

STRUCTURES FOR SOCIAL ENTERPRISES

When setting up your social enterprise it is important to have the right legal structure.

From this flowchart, comparison table and detailed guidance you will be able to assess which is the right legal structure for your social enterprise

For further information visit

www.gov.uk/set-up-a-social-enterprise

www.gov.uk/business-legal-structures

www.companieshouse.gov.uk

DLA Piper has produced these helpsheets as part of a collaborative project with UnLtd. DLA Piper is one of the largest business law firms in the world with an extensive pro bono legal advice programme which assists social enterprises, charities and individuals across the globe. UnLtd is the leading provider of support to social entrepreneurs in the UK and offers the largest such network in the world.

STRUCTURES FOR SOCIAL ENTERPRISE

Which structure is right for you?

INTRODUCTION

A *Social Enterprise* is not a legally defined term or status, and there may be subtly different views on what actually constitutes such an organisation. It is commonly accepted however that a *Social Enterprise* is a business trading in goods and/or services and which has the following key features:

- objectives primarily have a social and/or environmental benefit, as opposed to maximising profits for *Shareholders* and other investors; and
- at least the majority of surpluses (i.e. *Profits*) are reinvested/retained to further the organisation's objectives.

There is scope for *Social Enterprise* structures to take different forms ranging from the relatively informal and simple, to the highly formal and sophisticated. This includes incorporated and unincorporated structures, and potentially having *Charity* status.

UnLtd, in conjunction DLA Piper UK LLP, has developed this Introduction and Glossary, together with the associated [Structures Flowchart](#) and [Comparison Table](#), as a basic guide to assist social entrepreneurs when considering possible structures for their *Social Enterprises*. For the avoidance of doubt, this Introduction and Glossary document, together with the associated [Structures Flowchart](#) and [Comparison Table](#), are intended to provide general information and guidance only and are not a substitute for specific legal advice. If you have any particular questions or concerns regarding the set up of a *Social Enterprise*, seek assistance from an independent solicitor.

KEY CONSIDERATIONS WHEN SELECTING A SOCIAL ENTERPRISE STRUCTURE

- **Management of risks:** consider how the liabilities and obligations of the business are to be managed, and whether it is prudent to seek *Limited Liability* (in respect of any liabilities that arise from the operation of the organisation) for participants – choose between Incorporated or Unincorporated structures.
- **Complexity of management and membership:** consider whether the entire membership of the organisation will have a role in managing the business on a day-to-day basis, or whether there should be a separate governance board.
- **SWOT analysis:** conduct a structured evaluation of the strengths, weaknesses, opportunities, and threats relevant to the business venture.
- **Community and other stakeholder involvement:** consider how wide the organisation's membership should be, and how accountable the organisation should be both to its membership and to external stakeholders.
- **Use of surpluses (i.e. Profits):** consider how the organisation intends to direct the *Profits* from its enterprise (ie to members or back into the organisation to further its goals).

- **Tax status:** consider whether *Charity* status is appropriate and worthwhile, or whether *Tax Transparent* structures (such as *Partnerships* and *LLPs*) are appropriate.
- **Formality, regulation, reporting requirements and transparency obligations:** weigh up the various factors relevant to different business structures, both at their inception and on an on-going basis.
- **Cost of set-up and start-up:** consider the varying costs associated with different structures and how start-up costs will be covered generally.

GLOSSARY

Asset Lock	A provision written into the <i>Constitution</i> of an organisation (or applying by virtue of relevant overriding law) which prevents the assets of that organisation (e.g. money, property) being used other than (i) to further the objectives of the organisation or, (ii) otherwise in accordance with the terms of the <i>Asset Lock</i> .
Articles of Association (“Articles”)	The primary <i>Constitutional</i> document of a <i>Company</i> . The Articles set out the rules for running a <i>Company</i> which <i>Members</i> and <i>Officers</i> need to abide by.
Charitable Incorporated Organisation (“CIO”)	A corporate legal form (i.e. having its own <i>Legal Personality</i>) exclusively for eligible <i>Charities</i> . A <i>CIO</i> is registered with the <i>Charity Commission</i> . Has a two level structure with <i>Trustees</i> governing the day-to-day activities of the <i>CIO</i> who are accountable to the membership. Not a <i>Company</i> .
Charity	A status applicable to organisations which satisfy the criteria for a <i>Charity</i> (including the public benefit requirement) and which are usually registered with an appropriate regulator (although there are certain exemptions from the need to register). In most instances, the appropriate regulator is the <i>Charity Commission</i> . Charities can benefit from tax exemptions and rates reductions. An ‘unregistered’ <i>Charity</i> (i.e. one that does not have an appropriate regulator) may benefit from tax exemptions if it registers as a <i>Charity</i> for tax purposes with <i>HMRC</i> .
Charity Commission	The regulator for <i>Charities</i> (www.charitycommission.gov.uk): a non-Ministerial Government Department and part of the Civil Service with a number of quasi-judicial functions.
CIC Regulator	The regulator for <i>CICs</i> who decides whether an organisation is eligible to be a <i>CIC</i> amongst other activities.
Community Benefit Industrial and Provident Society	One of two types of <i>Industrial and Provident Society</i> . Objectives will be primarily for the benefit of people who are not <i>Members</i> of the society, and in the interests of the community at large, plus other relevant criteria.
Community Interest Test	Whether a reasonable person would consider the purpose of a <i>CIC</i> to be for the benefit of the community: an objective test applied by the <i>CIC Regulator</i> when determining whether an organisation is eligible to be a <i>CIC</i> .

Community Interest Company (“CIC”)	<p>A <i>Company</i> subject to additional requirements (over and above those for registering a <i>CLS</i> or a <i>CLG</i>) and the <i>Community Interest Test</i>, acting for the benefit of a defined community. Intended as a specialist vehicle for <i>Social Enterprise</i> and precluded from registering as a <i>Charity</i>.</p> <p>A <i>CIC</i> is either a <i>CLS</i> or a <i>CLG</i>.</p> <p>A <i>CIC</i>'s <i>Articles of Association</i> must contain certain prescribed provisions, including a statutory <i>Asset Lock</i>. Model constitutions are available.</p> <p>Subject to the approval of, and on-going regulation by, the <i>CIC Regulator</i>, and is also registered with <i>Companies House</i>.</p> <p>A standard <i>CLS</i> or <i>CLG</i> can be converted to a <i>CIC</i> if appropriate amendments are made to its <i>Constitution</i>.</p> <p>A <i>CIC</i> limited by shares can potentially pay <i>Dividends</i> to <i>Shareholders</i>, subject to restrictions.</p>
Companies House	<p>The regulator for Companies: an Executive Agency of the Department for Business, Innovation and Skills.</p> <p>Main functions include:</p> <ul style="list-style-type: none"> the <i>Incorporation</i> and dissolving of limited Companies; examining and storing <i>Company</i> information delivered in accordance with relevant legislation; and making relevant information available to the public.
Company	<p>A corporate legal form (i.e. having its own <i>Legal Personality</i>).</p> <p>A <i>Company</i> is registered with <i>Companies House</i>.</p> <p>Has a two level structure with <i>Directors</i> governing the day-to-day activities of the <i>Company</i>, who are accountable to the <i>Members</i>.</p> <p>The most common form of <i>Company</i> is a <i>Company Limited by Shares</i>. An alternative is a <i>Company Limited by Guarantee</i>.</p> <p>The primary <i>Constitutional</i> document of a <i>Company</i> is its <i>Articles of Association</i>. As a minimum, a <i>Company</i> may be established by a single natural person, acting as both <i>Member</i> and <i>Director</i>. Another <i>Corporate Vehicle</i> may also be a <i>Member</i> and/or a <i>Director</i> of a <i>Company</i>, but there must be at least one <i>Director</i> who is a natural person. A highly flexible structure, Companies can be tailored to be a suitable vehicle for a wide range of enterprises e.g.:</p> <ul style="list-style-type: none"> <i>CIC</i> which is intended as a specialist vehicle for <i>Social Enterprise</i>; <i>CLG</i> which may potentially be registered as a <i>Charity</i>; <i>CLS</i> can enable Profit distribution via <i>Dividend</i> payments to <i>Shareholders</i>.
Company Limited by Guarantee (“CLG”)	<p>A <i>Company</i> which does not feature any <i>Share Capital</i> (subject to historic exceptions). The <i>Members</i> of a <i>CLG</i> undertake to pay an amount (usually a nominal sum e.g. £1 or £10 etc) to contribute to the assets of the <i>CLG</i> in the event of it being wound up.</p> <p>As there are no shares, a <i>CLG</i> cannot pay <i>Dividends</i> in the way a <i>CLS</i> may. Consequently, a <i>CLG</i> is unlikely to be suitable as a vehicle for distributing <i>Profits</i> to <i>Members</i> or other investors, which may make it suitable as a vehicle for <i>Social Enterprise</i>.</p> <p>A <i>CLG</i> can become a registered <i>Charity</i> if its objects are exclusively charitable, unless it is a <i>CIC</i>.</p>

