

What is 'Social Enterprise' & what form can it take?

FACT SHEET

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Are you socially aware?

Do you have enterprising ideas that can help your community or the environment?
Would you like to put them into practice and make the most of them?

If the answer is yes, Social Enterprise may be for you.

What is a Social Enterprise?

A Social Enterprise is a business that benefits the community and/or the environment rather than providing profit for the owner or shareholders.

The Department for Trade and Industry defines Social Enterprise as:

"Social enterprises are businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners"

Examples of Social Enterprises are: Community shops; Community cafes; Farmers markets; Community Transport initiatives.

What do Social Enterprises do?

Social Enterprises offer dynamic, innovative business models to provide solutions to meet community needs. They can create opportunities where commercial business cannot operate in the same way. They can help regenerate communities by providing people with:

- Jobs
- Income
- Social contact.

Why Social Enterprise?

Social Enterprises can help to achieve sustainable, healthy communities by:

- reinvesting surpluses in the organisation or in the community
- helping to create jobs and wealth for the community
- giving people the power to decide how to address issues in their neighbourhood
- showing new ways to deliver public services

- providing services for the community not provided by anyone else
- helping to develop an inclusive society and active citizenship

Legal Structures

There are several legal structures that you can use to set up your social enterprise. All have 'pros' and 'cons' and you need to consider which one is best for your situation.

UNINCORPORATED

An unincorporated form is appropriate when a group, partnership, trust or association are not getting involved in activities such as entering substantial contracts with equally substantial obligations, such as employing people, purchasing durable goods or services, etc.

The reason for this is that if an organisation is unincorporated, the members will have to respond with their own financial assets to any obligations contracted. This is because, without incorporation, there is not a separate legal form distinct from the individuals included in the group.

Some examples of unincorporated legal forms are:

- association - A group of persons bound by a common purpose and a set of rules and procedures;
- trust - A group of individuals (trustees) that commit themselves to manage assets on behalf of someone else or for a specific purpose. The trustees agree what the purpose of the trust is, in the trust deed. The trustees cannot use the assets for their individual benefit.

INCORPORATED

When an entity is incorporated, a new legal form is created, separate from the individuals that are involved. When a group partnership incorporates, it will be the assets that belong to the incorporated entity that are actually liable for the obligations and debts acquired.

Limited Liability Company (LLC)

Companies House regulates LLCs. LLCs have a board and a separate group of directors to manage the company:

- by Guarantee - There is a limit to the responsibility of the individuals involved in the company;
- by Shares - The shares, which normally are all paid for, are the limit to which the shareholder is responsible. Shares allow this type of company to raise equity.

Community Interest Company (CIC)

A CIC is a new form of Limited Liability Company for Social Enterprise. It has been in force since 1st July 2005.

CICs have:

- the freedom of any entrepreneurial company;
- clear branding as Social Enterprises;
- access to sources of funding or grants aimed at Social Enterprises.

There are two main characteristics of CICs:

- asset lock - this means that any profits and assets can only be used for the benefit of the community;
- equity finance - CICs can issue shares to be sold to shareholders outside the company. There is a cap on the number and price of shares and on the profit that shareholders can make on these.

CICs have to register with the Regulator at Companies House and no specific tax benefits apply to them. CICs are companies and cannot be charities. Equally a charity cannot become a CIC. CICs have to comply fully with company law.

The new Community Interest Company (CIC) Regulator has been processing applications since July 2005 from anyone wanting to set up a CIC. To become a CIC any organisation will have to pass a community interest test and prove how it benefits the community with its activities.

For more information visit www.cicregulator.gov.uk

Industrial & Provident Societies (IPS)

IPS are regulated by the Industrial & Provident Society Act 1965 and by the Financial Services Authority rather than by Companies House. Two types of IPS are:

- Community Benefit Societies (CBS): Entities whose profits are distributed for community benefit. They are run and managed by members. Since The Co-operatives and Community Benefit Society Act 2003

this type of IPS can implement an asset lock to ensure that no use other than for community benefit is given to the assets.

- Co-operatives: Set up to benefit the members. Sometimes the profit can be distributed for a social purpose. They have a strict one-member one-vote structure, but can allow variable levels of share capital to be issued. A co-operative structure can be replicated using other legal forms such as an unincorporated association or a company.

Charitable Incorporate Organisation (CIO)

The Charities Bill will include CIO models. The Bill is expected to be published early in 2008. It will constitute the first legal structure specifically designed for charities. Currently, many charitable organisations have to embrace the dual legal model of charity and company limited by guarantee to protect their trustees. This can be a disadvantage because of the dual registration and reporting required in this case.

The CIO will enable charitable organisations to obtain limited liability protection for their trustees by registering with the Charity Commission.

The CIO will offer flexibility in terms of the structure that an organisation can adopt. It will also offer limited liability to members of the charitable organisation.

Only organisations which meet the criteria to be a charity can embrace this legal form. This is a crucial difference with the CIC legal form, which is aimed at enabling limited liability companies to operate on a not-for-profit basis and to avoid demutualisation or privatisation.