

STEP 7

UNDERSTANDING ORGANISATIONAL STRUCTURES



This guide considers four forms of legal structure that could be considered when establishing a new organisation to own and manage a community asset. It also sets out some basic principles that should be enshrined in the organisation's governing documents.

THIS IS NOT A SUBSTITUTE FOR SPECIALIST LEGAL ADVICE AND DOES NOT PROVIDE A COMPREHENSIVE GUIDE TO ELIGIBILITY. PLEASE DISCUSS WITH YOUR LOCAL DEVELOPMENT MANAGER AND SEEK APPROPRIATE PROFESSIONAL ADVICE BEFORE FINALISING YOUR STRUCTURE AND GOVERNING DOCUMENTS.

THE INFORMATION BELOW DESCRIBES FOUR LEGAL STRUCTURES THAT ARE MOST LIKELY TO BE ADOPTED FOR COMMUNITY ASSET OWNERSHIP. EACH FORM CAN HAVE MANY VARIATIONS. TO BE ELIGIBLE FOR FUNDING FROM THE SCOTTISH LAND FUND, HIE OR TO USE THE COMMUNITY RIGHT TO BUY LEGISLATION THE FOLLOWING CRITERIA SHOULD BE CLEARLY SET OUT IN THE GOVERNING DOCUMENT, REGARDLESS OF THE LEGAL STRUCTURE CHOSEN:

- I. THE ORGANISATION MUST HAVE A SOCIAL PURPOSE AND ACT FOR THE BENEFIT OF THE LOCAL GEOGRAPHIC COMMUNITY; A DEFINITION OF THE COMMUNITY AND ITS BOUNDARY MUST BE INCLUDED**
- II. IT MUST HAVE A TWO-TIER STRUCTURE COMPRISING A BOARD OF DIRECTORS AND A WIDER MEMBERSHIP BODY. MEMBERSHIP MUST BE OPEN TO EVERYONE LIVING IN THE GEOGRAPHICALLY DEFINED COMMUNITY, ALTHOUGH APPROPRIATE AGE THRESHOLDS MAY APPLY.**
- III. THE ORGANISATION MUST BE CONTROLLED BY LOCAL PEOPLE:**
 - THE MAJORITY OF THE ORGANISATION'S VOTING MEMBERS MUST BE INDIVIDUAL ORDINARY MEMBERS AND RESIDENT WITHIN THE DEFINED COMMUNITY.
 - MORE THAN HALF OF THE VOTING SEATS ON THE BOARD MUST COMPRISE COMMUNITY DIRECTORS RESIDENT WITHIN THE DEFINED COMMUNITY AND ELECTED BY THE MEMBERSHIP.
- IV. ANY PROFIT GENERATED BY THE ORGANISATION MUST BE USED TO BENEFIT THE COMMUNITY AND CANNOT BE DISTRIBUTED TO INDIVIDUALS**
- V. STATEMENT ON DISPOSAL OF ASSETS IN CASE OF DISSOLUTION**
- VI. DIRECTORS CANNOT BE EMPLOYED BY OR RECEIVE REMUNERATION FROM THE ORGANISATION.**

COMPANY LIMITED BY GUARANTEE (CLG)

This is a company structure that has been commonly used for community land owning groups in Scotland. A CLG has the benefits of incorporation, so the company has its own legal identity that is separate from its board and members. The liability of members for company activities is limited to a guarantee made by all members on joining; normally £1. CLGs are registered with Companies House and have to submit annual reports. A CLG can apply to the Office of the Scottish Charity Register (OSCR) to become a registered charity. If successful the organisation has to submit annual returns to both OSCR and Companies House.

SCOTTISH CHARITABLE INCORPORATED ORGANISATION (SCIO)

This structure was established for Scottish organisations that wish to be a charity, and to have limited liability for members and directors. SCIOs are registered with and report to OSCR. As they do not have full company status they are not required to report to Companies House and are not subject to company law. A SCIO can only exist as a charitable organisation, and therefore has the associated restrictions on trading activity. If trading grows beyond an acceptable level, or if the organisation fails to meet the charity test in other ways, then the organisation may be required to dissolve. This can be averted by establishing a trading arm (see below).

COMMUNITY INTEREST COMPANIES (CICS)

A Community Interest Company is an appropriate structure for organisations whose emphasis is on trading with social purpose, such as carrying out a business or social enterprise. CICs can operate as the trading arm of a charity and pass some or all of profit to the charity.

There are two distinct features of a CIC:

- a 'Community Interest Statement' that explains that the activities will be carried out for the benefit of the community and how this will be achieved
- an 'asset lock' which ensures that assets are retained within the company to support its activities or otherwise used to benefit the community.

CICs are registered with Companies House but require the approval of the Community Interest Company Regulator. They are required to submit an annual report to the CIC Regulator.



COMMUNITY BENEFIT SOCIETY (BENCOM)

This is a relatively new form of organisation that operates for the benefit of the wider community. The BenCom format is generally adopted for the ability to raise finance through the sale of shares. However, unlike other shareholding bodies, any profit has to be used for community benefit and cannot be distributed amongst members. It is permitted to pay interest to shareholders on the sums invested. BenComs adhere to the principle of 'one member, one vote' irrespective of the number of shares held or financial contribution made. OSCR does not recognise BenComs as a qualifying structure for charitable status.

There is a potential conflict between a BenCom and the principle of maintaining open membership for a community asset owning organisation. As all members have to buy a share the cost involved could be perceived as a barrier to membership. This can be avoided by setting the minimum share price at a low enough level not to be prohibitive. Limiting membership of a BenCom to residents of the local community is likely to impose a restriction on its fundraising ambitions.

TRADING ARMS

SCIOs and CLGs can establish a trading subsidiary to carry out trading activity. This is usually done to protect charitable status of the parent body and/or to minimise risk. It is best to seek professional advice from an accountant to assess whether this is necessary for your group.

REMEMBER...

HIE Development Managers will work with you during the development of your project to ensure that you have an appropriate organisational structure in place. The most commonly used structure to provide for effective ownership and management of land or other assets is a Company Limited by Guarantee or a Scottish Charitable Incorporated Organisation (SCIO). However, another organisational structure that meets the criteria above will also be considered.

FOR FURTHER INFORMATION PLEASE SEE

www.hie.co.uk/ten-steps

or contact us on community.assets@hie.co.uk

