

## GOVERNANCE / LEGAL STRUCTURES AT A GLANCE

*This is a rough guide to the governance and legal structures most commonly associated with community endeavors. For more information on them, see the websites listed below. However, there is a lot of law on each of the legal structures described below and you should consider seeking legal advice before your organisation adopts any 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? |
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| <b>Unincorporated association</b>   | <p>Informal; no general regulation of this structure; need to make own rules unless registered as a charity.</p> <p>Two tier structure – Board and members</p>                                     | <p>Nobody owns: governed according to own rules.</p> <p>Governing document - Constitution</p>  | No: 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.           |
| <b>Trust</b>  | <p>A way of holding assets so as to separate legal ownership from economic interest.</p> <p>Single tier structure so no AGM, election of trustees etc not answerable to a wider body of people</p> | <p>Assets owned by one or a number of trustees and managed in interests of beneficiaries on the terms of the trust.</p> <p>Governing document - Trust Deed</p> | No: trustees personally liable.   | <p>Trustees/ directors no, unless trust, court or OSCR permit.</p> <p>Prohibition on payment to trustees</p> | Yes (if trust established for community benefit).                            | Yes if it meets the criteria for being a charity.           |
| <p><b>Limited company (other than Community Interest Company)</b></p> <p><a href="http://www.companieshouse.gov.uk">www.companieshouse.gov.uk</a></p> | <p>Most frequently adopted corporate legal structure; can be adapted to suit most purposes.</p>  | <p>Directors manage business on behalf of members. Considerable flexibility over internal rules.</p> <p>Governing document – M&amp;A's</p>                     | 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.           |
| <b>Community interest</b>   | "Of-the-peg" limited company structure for   | As for other limited companies, but  | Yes; members' liability limited   | Yes, but must benefit wider  | Yes, through standard  | No, but can become a charity if it ceases to                |

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| <p><b>company (CIC)</b></p> <p><a href="http://www.cicregulator.gov.uk">www.cicregulator.gov.uk</a></p>   | <p>social enterprise with secure "asset lock" and focus on community benefit.</p>   | <p>subject to additional regulation to ensure community benefits.</p>   | <p>to amount unpaid on shares or by guarantee.</p>                 | <p>community as well. Can pay limited dividends to private investors.</p>   | <p>provisions which all CICs must include in their constitutions.</p>                          | <p>be a CIC.</p>   |
| <p><b>Industrial &amp; Provident Society (IPS) (Co-operative)</b></p> <p><a href="http://www.fsa.gov.uk/Pages/Doing/Info/MSR/">www.fsa.gov.uk/Pages/Doing/Info/MSR/</a></p> | <p>For bona fide co-operatives that serve members' interests by trading with them or otherwise supplying them with goods or services.</p> | <p>Committee / officers manage on behalf of members. One member, one vote (regardless of e.g. sizes of respective shareholdings).</p> | <p>Yes; members liability limited to amount unpaid on shares.</p>  | <p>Yes, but should do so mostly by trading with society, using its facilities etc, not as a result of e.g. shareholdings.</p> | <p>Would need bespoke drafting in articles (which could be amended by members).</p>            | <p>No – would have to be constituted as community benefit type of IPS.</p>               |
| <p><b>Industrial &amp; Provident Society (IPS) (Community Benefit Society (BenComm))</b></p>  | <p>Benefit community other than just own members and have special reason not to be companies.</p>   | <p>Like Co-op type, but new legislation provides option of more secure form of asset lock.</p>  | <p>Yes; members liability limited to amount unpaid on shares.</p>  | <p>Must primarily benefit non-members; asset lock applies.</p>  | <p>Yes (asset lock only survives dissolution if new statutory form of asset lock adopted).</p> | <p>Yes if it meets the criteria for being a charity.</p>                                 |
| <p><b>Scottish Charitable Incorporated Organisation (SCIO)</b></p>  | <p>EXPECTED 2010<br/>First ready-made corporate structure specifically designed for charities.</p>  | <p>Similar to company but with different terminology (e.g. for "directors" read "charity trustees").</p>                              | <p>Yes; members either have no liability or limited liability.</p> | <p>Members: no. Charity trustees: only if constitution, court or Charity Commission permit.</p>                               | <p>Yes.</p>  | <p>Cannot be anything but a charity, and must meet the criteria for being a charity.</p> |