

Gareth Hart, Director, Iridescent Ideas CIC

Legal Structures Workshop

IRIDESCENT
IDEAS™

Business advice with a different perspective

 **POP ideas**
Funding Advice & Business Planning Support

Introduction

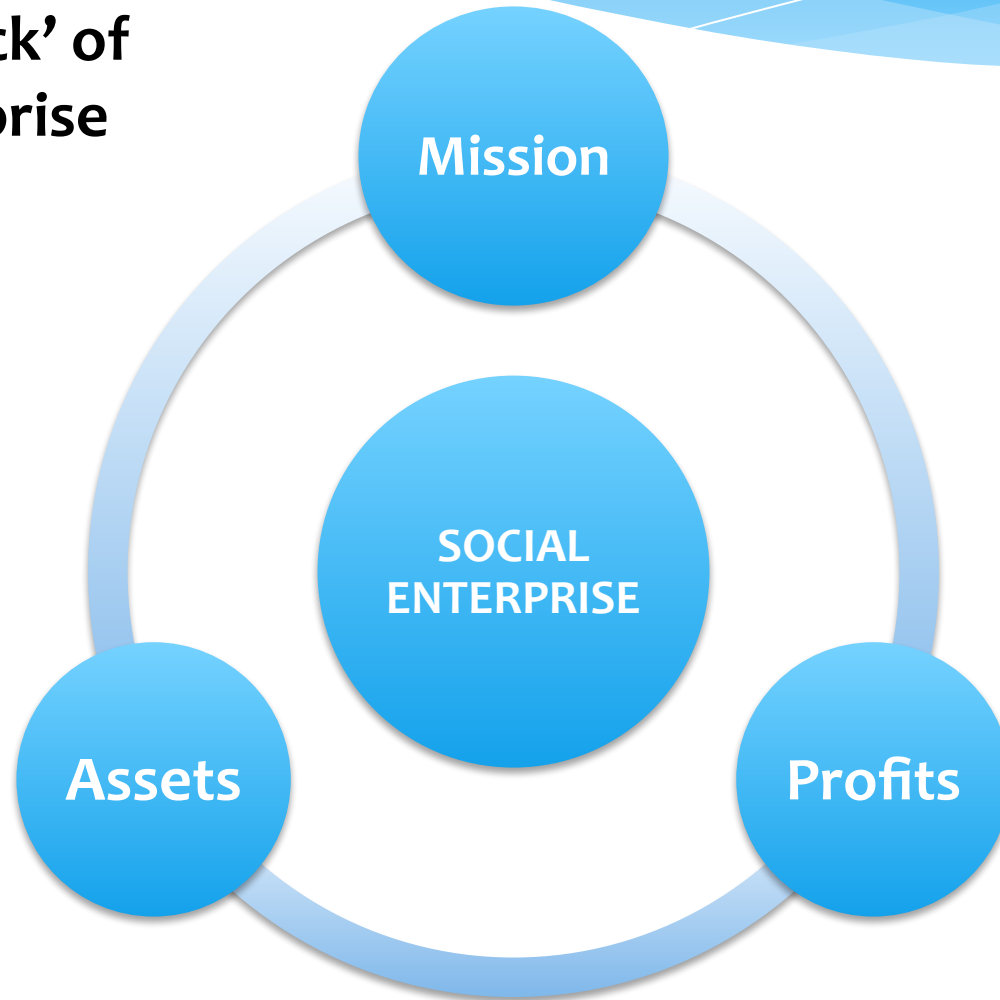
- * About me
- * About this talk
 - * Legal structures
 - * What is governance/why is it important
 - * Examples
- * About Pop Ideas

Essentials

- * Appropriate for your business
- * Social/environmental/community objectives
- * Mostly or wholly not for private gain
 - * Restrictions on profit distribution
 - * Restrictions on asset distribution

Appropriate for you?

