Anthony Collins solicitors

CHARITABLE TRUST WEST MIDLANDS

Comparison of Corporate Structures

	Legislative Framework	Administrative Complexity	Constitutional Model	Regulator	Tax Treatment (indicative)	Flexibility of activities	Portability of Assets	Extraction of Profits	Approach of Funders
Trust	Trusts law	Depends on the trust deed.	Trust deed. Very complex rules as to beneficiaries.	Charity Commission (for charitable trusts)	Depends on type of trust and nature of beneficiary. See overview: http://www.hmrc.gov.uk/trusts/types/index.htm	Must work for the purposes of the trust.	Assets are to be used for a specified purpose or for the benefit of specified beneficiaries.	Administration / management fees where permitted by the deed	Can be unattractive to funders because of lack of discrete legal identity.
Company limited by Shares	Company law (extensive and up-to-date so more tightly bound). Limited liability.	More straightforward corporate structure than IPS More filing requirements than an IPS	Articles of Association. Directors and shareholders – usually only one or two shareholders in the social housing context – usually parent organisation or partners in joint venture.	Registrar of Companies – largely passive regulator. Provided annual returns and accounts are filed on time, the Registrar does not take an active role in monitoring compliance with company law by CLSs.	No special tax treatment.	Objects clause often 'general commercial purposes'. No real limits unless also a CIC	Assets are not ring-fenced – can be distributed to shareholders. Profits generated can be distributed by way of dividend.	Sale of shares Dividends from shares Interest on debenture Amongst the shareholders on solvent winding up. More restrictions if CIC.	Seen as a "for-profit" corporate structure. Company law is familiar to funders.
Company limited by Guarantee	Company law (extensive and up-to-date so more tightly bound). Limited liability.	More straightforward corporate structure than IPS More filing requirements than an IPS	Articles of Association Directors and company members. May be the same individuals fulfilling both roles.	Registrar of Companies – largely passive regulator. Provided annual returns and accounts are filed on time, the Registrar does not take an active role in monitoring compliance with company law by CLGs.	No special tax treatment unless also registered as a charity.	In theory anything, unless also a CIC or a charity, but usually objects are for the benefit of the community in some way.	Cannot usually distribute assets to members	Almost always contains prohibition on distribution of profits to members, even on winding up.	Company law is familiar to funders.

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Industrial and Provident Society	Compared to company law, IPS law may benefit from being updated. The main Act for IPSs has only 78 sections (as opposed to over 1300 in the Companies Act 2006). There is also very little case law relating to IPSs. This can lead to uncertainty and increased costs for professional advice. However, on occasions it does benefit IPSs as it permits greater flexibility than company law.	Can be harder to change the constitution when compared to the company model. Relatively little information has to be routinely filed with the FSA.	Rules (usually based on 'model' rules)	Regulated by the Mutual Societies Registration Department of the Financial Services Authority. The FSA is a passive regulator and, provided the annual return is made each year by the IPS, it does not tend to involve itself in monitoring compliance by IPSs.	No special tax treatment unless comply with charities tax regime.	Either for the benefit of the members (co-op) or for the community (community benefit society)	IPSs must be set up for the benefit of the community or as co-operatives. Cannot distribute assets to members (unless a co-operative)	Profits may go to the members in a co-op. Profits not distributed to members in a community benefit society.	IPS law can be seen as in need of being updated and is less familiar to funders than company law. However, IPS have been used successfully for community shares and bond issues due to fewer restrictions applying to IPS when compared with companies for this type of funding.
Community Interest Company	Company law plus Companies (Audit, Investigations and Community Enterprise) Act 2004 and associated regulations	Filing as for company law, plus annual CIC34 report which must be filed at the same time as the accounts	Articles of Association plus CIC36 (or CIC37 on conversion) to satisfy 'community interest test.' Cannot be registered as a charity (though can convert to / from).	Companies House and CIC Regulator	Doesn't have tax advantages of charity	Can be established for any purpose, as long as activities are carried out for the benefit of the community.	Asset lock in place – transfer for full market value, or otherwise to 'asset-locked bodies' (= charities, CICs, IPS with asset lock).	If CIC limited by shares, then as for company limited by shares except special Dividend Cap. If CIC limited by guarantee, then as for company limited by guarantee.	Funders becoming more aware of the model. Some more cautious of CIC limited by shares as seen as 'for profit' even though a CIC. CIC limited by guarantee should be as for other CLGs.

