



## **BMAF INCORPORATION**

### **YOUR QUESTIONS ANSWERED**

#### **1. What does incorporation mean?**

Incorporation is the legal process of changing an organisation into a legal entity such as a company. In some ways, it is similar to an individual changing from being self-employed to setting up a company. It usually happens when an organisation reaches a certain size, and its owners want to protect themselves should its assets not be sufficient to cover its liabilities in the event of a claim against it. Taking advantage of different tax treatment is also a key reason.

#### **2. What type of incorporated body will the BMAF become?**

Although a number of options have been considered, a “not for profit company by limited guarantee” has been chosen as the most appropriate. A number of sports organisations with significant assets, such as owning a club house, often choose to set up a trust fund and keep the club unincorporate and put the property into a trust fund. A trust is not appropriate for the BMAF as it has negligible assets and could be too restrictive on the activities it wishes to conduct. Many organisations overcome this by putting a trust inside a company. As the BMAF has no need for a trust going straight to a company makes things much simpler. Some sports organisations choose to become a charity such as the England Schools Athletic Association, but it is not thought likely that the BMAF could formulate an acceptable charitable purpose and it would have to meet the more demanding standards of the Charity Commission compared to meeting those needed for a company. A Community Interest Company (CIC) is a special type of company that is for the benefit of a community and usually used for social enterprises. The nature of the BMAF does not make this suitable either. A Community Amateur Sports Club (CASC) was also considered as they have been specially designed to meet the needs of sports clubs who wish to incorporate. To become a CASC 50% of its members have to be participating members and there is an upper size. As the BMAF has no members this rules it out without a significant reorganisation of the BMAF and Area Clubs relationship (the clubs have the members, not the BMAF). There is also a requirement that annual income must not exceed £100,000 which the BMAF could exceed in the next few years as it is currently of the order of £85,000.

Almost all of the governing bodies in athletics such as UKA and the home country federations, such as England Athletics, are now companies by limited guarantee. Welsh Masters is the first Masters Area Club to take this route and is Welsh Master Athletics Ltd. Other Area clubs are thinking about it. In the hierarchy of types of incorporated structures, a “not for profit company by limited guarantee” is the one that will meet the needs of the BMAF now many for many years to come.

#### **3. What is a not-for-profit company by limited guarantee?**

The most common types of company are Ltd (a private Limited company) or Plc (public Limited company). Both types have shareholders who receive the profits of the company through dividends. A not-for-profit company by limited guarantee has no shareholders and any profits that are made are usually ploughed back into the company. The liability of a Ltd company or Plc, when it does not have sufficient money to pay its debts, falls on the shareholders but is limited to the value of the shares they hold. In a limited guarantee company, there are no shareholders. They are replaced by members who guarantee that they will pay a fixed amount in the event of there not being enough money to cover debts. The BMAF has decided to set the guarantee at £1

per member which is the typical amount used thereby ensuring that none of those who agree to provide the guarantee will be disadvantaged.

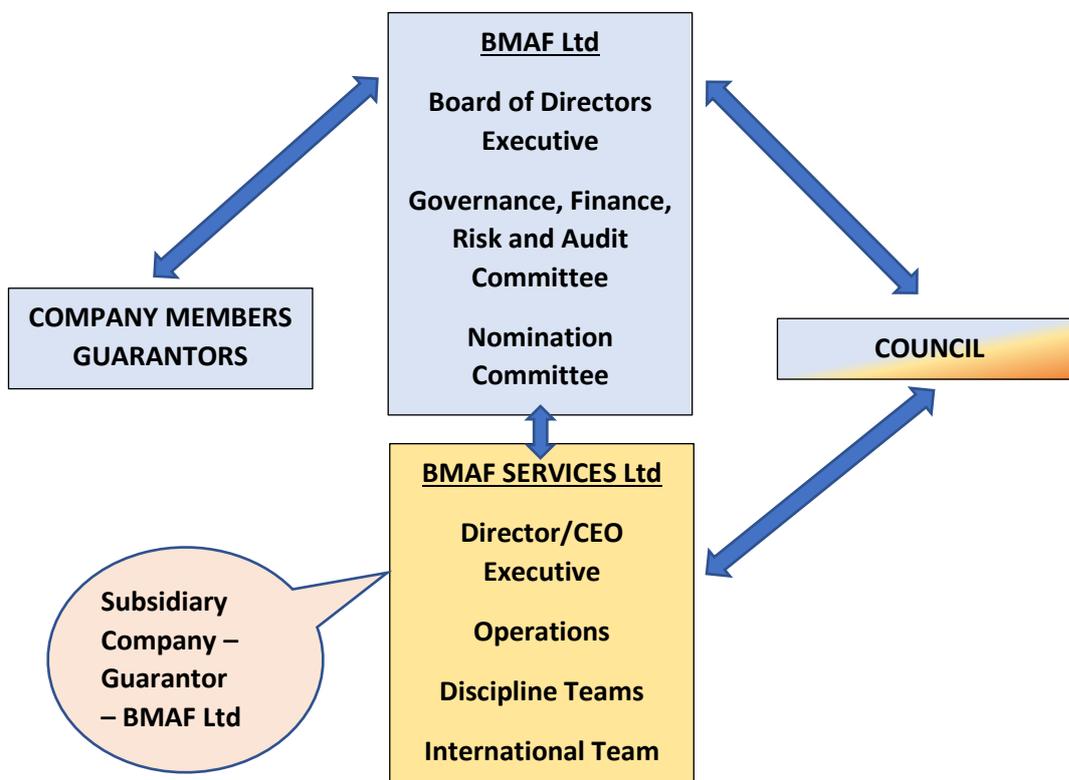
#### 4. Why has the BMAF decided to incorporate?

