



COMMUNITY ACCOUNTANCY PROJECT - GUIDANCE NOTES

Legal Structures and Registration Requirements

Every organisation, be it a Charity, voluntary or community organisation, Community Centre, social enterprise, co-operative, Community Interest Company or business or any description, must have an appropriate legal structure – such as a Company, Trust, Industrial and Provident Society, or an Unincorporated Association.

These guidance notes set out the basic *legal structures* and some of their characteristics, and what *type* of organisation they might suit. The purpose of this sheet is to try to clarify confusion between *legal structures* and *organisation types* to help those involved in Third Sector organisations and those thinking of creating a new Third Sector organisation.

Legal Structure	Description	Incorporated Body?*	Can Committee members be paid?	Must it register [†] as a Charity and have a charity number [‡] ?	Governing Document	Where else must it register?	What types ^ⁿ of organisations might they be?	Local examples
Association	Formed when 2 or more people come together for a specific purpose that is not about making a profit. There is a legal agreement between them.	No	No	Yes if its purpose is exclusively charitable and its income exceeds £5,000 a year	If it has one, a constitution or Rules of Association. Some older Charities have a Scheme made by the court or the Charity Commission		Voluntary and Community organisations, clubs, societies, small groups, various membership organisations, trade unions, professional associations, Social Enterprise if it can trade*	

Legal Structure	Description	Incorporated Body?*	Can Committee members be paid?	Must it register [†] as a Charity and have a charity number?	Governing Document	Where else must it register?	What types ⁿ of organisations might they be?	Local examples
Trust	<p>Created automatically when anybody gives money or property to anybody else to be used only for an identified beneficiary, or for a charitable purpose. Fundraisers collecting donations for charity create a form of trust.</p> <p>Can also be set up by writing a will, or making a Trust Deed or Declaration of Trust. Trusts can be private (eg to benefit family members or employees of a company) or public (for the benefit of the public, which will almost certainly be charitable).</p>	No	No	Yes if its purpose is exclusively charitable and its income exceeds £5,000 a year	If it has one, a Trust Deed or Declaration of Trust. Some older Charities have a Scheme made by the court or the Charity Commission	HM Revenue and Customs must stamp the governing document	Voluntary and Community organisations. Grant making charities. Social Enterprise if it can trade*	
Charitable Incorporated Organisation	This new structure comes into effect in the Summer of 2008, and is intended to provide some of the advantages of incorporation to Charities, without the burden of registering as a company.	Yes	No	Presumably it will have to when its income exceeds £5,000 a year.	Charity Commission is working on model constitutions.		Voluntary and community organisations. Possibly Social Enterprise if it can trade*	
Private Limited Company with no share capital	Otherwise known as <i>Companies Limited by Guarantee</i> are not-for-profit companies and may be charitable also. Members <i>guarantee</i> to pay the agreed sum towards the company's liabilities if it winds up. This is "limited liability".	Yes	If allowed in governing document, and if not charitable	Yes if its purpose is exclusively charitable and its income exceeds £5,000 a year.	Memorandum & Articles of Association	Companies House	Voluntary and Community organisations. Social Enterprise, Social Firm, Community Interest Company if it's not charitable, co-operative	
Private Limited Company with Share Capital	Companies limited by shares can invite investment from individuals and corporate bodies, by selling shares.	Yes	Yes	No it's not charitable	Memorandum & Articles of Association	Companies House	Social Enterprise, Social Firm, Community Interest Company	

Legal Structure	Description	Incorporated Body?*	Can Committee members be paid?	Must it register [†] as a Charity and have a charity number?	Governing Document	Where else must it register?	What types ⁿ of organisations might they be?	Local examples
Public Limited Company (PLC)	A company with a share capital that is floated on the stock exchange and anyone can buy shares.	Yes	Yes	No it's not charitable	Memorandum & Articles of Association	Companies House	Social Enterprise, Community Interest Company, Social Firm, Community Interest Company if it has a profit lock, co-operative	
Industrial and Provident Society	Either co-operatives (which cannot be charitable) or societies that trade to benefit the wider community (which could be charitable)	Yes	Yes if not charitable	No, but if it exists for a charitable purpose, can register as a Charity for tax purposes with HM Revenue and Customs.	Rules	Financial Services Authority and HMRC	Social Enterprise, Social Firm, Community Interest Company, co-operative, Credit Unions	
Partnership#/ Limited Liability Partnership (LLP)	A legal partnership is when two or more individuals enter into an agreement to trade and share the profits/losses. Limited Liability Partnerships create an organisation with a separate legal identity a bit like a company.	LLP is	The partners will certainly be paid	No, it's not charitable	May have a partnership agreement or deed.	LLP's need to register with Companies House	Social Enterprise, Community Interest Company, Social Firm, Co-operative	GP practices, Firms of solicitors, accountants, etc.
Sole Trader	A person who does business as an individual rather than as an employee of a firm (although a sole trader might employ others).	No	A sole trader will certainly pay her/him self	No, it's not charitable	None	HM Revenue and Customs for tax purposes		Possibly your window cleaner or plumber, or newsagent, or local café, or Chiropractor or counsellor

¥ An organisation that is *incorporated* has its own legal personality and can, in its own right, enter into contracts, own property and take legal actions. Incorporation limits the liabilities of its members and – to a degree, but not totally – those of its governing body. An *unincorporated* organisation relies on its members to do these things on its behalf, and those members may face any liabilities personally.

- † If an organisation has exclusively Charitable purposes and exists for the public benefit it *is* a charity. Registration with the Charity Commission only *confirms* the organisation's Charitable Status. It *must* be registered with the Charity Commission once its income exceeds £5,000 a year and the committee members who are its trustees have a legal duty to register it.
- ∩ Some types of organisation need to register with regulatory bodies, for example, Community Interest Companies must register with the Community Interest Companies Regulator, at Companies House; Credit Unions must register with the Financial Services Authority, and can join the Association of British Credit Unions; Industrial and Provident Societies must register with the Financial Services Authority. Sole Traders may be obliged to join a professional or trade association, depending on their profession or trade. Others may choose to join umbrella bodies but are not regulated, for instance Social Enterprises could register with Social Enterprise Coalition. Social Firms can join Social Firms UK. Any organisation may have to register with an appropriate regulatory body depending on its activities, but this information is not covered here.
- * There are restrictions on the type and amount of trading Charities can carry out.
- ≠ Many organisations called "partnerships" exist in the voluntary and community sector which are not legal partnerships at all – instead they may be Associations, Companies or simply a loose network of representatives of organisations.

This sheet does not represent a full and final statement of the law and is not intended to be taken as such. It is not a substitute for professional advice. No responsibility can be accepted by Gateshead Voluntary Organisations Council or the author of this sheet for any losses arising from any person acting or refraining from acting.

This information sheet is based on material produced by Hull Council for Voluntary Service.