

CIC vs Charity

What are the differences?



A question that we often get asked is, “What is the difference between a Community Interest Company (CIC) and a charity, and what is the right choice for a venture or project?”

The most important thing to note is that a CIC is not a charity, and within the term “charity” there is still a variety of structures. Charity structures include an unincorporated charity, a charitable trust, a charitable company and the newest of these structures - a Charitable Incorporated Organisation (CIO).

Now, for tomorrow

The table below summarises the key points:

	Limited liability	Registered with Companies House	Registered with the Charity Commission	Charitable status	Tax exemptions
CIC	✓	✓	✗	✗	✗
Company limited by guarantee	✓	✓	✗	✗	✗
Charitable company	✓	✓	✓	✓	✓
Unincorporated/charitable trust	✗	✗	✓	✓	✓
CIO	✓	✗	✓	✓	✓

Common features

With the exception of the unincorporated charity /charitable trust all of the other entities have a number of common features.

These include:

- **Separate legal identity**

This means that any property that is owned can be held in the name of the actual entity rather than in the individual names of trustees. With land and buildings that are required to be registered with the Land Registry this is particularly useful as it means that the registration can be done once and does not need to be updated when trustees change.

- **Limited liability of members**

Generally members liability is limited to a notional £1 or £10 and this means that in the event of the wind up of the entity or legal action against the entity the members of the legal entity have a capped liability of the stated amount in the governing document.

- **Trustees are protected from liability provided that they use proper care and skill**

Similar to the limitation on liability of members, the trustees of the entity would not be required to meet liabilities from their personal wealth provided that they were not negligent in the conduct of their duties.

In today's society, it is generally accepted and recommended that there is a very limited number of circumstances where an unincorporated charity or charitable trust would be the preferred option.

Charitable status

In order to be recognised as a charity it is a requirement that an entity is established with wholly charitable purposes¹ (as listed in the Charities Act 2006) and is for the benefit of the public.

Public benefit means that there must be an identifiable benefit and that the benefit is to a section of the public - beneficiaries are appropriate to the aims, it is a sufficient section of the public, people on low income are not excluded and any private benefit is incidental.

It should be noted that if an organisation meets both of these criteria above, then registration as a charity is a requirement, not a choice. That said, if you are beginning the process of set up of an entity then, by being aware of these criteria, you can seek to structure the entity in a way that is most suitable for you.

¹ Charitable purposes - GOV.UK (<https://www.gov.uk/government/publications/charitable-purposes>)

Community interest company

Where it is concluded that charitable status is not the correct route but you still wish to operate with a 'not for profit' principle then a CIC is an option.

There are two particular distinguishing features in a CIC compared to a company limited by guarantee. One is the "asset lock" clause, the other is the community interest requirement. The asset lock clause means that in the event of wind up, the residual assets of the company could not be distributed to members or directors but only to another entity with an asset lock provision – this might be a specific named entity or a wider non specific entity.

The community interest requirement is similar to the public benefit requirement of a charity, in that the activities are carried on for the benefit of a community which must be a sufficient group of people. This might either be that the activities benefit a community or that the surpluses of the CIC are applied for the benefit of a community.

Charity

- Pros**
- Charitable tax reliefs/exemptions
 - Access to gift aid
 - Some mandatory rates relief
 - Grant making trusts may often only be able to support charities

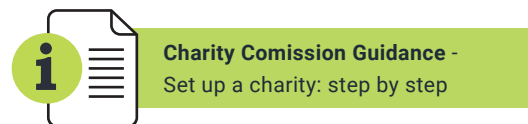
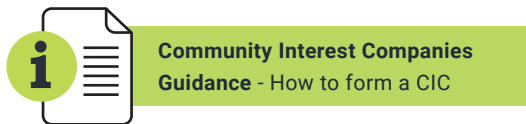
- Cons**
- More freedom in activities that can be undertaken
 - Can remunerate directors
 - Asset lock clause may be attractive to funders

CIC

- More freedom in activities that can be undertaken
- Can remunerate directors
- Asset lock clause may be attractive to funders

- Not eligible for charitable tax reliefs/exemptions
- Not eligible for gift aid
- Some funders may not be able to fund noncharities

Useful links for further information



i How we can help

If you would like to discuss any matters arising from this example policy please contact MHA on info@mha-uk.com or your usual MHA contact.

This template is designed for information purposes only. Whilst every effort has been made to provide accurate and up to date information, it is recommended that you consult us before taking or refraining from taking action based on matters discussed.



Sudhir Singh
Partner

E: sudhir.singh@mha.co.uk



Stuart McKay
Partner

E: stuart.mckay@mha.co.uk



Nicola Mason
Partner

E: nicola.mason@mha.co.uk

Now, for tomorrow