

Look Before You Leap

Why IEEE-ISTO is a sound alternative to incorporation for many technology associations

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Items to consider when forming a new association

- Incorporation
- Tax exemption
- Tax filings
- Accounting
- Financial audits
- Insurance
- Management

As an alternative to incorporation, IEEE-ISTO can save member associations considerable time and money while providing all of the requisite benefits

Weighing the facts

As you start into this article, rest assured that at least some of the hardest work may already be behind you: that is, agreement by a number of industry competitors to work together. Getting competitors to agree on anything is tough; getting them to agree to collaborate within a long-term, structured trade association can be nothing less than remarkable. But it does happen, as evinced by the growing number of trade associations worldwide.

Once the decision has been made to form a new trade association, the next crucial set of decisions is how to establish and maintain that association. In many cases, the first step often seems somewhat default: just form a new not-for-profit corporation.

While the initial process of filing papers of incorporation is, in fact, pretty simple, incorporation itself carries a significant set of ongoing responsibilities – some of which are time consuming, costly, or both. Because many of these ongoing tasks related to incorporation are not obvious, and are often not considered at the time an entity files for incorporation, it is not uncommon for self-incorporated associations to require considerable hands-on attention to their corporation, as well as higher-than-expected maintenance costs.

In fact, those considerations are very much the reason why IEEE-ISTO was formed: to be a flexible, convenient and cost-effective alternative to incorporation. Affiliated with the IEEE, the IEEE-ISTO is a not-for-profit membership organization comprised of associations working to standardize technical implementations that span the spectrum of today's electro-technologies. The ISTO supports the development and proper implementation of industry standards and facilitates the activities required to drive their market acceptance. Since 1999, the IEEE-ISTO has been home to more than 30 technology associations which have produced more than 200 industry standards and technical specifications.

IEEE-ISTO believes it offers technology associations an attractive alternative to incorporation – after all, IEEE-ISTO can save organizations considerable time and money while providing all of the requisite benefits. To that end, the IEEE-ISTO encourages stakeholders of associations to consider all of the facts before making the very significant decision to leap into incorporation.

Incorporation

Due to the significant risk of antitrust which occurs when competing companies collaborate, the protection of a formal legal umbrella is essential. As noted above, the process of an association actually filing for incorporation is relatively straightforward. Doing so will require some legal assistance, and some filing fees are involved, exact costs of which depend on where incorporation is filed and the particular circumstances of your organization. Further, in support of filing for incorporation, your organization will need to establish its governing documents, such as articles of incorporation, bylaws, membership agreement, corporate policies, etc. Given the nature of trade associations – and especially standards-based organizations where intellectual property considerations are prominent – creation of these governance documents should not be taken lightly. For instance, repurposing of a local civic association's bylaws probably won't suffice, and will almost certainly lead to legal issues within your organization sometime down the road. Lawyers are often ready and willing to assist in the preparation of these documents, but certainly at some cost.

Under the IEEE-ISTO structure, member programs enjoy the full protection of the IEEE-ISTO legal umbrella from the minute they sign a Participant Program Agreement (PPA). There are no filings, no applications, and no delays. Further, the member programs of IEEE-ISTO can leverage its extensive library of governance document templates. These not only speed the development of such documents, but can save thousands of dollars in legal expenses.

Exempt Status

Beyond filing for incorporation, a new organization also needs to file for tax exempt status with the IRS. Again, up-front this is a fairly benign process. But stakeholders of start-up associations should be very weary of this stage, for several reasons. First, obtaining an IRS ruling can take a long time (two years is not uncommon). During this time, associations are encouraged to build up a tax reserve in the event the association is denied tax exemption. For fledgling organizations, this can funnel critical cash away from value-added activities.

Second, defense of an exempt filing can be costly and time consuming. It is not uncommon for several rounds of back-and-forth to occur between the IRS and the filing association before a ruling is made. Seeking advice from legal counsel during such exchanges is strongly advised. Further, the IRS may suggest structural changes to the filing organization, such that it may better comply with regulations. Implementing such changes can be costly on several fronts: in legal fees; in lost memberships, should some members not agree to the proposed changes; and in the amount of member time and energy spent outside core activities.

Finally, gaining exempt status is far from a certainty. The IRS looks at trade association filings quite closely, to ensure they truly are for the benefit of the industry(s) which they serve versus for the benefit of the member companies involved. Denial of tax exemption can cripple an association; after all, as much as 30% of member dues could be siphoned off as tax due to the IRS. Similar to the legal umbrella, under the IEEE-ISTO structure, member programs realize tax exempt status immediately upon signing the PPA, provided the group aligns with ISTO's mission and exempt purpose.

By forming under the IEEE-ISTO, member programs receive the immediate benefits of a protective legal umbrella and tax exempt status, thus removing all aspects of uncertainty in these critical areas.

