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Choosing the right legal structure for your group

This section explains the key features of companies and why a community group might want to adopt this particular legal form.

Key features of companies

Companies Act 1993, ss 10, 15, 97

- Minimum requirements – A company must have a name, one or more shares, one or more shareholders, and one or more directors.
- Separate legal identity – By registering and incorporating under the Companies Act 1993, a company becomes a body corporate under the name of the company, and therefore it has a separate legal identity distinct from its shareholders and directors. Until it's liquidated, the company has a continuing existence even if the shareholders or directors change.
- Limited liability – Unless its constitution states otherwise, a company is a "limited liability" entity. This means a shareholder isn't personally liable, beyond the value of their shareholding, for any of the company's contracts, debts or other obligations, unless the shareholder has given a personal guarantee.

Why choose to become a company?

Although most community groups don't choose the company form, it may be appropriate if you want:

- to keep control and decision-making in the hands of just a few people
- to provide those people with limited liability
- to make it easy to transfer ownership of some or all of the group's property.

Registering and incorporating as a company

Companies Act 1993, ss 10, 12

To register and incorporate as a company you'll need to apply to the Registrar of Companies at the Companies Office. Your company will need to have:

- a name
- one or more shares
- one or more shareholders
- one or more directors.

(For information about how to apply, visit the Companies Office website at: www.business.govt.nz/companies/learn-about/starting-a-company)

Constitutions

Companies Act 1993, ss 26-34

Although it's not a requirement, it's always a good idea for a company to have a specially drafted constitution that meets the company's particular needs.

In general a company's constitution can't contradict the rules contained in the Companies Act 1993 and a provision in a constitution that tries to do this will be legally invalid. Some provisions in the Companies Act, however, state explicitly that they can be varied by the constitution.

A company can adopt a new constitution, or change or revoke its current one, only by a special resolution passed by 75 percent of the shareholders.

Shareholder meetings

Companies Act 1993, ss 120, 121

A company must hold an annual meeting of shareholders within 18 months after it's incorporated. Annual meetings must be held within six months after the company's balance date and within 15 months after the last annual meeting.

A special meeting of shareholders can be called at any time by the board of directors or by

someone authorised by the constitution.

Directors: Their role, powers and duties

Companies Act 1993, ss 128-138, 161

The board of directors is responsible for the day-to-day management of the company. The directors must comply with the Companies Act and the company's constitution.

Directors can delegate their powers to individuals or committees, but they continue to be responsible for their duties and must make sure there's a monitoring system for those delegated duties.

Directors must:

- act in good faith and in the company's best interests at all times
- exercise their powers for a proper purpose
- exercise the care, diligence and skill that a reasonable director would exercise in the circumstances
- keep records of the basis on which important decisions are made – this will help establish that their decisions were reasonable if this is questioned later.

Directors must not:

- act, or agree to the company acting, in a way that contravenes the Companies Act or the company's constitution
- agree to the company taking on obligations that the company can't meet or that would create serious loss to the company's creditors
- cause or allow the company's business to be carried out in a way that's likely to create a substantial risk of serious loss to the company's creditors
- release or make use of any confidential information about the company.

Directors can be paid a fair amount for their role.

Companies Act 1993, ss 138A, 156, 164

Directors who breach their statutory duties can be removed from office by the company's

shareholders. The company, or any other director or shareholder, can also apply to the courts for an injunction to stop a director breaching his or her duties. There are also heavy criminal penalties if a director acts in bad faith, knowing that their conduct isn't in the company's best interests and that it will cause the company serious loss. In those cases the director can be jailed for up to five years or fined up to $200,000.

Records, reports and financial accounts

Companies Act 1993, ss 189, 194, 195, 208-214A; Financial Reporting Act 1993

- Records and registers – A company is generally required to keep a number of records at its registered office, including its constitution and minutes of all meetings and resolutions of shareholders and directors over the past seven years.
- Annual reports and returns – A company must prepare an annual report each year within five months of its balance date; this must be sent to all shareholders before the AGM. A company must also file an annual return with the Registrar of Companies every year, except for the calendar year in which it's registered. Companies that register as charities also have some specific reporting requirements (see "Charities and charitable status / Administrative responsibilities of registered charities" in this chapter).
- Accounts – Some companies may be required to prepare annual financial statements and, in some cases, to file those statements with the Companies Office (for information, visit: www.business.govt.nz/companies/learn-about/updating-company-details/financial-reporting).

Dividends: Payments to shareholders

Companies Act 1993, ss 52, 53

A dividend is a payment made by the company to a shareholder in proportion to his or her particular shareholding. The board of directors can authorise the payment of dividends only once the company has satisfied the "solvency test" set out in the Companies Act. Alternatively, the shareholders can unanimously authorise a dividend.

Contracts and transactions with other people and organisations

Companies Act 1993, s 129

A company can enter into a contract with another person or entity. The appropriate way of doing this will depend on the particular kind of contract (see “Laws you may need to know about / Contracts” in this chapter).

A special shareholders’ resolution is required before a company can enter into a “major transaction”, which is where the value of the assets or obligations involved is more than half of the value of the company’s assets.

Liquidation and receivership

Companies Act 1993, Part 16; Receiverships Act 1993

“Liquidation” (or “winding up”) of a company is when it stops trading or becomes “insolvent” (this means when it’s unable to pay its debts or when it doesn’t have enough assets to meet its liabilities). The company’s assets are sold and the proceeds are paid to the company’s creditors according to what the company owes them and the priorities between those creditors themselves. Any surplus money will be distributed proportionately among the shareholders.

A company can be put into liquidation voluntarily or by the courts. Liquidation begins when a liquidator is appointed.

“Receivership” is when a creditor of the company or the courts appoint a “receiver” to take control of and manage the assets of a company that’s in financial difficulty. A receiver can be appointed by or on behalf of a secured creditor to protect and take control of the assets over which the security has been granted. Debentures creating a security over the company’s property often give the debenture holder the right to appoint a receiver.

Key questions to ask

To help your group work out what its needs are and what type of legal structure would best suit it, consider the following questions (and consult the following table):

How large will your group’s membership be?

The size of your group may be relevant to the type of structure you should choose. For

example:

- an incorporated society must have at least 15 named members
- a trust need have only one appointed or elected trustee, although usually there are at least two (the same applies to a charitable trust board based on a trust)
- a company need have only one shareholder and one director (this can be the same person)
- to incorporate as a charitable trust board, a charitable society or group must have at least five members
- industrial and provident societies must have at least seven members.

How flexible should the membership rules be?

An incorporated society must have rules about how people join or leave the society. These rules can be written to meet the organisation's needs. If your group intends to begin with a limited number of people involved, but plans to become larger, an incorporated society is likely to be the best option in the long term. Charitable societies that have nominated several of their members to be trustees are not greatly affected by turnover in membership because the trustees continue to run the organisation. However, it may not be easy to change trustees. The trust deed for any charitable trust or charitable trust board can set up whatever rules a group wants for appointing trustees, but these must be specific.

