

## UNITED KINGDOM (UK)<sup>1</sup>

### **1. Overview of Country**

The United Kingdom (UK) is a democracy, with a substantially common law legal system. The UK actually has three legal systems since it is divided into English law (covering England and Wales), Northern Ireland law, and Scottish law. Whilst there are some differences, with divergence being more prevalent in the detailed rules of common law and equity, there are substantive fields of law which apply across the whole UK. For the purposes of this report we will be reporting on the laws that apply either to the whole of the UK, or to England and Wales (but shall refer to them as the laws of the UK).

The four principal sources of UK law are legislation, common law, European Union (EU) law, and the European Convention on Human Rights. There is no single series of documents that contains the whole of the law of the UK.

Legislation is law that is created by the legislative body of the UK. The principal legislative body is the UK Parliament and the most important pieces of legislation are Acts of Parliament. Parliament consists of the House of Commons and House of Lords. The House of Commons consists of elected Members of Parliament who are elected using a first-past-the-post system in defined geographical constituencies. The House of Lords is substantially made up of peers formally appointed by the Queen on the recommendation of the Prime Minister (the head of the Government) and the rest of people who have inherited aristocratic titles and senior bishops of the Church of England.<sup>2</sup>

The common law system means that the decisions of the senior appellate courts become part of the law.

The UK is a member of the EU which means that EU law takes precedence over UK law.

As a member of the Council of Europe, the UK is a signatory to the European Convention on Human Rights (ECHR).<sup>3</sup> The Human Rights Act 1998 (HRA)<sup>4</sup> enables all the courts in the UK to protect the rights identified in the ECHR. Article 11 of the ECHR provides for the right of freedom of assembly and association. The HRA directly brings this in to UK law.

There are many recognizable types of for profit organisations, including public companies (listed or unlisted), private companies which are limited liability by shares or guarantee, and unincorporated businesses.

In terms of non-profit organizations, whilst this may be a helpful informal description, the term has no legal meaning in the UK and does not refer to a particular legal structure. It may include organizations which are community or voluntary organizations or social enterprises. Such organizations may be set up in a number of different ways from unincorporated associations through to specially set up companies.

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<sup>1</sup> The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> An overview of the legal system can be found at [http://www.cilex.org.uk/about\\_cilex\\_lawyers/the\\_uk\\_legal\\_system.aspx](http://www.cilex.org.uk/about_cilex_lawyers/the_uk_legal_system.aspx)

<sup>3</sup> A copy of which can be found [here](#)

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

Some structures may be used for both for-profit and non-profit organizations and where there is an overlap, the structure will only be discussed once unless there are differences for the profit and non-profit organization in using the structure.

## **2. Registration Procedures**

### **(a) For-Profit Organizations**

#### **(i) Laws**

The UK recognizes multiple different forms of for-profit organizations including unincorporated businesses which may be run as a partnership/sole trader small business. Unincorporated businesses require few – or even no – administrative steps to be taken to be formed under the law. They do not have a separate legal personality and the owner is personally liable for the business.

There are also limited liability partnerships (LLPs) subject to their own rules under the Limited Liability Partnerships Act 2000 ("LLPA").<sup>5</sup> An LLP is essentially a hybrid between a partnership and a limited company.

Many forms of company are also recognized including public companies which may be listed or unlisted on a stock exchange, private companies which may be unlimited, or limited by shares (private companies may also be limited by guarantee but this tends to apply to not-for-profit organizations). All of these are subject to the Companies Act 2006 ("CA")<sup>6</sup> which is the general law of application. Public companies are more heavily regulated than private companies, particularly if they are listed, due to the public having more access to the company.

A summary of each of the different types of for-profit organizations follows with an overview of the registration procedure for each.

#### **Sole Trader**

This is someone who runs a business on his own as a self-employed person. No formal steps need to be taken to set up as a sole trader, but the sole trader must register with HM Revenue & Customs ("HMRC") for tax purposes. In law, a sole trader is personally liable for all the debts of the business. The business has no legal status of its own and the sole trader has unlimited liability.

There is no single piece of legislation which governs a business run by a sole trader. The law can be found in various pieces of legislation which can equally apply to individuals or businesses generally. For example, a sole trader must register for VAT if his business turnover exceeds a certain threshold<sup>7</sup> and sole traders are also subject to the common law, just as are all other forms of business. Sole traders must also follow the rules for choosing a business name even though they do not need to register with Companies House (see below in the Companies section).

#### **Partnership**

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<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2000/12/contents>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2006/46/contents>

<sup>7</sup> See the Value Added Tax Act 1994 at <http://www.legislation.gov.uk/ukpga/1994/23/contents>

A partnership occurs where two or more persons run and own a business together. Partnerships are principally governed by the Partnership Act 1890.<sup>8</sup> Under s1 of this Act, a partnership is legally formed when two or more persons carry on a business with a view to making a profit. The partnership will be run on the basis of a contract, which may be written or oral. There are no formalities although each partner must register with HMRC for tax purposes. A partnership has no separate legal status and the partners therefore have unlimited liability for the debts of the partnership. Note that there are also limited partnerships under the Limited Partnerships Act 1907<sup>9</sup> which are required to be registered with Companies House, but this structure is seldom used and therefore shall not be considered further.

### Limited Liability Partnerships (LLPs)

LLPs can be formed only by two or more members carrying on a lawful business with a view of profit.

LLPs are subject to their own rules under the LLPA. They have a separate legal personality like a company does, and offer owners the same protection from liability as a limited company does. However, the LLP is run with the informality and flexibility of a partnership, and the partners are taxed as if the business were a partnership rather than a company.

