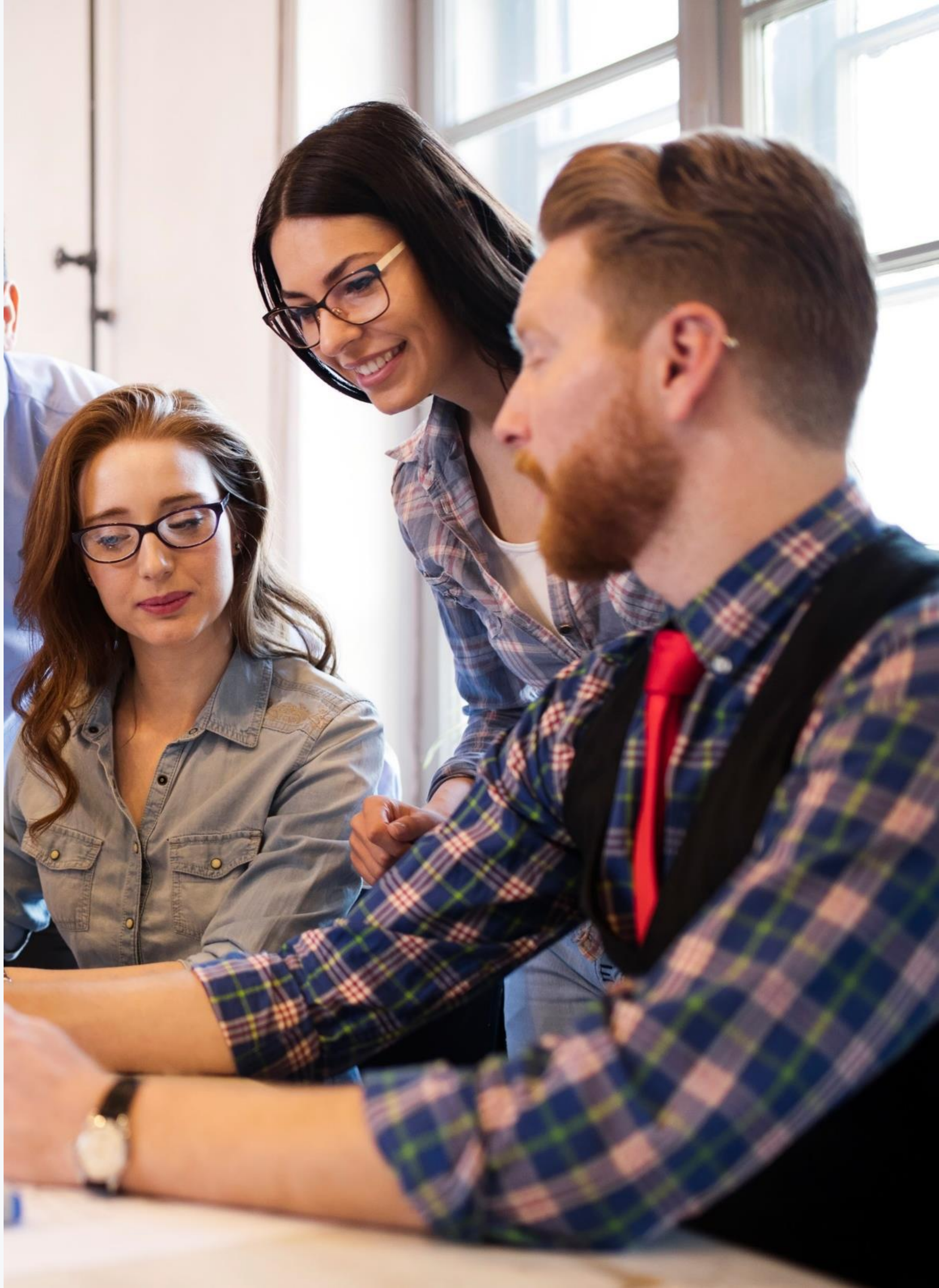
When is an unincorporated structure suitable?