Who is your group accountable to?

If your group is accountable to a wide number of people, it may be better to have a broad membership-based legal structure, such as an incorporated society. Trusts and charitable trust boards that are based on a trust aren't accountable to a membership in the same way as the managing group of an incorporated society.

Who makes important decisions?

If the group of decision-makers in your organisation is small, it may be best to set up a trust, charitable trust board or company. If larger numbers of people are included in decision-making, an incorporated society may be suitable.

How much money or property will your group have?

If your group has or may potentially have substantial money or property, a trust may be an appropriate way to manage and use it, particularly if you want to keep decision-making within a small number of people.

How will your group be funded?

Consider where the funds will come from to establish and maintain your organisation.

Will you have employees?

If it's going to be employing paid staff, your organisation should be incorporated so that it has its own legal identity with power to, among other things, enter into employment contracts in its own name.

Will your group make a profit?

If your group is a commercial venture, then consider a profit-based structure such as an industrial and provident society, a partnership, or a company. Trusts and incorporated societies can make profits, but if they have charitable status or are not-for-profit then the profits cannot go to members.

Is Māori-owned land involved?

If it is, you may need to consider establishing a trust under Te Ture Whenua Act 1993 / the Māori Land Act 1993.

Charitable company

A charitable company is an ordinary limited liability company that has been registered as a charity on the Department of Internal Affairs Charities Register, and is eligible to receive a tax exemption.

In order to be registered as a charitable company on the Charities Register, the company must have exclusively charitable purposes. These charitable purposes must be set out in the company's constitution.

How to become a charitable company

First, apply to the Companies Office for incorporation as a limited liability company. The steps are as follows:

- Check that the proposed name of the company is not currently reserved or registered on the Companies Office website, and the trade mark register on the Intellectual Property Office of New Zealand website.
- Reserve the proposed company name by filling out a name reservation form on the Companies Office website. The Registrar of Companies will then issue a notice of reservation, and the name will be reserved for 20 working days after the date the notice of reservation is issued.
- Prepare an application for company registration. The application for registration must contain
    - the full name of the company
    - the company's registered officer and address for service
    - the full name and residential address of each director and shareholder
    - the number of shares to be issued to each shareholder
- Consent forms and certificates of eligibility must be provided for each director
- Consent forms must be provided by each shareholder
- The company's constitution, which must set out the company's charitable purposes, must be submitted alongside the application for registration
- The documents (notice reserving company name, application for registration, consents and certificates, and the company's constitution) must be filed with the Companies Office. It costs $10 to reserve a name and $105 to apply to register the company.

Once the company is incorporated with the Companies Office, apply to the Department of Internal Affairs Charities Services for registration as a charitable company. The process is set out at the Charities' website here.

Charitable companies may be suitable for groups that:

- want the liability of shareholders to be limited
- want more flexibility in decision-making (as decisions do not need to be made by all

members as with an incorporated society)

- have some trading purpose

Incorporated societies

What is an incorporated society?

An incorporated society is a membership-based organisation that has registered under the Incorporated Societies Act 1908. To be able to register, your group must exist for some lawful purpose other than making a profit.

By registering under the Act, the society becomes an incorporated body with a legal identity of its own, separate from the identity of its members. This means the society continues to exist as a legal entity (called "perpetual succession") even though its membership may change. It also means the society's members are not personally responsible for debts and other obligations that the society takes on.

The society's activities are limited by the Incorporated Societies Act and the rules the society adopts for itself.

Usually an incorporated society's management committee and officers deal with the administration, management and control of the society.

Key requirements for incorporated societies

Incorporated Societies Act 1908, ss 4(1), 20, 31

- Not for financial gain – The society cannot operate for financial gain, which means it can't make a profit with the intention of passing it on to the members. Any profits must be returned to the society to be used for its purposes and for the benefit of those in the community who the society serves. If a society breaches this rule it can be fined up to $200, and each member that was involved in the breach can be fined up to $40. As well as this, the members involved can be held personally liable for any debt or obligation that the society took on in breaching the rule.
- Minimum membership – The society must have at least 15 members. However, a member that is a body corporate, such as another incorporated society, counts as three individual members.

- Rules – The society must have a set of rules that meet the requirements under the Incorporated Societies Act. (A model set of rules is available here.
- Acting within society's objects – Once registered, the society must operate within the scope of the objects (aims) stated in its rules. If it acts outside these objects, the Registrar of Incorporated Societies can give written notice to the society to stop doing this, and after that each of the society's officers can be fined for every day that the breach continues. If a society enters into a contract or other transaction outside its objects, the transaction could be invalid and not enforceable by or against the society, in which case the officers responsible (the treasurer or secretary for example) may be personally responsible. If a society makes a rule or does something affecting its members that is outside its objects, members may be able to get a court injunction to stop it.

Note: Registrars' powers and the ability of the courts to intervene will likely become stronger when new legislation replaces the current Incorporated Societies Act 1908 (a new bill is expected to be introduced into Parliament later in 2016).

Registering as an incorporated society

How to register

Incorporated Societies Act 1908, s 7

To become an incorporated society, your organisation must register with the Registrar of Incorporated Societies (part of the Companies Office). You'll need to submit an application for incorporation signed by at least 15 members, and a copy of your organisation's rules.

(For more information about how to register, and other information about incorporated societies, check the website.

The society's rules

What must the society's rules cover?

Incorporated Societies Act 1908, s 6

An incorporated society must have a set of rules covering, among other things:

- the society's objects (aims)

- how a person becomes and stops being a member
- how general meetings are called and held, and how voting is to take place at these meetings
- how the society's officers are appointed
- the control and investment of the society's funds, and the society's powers (if any) to borrow money
- how the rules can be changed.

As well as covering the matters required by the Act, the rules can also include any other provisions, so long as they're not inconsistent with the Act and other laws.

Meetings and decision-making

Incorporated Societies Act 1908, s 6(1)(f)

The society's rules must state how general meetings are to be called and held. To comply with this requirement, it's a good idea for the rules to provide for:

- the ability to call special meetings in addition to annual general meetings
- how much notice is required for calling AGMs and special meetings and for announcing the agendas for these meetings
- the quorum required for a meeting
- procedures for adjourning meetings
- appointing a chairperson or co-chairs, and whether they can have a casting vote (casting votes are less common than they used to be, as most groups prefer the notion of one vote per person and if a vote is equally tied, the motion does not pass. With a governance approach informed by Te Tiriti o Waitangi, there's usually an emphasis on consensus decision-making and balancing power between tangata whenua and tangata Tiriti.
- the appointment of corporate representatives for meetings (if some of the society's members are themselves incorporated bodies)
- keeping proper and accurate records of all meetings.