Company Limited by Shares (“CLS”)	<p>A <i>Company</i> which features a <i>Share Capital</i>. The <i>Members</i> of a <i>CLS</i> are known as <i>Shareholders</i> whose liability is limited to the amount, if any, unpaid on the shares held by them.</p> <p>A <i>CLS</i> may pay <i>Dividends</i> to its <i>Shareholders</i>, typically in proportion to the relevant shareholding held by each <i>Shareholder</i>. Consequently, a <i>CLS</i> is a vehicle which can have capacity to distribute its <i>Profits</i> to <i>Members</i>, which may make it unsuitable as a vehicle for <i>Social Enterprise</i>.</p> <p>A <i>CLS</i> cannot be registered as a <i>Charity</i>.</p>
Constitution (including Constitutional)	The governing document(s) which set out the parameters within which an organisation can operate and which the <i>Members</i> of the organisation must abide by.
Co-operative	<p>An organisation adopting co-operative principles (see further below) (as opposed to a specific form of legal structure), owned and democratically controlled by its <i>Members</i>.</p> <p><i>Members</i> often have a close association with the organisation e.g. as its employees and/or as producers or consumers of its products or services.</p> <p><i>Co-operative</i> principles include:</p> <ul style="list-style-type: none"> voluntary and open membership; equal voting rights for <i>Members</i> (regardless of their shareholding); <i>Members</i> participate economically by contributing capital and exercising; autonomy and independence; and co-operatives work for the sustainable development of their communities.
Co-operative Industrial and Provident Society	One of two types of <i>Industrial and Provident Society</i> . Objectives will be primarily for the benefit of its <i>Members</i> and align with the core values of a <i>Co-operative</i> . It can typically distribute <i>Profits</i> to <i>Members</i> , which may make it unsuitable as a vehicle for <i>Social Enterprise</i> .
Corporate Structure/ Vehicle	A general term for an organisational structure with its own <i>Legal Personality</i> , distinct from its <i>Members</i> and <i>Officers</i> .
Director	<p>A person (including a natural person and a <i>Corporate Vehicle</i>) elected or appointed as an <i>Officer</i> to oversee the activities of a <i>Company</i> and is charged with day-to-day management and decision making on behalf of the <i>Company's Members</i>.</p> <p>Where a <i>Company</i> has more than one <i>Director</i>, they are together known as the “board of directors”.</p> <p><i>Directors</i> might be “executive” (meaning in general terms they are often (but not always) employees of the <i>Company</i>) or “non-executive” (meaning in general terms they are often not (but not always) employees of the <i>Company</i>).</p> <p><i>Directors</i> are subject to duties imposed upon them by law (for example, under the Companies Act 2006) and owe other “fiduciary” duties to the <i>Company</i>. In the case of a <i>CLG</i> which is also a <i>Charity</i>, the <i>Directors</i> will also be the <i>Trustees</i>.</p>
Dividend	A payment made by a <i>Company</i> to its <i>Shareholders</i> , usually as a distribution of <i>Profit</i> .
Financial Conduct Authority (“FCA”)	<p>The regulator of financial organisations providing services to consumers and formed as one of the successors to the Financial Services Authority.</p> <p>Separately, the <i>FCA</i> is also the regulator for <i>Industrial and Provident Societies</i>.</p>

Her Majesty's Revenue & Customs ("HMRC")	A non-Ministerial Government Department responsible for the collection of taxes: reports to Parliament through the Treasury Minister. Established in 2005 to replace the Inland Revenue and Customs and Excise.
Incorporation	A process through which an organisation achieves its own <i>Legal Personality</i> and becomes a <i>Corporate Structure</i> . In the case of a <i>Company</i> , <i>Incorporation</i> is achieved through registering with <i>Companies House</i> , where upon a certificate of incorporation is issued.
Industrial and Provident Society ("IPS")	A corporate legal form (i.e. having its own <i>Legal Personality</i>) which has its origins in social philanthropy, self-help and the co-operative movement. An <i>IPS</i> is registered with the <i>FCA</i> and must be one of two types: <ul style="list-style-type: none"> Community Benefit Industrial and Provident Society; or Co-operative Industrial and Provident Society. Has a two level structure with a management board governing the day-to-day activities of the <i>IPS</i> who are accountable to the membership. The primary <i>Constitutional</i> document of an <i>IPS</i> is its registered rules, which is capable of extensive tailoring to suit particular purposes (whilst continuing to satisfy relevant fundamental criteria). Not a <i>Company</i> .
Legal Personality	The capacity to be legally recognised as a distinct entity from its <i>Members</i> , also known as "corporate status" (normally achieved through <i>Incorporation</i>). An organisation with <i>Legal Personality</i> may normally enter into contracts, employ staff, have a bank account and be eligible for taxation etc in its own right. Having a <i>Legal Personality</i> means an organisation is separate and distinct from its <i>Officers</i> and <i>Members</i> . This separation can enable the limiting of personal liability of the <i>Officers</i> and <i>Members</i> for the organisation's liabilities (see " <i>Limited Liability</i> "). However, an organisation's <i>Legal Personality</i> does not mean there is absolute blanket protection for <i>Officers</i> : if they act criminally or negligently etc. they can be made personally liable for an organisation's actions and/or obligations.
Liability/Liabilities	"Liability" – means the extent to which a person or a corporate entity is potentially responsible for a legal obligation, e.g. under a contract or statute.
Limited Liability	Where the participants within an organisation have their liability limited in respect of the liabilities of that organisation. <i>Limited Liability</i> enables <i>Members</i> and <i>Officers</i> of an organisation to be shielded from its liabilities, and is achieved through the use of an organisation with its own <i>Legal Personality</i> i.e. a <i>Corporate Structure</i> . E.g. in the case of a: <ul style="list-style-type: none"> <i>CLS</i>, the liability of its <i>Members</i> (the <i>Shareholders</i>) is limited to the amount, if any, unpaid on the shares held by them; and In the case of a <i>CLG</i>, the liability of its <i>Members</i> is limited to such amount as they undertake to contribute to the assets of the company in the event of it being wound up. By contrast, a <i>Sole Trader</i> or a partner within a <i>Partnership</i> is liable for all the liabilities of the organisation (i.e. "unlimited liability").

