

Company Limited by Guarantee (CLG)

What is a CLG?

Companies Limited by Guarantee (CLG) have been in existence since 1862 and are simply an alternative type of corporation, primarily used for not-for-profit organisations.

For example, the CLG form is often used for clubs, membership organisations, including students' unions, residential property management companies, sports associations, workers' co-operatives, other social enterprises, non-governmental organisations (NGOs) and charities (such as Oxfam).



When incorporating multi-stakeholder organisations, this form is sometimes preferred over the industrial and provident society because company law allows multiple classes of member with separate voting constituencies.

No Share Capital

The majority of voluntary organisations which incorporate become private companies limited by guarantee and not having share capital. (Until 1981 it was possible to form a company limited by guarantee with share capital).

The main difference between a CLG and a Company Limited by Shares (CLS) is that a CLG does not have share capital or shareholders. Instead a CLG has members who act as guarantors, undertaking to contribute a nominal amount (normally £1 or £10) in the event of winding up the company.

Any profits made by a CLG are therefore distributed not to its members but back into the company or if the company is a trading subsidiary of a charity, the profits would go to the charity as unrestricted income.

Depending upon the provisions in the governing document, it is sometime possible for profits to be distributed to members; this is one reason why organisations choose to become a [Community Interest Company \(CIC\)](#) instead, with an asset lock preventing this. Neither a CIC nor a CLG that distributes profits to members would be eligible for charitable status.

As there are no shareholders, it is not possible to *own* a company limited by guarantee in the way that a company with a share capital is owned by its shareholders. The members of the guarantee company control it, in the same way as shareholders control a share company, but they do not have any shares or other security in the company that they can sell to another.

A guarantee company can borrow money and may issue debentures or debenture (loan) stock.

Members, not shareholders



A CLG does not have shareholders, instead it has members. To set up a company there must be at least one member and one director (if you wish to become a charity, the Charity Commission require a minimum of three directors)

Members are generally entitled to attend and vote at the company's Annual General Meeting (AGM), which for most companies means they can appoint and remove directors, and have ultimate control of the company (subject to any special provisions in the company's governing document).

Members must be distinguished from others such as supporters, service users or participants, who may (confusingly) be called members but do not have any constitutional role in the organisation. You can therefore have different levels of members – those who sign up to a loyalty card or to receive a newsletter but do not have a vote at the AGM all the way up to Full members who have full voting rights and are normally eligible to become a member of the governing body.

Directors

A CLG, as a private company, must have at least one director, and many CLG's have several, particularly if the organisations has ambitions to become a charity.

The directors may be given some other title, such a committee, management committee, board of managers, trustees, governors, etc. Whatever title they may be given, if they are in day to day control of the company they are in law directors of that company. Their powers will depend on the terms of that particular company's governing document, but typically they are given very wide powers of management.

It is important to remember that these powers are held by the directors collectively – they therefore must make a decision as a whole board. They may, of course, set up sub-committees, etc. and delegate powers to them, and may give particular directors special responsibilities, such as treasurer, chair etc..

Directors have certain duties and legal obligations and it is important to know what these are. For example:

- Filling the company's annual accounts and annual return on time;
- Ensuring your company details are up to date;
- Following the companies governing document;
- Disclosing any conflict of interest. etc.

[Companies House](#) and [GOV.UK](#) provide more information on these responsibilities.

Charitable Companies

A CLG can work in the voluntary and community or non-profit sector without ever becoming a charity, likewise, a charity may never feel the need to incorporate and become a CLG.

An unincorporated Association which is too small to register with the Charity Commission, may choose to become a CLG in order to have an official number, limited liability etc.

A registered charity may decide to become a CLG as well to limit liability, especially if the organisation has increased risks such as taking on staff, large contracts or a lease. By becoming a company the legal personality becomes that of the organisation rather than the individual

governing body members. If limited liability is sought, the body would have to be registered both as a charity and as a company limited by guarantee, and certain provisions (such as the restrictions on profit distribution mentioned above) must be included in the memorandum and articles of association.

A CLG may be set up because it is quick and easy to do so¹, however, the directors can decide to register as a charity as well once the organisations annual income is £5000 or above.