The rules must also set out the procedure for making decisions at society meetings. This will usually include:

- rules about who can vote
- the voting procedures (for example, whether a show of hands is enough)
- whether members can vote by proxy, post or email
- how many people must agree for there to be a valid decision (for example, a simple majority)
- consensus decision-making, if this is the preferred approach.

Electing the society's officers

Incorporated Societies Act 1908, s 6(1)(g)

The rules must state how the society's officers are appointed. Often rules state that they will be elected by the members at the annual general meeting. At a minimum, a chairperson, treasurer and secretary (the principal officers) should be elected at the AGM. Groups can decide to specify the minimum and maximum number of people on their board and rather than elect officers for specific tasks such as the secretary, the rules can specify that the officers will be elected by the board at the first board meeting after the AGM.

Controlling, investing and borrowing money

Incorporated Societies Act 1908, s 6(1)(i)

The rules must specify how the society's funds will be managed – for example, who can sign cheques and who will collect money owed to the society. The control and investment of a society's funds are usually entrusted to the management committee.

The rules must also specify the types of investments that are allowed when the society has surplus funds.

If there is a possibility that the society will borrow money, a rule should state how this may be done. The power of a society's management committee to borrow is usually limited, and usually requires a general meeting of members.

The rules should also require that income and property can be applied only to further the society's objects (aims), and that members aren't allowed to gain financially.

Financial accounts and statements

Although it's not required, it's good practice for the rules to deal with accounting processes and statements, including who's responsible for keeping proper accounts. This is important, because the Act requires a society to keep proper accounts and provide financial statements.

Changing the rules

Incorporated Societies Act 1908, ss 6(1)(e), 21

The rules must state how they can be changed. Usually all members will be given an opportunity to meet and debate any proposed changes. The threshold for approving a rule change is often higher (two thirds of the membership, for example) than for other decisions (where a consensus of those present or a simple majority is usually enough).

Membership

Becoming and ceasing to be a member

Incorporated Societies Act 1908, s 6(1)(c),(d)

An incorporated society's rules must state how people become and stop being members. Membership that isn't authorised by the rules is invalid. The rules should specify:

- the administrative steps involved in a person becoming a member, how applications are made (if they're required), who decides whether to accept the applicant as a member (if this isn't automatic after an application), and any subscription fee
- when the society can refuse to admit a person as a member – for example, if they were previously expelled
- different classes of membership, such as honorary members or active or associate members, and the voting rights of each class.

For how a person stops being a member, the rules should specify:

- the process for resigning (for example, whether a resignation must be in writing)
- how the society can terminate someone's membership – that is, who has the authority to do this and in what situations (non-payment of subscriptions or fees, for example)

- a process for disciplining and expelling members that complies with natural justice, is culturally appropriate and fair.

Members' functions and powers

The functions and powers of members usually relate to important decisions involving the society's direction, purpose or structure, or large amounts of money. The rules should require decisions such as these to be approved by members at general meetings.

The rules should also clarify the functions and powers of different classes of membership – for example, financial members may be given the right to attend meetings, speak and vote.

Officers and management committee: Roles and responsibilities

Management of an incorporated society

Usually an incorporated society's management committee and other officers deal with the administration, management and control of the society.

Chairperson, treasurer and secretary: The principal officers

A society's principal officers are its chairperson/co-chairs, treasurer and secretary:

- The chairperson/co-chairs preside over and regulate the society's meetings. Specific duties may include acting as spokespeople for the society in the community.
- The treasurer controls income and spending, keeps the society's financial records, and prepares the annual accounts.
- The secretary is responsible for the overall administration of the society.

Role and powers of officers

Officers are directly accountable to the society's members, mainly through general meetings.

Officers must act consistently with the functions and powers given to them by the society's rules. Officers have no powers other than those set out in the rules, and they cannot do anything that the society itself cannot do.

The management committee

The management committee or board is appointed by the society's members at the annual general meeting. The committee's functions are to:

- set the mission, aims and values of the society
- employ and dismiss the co-ordinator or manager
- develop and propose policies and strategies for the society to consider adopting
- keep proper accounts and handle the society's finances, including reviewing budgets and business plans
- monitor compliance and risk
- keep a register of members
- control the society's common seal (official stamp)
- call general meetings.

Duties and liabilities of officers

Incorporated Societies Act 1908, s 34A

The Incorporated Societies Act doesn't specify any general duties for a society's officers.

In general, all officers of a society have a duty to:

- act in good faith and in the society's best interests
- exercise their powers for a proper purpose
- act in accordance with the society's rules and objects
- ensure the society's affairs are carried out in a way that does not create a substantial risk of loss to the society's creditors
- ensure that the society does not incur an obligation that it can't fulfil
- take reasonable care in exercising their duties
- ensure that they don't profit personally from their position of trust.

The society's rules can provide for officers to be indemnified for costs and liabilities that they incur through committing wrongful acts in good faith while properly serving the society. The

society can also take out “Directors and Officers” insurance to protect their officers and in some cases entire committees.

A society’s officers can potentially face financial penalties under the Incorporated Societies Act if the Act is breached. For example, each officer can be fined up to $1,000 for failing to provide documents that the Registrar of Incorporated Societies has asked to inspect.

Apart from potential criminal liability (for theft for example), an officer may also be personally responsible to third parties under civil law for breaches of trust or fiduciary duty if they act outside the society’s rules and objects, or for “conversion” of property.

Can officers be paid?

Members may be paid as officers of a society and may be eligible for prizes. If the society has tax-exempt status as a charity, members can be paid for services only if the payment is reasonable and is no more than would be paid to a non-member.

The rules should be very clear about any right of management committee members and officers to receive an honorarium or to be reimbursed for out-of-pocket expenses.

Officers who become paid employees of the society should resign from their position as officer, to avoid any conflict of interest (a conflict between their personal interests and those of the society).

Ongoing administration

Administrative requirements for incorporated societies

Incorporated Societies Act 1908, ss 18(2), 22-24, 34A

- Registered office – When it incorporates, the society must register its physical address with the Registrar of Incorporated Societies, and must notify the registrar of any changes to this. (A society need only put their physical address in their cover letter rather than in the actual rules. The rules need only indicate that the registered office is in New Zealand. This prevents needing to change the rules each time the society’s registered office changes).
- Register of members – The society must keep a register of members, listing names and addresses and when each member joined.

