



LEGAL STRUCTURES FOR SOCIAL ENTERPRISE AT A GLANCE

This is a rough guide to the legal structures most commonly associated with Third Sector organisations.

A social enterprise, at its core, is a business that generates profit and reinvests that profit to deliver social or environmental benefits, however there is no single legal structure for a social enterprise, meaning that groups must consider what is the right legal structure for them.

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. For perspective, common legal structures for social enterprises are Community Interest Companies (CIC), Scottish Charitable Incorporated Organisations (SCIO) and Companies Limited by Guarantee (CLG).

Legal Structure	Summary: most typical features	Ownership, Governance and Constitution	Is it a legal entity distinct from those who own/run it?	Can its activities benefit those who own and/or run it?	Assets 'locked in' for community benefit?	Can it apply for Charitable Registration??	Regulated by
Unincorporated Association Not suitable for asset-locking	Informal; no general regulation of this structure; need to make own rules.	Property, assets and potential liability are vested in the Office Bearers	No, which can create problems for contracts, holding property and liability of members.	Depends on own rules.	In practice, no. It is not recommended that UA's hold ANY assets	Yes, if it meets the criteria for being a charity.	Not regulated by an external regulator or subject to specific legislation, although some case law does exist. If becomes charitable it will be subject to charity law and regulated in Scotland by OSCR. under the "2005" Act
Limited Company (Limited by Shares, or Limited by Guarantee)	Most frequently adopted corporate legal structure; It can enter into third party contracts, sue and be sued	Directors manage the business on behalf of members/shareholders. Considerable flexibility over internal rules.	Yes, members' liability limited to shareholding or guarantee.	Yes.	Assets can be locked in <i>via</i> bespoke drafting in articles, which could be amended by members.	Yes, if it can meet the Charity test.	Regulated by Companies House. Subject to the Companies Acts and other legislation. If becomes charitable then will be subject to charity law and regulated in Scotland by OSCR under the "2005" Act.



Legal Structure	Summary: most typical features	Ownership, Governance and Constitution	Is it a legal entity distinct from those who own/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 a charitable status tax benefit?	Regulated by
Community Interest Company (CIC)	An effective limited company structure for social enterprise with secure 'asset lock' and focus on community benefit. It can enter into third party contracts, sue and be sued	As for other limited companies, but subject to additional regulation to ensure community benefits.	Yes, members' liability limited to shareholding or guarantee.	Yes, but must benefit the wider community. Can pay limited dividends subject to CIC regulator limits to private investors and directors can be paid.	Yes, through standard provisions which all CICs must have in their constitutions.	No, but can become a charity if it ceases to be a CIC and can meet the Charity test.	Regulated by Companies House. Subject to the Companies Act and other legislation AND regulated by the CIC Regulator.
Scottish Charitable Incorporate Organisation (SCIO)	A SCIO is a legal entity It can enter into third party contracts, sue and be sued	Must have at least two founding members (who may also be charity trustees), and a minimum of 3 Charity Trustees. May have a single tier structure or a two-tier structure.	Yes	Yes	Yes	On Incorporation a SCIO is placed on the Scottish Charity Register	Subject to charity law and regulated by OSCR under the "2005" Act



Legal Structure	Summary: most typical features	Ownership, Governance and Constitution	Is it a legal person distinct from those who own/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 a charitable status tax benefit?	Regulated by
Trust	A way of holding assets so as to separate legal ownership from economic interest.	Assets owned by trustees and managed in interest of beneficiaries on the terms of the trust.	No, which means the trustees are personally liable.	Not usually. Trustees can only benefit if trust, court or Charity Commission give permission.	Yes, subject to appropriate provisions in the Trust Deed	Yes, if it meets the Charity test.	Not regulated by an external regulator, but is subject to various legislation, e.g. Trusts (Scotland) Acts 1921 and 1961. If it is charitable it will be subject to charity law and regulated in Scotland by OSCR under the "2005" Act-
Industrial & Provident Society (IPS) (Co-operative)	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.	Assets can be locked in <i>via</i> bespoke drafting in articles, which could be amended by members.	No, would have to be constituted as community benefit type of IPS.	Regulated by The Financial Services Authority.
Industrial & Provident Society (IPS) (Community Benefit Society)	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 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.	Regulated by The Financial Services Authority.

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