



OFFICE FOR
HOLISTIC URBANISM

LEGAL STRUCTURES A COMPARISON

PREPARED BY OHU DEVELOPMENT

	Legal structure 1: Charitable Trust	Legal Structure 2: Non-Charitable Company	Legal structure 3: Incorporated Society	Legal structure 4: Co-Operative	Legal structure 5: Charitable Company	Legal structure 6: Partnership
Who makes decisions	Board of Trustees	Directors and/or share-holders with voting rights. Could incorporate co-op approach so that stakeholders can do so.	Governance Board	Shareholders with voting rights (this structure best enables stakeholders to have voting rights)	Directors and/or share-holders with voting rights. Could incorporate co-op approach so that stakeholders can do so.	The partners
How does (any) profit flow	Profit is retained in the Trust's bank account and spent/used as per the Board's decision BUT in alignment with Ohu's purpose/s.	As per the governance documents (eg principles) and the decision makers	As per the governance documents BUT society is barred from pecuniary gain	As per the governance documents (eg principles) and the decision makers	As per the governance documents (eg principles) and the decision makers.	As per the decision-makers
Who holds liability/risk	The Trustees bear all the trust's debts and liabilities personally if the trust's resources are insufficient and the trustees have acted negligently	The Directors and shareholders operate independently. Therefore none of ODL's debts or liabilities can be attributed to the persons behind it. Directors can be held personally liable if negligent.	The group in its own name. Members are not usually personally responsible.	The Directors and shareholders operate independently. Therefore none of ODL's debts or liabilities can be attributed to the persons behind it. Directors can be held personally liable if negligent.	The Directors and shareholders operate independently. Therefore none of ODL's debts or liabilities can be attributed to the persons behind it. Directors can be held personally liable if negligent.	The equity partners bear all responsibility for the trust's debts and liabilities
How does money flow in general	As per the Board of Trustees' decision/s, provided in alignment with Ohu's purpose/s	As per the governance documents (eg principles) and the decision makers	As per the Governance Board's decision, provided in alignment with aims and powers	Money is received from equity shareholders and members and spent on operational costs	As per the governance documents (eg principles) and the decision makers. Must reflect Charitable purpose	As per the partners' decision
Who has equity (financial interest)	As per the governance document BUT no specified individual	The shareholder	Nobody	The equity shareholders	The shareholders and/or stakeholders	The equity partners
Ease of establishment	A trust must register with the Registrar of Societies (and, if/when relevant, the Charities Service)	A company must register with the Registrar of Companies (and, if/when relevant, the Charities Service)	An incorporated society must register with the Registrar of Incorporated Societies.	This depends on underlying structure (usually a company)	A charitable company trust must register with the Registrar of Companies and the Charities Service)	Very easy – simply requires a partnership agreement to be drafted
Required documents	Trust Deed	Certificate of Incorporation Constitution Thereafter, annual returns	Constitution or Rules and a certificate endorsing them	This depends on underlying structure (usually a company)	Certificate of Incorporation Constitution Thereafter, annual returns	Partnership agreement
Term/lifespan	As specified or on winding up	As specified or on winding up	As specified or on winding up	As specified or on winding up	As specified or on winding up	As specified or on winding up
Governance and control	As per the trust deed. Trustees should be appointed by or through consultation with appropriate stakeholders	As per the Constitution	As per the Constitution Nearly always with the governance board	As per the Constitution	As per the Constitution	As per the partnership agreement
Ease of transactions	May only conduct transactions within its objects. The trustees, as individuals, have to undertake the transaction, and are jointly and severally liable for their decisions.	Can easily engage in transactions as legal persons. Usually liable to shareholders and/or stakeholders	Can transact in accordance with the objects of the trust and as per the governance document	This depends on the underlying structure (usually a company)	Can easily engage in transactions as legal persons. Usually liable to shareholders and/or stakeholders. MUST only conduct transactions within its objects.	Can transact as per the partnership agreement. The partners, as individuals, have to undertake the transaction, and are jointly and severally liable for their decisions.
Holding legal title	A trust can hold legal title but this vests in the trustees. This can lead to complexity	A company can hold legal title in its own name	Similar to a trust	This depends on the underlying structure (usually a company)	Can hold legal title in its own name	A partnership can hold legal title but this vests in the partners. This can lead to complexity
Ease of engaging in litigation	A trust cannot sue or be sued. The trustees would sue and be sued as joint parties	Companies are legal persons and can directly engage in legal disputes	Similar to a trust	This depends on the underlying structure (usually a company)	Companies are legal persons and can directly engage in legal disputes	A partnership cannot sue or be sued. The partners would sue and be sued as joint parties
Tax implications	Nil	Net profit is taxed at a flat rate of 28%	Net profit is taxed at a flat rate of 28%	This depends on the underlying structure (usually a company)	Nil tax implications provided approved by the Registrar of charities	Each partner has varying obligations depending on their allocation of earnings