- Annual financial statement – The society must file an annual financial statement with the registrar, including a statement of income and expenditure for the last financial year, a balance sheet of assets and liabilities, and a list of the securities affecting any of the society's property. The financial statements must be approved by the members at a general meeting, and an officer must certify that the members have approved it. The statements don't have to be audited, unless the society's rules require this. (Note however the new financial reporting standards.)
- Changes to rules – Any change to the rules must be signed in duplicate by at least three members and must be filed with the registrar, along with the minutes from the meeting where the members agreed with the changes. A statutory declaration made by a member or lawyer must confirm that the change was made as required by the society's rules. This can now be done online at: www.societies.govt.nz/cms/customer-support/learn-about-our-online-services/file-rule-changes-online/file-a-societys-rule-change-online
- Registrar's powers of inspection – The registrar can require the society to hand over any registers, records or other documents so that the registrar can monitor whether the society is complying with the Incorporated Societies Act.
- Reporting by charities – Incorporated societies that register as charities also have some specific reporting requirements (see "Charities and charitable status / Administrative responsibilities of registered charities" in this chapter).

Winding up the society (liquidation)

What is "liquidation"?

Liquidation is the process that brings an incorporated society's existence and activities to an end. Its purpose is to collect the proceeds of the society's assets and distribute them to the members, unless the rules require otherwise.

If the society has charitable status, any surplus assets must be distributed to other charitable organisations within New Zealand that have similar aims. If a charity is deregistered, there will be a tax on its net assets (see "Charities and charitable status / Removal from the Charities Register" in this chapter).

Voluntary liquidation

Incorporated Societies Act 1908, s 24

The members of an incorporated society may voluntarily put it into liquidation by passing a resolution to this effect (by either a simple majority or a three-quarter majority according to their rules) and appointing a liquidator (if there are any assets to liquidate) at a general meeting.

This decision must be confirmed by another resolution (again, passed by a simple or three-quarter majority, according to their rules) at a second general meeting held no earlier than 30 days after the initial meeting.

Compulsory liquidation by the High Court

Incorporated Societies Act 1908, s 25

The High Court can put an incorporated society into liquidation in various situations – for example, if the society is unable to pay its debts, or its membership falls below 15.

An application to the court to have a society put into liquidation may be made by the society itself, a member, a creditor of the society, or the Registrar of Incorporated Societies.null

Unincorporated groups

Many community groups will not need to incorporate – for example, if your group is intended to exist for only a short period (perhaps because it's been formed to organise a particular event, or to respond to a particular time-limited issue), or if you don't intend to seek funding from funding agencies (who often require applicants for funding to be incorporated). In those cases, it may not be worthwhile to incur the cost of becoming formally incorporated and to take on the ongoing obligations – reporting requirements for example.

However, it's important to understand the limitations of remaining unincorporated – for example, the risk for individual members that they will be held personally responsible for obligations the group takes on.

Benefits and limitations

Benefits of being unincorporated

- No incorporation process – You will not need to go through the relevant administrative process, including providing an application and supporting documents, and showing that you meet all the relevant requirements (for example meeting the legal definition of "charitable purpose" if you want to incorporate as a charitable trust board).
- Fewer ongoing requirements – By incorporating, your organisation will take on a number of ongoing administrative requirements – for example, incorporated societies must maintain a register of members and file annual financial statements with the Registrar of Incorporated Societies (see "Charities and charitable status / Administrative responsibilities of registered charities" in this chapter).
- Fewer costs – There may be registration fees involved with becoming incorporated, and you may also need to pay for legal advice.
- Flexibility – By remaining unincorporated, your organisation is free to organise its structure and operations as it chooses. For example it won't be necessary to ensure that its rules meet all the requirements of the relevant Act (such as the Incorporated Societies Act).

Limitations of being unincorporated

- Membership status is uncertain – The relationship between members in unincorporated groups is often uncertain. There may therefore be doubts about membership rights and obligations, including how people become or resign as members, how complaints and disputes are to be dealt with, and when and how members may be disciplined or expelled.
- Unclear rules and rights – Unlike incorporated groups, unincorporated groups do not have to have rules. However, if there are no rules, or if the rules are unclear, it may be difficult to resolve disputes. Even when an unincorporated group does have rules, it may still be difficult to prove how the rules were adopted, whether more recent members agreed to them, and whether the rules are binding on members.
- No perpetual existence, no legal standing – Unincorporated groups are not separate legal entities. They do not have a continuing existence independent of their members, and they have no legal standing to own property or borrow money in their own name. Because of this it can be difficult to obtain funding.
- Personal liability – Potentially, the members of the group's committee, and possibly all members, are personally responsible ("liable") for any obligations the group takes on, and

for any judgment made against the group by the courts.

Committee members are likely to be personally responsible for the group's debts and for debts incurred by an employee of the group, particularly if the committee members knew the debt was being incurred or they agreed in some way to the transaction. They are also likely to be personally responsible to a person who suffers damage as a result of the negligence of an employee or other person involved in the group – for example, failing to organise an event properly.

Individuals who are liable (either the person who committed the wrong or the committee) may have the right to be indemnified (paid back) out of any property the group members hold individually, if the group's rules provide for this.

Rules for unincorporated groups

Why have written rules

The rules of unincorporated groups will derive from an agreement between the members, or an implied agreement based on past practice, or both.

To operate smoothly, an unincorporated group should record its rules and processes for managing the group's affairs and making decisions. Having detailed written rules helps to determine what is right and wrong if disputes arise.

What should the rules cover?

It's good practice to have written rules stating:

- the group's name
- the group's objects or purpose
- how a person becomes and stops being a member, and any obligations that members have
- how the group will resolve disputes between members
- how general meetings will be convened
- the method of voting at general meetings
- what officers (such as chairperson and treasurer) will be appointed to any committee, and

how they will be appointed
- the control of finances and financial accounts
- how the group's rules can be changed
- how to dissolve the group.

Decision-making and management

Decision-making processes

The group's rules should clearly state its decision-making processes, including:

- which decisions need to be approved by the ordinary members
- if voting is to be used, who can vote
- the procedures for voting (for example, a show of hands) and whether members can vote by proxy, post, email or secret ballot
- how many people must agree in order for there to be a valid decision (for example, a simple majority)
- specific decision-making for groups using Te Tiriti informed processes
- The approach for achieving consensus if this is the preferred decision making process.

Managing the group's affairs

The management of most unincorporated groups is usually delegated to a committee of members.

If the rules require a management committee to be appointed, the committee has no authority to bind ordinary members, unless the rules state otherwise.

It's useful for the group's rules to deal with financial controls and investment of the group's funds. It will help the group operate smoothly for the rules to clearly state who is responsible for keeping proper accounts and the procedures for receiving and withdrawing funds (for example, a requirement for the signatures of two committee members).

Umbrella organisations and unincorporated groups

If your group does not want to incorporate, it could instead become part of an existing umbrella organisation that is incorporated. This would allow your group to get on with its work without the costs and responsibilities of being incorporated itself. (See “Choosing the right legal structure for your group / National bodies and local organisations” in this chapter.)

There should be a written agreement between the group and the umbrella organisation to make sure the relationship is clear. Both sides should get legal advice before signing any agreement.

An umbrella organisation can receive and pass on any money to groups that are within its structure, and can charge a handling or administration fee for its services.