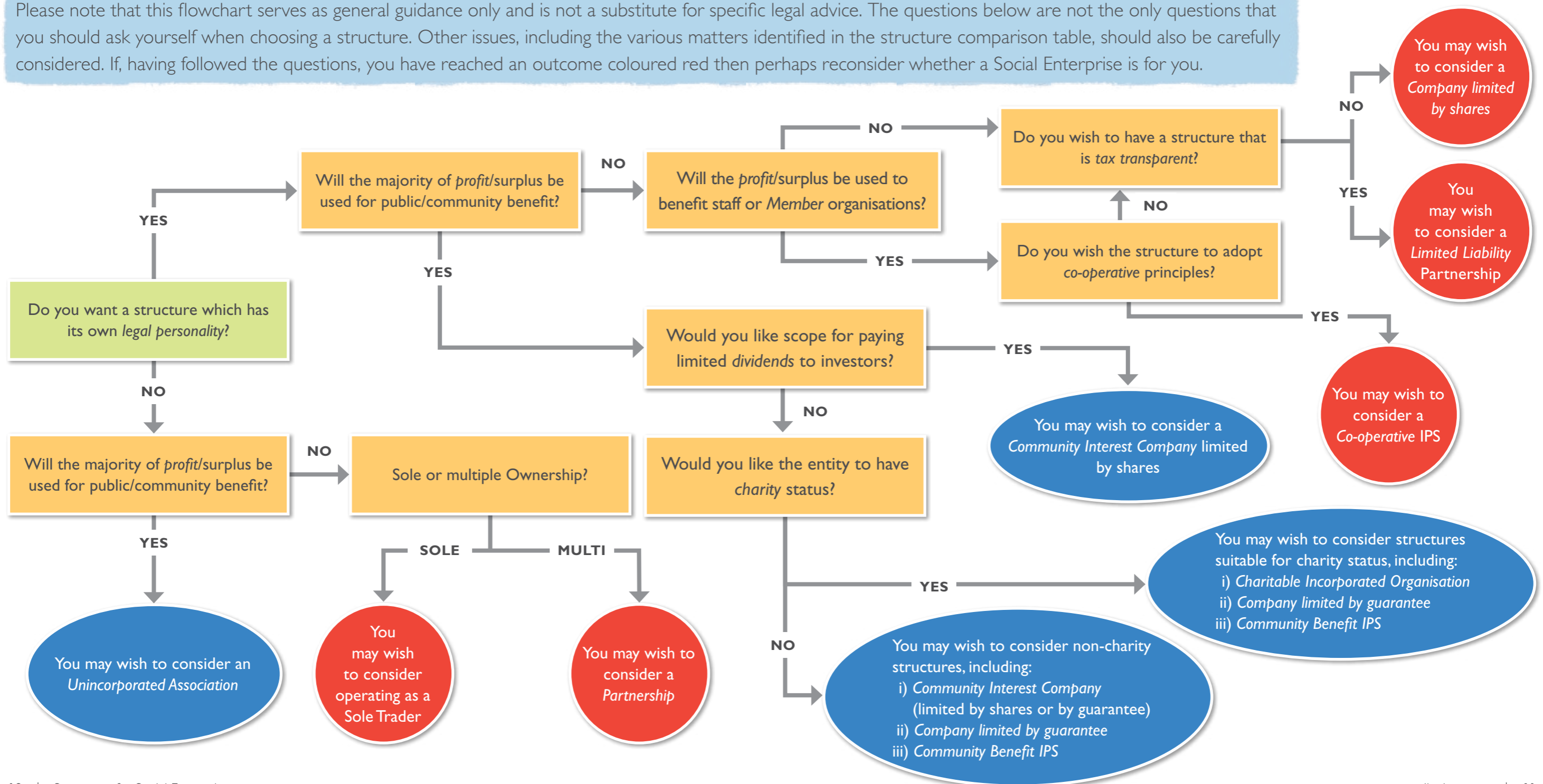
Limited Liability Partnership ("LLP")	A corporate legal form (i.e. having its own <i>Legal Personality</i>). An <i>LLP</i> might be considered as a combining the qualities of a <i>Company</i> (because it provides for a separate <i>Legal Personality</i> and <i>Limited Liability</i> for <i>Members</i>) and a <i>Partnership</i> (because it is a single-tier and <i>Tax Transparent</i> entity). Is registered with <i>Companies House</i> . Has a single level structure with the <i>Members</i> (the partners) arranging the management structure and hierarchy as they wish (whilst continuing to satisfy relevant fundamental criteria). The primary constitutional document of an <i>LLP</i> is usually a membership agreement (also known as a partnership agreement). However, this is not a statutory requirement. An <i>LLP</i> may be established by at least two persons (including natural persons and <i>Corporate Vehicles</i>) associated for carrying on a lawful business with a view to <i>Profit</i> . Consequently, an <i>LLP</i> is a vehicle which aims to generate <i>Profit</i> with a view to distributing it to <i>Members</i> , which may make it unsuitable as a vehicle for <i>Social Enterprise</i> . Not a <i>Company</i> .
Member	Used in different contexts but generally means those persons (including natural persons and <i>Corporate Vehicles</i>) comprising the membership of an organisation. Being a <i>Member</i> will have different significance depending on whether an organisation is Incorporated, and the type of <i>Corporate Structure</i> . For a <i>Company</i> , the <i>Members</i> represent the 'ownership' of the <i>Company</i> and generally decide the most important decisions such as changing the governing documents and winding up, whereas the <i>Officers</i> run the <i>Company</i> on a day-to-day basis. Similar principals apply for <i>CIOs</i> and <i>IPSs</i> . A <i>Member</i> of an <i>LLP</i> however is often referred to as a "partner" and an <i>LLP</i> is a single-tier structure meaning there is no legal distinction between governance board and membership (although "designated members" in an <i>LLP</i> have additional responsibilities compared to those <i>Members</i> who are not "designated"). <i>Members</i> of an unincorporated organisation will have less formal significance and will not have separate <i>Legal Personality</i> from that unincorporated organisation.
Officer	Used in different contexts but generally means those persons (including natural persons and <i>Corporate Vehicles</i>) comprising the management board of an organisation, responsible for managing it on a day-to-day basis on behalf of the <i>Members</i> . E.g. in the case of: <ul style="list-style-type: none"> a <i>Company</i>, the <i>Officers</i> will be the <i>Director(s)</i> and company secretary (if appointed); a <i>CIO</i>, the <i>Officers</i> will be the <i>Trustees</i>; and an <i>IPS</i>, the <i>Officers</i> include those persons appointed to committee/board of management and the secretary. Terminology is often informally interchangeable, although if an organisation is a <i>Charity</i> , those persons comprising its board of management will be <i>Trustees</i> under <i>Charity</i> law, in addition to any other titles they may have. In the case of a <i>CLG</i> which is also a <i>Charity</i> , the <i>Directors</i> will also be the <i>Trustees</i> . <i>Officers</i> of an unincorporated organisation will have less formal significance and will not have separate <i>Legal Personality</i> from that unincorporated organisation.

