

FORMS OF OPCO

This table is an overview only, which is intended to help those providing nature-based solutions to select the most appropriate legal structure for their operating company. This table reflects the law in force in England and Wales as at April 2023. The information contained therein is general in nature and may not apply to the particular factual or legal circumstances which a project faces, and it is therefore recommended that independent legal advice is sought. This table does not constitute legal advice and should not be relied on as such.

Type of entity	Key features/ benefits	Disadvantages	WBEP specific comments
Private limited company	<p>Limited liability of shareholders.</p> <p>Shareholders able to receive income as dividends.</p> <p>Access to debt markets, including development finance institutions and other third party funders (e.g. Government Agencies, Local Authorities etc.).</p> <p>Option for different levels of ownership (i.e. different share classes holding different rights)</p> <p>Well known as most common form of private company; well-trodden path in terms of governance.</p> <p>Company legislation is familiar and well understood.</p> <p>Separate legal personality able to enter into contracts, own property, employ staff etc. on its own behalf.</p>	<p>Not specific to social enterprises.</p> <p>Tax opaque, with no charitable tax breaks.</p> <p>Restricted ability to pay out dividends (only payable from distributable profits)</p>	<p>Separate personality allows OpCo to enter into legal agreements on its own behalf</p> <p>Common form of company clearly regulated by company law, which is potentially attractive for third party parties (e.g. Government Agencies, Local Authorities etc.)</p> <p>Scale-up potential, with ability to bring in new shareholders/owners.</p> <p>No requirement to meet charitable purpose criteria, which could be attractive to OpCo.</p> <p>Tax opaque, so potential for double tax where the shareholders are the various landowners' respective corporate entities, rather than the landowners themselves. This may not be too big of an issue if OpCo is not generating significant 'profit'</p> <p>Not designed specifically for social enterprises, so would not provide the</p>

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	Ongoing administration is not overly burdensome (though there is an obligation to file accounts and other administrative changes)		benefits in that sector that a CIC or charitable company would.
Limited Liability Partnership (“LLP”)	<p>Partnership and limited company hybrid, i.e. a partnership that provides the partners with the benefits of limited liability.</p> <p>Corporate body that can own assets, hold property, employ staff, enter into contracts and other obligations, and can sue and be sued in its own corporate name.</p> <p>Treated as a partnership for tax purposes (i.e. tax transparent for corporation tax purposes).</p> <p>Very flexible vehicle – distributions can be determined by written agreement between the members and ownership can be tailored to owners’ requirements</p> <p>Access to debt markets, including development finance institutions and other third party funders (e.g. Government Agencies, Local Authorities etc.).</p> <p>Company legislation familiar and well understood.</p>	<p>Not specific to social enterprises.</p> <p>Regulatory concerns – would need to structure to ensure that the LLP is not a collective investment scheme (which would require FCA regulation).</p>	<p>Common form of organisation which is potentially attractive for third parties (e.g. Government Agencies, Local Authorities etc.)</p> <p>Scale-up potential, with ability to easily issue further membership interests.</p> <p>Flexibility with distributions and no requirement to meet charitable purpose criteria, which could be attractive to OpCo.</p> <p>Tax transparent, beneficial if the members are the various landowners’ respective corporate entities, rather than the landowners themselves.</p> <p>Not designed specifically for social enterprises, so would not provide the benefits in that sector that a CIC or charitable company would.</p> <p>Potential regulatory concerns</p>