Trusts

What is a trust?

A trust may be an appropriate form for your group if it has, or could potentially have significant money or property and you want to keep decision-making in relatively few hands.

The key feature of any trust – whether a private “family” trust, or a trust with charitable status or some other community-based trust – is that the people appointed to be the legal owners of the trust’s property (the “trustees”) have a special duty to hold and manage that property for the benefit of others – either the people or classes of people (the “beneficiaries”) who are named in the trust deed, or the sections of the community who will benefit from a specific charitable purpose stated in the deed.

Although the trustees are the legal owners of the property, their duty to the beneficiaries means the beneficiaries still have a legally recognised interest in the property, which is called a “beneficial” (or “equitable”) interest.

Note: This chapter isn’t concerned with trusts for private purposes, such as “family trusts”, or with Māori land trusts. It deals only with trusts that have charitable status and other community-based trusts.

Trusts have no separate identity

A trust is not an incorporated body and therefore does not have a separate legal identity.

However, the trustees of a charitable trust can choose to register as a "charitable trust board" under the Charitable Trusts Act 1957, and they thereby become an incorporated body with a separate legal identity in the same way as groups that incorporate by registering under the Incorporated Societies Act. Charitable trust boards are explained in the next section (see "Charitable trust boards").

Creating a trust

How is a trust created?

The person who creates the trust – the "settlor" – does so by transferring property (a fund of money for example) on trust to one or more people – called "trustees" – or by declaring that the settlor now holds the property on trust (in which case the settlor is also a trustee).

A special document – the trust deed – is needed to create the trust. This records the key information about the trust: it identifies the trust property, appoints the trustees, and identifies the beneficiaries or the relevant charitable purpose.

Requirements for a valid trust

Under the common law (law made by the courts), a trust must meet the following requirements in order to be valid:

- The person creating the trust (the settlor) must show a clear intention to create the trust.
- The trust deed must clearly identify the money or property that is to be held in trust (known as the initial trust fund).
- The trust deed must identify specific people or classes of people as beneficiaries of the trust, or identify a charitable purpose.
- The trust deed must be signed or sealed by the settlor and by every trustee appointed under the deed. The trust deed must be executed in "proper form", which means it must be in writing and must be witnessed by someone who records his or her address and occupation on the deed.
- Trusts for charitable purposes are not required to have an end date. Other trusts, however, including community-based trusts that don't qualify as "charitable", are required to specify an end date in the trust deed.

How many trustees do there have to be?

Trustee Act 1956, s 43(2)(c)

A trust can be created with just one trustee, although it's usual for there to be at least two. The law does not specify a minimum number of trustees, and leaves this instead to the particular trust deed.

Trusts with a charitable purpose: Ownership of the trust property

Charitable Trusts Act 1957, ss 3-5

The Charitable Trusts Act specifies that, if a trust has a charitable purpose, it's not strictly necessary each time that replacement trustees are appointed for there to be new documentation recording that the new trustees are the legal owners of the trust property. Instead the Act states that at any given time the owners of the trust's property will be whoever are the trustees at that time.

However, despite those provisions in the Act, most trust deeds will require some form of documentation of the new trustees' legal ownership of the trust property.

Trustees: Their powers, duties and liabilities

Powers of trustees

Trustee Act 1956, ss 13A, 14, 15, 24, 29, 31

Trustees have the following powers under the Trustee Act 1956:

- to invest the trust's funds
- to sell, exchange, lease, rent out or mortgage any of the trust's property
- to insure any of the trust's property
- to obtain valuations for any of the trust's property
- to spend trust funds on repairs, maintenance, renovations or improvements of trust property
- to employ or hire other people (such as lawyers and accountants) to act as agent for the trustee in doing things necessary for administering the trust (this can also include employing a trustee corporation such as Public Trust to invest trust funds)

- to reimburse themselves for the charges and expenses they incur in hiring those other people to act for them
- to delegate their powers to another person (by a deed granting a power of attorney) if the trustee is, or is going to be, out of the country or physically incapable of being trustee for a period (if going into hospital for example)

Other powers that are often granted by trust deeds include:

- to buy, lease or hire any land or personal property
- to borrow money on terms that the trustees think are appropriate
- to enter into contracts or other arrangements with any individual or body
- to pay expenses (to themselves or to others) that they've incurred in setting up and running the trust
- to change the powers and rules of the trust – however, if the trust has a charitable purpose, the changes must not detract from that purpose.

If there's a conflict between the Trustee Act and what's stated in the trust deed, the Act overrides the deed.

Duties of trustees

Trustee Act 1956, ss 13B-13D, 13F, 13G

The Trustee Act and the common law (law made by the courts) require trustees to:

- act only for the benefit of the trust, and consistently with the trust rules and the powers given to the trustees
- exercise due diligence and prudence (reasonable skill and care) in managing the trust
- comply strictly with the trust deed, unless the deed itself allows the trustees to do otherwise, or the courts or the beneficiaries allow it
- invest money that's held on trust
- keep accurate accounts for the trust property
- be impartial towards beneficiaries (unless the trust deed says otherwise)
- not be in a position of conflict of interest (this means where their own personal interests would conflict with their duties as trustees).

Trustees must also:

- be familiar with the terms of the trust deed, with the trust property, and with the actions of previous trustees
- act unanimously in making decisions about trust property, unless the trust deed allows majority decisions (with public or charitable trusts, however, the majority of trustees may usually bind the minority)
- act personally and not delegate responsibilities, unless the trust deed explicitly allows this (recognising that trustees may need expert advice) or the delegation is in one of situations permitted by the Trustee Act (see "Powers of trustees" above).

Charitable trust boards

What is a charitable trust board?

Charitable Trusts Act 1957, s 2 (definition of "charitable purpose"); ss 7, 8

The Charitable Trusts Act 1957 allows the trustees of a trust, or the members of an unincorporated society, to become an incorporated body – a "charitable trust board" – by registering under that Act. As a charitable trust board, these people agree to hold money or assets and carry out activities for charitable purposes.

What qualifies as a "charitable purpose" is explained elsewhere in this chapter (see "Charities and charitable status / Who can register as a charity" in this chapter). However, in the case of charitable trust boards, a "charitable purpose" also includes any religious or educational purpose, even if it wouldn't otherwise qualify as "charitable" under New Zealand law.

By registering, the trustees or the society's members become the members of the charitable trust board.

Sometimes a charitable society will take an additional, intermediate step and establish a trust, so that the trustees appointed can then be incorporated as a charitable trust board. In those cases, the membership of the charitable trust board consists of the trustees, rather than all the members of the society that set up the trust.

To be able to register as a charitable trust board, the trustees or the society must not be registered under any other Act.

The Charitable Trusts Act is administered by the Registrar of Incorporated Societies.

