

# LEGAL STRUCTURES

## Private Company Limited by Shares

| DEFINITION  | LIABILITY OF OWNERS   | LEGAL PERSONALITY   | FORMALITIES  |
|---|---|---|--|
| <p>A body corporate formed by one or more persons (known as shareholders or members).</p>   | <p>Liability of each member is limited to the amount unpaid on that member's shares.</p>  | <p>The company has separate legal personality and can own property, will be responsible for the fulfilment of all contracts and the payment of any debts. A guarantor of its obligations may be required.</p> | <p>Must be incorporated and registered at Companies House.</p>   |
| MANAGEMENT STRUCTURE  | FUNDING OPTIONS   | CHARITABLE STATUS   | REPORTING REQUIREMENTS   |
| <p>Responsibility for managing the company is generally left to a board of directors. Certain decisions shall be reserved to, and require the approval of, the shareholders – this list of "reserved" decisions can be enhanced or reduced depending on the desires of the parties. Private companies limited by shares are the corporate vehicle most often used in "joint ventures" where two or more parties come together to create a new entity that will be used for a particular purpose. The rights and responsibilities of each member, and how the vehicle will be managed, will usually be set out in a legal agreement (which will generally be called either a shareholders agreement or a joint venture agreement).</p> | <p>Company capable of receiving funding in the form of:</p> <ul style="list-style-type: none"> <li>- equity investment - whereby shares are allotted to investors in exchange for payment to the company for those shares;</li> <li>- debt – either from a bank or other lender (including the shareholders);</li> <li>- grants – from public sector bodies or private corporations or individuals</li> </ul> | <p>Possible for a charitable company to be limited by shares but very rare in practice.</p>   | <p>Must file annual accounts at Companies House. These annual accounts may be audited or unaudited depending on the size of the company. Companies that qualify as "small companies" are exempt from audit.</p> <p>For a company to be a "small company" it must have:</p> <ul style="list-style-type: none"> <li>- turnover less than £10.2m;</li> <li>- total assets less than £5.1m; and</li> <li>- less than 50 employees.</li> </ul> <p>Must file an annual confirmation statement with Companies House. This provides basic details of the company including listing the shareholders, directors and persons with significant control.</p> |

# LEGAL STRUCTURES

## Private Company Limited by Guarantee

| DEFINITION  | LIABILITY OF OWNERS   | LEGAL PERSONALITY   | FORMALITIES   |
|---|---|---|---|
| <p>A body corporate formed by members undertaking to contribute a predetermined nominal sum to the liabilities of the company which becomes due in the event of the company being wound up. This is the structure generally used for non-profit making entities such as charities.</p>  | <p>The members have no liabilities while the company is a going concern but do incur liability on a winding up (although this is usually restricted to a nominal sum in the constitution of the company)</p>  | <p>The company has separate legal personality and can own property, will be responsible for the fulfilment of all contracts and the payment of any debts. A guarantor of its obligations may be required.</p>                                   | <p>Must be incorporated and registered at Companies House.</p>  |
| MANAGEMENT STRUCTURE  | FUNDING OPTIONS   | CHARITABLE STATUS   | REPORTING REQUIREMENTS  |
| <p>Responsibility for managing the company is generally left to a board of directors. Certain decisions shall be reserved to, and require the approval of, the shareholders – this list of "reserved" decisions can be enhanced or reduced depending on the desires of the parties.</p> | <p>Company capable of receiving funding in the form of:</p> <ul style="list-style-type: none"><li>- debt – either from a bank or other lender (including the members);</li><li>- grants – from public sector bodies or private corporations or individuals.</li></ul> | <p>Most charitable companies are set up as companies limited by guarantee. The constitution of a company limited by guarantee consists of its articles of association and any other agreements or resolutions that affect its constitution.</p> | <p>Same filing rules apply for companies limited by guarantee as those limited by share capital. This means that companies limited by guarantee must also file annual accounts and an annual confirmation statement with Companies House.</p> |

