



Council Policy Statement The BGA as a Legal Entity

Introduction

At its meeting on 21 November, 2009, Council considered a document “The BGA as a legal entity”. This document discussed the position of the BGA, and whether or not it should become a legal entity – a charity, company or such-like.

At its meeting, Council decided that the case for change had not been made, and that it would not pursue the idea of change at this time. However, it agreed to record the position, and this document puts forward the pros and cons of the BGA changing its status.

This document has been prepared by Council member Toby Manning. It is based on his own experience operating through a Company (Toby Manning Limited); the views of Council; and comments from Council Members, in particular Simon Mader (Treasurer) and Alison Bexfield (Auditor), but any errors, omissions or distortions are the responsibility of the author alone.

It should be noted that this paper does not claim to be a comprehensive discussion of the issue; in the event that the BGA wishes to become incorporated, the contents of this paper should be used to provide an initial consideration, but additional investigation may be required.

The current position

Currently the BGA is an Unincorporated Organisation. This means that it is not recognised in law, and therefore there are a number of actions that the BGA cannot currently do. In particular, the BGA cannot own property (including intellectual property, so we cannot own any copyright).

Any legal contract entered into by the BGA cannot be enforced through the courts.

The BGA cannot be prosecuted or sued. In the event of an aggrieved person wishing to take action against the BGA (for example, alleging unpaid bills or libel) then the usual process would be to sue the President and/or secretary, although it would be possible in principle to sue any member of the BGA

The need for Change?

With our increasingly litigious society, it is worthwhile re-examining the position of the BGA. The following issues are particularly pertinent:-

- a) New Child Protection legislation puts various legal responsibilities on organisations to protect children and vulnerable adults. We have enquired how this will affect unincorporated organisations, but have not yet received a response. However, it may put some personal risk on Organisers which should properly be covered by the BGA itself
- b) The BGA has made payments to persons (particularly Peter Wendes) for undertaking work on the BGA's behalf. Although a contract has been drawn up (and signed) by Peter Wendes, it is not clear that this is enforceable in law
- c) The BGA has significant financial resources. Currently these can only be held in cash – the BGA may wish to hold some of these resources in shares, property or other types of asset.
- d) The BGA is involved in a number of contracts etc. with government or similar organisations (e.g. the recent award of £10000 for Peter Wendes' "Go Tour"). This has involved a contractual arrangement with the money provider (in this case I believe CCPR). Some such providers may be reluctant to make such a contractual arrangement with an unincorporated organisation.

Other issues which might push towards incorporation are if the BGA took on employees, or became more significant in size.

It should be noted that any change to the BGA's legal status would take time, requiring Constitutional amendments and membership agreement, and could not be done "in an emergency".

The Way Forward

If the BGA is to become a legal entity, the two alternatives appropriate vehicle appears to be a Charity, or a Private Limited Company, probably a Company Limited by Guarantee (CLG). (A Company limited by Shares is not appropriate for a non-profit distributing organisation such as the BGA).

Company Limited by Guarantee.

This is the appropriate vehicle for a non-profit distributing organisation. (It should be noted that it is possible for an organisation to be both a charity, and a Company limited by Guarantee).

The English Chess Federation (ECF) is a CLG. It was proposed that the Mind Sports Council be a CLG, although this was turned down by the English Bridge Union (who could not see why the MSC should hide behind limited liability).

The English Bridge Union (EBU) is a Private Limited Company.

A CLG is like a plc. It has a Board of Directors, and members (rather than shareholders). It also has a Memorandum of Association (covering aims and objectives) and Articles (how these aims and objectives are to be met) which would replace the BGA Constitution.

Community Interest Company.

A few years ago legislation introduced the concept of a “Community Interest Company”. This is a company – normally, but not always, a Company limited by Guarantee – that provides services to a “community”: it is an appropriate vehicle if one does not want to become a Charity. Most CIC’s serve a “local” community rather than a National one. The advantages seem to be the ability to obtain local funding, plus perhaps some minor tax advantages.

If the BGA decides to become a Company, then a secondary question will be “Should it attempt to become a CIC?” It is not a fundamental issue.

