

Fact sheet 4

Legal Structures

There are a number of different types of legal structure available, and choosing the right legal structure for your organisation is an important step. It will affect what you can and can't do, and could affect your degree of financial risk, the control you retain over your activities, how you can raise money, as well as the amount of administration involved.

A legal structure may include one or more legal forms and types of status, depending on the circumstances and activities delivered. A number of legal structures exist and each has its own relative advantages and disadvantages and will be suitable for different types of organisations.

Commonplace Legal Structures

Legal structures often found in the voluntary and community sector include the following:

Unincorporated Association (Society)

A group of people joined together for a common purpose, governed by a written constitution. While it can be set up quickly, individuals have unlimited liability and are personally responsible for any debts.

Charitable Trust

Two or more individuals declare in a deed to hold property upon trust to be used for defined charitable purposes. An advantage is that it is autonomous, although a disadvantage is that Trustees are personally liable for contracts they enter into.

Company

Considered in law to be an individual with its own legal identity, and as such it can enter into contracts in its own name, sue, and be sued. There are two main types of Company; Private Company Limited by Share (owned by shareholders), and Private Company Limited by Guarantee (owned by members). Greatest advantage is that owners are not personally liable for debts, unless negligent, however legal requirements can be time consuming.

Community Interest Company

Includes a 'community interest test' and an 'asset lock' to ensure the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Dividends may be paid to members and directors may be paid for their role, although a CIC cannot have charitable status.

Industrial and Provident Society (IPS)

Have own legal identity and members have limited liability. There are two types; Bona Fide Cooperatives (services for members), and Bencom (services for the benefit of the community). All IPSs may distribute a surplus annually through dividends to members, although they are relatively inflexible and must operate on a 'one member one vote' basis.

Charitable Status

Not a legal form in itself, but a status applied to certain legal forms. The concept of a charity is far wider than many realise, and charities are not confined to helping the

poor or destitute. All charities must always act for the public good, must have charitable objects, and the primary purpose cannot be to make money. Charities have very specific rules on trading and are not generally allowed to undertake activities designed solely to generate funds. Many organisations form a dual structure to enable trading activities, for example operating a company limited by guarantee with charitable status (to undertake solely charitable work) and incorporating a wholly-owned trading subsidiary as a company limited by share (to generate income)

Further information:

The following information may be useful:

Co-operative UK: Simply Legal

A clear, simple and understandable guide to the legal and governance processes required to support the third sector - from co-operatives to social enterprises.

www.uk.coop/resources/documents/simply-legal

Governance Hub and Co-operatives UK: Governance and Organisational Structures

A guide about the common organisational and legal structures

http://www.socialenterpriseworks.org/wp-content/uploads/2009/05/governance_and_organisational_structures.pdf

Co-operatives UK: Select a structure tool

The questionnaire displays a list of the possible legal forms and organisational types. You will be asked a series of questions and your responses will lead to some of these options becoming less likely as the appropriate choice for your venture.

<http://www.uk.coop/sas>

Get Legal

A free online reference and decision-making tool for charities, social enterprises and co-operative organisations. Get Legal has been developed by NCVO, with support from BWB, to enable organisations and their advisors to access clear information and guidance on the most appropriate legal form and governance structure for delivering their goals.

www.getlegal.org.uk

Have you seen our other useful fact sheets?

- Fact sheet 1: Starting Up
- Fact sheet 2: Management Committee Roles and Responsibilities
- Fact sheet 3: Committee Meetings
- Fact sheet 5: Constitution
- Fact sheet 6: Business Planning
- Fact sheet 7: Are you fit for funding?
- Fact sheet 8: Charities and VAT

For further information and advice contact the CVS Development Team:

Call 01768 800350 or email: info@cumbriacvs.org.uk

Or visit the Cumbria CVS website www.cumbriacvs.org.uk

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LEGAL STRUCTURES FOR SOCIAL ENTERPRISE AT A GLANCE

This is a rough guide to the legal structures most commonly associated with social enterprise. However, there are a variety of legal requirements associated with setting up the structures described below and you should consider seeking professional advice before your organisation adopts any one of them.