### *Registration*

They are formed by filing a series of documents with Companies House and paying the applicable fee (currently £40 if the documents are submitted in paper form, or £13 via the Companies House software). Please see below in the Companies section for further details of the registration process with Companies House.

### *Deregistration*

See below in the Companies section – the same procedure applies.

### Companies

A company in the UK is formed by registering certain documents with a public official, the Registrar of Companies at Companies House. So, whereas the partners in a partnership or a sole trader can start trading immediately, steps need to be taken to set up a company before it can start trading. The company is recognized as a separate legal entity.

### *Limited or Unlimited*

A company may be either a limited or unlimited company. An unlimited company is defined in s3(4) of the CA 2006 as a company which does not have any limit on the liability of its members. These types of companies are very rare in practice but one key advantage is that the company's finances do not have to be made public.

A limited company is one in which the liability of its members is limited by its constitution<sup>10</sup> The constitution of the company sets out the rules which govern how the company should be run. Virtually all companies are run as limited companies.

A limited company may limit the liability of its members either by shares or by guarantee. A company which is limited by guarantee is a much less common type of limited company usually used for non-profit organizations (see below).

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<sup>8</sup> <http://www.legislation.gov.uk/ukpga/Vict/53-54/39/contents>

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/Edw7/7/24/contents>

<sup>10</sup> S3(1) Companies Act 2006

A company which is limited by shares is by far the most usual form of limited company and can either be private or public

#### *Private or Public*

Almost all of the companies in existence are private limited companies. The CA defines a private company in s4(1) as "any company that is not a public company". This negative definition therefore requires an identification of a public company in order to establish what a private company is.

A public limited company is defined by s4(2) of the CA. It is a company limited by shares or by guarantee and having a share capital which has complied with the requirements of the CA 2006 (or former Companies Acts) to enable it to be registered or re-registered as such (these requirements are discussed below in Registration Process).

A private company is therefore any company not complying with these requirements. A private limited company can raise money for its purposes only from a restricted circle of owners-investors. This is because, under s755 of the CA, it is prohibited for a private company to raise money from members of the public at large by issuing securities such as shares.

#### *Listed or Unlisted*

A public company can raise money from members of the public and may 'list' on the stock exchange. A listed company is subject to a significant amount of additional regulation which does not apply to an unlisted company.

If it wishes, a public company may apply to join a stock market in the UK. Stock markets allow companies to raise large amounts of money by enabling investors to buy their shares quickly and easily. Publicly-traded companies are therefore the largest companies in the UK.

A public company quoted on the Alternative Investment Market (AIM), a branch of the London Stock Exchange, becomes subject to the AIM Rules.<sup>11</sup> A public company listed on the Main Market of the London Stock Exchange is subject to the Financial Services and Markets Act 2000 ("FSMA")<sup>12</sup> and a variety of rules, including those in the FCA's Handbook (particularly the Listing Rules, the Prospectus Rules, the Disclosure Rules, the Transparency Rules and the Corporate Governance Rules)<sup>13</sup> and the UK Corporate Governance Code.<sup>14</sup>

There are restrictions on offering or promoting securities and companies need to produce a prospectus when they offer their shares to the public. In addition, companies traded on the Official List will need to comply with the Listing, Prospectus, Disclosure and Transparency Rules<sup>15</sup> issued by the FSA (responsibilities now handed to the FCA). There are more stringent requirements on public companies due to the public having more access to them.

#### *The Registration Process*

A company is usually formed under the CA by filing a series of documents with the Registrar at Companies House (an executive agency, sponsored by the Government Department for Business, Innovation & Skills ("BIS")). The fees differ depending on whether the application is submitted on paper (£40), electronically (£15), or through Companies House software (£13). Companies House ("CH") aims

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<sup>11</sup> Which may be found on the London Stock Exchange's website at [www.londonstockexchange.com](http://www.londonstockexchange.com)

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/2000/8/contents>

<sup>13</sup> All of which may be found on the FCA's website at <http://fshandbook.info/FS/html/FCA/>

<sup>14</sup> Available at [www.frc.org.uk](http://www.frc.org.uk)

<sup>15</sup> <http://fshandbook.info/FS/html/handbook/D85>

to process paper applications within 5 days and electronic ones within 24 hours. You can also pay a £100 paper fee (or £30 electronic fee) for a same day registration service. The application is reviewed by CH and if all the documents are in order, will be accepted and the company incorporated. Occasionally, a company may be rejected based on its name (if the name is already taken and this has slipped through the automatic system, or if the name is sensitive), if there are missing details, if the share structure is incorrect, or if any of the proposed details would be illegal. If the application is rejected, CH will provide the reason why and the applicants will have to resubmit. The fee will not be refunded.

Although anyone is allowed to prepare and submit the documentation required, because of the need for legal documents, the volume of rules, the potentially complex concepts involved and the specialist technical language used, it will often be prepared either by a solicitor, an accountant, or company formation agent.