Partnership	<p>The relationship which can exist between persons (including natural persons and <i>Corporate Vehicles</i>) carrying on a business in common with a view to <i>Profit</i>. A <i>Partnership</i> can arise without formality (there is no registration requirement), and even where ‘partners’ did not intend a <i>Partnership</i> to arise.</p> <p>A <i>Partnership</i> is a <i>Tax Transparent</i>, one-tier structure, although partners may be organised into a hierarchy internally, for instance under the terms of a partnership agreement (although this is not a requirement).</p> <p>A <i>Partnership</i> does not have a <i>Legal Personality</i> distinct from the partners which comprise it, and consequently does not generally afford <i>Limited Liability</i> to the partners. However, the <i>Partnership</i> may sue and be sued in the <i>Partnership’s</i> name, and certain legislation can treat a <i>Partnership</i> as if it were a corporate entity.</p> <p>A <i>Partnership</i> aims to generate <i>Profit</i> with a view to distributing it to its constituent partners, which may make it unsuitable as a vehicle for <i>Social Enterprise</i>.</p>
Profit	<p>The income received through running a business minus the costs expended in generating that income, over a given period (also known as “surplus”). Various accounting methods can be applied to establish different types of <i>Profit</i>.</p> <p>Costs expended can include paying employees’ wages, paying rent, buying stock, rates etc.</p> <p>Income received can include fees paid in return for goods and/or services etc.</p> <p>The treatment of a business’s <i>Profit/surplus</i> is a key factor in whether it may be considered as a <i>Social Enterprise</i>: a <i>Social Enterprise</i> will tend to reinvest and/or retain at least the majority of surpluses to further its objectives.</p>
Share	<p>A right to share in the capital of a corporate entity (such as a <i>CLS</i>, <i>IPS</i>).</p> <p>Depending on an organisation’s <i>Constitution</i>, <i>Shares</i> may have different values and different classes assigned to them. For instance, <i>Shareholders</i> of a <i>CLS</i> may own shares in varying numbers and/or of different classes, affording different weightings of rights (e.g. voting rights, rights to <i>Dividends</i>, rights to appoint/remove <i>Officers</i> etc).</p>
Share Capital	<p>The total amount of all of a <i>Corporate Vehicle’s</i> <i>Shares</i> (which have been issued by the relevant <i>Company</i>), which may be held entirely by a single <i>Shareholder</i> or shared between two or more <i>Shareholders</i>.</p>
Shareholder	<p>The commonly used name for a <i>Member</i> of a <i>CLS</i> (and sometimes <i>Members</i> of an <i>IPS</i>).</p>
Shareholders’ Agreement	<p>An agreement entered into between the <i>Members</i> of a <i>Company</i> concerning their relationship and rights. For a <i>CLG</i>, such an agreement is normally referred to as a “members’ agreement”.</p> <p>A <i>Shareholders’ Agreement</i> can supplement a <i>Company’s</i> <i>Articles</i>, providing for detail and arrangements not normally provided for in the <i>Articles</i>, including the detailed rights assigned where there are different classes of share and arrangements for resolution of deadlocks/disputes between <i>Members</i> etc.</p> <p>A <i>Shareholders’ Agreement</i> usually need not be submitted to <i>Companies House</i> and is not a public document, enabling confidential arrangements to be kept private, although there are some situations in which it would need to be lodged at <i>Companies House</i> and so made available for the general public to see.</p>

Social Enterprise	<p>A description of the purpose and activities of a business, as opposed to being a legal form or status.</p> <p>Although no formal definition exists, it is commonly accepted that a <i>Social Enterprise</i> is a business trading in goods and/or services with the following key features:</p> <ul style="list-style-type: none"> objectives primarily have a social and/or environmental benefit, as opposed to maximising <i>Profits</i> for <i>Shareholders</i> and other investors; and at least the majority of surpluses (i.e. <i>Profits</i>) are reinvested/retained to further the organisation’s objectives.
Sole Trader	<p>A single natural person running a business as an individual and without separate <i>Legal Personality</i>. A <i>Sole Trader</i> is personally liable for the debts of the business: there is no <i>Limited Liability</i>.</p>
Tax Transparent	<p>A description of the tax treatment of an organisation which is not subject to taxation on its <i>Profits</i> prior to their distribution to <i>Members</i> (or, in the context of a <i>Partnership</i>, the partners).</p> <p>Most associated with <i>Partnerships</i> and <i>LLPs</i>: the partners/<i>Members</i> are taxed as individuals on the <i>Profit</i> share each receives, as opposed to the organisation paying corporation tax on its <i>Profits</i> (for instance), as would a <i>Company</i> which is not a <i>Charity</i>.</p>
Trustee	<p>A person (including a natural person and corporate entity) who is a <i>Member</i> of the managing board of a <i>Charity</i> and responsible for ensuring the <i>Charity</i> adheres to its objectives.</p> <p>A <i>Trustee</i> is subject to numerous legal obligations and must (amongst other things):</p> <ul style="list-style-type: none"> adhere to the law and the <i>Charity’s</i> constitution; act independently and only in the interests of the <i>Charity</i>; and use reasonable care and skill, and seek to make well-informed decisions.
Unincorporated Association	<p>A group of individuals who come together to pursue a shared goal.</p> <p>Such an organisation is not subject to any regulation by company law and its liabilities are usually unlimited. As an unincorporated organisation, it has no separate <i>Legal Personality</i> distinct from its <i>Members</i>, and consequently the <i>Members</i> can be personally liable.</p> <p>Such an organisation will be distinct from a <i>Partnership</i> provided its <i>Members</i> are not carrying on a business in common with a view to <i>Profit</i>. With the relative informality and flexibility afforded, an Unincorporated Association may offer an appropriate structure for <i>Social Enterprise</i>.</p>

STRUCTURES FOR SOCIAL ENTERPRISE – FLOWCHART

Please note that this flowchart serves as general guidance only and is not a substitute for specific legal advice. The questions below are not the only questions that you should ask yourself when choosing a structure. Other issues, including the various matters identified in the structure comparison table, should also be carefully considered. If, having followed the questions, you have reached an outcome coloured red then perhaps reconsider whether a Social Enterprise is for you.



COMPARISON OF LEGAL STRUCTURES THAT COULD BE USED TO FORM A SOCIAL ENTERPRISE

	<i>Company Limited by Shares</i>	<i>Company Limited by Guarantee</i>	<i>Community Interest Company (CIC)</i>	<i>Charitable Incorporated Organisation (CIO)</i>	<i>'Co-operative' Industrial and Provident Society</i>	<i>'Community Benefit' Industrial and Provident Society</i>	<i>Limited Liability Partnership (LLP)</i>	<i>Partnership</i>	<i>Sole Trader/ Unincorporated Association</i>
BASIC DESCRIPTION	<ul style="list-style-type: none"> Company structure Members of the Company, who are known as the "Shareholders" hold Shares in the Company 	<ul style="list-style-type: none"> Company structure This structure does not involve Shares Members provide a guarantee (typically for a nominal sum), which will be their maximum liability if the Company is wound up 	<ul style="list-style-type: none"> Company structure designed as a vehicle for Social Enterprises that want to use Profits and assets for the public good Basic structure is a limited Company (which can be a new Company or converted from an existing Company). Can be limited by either Shares or by guarantee Special Constitution requires that the Company serves some community benefit and satisfies a "Community Interest Test" 'Asset Lock' applies (see further below) 	<ul style="list-style-type: none"> A relatively new incorporated structure designed specifically for charities (but which is not a Company) Phased introduction for adoption by new and existing charities 'Asset Lock' applies under Charity law whereby the Trustees have a duty to protect the Charity's assets and resources and to make sure they are only used to further the Charity's aims 	<ul style="list-style-type: none"> Corporate Vehicle formed for the benefit of its Members, rather than society at large Has origins in the cooperative movement/social philanthropy Tends to be used where it is appropriate to give a wide membership an equal stake and an equal say in management 	<ul style="list-style-type: none"> Corporate Vehicle formed to serve some community benefit Has origins in the cooperative movement/social philanthropy Potential to apply an 'asset-lock' Tends to be used where it is appropriate to give a wide membership an equal stake and an equal say in management 	<ul style="list-style-type: none"> A hybrid of a Company and a traditional Partnership Preserves the basic aspects of a traditional Partnership whilst including the valuable aspects of a Company such as Limited Liability Separate Corporate Structure Taxed as a Partnership (Tax Transparent, i.e individual partners are liable to tax) Typically used by professional services firms such as lawyers and accountants An LLP must carry on a lawful business with a view to Profit 	<ul style="list-style-type: none"> No separate corporate identity A relationship that arises (automatically) when people carry on business with a view to a Profit Tax Transparent 	<ul style="list-style-type: none"> No separate corporate identity One or more individuals pursuing a Shared goal A Sole Trader runs their business as an individual Examples of Unincorporated Associations include a sports club or voluntary group