Legal structure	Summary: most typical features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets 'locked in' for community benefit?	Can it be a charity and get charitable status tax benefits?	Differences in the law as it applies in Scotland or Northern Ireland?
Unincorporated association	Informal; no general regulation of this structure; need to make own rules.	Nobody owns - governed according to own rules.	No, which can create problems for contracts, holding property and liability of members.	Depends on own rules.	Would need bespoke drafting to achieve this.	Yes, if it meets the criteria for being a charity.	No specific differences.
Trust	A way of holding assets so as to separate legal ownership from economic interest.	Assets owned by trustees and managed in interests of beneficiaries on the terms of the trust.	No, which means the trustees are personally liable.	Not usually. Trustees/directors can only benefit if trust, court or Charity Commission give permission.	Yes, if trust established for community benefit.	Yes, if it meets the criteria for being a charity.	No, subject to differences between English and Scots trust law.
Limited company (other than Community Interest Company) www.companieshouse.gov.uk	Most frequently adopted corporate legal structure; can be adapted to suit most purposes.	Directors manage business on behalf of members. Considerable flexibility over internal rules.	Yes, members' liability limited to amount unpaid on shares or by guarantee	Yes, but no dividends etc to members if it is a company limited by guarantee.	Would need bespoke drafting in articles, which could be amended by members.	Yes, if it meets the criteria for being a charity.	Scotland: no. Northern Ireland: separate but similar legislation.
Community interest company (CIC) www.cicregulator.gov.uk	An effective limited company structure for social enterprise with secure 'asset lock' and focus on community benefit.	As for other limited companies, but subject to additional regulation to ensure community benefits.	Yes, members' liability limited to amount unpaid on shares or by guarantee.	Yes, but must benefit the wider community. Can pay limited dividends to private investors and directors can be paid.	Yes, through standard provisions which all CICs must include in their constitutions.	No, but can become a charity if it ceases to be a CIC.	Scotland: no. Northern Ireland: legislation not yet in place.
Industrial & Provident Society (IPS) (Co-operative) http://www.fca.org.uk/firms/firm-types/mutual-societies/industrial	For bona fide co-operatives that serve members' interests by trading with them or otherwise supplying them with goods or services.	Committee / officers manage on behalf of members. One member, one vote (regardless of size of respective shareholdings).	Yes, members liability limited to amount unpaid on shares.	Yes, but should do so mostly by members trading with society, using its facilities etc, not as a result of shareholdings.	Would need bespoke drafting in articles, which could be amended by members.	No, would have to be constituted as community benefit type of IPS.	Scotland: no. Northern Ireland: separate but similar legislation.
Industrial & Provident Society (IPS) (Community Benefit Society (BenComm))	Benefit community other than just own members and have special reason not to be companies.	Like Co-op type, but new legislation provides option of more secure form of 'asset lock'.	Yes, members liability limited to amount unpaid on shares.	Must primarily benefit non-members - 'asset lock' applies.	Yes, asset lock only survives dissolution if new statutory form of asset lock adopted.	Yes, if it meets the criteria for being a charity.	Scotland: no. Northern Ireland: legislation not yet in place.
Charitable Incorporated Organisation http://www.charitycommission.gov.uk/frequently-asked-questions/faqs-about-charitable-incorporated-organisations-(cios)/cios-setting-up-and-registering/	First ready-made corporate structure specifically designed for charities.	Similar to company but with different terminology, eg 'charity trustee' instead of 'director'.	Yes, members either have no liability or limited liability.	Members are not permitted to benefit and charity trustees are only able to benefit if constitution, court or Charity Commission give permission.	Yes.	Cannot be anything but a charity, and must meet the criteria for being a charity.	Scotland: separate but similar legislation and regulator. Northern Ireland: legislation not yet in place.