The BMAF has grown significantly over the last 10 years and is now engaged in a much wider range of activities than ever before. Income and expenditure have grown alongside with turnover of BMAF Services reaching £85,000, necessitating paying for the services of an accountant to help manage our finances, especially as we now need to take account of possible VAT and corporation tax liabilities. There are exemptions that are available to us as a sports body, but we have to ensure that we operate in a manner that will not preclude us from taking advantage. The governance requirements of being a company will be of enormous assistance in ensuring that we stay within the rules. We are having to enter into more and more formal contracts for the services that we need, particularly as we are making greater use of technology for member administration, competition management and communication. Such contracts need to be carefully written within a legal framework to protect both sides and the BMAF will fare much better if it is a legal entity. It is against this background we have concluded that it is no longer appropriate to be structured as a simple club.

#### 5. What is the structure of the new company?

The intention of the structure is to try to have the right people in the roles that they are most suited for and for officers not to be burdened by getting involved in matters in which they have no expertise and, more often than not, no interest. It is also important that neither individuals, or a small number of individuals, should have too much power to dictate how the company should be acting both at a strategic and operational level. This has meant splitting the structure so that one part looks after all the governance and company matters while the other looks after the athletic activities. This is being achieved by setting up a new company, initially called British Masters Athletic Federation Ltd (BMAF Ltd for short), which will be the main company doing all the company things with limited involvement in the athletics side. BMAF Services Ltd will be expanded to take on all the athletic activities but instead of being a separate legal entity it will become a wholly owned subsidiary of the main company. The existing Council of representatives from the Area Clubs will be retained and have a role in both companies.

The following diagram illustrates the broad structure:



## **6. What is it trying to achieve?**

The whole organisation sits within a Not-for-Profit Company by Limited Guarantee which effectively gives the whole of Federation a legal identity with Companies Act governance ensuring higher standards, enforceable by law, that must be met in the way that it operates. It gives liability protection for both its financial assets and to all its officers. It is a structure that should be acceptable to any third party, such as a supplier or potential sponsor, giving them comfort that they will be dealing with a sound organisation that operates within the rule of law.

Rather than having a main company and a subsidiary, a single company could be an acceptable alternative. However, as BMAF Services is already operational this is an easier and quicker solution to implement, enabling Services to operate on a business-as-usual basis with minimal disruption during the transition. The structure could be changed in the future if it was felt it might be more efficient. An advantage of having a clear dividing line between governance and operations at the initial stage is that it helps ensure key governance decisions on the way that the company should be set up and should prevail for many years to come will be made by those who have knowledge and an understanding of managing a company. Equally those whose expertise lies in the athletics operation will be able to get on building a subsidiary fit for purpose. Oversight of the whole company will be provided by the Area Clubs through a Council of all clubs with officers elected by their members.

## **7. What are the Articles?**

Articles is effectively the name given to a Company's constitution. The Companies Act prescribes what must be included and have given guidance by producing a set of Model Articles. If these are followed, then they will be approved. The BMAF's articles use a mixture of clauses from the model articles, clauses from other company's articles particularly the various governing bodies and original drafting. It is not anticipated that there will be any difficulty in getting the proposed Articles approved by Companies House. The challenge is for every athlete, officer in one of the clubs and the Executive to ensure that all the right articles needed are included, and that they are not capable of misinterpretation.