Once a charitable company, the company directors will also be the charity trustees.

There is a set process for registering companies as charities and vice-a-versa. Guidance for which can be found on the [Charity Commission website](#).

Trading Subsidiaries

A charity may also create a CLG (or a CLS) to be a trading subsidiary as part of their income generation plan. As charities can only carry out primary purpose activities in line with their objects and for public benefit, if they wish to generate extra income a charity may set up a separate trading subsidiary company.

'Charities can set up wholly-owned subsidiary companies to carry out trading on their behalf. A wholly-owned trading subsidiary is a company owned and controlled by one or more charities, and is usually set up to generate income for the charity or charities. The advantage of using subsidiary companies is that they don't have the restrictions on their trading activities that charities have.'

[HM Revenue and Customs \(HMRC\)](#)

The subsidiary company can donate part or all of its profits to its parent charity and get relief from Corporation Tax for the payments. As long as the charity uses the income for charitable purposes, it doesn't have to pay tax on it.

For VAT purposes, HMRC sees subsidiaries as normal commercial enterprises, apart from under the following circumstances:

1. selling donated goods can be zero-rated in most circumstances, as long as your trading subsidiary is donating its profits to your charity.
2. certain charitable fundraising events are exempt from VAT when they're undertaken by your charity's subsidiary trading company on behalf of your charity.

For more on trading and trading subsidiaries see the Community Southwark fact sheet '[Legal Implications of Charity Trading](#)'.

¹ Please note that only Companies limited by shares i.e. private companies can be registered online at the cost of £15. For Companies limited by guarantee registration must be done by post at a cost of £40 using form IN01.

CLG Overview

1. Incorporation	Yes
2. Limited Liability	Yes – members guarantee to contribute a sum, normally, between £1 and £10 if the company becomes insolvent and is wound up. Personal liability is limited to this sum apart from under certain circumstances.
3. Governing document	Memorandum and Articles of Association
4. Can register as a charity	Yes
5. Ease to set up	Easy
6. Costs	<ul style="list-style-type: none"> • Paper incorporation: £40.00 • Web incorporation: £15 – not available for CLG • Annual document processing fee: £40 (paper), £13 web filed • Late Filing – If you do not file accounts on time there is a significant fee £150 for a month late, £375 (between 1 – 3 months) £750 (3 – 6 months) £1500 for over 6 months. Accounts must be filed within 9 months of the close of the financial year.
7. Sources of finance available	loans, crowdfunding, trading, grants, service delivery contracts etc.
8. Regulator	Registered to Companies House, Regulated by Company Law. Can also register as a charity – will then be regulated by Charity Commission as well.
9. Members	Yes
10. Income requirement	No
11. Converting to CIO	No – existing charitable companies currently are unable to convert to CIO's, due to change in 2014 but delays are ongoing
12. Asset Lock	Yes
13. Share Capital	No
14. Tax Benefits	No – but can register as charitable with HMRC

The Pros and Cons of CLGs

Pros	Cons
Incorporation – limited liability	Paperwork – must submit accounts, annual return
Flexibility – can be adapted for any size or type of organisation	Risk of fines
Widely understood by solicitors	Need to prepare accounts regardless of income
Widely recognised and understood by funders	Lack of understanding that a company can be not for profit
Can be formed quickly and cheaply	Not always eligible for grant funding
Democratic – members have the right to elect and remove directors	Can be made undemocratic if only members are the directors
Only need 1 member and 1 director to set up	CLG's can't use online registration
Governing document is very detailed, in addition to company law	