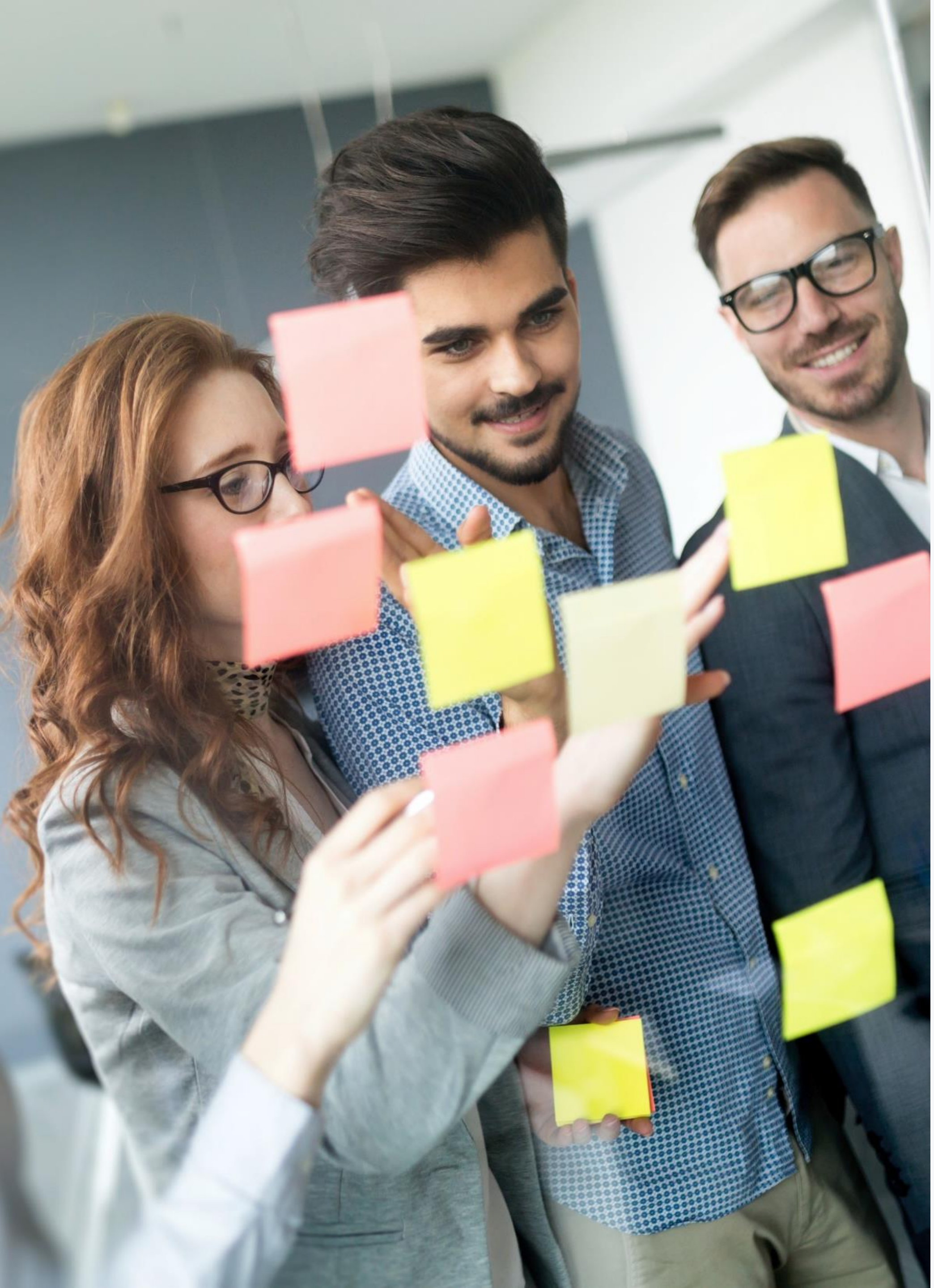
- This is a structure that can be well suited to charities where membership participation is important.
- It is unsuitable for risker or large scale activities or significant contractual activities.

FORM OF LIMITED COMPANY

- Company limited by guarantee.
- Company limited by shares.

- The share option suggests shareholders and dividends and is therefore not considered as appropriate for charitable activities.





CONSIDERING INCORPORATION

When should a charity consider incorporation?

- When it is quite large.
- When it has employees.
- Enters into contractual agreements.
- Enters into commercial agreement.
- Buys freehold / leasehold property.

PERSONAL LIABILITY AND A LIMITED COMPANY

Directors are officers of the company and are not personally liable – subject to:-

- Acting in breach of trust or duty to the company.
- Where responsible for fraudulent or wrongful trading by the company.

- Members' liabilities are restricted to the level of the guarantees.

THE PROCESS

- Form a steering group.
- Take advice, review current rules and consult key external stakeholders.
- Speak to the charity commission and get their permission along with any other regulators.
- Draw up the new model rules and agree any changes to the way the current charity is run. (Objects, voting etc).
- Get approval for rules from the members.
- Inform other stakeholders of the plan i.e. staff, unions, partners etc.
- Have the formal meeting to ratify the decision.
- Form a limited company with Companies House normally with limited number of directors.
- Adopt appropriate Memorandum and Articles of Association for a charitable company.
- Register the company as a new charity with the Charity Commission.
- Agree a date for the formal transfer
- On this date transfer contacts and assets to new legal entity.
- Leave cash behind to settle old liabilities.

THE PRACTICAL STEPS

- Identify all assets and liabilities of the unincorporated charity.
- Identify any on going contracts that need to be transferred to the new company.
- Identify any freehold or leasehold interest that need to be transferred.
- Draw up a list of service providers, statutory bodies and other partners needing to be informed.
- Update headed paper, official notices and publications Charities are exempt from using the word “limited” after their name.
- Open a new bank account.
- Register a new PAYE scheme (and possibly VAT) and transfer staff.
- Advise insurers.
- Advise pension scheme providers.
- Advise all funders and obtain their approval.
- Inform donors & HMRC (Gift aid).

TRANSFER

How can the transfer to the new charity be made?

