



## Guidance Note

# Legal structures for Community Land Trusts

3<sup>rd</sup> Floor, Fountain Precinct  
Balm Green  
Sheffield, S1 2JA

**DX: 10511 Sheffield**  
**Tel: 0114 267 5588**  
**Fax: 0114 276 3176**

19 Cookridge Street  
Leeds LS2 3AG

**DX: 12020 Leeds 1**  
**Tel: 0113 244 6100**  
**Fax: 0113 244 6101**

[www.wrigleys.co.uk](http://www.wrigleys.co.uk)

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## About Wrigleys

Wrigleys is a specialist charity law firm and considered one of the top 20 law firms advising charities in the UK by the Caritas Data publication Top 3000 Charities 2004/05. The Legal 500 consider Wrigleys the leading charity law firm of the North East and Chambers give the firm premier ranking.

The Charities and Social Economy Team consists of 8 lawyers working almost exclusively with clients in the charities and the wider social economy, with experience across charity, company and commercial, intellectual property, tax, property, employment, banking and financial services. Other members of the firm advise charities, and those involved in the management of charities, in their specialist areas.

**Chris Billington** is a senior solicitor in the Charities and Social Economy Team. He qualified in 1993 and has over 12 years experience in company and commercial matters relating to both business and not-for-profit clients. Chris is a member of the Charity Law Association and the Employment Lawyers Association and speaks regularly on issues relating to trustee liability, governance including legal structures, general charity issues, contracts and employment law relating to Charities and the Social Economy.

Further information about Wrigleys, Chris and other members of our Charities and Social Economy Team can be found on our website at [www.wrigleys.co.uk](http://www.wrigleys.co.uk)

## Contact Details

Wrigleys Solicitors LLP, 19 Cookridge Street, Leeds LS2 3AG

Tel: 0113 204 5734

Fax: 0113 244 6101

Email: [chris.billington@wrigleys.co.uk](mailto:chris.billington@wrigleys.co.uk)

## **Introduction**

This note is intended to provide general guidance on three structures which may be suitable for you to use in establishing a Community Land Trust; in no particular order, the Company Limited by Guarantee, the Industrial and Provident Society and the Community Interest Company.

It covers some of the common features and highlights some of the differences which may influence which structure is more suited to your organisation. This note does not provide a comprehensive statement of the law as it applies to the different structures and advice should be taken on your particular requirements at an early stage in your considering setting up a Community Land Trust. The law is stated as at 31<sup>st</sup> October 2006.

## **What is a Community Land Trust?**

The Community Land Trust (“CLT”) is a means of providing democratic community ownership of, in particular, land for the sustainable provision of affordable housing, workspace, farming, conservation and/or other cultural or community based or focussed activities and projects. Once land is owned by and held for the community its value is captured in perpetuity.

Community ownership can be achieved in a number of different ways, including land being gifted or bought at either full market or some lower value. Local Authorities have increased powers to transfer land for best consideration and can also make use of planning rules.

This Guidance highlights three different legal structures which can be used for a CLT; the Company Limited by Guarantee (“CLG”), the Industrial and Provident Society (“IPS”) and the Community Interest Company (“CIC”).

### **Some Common features**

#### **Legal Status**

Each of the structures has what is referred to as a separate legal personality (the legal status may also be referred to as 'incorporated'); it is a legal person in its own right, separate from those who own or run it. Just as an individual can enter into contracts and own assets, sue or be sued, so too can the CLT which has been set up as a CLG, IPS or CIC.

This differs from an 'unincorporated' structure such as a club or association where, without legal personality, those involved in the management or administration of the association must contract in their own name on behalf of the association.

#### **Limited Liability**

It is likely that you have heard about ‘limited liability’, but what does this mean? As already noted a CLT with legal status can contract in its own name and has its own assets and liabilities. Limited liability gives the directors, employees and members protection in the event

that the CLT goes into liquidation and from other claims made against the CLT, provided the directors, employee and members act in accordance with the relevant governing documents (its Rules or Memorandum and Articles of Association) and also act in accordance with any duties which may be due from them which includes, for directors and members, acting in the best interests of the CLT.