Registering as a charitable trust board

Charitable Trusts Act 1957, ss 13, 14, 19, Schedule 2

To register and incorporate as a charitable trust board, your trust or group must apply to the Registrar of Incorporated Societies (part of the Companies Office). The application must be in the form shown in the Charitable Trusts Act 1957 (Schedule 2).

Once they are registered and incorporated, the trustees or society members become a body corporate under the name of the charitable trust board. This means the board takes on a separate legal identity distinct from those individuals. The board also enjoys "perpetual succession", which means it continues to exist despite changes to its membership (until it's wound up), and it also has its own "common seal" (official stamp).

When a board is registered, all property held by the trustees or society members is vested in the board for the same purposes as before. The board's liability is limited to the assets of the trust or society (although board members can be personally liable in some cases – for example, if they've been negligent or acted illegally). The board is liable for any transactions that are entered into in the board's name and that the board is authorised to enter into by the trust deed or constitution.

Board's powers and duties

The powers of a charitable trust board will be the powers set out in the constitution of the society or the trust deed of the trust.

Board members must comply with the requirements of the Charitable Trusts Act. If they're also trustees, they're also bound by the general duties applying to trustees under the common law and the Trustee Act 1956 (see above, "Trusts / Trustees: Their powers, duties and liabilities").

Choosing an appropriate management structure for a charitable trust board

What management structure is appropriate will depend on whether a charitable trust board is based on a society or a trust:

- Society-based charitable trust boards – If a charitable society incorporates as a board under the Charitable Trusts Act, best practice suggests that a committee consisting of a few of the members should be responsible for managing the board. In effect, this should be no different from the way in which the society managed itself before it became a charitable trust board, or if it had been registered under the Incorporated Societies Act 1908 (see "Choosing the right legal structure for your group / Incorporated societies" in this chapter).
- Trust-based charitable trust boards – A board consisting of the trustees may not need to have a management committee, because all the trustees will be required or entitled to participate in decision-making.

Duties and liabilities of trustees / officers

The Charitable Trusts Act does not impose any general duties on the trustees or officers of a charitable trust board. The trustees or officers are in a similar position to company directors, and owe duties to the charitable trust board in the same way as directors owe duties to the company (see "Companies" below). These duties are to:

- act in good faith and according to the rules of the board
- exercise their powers for a proper purpose and with reasonable care
- not cause or allow the board's affairs to be carried out in a way that creates a substantial risk of loss to the board's creditors
- not agree to the board taking on an obligation unless it's reasonable to believe the board will be able to perform it
- not obtain any unauthorised personal financial gain from their position as officer of the board or make any unauthorised use of confidential information.

Reporting requirements

There's no requirement for charitable trust boards to file annual financial statements with the Registrar of Incorporated Societies. However, a number of reporting requirements will apply if the board is also registered on the Charities Register, which is a precondition for having charitable status for tax purposes (see "Charities and charitable status / Administrative responsibilities of registered charities" in this chapter).

Winding up a charitable trust board (Liquidation)

Charitable Trusts Act 1957, ss 24-27

In some cases a charitable trust board may be wound up (liquidated) by the courts – if it can't pay its debts for example.

When a board is based on a charitable society, rather than on a trust, the board can also be wound up voluntarily by the board itself. For most trust-based boards, the trust deed will also give the trustees (that is, the board) the power to wind up the trust.

The liquidation provisions in the Companies Act 1993 (Parts 16 and 17) apply to a liquidation of the board as if the board were a company.

The board's debts must be paid from its funds or assets. If there's any surplus, this must be distributed to another charitable organisation in New Zealand. A charitable trust board must specify in its trust deed or constitution that any surplus assets will go to a charity with similar aims to its own. If a charity is deregistered, there will be a tax on its net assets (see "Charities and charitable status / Removal from the Charities Register" in this chapter).

Under the Companies Act, officers of a charitable trust board may be personally responsible (liable):

- if they've misapplied money or property belonging to the board
- if they've been negligent or breached a duty or trust, or
- if proper accounting records haven't been kept.

Companies

This section explains the key features of companies and why a community group might want to adopt this particular legal form.

Key features of companies

Companies Act 1993, ss 10, 15, 97

- Minimum requirements – A company must have a name, one or more shares, one or more shareholders, and one or more directors.

- Separate legal identity – By registering and incorporating under the Companies Act 1993, a company becomes a body corporate under the name of the company, and therefore it has a separate legal identity distinct from its shareholders and directors. Until it's liquidated, the company has a continuing existence even if the shareholders or directors change.
- Limited liability – Unless its constitution states otherwise, a company is a "limited liability" entity. This means a shareholder isn't personally liable, beyond the value of their shareholding, for any of the company's contracts, debts or other obligations, unless the shareholder has given a personal guarantee.

Why choose to become a company?

Although most community groups don't choose the company form, it may be appropriate if you want:

- to keep control and decision-making in the hands of just a few people
- to provide those people with limited liability
- to make it easy to transfer ownership of some or all of the group's property.

Registering and incorporating as a company

Companies Act 1993, ss 10, 12

To register and incorporate as a company you'll need to apply to the Registrar of Companies at the Companies Office. Your company will need to have:

- a name
- one or more shares
- one or more shareholders
- one or more directors.

(For information about how to apply, visit the Companies Office website at: www.business.govt.nz/companies/learn-about/starting-a-company)

Constitutions

Companies Act 1993, ss 26-34

Although it's not a requirement, it's always a good idea for a company to have a specially drafted constitution that meets the company's particular needs.

In general a company's constitution can't contradict the rules contained in the Companies Act 1993 and a provision in a constitution that tries to do this will be legally invalid. Some provisions in the Companies Act, however, state explicitly that they can be varied by the constitution.

A company can adopt a new constitution, or change or revoke its current one, only by a special resolution passed by 75 percent of the shareholders.

Shareholder meetings

Companies Act 1993, ss 120, 121

A company must hold an annual meeting of shareholders within 18 months after it's incorporated. Annual meetings must be held within six months after the company's balance date and within 15 months after the last annual meeting.

A special meeting of shareholders can be called at any time by the board of directors or by someone authorised by the constitution.

Directors: Their role, powers and duties

Companies Act 1993, ss 128-138, 161

The board of directors is responsible for the day-to-day management of the company. The directors must comply with the Companies Act and the company's constitution.

Directors can delegate their powers to individuals or committees, but they continue to be responsible for their duties and must make sure there's a monitoring system for those delegated duties.

Directors must:

- act in good faith and in the company's best interests at all times

- exercise their powers for a proper purpose
- exercise the care, diligence and skill that a reasonable director would exercise in the circumstances
- keep records of the basis on which important decisions are made – this will help establish that their decisions were reasonable if this is questioned later.

Directors must not:

- act, or agree to the company acting, in a way that contravenes the Companies Act or the company's constitution
- agree to the company taking on obligations that the company can't meet or that would create serious loss to the company's creditors
- cause or allow the company's business to be carried out in a way that's likely to create a substantial risk of serious loss to the company's creditors
- release or make use of any confidential information about the company.