- A vesting declaration.
- A transfer agreement.
- A member’s resolution.
- By way of a gift.

CARE WHEN TRANSFERRING THE ASSETS

- Check your governing document for any dissolution clause.
- Is there a named charity to receive the funds in the event of a dissolution.
- Look for all dissolution clauses.
- Identify any endowments.
- Liabilities cannot be transferred.
- The assets will need to be transferred at fair values.
- Is the audit threshold breached in the new charity.

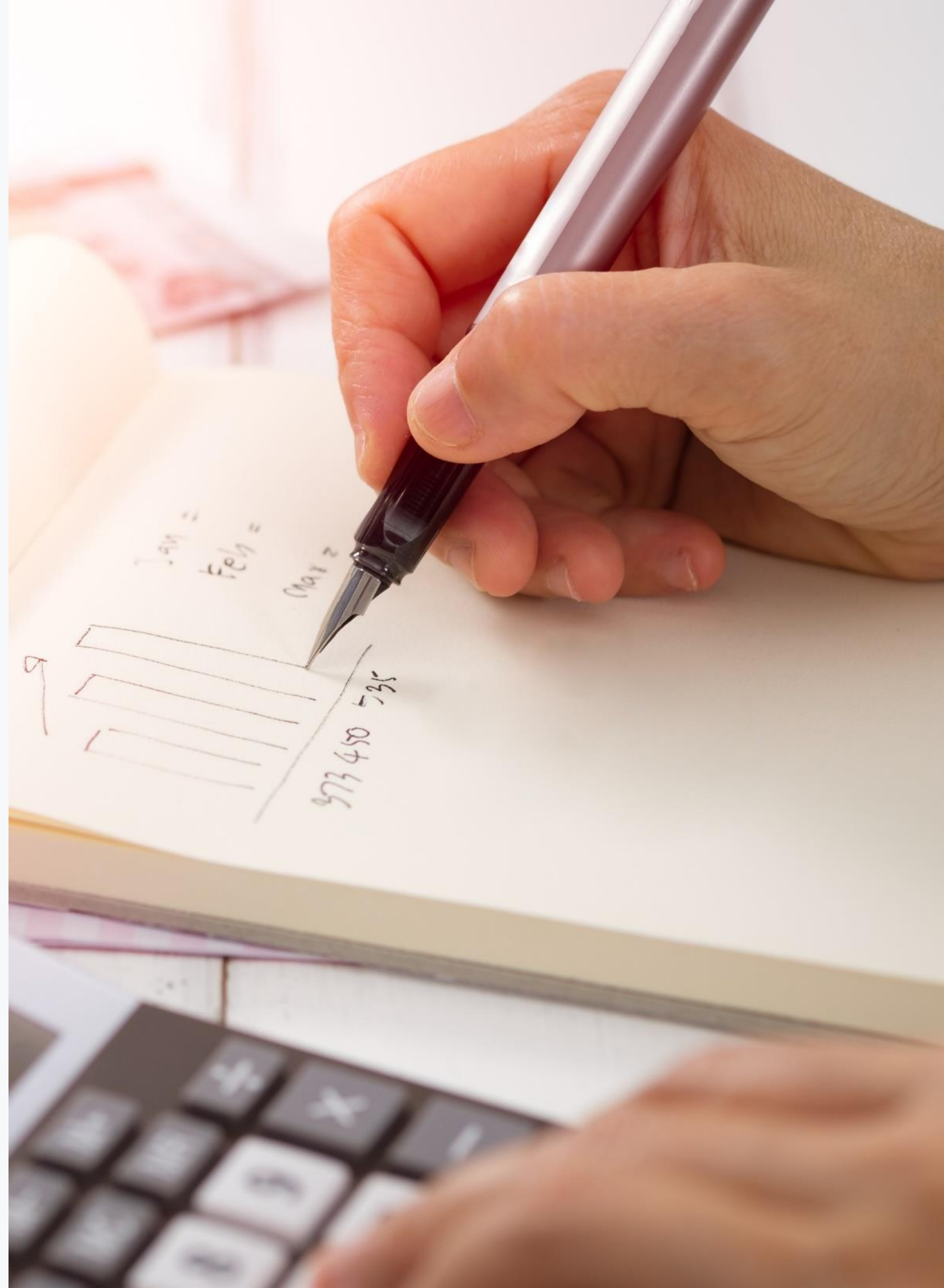
ISSUES, RISKS & PITFALLS

- Defined pension scheme – ensure no pension liability crystallises.
- Legacies received in name of old charity - need to make an entry in the register of mergers.
- The ownership of a trading. subsidiary can be transferred to the new charity company.

THE ACCOUNTING

- Although merger accounting may be possible you normally will show a gift/grant to the new organisation.

- This is then shown as income in the new company.



CIO'S

- A Charitable Incorporated Organisation.
- Offers limited liability for the Trustees without having to register with Companies House.
- These are increasingly popular for smaller or simpler organisations.
- No minimum income threshold to register.
- Possible to transfer from an unincorporated charity to a CIO.
- Need to consider impact of losing trading history of original unincorporated charity.


QUESTIONS?

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