Members' liability is limited to the contribution they have agreed to put in; in a CLG this is the 'guarantee'; in the IPS this is the price paid for their shares; and the CIC may be either. This is explained further below. It is rare for any further liability to be imposed on members but liability can exist where a member fails to follow the rules set out in the CLT's constitution or acts contrary to the law.

Directors have a greater responsibility and a higher potential liability. A particular example is where the directors allow the CLT to continue to operate where there are no reasonable prospects of it being able to pay its debts as they fall due, known as fraudulent, wrongful or insolvent trading. Personal liability is also imposed on directors or employees by specific laws, such as those protecting the environment or the health and safety of employees. In broad terms it might be said that directors are protected from liability except where it would be unreasonable to provide them with protection from wrongdoing. .

Detailed consideration of the duties of a director (who may also be called a "trustee" or a "member of the management committee" depending upon any particular organisation) is outside the purpose of this Guide. These duties arise through decided case law although the duties of a company director have been codified and placed onto a statutory footing as part of the Companies Act 2006.

## **Regulation**

In return for limited liability the CLT has a number of disclosure obligations. It must use its full name, and give details of its registered number and address, on all formal papers. This doesn't stop the CLT adopting a trading name, but certain formalities do need to be followed. Also, each year the CLT must file an annual return, which will give details of its directors and secretary, and accounts, which must contain certain required information. However the

burden of disclosure and the formalities involved does differ depending upon which particular structure (CLG, IPS or CIC) the CLT has used and whether or not it is registered as a charity.

### **Choosing a Name**

As part of the process of registration of your CLT you must choose a name. The Registrar (Companies House, the CIC Regulator or the FSA - see p21 for which applies to your particular structure) must agree to the proposed choice of name for your CLT and will have views on whether it is too similar to an existing organisation, or one previously registered within the last 10 years, or if it contains sensitive or prohibited words. Companies House and the FSA have produced guidance on choosing a name and it is recommended that you should check if there are any organisations already registered with a similar name to that which you propose for your CLT.

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

If you wish to use the word 'Trust' in your name you must be able to satisfy Companies House or the FSA (as the case may be) that you are legally entitled to use that word. For instance, if the organisation is or intends to be a charity then you are entitled to use the word trust. If you are unable to justify the use of the word 'Trust' then you will not be permitted to use it in your name. You can use the initials 'CLT' (for Community Land Trust) without difficulty.

### **Funding**

This Guide does not seek to discuss particular sources of funds for a CLT. Here we set out some of the common sources of funds

**Grants:** Each of these structures can receive grants, and in general terms charitable CLGs and IPSs for community benefit can be the beneficiaries of grant-making bodies including major charities and the National Lottery. However some organisations including some large

grant-making charities will only give grants to a charity or to a registered charity. Gifts given to a charity attract tax relief for the giver if they are a UK tax payer.

**Equity:** CLTs may hold “equity” meaning the capital value of assets where this exceeds any debts or other charges held against them. In this Guide we use the term equity for money invested in an organisation, usually for some kind of profit or return based on the organisation’s performance rather than for a pre-determined rate of return as would be the case with a loan. The return is usually financial (a dividend), but some investors may look for a social return, promoting the good works of an organisation with no, or a limited, expectation of any profit. For example there may be no return, or one that is low but over time accumulates to satisfy the investor; or shares increase in value or allow the investor to sell without making a loss. A focus on social return may be referred to as ‘social capital’, ‘patient capital’ or ‘philanthropic funds’. The CLG has no share capital and the opportunity for raising equity finance does not exist (but the CLG can of course own property or financial equity derived in other ways). Both the IPS and CIC can have share capital and issue shares, subject to certain limitations.

**Loans:** Each can borrow money, and can give security against any assets it owns. Before borrowing money the CLT must ensure that it can pay the interest and repayments as they become due. Patient capital or philanthropic funds (see above) in loan finance includes low interest or extended repayment terms.

**Trading and other income:** Each of the structures can trade and make a profit on that trade. Only where the organisation is charitable will there be limits on what kind of, or how much (in value), trade may be undertaken and a requirement that ‘profit’ is applied towards the charitable objects. There is an expectation that any social enterprise will re-invest any profits in its activities with only a limited financial return to stakeholders.

