Legal Structures for Social Enterprise

Nicola Dickins
Make it Happen Consultancy

About Make it Happen

• Stockport
• Income Generation & Social Value Specialists
• 97 Start Up Social Enterprises
• £165 million income
• Qualified and Experienced in Social Enterprise
• Social Accountants

Types of Legal Structures
Where are you now?

Charitable Organisations

Group of People Association

Each Person is individually Liable

Incorporation (not-for-profit)

CIO Charitable Incorporated Organisation

Charitable Trust

No Incorporation

Charitable Association

Charitable Purpose comes before profit – “Public Benefit”

Incorporation

Legal personality
An incorporated business is a legal entity in its own right. This means that it can enter into contracts, employ staff, lease property and have its own obligations and liabilities.

Limitation of risk
Incorporation limits the personal liability of the individuals involved. Incorporation is an important consideration if the organisation intends to employ any staff, take on significant property interests or undertake major contractual obligations.

Clear ownership structure/governance
Incorporation involves the formalisation of governance structures within a legislative framework.

Public accountability
With limited liability comes regulation and disclosure requirements, which can increase public confidence in the company. Limited companies and charitable incorporated organisations have to have a registered address, file their constitutions, annual accounts and prescribed details of their directors etc.
Charitable Incorporated Organisation (CIO)

A charitable incorporated organisation, or CIO, is a new legal form for a charity. A CIO is an incorporated form of charity which is not a company only has to register with the Charity Commission and not Companies House is only created once it is registered by the Commission can enter into contracts in its own right and its trustees will normally have limited or no liability for the debts of the CIO. The CIO was created in response to requests from charities for a new structure which could provide some of the benefits of being a company, but without some of the burdens.

Charity Benefits

- Reduction in Business Rates – 80% - 100%
- Exempt from Corporation Tax
- Gift Aid
- Preferential Rates
- Exempt from VAT (in most cases)
- Public Trust

Charity Trading

- Primary Purpose Trading (to meet objects)
- Trade carried on by the charity’s beneficiaries (as a result of charitable activity)
- Ancillary trading (for beneficiaries comfort)
- The sale of donated goods.
- Small-scale trading (less than £50k or 10% of turnover)
- Income from property
- Raffles and lottery
- Fundraising events
Companies

- Individual
  - Sole Trader
  - Limited by Guarantee
  - Limited by Shares
  - Partnership

Register with HMRC
Incorporated at Companies House
No Regulator

Established to make profit for the benefit of its shareholders (personal gain)

Profit for Purpose Enterprise

- Group of People
  - Association
    - Limited by Guarantee
    - Limited by Shares

No Regulator: Known as a not-for-profit company
CIC Regulator: Known as a Community Interest Company

Established to make profit, not for personal gain, to re-invest back into the community

Community Interest Companies

- Limited Company regulated by CIC regulators based at Companies House.
- Does not have charitable objectives and cannot register as a charity.
- All profits must be invested for the benefit of the community.
- Does not receive benefits that charities can – operates as a private limited company.
- Second highest level of regulation.
- Regulators have power to freeze bank accounts, remove directors and intervene if they do not feel the CIC is operating for community benefit.
- Fastest growing social enterprise sector.
- Over 8,000 CIC’s now registered throughout England & Wales.
- Only one director required/one member to register
- Flexible governance
- Limited liability £1
- Asset Locked Body
- Costs £35 to register
### Democratic Organisations – Co-Operative Principles come first.

<table>
<thead>
<tr>
<th><strong>Members</strong></th>
<th><strong>Benefit of the Community</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Share, 1 Vote</td>
<td><strong>Charities Commission</strong></td>
</tr>
<tr>
<td><strong>Society Rules: Co-operative Principles</strong></td>
<td><strong>Charitable Objectives</strong></td>
</tr>
<tr>
<td><strong>Housing Association</strong></td>
<td><strong>Financial Services Authority</strong></td>
</tr>
<tr>
<td><strong>Workers</strong></td>
<td><strong>Industrial &amp; Provident Society</strong></td>
</tr>
<tr>
<td><strong>Co-operatives UK</strong></td>
<td><strong>Co-operatives UK</strong></td>
</tr>
</tbody>
</table>

**Co-operatives**

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a joint owned and democratically controlled enterprise.

It is member led and members are jointly responsible for the management of the organisation.

**Co-operative Principles**

- Voluntary and Open Membership
- Democratic Member Control
- Member Economic Participation
- Autonomy and Independence
- Education, Training and Information
- Co-operation among Co-operatives
- Concern for the Community
### Company Regulators

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charities Commission</td>
<td>Registered Charity</td>
</tr>
<tr>
<td>CIC Regulator</td>
<td>Charitable Incorporated Organisation</td>
</tr>
<tr>
<td>FCA Regulation</td>
<td>Industrial &amp; Provident Society</td>
</tr>
<tr>
<td>Companies House</td>
<td>Limited Companies</td>
</tr>
<tr>
<td>Unregulated</td>
<td>Community Group</td>
</tr>
<tr>
<td></td>
<td>Society</td>
</tr>
<tr>
<td></td>
<td>Association</td>
</tr>
</tbody>
</table>

### Fairshares Model

<table>
<thead>
<tr>
<th>Shares Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder Shares</td>
<td></td>
</tr>
<tr>
<td>Labour Shares</td>
<td></td>
</tr>
<tr>
<td>Service User Shares</td>
<td></td>
</tr>
<tr>
<td>Investor Shares</td>
<td></td>
</tr>
</tbody>
</table>

The Fairshares Model enables the distribution of a variety of shares with different voting and distribution rights.

http://www.fairshares-association.com/

### What effects do Legal Structures have on Social Enterprise?

---
<table>
<thead>
<tr>
<th>Income Generation</th>
<th>Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance &amp; Democracy</td>
<td>Public Trust</td>
</tr>
</tbody>
</table>

**Income generation Considerations**

**Trading**
- Charities have restricted trading under Charity Law.
- Charities cannot hold large amounts of unrestricted funds.

**Commissioning**
- Unincorporated associations do not have any legal entity so individuals must enter into contracts.
- Charities have complicated governance and can tend to resist change and innovation.
- Member led organisations can take a long time to make decisions.

**Funding**
- The public know and trust Charities.
- Many Trust giving bodies will only fund charities.

**Any Questions?**