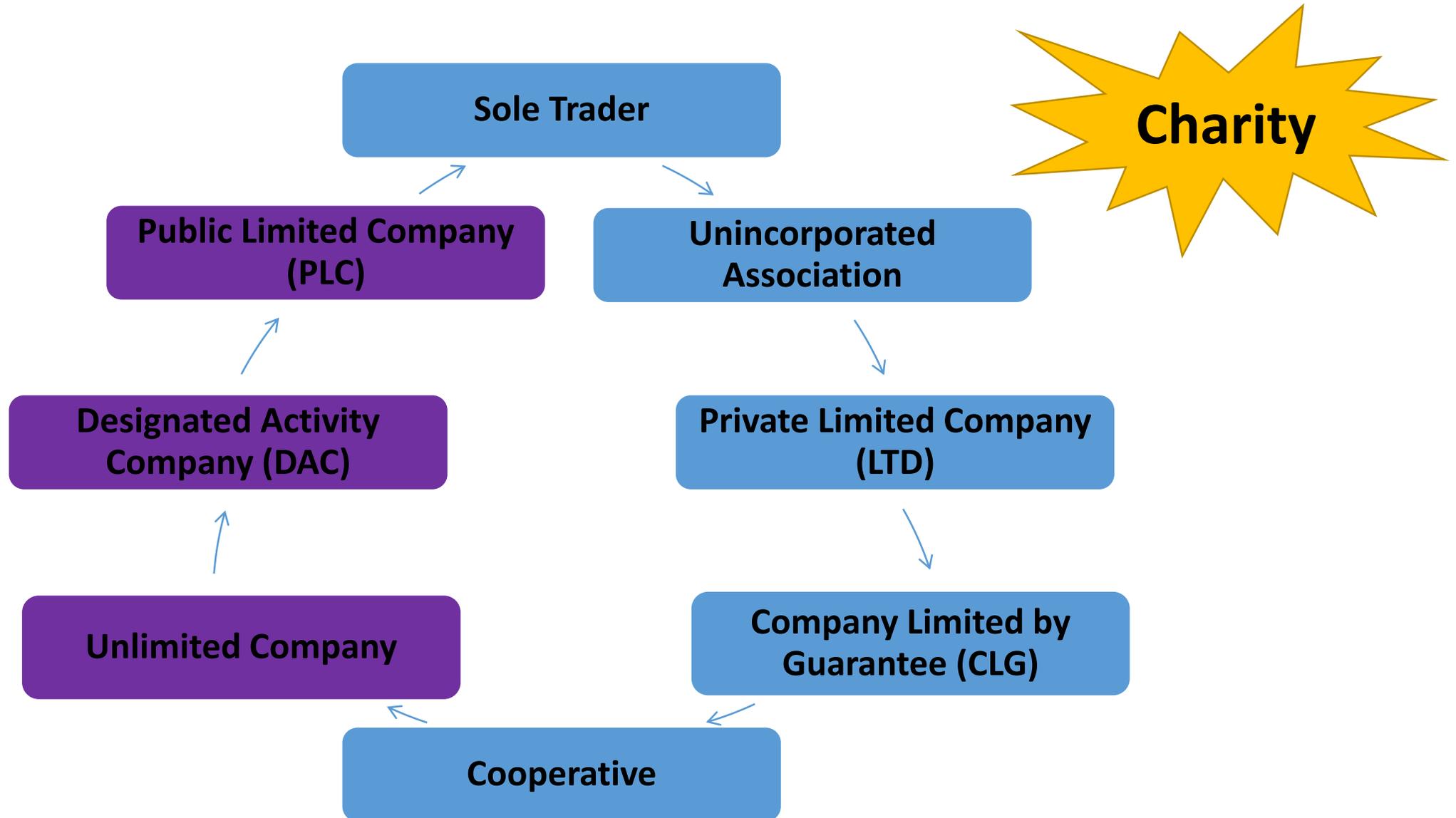


Legal organisational models for Social Enterprises

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There are a range of potential business models for your venture



Your business model will have implications for your regulatory environment and what you are legally allowed to do

CRO

ODCE

Revenue

**Charities
Regulator**

So it is important to consider the appropriate legal structure for your venture

Things you need to consider include;

Funding

**Charitable
status**

**Profits/
Surpluses**

**Members/
Owners/
Investors**

Sole trader model

- This is the most straightforward way to set up your own business.
- As a sole trader, you are the owner of the business.
- You are legally liable for the business and do not have any protection if the business fails.
- If the business is not successful, all of your assets (business & personal) can be used to pay off your creditors.