### **Asset Lock**

An essential feature of a CLT is that it holds property assets in perpetuity and uses them for the benefit of the community. Those who might enable it to acquire these assets - landowners, local planning authorities or public bodies who might transfer assets to the CLT,



perhaps at the outstanding debt or below value - will only support the acquisition if they can be assured that the property will not be sold off for profit. The way in which the assets are locked into the organisation is referred to as the “asset lock”. This may comprise:

- rules which prohibit a return on equity investment or rules which prevent the distribution of profits or assets;
- rules requiring a large majority of members to agree changes to particular rules, for example the rules which restrict distribution of assets for private benefit;
- legal requirements to obtain the consent of the Financial Services Authority (FSA), the CIC Regulator or Charity Commission to any change of rule

It is usual to find a prohibition on payments or other distributions of profit or assets to the directors and members of a CLT, indeed this is an essential feature of a charity or social enterprise and it is a feature of the Land For People CLT Model Rules for an IPS. However the 'strength' of the asset lock differs depending on the structure used and consideration should be given to the value of assets held by the CLT and measures to protect those assets from distribution amongst the members. Both the IPS and CIC provide similar statutory asset lock protection. The lock for the CLG is weaker unless the CLG is a registered charity in which case it needs Charity Commission consent for any change in its objects or for any distribution of assets.

### **Democratic Membership**

At the heart of the CLT is democratic membership. Each of the CLG, IPS and CIC allow for this although it is necessary to ensure appropriate provisions, making sure that voting rights are properly distributed (for example one member one vote or different votes for different stakeholder groups as desired), in the relevant governing documents.

You will need to decide whether, for simplicity sake, you wish to restrict membership. For example in a CLG or the CIC limited by guarantee, you may wish to have the directors and the members as one and the same. Representation from different stakeholders and community interest can be maintained in this, common, structure for example through the use of public meetings or forums. A wider membership can give rise to both administrative burdens (simply keeping in touch and making sure everyone is kept informed can become a monumental task) as well as constitutional difficulty, such as balancing voting rights across

different stakeholder groups. Each CLT must determine this issue for themselves to reflect their own unique base.

Membership will, generally, be open to individuals as well as organisations which share or support the CLT's Objects although the CLT must seek to ensure that no one stakeholder group gains disproportionate representation. Different membership classes can be created, representing different stakeholder groups, such as landowners, local authorities and others. Different rights can be given to these different classes, such as the right to appoint directors, the power to veto certain changes to the governing documents and different voting rights although care needs to be taken to ensure that the CLT retains its community basis.

Organisations can exercise their voting rights by appointing representatives (for example one of their trustees, officers or staff) authorised to act, including vote, on behalf of the organisation. The appointment of a representative will usually be confirmed by a formal resolution and the CLT should get a copy as confirmation. Where the organisation is unincorporated, such as an association, the registered member may well be the representative.

One of the issues that arises out of membership of the CLT is the role of local authorities, local authority appointed directors and possible public sector finance constraints. Consideration of such matters is outside of this Guide, but the CLT is intended to exist as a wholly independent organisation and as a general rule local authority appointments will be maintained at less than 20% of the total board of directors of the CLT.

## Legal Structures for the Community Land Trust

### Company Limited by Guarantee (“CLG”)

There are two principal types of registered company, the company limited by guarantee (CLG) and the company limited by share (CLS). The CLG is more appropriate for CLTs and this guide deals only with the CLG (except in relation to Community Interest Companies where brief mention is made of the CLS option).

The CLG is perhaps the most common incorporated structure for a charity, a not for profit company or social enterprise. It is governed by two documents; the Memorandum and the Articles of Association. The Memorandum is the public face of the CLG and defines its purpose (the Objects); the Articles are more internal facing and govern the CLG's internal proceedings such as the appointment of directors and the holding of members meetings. Together the Memorandum and Articles of Association form a contract between the CLG and its members.

The Objects clause in the Memorandum is perhaps the single most important provision. The clause defines the nature and extent of the activities which the CLG can undertake. The CLG cannot act outside of these objects and those who fail to exercise control and management can be punished, including personal liability where a director knows or should have known that any particular course of action was not permitted.