## **8. Who is controlling the main company and how are they overseen?**

The Company will be controlled by the BMAF Ltd Board of Directors. The Executive will be small and have as its main role the management of the company's organisational structure, governance, finances, and main strategy. A chairman should be sufficient to manage the executive without a Chief Executive officer although provision has been made in the Articles for one to be appointed if the Board considers it necessary. Its members will need to include the Chairman, Vice Chairman, Finance Director, any Treasurer that might be appointed and the Company Secretary. The Executive will be assisted by a Governance, Finance, Audit and Risk Committee which will be a technical body who will monitor the past and look forward trying to anticipate future problems and opportunities. This Committee needs to be independent and have the power to look where they feel investigation might be needed bringing matters of concern to the attention of the Directors, Executive and, if necessary, the Members and the Council. Directors also have the benefit of a Nominations Committee with the responsibility of identifying and reviewing potential new directors to ensure that they will be suitable for appointment. Final appointment is made through an election by the Company Members at an AGM.

The Company Members have a number of statutory responsibilities and powers, in addition to their responsibility as guarantors. They are effectively the owners of the Company, like shareholders, but should not be involved in the operation of the company. The operation is the responsibility of the Directors who are required to act within the terms of the Company's Articles of Association. If they want to do something outside of the Articles, they will need the approval of the Members. They cannot stop the Directors from doing something but can halt progress if they

so decide. They have the power to both appoint and dismiss the Directors. They are entitled to be provided with information on certain matters such as finance. This would normally be done through presenting the accounts at an AGM. They also have the power to put forward motions and call an EGM.

While the Members have statutory powers and limited involvement, it is intended that the Council plays a significant advisory role to the Board of Directors on most matters but will have no voting powers. This is similar to the role of the Council in the current constitution. At Area Club Level it is expected that the Company Member representatives will work closely with their Council Representative, who may actually be the same person, and the Club Committee. It is this combination of a separate Council and Members that gets round the restrictions that could hinder good governance if there were only one body.

## **9. Who will be the Company Members?**

The majority of the Company Members will be the 11 Area Masters Clubs and Associations who will appoint a representative to act on their behalf at meetings. Rules are set out in the Articles about how the representatives may work so that if they are unable to be present then someone else can take their place. This is very important in order to keep the grass roots club connection in place and ensure that the Company is providing the services that the Area clubs and their athlete members require. In addition, a few of the main board directors, such as the Chairman and Vice Chairman, will also become members. The clubs will always be in the majority with safeguards built into the Articles to protect that majority even if their numbers at a meeting are insufficient to achieve that majority. A facility known as a poll can be demanded by any member, even after a vote has been taken. A Poll is a new postal/electronic vote by all Members that can over-ride the original vote.

## **10. Who will be the Main Board Directors and how are they chosen?**

There will not be more than eight and not less than three directors made up as follows:

1. Chairperson
2. Vice Chairperson
3. At least 3 Non-executive Directors
4. The Chief Executive Officer of any wholly owned subsidiary company

Additional directors at the Board of Directors discretion:

1. Finance Director
2. Director representing the national governing body for athletics, UK Athletics
3. CEO of BMAF Ltd if appointed as an officer of the Company

Directors are elected by the Company Members at an AGM provided that they have been ratified by the Nominations Committee as being suitable. All Directors will serve for a term of 3 years except for Chairperson, 2 Non-executive Directors and any CEO who will be appointed for a term of 2 years at the formation of the Company and every 3 years thereafter. This helps ensure that the Board will not lose all its directors at the same time.

## **11. Who will be in the Council?**

The Council will be made up of representatives from each of the Area Clubs and may be changed as necessary.

## **12. Who will be in the Nominations Committee?**

Appointed by the Board, there will be a minimum of 5 members with the majority independent. The 5 will include the Chairperson and a Member.

## **13. Who will be in the Governance, Finance, Audit and Risk Committee?**

The Committee's purpose, responsibilities, structure, membership, organisation, and any powers will be determined by the Board and recoded in the Byelaws written by the Board.

## **14. What happens to BMAF Services Ltd?**

BMAF Services Ltd was established as the first stage of incorporation and ensured that the liability protection a company by limited guarantee could provide was available as quickly as possible for the main areas of risk that the BMAF faced. Its articles were drafted to provide maximum financial flexibility keeping close to model articles. It was not intended to have significant involvement, mainly member administration, and event and management with a small staff. Governance was not a high priority, and no formal agreement was put in place between Services and the BMAF. Accountability was provided by a representative of Services attending Executive meetings and the majority of company members being representatives from the Area Clubs. Finance was provided by BMAF as and when needed.

