

# 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 private sector businesses. **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 factsheet will cover:

- Main governance issues
- Guidance on directors' duties & responsibilities
- Legal structures for Social Enterprises
- Define the advantages & 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.
- It identifies who has power and accountability, and who makes decisions.
- Governance of your Social Enterprise involves responsibility from 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.

## Establishing your Social Enterprise Board

The size of a SE board typically is between 5 -20 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.

Size does not matter; you must keep 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



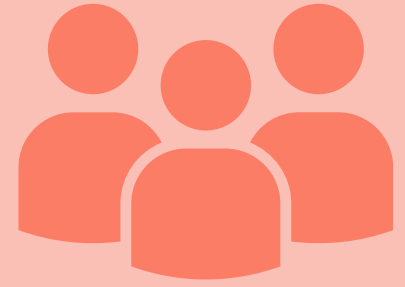
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## Roles within board

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

- A Chairperson
- A Secretary
- A Treasurer



There is no limit to other positions You just need to do 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?

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LEGAL FORM	INCORPORATION	MANAGEMENT & GOVERNANCE	MEMBERSHIP OR ACCOUNTABILITY	OTHER ISSUES
<b>Association</b>	Unincorporated	Executive or management committee	Open Membership	Potentially unlimited liability and no "legal personality" so has to act through the management committee
<b>Company Limited by Shares</b>	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. Fundors typically do not like this structure as more suited to a commercial trading entity for private gain
<b>Company Limited by Guarantee</b>	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
<b>Trust</b>	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.
<b>Limited Liability Partnership</b>	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
<b>Community Benefit Societies</b>	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

<b>Community Interest Company (company limited by guarantee without shares)</b>	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
<b>Community Interest Company (with shares)</b>	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

For further support refer to fact sheet 1



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