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Charitable Incorporated Organisation	Charities Act 2006. Regulations EC company law directives will not apply to CIOs.	Single registration with the Charity Commission	Simpler constitutional form – CC model forms, including fewer fixed governance provisions than for companies. More straightforward arrangements for merger and reconstruction – Charities Act 2006 contains a no. of provisions designed to facilitate merger and reconstruction which are not available to charitable companies. Enforcement regime does not penalise charity for conduct of its directors. Codified duties for directors and members.	Charity Commission Less onerous requirements for preparing accounts – small CIOs prepare receipts and payments accounts and larger CIOs prepare accruals accounts. Less onerous reporting requirements – only prepare an annual report under Charities Act 1993 (companies have to prepare directors report too) Only one annual return Less onerous filing requirements – only send to CC. Easier to make constitutional changes – don't go through CH. Lower costs – no charge for registration and filing of documents.	Expected to have usual tax advantages of charities.	Must be charitable in law	Restricted – usual charity law provisions apply	Restricted – as for charity.	Likely to be fine for smaller funders. No register of charges held by the Charity Commission (equivalent to that maintained by Companies House for companies). This in turn is likely to mean that funders offering more substantial sums (where they would want to take a legal charge as security) will be put off.
LLP	Governed by the Limited Liability Partnerships Act 2000 (and subsequent regulations) and the Companies Act 2006	Can be as complicated or simple as the members want.	Governed by the members' agreement (LLP agreement) – a private document which is confidential to the members	Companies House for compliance matters – accounts, etc.	Taxed as a partnership: the partners are taxed but the LLP is not.	Designed as a 'for profit' model	As set out in the members' agreement.	As set out in the members' agreement.	Unlikely to attract grant funding as 'for profit' vehicle. Partners usually expected to put in their own funds as capital.
Partnership	Partnership Act 1890 (and subsequent case law)	Can be as complicated or simple as the members want.	Partnership agreement. All have potentially unlimited liability.		Partners each taxed individually	Designed as a 'for profit' model	As set out in the partnership agreement.	As set out in the partnership agreement.	Unlikely to attract grant funding. Partners usually expected to put in their own funds as capital.

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Limited Partnership	Limited Partnerships Act 1907	Can be as complicated or simple as the members want.	Partnership agreement. At least one partner has unlimited liability, whilst the rest have limited liability.		Partners each taxed individually	Designed as a 'for profit' model	As set out in the partnership agreement.	As set out in the partnership agreement.	Unlikely to attract grant funding. Partners usually expected to put in their own funds as capital.
Unincorporated Association		Structure is cheap to set up and can be run with relative informality. Governed by the association's rules.	No separate legal personality from its members	Charity Commission, if association is charitable.	Normal tax rules apply. Where charitable, then potentially no corporation tax to pay on surpluses. Where charitable, can be exempt from SDLT. Partial exemption from business rates.	Broad if non-charitable. Limited if charitable – activities must be charitable or pose no significant risk to charitable assets.	Depends on rules, but assets must be used for charitable purposes if charitable.	Profits cannot be distributed to members, if charitable.	Funders are sometimes uncomfortable at the lack of legal identity.
Incorporated Charity (company limited by guarantee)	Companies Act 2006 plus associated regulations. Charities Act 1993. Company and charity law generally.			Companies House and Charity Commission. CLGs that are charities are required to register with the Charity Commission, which is an active regulator. Registered charities are required to file an annual return each year and can be subject to inspection by the Charity Commission. The Charity Commission has extensive powers to force charities to comply with charity law.	Potentially no corporation tax to pay on surpluses. Can be exempt from SDLT. Partial exemption from business rates.	Limited – activities must be charitable or pose no significant risk to charitable assets	Assets must be used for charitable purposes	Profits cannot be distributed to members.	Some grant funders will only fund charities.