The application is required by s9(1) of the CA and must contain the following information:

- The type of company being registered (e.g. private, public, limited, unlimited etc. Note that the majority of corporations will be companies limited by shares)
- The new company's proposed name which may not be the identical or essentially the same as another and must contain 'limited' or 'Ltd' as a suffix (subject to regulations in Company and Business Names (Miscellaneous Provisions) Regulations 2009<sup>16</sup>, Company, Limited Liability Partnership and Business Names (Public Authorities) Regulations 2009<sup>17</sup>, The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009<sup>18</sup>, Geneva Convention Act 1957<sup>19</sup>).
- The address (including the country) of the new company's registered office
- A statement of capital and initial shareholdings
  - Ss10(2)(a)-(b) CA require that the statement must include the total number of shares to be taken by the subscribers to the memorandum, the total nominal value of those shares and the rights attaching to the shares. In addition, s10(2)(d) requires the amount of money to be paid on each share to be included (as shares do not have to be paid in full when they are issued by the company)
- A statement of the new company's proposed officers
  - Details of the proposed directors including name, home address, an address for service of documents, country of residence, nationality, business occupation and date of birth (s163 CA)
  - There are no citizenship requirements
- A copy of the new company's articles of association if the company is not using standard form articles (s18 CA )
- A statement of compliance (s9(1) and s13 CA)
- Memorandum of Association

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<sup>16</sup> These can be accessed [here](#)

<sup>17</sup> <http://www.legislation.gov.uk/ukdsi/2009/9780111486283/contents>

<sup>18</sup> Which can be accessed [here](#)

<sup>19</sup> <http://www.legislation.gov.uk/ukpga/Eliz2/5-6/52/contents>

In addition to sending the documents referred to below in the Registration Process, the following extra requirements apply if it is wished to register the company as a public company on original incorporation:

- The articles must be in a form suitable for a public company. Under s20 CA, a default set of model articles will apply save to the extent they are excluded or modified.<sup>20</sup> The model articles for a public company limited by shares are more comprehensive than those for a private company. Note that companies may adopt unamended model articles, amended model articles, or bespoke articles (entirely of their own drafting – as long as they comply with company law).
- The company name must end with 'public limited company' or with the abbreviation 'plc'.<sup>21</sup>
- The allotted share capital of the company must not be less than the 'authorised minimum'<sup>22</sup> which is currently £50,000.<sup>23</sup> In addition, each share allotted must be paid up to at least one-quarter of its nominal value together with the whole of any premium on it.<sup>24</sup> In practice, this means that if 50,000 shares with a nominal value of £1 each are allotted at nominal value with no premium, the minimum consideration which must be paid to the company is 0.25p per share, making a total minimum payment of £12,500 for 50,000 shares. If however, the shares are allotted for, for example, £3 each, then each share has a premium (the amount by which the price exceeds the nominal value) of £2. This premium must be paid to the company together with a minimum of a quarter of the nominal value of each share, which is £2 plus 0.25p, that is £2.25 per share, making a total minimum payment of £112,500 for 50,000 shares.

A public company will then be registered at Companies House but before it can actually commence business it needs to obtain a trading certificate under s761 which confirms that the company has met the allotted share capital requirements above. The certificate is proof that the company is able to trade and borrow. To obtain the certificate, an application must be made (accompanied by a statement of compliance) on Form SH50 to the Companies Registrar.<sup>25</sup>

A company which has registered as private on original incorporation may re-register as a public company pursuant to ss90-96 CA. The company must pass a special resolution (a majority of not less than 75%) at a General Meeting or by written resolution, meet the specified conditions and submit an application in a prescribed form to the Registrar of Companies.<sup>26</sup>

- The Special Resolution must
  - Approve the re-registration of the company
  - Alter the company's name so that it is in a form suitable for a public company i.e. it will end with plc or equivalent
  - Alter the articles so they are suitable for a public company

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<sup>20</sup> The public company model articles may be found in Schedule 3 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) [here](#)

<sup>21</sup> S58 CA

<sup>22</sup> S761 CA

<sup>23</sup> S763

<sup>24</sup> S586

<sup>25</sup> S762

<sup>26</sup> S90 CA

- The share capital requirements of a public company are dealt with by s90(2) of the CA. At the time the shareholders pass the Special Resolution the company must have satisfied the allotted share capital requirements set out above. A company re-registering as public does not therefore require a trading certificate; the certificate of incorporation is proof enough of the share capital requirements.
- The application (on Form RR01) must accompany the Special Resolution. If the existing private company does not have a company secretary, one must be appointed and details included in the application. This is because under s71 CA, a public company must have a company secretary. The application must include the fee for re-registration (currently £20, together with £10 for any change of name; a same-day service is available for £50, plus an extra £50 for a same-day change of name. Note that the change of name fee does not arise if it is just the change of the suffix, only if the change is more substantial). Re-registration currently cannot be done electronically. The following must also be included
  - Revised articles;<sup>27</sup>
  - A balance sheet prepared not more than 7 months before the application, containing an unqualified report by the company's auditors.<sup>28</sup> If the company's accounting reference date is within this 7 month period, this requirement may be met by the end of year balance sheet; if not, then an interim balance sheet must be prepared and audited which can prove time consuming and expensive. The auditors must also provide a written statement regarding the level of the company's net assets in comparison to the company's called-up share capital and undistributable reserves;<sup>29</sup>
  - A valuation report on any shares which have been allotted for non-cash consideration between the date of the balance sheet and the date the Special Resolution was passed.<sup>30</sup> This ensures that a private company seeking to re-register is brought into line with the general requirement under s593 CA that public companies seeking to allot shares for non-cash consideration must have such consideration valued before allotting shares
  - A statement of compliance.<sup>31</sup>

If the Registrar is satisfied with the application, he will issue the company with a certificate of re-registration on incorporation as a public company (s96 CA).

### *The deregistration process*

#### **BY THE OWNERS**

The owners of a limited company may get it 'struck off' the Companies Register, but only if it hasn't traded or sold off any stock in the last 3 months, hasn't changed names in the last 3 months, isn't threatened with liquidation, and has no agreements with creditors.