Unincorporated Association

- Unincorporated associations have no separate legal identity from their members.
- They are usually established by rules or a constitution, and are no different from an unincorporated club in Irish law.
- Such bodies do not have the benefit of limited liability and therefore the members are personally liable for their actions.
- The officers and directors may, however, still fall within the definition of a charity trustee for the purposes of the Charities Act 2009, with all the applicable statutory obligations.
- Under the Charities Act 2009, a charitable organisation may agree with a charity trustee to obtain indemnity insurance in respect of acts done by the charity trustee in good faith.
- Where an unincorporated association wishes to enter into contracts or operate as an employer or acquire an interest in land, it may be sensible to incorporate the structure, for example into a company limited by guarantee (see above, Company limited by guarantee).
- An unincorporated association may, however, suit a small organisation with limited assets, provided it takes out all necessary insurances to protect the individual members of the association.

Unincorporated association advantages & disadvantages

Advantages.

- Unincorporated associations are the preferred type of arrangement for small voluntary organisations, as they are not required to comply with company law and the Companies Acts, unlike CLGs.
- The unincorporated associations may suit some smaller charities, particularly those that may be able to fall under the de minimis provisions for a requirement to file an annual statement of account with the Charities Regulator. The de minimis provisions relate to charitable organisations who either:
 - Have gross income or total expenditure of less than EUR10,000 in a financial year, or such greater amount not exceeding EUR50,000 as may be prescribed.
 - Are centres for education designated by the Minister for Education and Skills.

Disadvantages.

- Unincorporated associations do not benefit from limited liability and their members are personally liable for their actions.

Private Limited Company LTD (1)

- A legal entity, separate from its shareholders
- It can trade, own assets and incur liabilities in its own right.
- Your ownership of the company is recognised by owning shares in that company.
- If you also work for the company, you are both the owner (shareholder) and an employee of that company.
- When a company generates profits, they are the company's property.
- Should you wish to extract money from the company, you must either pay a dividend to the shareholders, or a salary as an employee.
- The advantage to you is that you can have a balance of these two to minimise your overall tax and PRSI insurance liability.
- Companies themselves pay corporation tax on their profits after paying your salary but before your dividend distribution.

Private limited company LTD (2)

- There are many advantages as well as disadvantages to operating through a limited company.
- New companies can be purchased relatively cheaply in a ready-made form usually referred to as 'off the shelf' companies.
- There are additional administrative factors in running a company, such as statutory accounts preparation, company secretarial obligations and PAYE (Pay as You Earn) procedures.
- A big advantage of owning a limited company is that your personal liability is limited to the nominal share capital you have invested.

Company Limited by Guarantee CLG (1)

- Companies limited by guarantee (CLGs) are the most popular form of organisation model utilised for charitable purposes in Ireland.
- Company legislation was consolidated in Ireland with the coming into force of the Companies Act 2014.
- A CLG is a form of public company with separate legal personality to its members, whose liability is limited to the amount they undertake to contribute to the assets of a company in the event of a wind-up, subject to a minimum of EUR1.

Company Limited by Guarantee (2)

- If a guarantee company has no share capital, the members will not be required to buy any shares in the company.
- A CLG must have at least two directors, however, if a company registers with the Revenue Commissioners for charitable tax exemption the Revenue will require those companies to have at least three directors.
- The governing instrument of the CLG is the constitution, which is comprised of the memorandum and articles of association of the company.

Company Limited by Guarantee: Advantages.

- It is a distinct legal entity from its members, and can enter into legal contracts and agreements in a relatively transparent manner.
- It can own property, and does not need to hold property in the name of its trustees.
- It can be wound up.
- Its members have limited liability.
- It will not cease on the death of all of the trustees/members and will continue in existence despite changes in membership and without the requirement of an application to court or the Charities Regulator, unlike a charitable trust

Company Limited by Guarantee: Disadvantages.

