



Social Enterprise NI

Fact Sheet 3 – Governance/Legal Structures for Social Enterprises.

Introduction

The key success to any Social Enterprise is good governance. History shows that the failure rate for Social Enterprises is significantly lower than that of private sector businesses, however the reason for 80% of failures of social enterprises is due to poor governance.

Social Enterprise NI have designed this fact sheet to take your organisation through the main governance issues and Social Enterprise legal structures and how to ensure you have good governance and the proper legal status for your organisation. This fact sheet aims:

- To take you through the main governance issues
- To give you guidance on directors' duties and responsibilities
- Show the different forms of legal structures for Social Enterprises
- Set out the advantages and disadvantages of each legal structure.

What do you think governance means?

Corporate Governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate Governance refers to the way in which companies are governed and to what purpose. It identifies who has power and accountability, and who makes decisions. Governance of your Social Enterprise involves responsibility for financial control and performance, policies and procedures, all legal aspects, staffing, leadership, strategic direction, ensuring the Social Enterprise objectives are met and doing this all with integrity. Within social enterprises governance refers to the body (regardless of their legal structure) that is the controlling authority of the social enterprise, i.e., your voluntary board/trustees.

Size your board appropriately

The size of any Social Enterprise board usually ranges from 5 to 20^[1] people. The number of people on your board will depend on two factors:

- What is allowed under your legal documents?
- How representative you wish your board to be.

The key point is that size does not matter; you need to be in line with your legal document and for funding purposes a minimum of 5 is recommended, beyond this you need to ensure that your board is effective, has the right skills sets needed and can make decision required for the strategic direction in accordance with statutory duties.



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Roles within board

Commonly there will be 3 main roles within a board of directors/ trustees

- Chairperson
- Secretary
- Treasurer

There is no limit to other positions; all you need to do is ensure there is a need, and that the person knows their role. Sub-committees may also be beneficial further down the line.

Purpose of a meeting

A Social Enterprise Board should meet regularly, according to the needs of the business. The purpose of these meetings should be to ensure the effective running of the organisation and to set the strategic direction of the organisation and liaise with the staff team. The board delegate functions and tasks to the staff team. Other points to take into consideration when holding a meeting should be:

- Build morale
- Solve problems
- Make decisions
- Agree objectives
- Collect opinions
- Give information
- Meet legal requirements

What are the different types of legal structure?

A legal structure is the type of legal entity you use to operate your Social Enterprise. Each legal structure has a form of governing document which will set out the rules for running your Social Enterprise. Unless you have a legal structure, you cannot operate a Social Enterprise. Some social enterprises may meet the criteria requiring them to register as a charity with the Charity Commission for Northern Ireland.

Please see below the list of the most common Social Enterprise legal structures open to you in Northern Ireland

- Company limited by shares
- Company limited by guarantee
- Co-operative and community benefit societies
- Community interest company (CIC)
- Credit union



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Legal Form	Incorporation	Management & Governance	Membership or Accountability	Other Issues
Association	Unincorporated	Executive or management committee	Open Membership	Potentially unlimited liability and no “legal personality” so has to act through the management committee
Company Limited by Shares	Limited Liability Companies Act 2006 Registered at Companies House Private	Board of Directors Elected by Shareholders 1 share 1 Vote	Accountable to shareholders	Shares can be sold/transferred Returns on capital Risk of losing capital. Funders typically do not like this structure as more suited to a commercial trading entity for private gain
Company Limited by Guarantee	Limited Liability Companies Act 2006 Registered at Companies House	Board of Directors Elected by members No shares members guarantee to pay £1.00 on a winding up	Accountable to Members	No distribution of profits to members. If eligible it may hold charitable status at the same time and have to register with the Charity Commission for NI
Trust	Unincorporated	Trust deed Trustees or Board of Trustees	The only members are the Trustees Can be self-perpetuating	No distribution of profits. More usual for a charitable entity.
Limited Liability Partnership	Incorporated Limited Liability Registered with Companies House	Partners are the only members – no other governing body Partnership deed	Partners	No Charitable status Not all partnerships are LLPs Profit distribution necessary Not common
Community Benefit Societies	Co-operative and Community Benefit Societies Act (NI) 1969	Committee of Management or general meeting Inherently democratic	Membership elect committee Open Membership, but must share a common economic interest Can include corporate bodies	Minimum 3 members. Can distribute profits to members up to a limit



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Legal Form	Incorporation	Management & Governance	Membership or Accountability	Other Issues
Community Interest Company (company limited by guarantee without shares)	Limited Liability Companies Act 2006 Registered at Companies House & CIC Regulator	Board of Directors elected or appointed by members No shares, members provide a guarantee of £1	Accountable to members (can be 1 member/director or many)	Cannot be a charity or co-op Annual Community Benefit Reporting Asset Locked
Community Interest Company (with shares)	Limited Liability Companies Act 2006 Registered at Companies House & CIC Regulator	Board of Directors appointed by Shareholders 1 share 1 vote Shareholders can include private investors	Accountable to shareholders (can be 1 shareholder or many) Shares may be redeemable but with conditions	Cannot be a charity or co-op Annual Community Benefit Reporting Asset Locked Dividends are capped Funders do not typically like this structure if the shareholders are individuals. If shareholder is charity this is seen differently

Next Steps/Get Further Legal Advice

- One of the benefits of being a member of Social Enterprise NI is that we have negotiated a “free of charge” initial information legal session with our Corporate Partner Edwards & Co Solicitors. Edwards and Co are the leading law firm for the social enterprise sector in Northern Ireland.
- However, should you need to use their services further or for help to incorporate your social enterprise, there will be a cost involved and Edwards & Co. Solicitors will provide you further information on engaging them and the likely costs involved



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Get Further Support

- **Become a member**
 - Social Enterprise NI is open to all social enterprises across the country and has various benefits, to find out more [CLICK HERE](#). Please note membership is **FREE** until you have a turnover of **20k plus per annum**.
- **Signposted for mentoring support to either:**
 - Local Council support programme
 - Local Enterprise Agency support programme
 - Other identified strategic partner mentor programmes e.g., Ulster Bank Accelerator Hub, Catalyst etc
- **Business Planning** – signposted to one of our strategic partners and fellow social enterprise Viable Corporate Services, who can support you in the following areas:
 - Offer discounted business plan development
 - Offer discounted marketing plan development
 - Offer discounted board recruitment pack development & recruitment
 - Offer discounted payroll and finance reporting services
 - Offer discounted social media training
 - Offer discounted HR support
- **Examples of Pro Bono or Discounted services from our Strategic Partners**
 - HR advice and recruitment discount with Hays Recruitment
 - Insurance evaluation and no obligation quotation from Lockton Insurance
 - Legal advice - Free first meeting with Edwards & Co Solicitors
 - Confidential Shredding – discounted rate for confidential shredding services from UShred
- **Next Step**
 - If you would like to avail of any of the above services, please email amanda@socialenterpriseni.org