The principal advantage of establishing the CLT as a CLG is its ease and familiarity. The CLG provides a flexible structure which allows it to be shaped to satisfy the needs of any organisation. Its familiarity also extends to funders and potential partners who can gain great comfort from the ease of access to information concerning the organisation's Objects; structure; and appointed officers through the public register at Companies House.

Where other structures have an advantage is that the CLG is limited in the means of attracting outside investors. The CLG membership structure is intended to attract those who directly or indirectly support the organisation's objects. The CLG does not have share capital.

and so cannot raise financial equity investments, including patient or philanthropic finance, except as debt (loans).

It is also usual to find that voting is democratic with 'one member one vote', but the structure is flexible in that it can allow for different classes of membership and different voting rights attaching to the different classes. The members' liability is limited to a requirement (the guarantee) to contribute a certain amount (usually £1 or £10 but it can be any sum) in the event of the company being wound up. This arises at any time when that member is a member or within, usually, 12 months of them ceasing to be a member.

As already mentioned it is common for CLT rules to have a prohibition on payments or other distributions of profit or assets to the directors and members of a CLG (see above under asset lock). This is a recognisable feature of a social enterprise centred on the community purpose and should be a feature of any CLT. However, this feature is established as part of the Memorandum and Articles of Association, the governing documents of the CLG, by agreement between its members. The Memorandum and Articles of Association can be amended following a specific formal process so as to remove any restrictions on such benefits, effectively enabling a distribution of assets. There is no statutory asset lock which applies to the CLG but some protection exists where the CLG is a registered charity where certain amendments to the Memorandum and Articles of Association are subject to Charity Commission consent. The Companies Act 2006 includes provisions for a statutory asset lock which can be used by the CLG.

Setting up a CLG is relatively straightforward and inexpensive. The Memorandum and Articles of Association must be signed by the founder members and Companies Forms 10 and 12 completed and sent, with the required fee, to Companies House. Provided all is in order incorporation/registration will follow with two weeks and can be completed on line for as little as £15 with postal applications costing £20. There is a fee payable on filing the annual return and further fees as proscribed e.g. registering a charge on assets costs £10 and late filing fees of up to £1000 if your annual accounts are overdue.

Up to date information on incorporation and recurring costs is readily available from Companies House website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).

A template/draft Memorandum and Articles of Association for a CLG are available from the following:

- Charity Commission at [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk).
- Trowers and Hamlins Solicitors. For more information please contact Ian Davis on 0207 423 8000 or at [IDavis@trowers.com](mailto:IDavis@trowers.com)
- Wrigleys Solicitors LLP. For more information please contact Chris Billington on 0113 244 5734 or at [chris.billington@wrigleys.co.uk](mailto:chris.billington@wrigleys.co.uk).

Templates may be available elsewhere.

## **Industrial and Provident Societies (“IPS”)**

There are two types of IPS, the bona fide “co-operative” or the “society for the benefit of the community”. The main difference between the two is that the co-operative will conduct its business for the mutual benefit of its members, while a “Benefit of the Community Society” (also referred as a BenCom) must operate for the benefit of persons other than its own members and act in the interests of the community. The BenCom is more suited to the CLT and this guide deals only with the BenCom.

It is possible for a BenCom to have charitable status (if its Objects are exclusively charitable), although currently an IPS is not required to register as a charity with, and therefore is not regulated by the Charity Commission. This will change under proposals contained in the Charities Act 2006, except where the IPS is a registered social landlord or regulated by some other body. A charitable BenCom can receive some of the tax advantages of a registered charity, for example tax relief on profits. A charitable BenCom may also, for example, be treated as charitable by funders or by local authorities giving rate relief. However some funders and authorities will only accept registration with the Charity Commission as evidence of charitable status or entitlement to grants.

The IPS is governed by its Rules which is a contract between the IPS and its members. The Rules set out the objects of the IPS, its powers, and amongst the key clauses are those providing for the rights and duties of the members, the admission and withdrawal of members, appointment and removal of directors and for decision-making.

