

Guidance No. 4 – The Basics of Asset Transfer

LEGAL STRUCTURES TO MANAGE ASSETS

Charitable Incorporated Organisation (CIO)

This is a new (2012) incorporated structure for a charity, which is not a limited company, or subject to company regulation. A CIO is a corporate body like a company, but it does not have to register with the Companies House. It is an alternative to becoming a Registered Charity as well as Company Limited by Guarantee. This legal structure is suitable for organisation that own land in its own name; control substantial funds or assets; enter into contracts, for example by employing staff; or engage in charitable activities involving financial risks. This legal structure uses a Constitution as its governing document.

Company Limited by Guarantee

This legal structure is also suitable for organisation that own land in its own name; control substantial funds or assets; enter into contracts, for example by employing staff; or engage in charitable activities involving financial risks. It is registered at Companies House, which means it has to comply with the Companies Act and must register its accounts and an annual return each year. If the company winds up, the liability of its members can be as little as £1 per member. Any surplus that the company generates is principally reinvested in the business, or in the community, rather than being driven by the need to maximise profit for shareholders and owners. It uses Articles of Association (as at 2009) as its governing document. The main reason for a charity, community project, etc., to be a Company Limited by Guarantee, is to protect the people running the company from personal liability for the company's debts.

Company Limited by Shares

This form is also registered at the Companies House. Unlike Company Limited by Guarantee, where Directors are not allowed to make a profit for themselves, Directors of Company Limited by Shares and their shareholders can have share on the profit of the company. Often used by social enterprises who raise funds from members' personal money to develop the company. It uses Articles of Association as its governing document or Rules if it is registered under Industrial and Provident Society (IPS).

Community Interest Company (CIC)

Community Interest Companies (CICs) are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", which ensures that the CIC is established for community purposes and the assets and profits, are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator, who also has a continuing monitoring and enforcement role.

This type of company is more suited for social enterprises that want to use their profits and assets for the public good. CICs are intended to be easy to set up, with all the flexibility and certainty of the company form. This legal form uses Articles of Association as its governing document. Registration is at Companies House and the CIC Regulator.

Community Benefit Society (BenComs)

Registered under the Industrial and Provident Society Acts 1965-2002, this is perhaps the most suitable legal form for co-operatives. Profits are not distributed among members, or external shareholders, but are instead returned to the community. It must also be set up with social objectives to conduct a business or trade. The governing document is called 'Rules'. Many mutual organisations choose this structure as it provides for member involvement, but has a wider community benefit at its core. BenComs are run and managed by their members, and must submit annual accounts to the Financial Services Authority (FSA). It can raise funds by issuing shares to the public and may be established as a charity, providing it has exclusively charitable objects that are for the public benefit, allowing them to raise capital through public grants and charitable trusts.

Further Information:

CC 22 – Choosing and Preparing a Governing Document

<http://www.charity-commission.gov.uk/Library/guidance/cc22text.pdf>

Model Governing Documents for a Charity

http://www.charity-commission.gov.uk/Start_up_a_charity/Guidance_on_registering/mgds.aspx

About Charitable Incorporated Association

http://www.charity-commission.gov.uk/Start_up_a_charity/Do_I_need_to_register/CIOs/

About Community Interest Company

<http://www.bis.gov.uk/cicregulator>

How to Register a Company

<http://www.companieshouse.gov.uk/infoAndGuide/companyRegistration.shtml>

Tool for Choosing the Right Structure for a Cooperative

<http://www.uk.coop/our-work/select-structure-tool>

Cooperative Legal Forms

<http://www.uk.coop/co-operative-legal-forms>

Further information on Legal Forms for the Vol/Com Sector

<http://www.getlegal.org.uk>

Disclaimer:

Please note, information provided here are for guidance purposes only and does not in any way provide advice to anyone wishing to set up a charity or company. If you want to explore the above legal structures in more detail, please click on the links above.