

LEGAL STRUCTURES FOR SOCIAL PURPOSE ORGANISATIONS

7 November 2024



WHERE ARE WE GOING TODAY?

Looking at:

The range of legal structures that you might come across for organisations looking to work for a social purpose

Their key characteristics and when you might find them in practice



WHY STRUCTURES MATTER

Corporations don't exist; we pretend they do

This is partly to avoid people getting their houses taken off them

They can't DO anything, except through PEOPLE

We all need to know which people, who have which roles, and what they can do (set out in the constitution)



DOES STRUCTURE MATTER?

Yes it does, because it can affect:

What a group can do

Liability when things go wrong

How the group holds money or assets

Who will fund them and how

Tax issues

COMMON LABELS

You might have heard mention of:

- Social enterprises
- Housing associations
- Charities

And maybe:

- Development trusts
- Community land trusts
- Tenant Management Organisations

Here's a thing...

COMMON LABELS

You might have heard mention of:

- Social enterprises
- Housing associations
- Charities

And maybe:

- Development trusts
- Community land trusts
- Tenant Management Organisations

Here's a thing... **NONE OF THE ABOVE ARE LEGAL STRUCTURES**

WHAT ARE THE OPTIONS?

Profit distributing structures:

Companies limited by shares

- Including PLCs

Limited liability partnerships

Co-operative societies

Community interest company (CIC) ltd by shares



WHAT ARE THE OPTIONS?

Non-profit distributing structures:

Companies limited by guarantee

Community benefit societies

Community interest company (CIC) limited by guarantee

Charitable Incorporated Organisation (CIO)



ALL OF THESE STRUCTURES

Limit liability for their members

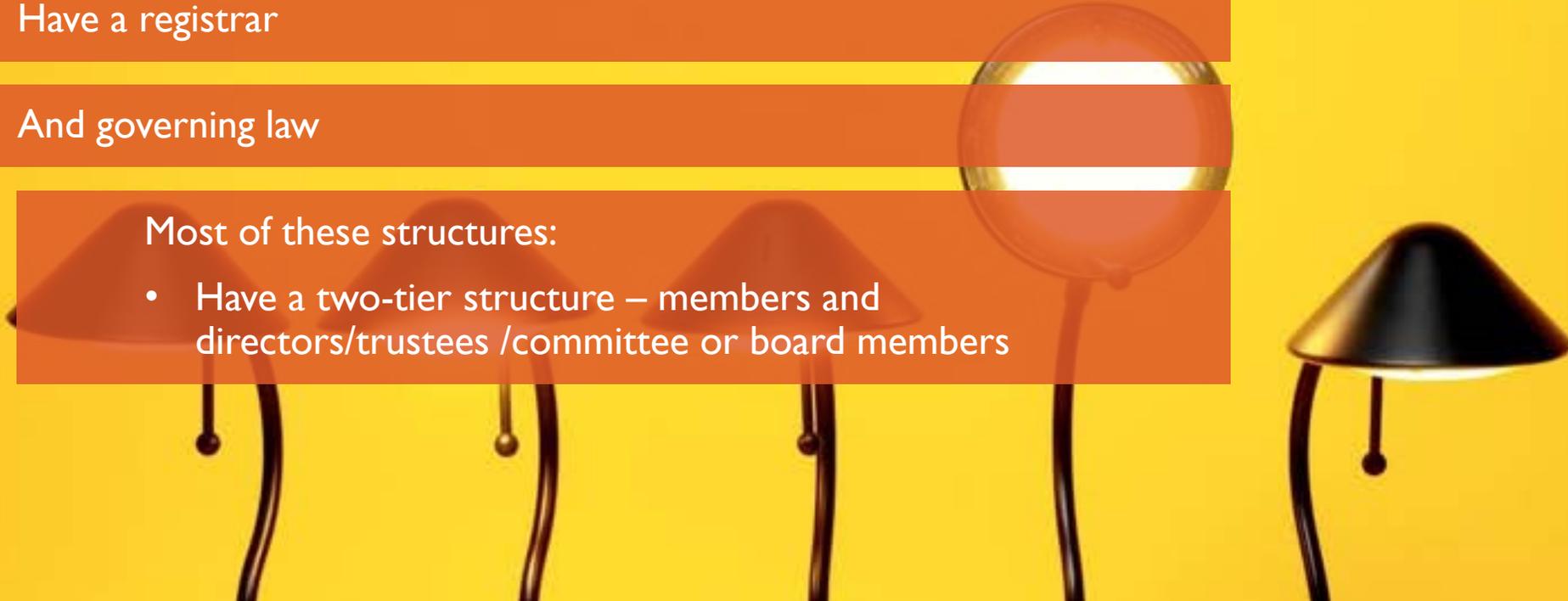
Can hold property, employ people and enter into contracts in their own right

Have a registrar

And governing law

Most of these structures:

- Have a two-tier structure – members and directors/trustees /committee or board members



BUT WHAT IS THE GROUP AT THE MOMENT?