# LEGAL STRUCTURES

## Limited Liability Partnership (or LLP)

| DEFINITION  | LIABILITY OF OWNERS  | LEGAL PERSONALITY   | FORMALITIES  |
|---|--|---|--|
| <p>A body corporate with unlimited capacity formed by at least two members under the Limited Liability Partnerships Act 2000.</p>   | <p>Members' liability is generally limited to the amount they have contributed or agreed to contribute to the LLP.</p>   | <p>The LLP has separate legal personality and can own property, will be responsible for the fulfilment of all contracts and the payment of any debts. A guarantor of its obligations may be required.</p> | <p>Must be incorporated and registered at Companies House.</p>   |
| MANAGEMENT STRUCTURE  | FUNDING OPTIONS  | CHARITABLE STATUS   | REPORTING REQUIREMENTS   |
| <p>The members will be responsible for the management of the LLP unless the partnership agreement amongst the members stipulates otherwise. Limited liability partnerships may be used in "joint ventures" where two or more parties come together to create a new entity that will be used for a particular purpose. The rights and responsibilities of each member, as well as how the entity will be managed, are usually set out in an agreement amongst the members.</p> | <p>LLP capable of receiving funding in the form of:</p> <ul style="list-style-type: none"> <li>- capital contributions - made by the members to the LLP (if agreed in the partnership agreement);</li> <li>- debt – either from a bank or other lender (including the members);</li> <li>- grants – from public sector bodies or private corporations or individuals.</li> </ul> | <p>None.</p>  | <p>All LLPs must file their annual accounts at Companies House. The accounts must have been approved by the members of the LLP and the accounts must generally be accompanied by an auditors' report stating the name of the auditor and signed and dated by that auditor. LLPs may be exempt from audit if they qualify as "small". This requires the LLP to have:</p> <ul style="list-style-type: none"> <li>• turnover less than £10.2m;</li> <li>• total assets less than £5.1m; and</li> <li>• less than 50 employees.</li> </ul> <p>LLPs must also file an annual confirmation statement with Companies House. This will provide details of the members of the LLP and any persons with significant control.</p> |

# LEGAL STRUCTURES

## General Partnership

| <b>DEFINITION</b>   | <b>LIABILITY OF OWNERS</b>  | <b>LEGAL PERSONALITY</b>  | <b>FORMALITIES</b>   |
|---|---|---|--|
| <p>A relationship which exists between persons carrying on a business in common with a view to profit. Can be covered by a partnership agreement or simply by the Partnership Act 1890 if no partnership agreement is in place.</p> | <p>Partners are jointly liable for the debts and obligations of the partnership business. Partners are also jointly and severally liable for the wrongful acts or omissions of their fellow partners in the ordinary course of the partnership business, or with the authority of the other partners.</p> | <p>In Scotland, partnerships have separate legal personality (distinct from the partners) and so can own property and be responsible for the fulfilment of contracts. The situation in England is different. Again, the partners may have to act as a guarantor of the partnership's obligations and liabilities.</p> | <p>No incorporation required. A partnership is formed automatically when two people come together with a common purpose with the intention of making a profit (as per the Partnership Act 1890).</p> |
| <b>MANAGEMENT STRUCTURE</b>   | <b>FUNDING OPTIONS</b>  | <b>CHARITABLE STATUS</b>  | <b>REPORTING REQUIREMENTS</b>  |
| <p>Unless partners otherwise agree, each partner has the right to participate in the management of the partnership business.</p>  | <p>Partnership capable of receiving funding in the form of:</p> <ul style="list-style-type: none"><li>- capital contributions made by the partners to the partnership;</li><li>- debt – either from a bank or other lender (including the partners).</li></ul>  | <p>None.</p>  | <p>No formal reporting requirements. Instead, the partners are individually responsible for their own accounting and tax filings.</p>  |