**‘The triple lock’ of
social enterprise**



Key trigger points



**World
domination!**

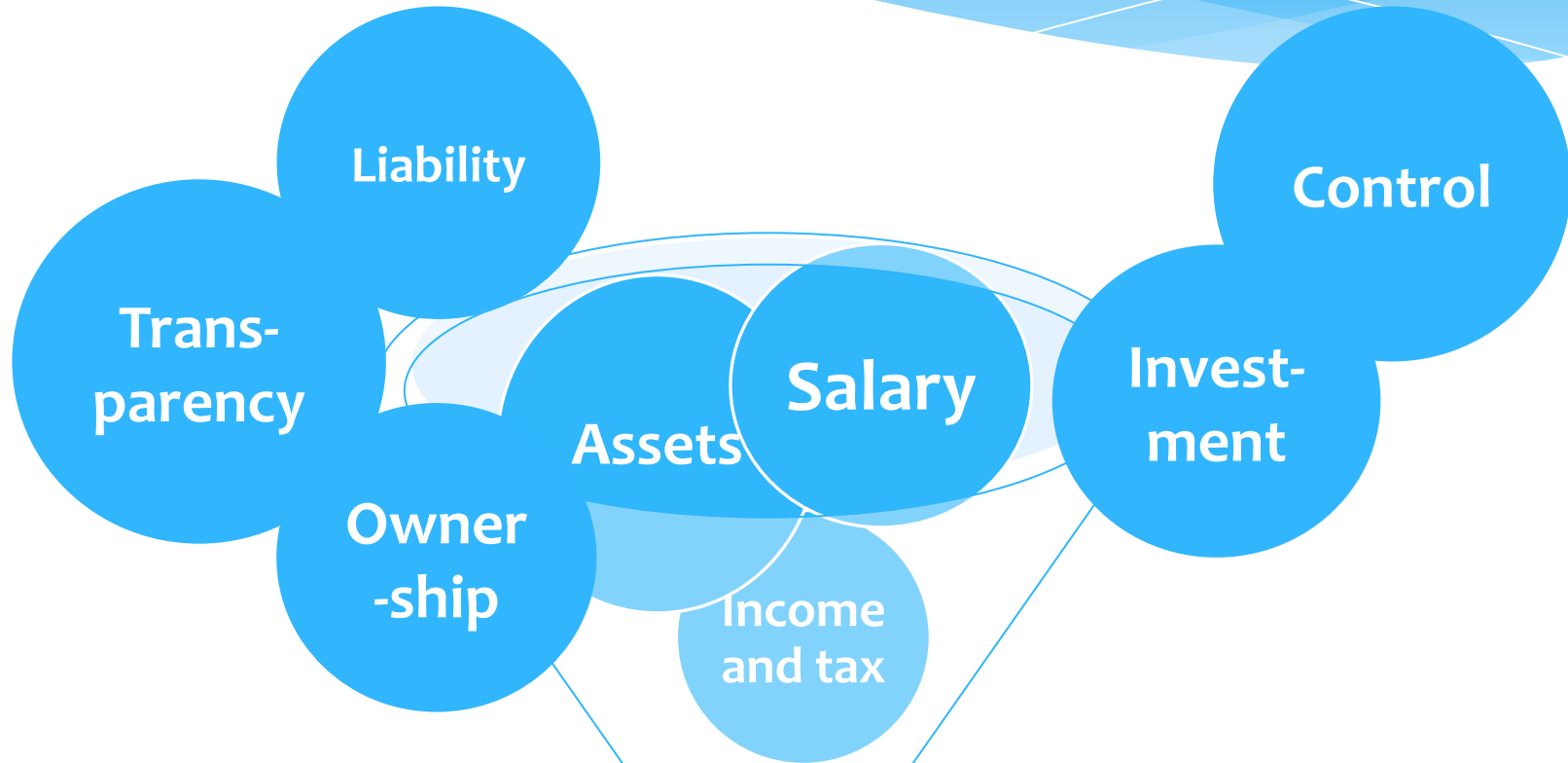
Tendering/
contracts

Premises

Employing
people

Funding

Key considerations



Decision time!

Incorporated v unincorporated

- * Incorporation:

- * Running your business through a corporate entity which is separate from owners of the business

- * Unincorporated:

- * Partnerships, sole traders, trust, association

Pros and cons of incorporation

Pros	Cons
Hold assets in own name	Set up and costs
No need for 'holding trustees'	Asset transfer from old organization
Limited liability	Accounting costs
More certainty for stakeholders	Additional regulation
Separate legal personality	Additional scrutiny/public disclosure

Key considerations

- * Ownership
- * Money
- * Profits
- * Salaries
- * External funding/revenue
- * Tax
- * Trading

Forms and structures

- * Community Interest Company (CIC)
- * Registered Societies (RS)
- * Company (Limited by Shares or Guarantee)
- * Charity +/- Trading Arm
- * Co-ops and Mutuals
- * Public Limited Company (PLC)

Community Interest Companies

Structure	Key Features	Pros	Cons
CIC (limited by shares or by guarantee)	<ul style="list-style-type: none">• Asset lock• Community Interest Test and statement	<ul style="list-style-type: none">• Easy to set-up• Can pay directors• Light touch regulation• Freedom to trade	<ul style="list-style-type: none">• Fewer tax breaks v charity• Some grant funders wont support

CICs practical steps

Complete CIC36

Complete IN01

Complete Memorandum & Articles
of Association

Cheque £35 or £27 online fee

Send to Companies House

Which
version?