One way of looking at the difference between an IPS and a CLG is that an IPS is a way of bringing people and organisations together to achieve a common aim in which the members themselves may be involved. A CLT which is an IPS could include occupiers or part-owners of the property; someone who owns land on which the scheme could be built; investors; members of the community; and statutory bodies. Open membership may encourage wider membership from the community which elects all or part of the Board. The CLG or charitable CLG is more commonly found in the case of a smaller group of individuals and organisations who have come together to achieve an aim on behalf of others. There may be conflicts of interest where the

Trustees of the CLG are themselves beneficiaries: for the IPS the intention is to bring together into one body both beneficiaries and others who wish to help them.

The IPS has share capital, similar to a company limited by shares. It therefore has an in-built mechanism, unlike a CLG, for raising (equity) funds from its members. For a company limited by shares, share issues are very expensive because of the legal requirements that must be satisfied but in the case of an IPS, raising money through this route may be comparatively cheaper where certain exemptions from the full share offer rules apply. Consideration of those exceptions is outside the scope of this Guide and specialist legal advice is necessary for any CLT which may wish to raise money through a share issue. There is a statutory limit on the amount any individual may invest (£20,000) although the Rules may set a lower figure. Dividends (called interest) can be paid on shares. The amount of dividend that can be paid is more flexible than for the CIC.

Dividends may also benefit from tax incentives (Community Interest Tax Relief and the Enterprise Investment Scheme) provided they are for qualifying purposes (which generally exclude affordable housing) and/or in qualifying locations: there may be other conditions to be satisfied as well. Detailed consideration of such incentives falls outside the remit of this guidance.

An IPS is (usually) democratically controlled by its members; each member has one vote, irrespective of how many shares the member owns. It is possible for an IPS to attach different rights to shares.

The Co-operative and Community Benefit Societies Act 2003 introduced, for the first time, a provision that allows the assets of an IPS registered as a society for the benefit of the community to be locked so that the members of an IPS which has such a rule cannot vote to wind up and distribute the assets among themselves without consent from the FSA for a rule change. This is an effective “asset lock” (see above) and is comparable to the asset lock that exists for the CIC (see below).

Whilst the IPS, as a legal structure, has been available for longer than the CLG or CIC it does suffer from being considered somewhat outdated, with an archaic and perhaps meaningless title (the Industrial and Provident Society) and lack of relative flexibility. In particular the IPS suffers from a lack of transparency since information relating to any particular IPS is more difficult to obtain than for the company structure. Although great steps have been taken in recent years to computerise the Register, paper searches seeking information as to current directors of an IPS can take several days and may not be up-to-date since such information is only required to be filed annually, in contrast to the availability of up to date information available from Companies House on registered companies.

The registration process for an IPS is more involved than that for the CLG, but remains relatively straight forward. A completed application form, copies of the Rules, and the registration fee is sent with the required fee to the FSA. The application must specify the 'special reasons' why incorporation as an IPS is sought rather than as a company. In practice this will usually be satisfied by demonstrating that the IPS will be conducted for community rather than for private benefit, with an appropriate restriction on a distribution of assets to members on a winding up.

The registration fee is £40 where the IPS adopts Model Rules without amendment, with the fee increasing where amendments to those Rules are sought. A stand alone registration with its own Rules will cost £950 to register. Periodic fees (annual) are charged calculated with reference to assets value but are generally £45 pa for an IPS with assets of less than £50,000, increasing to £355 pa for an IPS with assets of more than £1million.

Where Model Rules are used an additional fee will be payable to the Sponsor, the body which has promoted the Model and agreed the form of the Model with the FSA. Fees vary from Sponsor to Sponsor but organisations should expect to pay in the region of £300 - £700 (to the Sponsor) in addition to the registration fees (payable to the FSA) if they are using Model Rules.

Land for People have collaborated in producing model rules for a CLT structured as an IPS. The Land for People Model Rules also allow for the IPS to act as an umbrella body on a wide



area, such as Wales, or a county or sub-region, with an educational and supportive role for local CLT's who as members of the umbrella IPS can help set its direction, strategy and services.

Up to date information on incorporation and recurring costs is readily available from the FSA website at [www.fsa.gov.uk/Pages/Doing/small\\_firms/MSR/index.shtml](http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR/index.shtml) under the guidance for Small Firms.