If these conditions are not met, the owners will have to voluntarily liquidate (wind up) the company instead. When a company is liquidated, its assets are used to pay off its debts and any money left goes to the shareholders.

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<sup>27</sup> S94(2)(b)

<sup>28</sup> S94(2)(c) and s92(1)

<sup>29</sup> S92(1)(c)

<sup>30</sup> S93(1)(a) and s93(2)(a)

<sup>31</sup> S90(1)(c)(ii)

A £10 fee is payable to cover the cost of the striking off process.

#### *BY THE REGISTRAR OF COMPANIES HOUSE*

The registrar may decide to strike off a company on his own initiative if it is neither carrying on business nor in operation. Before doing so, the registrar is required to write two formal letters and send notice to the company's registered office to inquire whether it is still carrying on business or in operation. The registrar will take into account representations from the company and other interested parties, for example, creditors. This is the only circumstance in which a government accredited body may deregister a company.

#### *OTHER PARTIES*

Other interested parties, for example, creditors, may also apply to have the company liquidated as a means of getting their money back if the company has not paid its debts.

#### *RESTORATION*

The registrar can only restore a company if he receives a court order, unless a company is administratively restored to the register. Any company which is restored to the register is deemed to have continued in existence as if it has not been struck off and dissolved.

Under certain conditions, where a company was dissolved because it appeared to be no longer carrying on business or in operation, a former director or member may apply to the registrar to have the company restored. This is called administrative restoration.<sup>32</sup>

#### European Public Company

An EPC may be formed in any European Economic Area Member State in accordance with EU Regulation 2157/2001 on the Statute for a European Company.<sup>33</sup> These companies are known as *Societas Europaea* ("SE"). The European Company Statute establishes the first pan-European company structure. A single company, or a group of companies, operating in different EU Member States is now able to operate as a single corporate entity subject to one set of rules valid in all Member States.

In the UK the Regulation is supplemented by the European Public Limited Liability Company Regulations 2004.<sup>34</sup>

An SE may be formed in one of five different ways, but only by existing companies. These companies are also not particularly popular because it is not subject to EU law alone, but also to the domestic company law of the Member States in which it is registered and operates. Another reason is the need for the SE's operations to have been subject to the laws of at least two Member States before it became an SE. For example, an English public company can transform into an SE, provided it has for two years had a subsidiary company governed by the laws of another Member State, such as Italy. An SE registered in England would be subject to the rules of formation, dissolution, reporting and management under the EU Regulation, but also to much of the law which applies to English public limited companies.

#### UK Establishment by an overseas company

This method of running a business applies only to a pre-existing foreign company (known as an 'overseas company') that wishes to operate in the UK and set up a regular physical presence here. The law is set out

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<sup>32</sup> Further guidance on this section can be found in this government guide  
<https://www.gov.uk/government/publications/company-strike-off-dissolution-and-restoration>

<sup>33</sup> This is available [here](#)

<sup>34</sup> <http://www.legislation.gov.uk/ukxi/2004/2326/contents/made>



in the Overseas Companies Regulations 2009 ("OCR").<sup>35</sup> All overseas companies that set up a branch or any other place of business in the UK must register selected details of their establishment within one month of its opening.

The rules apply to companies registered in any country outside of the UK. Registration is not required if the overseas company does not have a physical presence in the UK, for example if it operates solely over the internet or it appoints an agent in the UK to act on the company's behalf.

In order to register, the overseas company must submit a registration application form, OS IN01, to Companies House. The form includes information on both the overseas company and the UK establishment (such as the name). The fee is currently £20 for the normal service and £100 for a same-day registration service. Currently it is not possible to register UK establishments electronically. If the company is registering its first UK establishment it must also deliver a certified copy of the company's constitutional documents (e.g. charter, statute, memorandum, articles of association etc) with a certified translation in English if the original is in a different language, and a copy of the company's latest set of accounts (again with a certified translation in English if necessary) if the overseas company is required to prepare and deliver accounts under its parent law. Where an overseas company registers a further UK establishment, it is not required to deliver the additional documents again and may instead state in the Form OS IN01 that the documents have been delivered in respect of another UK establishment (giving the registered number of that establishment).

An overseas company should notify Companies House of any changes to the original information delivered for registration as and when changes occur. It must deliver forms notifying any changes in particulars of the overseas company or the UK establishment to Companies House. In respect of changes affecting a UK establishment, the changes must be notified within 21 days of the alteration being made. In the case of a change affecting the overseas company, the notifying form must be delivered within 21 days after the date on which notice of the alteration could have been received by post in the UK.

## (ii) Case Law

This area of law is mainly statutory. Case law relates to specific points and legal interpretation of particular facts which are not directly relevant here.

## (b) Not-For Profit Organizations

### (i) Laws

As outlined above, the term non-profit organization is not indicative of a particular legal structure. For ease of reference, we will split the types of structure into two groups: (1) Community Groups and Voluntary Organizations and (2) Social Enterprises.<sup>36</sup>

Community Groups and Voluntary Organizations cover a wide range of organizations, from small neighbourhood groups to larger voluntary agencies with staff. They may be working to improve their local area, campaigning for change or providing a service. Some, but not all, will be charities. A charity is a non-profit organization that meets stricter criteria regarding its purpose and the method in which it makes decisions and reports its finances. In England and Wales, charities may be registered with the

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<sup>35</sup> <http://www.legislation.gov.uk/ukdsi/2009/9780111479476/contents>

<sup>36</sup> <http://www.resourcecentre.org.uk/information/legal-structures-for-not-for-profit-organisations/>

Charity Commission. A charity must have 'charitable purposes' that help the public (known as being 'for public benefit').<sup>37</sup> An organization could still be non-profit but not included within this definition.