	Company Limited by Shares	Company Limited by Guarantee	Community Interest Company (CIC)	Charitable Incorporated Organisation (CIO)	'Co-operative' Industrial and Provident Society	'Community Benefit' Industrial and Provident Society	Limited Liability Partnership (LLP)	Partnership	Sole Trader/ Unincorporated Association
GOVERNANCE/ STRUCTURE	<ul style="list-style-type: none"> Two-tier structure: <i>Shareholders</i> and <i>Directors</i> <i>Directors</i> manage day-to-day operation of the <i>Company</i> on behalf of <i>Shareholders</i> Relationship between the <i>Members</i> and the <i>Company</i> is governed by the <i>Articles of Association</i>. Separate <i>Shareholders'</i> <i>Agreements</i> may also be put into place <i>Directors</i> are subject to duties imposed upon them by law and will also owe other "fiduciary" duties to the <i>Company</i> 	<ul style="list-style-type: none"> Two-tier structure: <i>Members</i> and <i>Directors</i> <i>Directors</i> manage day-to-day operation of the <i>Company</i> on behalf of the <i>Members</i> Relationship between the <i>Members</i> and the <i>Company</i> is governed by the <i>Articles of Association</i>. Separate <i>Members'</i> <i>agreements</i> may also be put into place <i>Directors</i> are subject to duties imposed upon them by law and will also owe other "fiduciary" duties to the <i>Company</i> 	<ul style="list-style-type: none"> Same two-tier governance structure as a standard <i>Company</i> (limited by <i>Shares</i> or by guarantee) Subject to additional rules to ensure community interest objectives Relationship between the <i>Members</i> and the <i>Company</i> is governed by the <i>Articles of Association</i>. Separate <i>Shareholders'</i> <i>Agreements</i> may also be put into place <i>Directors</i> are subject to duties imposed upon them by law and will also owe other "fiduciary" duties to the <i>Company</i> 	<ul style="list-style-type: none"> Two-tier structure: <i>Charity Trustees</i> and <i>Members</i> <i>Trustees</i> manage day-to-day to further charitable objectives The <i>Charity Trustees</i> and <i>Members</i> can be the same people 	<ul style="list-style-type: none"> Two-tier structure: <i>Members</i> and committee/<i>Officers</i> Governance arrangements are highly flexible Control of the society is often equal and not based on the level of investment of each <i>Member</i>. Voting is usually on a one <i>Member</i>, one vote basis (meaning that no one person/body can assert any degree of 'control') 	<ul style="list-style-type: none"> Two-tier structure: <i>Members</i> and committee/<i>Officers</i> Governance arrangements are highly flexible 	<ul style="list-style-type: none"> One-tier structure, although partners may be organised into a hierarchy <i>Members</i> are free to agree their own arrangements for management and control of the <i>LLP</i> 	<ul style="list-style-type: none"> One-tier structure, although partners may be organised into a hierarchy Partners are free to agree their own arrangements for management and control of the <i>Partnership</i> 	<ul style="list-style-type: none"> Totally flexible – no formal requirements A <i>Sole Trader</i> acts in his/her own right and 'owns' the business An <i>Unincorporated Association</i> is governed by its own rules
LIABILITY	<ul style="list-style-type: none"> Has a <i>Legal Personality</i> distinct from its <i>Members</i> and so can own assets, sue and be sued and enter into contracts in its own right <i>Shareholders</i> can limit their liabilities and losses to their capital contribution for shares 	<ul style="list-style-type: none"> Same position as a <i>Company Limited by Shares</i>, however the liability of its <i>Members</i> is limited to the amount of guarantee undertaken by the <i>Member</i> and specified in the <i>Company's Articles</i> 	<ul style="list-style-type: none"> Offers <i>Limited Liability</i> status. Based on the principles of a <i>Company Limited by Shares</i> or a <i>Company Limited by Guarantee</i>, as already discussed 	<ul style="list-style-type: none"> A <i>CIO</i> has a separate <i>Legal Personality</i> and can contract and hold property in its own name The liability of its <i>Charity Trustees</i> and <i>Members</i> is limited. The <i>Members</i> are either liable to contribute up to a specified amount to the assets of a <i>CIO</i> if it is wound up or not liable to make any contribution at all 	<ul style="list-style-type: none"> Has a separate <i>Legal Personality</i> which exists independently of its <i>Members</i>, as with a <i>Company Limited by Shares</i> The liabilities of its <i>Members</i> is limited to the <i>Share Capital</i> they hold and the amount of any unpaid <i>Share Capital</i> 	<ul style="list-style-type: none"> Has a separate <i>Legal Personality</i> from its <i>Members</i>, as with a <i>Company Limited by Shares</i> The liabilities of its <i>Members</i> is limited to the <i>Share Capital</i> they hold and the amount of any unpaid <i>Share Capital</i> 	<ul style="list-style-type: none"> Is a body corporate with a separate <i>Legal Personality</i>, much the same as a limited <i>Company</i> 	<ul style="list-style-type: none"> Unlike a <i>Limited Liability Partnership</i>, a <i>Partnership</i> has no <i>Legal Personality</i> separate from its partners. It therefore cannot own assets or grant security over them. However, court rules now permit <i>Partnerships</i> to be sued and to sue in the <i>Partnership</i> name Partners are jointly liable for the contractual debts and obligations of the <i>Partnership</i>. Partners are also jointly and severally liable for the wrongful acts or omissions of their fellow partners 	<ul style="list-style-type: none"> No separate <i>Legal Personality</i> between the business and the affairs of a <i>Sole Trader</i>. The business cannot own assets in its own right, or grant security over them A <i>Sole Trader</i> is personally liable, without limit, for all the liabilities of the business