Model IPS Rules for a CLT are available from the following:

- Land For People. For more information please contact Jonathan Brown at Land for People on 01938 556819 or at [jonathan@landforpeople.co.uk](mailto:jonathan@landforpeople.co.uk)
- CDS Co-operatives. For more information please contact Stephen Brown at CDS Co-operatives on 02073975700 or at [stephen.brown@cds.coop](mailto:stephen.brown@cds.coop)
- Trowers and Hamlins Solicitors. For more information please contact Ian Davis on 0207 423 8000 or at [IDavis@trowers.com](mailto:IDavis@trowers.com)

Templates may be available elsewhere.

## Community Interest Company (“CIC”)

The CIC is a new structure, introduced in July 2005 designed specifically for those interested in establishing social enterprises. The CIC can have the structure of a company limited by shares, a public limited company or a CLG (which makes up the majority of CICs now registered).

Both the CIC limited by share and by guarantee are suitable for the CLT as a social enterprise and its intended community ownership of assets. The CIC limited by guarantee is similar to the CLG save it will have the additional features highlighted below, principally the statutory asset lock and that it cannot be a charity. The focus in this part of our guidance note is on the CIC limited by shares.

A CIC cannot be a charity and will not have the benefits of charitable status, such as the tax concessions. However there is emerging evidence that some local authorities are granting discretionary rate relief to CICs. As the CLT may want to be charitable you should consider whether the non-charitable CIC is more suitable for you.

The CIC can be established as a company limited by shares and this is seen as a positive encouragement of private investment in social enterprise. However to protect the assets, dividend and other payments to shareholders are subject to a statutory cap as part of the asset lock. If a return to investors is not anticipated then the CIC limited by guarantee will be a more appropriate structure.

The statutory asset lock, similar to that which an IPS can now adopt (see above), takes two principal forms:

- a requirement that the Memorandum and the Articles of Association of the CIC contain rules that cap or limit any return to members; and
- a restriction on distribution of assets in the event that the CIC is wound up which required that such assets pass to some other organisation with a similar asset lock, such as another CIC or a charity and retain their community ownership rather than passing in to private or individual hands.

In order to be eligible to be registered as a CIC the Memorandum and Articles must contain the required asset lock provisions and those provisions may not be changed by the members without the permission of the CIC regulator.

One of the key advantages of the CIC is that the members, financial backers, service users, customers and others are clear that the organisation is intended for the benefit of the community and not for private gain. Also if the CIC is wound up, its remaining assets will be preserved for the community rather than being divided up between the members.

The CIC does not share the same advantages as the IPS in offering its shares to the public and more costly and time consuming process must be followed, again with the benefit of specialist legal advice. However the CIC can still raise substantial equity or social capital from a more restricted community and is not subject to the same statutory maximum investment as the IPS. There is a statutory cap on the level of any dividend payable by a CIC.

The currently applicable cap on dividends is the Bank of England base rate (4.75% variable as at September 2006) plus 5% with an aggregate cap on all dividends at no more than 35% of allowable profit. An IPS has more flexibility on the amount it can pay by way of dividends.

The CIC is registered with Companies House in the usual way for the CLG, but a community interest statement (identifying how the CIC will benefit the community) must be filed with the Memorandum and Articles of Association, Form 10 and 12 and registration fee. Before incorporation/registration is complete the application will be referred to the Regulator of CICs who will consider the statement and whether the statutory CIC requirements are satisfied. The rules governing CICs outline specific provisions required in the Memorandum and Articles of Association of a CIC - such as the asset lock (including a dividend cap for the CIC limited by shares) and the manner of appointment and removal of directors.

In addition to the accounts, financial audit and annual return (all similar to the CLG), CICs will be required to produce an annual community interest statement and report for the public

record. The report must demonstrate what the CIC has done to pursue the community interest during the year and must also include details of payments to directors.

On going costs will be similar to the CLG. The community interest statement is likely to incur additional costs although this is unlikely to be significant as many organisations will already include something to this effect in their annual accounts, director's report or reports to key funders

Up to date information on incorporation and recurring costs is readily available from Companies House website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) and from the CIC Regulators website at [www.cicregulator.gov.uk](http://www.cicregulator.gov.uk).

