

# LEGAL STRUCTURES

## WHY HAVE A LEGAL STRUCTURE?

- It provides a group with its own unique legal name
- To provide limited liability protection: members can't be held personally liable for the debts or actions of the group
- Gives much greater access to funding and grants; groups with no legal status are often required to apply through an Umbrella group, and/or are ineligible for larger grants
- Provides a formal structure, including a process of winding up
- Gives the organisation credibility and recognition
- Group can open bank accounts, own property, sue, be sued, take out loans
- Can enter contracts under its own name
- Has a structured means of surviving its initiating members

## WHAT IS AN INCORPORATED SOCIETY?

It is a group or organisation that has been registered under the Incorporated Societies 1908 Act and is authorised by law to run its affairs as though it were an individual person.

There is a wide range of groups and organisations which have become incorporated societies. These include not for profit groups such as sports clubs, social clubs, musical and cultural groups, special interest and activist organisations.

## KEY FEATURES

- Set up under a Constitution with rules
- Have a minimum of 15 Members
- Members make the decisions, usually electing a management committee
- Annual financial statement is required to be filed with Government
- Any profit beyond wages must be put into charitable activities
- Easy for people to join or leave

## WHAT IS A TRUST?

It is an obligation on the part of the trustees to deal with any property in the manner in which they have been directed, for the benefit of the beneficiaries or the objectives.

An organisation can only create a trust if its own rules contain the power to dispose of its property in that manner. The language used in setting up a trust must make it clear that a trust is intended, so it is best to use the words 'on trust for', plain English should be used to state the intention of the organisation as simply and as clearly as possible.

## KEY FEATURE

- It has a board of at least two Trustees
- It must be for charitable aims- not for private profit
- Trustees make decisions
- There is often limited community or member involvement

## CHARITABLE TRUSTS

A charitable trust is one created in respect of property intended for a charitable purpose. In this area of the law 'charitable' has a special legal meaning, different from the meaning in common usage. A list of charitable purpose was drawn up in 1601 which is still used by the Courts today, although they are not regarded as the only charitable purposes possible. That list includes the relief of aged, afflicted or poor people; the aid of young tradesmen and handicraftsmen; the relief or rehabilitation of prisoners and captives. Further purposes have been deemed charitable by the Courts themselves. They are:

- a The relief of poverty;
- b The advancement of education or religion;
- c Other purposes not falling under any of the preceding headings.

In order to be charitable, every trust falling in one of those four categories, must also:

- a be in some way for a public purpose;
- b be for the public benefit;
- c be able to be controlled by the courts if necessary.

There are a few advantages in a charitable trust e.g., income tax is not payable, and the gift can be perpetuated, with any interest or monetary return being paid out each year, but the capital of the gift remaining. In New Zealand there is a Charitable Trusts Act 1957, which provides for the Court to approve schemes to be set up when it is impracticable or impossible to carry out the purpose of an obsolescent charitable trust, or when there are more assets held than the stated purpose requires. Such schemes can also be set up (using the procedures in that Act) in respect of money raised by public contributions for charitable purposes, (when it is impractical or impossible to carry out the purpose), or more money was raised than was necessary, to carry out the publicly-stated objectives.

### Duties of trustees

Basically the trustees must follow the terms of the trust, and be guided in that duty by the Trustee Act, 1956. In general some of the trustees duties are:

- a. to be fair as between the beneficiaries or objectives;
- b. not to delegate his job except where absolutely necessary;
- c. act together, when more than one trustee;
- d. not to expect payment for contributions except where express provision is made;
- e. to keep proper accounts and be prepared to make information available; and
- f. to be scrupulously honest - which means no direct or indirect profit or advantage can be obtained during his role as trustee.

