Organisation Legal Structures APPENDIX 1

Community Group and Voluntary Organisations			
Unincorporated Organisation	**Advantages**	**Disadvantages**	**Potential charitable status**
Better suited for small groups. May need a structure that gives members more individual protection if employing staff or managing a building	• Simple/ flexible. Constitution does not have to be agreed by an outside body unless registering as a charity • Cheap to run • If charitable aims then can register as a charity and access funding that is only available to charities	• Some funders prefer a more formal structure – especially for larger amounts of money • As a group with no legal existence: o It cannot own property in its own right o It cannot enter into contracts – if it wants to rent premises or employ people, this is done in the eyes of the law by individuals on behalf of the group o Individual members of the management committee are personally responsible for the group's obligations and debts and are liable if, for example, it is sued	Yes
Charitable Trust	**Advantages**	**Disadvantages**	**Potential charitable status**
Legal form set up by means of a trust deed and will need to register with the Charity Commission. Usually set up to manage money or property for a charitable purpose. Not a membership organisation – run by a small group of people known as trustees, although the deed	• Cheap to establish – no registration fee although a small stamp duty to pay • Fairly simple to set up – Charity Commission publishes a model declaration for a charitable trust (trust deed) • Regulation by the Charity Commission gives a 'seal of	• Property can be held in the name of individual trustees for use by the charity – though the charity cannot purchase property in its own name • Normally for a charity with more professional aims that wants to employ a small number of workers or manage a building • Must draw up annual accounts and	Yes

can be written in such a way as to allow for members. Trustees can be changed regularly if so wished. Trustees must not receive any remuneration from the trust or receive any personal benefit from its activities	approval' to its activities • Funders may find the formal and stable structure reassuring whilst some funders will only give grants to registered charities	report in a particular way and send a copy to the Charity Commission • Charitable trust is an unincorporated organisation which means its trustees are personally liable for its obligations and debts • All decisions are made by a small group of people who are not necessarily easily replaceable (The Charity Commission suggests having between 3 and 9 trustees). So it is not a suitable structure for a group which wants to encourage a large and active membership.	
Charitable Incorporated Organisation (CIO)	**Advantages**	**Disadvantages**	**Potential charitable status**
New form of charitable organisation created by the Charities Act 2006 and became available at the start of 2013. Needs minimum income of £5,000 per annum. Members cannot receive dividends	• Provides a legal personality and limited liability without the dual regulation of Companies House and the Charity Commission • Registered and regulated by the Charity Commission and therefore the requirements for reporting and for annual accounts should be simpler and cheaper • Charity Commission will produce model forms of constitution for CIOs which will be simpler than the governing document of a Charitable Company	• Lengthy registration process • Because CIOs are new, the laws and regulations regarding them are underdeveloped – and therefore little support and advice currently available • May be difficult to get loans from banks as don't need to keep a public record of liabilities • If it stops being charitable under the Charity Commission's criteria will be forced to close • Not suitable for external investors such as joint venture partners	Yes

Charitable Company	**Advantages**	**Disadvantages**	**Potential charitable status**
A Charitable Company is a limited company with charitable aims. It is an incorporated organisation that means it has a legal identity separate to its members. A limited company is considered to be a 'person' and it can therefore own land or enter into contracts. The directors are agents of the company and are not personally liable for its debts. Unlike an incorporated organisation, members must be named and a list of members forms part of the Company Register A company can also demonstrate, through its Memorandum & Articles of Association (its governing document) that it is accountable to the community and charitable in its aims. The directors of a Charitable Company are also its trustees and perform the role of the management committee Company limited by shares or by guarantee. Those limited by guarantee have no shareholders and any surplus is reinvested in the company. This type is	• Suitable for larger organisations which has considerable assets and employs more staff • Can take on legal obligations and buy property in its own name • The organisation and not its members is responsible for any debts (although directors have a legal duty to act prudently and to ensure the company manages its finances carefully) • Many funders regard this structure as more stable, as they know the company will continue to exist even if there is a change of people involved – so helps increase chances of applying for larger sums of money • Some funder only give grants to registered charities	• Need to register with Companies House and the Charity Commission and they have to be notified of every change of director/ trustee • Account and reports have to be in a particular form • It is expensive to set up and time consuming to run and annual accountancy fees can be high	Yes

recommended by the Charity Commission Company limited by shares is usually found in the commercial sector where members are investing money in the hope of gaining a profit.			