	Company Limited by Shares	Company Limited by Guarantee	Community Interest Company (CIC)	Charitable Incorporated Organisation (CIO)	'Co-operative' Industrial and Provident Society	'Community Benefit' Industrial and Provident Society	Limited Liability Partnership (LLP)	Partnership	Sole Trader/ Unincorporated Association
TREATMENT OF SURPLUSES/ PROFITS	<ul style="list-style-type: none"> Any Profits available after paying expenses (any income the Company generates will need to be utilised to pay expenses including the cost of its employees or consultants, research and development, etc) can be paid by way of Dividends to Shareholders The above will be subject to any specific arrangements that may have been written into the Company's Articles of Association and/ or anything that the Members have agreed to in any contract entered into in respect of the operation of the Company (a Shareholders agreement) 	<ul style="list-style-type: none"> A structure which does not tend to be associated with a return of Profits to its Members The Companies Act 2006 renders void any provision in the Articles of Association of a Company Limited by Guarantee which does not have a Share Capital, any resolution which purports to distribute Profits of the Company (note that companies limited by guarantee are no longer permitted to have a Share Capital but there may be a few still in existence prior to the change in legislation) Companies limited by guarantee that wish to be registered as charities must include in its Articles of Association a prohibition on distribution of income and Profits to Members 	<ul style="list-style-type: none"> A key feature of CICs is the "Asset Lock" rules. These provisions limit the way in which distribution of Profits and assets can be made and are designed to ensure that a CIC's assets are used for the benefit of the community CICs are not allowed to transfer assets to third parties for less than their full market value other than to other "asset-locked bodies" – its Articles may nominate such a body (which will avoid the Regulator having to decide the ultimate destination of surplus assets on a winding up) Save in circumstances where a CIC is able to pay Dividends, a CIC must use its income, assets and Profits for the community it is formed to serve. CICs operate on the principle that any Dividends, or performance related interest paid, should not be disproportionate to the amount invested and the Profits made by the Company, although this is subject to ongoing consultation 	<ul style="list-style-type: none"> A CIO's income must be applied towards the promotion of its objects The model CIO Constitution (made available by the Charity Commission) provides that the CIO's income and property must not be paid directly or indirectly by way of Dividend, bonus or otherwise by way of Profit to any of its Members. However, this does not prevent a Member who is not also a Charity Trustee receiving reasonable and proper remuneration for any goods or services supplied to the CIO A Charity Trustee (or a person connected to them) can receive payments and benefits from the CIO in specified circumstances and subject to various conditions, for example, the Constitution must expressly permit such payments or a court or the Commission authorises it 	<ul style="list-style-type: none"> A Co-operative society is not entitled to be registered if it carries on, or intends to carry on, business with the object of making Profits mainly for the payment of interest, Dividends or bonuses invested or deposited with, or lent to, the society or any other person There is a limited right for holders of Shares to receive any return on their Shares Any distribution of Profits must be made in line with the rules of the IPS 	<ul style="list-style-type: none"> Cannot distribute surpluses to Members The Incorporation application must state how the surplus will be applied 	<ul style="list-style-type: none"> Consideration needs to be given to whether there should be any differentiation between the ways in which operating losses and capital losses are to be borne Profit sharing agreements can be put in place in relation to the Profits (if any) of an LLP (which can also distinguish between income and capital Profits made) 	<ul style="list-style-type: none"> Profits are shared between partners equally or in a proportion as may be agreed in the Partnership Agreement 	<ul style="list-style-type: none"> Sole Trader may keep Profits, subject to taxation determined by mandatory completion of annual self-assessment tax return to HMRC A Sole Trader must also keep records showing business income and expenses An unincorporated association cannot trade or generate Profit in its own right as it has no corporate status

	<i>Company Limited by Shares</i>	<i>Company Limited by Guarantee</i>	<i>Community Interest Company (CIC)</i>	<i>Charitable Incorporated Organisation (CIO)</i>	<i>'Co-operative' Industrial and Provident Society</i>	<i>'Community Benefit' Industrial and Provident Society</i>	<i>Limited Liability Partnership (LLP)</i>	<i>Partnership</i>	<i>Sole Trader/ Unincorporated Association</i>
TREATMENT OF SURPLUSES/ PROFITS			<ul style="list-style-type: none"> – For <i>CICs</i> limited by <i>Shares</i>, the Regulations in essence permit: – capped <i>Dividends</i> on <i>Shares</i> issued to raise investment. The cap is set by the Regulator and there are limits on the ability to carry forward unutilised <i>Dividend</i> cap from one year to subsequent years; – limited rights to purchase or redeem <i>Shares</i> or reduce <i>Share Capital</i>; and – unlimited distributions to <i>Members</i> which are themselves <i>CICs</i> or charities (as these will themselves be subject to an "Asset Lock"). – Limits are also placed on a <i>CIC's</i> ability to pay interest on certain types of debentures and debts. These are not aimed at conventional interest payments, but those that are related to the performance of the <i>CIC</i> (such as by reference to <i>Profit</i> or turnover). This will prevent debt instruments that are akin to equity being used to avoid the <i>Dividend</i> restrictions. 						

	Company Limited by Shares	Company Limited by Guarantee	Community Interest Company (CIC)	Charitable Incorporated Organisation (CIO)	'Co-operative' Industrial and Provident Society	'Community Benefit' Industrial and Provident Society	Limited Liability Partnership (LLP)	Partnership	Sole Trader/ Unincorporated Association
SET UP PROCESS & REGULATOR	<ul style="list-style-type: none"> Easy to incorporate, either via completion of an <i>Incorporation</i> application (form IN01 – selecting “private limited by shares”). Can be incorporated either electronically or by filing paper documents <i>Incorporation</i> fee payable Memorandum and <i>Articles of Association</i> required Registered with <i>Companies House</i> 	<ul style="list-style-type: none"> The same requirements apply as in the case of a <i>Company Limited by Shares</i> Complete <i>Incorporation</i> application (form IN01 – selecting “private limited by guarantee”). Can be incorporated either electronically or by filing paper documents <i>Incorporation</i> fee payable Memorandum and <i>Articles of Association</i> required Registered with <i>Companies House</i> 	<ul style="list-style-type: none"> Complete <i>Incorporation</i> application (form IN01) to form a <i>Company</i>, plus there is a requirement to produce a “community interest statement” (form CIC36) <i>Incorporation</i> fee payable Memorandum and <i>Articles of Association</i> required (it is advisable that the published model forms of these documents are followed) It is possible to convert an existing <i>Company</i> to a <i>CIC</i> Applications for registration made with <i>Companies House</i> who will refer the application to the <i>CIC Regulator</i> for approval. Must satisfy a <i>Community Interest Test</i> – the test is whether a reasonable person could consider its activities to benefit the community and not serve an unduly restricted group of beneficiaries 	<ul style="list-style-type: none"> Complete <i>Incorporation</i> application and provide all necessary documentation, including the prescribed <i>Constitution</i>, to the <i>Charity Commission</i> (model <i>Constitutions</i> are available from the <i>Charity Commission</i>) Registered with the <i>Charity Commission</i> – no need to register with <i>Companies House</i> 	<ul style="list-style-type: none"> Complete <i>Incorporation</i> application (Mutual Societies Application Form) (this must be completed and signed by three <i>Members</i> and the secretary of the IPS) and then submit the same to the <i>Financial Conduct Authority (FCA)</i> with the appropriate fee Registered with the <i>FCA</i>. The <i>FCA</i> will only register as a <i>Co-operative</i> society if it is satisfied the <i>Co-operative</i> society is bona fide and meets certain criteria. These organisations do not register documents at <i>Companies House</i> Must have at least three <i>Members</i> 	<ul style="list-style-type: none"> Complete <i>Incorporation</i> application (Mutual Societies Application Form) (this must be completed and signed by three <i>Members</i> and the secretary of the IPS) and then submit the same to the <i>Financial Conduct Authority (FCA)</i> with the appropriate fee Registered with the <i>FCA</i>. The <i>FCA</i> will only register as a community benefit society if it is satisfied it will be run primarily for the benefit of people who are not <i>Members</i> of the society, and in the interests of the community at large, plus other relevant criteria. These organisations do not register documents at <i>Companies House</i> Must have at least three <i>Members</i> 	<ul style="list-style-type: none"> Complete <i>Incorporation</i> application (form LLIN01) and pay the required fee at <i>Companies House</i>. Can be incorporated either electronically or by filing paper documents Registered with <i>Companies House</i> Advisable to establish a <i>Members Agreement</i> from the outset which sets out the basis on which each partner participates in the <i>LLP</i> 	<ul style="list-style-type: none"> No formal set up is required No registration process or regulator Can arise automatically if the definition of a <i>Partnership</i>, as set out in the <i>Partnership Act 1890</i>, is satisfied. It is a matter of fact whether a <i>Partnership</i> exists and the parties cannot simply determine this for themselves. Normally the relationship is governed by a contractual agreement but the essence of a <i>Partnership</i> is the continuing relationship, Advisable to establish a <i>Partnership Agreement</i> (otherwise <i>Profits</i> and losses will be shared equally amongst the partners) 	<ul style="list-style-type: none"> No formal set up is required for a <i>Sole Trader</i>. It is usual for an unincorporated association to adopt a set of rules by formal resolution at a meeting of the <i>Members</i> (which represent the terms of the contract between them) No registration process or regulator