Tax Filings

Once your association receives tax exempt status from IRS, it doesn't mean smooth sailing on the tax front. In 2007, the IRS introduced, through a new Form 990 (the annual tax form for non-profits), sweeping changes to the amount of information disclosed to the IRS annually by non-profits. Many of the change drivers for Form 990 were derived from the Sarbanes-Oxley provisions used to examine for-profit companies. In short, the IRS wants to know everything about your organization, from its finances to its accomplishments to its governance. All told, including all of its schedules, the Form 990 is more than 80 pages! Due to the complexity of the new Form 990 – as well as the myriad potential pitfalls contained within – many associations are outsourcing tax filing activities to outside entities such as accounting firms and law offices. Costs for preparation of such forms can easily run between \$2,000 and \$4,000 per year – and that's assuming your organization doesn't get audited by the IRS.

Because its member programs utilize the IEEE-ISTO legal umbrella, they do not file anything directly with the IRS. Instead, IEEE-ISTO files a master Form 990 covering all of its program activities. Member programs pay a pro-rata portion of the expenses related to these filings, which is a fraction of the costs they would incur if filing directly.

Accounting Support

To achieve any of its goals, your association will need money. To effectively manage its money, your association will need a sound accounting partner – specifically, one who understands the nuances of non-profit accounting. Accounting support to an association runs the gamut of financial activity, from banking and investments to financial reporting and accounts payable. Depending on the nature and scope of your association's activities, accounting support could cost several thousand dollars per month. Worse, repairing damage done by inexperienced or inept book-keepers can cost much more.

IEEE-ISTO addresses this critical need by availing to its member programs a top-notch accounting team. Offering a full range of accounting support, IEEE-ISTO has the tools, facilities and know-how to support nearly every financial situation. Its performance record is highlighted by its blemish-free audit record.

Annual Audit

It is highly recommended that all associations undergo an annual financial audit. After all, given the member-based construct of trade-associations, there is substantial value in having a qualified third-party affirm that the organization's financials are being managed and maintained in a responsible manner. Case in point: organizations that forgo an annual audit are often those held in suspicion by not only its members, but also the IRS.

Even for smaller organizations, audits can be fairly expensive undertakings, ranging between \$7,000 and \$10,000 (or upwards) based on the complexity of accounting and the amount of field work required. Under the IEEE-ISTO structure, member programs themselves are not audited. Because all member program financials are rolled up into the IEEE-ISTO books, only the federation's books are audited. This saves member programs considerable cost each year. What's more, ISTO also conducts an annual operations audit to ensure its staff members are following established policies and procedures in carrying out their work on behalf of member programs.

The Joys of Tax Filing

Recent changes to the IRS Form 990, the tax return form for non-profits, have broadly increased the transparency requirements of associations, and have increased significantly the complexity of completing the form. The form and all its schedules now numbers over 80 pages!

Insurance

Like any organization, your association will require insurance coverage. The ease of your organization's ability to acquire insurance, and its cost, will vary depending on the nature and scope of your association. Generally, insurance costs are about 1%-1.5% of your organization's total revenue per year. However, due to the risk involved, some insurers will not offer E&O (errors and omissions) insurance to standards-based organizations. Member programs of IEEE-ISTO enjoy the benefits of full insurance coverage, including E&O, immediately upon executing the PPA. Equally important, IEEE-ISTO leverages its economies of scale to acquire extensive coverage at very friendly group rates.

Management

Once your association has its structure established and confirmed, it will likely seek to enlist some help managing the organization. In general there are three models to consider here:

- Strictly volunteer – the members manage the organization on their own
- Staffed – the organization recruits and retains its own dedicated staff
- Management Firm – the organization outsources management duties to a third-party firm

While the strictly volunteer method is by far the most cost-effective, it all-too-often results in a lack of productivity. Where volunteer attention to the organization is strong at first, it almost always wanes as other priorities creep in. The staffed model has clear merits, foremost being that your association directly manages the resources working on its behalf. But therein lies the rub: your association has now become an employer, a responsibility which carries obligations such as HR compliance, payroll, benefits, time off, etc. The staffing model also has a sense of permanence, which becomes a thorny issue if the organization ever needs to compress its scope or close its doors.

By comparison, the management firm model has many attractive merits. Generally it's consumption-based, so organizations only pay for the support they need. Management firms are typically more scalable, meaning they have the ability to support many different types of activities as your organization grows and evolves. But all of this skill and flexibility often comes at a price – sometimes a high price. To have the manpower to offer a deep array of services to clients, firms often need to retain a large staff, which can add to overhead costs (and, of course, fees).

The IEEE-ISTO, while providing a full range of support to its member programs, is not a management firm. Instead, it is a not-for-profit organization that offers assistance to its member programs such that they may succeed in achieving their goals. The incentive program offered to its staff is based on one prominent factor: the satisfaction of the member programs. To that end, ISTO endeavors to provide value-added, cost-effective support to its member programs, and to continuously work to leverage economies of scale to reduce costs for its members.

Conclusion

At the end of the day, determining the right course forward for your association will boil down to what's most comfortable to its members and stakeholders. For some groups, incorporation makes the most sense. For others, the comprehensive, pop-up infrastructure offered by IEEE-ISTO is attractive due to its substantial time and cost savings. Whatever direction your group decides to take, IEEE-ISTO wishes you and your association much luck in making the right decision.

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