# LEGAL STRUCTURES

## Unincorporated Associations

| DEFINITION  | LIABILITY OF OWNERS  | LEGAL PERSONALITY  | FORMALITIES  |
|---|--|--|--|
| <p>Not a separate legal entity but an organisation of two or more people who are the members of the association, and which is usually governed by a written constitution.</p> | <p>An unincorporated association does not exist as a separate legal person and so members will have to enter contracts and take on liabilities in a personal capacity.</p>   | <p>No legal personality.</p>   | <p>No formal incorporation or registration.</p>  |
| MANAGEMENT STRUCTURE  | FUNDING OPTIONS  | CHARITABLE STATUS  | REPORTING REQUIREMENTS   |
| <p>Governed by the terms of the constitution or by the will of the members. Clubs and charities set up as unincorporated associations may have a management committee.</p>    | <p>Unincorporated associations may demand or require capital contributions from members. Debt funding may be available, but given the lack of legal personality, the debt obligations would be taken on by the members personally.</p> | <p>Can set up an unincorporated association for a charitable purpose. OSCR must preapprove the constitution of the unincorporated association if applying for charitable status.</p> | <p>Whilst there are no formal reporting requirements as such, it should be noted that an unincorporated association that makes a profit will need to pay corporation tax and file a corporation tax return in the same way as a limited company.</p> |

# LEGAL STRUCTURES

## SCIO

| DEFINITION   | LIABILITY OF OWNERS   | LEGAL PERSONALITY  | FORMALITIES  |
|--|---|--|--|
| <p>A Scottish Charitable Incorporated Organisation ("SCIO") is a separate legal entity, specifically developed for charities in Scotland. It is only available for an organisation eligible for charitable status.</p> | <p>The members of a SCIO have limited liability similar to the members of a limited company and are not required to contribute to the assets on a winding up.</p> | <p>A SCIO has separate legal personality in the same way a limited company does.</p> | <p>Not set up under the Companies Act and so has a lower administrative burden than a limited company. A SCIO must have at least 2 members. It may have a single-tier structure (with charity trustees and no additional members); or a two-tier structure with charity trustees and additional members). Needs to be registered with the OSCR, not Companies House. Is subject to the Charities and Trustee Investment (Scotland) Act 2005 and SCIO Regulations. The members are subject to some of the duties of a charitable trustee.</p> |

# SCIO

| MANAGEMENT STRUCTURE   | FUNDING OPTIONS  | CHARITABLE STATUS   | REPORTING REQUIREMENTS   |
|--|--|---|--|
| <p>A SCIO has a relatively flexible form of constitution which puts real power in the hands of the members, arguably more so than with a limited company. The Trustees have primary responsibility for management. Oversight is by the members. The constitution must set out certain matters prescribed by the Charities and Trustee Investment (Scotland) Act 2015 and the SCIO Regulations.</p> | <p>A SCIO is capable of receiving third party funding and may be seen as more attractive to certain funders than an unincorporated venture including by way of debt and public grants.</p> | <p>A SCIO is only suitable for an entity that is eligible for charitable status. If it ceases to have charitable status it will cease to exist.</p> | <p>A SCIO will need to prepare records of receipts and payments or accrued accounts, depending upon the income level of the entity. A SCIO must keep a register of members and charity trustees. Each SCIO must prepare and file annual accounts with the Scottish Charity Regulator ("OSCR") that are compliant with the Charities Accounts (Scotland) Regulations 2006. The type of accounts to be prepared depends on:</p> <ul style="list-style-type: none"> <li>- the SCIO's income level; and</li> <li>- the requirements of the SCIO's governing document.</li> </ul> <p>The trustees of every charity in Scotland (including SCIOs) are required to prepare a trustees' report to form part of the annual accounts – this contains information about the charity and its activities in the relevant financial year. SCIOs can have their accounts independently examined (rather than fully audited) as long as each of the following apply:</p> <ul style="list-style-type: none"> <li>- gross annual income is below £500k;</li> <li>- fully accrued accounts and gross assets are below £3.26m;</li> <li>- there is no requirement in the governing documents for an audit; and</li> <li>- no third party funder requires the charity to be audited.</li> </ul> <p>All SCIOs must also prepare and file an annual return with OSCR. The depth of information provided in the annual return depends on the income of the charity. SCIOs with an income of over £25k per annum have an enhanced reporting procedure. This level of reporting is enhanced further for SCIOs with income above £250k.</p> |