Charities

Structure	Key Features	Pros	Cons
Charitable Company, Trust, Association or 'Charitable Incorporated Organization'	<ul style="list-style-type: none">• Must exist for charitable purpose• Public benefit	<ul style="list-style-type: none">• Public understanding and trust• More funding options• Tax and other benefits	<ul style="list-style-type: none">• Restrictions on trading• Trustees usually not paid• Regulatory burden• More difficult for entrepreneurs

Charitable Incorporated Organization

Structure	Key Features	Pros	Cons
CIO Association or Foundation	<ul style="list-style-type: none">• As above• Incorporated• One regulator	<ul style="list-style-type: none">• Register without £5k income• Single regulator• Reduced bureaucracy	<ul style="list-style-type: none">• New structure• Banks may not be keen to lend• Existing charitable companies cannot convert

Registered societies

Structure	Key Features	Pros	Cons
Registered Society (Co-operative or Community Benefit society)	<ul style="list-style-type: none">• Regulated by FCA• Incorporated structure• Can have an asset lock	<ul style="list-style-type: none">• Can raise public finance• Can gain charity exemptions• Democratic control	<ul style="list-style-type: none">• Possible conflicts• Higher admin costs• Share capital restrictions

A famous and local example

eden project



- * Charity and trading arm
- * Social and environmental aims
- * 400+ employees

More examples



Business advice with a different perspective



Duties and responsibilities

Trustees' duties

- * Responsible for administration of the organization
- * Keep within constitution
- * Ensure assets only used for purposes
- * Accept ultimate responsibility for vision/management
- * Act reasonably and prudently
- * Safeguard and protect assets of organization
- * Act collectively
- * Act in best interests of the organization
- * Avoid conflicts of interest

Directors' duties

- * Act within powers granted
- * Promote success of company
- * Independent judgement
- * Reasonable care, skill and diligence
- * Avoid conflicts of interest
- * Not to accept benefits from third parties
- * To declare any interests

Additional guidance

- * Charity Commission: The Essential Trustee

<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

- * CICs: Corporate Governance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211749/13-712-community-interest-companies-guidance-chapter-9-corporate-governance.pdf

- * Companies House

<https://www.gov.uk/government/collections/companies-house-guidance-for-limited-companies-partnerships-and-other-company-types>

Governing document

- * Constitution (Community groups)
- * Memorandum and Articles of Association (Companies)
- * Rules (RS)
- * CIO Governing Document (Charity)
- * Trust deed (Charity)

Governing document describes

- * Who owns the business
- * What happens to money
- * What happens if you close down
- * How the board is appointed
- * How the board works



Regulation

- * Companies – Annual return + accounts
- * Charities – Annual return + accounts
- * CICs – as per Companies plus CIC34
- * Registered Society – Annual return

Governance in practice

What is governance?

- * Overall direction
- * Effectiveness
- * Supervision
- * Accountability



Governance responsibilities

	Accountability Funders, regulators, members, clients, stakeholders	
Performance Supervision, risks, achievements, social impact, effectiveness, finances	Governing body Recruitment, selection, induction, development	Policy Developing, implementing, monitoring, updating
	Strategy Agreeing the vision and direction, goals and allocating resources	

Policies and procedures

* Depends on the nature of your work

Basic	Developing	Employing staff	Others
Equal opportunities	Environmental impact	Recruitment, pay, sick pay	Quality assurance
Health and Safety	Data protection and data security	Disciplinary, grievance, bullying and harassment	Complaints and whistleblowing
Financial management	Confidentiality	Redundancy	Conflicts of interest
Safeguarding, child protection		Maternity and paternity	

Resources

- * Good Governance Code:

www.governancecode.org

- * NCVO:

www.ncvo-vol.org.uk/governanceandleadership

- * UK Coops:

<http://www.uk.coop/simplyseries>

- * Know How Non Profit

<http://knowhownonprofit.org/leadership/governance>

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