The other main legal types of company

Company Limited by Shares	Community Interest Company	Industrial and Provident Society
<p>1. Not suitable for charities or other voluntary organisations.</p> <p>2. Can still be set up with a social purpose but use the shares as an incentive to invest in the company.</p> <p>4. Often set up as trading subsidiaries.</p> <p>5. Unlikely to be able to apply for grants etc. but may still go for some contracts, crowdfunding, loans etc.</p> <p>6. Must set up with Companies House and let HM Revenue and Customs (HMRC) know when the company starts business activities.</p> <p>7. Must put together statutory accounts, send Companies House an annual return and send HMRC a Company Tax Return, every financial year.</p> <p>8. Must register for VAT if the company expects its takings to be more than £81,000 a year.</p> <p>9. Directors must fill in a Self Assessment tax return every year, and pay tax and National Insurance through the PAYE system if the company salaries to directors.</p> <p>10. Shareholders liability is limited to the capital originally invested – personal assets are protected in the event of insolvency, but any money invested in the company</p>	<p>1. The Community Interest Company (CIC) is the form that was developed particularly for social business.</p> <p>2. The regulatory body for the CIC form is the CIC regulator: http://www.bis.gov.uk/cicregulator</p> <p>3. Must also register with Companies House</p> <p>4. Subject to company law.</p> <p>5. Must meet community benefit test.</p> <p>5. Asset lock</p> <p>6. Caps on interest and dividends</p> <p>7. Can be Limited by Guarantee or Limited by Shares</p> <p>8. Cannot be charitable – even if the objects are wholly charitable.</p> <p>9. No charity tax advantages – subject to corporation tax on profits and capital gains</p> <p>10. Can issue shares – although subject to a dividend cap</p> <p>11. Not eligible for stamp duty reliefs on transfer of investments or transfer of land</p> <p>12. Can raise loans and debentures and interest on these is subject to a cap</p> <p>13. Cannot benefit from gift aid and other forms of tax-effective giving</p> <p>14. Members of the governing body can be paid as long as they are reasonable payments, don't violate community interest test or the asset lock</p> <p>15. Bequests to CICs are not exempt from inheritance tax</p> <p>16. Some funders may not be able to fund CICs</p>	<p>1. Less common than companies, and not available to all organisations. IPS structure is only available to genuine cooperatives and voluntary sector organisations carrying on an industry, trade or business for the benefit of the community.</p> <p>2. Recent legal developments include the Co-operatives and Community Benefit Societies Act 2003</p> <p>3. Community Benefit Societies have an asset lock</p> <p>4. IPSs may in general conduct any legal business except that of investment for profit</p> <p>5. Co-operatives - these trade for the mutual benefit of their members, and the Registrar will judge the legality of their action by reference to co-operative principles</p> <p>6. Community Benefit Societies - these trade to benefit the broader community, and the Registrar will refer to charity law. Societies for the benefit of the community are granted charitable status by the taxation authority, HMRC, rather than the Charity Commission. Although recent changes have removed this exemption</p> <p>7. Registered (but not regulated) by the Financial Conduct Authority (FCA)</p>

<p>will be lost.</p> <p>11. Shares cannot be offered to the general public – cannot trade on public stock exchange.</p> <p>10. Must have at least one director to set up.</p> <p>12. At least one director must be an individual not another company.</p> <p>13. When set up must issue one or more subscriber share to the initial members.</p> <p>14. Like CLGs and CICs, CLSs are regulated by Company Law but there are some significant additional requirements.</p>	<p>17. If wound up the assets are preserved for community benefit rather than being distributed to members or used for other purposes outside the original intention</p>	<p>8. Advantages of incorporation but with less cumbersome legislative requirements</p> <p>9. Straightforward merger process called transfer of engagements that is not available to companies</p> <p>10. Cost of registration and annual fees substantially higher than for a company</p> <p>11. May be difficult to explain structure to funders.</p> <p>12. Slower registration process.</p>
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Resources

- The Russell-Cooke Voluntary Sector Legal Handbook, Third Edition
- Get Legal Website <http://getlegal.bwbllp.com/company-limited-by-guarantee>
- CIC Regulator <http://www.bis.gov.uk/CICREGULATOR>
- Charity Commission <http://www.charitycommission.gov.uk>
- HMRC <http://www.hmrc.gov.uk/manuals/ctmanual/ctm40505.htm>
- [Expert advice: Trading subsidiaries](#) by Debbie Jennings, Civil Society, 5 Dec 2013
- Companies House <http://www.companieshouse.gov.uk/index.shtml>

Support

If you would like any support with setting up an organisation and picking a legal structure or any other issues facing your organisation, please contact the Development Team at Community Southwark: development@communitysouthwark.org or 020 7358 7020