A Template Memorandum and Articles of Association for the CLT as a CIC limited by guarantee and CIC limited by shares are available from the following:

- CIC Regulator at [www.cicregulator.gov.uk](http://www.cicregulator.gov.uk).
- Wrigleys Solicitors LLP. For more information please contact Chris Billington on 0113 244 6100 or at [chris.billington@wrigleys.co.uk](mailto:chris.billington@wrigleys.co.uk)

Templates may be available elsewhere.

## Charitable Status

A charity in itself is not a legal structure but a recognised status and a charity can be, or charitable activities can be carried out by, a CLG or an IPS (as well as other structures not part of this note). The CIC cannot be a registered charity.

For charitable status to exist, the organisation must have exclusively charitable objects and exist for the public benefit. Particular attention must be given to the preparation of the organisations Objects, closely following available Charity Commission guidance unless the proposed charity is prepared for a long dialogue/discussion with Commission and for associated legal advice and support. Not all charities are required to register with the Charities Commission. Some are exempt, such as presently an IPS but the Charities Act 2006 will change this, and others are under the threshold which requires a charity to register (that is its income is less than £5,000 per annum and it holds no land). Non-registered charities may still register with the Inland Revenue in order to gain the tax advantages of charitable status.

The charitable status of an organisation means that the extent to which a trustee (in a company structure this is the same as a director) may be paid, or receive any personal benefit is considerably restricted. A charity will be subject to greater regulation, since it will need to satisfy the rules that apply to its particular structure (e.g. the CLG) as well as the rules applicable to charities.

One of the principal advantages of charitable status is the substantial tax concessions available including tax relief on profits, rate relief and tax relief on donations from individuals (inheritance and income tax) and companies (and other organisations) which pay corporation tax. Often grants may only be available to charities, and some only available to registered charities.

A further advantage for the CLT comes in the shape of strengthening the asset lock. A change to the governing documents which affects the objects, member benefits or the distribution of assets on a winding up of the organisation will need the consent of the Charity Commission. In this way an organisation which has charitable status may give

additional comfort to a land owner or local authority seeking to pass land into community ownership.

A disadvantage, and one of the areas which causes great confusion to charities, is that it is only trade in furtherance of the charity's core charitable objects which benefits from tax relief. Where trade falls out of this primary purpose then, save for some limited (de-minimis) financial limits, the relief is lost. Where non-primary purpose trade may arise this may be overcome by the charity incorporating a wholly owned trading subsidiary to conduct the trade with any profits donated (via gift aid) from the subsidiary to the charity. The relationship between a charity and a subsidiary is governed by guidance from the Charity Commission.

A registered charity is required to file annual returns and accounts with the Charity Commission, similar and often identical to the information the charity will have to file elsewhere, e.g. which the CLG files at Companies House.

A great deal of guidance is available to charities, much of which guidance forms good practice for non-registered charitable organisations and social enterprises, at the Commission website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).

## SUMMARY GUIDE TO LEGAL STRUCTURES FOR A COMMUNITY LAND TRUST

	<b>Company Limited by Guarantee</b>	<b>Industrial and Provident Society (Society for the Benefit of the Community)</b>	<b>Community Interest Company (Limited by Guarantee)</b>	<b>Community Interest Company (Limited by Shares)</b>	<b>Charitable Incorporated Organisation (proposed)</b>
Separate legal identity	Yes	Yes	Yes	Yes	Yes
Limited liability	Yes	Yes	Yes	Yes	Yes
Governing documents	Memorandum and Articles of Association	Rules	Memorandum and Articles of Association	Memorandum and Articles of Association	Constitution
Objects	Any	Benefit of the community	Benefit of the community	Benefit of the community	Benefit of the community
Registration	Companies House/ Charity Commission (if charitable)	Financial Services Authority	Companies House/ CIC Regulator	Companies House/ CIC Regulator	Charity Commission
Charitable	Can be	Can be	No	No	Yes
Registration Fee	£20	£40-£950	£35	£35	tba
Asset lock:	Yes but weak	Yes	Yes	Yes	Yes
Loan Capital (Borrowing)	Yes	Yes	Yes	Yes	Yes
Equity Capital (investors)	No	Yes	No	Yes	unlikely
Member voting	Usually one member one vote	Usually one member one vote	Usually one member one vote	One vote per share	Likely to be one member one vote