





SUMMARY OF COMMON FORMS FOR SOCIAL ENTERPRISES

| | Trust or Unincorporated Association | Charitable Incorporated Organisation (CIO) | Registered Societies | | Companies (including community interest companies (CICs)) | | | | LLP |
|--|--|---|--|---|--|--|--|--|---|
| | | | Benefit of Community (BenCom) | Cooperative | Guarantee | | Shares | | |
| | | | | | Company Ltd by Guarantee | CIC Ltd by Guarantee | CIC Ltd by Shares | Company Limited by Shares | |
| Likely to be used for ¹ | Unincorporated associations: sports clubs, small community projects Trusts: small grant making charity | New charities, in particular service providing <i>(note possible difficulties with secured borrowing – see Debt finance below)</i> | Democratic, community focused, non-profit organisations (e.g. housing association, credit union, community development finance institution) | Community development finance institutions (e.g. credit unions) and more commercial social enterprises with members | Most new charities prior to 2013 introduction of CIO. Larger charities including service-providing. Grant funded or not for profit companies | Specifically designed for social enterprises with protected social mission | Specifically designed for social enterprises with protected social mission | Usually a commercial venture. May be used for social purposes. ² Very rarely a charity ³ | Joint venture project or consortia, particularly where see-through tax beneficial |
| Social purpose protected? | If charitable or constitutional requirement | Yes | FCA must approve any changes to rules | FCA must approve any changes to rules | If charitable or constitutional requirement | Yes | Yes | Only if constitutional requirement | If in Members' Agreement |
| Tax Treatment for organisation –brief summary ^{4, 5} | No charitable tax breaks if non-charitable. If charitable, similar to CIO and SISR available | No corporation tax for charitable activities. SDLT and CGT exemptions. Rates relief. ^{5, 6} Gift Aid on donations. SISR available. | If charitable, same as for CIO ⁵ . Rates relief sometimes given even if not charitable | No particular tax reliefs although interest can be paid on shares which may also attract tax incentives | No charitable tax breaks if non-charity. If charitable, same as for CIO ⁵ | No charitable tax breaks. Rates relief sometimes (rarely) given. SISR available and see note 5 | No charitable tax breaks. Rates relief sometimes (rarely) given. ⁵ SISR available | No particular tax reliefs (although see note 5) | Tax charge on members' profit share. No particular tax reliefs |
| Purposes | If non charity = any If charity = charitable and for public benefit | Charitable and for public benefit | Benefit of the community | Benefit of its members | If non charity = any If charity = charitable and for public benefit | Benefit of the community | Benefit of the community | Any | Any commercial purposes |
| Asset Lock | If charitable | Yes | Yes (although loopholes) but definitely if charitable | No, unless specified (and loopholes) | Usually, but definitely if charitable | Yes | Yes | No (although can include exceptionally) | If in Members' Agreement |
| Members voting rights | Unincorporated Association: as set out in the rules/ constitution and usually one member, one vote. Trusts do not have members | Usually one member, one vote | One member, one vote | One member, one vote | Usually one member, one vote | Usually one member, one vote | Usually proportionate to shareholding | Usually proportionate to shareholding | As per Members' Agreement |
| Debt finance | Yes <i>(bank/lender may require personal guarantee from trustee(s))</i> | Yes <i>(although presently no register of charges and so likely issues with security)</i> | Yes <i>(if charitable, ensure repayment terms are reasonable)</i> | Yes | Yes <i>(if charitable, ensure repayment terms are reasonable)</i> | Yes <i>(caps on performance related interest (quasi equity))</i> | Yes <i>(caps on performance related interest (quasi equity))</i> | Yes | Yes |
| Equity finance available | No | No | Yes, although limitations (plus additional caps if charitable) | Yes, although limitations <i>(useful for start-up capital)</i> | No | No | Yes, although dividend cap <i>(useful for equity investment via shares)</i> | Yes <i>(useful for equity investment via shares)</i> | Yes |
| Constitution | 'Constitution' or 'Trust deed' | Constitution | Rules | Rules | Articles of Association | Articles of Association | Articles of Association | Articles of Association | Members' Agreement |
| Regulator | None / Charity Commission (if charitable and registrable if above threshold) | Charity Commission | Financial Conduct Authority ⁷ | Financial Conduct Authority ⁷ | Companies House (& also Charity Commission if charitable and registrable if above threshold) | Companies House & CIC Regulator | Companies House & CIC Regulator | Companies House | Companies House |

KEY

| | | | |
|--|---------------------------------------|---|------------------|
|  | Unincorporated |  | Charity |
|  | Incorporated (i.e. Limited Liability) |  | Can be a charity |
|  | |  | Not a Charity |

This summary is designed to give you an overview only. It should not be acted on without taking professional advice on a given situation.

0800 111 4336

stoneking.co.uk

Notes

- Charity status is likely to be driven by a long-term desire to benefit the public and safeguard the assets of the charity.
 - Note that various bodies are developing share companies with different levels of social purpose enshrined at present, although no one commonly accepted model currently exists.
 - In exceptional circumstances (e.g. US/UK dual registered charities), share companies may be charities but this is extremely unusual.
 - VAT planning will also be relevant, which is outside the scope of this note, but please note that charities are not exempt.
 - Investment: Tax reliefs may also apply for investors in some circumstances, which enable organisation to encourage investment: Seed Enterprise Investment Scheme (SEED), Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT) can be used in certain circumstances with investments in shares (or EIS fund, for EIS). Social Investment Tax Relief (SISR) may be available for investments of shares or debt in charities, CICs and BenComs (subject to certain conditions). Social Investment Tax Relief (SISR) is available to individual investors to encourage them to make qualifying investments in to social enterprises
 - Rates relief for charities is mandatory at 80% relief and a further discretionary 20% (at the Local Authority's discretion).
 - It has been intended for some time that charitable BenComs will need to register with the Charity Commission but this has been delayed indefinitely at present.
- NB:** CASCs are increasingly popular for amateur sports clubs and offer some tax relief. Please see separate Stone King briefing.