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Community Interest Company	<p>Corporate body designed for social enterprises that can own assets, hold property, employ staff, enter into contracts and other obligations, and can sue and be sued in its own corporate name.</p> <p>Limited liability for members either by shares or guarantee.</p> <p>CIC brand benefits:</p> <ul style="list-style-type: none"> reassurance to stakeholders, with regulation of asset lock and community benefit regulation; and higher profile within social enterprise network. <p>Transparency, through filing of annual CIC report.</p> <p>Quick & easy to set up, with articles specifically designed for social enterprise.</p> <p>Ability to expand and raise funds by selling or issuing further shares.</p> <p>Access to debt markets and other third party funders (e.g. Government Agencies, Local Authorities etc.).</p> <p>Company legislation (with which a CIC must comply) is familiar and well</p>	<p>Dividend cap which is currently 35% of distributable profits in any given year.</p> <p>Dividends require members' resolution.</p> <p>None of the tax breaks enjoyed by a charity, even if the CIC's objects are wholly charitable.</p> <p>Tax opaque, so potential for double tax if the owners are corporate entities.</p> <p>Cannot be converted into a private limited company, and onerous to convert into other types of entity.</p> <p>Continuing reporting obligations more onerous than a private limited company.</p> <p>Asset lock so assets of CIC are used for the benefit of the community</p>	<p>Credibility of CIC brand could be attractive to potential third parties (e.g. Government Agencies, Local Authorities etc.)</p> <p>Increasingly familiar option for corporates with social purposes that are clearly regulated by familiar company law,</p> <p>Scale-up potential, with ability to easily issue further shares.</p> <p>Asset lock ensures that property of OpCo (if land were transferred) would be used to benefit community long term but with control for owners, BUT may limit flexibility to move land in and out of OpCo.</p> <p>Once wound up, any assets of CIC are transferred to another CIC/charity.</p> <p>Dividend cap of 35% potentially problematic, if payments to owners are likely to be by way of dividend.</p> <p>Tax opaque, so potential for double tax if the members of the CIC are the various landowners' respective corporate entities, rather than the landowners themselves. And no charitable tax incentives.</p>

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	<p>understood by the business community (i.e. CA 2006).</p> <p>Legal protection from demutualisation and windfall profits being paid to directors and members.</p>		
Charitable Company	<p>Private limited company registered under the Companies Act 2006 that fulfils the essential criteria for charitable status (i.e. must be established for exclusively charitable purposes).</p> <p>Corporate body that can own assets, hold property, employ staff, enter into contracts and other obligations, and can sue and be sued in its own corporate name.</p> <p>Limited liability, normally limited by guarantee (advantage over a charitable trust).</p> <p>Members owe a fiduciary duty of single-minded loyalty to the company's charitable purposes.</p> <p>Tax exemptions on income, chargeable gains and stamp taxes.</p> <p>Potentially most attractive to potential donors (i.e. more so than CICs or others they are less familiar with).</p>	<p>Limited by guarantee (i.e. no shareholding through which to make distributions).</p> <p>Directors cannot be paid.</p> <p>Dual regulation and onerous ongoing reporting requirements (e.g. the Charities SORP).</p> <p>Requirement for OpCo to be established for charitable purposes may restrict OpCo's activities.</p>	<p>Tax benefits on income tax etc</p> <p>Would OpCo's objectives meet the 'exclusively charitable purposes' standard?</p> <p>OpCo may need to distribute profits to its members, which it would be unable to do with a charitable company limited by guarantee.</p>

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Co-operative	<p>Incorporated mutual society for carrying on an industry, business or trade.</p> <p>Members united by a common economic, social or cultural need or interest.</p> <p>Democratically run by its members for the mutual benefit of its members.</p> <p>Typically one member one vote, although multi-stakeholder co-operatives with weighted voting rights are possible where there is a legitimate reason for this.</p> <p>Members' benefit should be drawn directly from their participation in the co-operative and not returns on share capital.</p> <p>Members' liability is limited to the share capital they hold in the co-operative.</p> <p>Membership must be open to all who are involved with the business of the co-operative; no artificial restrictions on membership.</p> <p>Loose governance structure; the co-operative provides a framework within which various stakeholders can interact for their mutual benefit.</p>	<p>Must be approved and registered with the FCA.</p> <p>Subject to the International Co-operative Alliance's Statement of Co-operative Identity, which may be restrictive.</p> <p>Shares remain at nominal value and do not give the holder an interest in the underlying value of the co-operative.</p> <p>Profits should either be reinvested into the co-operative or equitably distributed to the members based on the extent to which each member has made use of the co-operative's services.</p> <p>No tax breaks – required to pay corporation tax, VAT (above a certain threshold), capital gains tax, stamp duty as well as income tax of employees via PAYE</p>	<p>Separate legal personality would allow OpCo to enter into legal agreements on its own behalf.</p> <p>WBEP is likely to satisfy the FCA's requirements for registration of a co-operative.</p> <p>Landowners' benefit would be derived from the sale of credits through the co-operative and not from anticipated returns on share capital.</p> <p>Profits are equitably distributed according to participation in the cooperative (i.e. the amount of land committed to the co-operative by each landowner and the number of credits generated by each landowner's land) but there is no sharing of risk between landowners.</p> <p>May be required to admit additional members to the extent that other interested parties emerge.</p>