

LEGAL STRUCTURE FOR YOUR GROUP

A table to compare the different types of legal structures and their characteristics



	Unincorporated group	Incorporated society	Trust	Charitable trust board	Company	Industrial and provident society	Māori land trust
Best suited for	Informal and emerging groups with no staff One-off situations	Not-for-profit membership-based groups	Using property/funds for charitable or community purposes (<i>minimal people involved</i>) More about trusts	Not-for-profit organisations with a charitable purpose	Good for groups with a commercial purpose (such as a community business) – minimal people; have limited liability and easy ownership transfer	Good for co-operatives, generally with a business/commercial purpose (such as craft or workers–co-ops)	Only for Māori landowners or shareholders of incorporations
Legislation	None	Incorporated Societies Act 1908 Incorporated Societies Act 2022	Trustees Act 1956 Charitable Trusts Act 1957 (Part 1)	Charitable Trusts Act 1957 (Part 2)	Companies Act 1993	Industrial and Provident Societies Act 1908	Te Ture Whenua Māori Act 1993 (Māori Land Act)
Minimum number of people required	2 individuals	10 individuals (a member that is a corporate body counts as three individual members)	1 trustee (but usually to have 2)	1 trustee (but usual to have 2)	1 shareholder, one director (can be same person)	7 individual members	1 trustee (trustees are appointed by Māori Land Court)
Tax status	Income is not taxed if group has charitable status with DIA Charities and IRD Can also operate under a range of exemptions from IRD	Income is not taxed if group has charitable status with DIA Charities and IRD Can also operate under a range of exemptions from IRD	Income is not taxed if group has charitable status with DIA Charities and IRD Can also operate under a range of exemptions from IRD	Income is not taxed if group has charitable status with DIA Charities and IRD Can also operate under a range of exemptions from IRD	Charitable status possible	Tax paid on profits over wages and expenses	Charitable status possible

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Decision-making	By members at general meetings and/or by the management committee	Usually by members at general meetings and/or by the management committee – depends on the society's rules	By trustees	By trustees (trust board)	By directors mostly or by shareholders (based on proportion of shares held) at AGM	Usually by members at general meetings and/or by the management committee – depends on the society's rules	By trustees
Members	Made up of members with spoken or written agreement between members	Membership rules around joining or leaving the organisation	No members – has trustees appointed under trust deed	No members – has trustees appointed under trust deed	No members, just shareholders	Membership rules around joining or leaving the organisation	No members – has trustees appointed by Māori Land Court
Liability of trustees/ management committee	Personal individual and joint liability for debts, statutory obligations etc.	Limited liability if decision-makers act legally, prudently, within the rules, and not for personal gain	Trustees will be personally liable, but trust deed usually grants them the right to be indemnified	Likely to be limited liability if decision-makers act legally, prudently, within the board's / directors / decision-makers rules or objectives, and not for personal gain <i>(See also - Specific legislation provisions for directors and Māori trustees)</i>			
Reporting requirements	None unless registered under the Charities Act 2005	Registrar of Incorporated Societies requires: annual financial statements, changes of rules, register of members	None unless the trust has charitable status (reporting to DIA Charities)	Registrar of Incorporated Societies requires notification of: change in trustees or officers, change of rules, changes to the trust deed (often involving property)	Companies Office requires: annual return and changes of constitution, name or office (and for some, annual accounts)	Registrar of Industrial and Provident Societies requires: annual financial return	Registrar of the Māori Land Court requires: annual financial statement
All organisations registered under the Charities Act 2005 (also known as charitable entities) need to file an annual return (including financial statements) with Charities Services and notify changes to the name, address, balance date, rules, purposes, or officers of the charity to Charities Services							

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Disposal of assets on liquidation	Surplus assets will be disposed of according to the group's rules or as agreed by the members - unless charitable status	If a society is liquidated or removed from the register, the society can't distribute surplus assets to its members. It must distribute them to a not-for-profit entity	Assets disposed of as provided by the trust deed; usually distributed to another trust or organisation with similar charitable purpose	All surplus assets (after costs, debt and liabilities have been paid) are disposed of as provided in the trust deed or as ordered by the courts	Surplus assets are distributed among shareholders unless the company has charitable status	Surplus assets can be distributed among members unless the society has charitable status	As the court directs, or to beneficial owners or successors
ADVANTAGES	No external reporting requirements (unless the group is seeking tax benefits or charitable status) Informal structure, with few rules or restrictions	Democratic, membership-based organisation structure Easy, efficient structure for non-profit organisations (particularly smaller ones)	Provides a good framework for governance/management (especially where the group has significant money or property) members/trust board Keeps decision-making in relatively few hands	Keeps control in a few hands (the trustees), while enjoying limited liability. This provides longer-term stability (but may lead to staleness/stagnation)	Easy to set up Useful where the group has some commercial activities (such as a community enterprise) Keeps control in a few hands (the directors), while enjoying limited liability Often easier to obtain loans (but this may require personal guarantees from directors)	Profits can be distributed to members (unless the group has charitable status)	Protection of land from alienation Strong shareholder participation

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LIMITATIONS/ DISADVANTAGES	<p>Members may be liable for the debts of the group</p> <p>Not a separate legal entity</p> <p>Not recommended for on-going groups, where groups are employing staff or receiving external funding</p>	<p>Finding (and maintaining) 10 members may be a problem</p> <p>Risk of committees being overturned annually (at AGM) which may lead to short-term decision-making and limited succession planning (note this can be addressed in the rules)</p> <p>Not suitable for groups with a commercial purpose</p>	<p>A trust is not an incorporated body and therefore does not have a separate legal identity</p> <p>Groups need to have a charitable purpose and cannot distribute profits to members</p>	<p>Control is with the trustees - there is no accountability to a wider membership base</p> <p>Trustee succession planning is usually by Trustee appointment</p>	<p>Generally, too complex for charitable community organisations</p> <p>Reporting requirements are more complex than other structures</p> <p>Directors may be liable if they fail to meet their obligations</p>	<p>Not suitable for broad membership- based organisations</p> <p>Because they are quite rare, many accounting and legal professionals may not fully understand how they work</p>	<p>Not suitable for commercial enterprises</p> <p>Can be cumbersome to operate due to the wide shareholder participation</p>