Directors can be paid a fair amount for their role.

Companies Act 1993, ss 138A, 156, 164

Directors who breach their statutory duties can be removed from office by the company's shareholders. The company, or any other director or shareholder, can also apply to the courts for an injunction to stop a director breaching his or her duties. There are also heavy criminal penalties if a director acts in bad faith, knowing that their conduct isn't in the company's best interests and that it will cause the company serious loss. In those cases the director can be jailed for up to five years or fined up to $200,000.

Records, reports and financial accounts

Companies Act 1993, ss 189, 194, 195, 208-214A; Financial Reporting Act 1993

- Records and registers – A company is generally required to keep a number of records at its registered office, including its constitution and minutes of all meetings and resolutions of shareholders and directors over the past seven years.
- Annual reports and returns – A company must prepare an annual report each year within five months of its balance date; this must be sent to all shareholders before the AGM. A

company must also file an annual return with the Registrar of Companies every year, except for the calendar year in which it's registered. Companies that register as charities also have some specific reporting requirements (see "Charities and charitable status / Administrative responsibilities of registered charities" in this chapter).

- Accounts – Some companies may be required to prepare annual financial statements and, in some cases, to file those statements with the Companies Office (for information, visit: www.business.govt.nz/companies/learn-about/updating-company-details/financial-reporting).

Dividends: Payments to shareholders

Companies Act 1993, ss 52, 53

A dividend is a payment made by the company to a shareholder in proportion to his or her particular shareholding. The board of directors can authorise the payment of dividends only once the company has satisfied the "solvency test" set out in the Companies Act. Alternatively, the shareholders can unanimously authorise a dividend.

Contracts and transactions with other people and organisations

Companies Act 1993, s 129

A company can enter into a contract with another person or entity. The appropriate way of doing this will depend on the particular kind of contract (see "Laws you may need to know about / Contracts" in this chapter).

A special shareholders' resolution is required before a company can enter into a "major transaction", which is where the value of the assets or obligations involved is more than half of the value of the company's assets.

Liquidation and receivership

Companies Act 1993, Part 16; Receiverships Act 1993

"Liquidation" (or "winding up") of a company is when it stops trading or becomes "insolvent" (this means when it's unable to pay its debts or when it doesn't have enough assets to meet its liabilities). The company's assets are sold and the proceeds are paid to the company's creditors

according to what the company owes them and the priorities between those creditors themselves. Any surplus money will be distributed proportionately among the shareholders.

A company can be put into liquidation voluntarily or by the courts. Liquidation begins when a liquidator is appointed.

“Receivership” is when a creditor of the company or the courts appoint a “receiver” to take control of and manage the assets of a company that’s in financial difficulty. A receiver can be appointed by or on behalf of a secured creditor to protect and take control of the assets over which the security has been granted. Debentures creating a security over the company’s property often give the debenture holder the right to appoint a receiver.

National bodies and local organisations

How relationships between national and local bodies are determined

Local or regional organisations in the New Zealand community sector are often part of a larger national parent organisation, which is usually an incorporated body.

The relationships between the national and local components, and the rights and powers of each component, will depend on the rules of the national body and of each local group, and on whether the local organisations are separately incorporated.

The rules of the different bodies will determine how much control the national body has over its local components and how much autonomy the local organisations will have.

The rules will also determine the extent to which the local groups can control the national body. If the local organisations are members or shareholders of the national body, the local organisations will have an inherent right to participate in managing the national body.

Incorporation of local organisations

Incorporated Societies Amendment Act 1920, ss 2-4

In some national structures each local organisation is separately incorporated, giving it a different legal status and some additional rights and powers, such as the power to own property and enter into contracts in its own name. In other structures, there is an incorporated parent body with one or more unincorporated groups or committees operating locally.

There is a specific procedure under the incorporated societies legislation for incorporating a local component ("branch") of a parent incorporated society.

There is no provision under the Charitable Trusts Act 1957 for incorporating the local societies or groups of a charitable trust board.

Note: For a clear understanding of the relationships between the different components of particular bodies, you should read the rules or constitutions of each body. The website Societies and Trusts Online provides access to the rules or constitutions of all incorporated bodies.

Management in national structures

National structures with incorporated local groups

Incorporated Societies Amendment Act 1920, s 5

- National control over local groups – In national structures where the local organisations are separately incorporated, the management committee of the national body does not have an automatic right to be involved in managing the local organisations. If the purpose of the national body is to be a regulator of the local groups, then the rules or constitutions of the local organisations should allow the national body to give directions to them.
- Management and administration at local level – The rules applying to the incorporated local branches of incorporated societies are mostly the same as the rules applying to incorporated societies generally (see "Choosing the right legal structure for your group / Incorporated societies" in this chapter).
- Local control over national body – The management committee of an incorporated local group can exercise some limited control over its national body if it's also a member and shareholder of the national body. Otherwise the local group does not have an automatic right to be involved in managing the national body. To achieve this, the national body's management committee should consist of representatives of each of the local groups.

National structures where local groups are not incorporated

Unincorporated local organisations are usually constituted under the rules of their national body. The extent to which the rules of national bodies govern the management and procedures of the local groups will vary:

- Management and administration at local level – A local group can have its own rules for

the management of the group and its procedures, so long as those rules don't conflict with the parent body's rules.

- National control over local groups – The rules of a local organisation can prevent the national body having managerial oversight over it only if the national body's rules don't conflict with this. If the national body's rules cover the management and procedures of the local groups, a local group can't override those rules by making different rules of its own. Given the extent to which a national body can be bound by and held responsible for the actions of its unincorporated local groups, it's best practice for the rules of the national body to explicitly state that it has the right of managerial oversight of the local groups.

Civil and criminal liability in national structures

Liability in national structures with incorporated local groups

An incorporated local organisation is not legally responsible ("liable") for any civil or criminal penalties that the courts award against the national body unless:

- the local group acted jointly with the national body in the acts or omissions that resulted in the penalty, or
- the local group has agreed to indemnify the national body, or the local group's rules require it to do this, or
- the local group later ratifies (formally confirms) the relevant act or omission of the national body.

The same rule applies to the national body's liability for civil or criminal penalties awarded against a local group.

Liability in national structures with unincorporated local groups

A parent body will generally be liable (usually jointly with the members of the local group) for any wrongful acts that the local group does on the national body's behalf.

A parent body may be able to exclude or limit its liability for civil penalties (such as damages for negligence) resulting from a local group's actions, by including an exclusion or limitation of liability clause in the national body's rules. However, these clauses may not always be legally valid, particularly when the person committing the wrong and the person claiming the protection of these clauses are part of the same organisational structure.