	<i>Company Limited by Shares</i>	<i>Company Limited by Guarantee</i>	<i>Community Interest Company (CIC)</i>	<i>Charitable Incorporated Organisation (CIO)</i>	<i>'Co-operative' Industrial and Provident Society</i>	<i>'Community Benefit' Industrial and Provident Society</i>	<i>Limited Liability Partnership (LLP)</i>	<i>Partnership</i>	<i>Sole Trader/ Unincorporated Association</i>
REPORTING REQUIREMENTS	<ul style="list-style-type: none"> Submission of annual return, accounts and other information to <i>Companies House</i> Open to public scrutiny as a variety of information is publicly available 	<ul style="list-style-type: none"> Submission of annual return, accounts and other information to <i>Companies House</i> Open to public scrutiny as a variety of information is publicly available 	<ul style="list-style-type: none"> Submission of annual return, accounts and other information to <i>Companies House</i> Annual <i>CIC</i> report to be filed with <i>Companies House</i> 	<ul style="list-style-type: none"> Submission of annual return to <i>Charity Commission</i> <i>Trustees'</i> annual report Governing documents of charities can be publicly accessed via the register of charities 	<ul style="list-style-type: none"> A registered IPS must keep proper books of account and submit an annual return every year accompanied by a set of accounts: <ul style="list-style-type: none"> Within seven months from the end of its accounting year, an IPS must submit an annual return to the <i>FCA</i> that includes a balance sheet and an auditor's report. A copy of the latest balance sheet must be displayed in a prominent position at the IPS's registered office 	<ul style="list-style-type: none"> A registered IPS must keep proper books of account and submit an annual return every year accompanied by a set of accounts: <ul style="list-style-type: none"> Within seven months from the end of its accounting year, an IPS must submit an annual return to the <i>FCA</i> that includes a balance sheet and an auditor's report. A copy of the latest balance sheet must be displayed in a prominent position at the IPS's registered office 	<ul style="list-style-type: none"> Submission of annual return, accounts and other information to <i>Companies House</i> 	<ul style="list-style-type: none"> No reporting requirements 	<ul style="list-style-type: none"> No reporting requirements
PRIMARY LEGISLATION	<ul style="list-style-type: none"> Companies Act 2006 	<ul style="list-style-type: none"> Companies Act 2006 	<ul style="list-style-type: none"> Companies Act 2006 Companies (Audit, Investigations and Community Enterprise) Act 2004 <i>Community Interest Company Regulations</i> 2005 	<ul style="list-style-type: none"> Charities Act 2011 	<ul style="list-style-type: none"> Industrial and Provident Societies Act 1965 (although note that further reform of this Act is on the way – it is due to be amended by The <i>Co-operative</i> and Community Benefit Societies and Credit Unions Act 2010, although it is not known when this will come into force) 	<ul style="list-style-type: none"> Industrial and Provident Societies Act 1965 (although note that further reform of this Act is on the way – it is due to be amended by The <i>Co-operative</i> and Community Benefit Societies and Credit Unions Act 2010, although it is not known when this will come into force) 	<ul style="list-style-type: none"> Limited Liability Partnerships Act 2000 	<ul style="list-style-type: none"> Partnership Act 1890 	<ul style="list-style-type: none"> None for sole trader Companies Act 2006 for an Unincorporated Association Charities Act 2011 for certain types of Unincorporated Association

	Company Limited by Shares	Company Limited by Guarantee	Community Interest Company (CIC)	Charitable Incorporated Organisation (CIO)	'Co-operative' Industrial and Provident Society	'Community Benefit' Industrial and Provident Society	Limited Liability Partnership (LLP)	Partnership	Sole Trader/ Unincorporated Association
TAXATION	<ul style="list-style-type: none"> ■ A <i>Company</i> is subject to corporation tax on its taxable <i>Profits</i> (i.e. its income <i>Profits</i> and chargeable gain) made during its accounting period – The <i>Company</i> must: <ul style="list-style-type: none"> – Tell HMRC when the <i>Company</i> starts business activities – Send an annual <i>Company</i> Tax return to HMRC – Register for VAT if it expects to cross the threshold (for 2013/14 tax year this is £79,000) 	<ul style="list-style-type: none"> ■ A <i>Company</i> is subject to corporation tax on its taxable <i>Profits</i> (i.e. its income <i>Profits</i> and chargeable gain) made during its accounting period – The <i>Company</i> must: <ul style="list-style-type: none"> – Tell HMRC when the <i>Company</i> starts business activities – Send an annual <i>Company</i> Tax return to HMRC – Register for VAT if it expects to cross the threshold (for 2013/14 tax year this is £79,000) 	<ul style="list-style-type: none"> ■ Same tax treatment as a standard <i>Company</i> (limited by <i>Shares</i> or by guarantee) ■ A <i>CIC</i> cannot have charitable status 	<ul style="list-style-type: none"> ■ <i>CIOs</i>, as a charitable entity, are generally exempt from corporation tax where the profits of its charitable trade are applied solely for the purposes of the charitable entity and where the entity makes a claim for exemption 	<ul style="list-style-type: none"> ■ Same tax treatment as a standard <i>Company</i> (limited by <i>Shares</i> or by guarantee) ■ A registered <i>Industrial and Provident Society</i> may qualify for full or partial exemption from liability to tax in circumstances where it is regarded as a “mutual trading concern” 	<ul style="list-style-type: none"> ■ Same tax treatment as a standard <i>Company</i> (limited by <i>Shares</i> or by guarantee) ■ A registered <i>Industrial and Provident Society</i> may qualify for full or partial exemption from liability to tax in circumstances where it is regarded as a “mutual trading concern” or is a <i>Charity</i> 	<ul style="list-style-type: none"> ■ Send a personal and <i>Partnership</i> self-assessment tax return every year ■ Pay Income tax and National Insurance on their share of <i>Profits</i> through self-assessment (for individual members) ■ Most individual members will be treated as self-employed, so there is no “employer’s NICs”, only Class 2 and Class 4 NICs as appropriate ■ From April 2014, members who also work for the <i>LLP</i> may be treated as employees if certain conditions are met, in which case they will be subject to PAYE and Class 1 NICs ■ Pay corporation tax on their share of <i>Profits</i> (for corporate members) ■ Register the <i>LLP</i> for VAT if it expects to cross the threshold (for 2013/14 tax year this is £79,000) 	<ul style="list-style-type: none"> ■ Send a personal and <i>Partnership</i> self-assessment tax return every year ■ Pay Income tax and National Insurance on their share of <i>Profits</i> through self-assessment (for individual members) ■ As individual members are self-employed there is no “employer’s NICs”, only Class 2 and Class 4 NICs as appropriate ■ Register the <i>Partnership</i> for VAT if it expects to cross the threshold (for 2013/14 tax year this is £79,000) 	<ul style="list-style-type: none"> ■ Register for self-assessment and as self-employed for business taxes with HMRC ■ Complete an annual self-assessment tax return ■ Pay Income Tax and National Insurance through self-assessment (usually only Class 2 and Class 4 NICs as appropriate) ■ Register for VAT if it expects to cross the threshold ■ An <i>Unincorporated Association</i> is generally treated the same as a standard <i>Company</i> and is within the charge to corporation tax if it makes a <i>Profit</i> ■ An association such as a “community association” may have a constitution which enables it be considered as a <i>Charity</i>