Social Enterprises have been defined as 'a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximize profit for shareholders and owners'.<sup>38</sup> Social Enterprises are involved in providing services or making goods. However, they have explicit social aims and social ownership with a structure based on participation by 'stakeholders' such as users, community groups and employees. Most aim to be viable trading concerns, making a surplus from trading alone (as opposed to taking donations).

### Community Groups And Voluntary Organizations

Whatever structure the non-profit organization chooses, it must draw up a set of rules stating how the group will work (known as the governing document). There is a different type of governing document for each structure.

#### *Unincorporated Association*

No approval is needed to set this up, nor is there any need to register with any regulatory body unless the organization has charitable aims (which makes it a charitable unincorporated association – a type of charity) and an income of above £5,000 a year in which case it is required to register with the Charity Commission (CC). If the group wishes to be a charity it has to demonstrate charitable aims<sup>39</sup> and that the work is for the public benefit which must be set out in its constitution. The CC has model constitutions.<sup>40</sup>

Charities are required to comply with CC guidelines on political and campaigning activities.<sup>41</sup>

#### *Charitable Trust*

A Trust is usually set up to manage money or property for a charitable purpose and will need to register with the CC if its annual income is over £5,000. It is not a membership organization but is run by a small group of people, known as Trustees, although the trust deed (the governing document) can be written in such a way as to allow for members. The trustees of a charitable trust are personally liable.

There is no registration fee and the CC has published a model declaration (trust deed).<sup>42</sup> However, the Trust must draw up annual accounts and an annual report in a particular way and send a copy to the CC.

#### *Charitable Incorporated Organisation (CIO)*

This new form of charitable organization gives a charity the main advantages of a Charitable Company (see below) i.e. a legal personality and limited liability, but it is registered and regulated solely by the CC rather than CH. Annual accounts can be kept on a 'receipts and payments' basis (for CIOs with an annual income of below £250,000), making them simpler and cheaper than the accruals accounts required of a Charitable Company. The Trustees Annual Report and Annual Accounts have to be submitted to the Charity Commission annually.

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<sup>37</sup> <https://www.gov.uk/setting-up-charity/charitable-purposes>

<sup>38</sup> <http://www.resourcecentre.org.uk/information/legal-structures-for-not-for-profit-organisations/>

<sup>39</sup> <https://www.gov.uk/government/publications/charitable-purposes/charitable-purposes>

<sup>40</sup> <https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents>

<sup>41</sup> <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/speaking-out-guidance-on-campaigning-and-political-activity-by-charities>

<sup>42</sup> <https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents>

The CC are currently accepting applications for new CIOs and existing unincorporated charities which want to set up a CIO and transfer assets into it. It isn't yet possible for incorporated organizations to convert to CIOs, but new regulations to allow for this are expected.

Registration is fairly straightforward if a model constitution created or approved by the CC is used and the CC states it will complete the process in 40 days in the most straight forward cases. If an existing unincorporated charity wishes to convert into a CIO it can take 12-18 months (as it is not possible to directly convert, the CIO will have to be created and registered and the activities, assets and liabilities from the unincorporated association will have to be transferred across).

### *Charitable Company*

This is a limited company (see above in the for profit section) with charitable aims. Until 2013, this was the only option for an organization which had charitable aims and also wanted the benefits of being incorporated. Such organizations can now choose between being a charitable company or a CIO.

To be classified as 'charitable', a company must demonstrate, through its governing documents, that it is accountable to the community and charitable in its aims. The directors of a charitable company are also its trustees and perform the role of the management committee. The CC provides a model memorandum and articles of association for a charitable company but it would be prudent to seek legal help in drawing them up to ensure it fits the purposes of the company.<sup>43</sup>

Establishing a Charitable Company currently involves registering with both Companies House and the Charity Commission, and submitting annual accounts and the annual report to both bodies annually. There is a small fee for submitting reports to Companies House and fines are imposed for late filing.

The CC recommends being a company limited by guarantee which is where the members of the company guarantee that in the event of the company being wound up, they will pay a specified sum which is usually £1.

All charitable companies have to keep accruals accounts, regardless of their size. These are more complex than the 'receipts and payments' accounts required for smaller CIOs and charities, and can therefore lead to higher costs for book keeping and accountancy fees.

### *De-registration of charities*

If the CIO stops being charitable under the CC's criteria, it will cease to exist and be forced to close.

The CC has the *power* to remove a charity from the register when it is an excepted charity (i.e. does not need to be registered), and a *duty* to remove on request an excepted charity that is below the £5,000 threshold. The CC also has a duty to remove (1) any institution which no longer appears to the CC to be a charity (2) any charity which ceases to exist (3) any charity which ceases to operate.

There is no provision for service of notice but in *The Scott Bader Commonwealth Ltd* [1967] Ch Com Rep 48 (App D, Part II), the company was told that it was proposed it be removed from the register and was given the opportunity to submit a memorandum setting out legal arguments in support of its claim to be a charity.

### Social Enterprises

#### *Limited Company*

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<sup>43</sup> <https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents>

This may be by shares or guarantee but will usually be by guarantee limited to £1. Its memorandum and articles of association must state that any surplus is put towards the company's social purpose and usually defines the company as democratic and accountable to the community through its membership. See the Companies section above.