## LEGAL STRUCTURES

<b>POSSIBLE LEGAL STRUCTURES FOR VOLUNTARY ORGANISATIONS</b>		
	<b>Incorporated Society</b>	<b>Charitable Trust</b>
<b>Aims</b>	Often Charitable, but don't have to be	Must be charitable
<b>Rules</b>	Set up under Incorporated Society Act 1908. Has a constitution with rules, which must include: <ul style="list-style-type: none"> <li>• name of group;</li> <li>• objects of group;</li> <li>• how people can become/stop being members;</li> <li>• meeting arrangements;</li> <li>• officers and their election;</li> <li>• handling of money;</li> <li>• use of common seal;</li> <li>• changing rules;</li> <li>• winding up procedures.</li> </ul>	Set up under Charitable Trust Act 1957. Has a trust deed with rules, which must include: <ul style="list-style-type: none"> <li>• introduction; date trust was set up;</li> <li>• why it is being set up;</li> <li>• occupations and addresses of all trustees;</li> <li>• aims;</li> <li>• power: can be as wide or narrow as group wants eg to employ staff,</li> <li>• apply for grants,</li> <li>• buy or lease property;</li> <li>• rules board will operate under</li> </ul>
<b>Setting up costs</b>	\$200	Free
<b>Size</b>	Minimum of 15 members	Minimum of two trustees
<b>Charitable status</b>	Can apply for charitable status	Can apply for charitable status
<b>Members</b>	Made up of members who may join or leave according to membership rules; must have up-to-date register of current members showing name, address, occupation, date they become a member	No members. Trustees run the trust for the benefit of others. Trustees remain on office until they retire or the term set out in trust deed expires
<b>Decision making</b>	By members at General Meetings and by committee. Usually has an elected management committee	By trustees. AGM and ordinary meetings not automatically open to beneficiaries unless specified in trust deed
<b>Accountability</b>	Committee is accountable to its members	Trustees not accountable in specific way. Accountability through trust deed and Charitable Trust Act
<b>Ministry of Economic Development requirements</b>	Must keep list of members, and send annual financial accounts to Registrar of Incorporated Societies	Must act within law covering trusts, but no particular reporting requirements
<b>Profits</b>	Can make profits and employ people but cannot distribute profits to members	Any profit has to be used for charitable aims
<b>Liability</b>	Members are not personally liable for debts	Trustees are not personally liable for debts if trust is incorporated and trustees have acted responsibly
<b>Winding up</b>	Can be wound up, voluntarily by members, or by high court if society suspends operation for a year, has less than 15 members, is unable to pay debts, or if individual members profit. Surplus assets can be distributed among	Can be wound up voluntarily by trustees at any time, unless stipulated in deed, or by High Court if it believes it is just and equitable to do so. Surplus assets must be distributed to other charitable

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	members	organisations
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### Non-Charitable trusts

All other trusts are called private trusts. These are usually for the benefit of a few people e.g. Family Trust, These will not normally concern clubs or organisations.

## SIMILARITIES BETWEEN CHARITABLE TRUSTS AND INCORPORATED SOCIETIES

- Can have almost identical powers, objectives and rules
- Both can be charitable
- Both give the benefits of being a legal entity and allow you to
  - employee people
  - receive grants
  - enter in to contracts

## OTHER LEGAL STRUCTURES

Maori Land Trusts (under Te Ture Whenua Maori Act 1993) Putea, whanau, ahu whenua, whenua topu, & kai tiaki trusts

Industrial and Provident Society - Form usually used by co-operatives

Company - Companies can be community owned and have charitable purpose

## FURTHER READING

‘An Overview of the voluntary Sector’, Diana Suggate, 1995

**Contact the following website:** Prescribed forms and information about how to incorporate your society or charitable trust and how to run your society or charitable trust can be obtained from the Ministry of Economic Development website at <http://www.societies.govt.nz> or phone 0508 762-438

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**If you would like a list of our other community resources, or to be put on our mailing list, contact us at:**



Phone (09) 486-4820

Fax (09) 486-4823



Visit North Shore Community and Social Services Inc.  
Mary Thomas Centre, 3 Gibbons Rd, Takapuna



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