

UPDATE AND RECOMMENDATIONS REGARDING THE INSTITUTE OF ASBESTOS MANAGEMENT FOR INFORMATION AND DISCUSSION AT THE ALG MEETING ON THE 24TH SEPTEMBER 2010

During the last ALG meeting concern was raised regarding the name of the Institution. It was felt that the name was misleading and referred to the management of asbestos rather than the management of asbestos removal companies.

A suggested new name is the Asbestos Removal Management Institute (ARMI).

I would like to discuss this and any possible alternatives at the ALG meeting

The management structure of the institute was also questioned and a detailed proposal on the management structure was required. First and foremost it is necessary to decide on the type of organisation that is to be established. The 4 types of charitable organisations are detailed below.

1. CHARITABLE COMPANIES

A charity may need to take the form of a company when there is a risk that it may incur large financial liabilities because, for example it is expected to

- Control substantial assets or
- Employ staff and/or
- Engage in charitable purposes involving commercial risks
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2. CHARITABLE TRUSTS

A trust is likely to be appropriate where the charity:

- Will not have a membership; and
- Is unlikely to employ a significant number of staff or carry on any kind of business
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3. CHARITABLE ASSOCIATIONS

It may be appropriate to establish an unincorporated association where the organisation:

- Is to be relatively small in terms of assets
- Has a membership
- Is to be run by charity trustees who will be elected by members or appointed to hold office for fixed terms;
- Wants to take account of the views of local residents and organisations through membership or as users;
- Wishes to carry out its work wholly or partly through the voluntary effort and contributions of its members.
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4. SMALL CHARITY CONSTITUTION

Small charities that are expected to have an income of under £5000

From the above it may be deduced that the charitable association model would be the most appropriate model for the Asbestos Removal Managers Institute (ARMI). However the Charity

Commission suggest that where the organisation is to have a membership but is expected to have considerable resources and / or employ staff and become engaged in charitable purposes which involve commercial risks it is usually more appropriate to take the form of a charitable company. An unincorporated association would leave the directors personally liable for any debts. A company is a legal person quite separate from its members and directors (who, in the case of charitable companies are usually called members of the council of management). The directors are agents of the company and as such are not normally liable personally for its debts. The company will also have 'limited liability' which means, in the case of a typical charitable company, that its members are normally only liable for the debts of the company to the extent which they have undertaken to guarantee them. The draft articles currently state that this is £2.

Therefore I recommend that the Institute is set up as a charitable company

Once the decision has been made to set up a charitable company a governing document needs to be produced

A governing document is the formal document which sets up a charity and the Charity Commission recommend contains all the information about:

- what the charity is set up to do (objects);
- how the charity will do those things (powers);
- who will run it (charity trustees);
- what happens if changes to the administrative provisions need to be made (amendment provision); and
- what happens if the charity wishes to wind up (dissolution provision).

It should also contain the following administrative provisions:

- how the charity trustees will run it; and
- internal arrangements for meetings, voting, looking after money, etc.

The Charity trustees of a charitable company referred to as the Board, council of management or directors

A draft set of Articles of Association have been prepared along with two bye laws giving further information on membership requirements and election of the board. It should be noted that the Articles are only draft and will need to be reviewed by a solicitor to ensure all of the requirements of the Charity Commission and the Companies Act 2006 have been met.

Concern has been expressed at recent meetings as to the management structure of the institute. The Articles have been written so as to appoint the HSE ALG as the 'institutional member' of the institute (legal advice has been sought to ascertain whether this is possible – awaiting reply). The Institutional member is permitted to appoint five directors. In addition 4 directors are elected from the membership. This Gives the ALG representatives on the board a majority. In addition the voting arrangements detailed in the Articles are weighted towards the institutional member. The institutional member can out vote the members on any aspect other than the removal or appointment of not more than four voting members. This requirement of the Articles can stay in place as long as the ALG wish to remain as institutional members. It can be amended at any time by a Special Resolution at the AGM with the authority of the ALG.

Membership criteria have been defined in the Bye laws and are restricted to Fellow and Member grades only. Membership requirements for both grades include the requirement to hold an approved leadership/management qualification at level 4 and an approved asbestos qualification at level 4. Fellows will have to satisfy other criteria such as experience, significant contribution to the industry etc. as determined by the board.

Articles of association are put into operation by the memorandum of association being subscribed to by one or more people in accordance with the provisions of Part 2 of the Companies Act 2006 and by registration with the Registrar of Companies at Companies House who will issue a certificate of incorporation.

Provision has been made in Article 51 for external auditing of the Institute by an organisation:

'For 3 years following incorporation of the company the companies policies and procedures for admitting members, along with the records of those admitted in to membership, shall be audited by and external body approved by the institutional member. The frequency and content of the audit shall be determined from time to time by the institutional member.'

The Institute of Leadership and Management have agreed to fulfil this function.

I suggest that some / all ALG members subscribe to the Memorandum of association which still needs to be prepared but is straightforward.

The solicitors can word the articles in such a way as to put a temporary board in place leading up to the first AGM and the first members joining the Institute.

I would suggest that the ALG approve the Articles in principle. Legal advice can then be taken on the suitability of the Articles and redrafting can be carried out where necessary. Final approval can then be sought from ALG for the Articles and the Memorandum of Association followed by an application for company registration and an application to the Charities Commission for charitable status.