

Guidance

What legal structure should my charity adopt?

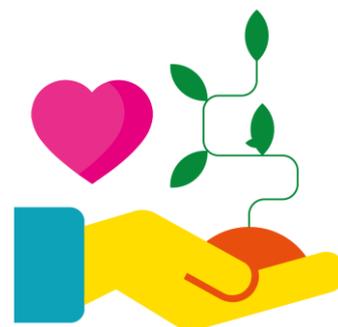
Philanthropy note (4)

If you are looking to set up a new charity, or perhaps make governance changes to an existing charity, thought should be given to the most appropriate structure. The right choice will largely depend on the assets the charity will hold, the activity it will engage in and the level of management/control envisaged.

Possible structures

The most common structures for a charity are:

- A charitable trust
- A charitable company
- A Charitable Incorporated Organisation (a “CIO”)



Charitable trust

A simple structure that can be set up by deed or Will.

The trustees are responsible for governance. They will hold and manage the assets in accordance with the terms set out in the trust deed.

The possible disadvantage (in some cases) with a trust is that it is not an independent legal entity, which can mean:

- **Less protection** – if somebody wanted to sue the charity, they would be suing the individual trustees behind it, who could potentially be personally liable; and
- **Inefficient ownership** – as a trust has no separate legal personality, the assets that are held in the names of the individual trustees need to be transferred when the trustees change (in the case of property, this can mean having to go through the Land Registry to keep legal titles up to date).

Typically, a trust may be appropriate for a grant making charity whose only function will be to receive and pay out money. If it is going to do anything more than that (eg. offer services, have employees, own property or enter into a form of contractual relationship, all of which carries risk), one of the other structures below is more likely to be suitable.

Charitable company

Unlike a trust, a charitable company is a separate legal entity.

It therefore provides greater protection as any claim would be against the organisation, not the individuals behind it. Members also have the benefit of limited liability.

The issue highlighted above with asset ownership for trusts does not apply to companies as a company can own assets itself in its own name.

One slight drawback is that a charitable company is subject to dual regulation, in that it has to comply with charity and company law. This means annual filing of accounts and reports with the Charity Commission and Companies House (more administrative/compliance work).

CIO

A CIO is a form of incorporation that exists specifically for charities.

It sits between trusts and corporate charities, sharing characteristics from each.

Like a company, it is a distinct legal entity and offers limited liability protection. It can also have a separate layer of control with a distinct group of members.

Unlike a company, however, it is not subject to dual regulation. As it is not subject to company law, it does not need to comply with Companies House filing requirements.



Which is the best?

One size does not fit all.

The most appropriate structure for your charity will depend on the type of charity it is going to be, taking into account:

- the assets it will hold,
- the control mechanisms you wish to have in place,
- what it will do and how it will do it, and
- the level compliance and reporting the trustees are prepared to take on.

Get in touch



Adam Williams

Principal Associate

T: +44 (0) 121 456 8420

E: adam.williams@mills-reeve.com

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