#### *Community Interest Company (CIC)*

The CIC was developed to deal with the problem whereby companies that did not have charitable status found it difficult to ensure that their assets were dedicated to public benefit. There was no simple, clear way of locking assets to a public benefit purpose other than applying for charitable status. The CIC was designed to tackle that problem by introducing an 'asset lock'.<sup>44</sup> It is a limited company with special features to ensure that it works for the benefit of the community, but it is subject to general company law. It differs from a charitable company in that it can be established for any legal purpose which benefits the community, whereas a charity must have exclusively charitable purposes. A further advantage is that a CIC is subject to lighter regulation than a charitable company. On the downside, a CIC may not be eligible for funding which is available to charities. CICs commit their assets and profits permanently to the community by means of an 'asset lock', ensuring that assets cannot be distributed to shareholders. They report to the Regulator of Community Interest Companies.<sup>45</sup> A CIC cannot register as a charity, but a charity may set up its trading subsidiary as a CIC.

The Regulator considers whether applications meet the criteria to become a CIC. If satisfied, the Regulator advises Companies House who, provided all the documents are in order, will issue a certificate of incorporation as a CIC.

A CIC's name must refer to its status as a CIC and contain the applicable private or public suffix.

As well as paying the same fees to Companies House as for other companies, there are additional fees (around the same amount as to Companies House) to pay to the Regulator.

A CIC can be registered at Companies House in the same way as a normal company with the same incorporation documents. However, a CIC requires additional incorporation documents including a community interest statement and a declaration that the company will not be an excluded company. Since the Regulator must decide if the business is eligible before the Registrar can incorporate the company, the premium same day registration service is not available for a CIC. However, every effort will be made to keep the registration time to a minimum, subject to the Regulator being satisfied as to the company's eligibility to be a CIC.

Whilst the Regulator endeavours to deal with each application within 5 days of receipt, each case will be unique and the Regulator may need to request more information before reaching a decision.

There are model articles of association available which contain the necessary extra clauses such as the statement that the company is a CIC.<sup>46</sup>

An existing company may apply to be converted into a CIC if it meets the requirements. All applicants for CIC status must make a Community Interest Statement. In addition, the articles of association of a CIC must comply with the relevant provisions of the Community Interest Company Regulations 2005.<sup>47</sup>

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<sup>44</sup> See [here](#)

<sup>45</sup> <https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>

<sup>46</sup> <https://www.gov.uk/government/publications/community-interest-companies-constitutions>

<sup>47</sup> <http://www.legislation.gov.uk/ukxi/2005/1788/schedule/1/made>

A company can cease to be a CIC only by dissolution or conversion to a charity. Once a company is a CIC it cannot become just an ordinary company.

(ii) Case Law

See above.

(c) Analytical comparison

There is a clear attempt to give charitable non-profits more structures that will work for their needs and to avoid dual regulation of CH and CC. However, due to the nature of charities, and CICs and their community aims, it takes longer to register non-profits with the relevant bodies because their aims have to be examined. Corporations are unlikely to have their applications rejected save for administrative errors in the application.

### 3. Tax Laws

(a) For-Profit Organizations

(i) Laws

For-Profit organizations are liable to pay the following taxes:

Capital Gains Tax (CGT)<sup>48</sup>

This is a tax on the profit when you sell (or 'dispose of') something (an 'asset') that has increased in value. This is only paid by a sole trader or business partnership. As the organization has no separate legal personality, the individuals are taxed as such. The rate differs depending on whether the individual pays basic rate or higher rate income tax but will either be 18% or 28% subject to reliefs. A sole trader or business partnership may be able to reduce or delay their CGT liability if they are eligible for a relief. The reliefs available include:

- Entrepreneurs' Relief
- Business Asset Rollover Relief
- Incorporation Relief
- Gift Hold-Over Relief<sup>49</sup>

Corporation Tax<sup>50</sup>

This is paid on a company's taxable profits. Small Companies (with taxable profits of up to £300,000) will pay 20%. Companies with taxable profits above that threshold pay tax at the main rate of 21%. Allowances and reliefs can be claimed in the form of the following:

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<sup>48</sup> Taxation of Chargeable Gains Act 1992

<sup>49</sup> See <https://www.gov.uk/capital-gains-tax/> and <https://www.gov.uk/capital-gains-tax-businesses/relief>

<sup>50</sup> Corporation Tax Act 2010 at <http://www.legislation.gov.uk/ukpga/2010/4/contents>

- Capital Allowances in respect of plant and machinery
- Annual Investment Allowance (£500,000)
- Research and Development Relief
- The Patent Box
- Marginal Relief
- Reliefs for Creative Industries
- Disincorporation Relief<sup>51</sup>

### Value Added Tax (VAT)<sup>52</sup>

VAT registration is legally required if a company's VAT-taxable turnover exceeds £82,000. VAT registered businesses must charge VAT at the appropriate rate (usually 20% but some services are charged at 5% and a zero rate) which must in turn be paid to HMRC. Provided that a company is not selling VAT exempt goods or services, it can offset any VAT they have paid on their purchases against the VAT payable to HMRC.<sup>53</sup>

### Business Rates<sup>54</sup>

The tax payable is calculated using the rateable value of the property and business rate multiplier. There are reliefs available for small businesses and those whose rateable value has increased substantially. Business Rates are set by local authorities.<sup>55</sup>

### Stamp Duty Land Tax (SDLT)<sup>56</sup>

This is payable on land and property purchases as well as leases of properties. SDLT is based on the purchase price of the property and is charged in value bands, for example the purchase of a commercial property with a purchase price of £150,000-£200,000 will be liable for SDLT at 1% of the purchase price (*Finance Act 2003*).<sup>57</sup>

### Annual Tax on Enveloped Dwellings (ATED)<sup>58</sup>

ATED applies to residential property and is payable if:

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<sup>51</sup> See <https://www.gov.uk/business-tax/corporation-tax> and <https://www.gov.uk/government/publications/rates-and-allowances-corporation-tax/rates-and-allowances-corporation-tax--2>

<sup>52</sup> See the Value Added Tax Act 1994 at <http://www.legislation.gov.uk/ukpga/1994/23/contents>

<sup>53</sup> See <https://www.gov.uk/vat-businesses/how-vat-works> and <https://www.gov.uk/vat-registration/when-to-register>

<sup>54</sup> See the Local Government Finance Act 1988 at <http://www.legislation.gov.uk/ukpga/1988/41/contents>

<sup>55</sup> See <https://www.gov.uk/introduction-to-business-rates/overview>

<sup>56</sup> See <https://www.gov.uk/stamp-duty-land-tax-rates>

<sup>57</sup> <http://www.legislation.gov.uk/ukpga/2003/14/contents>

<sup>58</sup> See <http://uk.practicallaw.com/5-531-6879?source=relatedcontent> and <https://www.gov.uk/annual-tax-on-enveloped-dwellings-the-basics>

4. the enveloped property was valued in excess of £2 million on 1 April 2012 (or when it was acquired)
5. the property is in the UK and
6. the property is owned wholly or partly by a company.

ATED is being extended to included properties worth in excess of £1 million from April 2015 (*Finance Act 2013*).<sup>59</sup>

### Environmental Taxes

Most business are not directly affected by environmental taxes but those companies which are directly involved in 'environmental industries' such as power generation are more directly affected. Taxes levied include Climate Change Levy & Landfill Tax.<sup>60</sup>

#### (ii) Case Law

Again, the main points of law are statutory, it is only specific details that may be covered by case law.

#### (b) Non-Profit Organizations

##### (i) Laws

Where a business is not registered as a charity or subject to special rules summarised below, it will be subject to the same tax regime outlined above.

Community Interest Companies (CICs) do not receive tax relief from HMRC and as such are liable to the tax regimes stated above, although those organizations providing education, health and welfare provisions may be entitled to exemptions. Similarly, some local authorities may give Discretionary Rate Relief to CICs.

Charities are entitled to a number of tax reliefs and exemptions on income and gains:

- Income Tax and Corporation Tax<sup>61</sup> – full relief provided that the income and gains received is used for charitable purposes only (*Income Tax Act 2007*<sup>62</sup> & *Corporation Tax Act 2010*)<sup>63</sup>;
- Gift Aid<sup>64</sup> – a charity can claim back basic rate tax from HMRC on income received from donations provided the income is used for charitable purposes only (*Chapter 2 Part 8 Income Tax Act 2007*);
- Investment income<sup>65</sup> – including income from investments made overseas provided the income is used for charitable purposes only (*532 & 534 Income Tax Act 2007 & 475/475, 486 & 488 Corporation Tax Act 2010*);

<sup>59</sup> <http://www.legislation.gov.uk/ukpga/2013/29/contents/enacted>

<sup>60</sup> See <https://www.gov.uk/green-taxes-and-reliefs/climate-change-levy>

<sup>61</sup> See <http://www.plummer-parsons.co.uk/not-profit/charities/charity-tax-exemptions-and-reliefs>

<sup>62</sup> <http://www.legislation.gov.uk/ukpga/2007/3/contents>

<sup>63</sup> <http://www.legislation.gov.uk/ukpga/2010/4/contents>

<sup>64</sup> See <http://www.tax.org.uk/gift-aid/gift-aid-walkthrough>

- Regular sources of income<sup>66</sup> – bank or building society interest can be given without being tax deducted. Tax can also be reclaimed in relation to income on stocks, wayleaves, legacy income, royalties, discretionary trust income but not dividends from UK companies (532 & 534 *Income Tax Act 2007* & 475/475, 486 & 488 *Corporation Tax Act 2010*);
- Land and Property<sup>67</sup> – income received from renting out land or property is exempt from tax provided that the income is used for charitable purposes only (s.531 *Income Tax Act 2007*, s.209 *Corporation Tax Act 2009*, s.485 *Corporation Tax Act 2010* & Parts 2 and 3 *Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005)*)<sup>68</sup>. There is no exemption from tax for profits made in relation to developing land or property (s.2 *CTA 2009* & s.5 *ITTOIA 2005*).
- Capital Gains Tax<sup>69</sup> – charities are exempt from tax on capital gains provided the proceeds of the disposal are used for charitable purposes only (s.256 *Taxation of Chargeable Gains Act 1992*)<sup>70</sup>;
- Business Rates Relief<sup>71</sup> – a charity will pay no more than 20% on any non-domestic property which is used for charitable purposes;
- Stamp Duty Land Tax Relief<sup>72</sup> – charities receive a 100% relief in relation to SDLT (*Finance Act 2003*);
- VAT<sup>73</sup> – if a charity provides goods or services in return for a charge they may be liable to register for VAT if the activity is in furtherance of the charitable aims. If a charity is VAT registered it may be able to claim back some of the VAT from HMRC within the normal VAT rules. A charity may be entitled to VAT relief on some purchases – whether not they are VAT registered (*Value Added Tax Act 1994*).

## (ii) Case Law

This area is mainly statutory.