The change in structure requires a different approach with increased governance and more formal links with BMAF Ltd. The governance improvements will arise from changes to its articles that will bring it into line with those of BMAF Ltd and by becoming a wholly owned subsidiary. Its role will be expanded to include much of the work of the current executive so that it deals with all the operational side of the BMAF. With BMAF Ltd as the sole company member and guarantor, it will have statutory controls over its operation and reporting.

Rather than having just individual discipline secretaries, each discipline will have a Lead and a team that collectively takes responsibility. The make up of each team will initially be determined by each Lead as it is expected that the requirements for each team will differ. It is hoped that this Team approach will lead to greater involvement of athletes and competition officials. An additional team will be created covering the international scene. This will include Team management, ratification for WMA and EMA championships, country allegiance changes and any matters coming from WMA and EMA including competition rule changes.

There will also be an Operations Team including IT, Finance, Secretarial, Marketing & Comms. Its Executive under a Chief Executive Officer will be the Team leads.

The Executive will liaise with the Council who will perform a similar role to the current advisory relationship between the Executive and the Council.

## **14. What voting rights will club members have under the new structure?**

The BMAF is unusual in that all the athletes are members of the Area Clubs, and it is the Area Clubs who are members of the BMAF. Normal practice would be just for the Clubs to have the right to attend AGMs and vote for officers. In the case of the BMAF, however, it is the Area Clubs Members who have the right to attend the AGM and have individual voting rights. The Area Clubs have none. In the new Company structure strictly speaking it will now be the Company Members who have the voting rights. Those rights are being adhered to as set out in the Articles with the Area Clubs having powers through being Company Members/guarantors and the Council. However, it is felt that the athletes and Area Club officials should not be disenfranchised from having voting rights in the athletic operation. Accordingly, all the Officers, in BMAF Services

Ltd Executive, apart from the Chief Executive officer, will be appointed by the vote of athletes and other area Club members at an annual Athletes and Officials Meeting. The Chief Executive Officer will be appointed by the Board of the main company, but the athletes and officials will have the opportunity of voting for their preferred candidate who will be recommended to the Board. This is not the official AGM which has to be conducted with the company members under Companies Act rules. That meeting will be conducted along similar lines to the current AGM with accounts and reports being provided by the various officers, an opportunity to question and make suggestions and the election of the officers.

This is a unique structure that combines the best of a company structure and a club set up to help ensure the continued involvement opportunity of the grass roots athletes and club officers.

## **15. What is the AGM being asked to vote on?**

The executive is asking for approval to take the incorporation into the next stage of finalising the main company articles considering the views expressed by the Council, area club committees and their club members plus the AGM. It is not asking for final approval of the articles but requires confirmation that the basic structure, decision making and voting processes are acceptable. Any objections to particular articles can be raised for consideration. Approval subject to certain changes be acceptable. In view of the significance of this decision at least a 2/3rds majority is required.

## **16. What will happen after the AGM?**

If the AGM gives approval, the BMAF Ltd articles will be finalised, and the emerging draft will be submitted to the Council before being used as the basis for a revised set of articles for BMAF Services. It is important that there is no conflict between the articles of the two companies and there are provisions for oversight and reporting from services to the main company. A legal review will be obtained once the document is finalised. BMAF Services revised articles will be submitted to the Executive, the Council, and its company members for their approval. The whole package will then be submitted to an EGM where approval will be sought for the final documentation and for the formal wind up. Approval for transfer of assets from the BMAF to the new company will be sought from each individual Area Club. Once all the approvals have been received, papers will be sent to Companies House to set the new company up. Some initial temporary appointments are likely while going through setting up the company. The revised articles for services will be submitted to Companies House. In due course the final step will be for BMAF Ltd to be appointed as a company member/guarantor of BMAF Services and all the other members resign leaving BMAF Ltd as the sole member making Services a wholly owned subsidiary.

## **17. What key features should you be reviewing?**

The most important features voters should consider are: -

- a. Are you happy with the Company's objects set out in the articles? These set out the scope of the BMAF's operations. In some instance these go further than the existing purposes of the existing constitution giving the right to go outside current restrictions of providing mainly for Area Club members.
- b. Are you happy with the control structure of the two companies and who will be making the key decisions?
- c. Are you happy with oversight and accountability features that are included to keep decision makers in check?
- d. Are you happy with the appointment process for the main company posts?
- e. Are you happy with the appointment and voting process for the officers in BMAF Services?