Charity

The 2006 Charities Act amended the “rules” for organisations to become charities. Currently charitable status does NOT necessarily imply incorporation, but the 2006 Act promised that the position would be changed to provide a mechanism for organisations that wanted to incorporate but would prefer to avoid dual registration as company and charity. The Charity Commission website states they expect the enabling legislation in 2010.

Other Mind Sports Organisations, such as the English Bridge Union, are attempting to achieve Charitable status: the BGA should await to see what are the results of that attempt.

The major benefits of becoming a charity resolve around tax issues; for example, charities can register for “Gift Aid”. There are also tax savings if the organisation holds property (in terms of relief on business rates, for example) but these are not currently relevant to the BGA.

There may be other requirements for becoming a charity: this will be the subject of further research if appropriate.

Issues

Paperwork

The BGA would need to acquire new corporate stationary and ensure all volunteers and officers were aware of the duty as a limited company to display this limited liability status on all paperwork. Not to do so would void the limited liability status.

Shareholders

Currently the BGA is a single tier, one member one vote organisation. If we became a CLG then either:-

- all BGA members would become shareholders (members) of the new company, and we would need to provide a list of these to Companies House annually. In other words we would have a shareholder register of hundreds, and this would become bureaucratically unwieldy.
- The BGA could adopt a “2 tier” approach, whereby members elected the “shareholders”. Both the EBU and the ECF have a “two-tier” organisation: for example the EBU is made up of 39 County Associations, each of which appoints a shareholder to the EBU. This is less democratic, but easier to manage.

The shareholder (member) list provided annually to Companies House consists of names, and dates when they became shareholders (members), but not addresses. The list becomes a public document.

Audit

The Company would need to provide Annual Accounts to Companies’ House. It would be normal practice for these to be audited by a qualified accountant (although small companies can – with the consent of their shareholders – dispense with this requirement, it is unlikely that the BGA would wish to).

To get the accounts professionally audited would cost several hundred pounds per year – the actual amount depending upon how well organised was the treasurer.

Other Requirements

The Company would need a “Registered Office”, which is the formal address for serving of documents, etc.

Directors

There are a few restrictions on who could become a Director. The main one is someone under the age of 18, but there will be a few other legal restrictions (e.g. bankruptcy?). It should be noted that some people would be precluded becoming a Director by their contract of employment (for example, some organisations will only allow their employees to become a Director with their explicit permission).

Incorporation would provide limited liability for shareholders (members). Directors would benefit from limited liability provided they did not act negligently, in which they may still be personally liable. The limited liability is only a protection for people who have undertaken their duties appropriately.

Directors do have certain legal responsibilities, and they are jointly liable with the other directors for BGA decisions – not just those that they take themselves.

Tax

It is not known what effect incorporation would have on the BGA’s tax status. It is possible that the BGA would need to pay Corporation Tax (at around 20%) on its profits, but this would be checked.

How Conversion would work in Practice.

There would be comparatively little change in the way the BGA works, and the changes should be reasonably transparent to the Members, although it should be noted that the Directors would need to formally accept collective responsibility for decisions made. There would be changes in job titles. We would need to write the Articles and Memorandum of Association to ensure that, as far as possible, the current structure and democratic principles of the BGA were preserved.

Costs

The direct costs of setting up a company are small (around £15). The Articles and Memorandum would also need to be drafted; we could use the ECF paperwork as a template, but it may be worthwhile having the paperwork reviewed by a qualified lawyer.

On an annual basis, there are administrative costs of £15 per year for registration with Companies House; the other major costs would be associated with the audit requirements.

Conversion Practicalities

The following mechanism is proposed if the BGA did wish to convert to a Company Limited by Guarantee (CLG):

- 1) Council sets up a Committee to draft the Articles and Memorandum of Association. These would mirror, as far as possible, the existing BGA Constitution.
- 2) At the next AGM, we put forward a resolution IN PRINCIPLE for the BGA to become a CLG . (We assume that it is passed)
- 3) Council sets up the BGA as a CLG. At this stage it is a “shell” with minimal assets, members and Directors.
- 4) At a subsequent AGM (or EGM) the BGA agrees to wind itself up, and to donate all its assets to the CLG. This will require a constitutional amendment (currently on winding up, all assets are to be donated to the European Go Cultural Centre).
- 5) The CLG takes over all the BGA’s assets and liabilities, and continues to operate seamlessly.

*Toby Manning
22 December 2009.*