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Incorporated Charity (IPS)	Charity law. IPS law.	As for IPS but must also comply with charity law.		If charities, IPSs are required to demonstrate charitabilty to HMRC (in order to benefit from the charities tax regime). HMRC is not an active regulator and largely leaves IPSs alone unless it becomes aware of a breach of charity law. However, under the Charities Act 2006, charitable IPSs that are housing associations are to be regulated by the HCA for compliance with charity law. This will not take effect for the foreseeable future, and we do not yet know what position the HCA will take in relation to charity law regulation.	Potentially no corporation tax to pay on surpluses. Can be exempt from SDLT. Partial exemption from business rates.	Limited – activities must be charitable or pose no significant risk to charitable assets	Assets must be used for charitable purposes	Profits cannot be distributed to members.	Some grant funders will only fund charities.
Joint Venture	Depends on form taken	Depends on form taken. If a company limited by shares then likely to have a joint venture agreement / shareholders' agreement underneath the new company. If an LLP, then probably dealt with under Members' agreement.	Assuming that the joint venture itself has a legal structure (as opposed to simply being under a joint venture agreement), then usually either company limited by shares or LLP.	Depends on form taken	Depends on form taken. If LLP, then 'tax transparent' – the members get taxed on profits but the LLP does not. If company limited by shares, then potential double-taxation: corporation tax for the company and additional tax for the shareholders where dividends paid out.	Depends on form taken, but usually intended to be 'for profit'.	Depends on terms of agreement between the parties.	Depends on terms of agreement between the parties.	Usually seen as 'for profit' so grant funds unlikely.

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In addition to the above, there are a number of ‘labels’ which are not legal structures in and of themselves, but which often share certain characteristics. A summary is set out below.

Community Association – an organisation working for the benefit of the local community. Likely to have residents involved, either directly as directors / trustees, etc, or indirectly through consultation or other mechanisms.

Community Land Trust – a CLT must be a “body corporate” so will usually be a company limited by guarantee or an IPS. A CLT must be controlled by its members and people living or working in the specified area of benefit must have the opportunity to become members of the CLT. A CLT must be established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets. Assets may not be sold or developed except in a manner which the CLT’s members think benefits the local community. Profits must be used to benefit the local community and profits cannot be distributed to members. Initial grant funding may be possible.

Development Trusts – no legal definition, but prior to its merger with BASSAC as Locality, the Development Trusts Association existed as the national body for development trusts. To be a member of what was the DTA, the criteria were: (1) be engaged in the economic, environmental and social regeneration of a defined area, (2) be independent, self-sufficient or aiming for self sufficiency, and not for private profit, (3) be community-based, owned and managed, and (4) be actively involved in partnerships and alliances between the community, voluntary, private and public sectors. Most development trusts are CLGs and some are IPS.

Mutuals – whilst there is no legal definition of a mutual, there are a number of organisations that state they are mutual. The term is commonly used in relation to newly constituted organisations set up as “spin outs” from the public sector where one of the main categories of participant (or membership) is that of the affected employees. The legal vehicles used for mutuals can vary significantly and include both charitable and non-charitable organisations as well as CLGs and IPSs. Mutuals are not (necessarily) co-operatives.

Social Enterprise – again no legal definition as yet but the Social Enterprise Coalition states three principles: to be an enterprise (selling goods or services), to be set up for a social or environmental purpose, and to be principally not for private profit, using surpluses for the benefit of the community or sustainability of the company. Most are CLGs. There are several thousand CICs but whilst CICs would probably describe themselves as social enterprises, not all social enterprises are CICs.

[Trading] subsidiary – as part of a group structure, a ‘parent’ will have one or more subsidiaries, often as companies but sometimes as IPS. A trading subsidiary is usually in the context of a charity and is often a CLS, allowing that company to make surpluses which are paid to the parent charity via Gift Aid.

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