Social Enterprises			
Partnership and Limited Liability Partnership	**Advantages**	**Disadvantages**	**Potential charitable status**
Partnership Agreement between two or more people defining how the business will be run. If Limited Liability Partnership (LLP) then have to register with Companies House and publish accounts. An LLP is taxed as a partnership so members are taxed on their respective proportions of profit and capital gains. Members can receive dividends if constitution set up as such.	• Social aims can be spelled out in the Partnership Agreement • If a Limited Liability Partnership – partners not personally liable for any losses provided they acted in a reasonable manner • Can own assets or enter into contractual arrangements • Organisational flexibility – no specified management structure and members can agree how to share profits, members can agree how decisions are made, when and how new members are appointed • Suitable for external investors such as joint venture partners	• Partnerships are not generally considered to be a Social Enterprise • Could be problem if applying for funding as may be difficult to demonstrate any wider social involvement • Partners are personally liable for debts unless a Limited Liability Partnership is formed and there still could be some circumstances in which personal liability arises • Not clear if local authority can legally establish a limited liability partnership and make profit (although some local authorities have already done this) – they should do this through a limited company or an Industrial and Provident Society	No
Limited Company	**Advantages**	**Disadvantages**	**Potential charitable status**
Company Limited by Shares or by Guarantee. Its Memorandum & Articles of Association must state that any surplus is put towards the company's social purpose and usually defines the company as democratic and accountable to the community through its membership. A company limited by shares will generally pay profits to its shareholders	• In law a Limited Company is considered to be a person and can therefore own land or enter into contracts • Directors are agents for the company and are not personally liable for its debts • Flexible structure suitable for a wider range of Social Enterprises • Can potentially claim charitable status for companies limited by guarantee. In a company limited by guarantee	• Regulation by Companies House is fairly strict • Detailed requirements for annual reports and accounts • If considering a company limited by shares, will need to consider the price of those shares to avoid the risk of being considered to offer State Aid • For companies limited by shares – if a shareholder wishes to retire or otherwise be removed from the company, a transfer of shares will be required	Yes if company limited by guarantee but not if limited by shares

by way of dividends. If the company is to trade then it is more common to consider a company limited by shares	(CLG) there is no share capital and no shareholders. Instead, the members give a guarantee to cover a company's liability. However, the guarantee is nominal, normally being limited to £1	• Companies limited by shares <u>cannot</u> claim charitable status	

Community Interest Company (CIC)	**Advantages**	**Disadvantages**	**Potential charitable status**
Limited company with special features to ensure it works for the benefits of the community. Report to a new independent regulator – the Regulator of Community Interest Companies. Requires publication of directors' remuneration. The ability of a Community Interest Company to pay dividends to its members is dependent on the constitution and subject to annual limits – but a CIC without shares cannot pay dividends	• Can be established for any legal purpose which benefits the community whereas a charity must have exclusively charitable purposes • Lighter regulation than a charitable company • Commitment of assets and profits permanently to the community by means of an 'asset lock' ensuring assets cannot be distributed to shareholders • Not for profit status is visible and assured • Cannot register as a charity but a charity may set up its trading subsidiary as a Community Interest Company – so will need to consider structure for tax benefits • Can be set up as a company limited by shares or by guarantee so offers the same limitation of liability to its members • If constitution of the Community Interest Company is non-profit distributing it is possible that it may be able to claim discretionary NNDR	• May not be eligible for funding that is available to charities • Have to register with Companies House as a company limited either by guarantee or shares and then apply to the new Regulator for Community Interest Companies • Additional regulation of activities by the Community Interest Company Regulator	No but can have a charity as a subsidiary

	relief		
Co-operative Societies (Industrial and Provident Society – IPS)	**Advantages**	**Disadvantages**	**Potential charitable status**
A Co-operative society is a form of Industrial and Provident Society (IPS). It is an incorporated organisation and its members benefit from limited liability Bona fide Co-operative Societies are now known as **Co-operative Societies** An IPS must register with the Mutual Societies Registration section of the Financial Conduct Authority (FCA), the regulatory body	• In general regulation is lighter than for Limited Companies and the accounting requirements less rigid • Members have limited liability as a separate company is formed • Members can benefit through the distribution of dividends in a co-operative society • Members can also benefit from cheaper prices for services or improved amenities	• Incorporation is more expensive than companies • There are prescribed matters to be contained in the IPS' rules • Not suitable if potentially looking for external investors – such as a joint venture partner	Co-operatives can very rarely register as charities.
Community Benefit Society – CBS (Industrial and Provident Society - IPS)	**Advantages**	**Disadvantages**	**Potential charitable status**
A Community Benefit Society is a form of Industrial and Provident Society (IPS). It is an incorporated organisation and its members benefit from limited liability. Benefit of the Community Societies are now known as	• In general regulation is lighter than for Limited Companies and the accounting requirements less rigid • Members have limited liability • Members can also benefit from cheaper prices for services or improved amenities • Community benefit societies can register with the Charity Commission	• Incorporation is more expensive than companies • There are prescribed matters to be contained in the IPS' rules • Not suitable if potentially looking for external investors – such as a joint venture partner	YES - Community benefit societies can register as charities

Community Benefit Societies. An IPS must register with the Mutual Societies Registration section of the Financial Conduct Authority (FCA), the regulatory body.	so it can explore the charitable tax benefits. Charitable community benefit society must have an asset lock. This must take the form of a rule stating that if the society is dissolved, any residual assets must be transferred to another charity with the same or similar charitable purposes		