

Legal Structures for Performing Arts Organisations

How does a formal structure benefit a performing arts organisation?

Provides financial protection for the individuals involved

A formal 'incorporated' structure creates an organisation that is a legal entity in its own right and that enters into contracts in its own name. Incorporated organisations have 'limited liability'. This means that it is rare for individuals involved in the company to be sued personally for the company's debts.

Enables it to raise funds

- A commercially focused company will want investors to provide share capital. It will need a structure that attracts investors with the promise of a return on their money.
- In contrast, a company seeking public funds will generally need a structure that is non-profit distributing. Public funders will not want their money going to a handful of individuals.
- A company that is doing work that is likely to be funded by trusts and foundations will want a structure that can have registered charity status since most donors will want this.
- A company that is doing work that puts social benefit before profit may want to be clearly perceived as a Social Enterprise.

Incorporated structures

Limited company with share capital

This structure provides a commercial organisation with a limited liability structure and the ability to raise funds from shareholders.

Company limited by guarantee

This format provides an organisation with a structure that does not require shareholders, this means that the company can be non-profit distributing and have charitable aims. A company of this kind must register as a charity if it has solely charitable aims and an income over £5k pa. For most ITC members this structure, company limited by guarantee, continues to be the best option. It satisfies public funders, makes charitable status possible and is an indicator of social enterprise.

Community Interest Company ("CIC")

This structure combines enterprise and social welfare. Some key features are:

- Aim: The CIC structure was introduced to encourage Social Enterprise. One impetus for their creation was a response to a shift in some sectors from social purpose to private profit, in particular the demutualisation of many building societies.
- Uses: Non-profit distributing companies that do not want charitable status may find the CIC a useful option. They may attract new funders who find the CIC a stronger indicator of social enterprise than the standard company limited by guarantee. Charities setting up trading companies may find the CIC brand reflects and reinforces their charitable identity.
- Capitalisation: A CIC can be set up with share capital or can be limited by guarantee.
- Profit distribution: Where there are shareholders there will be a limit on the dividends that they can be paid and they will not benefit from any assets if the company folds.
- Charitable status: A CIC in England and Wales cannot have registered charity status.

Charitable Incorporated Organisation ('CIO')

The Charitable Incorporated Organisation and the Scottish Charitable Incorporated Organisation ('SCIO') were devised to remove the perceived burden of having to make annual returns to both a Charity Commissioner (Charity Commission/Office of the Scottish Charity Regulator ('OSCR')) and Companies House. S/CIOs are not registered companies but they are a discrete legal structure, as companies are, with limited liability and registered charity status.

Setting up an organisation with an incorporated structure

Limited Companies (with Share Capital or Limited by Guarantee) must register with Companies House.

Companies Limited by Guarantee with charitable status register first with Companies House and then apply to the Charity Commission for charitable status. They must demonstrate public benefit when they apply for charitable status.

CICs must register with Companies House and must pass a 'Community Interest Test' as part of the process.

S/CIOs are only registered with the Charity Commission or OSCR, not at Companies House. Applicants must be able to demonstrate the public benefit of their work in the same way as other charities.

All these organisations will have boards of Directors/Trustees with overarching responsibility for running the organisation, although this is delegated to staff on a day to day basis. There will also be shareholders or members of the company, the first shareholders/members are usually the Directors/Trustees as well.

Annual Reporting

All **Limited Companies** they have to submit their accounts to Companies House each year and they also make an annual report to Companies House, which is a fairly short check on the Directors of the Company.

Companies Limited by Guarantee with charitable status must also make an annual return and submit accounts to the Charity Commission. The annual return must include a Trustee's Report on the public benefit of the Charity's work.

CICs have to submit their accounts to Companies House each year and make an annual report in the same way that Companies do. CIC's must additionally demonstrate that they are continuing to meet the Community Interest standard: showing how they benefit the community, how their stakeholders have been involved in its activities and what payment, if any, Directors have received.

S/CIOs only make an annual return to OSCR/the Charity Commission, like other charitable organisations this must include accounts and a Trustee's Report on public benefit.

Table of Legal Structures is attached

Further Information

ITC can help you set up your company and/or apply for charitable status:
Call 020 7089 6823 or email: j.elliman@itc-arts.org

Useful information is also available at the following websites:


www.gov.uk (<http://www.gov.uk>)

www.companieshouse.gov.uk (<http://www.companieshouse.gov.uk>)

www.charity-commission.gov.uk (<http://www.charity-commission.gov.uk>)

www.socialenterprise.org.uk (<http://www.socialenterprise.org.uk>)

File Attachments:

 [Legal_structure.pdf](https://itc-arts-s3.studiocoucou.com/uploads/helpsheet_attachment/file/77/Legal_structure.pdf) (https://itc-arts-s3.studiocoucou.com/uploads/helpsheet_attachment/file/77/Legal_structure.pdf)