	<i>Company Limited by Shares</i>	<i>Company Limited by Guarantee</i>	<i>Community Interest Company (CIC)</i>	<i>Charitable Incorporated Organisation (CIO)</i>	<i>'Co-operative' Industrial and Provident Society</i>	<i>'Community Benefit' Industrial and Provident Society</i>	<i>Limited Liability Partnership (LLP)</i>	<i>Partnership</i>	<i>Sole Trader/ Unincorporated Association</i>
CONSTITUTIONAL DOCUMENT	<ul style="list-style-type: none"> Memorandum and <i>Articles of Association</i> 	<ul style="list-style-type: none"> Memorandum and <i>Articles of Association</i> 	<ul style="list-style-type: none"> Memorandum and <i>Articles of Association</i> 	<ul style="list-style-type: none"> <i>Constitution</i> 	<ul style="list-style-type: none"> Rules 	<ul style="list-style-type: none"> Rules 	<ul style="list-style-type: none"> <i>Members Agreement</i> (not a statutory requirement) 	<ul style="list-style-type: none"> Normally the relationship is governed by a contractual agreement (<i>Partnership Agreement</i> (not a statutory requirement)) but the essence of a <i>Partnership</i> is the continuing relationship, personal as well as commercial, with the <i>Partnership</i> agreement being an indication of the relationship 	<ul style="list-style-type: none"> No formal requirement for a <i>Sole Trader</i> – flexible An unincorporated association will usually adopt a set of rules

SUMMARY

ADVANTAGES	<ul style="list-style-type: none"> <i>Incorporation</i> is fast Liability of <i>Members</i> is limited to their capital contribution Widely used and commonly understood structure 	<ul style="list-style-type: none"> <i>Incorporation</i> is fast Liability of the <i>Members</i> is limited to a specified amount in the guarantee Commonly associated with not for <i>Profit</i> organisations Suitable for any size of organisation enabling a small organisation to expand without restriction 	<ul style="list-style-type: none"> A structure which is designed as a vehicle for <i>Social Enterprises</i> that want to use <i>Profits</i> and assets for the public good Offer <i>Limited Liability</i> and are based on the familiar <i>Corporate Structure</i> Supervision by the <i>CIC Regulator</i>, which is committed to providing a high level service to <i>CICs</i> 	<ul style="list-style-type: none"> <i>Members</i> and <i>Trustees</i> are usually personally safeguarded from the financial liabilities the <i>Charity</i> incurs, which is not normally the case for unincorporated charities the <i>Charity</i> has a <i>Legal Personality</i> of its own, enabling it to conduct business in its own name, rather than the name of the <i>Trustees</i> Simple to set up Less onerous filing requirements than those applying to companies 	<ul style="list-style-type: none"> They are an established form of <i>Co-operative</i> enterprise There are no restrictions on the society buying back its <i>Shares</i> if it is structured in the right way Potential to change the form of a society in the event that its <i>Members</i> want to merge into a new society or a <i>Company</i> 	<ul style="list-style-type: none"> They are an established form of <i>Social Enterprise</i> There are no restrictions on the society buying back its <i>Shares</i> if it is structured in the right way Potential to change the form of a society in the event that its <i>Members</i> want to merge into a new society or a <i>Company</i> 	<ul style="list-style-type: none"> <i>Incorporation</i> is fast Tax transparency is often attractive 	<ul style="list-style-type: none"> <i>Partnerships</i> are relatively easy to establish As there is more than one "owner" of the business, the ability to raise funds may be increased Ability to benefit from the combination of complementary skills of two or more people. There is a wider pool of knowledge, skills and contacts 	<ul style="list-style-type: none"> Cheap to set up and can be run with relative informality Unlike companies, <i>Unincorporated Associations</i> are not generally subject to outside legal control
-------------------	---	--	--	--	--	--	--	--	---

	Company Limited by Shares	Company Limited by Guarantee	Community Interest Company (CIC)	Charitable Incorporated Organisation (CIO)	'Co-operative' Industrial and Provident Society	'Community Benefit' Industrial and Provident Society	Limited Liability Partnership (LLP)	Partnership	Sole Trader/ Unincorporated Association
DISADVANTAGES	<ul style="list-style-type: none"> Not commonly associated with not-for-Profit organisations Can present more stringent filing requirements and general regulation than compared with other structures 	<ul style="list-style-type: none"> Not usually adopted as a vehicle for commercial entities or with a view to generating Profit for investors Subject to the same stringent filing obligations as a Company Limited by Shares Unable to raise finance by the issue of Shares 	<ul style="list-style-type: none"> The restriction on the organisation making a return (CICs can only make limited returns to investors and surplus assets on cessation will be preserved for its "community" rather than be distributed to Members) could inhibit external investment Additional regulatory burdens 	<ul style="list-style-type: none"> The structure is relatively new and so not as tried and tested as other structures Trustees will have management responsibility and be liable for breaches of trust and for fraudulent/ wrongful trading Not suitable for all types of Charity – e.g. exempt charities cannot convert to CIO status 	<ul style="list-style-type: none"> An Industrial and Provident Society can be expensive to incorporate in terms of the fees that are payable to the FCA Control of the society is often equal and not based on the level of investment of each Member. Voting is usually on a one Member, one vote basis (meaning that no one person/body can assert any degree of 'control') Distribution of surpluses is permitted, but this is not based on sharing Profits so much as returning the Profits to those who have traded with the society The FCA has a significant regulatory function in relation to registration. The FCA monitors compliance with the registration criteria on an on-going basis 	<ul style="list-style-type: none"> An Industrial and Provident Society can be expensive to incorporate in terms of the fees that are payable to the FCA The FCA has a significant regulatory function in relation to registration. The FCA monitors compliance with the registration criteria on an on-going basis The "Asset Lock" feature of this society, which means that some or all of its assets can only ever be used or dealt with for the benefit of the community that it serves, could inhibit external investment 	<ul style="list-style-type: none"> Mainly used by professional Partnerships Having a second party involved is a pre-requisite to establishing an LLP 	<ul style="list-style-type: none"> The distribution of Profits and attribution of liabilities can cause problems unless a Partnership Agreement specifically sets out how these are to be shared A Partnership, like a Sole Trader, has unlimited liability 	<ul style="list-style-type: none"> Lack of a distinct legal identity for organisations to deal with often poses problems More generally suited for organisations with small Membership For an Unincorporated Association, a change to its rules requires unanimous agreement which can sometimes be unworkable

AT A GLANCE

SEPARATE LEGAL ENTITY	✓	✓	✓	✓	✓	✓	✓	✗	✗
POTENTIAL FOR DISTRIBUTING SURPLUSES/PROFIT	✓	✗	✓ if CIC limited by shares ✗ if CIC limited by guarantee	✗	✓	✗	✓	✓	✓
LIMITED LIABILITY FOR MEMBERS	✓	✓	✓	✓	✓	✓	✓	✗	✗
POTENTIAL FOR CHARITABLE STATUS	✗	✓	✗	✓	✗	✓	✗	✗	✓

If you have finished with this document, please pass it on to other interested parties or recycle it, thank you.

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities.
Further details of these entities can be found at www.dlapiper.com
Copyright © 2014 DLA Piper. All rights reserved. | MAY14 | 2766463