- One of the downsides of operating the more complex structure of a CLG may be the costs associated with preparation and filing of annual accounts and returns with the Companies Registration Office which is not required of, for example, an unincorporated association, which only reports to the Charities Regulator.
- In addition, if also a registered charity, directors must comply with the obligations both of charity trustees under the Charities Act 2009, and of directors under the Companies Acts.

The “charity” test! (1)

- Under the Charities Act, to qualify as a charity you need to meet the following criteria;
 - be a body that promotes a **charitable purpose** only.
 - be required under constitution to **apply all of its property to further that charitable purpose**, except for money used in its operation and maintenance (e.g., payments to staff) and, in the case of religious organisations or communities, money used for the accommodation and care of the members of the organisation or community; and
 - **none of the charity’s property is payable to the members** of the charitable body, except in specific circumstances.

The “charity” test! (2)

- A charitable purpose is defined in the Charities Act as a purpose that is of public benefit and involves:
 - the prevention or **relief of poverty or economic hardship**;
 - the advancement of **education**;
 - the advancement of **religion**; and/or
 - any other purpose that is of **benefit to the community**.
- An organisation cannot be a charity if there is no public benefit.

Co-operative

- A co-operative is an enterprise which is owned and controlled by its user members and operates for the benefit of its user members.
- Co-operatives place considerable emphasis on the ethos of member benefit, member participation and member loyalty.
- Transparency openness and democratic accountability are also a part of the co-operative ethos.
- It is perhaps in the area of identity and ownership that both corporate forms differ most.
- Co-operatives are uniquely associated with the idea of democratic control and being open accountable businesses accessible to all those who are able to use their services and are willing to accept the responsibilities that being a co-operative entails.
- Thus singular emphasis is put on the idea that those members who actively used the services of the co-operative are the persons who should be in control and should benefit from its services.
- A corollary to this idea is that these members should also contribute to the financing of the business in proportion to the use they are making of it.

Bonus slides not used as part of the presentation

Designated Activity Company (DAC)

- A private company, a DAC's activities is limited to its objects as set out in its memorandum of association and it must have at least two directors.
- Suitable for joint ventures and special purposes vehicles or where there is a corporate governance requirement for a restriction on its activities.

Designated Activity Company (“DAC”)

- The constitution of a DAC comprises of two separate documents namely a memorandum of association and articles of association.
- The memorandum of association must set out the objects of the DAC and the DAC has the capacity to do any act or thing stated in the objects.
- The DAC must have a minimum of two directors and a person may not be a director of more than 25 companies.
- The DAC can have from 1 to 149 members.
- A DAC with one member has the right to dispense with an AGM but if the DAC has two or more members it does not have that right.

Public Limited Company (PLC) & Unlimited Company

PLC

- Permitted to have shares listed on a stock exchange and offered to the public. Its activities are limited to its objects as set out in its memorandum of association.
- A PLC must have at least two directors, a statutory minimum share capital of €25,000 of which at least 25% must be paid on issue.

Unlimited Company

- Unlimited companies are similar to limited companies except that the shareholders' liability is unlimited.
- There are three types of unlimited companies:
 - A private unlimited company with a share capital (ULC)
 - A public unlimited company with a share capital (PUC); and
 - A public unlimited company not having a share capital (PULC)

Community interest company (CIC) – UK only

- These are specific limited companies that provide benefits to the community
- The reason behind the development of CICs was the lack of legal structures for non-charitable social enterprises.
- They can be set up as either companies limited by shares or companies limited by guarantee and thus have the benefits of limited liability.
- CICs need to be registered and comply with the CIC Regulations. They need to pass the ‘community interest test’ before they can register as CICs. Thus the main difference compared to other companies is that they are operating for the benefit of the community and not for the benefit of shareholders. An existing company can be converted to a CIC although a CIC cannot hold charitable status.
- Like trusts, they have an asset lock which restricts profit distribution in certain circumstances and ensures that the assets are used for the community purpose. On winding up a CIC, all of the assets must be transferred to another similar asset-locked body.
- A key advantage of a CIC (rather than a charity) is that the directors of a CIC can be remunerated (charity trustees generally are not remunerated). They are also not as heavily regulated (although are still regulated under a ‘light touch’ regime). They obviously do not have the taxation advantages that charities are entitled to and they have to file a community interest report annually with the CIC regulator (which is made available publicly).