

9: Choosing a legal structure for the voluntary and community sector

This factsheet should be seen as a starting point and introduction to legal structures and is not a replacement for professional guidance and support.

If you are thinking about (or are in the process of) setting up a charitable organisation, consider carefully what legal form you opt for. Your legal structure can have a huge impact on any future activities, such as fundraising, trading or contracting because your legal status is closely linked with how you are governed and regulated. It can also affect your legal rights as an organisation.

Voluntary and community groups

If you are a community group, local club, or association your type of organisation is known in legal terms as an ‘**unincorporated association**’. This means that even if you have your own name as a group, you are simply a group of people coming together under a shared interest or activity and you have no separate legal identity. Since your organisation is not a separate legal entity in the eyes of the law, individuals take personal liability for any risk or debts and you cannot enter into any legally-binding contracts in the organisation’s name (but as an individual you can). For more information, see **Factsheet 1a – Starting a new group**.

Registering for charitable status

If your organisation has charitable aims (as outlined in the Charities Act 2011) and is for the benefit of the public, you may need to register as a charity once the income per year reaches £5,000. The **Charity Commission** regulates and administers all registered charities in the UK, offering much guidance through their website. For more information, see **Factsheet 10 – Charity registration**.

Registering as a charity is not a legal form in itself (unless you choose to register as a Charitable Incorporated Organisation (CIO)). For your organisation to become a separate entity in the eyes of the law, organisations must become ‘incorporated’, choosing a legal structure that is right for them. The following ‘incorporated’ forms introduce the main types of legal structures within the voluntary and community sector.

Company Limited by Guarantee

Many charities chose to become a Company Limited by Guarantee (CLG) because it is relatively straightforward to set up with non-profitable aims.

“Choosing the right legal structure goes a long way towards making an organisation run more effectively”
Co-operatives UK

A CLG is essentially a private company that reinvests any profits back into the company. It has its own members but does not have shareholders or shares – because of this they can also apply for charitable status. A CLG means that an organisation becomes incorporated as a legal entity in its own right.

To become a CLG you will need to register with Companies House. To become a charitable CLG you will also need to register with the Charity Commission (this is often done at the same time). In this circumstance you will be subject to company law but will need to comply with the Charities Act and Charity Commission regulations as well.

Charitable Incorporated Organisation

Charitable Incorporated Organisations (CIOs) were introduced to simplify the process for setting up an incorporated charity, because you only need to register with the Charity Commission (rather than having to register with Companies House as well). There are two models for CIOs:

- a foundation CIO – if you want your charity to be a corporate body, the only members are the trustees, and you don't want a wider membership; and
- an association model – if you want to have a wider membership including voting members other than the charity trustees

There is no minimum income requirement to be able set up a CIO.

Community Interest Company (CIC)

Social enterprises and community businesses have no legal identity or definition but are a concept that has become increasingly popular. They are fundamentally a normal business or company but have some unique and important features to safeguard their social mission. A common legal structure for such an enterprise is a CIC.

CICs are limited companies which operate to provide a benefit to the community they serve. A CIC cannot register as a charity, even though it may be set up for a charitable purpose. CICs are regulated by Companies House but they also have their own **CIC regulator** that registers, monitors, and regulates them.

CICs can be converted to CIOs.

Key Words

Charity Commission

the regulatory body for all registered charities

CIC Regulator

the regulatory body for Community Interest Companies

Companies House

the regulatory body for companies

Company Limited by Guarantee

a private, incorporated company that reinvests any profits back into the company

Incorporated

a separate organisation or business with its own legal identity

Unincorporated

a group of people coming together under a shared interest or activity, including a community group, local club, or association

Registered Societies

Industrial and Provident Societies (IPS) are organisations with a long history, that carry out a business, trade, or industry either as a co-operative or for the benefit of the community and they were previously the only form of registered society. Only those registered before 1 August 2014 are still referred to as an IPS.

Since then they are now called Cooperatives or Community Benefit Societies. Like Companies they are corporate bodies but are registered with the Financial Conduct Authority rather than Companies House or the Charity Commission. They are generally less common as a legal form because their governance structure is more complex.

Charitable Trust or Foundation

In legal terms, a charitable trust or foundation must be registered with the Charity Commission, but they are unincorporated (so any trustees carry personal liability for any debt).

Most charitable trusts and foundations in the UK focus primarily on grant-making. They do not engage in other activities, or provide direct support to the sector itself, although many are beginning to explore other ways of addressing recent economic, social, and environmental challenges. Charitable trusts or foundations have a great degree of autonomy. They are extremely diverse – not only in the scale and number of grants made and the type of trust – but in their age, their style of grant-making and in the areas they support.

A charitable trust must be for the benefit of the public, though it may be set up to benefit a specific cause. The Joseph Rowntree Foundation and Charities Aid Foundation are examples of charitable trusts. Charitable trusts differ from private foundations, which allow private individuals or families to control their assets while protecting their family from taxes and creditors. The Chatsworth House Trust in Derbyshire is an example of a private trust.

Where to go next:

- Simply Legal – All you need to know about legal forms and organisational types for community enterprises by Co-operatives UK, available to download for free from: www.uk.coop/simplylegal
- The Charity Commission: www.gov.uk/government/organisations/charity-commission
- Co-operatives and how to start one up: www.uk.coop
- Companies House: www.gov.uk/government/organisations/companies-house
- Community Interest Companies: www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies
- Contact us on 0333 321 3021 or email: info@mcrcommunitycentral.org

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