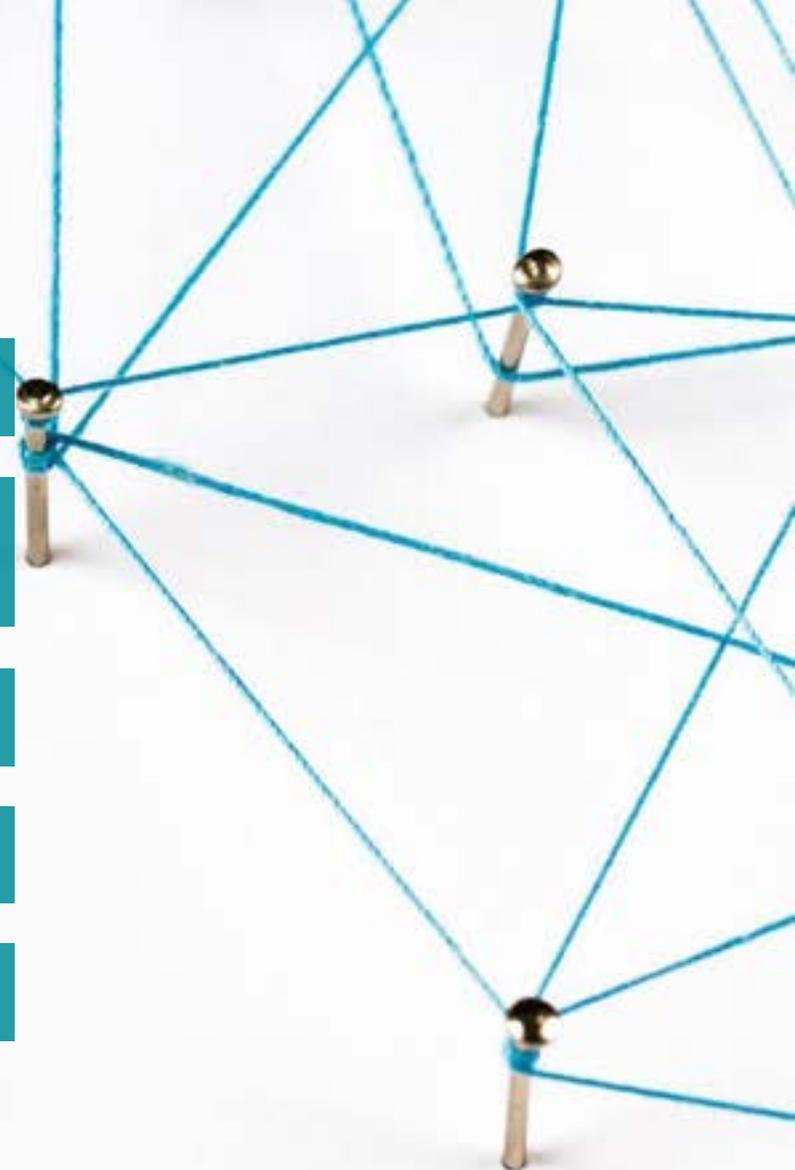
If a group doesn't have a legal structure, then in law its probably:

an 'unincorporated association', an association of two or more people 'for common purposes' (but not business); or

a 'sole trader'; or

a 'partnership' (if it's about business)

NB unincorporated entities have no limits on liability...



FIRST PAUSE FOR BREATH –
ANY QUESTIONS?



COMPANY

Registered by the Registrar of Companies

Accounts, returns and information filed with Companies House

Two types:

Company limited by shares

Company limited by guarantee

Governing law

Companies Act 2006 and other company legislation

COMPANIES LIMITED BY SHARES

Have shareholders and directors

Liability of shareholders limited to the amount of their investment

Value of shares can increase or go down

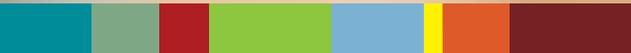
Includes PLCs

Certain decisions reserved to shareholders

COMPANIES LIMITED BY SHARES

Commonly seen: everywhere

Not that common for social purpose organisations, though increasingly 'purpose' is becoming a key theme for commercial organisations



COMPANY LIMITED BY GUARANTEE

Common vehicle for non-profit distributing organisations

No shares; members give £1 'guarantee'

Still gives limited liability

Can be a charity, or a CIC, but need not be

Commonly seen all over the third sector – many charities are CLGs, as are 75% of CICs – a very familiar form