A national body should make sure it properly monitors the actions of its local groups, to reduce the risk of it incurring civil or criminal liability.

Contracts

Capacity to enter into contracts

National bodies are usually incorporated and are therefore able to enter into contracts in their own right.

A local organisation that is separately incorporated will also be able to enter into contracts in its own name. Unincorporated groups cannot do this and must instead enter into contracts in the names of their members.

Power to hold property

National bodies

A national body is usually incorporated and can therefore hold property in its own right. Any property that is transferred or left to the national body in a will can be dealt with as the body chooses, according to its rules and any relevant legislation.

Each local organisation will have influence over property owned by the national body only to the extent that it can exercise management rights over the parent body. Unless the national body holds the property on trust, the property will be available to be distributed to creditors if the national body is liquidated.

Incorporated local groups

If a local organisation is incorporated it can hold property in its own right. Any property that's transferred to the group, or left to it in a will, can be dealt with as the group decides, so long as it complies with the rules of the group, the Incorporated Societies Act, and the terms on which the property was transferred or gifted to the group.

The national body has influence over the property only to the extent that it has management rights over the local group. Unless the local group holds the property on trust, the property will be available to be distributed to creditors if the local group is liquidated.

Unincorporated local groups

When a local group is not incorporated, any property transferred or left to it in a will, will be owned by the people who are the members of the group at the time. The property will then be dealt with according to the group's rules.

This poses a risk for the national body if the local group isn't subject to any formal rules, or if the group's rules can be changed without the national body's agreement. The local group members could potentially deal with the property for their own benefit and neglect the purposes of the larger organisation. To prevent this happening:

- ownership of the organisation's property should be restricted, as far as possible, to incorporated bodies that are controlled by the national body
- the amount of property held by local groups should be kept to a minimum
- any local group holding property should be subject to a rule that the property can only be dealt with to further the purposes of the organisation.

Industrial and provident societies

Key features

Industrial and Provident Societies Act 1908, ss 5, 7, 9(a), 9(m); Statutes Amendment Act 1939, s 33

A society that's been formed to carry on an industry, business or trade (except banking) can register and incorporate under the Industrial and Provident Societies Act 1908.

Although there are relatively few of them today, the industrial and provident society remains a sound and workable structure, suitable for groups wanting to work together co-operatively and make a profit that may be paid out to members. Typically an industrial and provident society will consist of the owners of small businesses who, while continuing to operate independently, become part of this larger entity for mutual benefit – a co-operative taxi society for example. An industrial and provident society must be a genuine co-operative, or must provide a benefit to the community in some way. It must have at least seven members and have a formal set of rules. Annual audited accounts and an annual return are required by the Companies Office.

Table of legal entities

	Unincorporated group	Incorporated society	Trust	Charitable trust board	Company	Industrial and provident society	Māori land trust
Best suited for	One-off situations Informal and emerging groups with no staff	Not-for-profit membership-based groups	Using property or funds for charitable or community purpose but keeping control in few hands	Not-for-profit bodies operating for charitable purpose (education, religion, relief of poverty, or other community benefit)	Keeping control in few hands, but enjoying limited liability and ease of transferring all or part of ownership	Not-for-profit organisation for the purpose of industry, business or trade	Only for Māori land owners or shareholders of incorporations
Relevant legislation		Incorporated Societies Act 1908	Trustees Act 1956 Charitable Trusts Acts 1957 (Part 1)	Charitable Trusts Acts 1957 (Part 2)	Companies Act 1993	Industrial and Provident Societies Act 1908	Te Ture Whenua Māori Act 1993 (Māori Land Act)
Operates for benefit of…	Members and/or community	Members and/or community	Charitable purpose (education, religion, relief of poverty, or other community benefit) or community issue	Charitable purpose (education, religion, relief of poverty, or other community benefit)	Shareholders	Members and/or community	Landowners and their descendants
Minimum number of people required	2 individuals	15 individual members or 5 corporate bodies at all times	1 trustee (but usual to have 2)	If based on a charitable trust: 1 trustee (but usual to have 2) If based on a charitable society: 5 members	1 shareholder, 1 director (can be same person)	7 individual members	1 trustee (trustees are appointed by Māori Land Court)
Tax status	Income not taxed if group has charitable status with DIA Charities and IRD Can also operate under a range of exemptions from IRD	Income not taxed if group has charitable status with DIA Charities and IRD Can also operate under a range of exemptions from IRD	Income not taxed if group has charitable status with DIA Charities and IRD Can also operate under a range of exemptions from IRD	Income 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
Decision-making	By members at general meetings and/or by the management committee	Usually by members at general meetings and/or by management committee – but will depend on society's rules, which may grant different voting rights to different levels of membership	By trustees	By trustees (if the board is based on a trust) or By members and/or management committee (if the board is based on a charitable society)	By directors generally By shareholders at AGM in proportion to shares held	Usually by members at general meetings and/or by the management committee – but will depend on society's rules, which may grant different voting rights to different levels of membership	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	Boards can be based on either a trust or a society; the board members will be either the trustees or the members of the society	No members, just shareholders	Membership rules around joining or leaving the organisation	No members – has trustees appointed by Māori Land Court
Liability of management committee/trustees	Personal individual and joint liability for debts, torts, and statutory obligations and offences	Limited liability if decision-makers act legally, prudently, within society's objects, and not for personal gain	Trustees will be personally liable, but usually the trust deed will grant them the right to be indemnified out of the trust property	Likely to be limited liability if decision-makers act legally, prudently, within board's objects, and not for personal gain	Limited liability if directors act legally, prudently, within company's objects, and not for personal gain Also specific legislation provisions for directors	Limited liability if decision-makers act legally, prudently, within society's objects, and not for personal gain	Limited liability if decision-makers act legally, prudently, within society's objects, and not for personal gain Also specific legislative provisions for trustees
Reporting requirements	None, unless the group has charitable status (reporting to DIA Charities)	Annual financial statement, register of members, change of rules and office – to Registrar of Incorporated Societies Additional requirements if charitable status – to DIA Charities	None, unless the trust has charitable status (reporting to DIA Charities)	Changes of rules, name or office; changes in board members (if land is owned) – to Registrar of Incorporated Societies	Change of constitution, name or office; list of directors; and (for some companies) annual accounts – to Companies Office Additional requirements if charitable status – to DIA Charities	Annual financial return to Registrar of Industrial and Provident Societies	Annual financial statements to Registrar of Māori Land Court
Assets on winding up (liquidation)	Surplus assets will be disposed of according to the group's rules or as agreed by the members, unless the group has charitable status	Surplus assets can be distributed among members, unless the society has charitable status	Assets disposed of as provided in the trust deed; assets usually distributed to another trust or organisation with similar charitable purposes	All surplus assets (after costs, debts and liabilities have been paid) are disposed of as provided in the trust deed or society rules, 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 courts direct or to beneficial owners or successors

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