



QUESTIONS ABOUT THE AILG INCORPORATION PROPOSAL

7 February 2007

Why is the AILG Board proposing this now?

Several reasons:

- To comply with the Internal Revenue Code (IRC). The AILG cannot continue in its present form without violating the Internal Revenue Code (IRC), which prohibits unreported business activity above a certain threshold. With the creation of the SLI program last year and the ongoing educational programming, the AILG now has enough economic activity that we must be incorporated and file.
- To allow the AILG Chair to sign a contract based on a vote of the Plenary or Board. The AILG currently has no legal existence – we are an unincorporated association, meaning that to take any action, the AILG technically needs the unanimous approval of its members to be binding on the group. This makes it very difficult for the AILG to enter into agreements with suppliers and contractors like the FSILG Cooperative, Inc. and the Building Safety Facilitator Jay Flynn. Currently each house has to sign a separate document annually to create the SLI program and contract with the BSF, and the same will be true for any other action the AILG undertakes
- To provide protection to the member corporations, chapters, and ILG's. At present, as an unincorporated association, it is possible that any and all members of the AILG can be found liable for the debts or liability incurred by the AILG.
- To provide liability protection to board members and other volunteers. At present, as an unincorporated association, it is not clear whether our volunteers are protected under non-profit volunteer statutes when working on behalf of the AILG.
- To allow the AILG to obtain a tax ID. As an unincorporated association, the AILG cannot have a tax ID, which effectively prohibits it from owning any assets, or even a bank account.

Will the operation of the AILG change?

The operation of the AILG depends today on its Charter and, after incorporation, will depend on its corporate Bylaws. Those Bylaws will and must be presented to the Plenary for approval later as they are an essential part of forming the corporation. However, to be clear, it is the Board's intent that the operation of the organization will not change in any noticeable way: It will still be governed by the Plenary of corporation members, which will still elect the Board of Directors to manage the operation. In a sense, our success over the last few years now requires some formality we did not previously need.

When will this take place?

If approved by the Plenary on February 14th, we will then contract a competent attorney to draft the necessary Articles of Incorporation and Bylaws based as closely as possible on our current Charter. These will have to be formally adopted by the membership in an incorporation vote later this spring, with the goal of establishing the corporation by July 1st, 2007.

What has been the process so far, and what steps remain?

In 2005 the AILG board began discussing this issue. At the November 16, 2005 Plenary meeting it was further discussed and a motion was made and passed (with one nay vote) to form a committee, authorize it to hire legal counsel, and develop a proposal for incorporation for presentation to the Plenary. The AILG Committee on Incorporation (ACOI) then set to work.

During this process many individuals have worked hard at collecting information, obtaining legal opinions, discussing and evaluating proposals. In early February, 2007 the AILG board reviewed this information and voted unanimously to recommend the course of action described in this proposal.

If the Plenary approved this proposal, the ACOI will work with legal counsel to draft formal Articles of Incorporation and Bylaws. These will be presented later this spring for a formal incorporation vote by the Plenary.

What form of corporation should the AILG adopt?

After considering the alternatives both as studied by the ACOI and as reviewed by a competent attorney, the Board voted unanimously on February 3rd to recommend to the Plenary that we create a non-profit corporation organized under Section 501(c)(6) of the Internal Revenue Code (IRC). A 501(c)(6) is a non-profit business association. This entity is intended to be an association of member organizations that is organized and devoted for the betterment of its members – which is exactly what the AILG is. Other organizations that are similar to the AILG, including the North-American Interfraternity Conference (NIC), National Pan-Hellenic Conference (NPC), and the IFCs at a number of universities, are organized under this section of the IRC.

Please note that obtaining non-profit status is not automatic; one has to apply and be approved. In the unlikely event that our application is denied, we would automatically convert to a regular for-profit “C” corporation.

What alternatives did the Board consider besides a 501(c)(6)?

The Incorporation Committee studied numerous other forms of organization, including both for-profit Type “C” and Type “S” corporations, non-profit 501(c)(3) and 501(c)(7) corporations, a limited liability corporation (LLC) and various types of partnerships.

We decided against the partnership, LLC, and “S” corporation forms because of the greater tax reporting burden they would have placed on both the AILG and the individual members, all of whom would have had to report their involvement in the AILG on their tax filings.

We decided against the 501(c)(3)—an educational or charitable foundation—because organizing and managing the finances of a public charity is extremely complex, and it is not clear that all of our activities would qualify for financing through a 501(c)(3) in any case. All of the activities of a 501(c)(3) must be in pursuit of an educational or charitable purpose, and the IRS scrutinizes them very closely.

We decided against the 501(c)(7)—a social or fraternal club—because as an association of member organizations, the AILG does not meet the IRC definition of a social club of individuals.

This left only the for-profit “C” corporation and non-profit business association as forms that the Board felt were viable. We decided on the 501(c)(6), because even though it is slightly more difficult and expensive to organize than a regular, for-profit corporation since one has to apply and be accepted for non-profit status, the Board felt that it better reflected the AILG’s mission as an association to advance the interests of our members. In addition, the compliance costs of operating a non-profit are typically lower than those of operating a for-profit entity.

Have we obtained legal advice?

We consulted with attorney Susan Abbott of Goodwin Procter and with attorney Gary M. Locarno. Attorney Locarno has worked with and was recommended by one of our members and is both a CPA and a tax attorney.

Does this approach require any changes by our member FSILGs?

No. Non-profit and for-profit corporations can be members of a 501(c)(6) without affecting their respective corporations. Requiring no change by our members was a requirement on whatever solution we selected.

How much will it cost to incorporate?

In the 2007 AILG budget, as adopted September 20, 2006, \$12,000 was allocated for incorporation. We currently believe that putting the proposed 501(c)(6) in place will require no more than \$7,500 of that budget, or about \$200 per member corporation / chapter / ILG. As with all AILG activities, this sum is for external (legal and filing) costs and does not include the considerable volunteer labor for which we are all grateful.

Is MIT aware of this change?

We discussed this with Deans Benedict and Immerman before proceeding. The Board believes that they fully support this action, and, of course, we will keep them informed of our progress, as we will do with the AILG membership itself.