COMMUNITY INTEREST COMPANY

- New legal form for social enterprise introduced in 2005
- Registered with Companies House and CIC Regulator
- Can be limited by shares OR by guarantee
- Key concept of 'community interest'
- Annual Community Interest Report
- Standard/required provisions in M&A
- Asset lock
- No tax advantages
- CANNOT be charitable



COMMUNITY INTEREST COMPANY

‘A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community or a section of the community’
(section 35(2))

Governing legislation

Company law plus:

Companies (Audit, Investigations and Community Enterprise) Act 2004

Community Interest Company Regulations 2005



COMMUNITY INTEREST COMPANY

Commonly seen:

Used by many social enterprises

Subsidiaries of charities

Small number of housing associations



SECOND PAUSE FOR BREATH –
ANY QUESTIONS?



CO-OPERATIVE SOCIETY

One of two forms of registered society

Registered with the Financial Conduct Authority

Generally have withdrawable shares

Shares remain at par value

Must adhere to the international co-op principles (be a 'bona fide co-operative'):

- Voluntary and open membership
- Democratic member control
- Economic participation by members
- Independence and autonomy

CO-OPERATIVE SOCIETY

Governing law: Co-operative and Community Benefit Societies Act 2014

Not able to be charitable

Commonly seen:

Retail and funerals ('the Co-op')

Housing co-ops

Wide variety of other businesses

COMMUNITY BENEFIT SOCIETY

The other form of registered society

Registered with the Financial Conduct Authority

Must operate **solely** for the benefit of the wider community

Can be charitable, but need not be

Use of 'community shares' - withdrawable share capital, shares remain at par value, capital can vary



COMMUNITY BENEFIT SOCIETY

Can have 'statutory' asset lock (bit like CICs)

The only form of charity that can have share capital

Strong expectation of member democratic control

Commonly seen:

Community pubs, community shops, housing associations,
community land trusts

Governing law again the Co-operative and Community Benefit
Societies Act 2014



CHARITABLE INCORPORATED ORGANISATION

Has to be charitable in law

Registered only with the Charity Commission

CIO constitution to be 'in the form specified by the Commission, or as near to that form as the circumstances admit'

Commission has issued two model constitutions:

Foundation model – where only members are trustees

Association model – wider membership

CHARITABLE INCORPORATED ORGANISATION

Can convert other forms of structure into a CIO if charitable

Commonly seen:

Very many smaller charities

Governing law:

Charities Act 2011

Charitable Incorporated Organisations (General)
Regulations 2012

Charitable Incorporated Organisations (Insolvency and
Dissolution) Regulations 2012

CHARITABLE STATUS

Being a charity is NOT a legal structure

A charity will be:

An unincorporated trust

Or:

A company limited by guarantee

A charitable incorporated organisation

A community benefit society



LIMITED LIABILITY PARTNERSHIPS

Body corporate specifically for business purposes

Taxed as a partnership (tax 'transparent')

Governed by (confidential) LLP agreement

Registered at Companies House

No share capital, no capital maintenance requirements

Not charitable



LIMITED LIABILITY PARTNERSHIPS

Commonly seen:

Professional services (accountants, lawyers)

Other types of business

Joint ventures

Governing law:

Limited Liability Partnerships Act 2000

Some company law, suitably modified



WHAT IS A B CORP?

A B Corp (B Corporation) is a business which has been certified for its social impact across a range of indicators



WHAT IS A B CORP?

The expectation is that a B Corp will be a business

In the US, 'for profit' entities only

In the UK, broad range of models:

'A business will usually fit well into the community of B Corps if it generates the majority of its revenue from trading, competes in a competitive marketplace, is not a charity and is not a public body or otherwise majority owned by the state.'



ELEMENTS OF B CORP ACCREDITATION

Successful B Impact assessment

Compliance with the legal requirements

Agreement to the declaration of interdependence



ELEMENTS OF B CORP ACCREDITATION

(I) The objects of the Company are to promote the success of the Company;

(i) for the benefit of its members as a whole; and

(ii) through its business and operations, to have a material positive impact on (a) society and (b) the environment,

taken as a whole.



THE UK REQUIREMENT

‘The language for the UK Legal Requirement has been developed so that it is a **meaningful requirement** by which B Corps will be **differentiated from other companies**, whilst still operating within the Companies Act s172 Framework and allowing director’s **scope for interpretation and discretion.**’



FINAL CHANCE FOR ANY QUESTIONS





Anthony
Collins

info@anthonycollins.com
anthonycollins.com

***Disclaimer:** Whilst every effort has been made to ensure the accuracy of these materials, advice should be taken before action is implemented or refrained from in specific cases. No responsibility can be accepted for action taken or refrained from solely by reference to the contents of these materials. © Anthony Collins Solicitors LLP 2024*