



Frequently asked questions on legal structures



Frequently Asked Questions regarding legal structures

Many of the questions that are commonly asked on by those interested in social enterprise are contained in our guides on 'Introduction to legal structures' and 'Summary of legal structures.'

However, because there is so much information that you need to get to grips with, these only cover some of the key considerations. Our list of Frequently Asked Questions should cover any other questions that you have.

I want to start a social enterprise and manage it and get paid for doing so. Is this possible?

Yes. You can be a board director and get paid for managing all forms of social enterprise. In practice the founder directors and other board members will usually perform their duties on the board on a voluntary basis. However, the founding director and other board members can also be employed by the board to perform specific jobs, such as a managing director, and get paid for this work. The exception is if you form a charity. Then you cannot be paid to be a director (trustee). You can be paid to be the chief executive but this does not entitle you to a board position and your employment is controlled by the trustees.

Is it true that you can't be paid to run a social enterprise?

No. You can be paid to run a social enterprise. Indeed if the enterprise is successful, there is nothing to prevent you from being well paid. The only exception is if you are a director/trustee of a charity. Then you cannot be paid for being a director/trustee, only if you are an employee of that charity.

If I want to access grant funding can I do so?

It depends on the legal structure you choose. If you choose a profit distributing structure such as a company limited by shares, a CIC Ltd by Shares, or a Bona-fide Co-Operative then you can't access grants. All other legal structures detailed in our guide 'summary of legal structures' allow you to access grants.

What are the advantages of being a CIC compared to being an ordinary company limited by guarantee?

Obtaining CIC registration demonstrates that you are recognised as having been set up for delivering some form of community interest. It is therefore a marketing device to let the public know that you are recognised as a social enterprise. You can also show that you are a regulated company, that is, someone independent is checking that you do what you say you will do.

Will I have more control if I set up a company limited by shares?

Yes you will. But you will find it next to impossible to access grants. You may also have a problem with convincing the public that you are acting in the community interest and not doing this just to make profits for yourself.

What if I set up a CIC that is limited by shares?

You will then benefit from being recognised as a social enterprise. However the problem with grant funding remains. There may also be problems with obtaining investment funding as the way that the CIC is currently structured is not particularly attractive to external investors.

Do I have to share power by inviting other people onto the board of my social enterprise?

The answer is yes for a number of reasons. Firstly, it is generally accepted as good governance to have additional directors so that control is spread and there is better oversight of all the enterprise's activities. Secondly, grant funders prefer that there are at least three directors on a board as this gives them some comfort that the money given will be spent as requested.

Do I need additional directors if I establish a CIC that is limited by shares?

You are not legally required to, though as a social enterprise you may want to demonstrate good governance so the answer is that it will be better if you do have additional directors.

If I establish a charity am I allowed to trade?

Charity law allows trading under certain circumstances. If your trading supports your charitable objects there is no restriction in trading. For example, if your charitable objects are educational and you offer ICT training to the general public for a fee, then, as training is an educational activity, you can trade as much as you want. This is also the case if the trading is undertaken by your beneficiaries, e.g. goods produced by beneficiaries and sold by your charity. Otherwise there are restrictions on the amount of trading you are allowed to undertake through the charity. That is why most charities create captive trading companies to undertake the trading.

Can CICs apply for grant funding?

As a CIC that is limited by guarantee you are able to apply for grants. A CIC limited by shares will find it very difficult to access grant funding.

Will I have to pay tax if I make a profit?

Yes you will need to pay corporation tax. Only charities are exempt from tax. Most social enterprises operate at fairly low profit margins, so corporation tax is not likely to be a major concern.

Further information

Read our guide on introduction to legal structures:

www.blondon.com/SocialEnterprise/LegalStructures/SELegalStructures.aspx

Read our guide on summary of legal structures for social enterprise:

www.blondon.com/SocialEnterprise/LegalStructures/Summaryoflegalstructures.aspx

Read our guide on Charity Trading:

www.blondon.com/SocialEnterprise/LegalStructures/CharityTrading.aspx