## (c) Analytical comparison

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<sup>65</sup> See <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-i-tax-exemptions-for-charities>

<sup>66</sup> <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-i-tax-exemptions-for-charities>

<sup>67</sup> <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-i-tax-exemptions-for-charities>

<sup>68</sup> <http://www.legislation.gov.uk/ukpga/2005/5/contents>

<sup>69</sup> <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-i-tax-exemptions-for-charities>

<sup>70</sup> <http://www.legislation.gov.uk/ukpga/1992/12/contents/enacted>

<sup>71</sup> <https://www.gov.uk/charities-and-tax/overview> and <https://www.gov.uk/apply-for-business-rate-relief/charitable-rate-relief>

<sup>72</sup> <https://www.gov.uk/charities-and-tax/overview>

<sup>73</sup> <https://www.gov.uk/vat-charities/overview>



There are clear differences in the tax treatment of for-profits and non-profits whereby charities are treated favourably with many tax exemptions and reliefs. CICs do not receive the same though and so it seems that the favourable treatment is limited to charitable status rather than non-profits as a whole.

#### **4. Financial Transaction Laws**

##### **(a) For-Profit Organizations**

###### **(i) Laws**

##### Foreign Investment/Foreign Funding Laws

There are no exchange control or currency regulations affecting inward or outward investment, the repatriation of income or capital, the holding of currency accounts or the settlement of currency trading transactions. There are no restrictions on foreign shareholders of UK businesses.

Transfer Pricing Rules provide that transactions between UK companies and UK or foreign affiliates must be taxed on the arm's length value of the transaction.<sup>74</sup>

Although there is no authorization required to invest in the UK or to export funds from the UK, there are strict controls of money laundering in the UK as in many other jurisdictions. The UK's anti-money laundering regime is designed to assist the UK authorities to detect, disrupt and deter money laundering and the underlying criminal activity by requiring higher standards of due diligence across certain sectors, particularly the financial services sector.<sup>75</sup>

##### Political Contribution Laws

Donations to political parties are regulated by the Political Parties, Elections and Referendums Act 2000.<sup>76</sup> A donation is considered to be money, goods or services given to a party without charge or on non-commercial terms, with a value of over £500. Political parties are allowed to accept donations from a UK-registered company which is incorporated within the EU and carries on business in the UK. Certain donations must be reported and made public. All parties must report permissible donations of over £7,500.

###### **(ii) Case Law**

(did not look for case law)

##### **(b) Not-For Profit Organizations**

###### **(i) Laws**

##### Foreign Investment/Foreign Funding Laws

In terms of charities, whilst there are no specific rules on where a charity can receive its funding, Trustees have an overriding duty to act in the interests of the charity. In doing so, they must act prudently,

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<sup>74</sup> <https://www.gov.uk/transfer-pricing-transactions-between-connected-companies>

<sup>75</sup> <http://uk.practicallaw.com/4-102-5253>

<sup>76</sup> <http://www.legislation.gov.uk/ukpga/2000/41/contents>

balancing issues of resourcing and potential risks to the charity. Thus, if potential foreign funding could pose a risk (e.g. because of the country it is coming from) then the Trustee would be obligated to consider this risk.

There are no restrictions on CIC's other than in a similar capacity as the above in relation to director's duties.<sup>77</sup>

### Political Contribution Laws

Under charity law, charities must not support or oppose a political party or a candidate but they can engage in campaigning and political activity aimed at securing, or opposing, any change in the law or policy of central government, local authorities or other public bodies in support of their charitable purposes. A charity may express support for specific policies that are also advocated by political parties if it will contribute to the delivery of its charitable purposes. Charities may also campaign to mobilise public support on a particular issue, to influence or change public attitudes. The government has published guidance on the matter.<sup>78</sup>

There may be circumstances where spending on activities that are in pursuit of their purposes means that they must register with the Electoral Commission as a non-party campaigner.<sup>79</sup>

However, whilst support for a specific policy may be an important way of contributing to a charity's purposes, support for a political party even when it advocates a policy that the charity supports, is not allowed. A charity may not give any kind of financial support to a political party.

CICs may not generally engage in any political activity. The reason for the wide-ranging exclusion of political activities is that Parliament did not want to put the Regulator in the position of having to decide whether particular political programmes are, or are not, beneficial to the community. However, the CIC legislation recognizes that there are times when a company's non-political aims and activities necessarily involve it in some form of political action or debate, without compromising its fundamentally non-political nature. Therefore, a CIC may engage in political activities if its engagement in them can reasonably be considered as incidental to activities which a reasonable person might consider are carried on for the benefit of the community, and which are not themselves incidental to political activities. For example, a CIC that uses a community centre for activities, which benefit local people, may be able to lobby local government for a grant to improve the facilities available in the building.

(ii) Case Law

(c) Analytical Comparison

Neither for-profits nor non-profits have any restrictions on foreign investment/funding but there is a sharp deviation when it comes to political engagement and contributions. Much stricter rules apply to non-profits (but this is somewhat understandable given their charitable/community aims).

## **5. Auditing/Reporting Requirements**

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<sup>77</sup> <http://www.legislation.gov.uk/ukpga/2006/46/part/10/chapter/2>

<sup>78</sup> <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/speaking-out-guidance-on-campaigning-and-political-activity-by-charities/>

<sup>79</sup> Further information can be found [here](#)

(a) For-Profit Organizations

(i) Laws

Unincorporated organizations have no formal auditing or reporting requirements relating to their structure (although it is possible that there would be industry specific requirements).

Limited Liability Partnerships

An LLP has to file annual accounts which then become a public document. Accounting records must be kept for 3 years from the date they were made. Every LLP must also deliver an annual return as below. The accounts must be sent to every member of the LLP and CH. The LLP has 9 months from the accounting reference date to file accounts. As for small, medium and large LLPs, see below in Companies for whether accounts may be abbreviated (they are the same thresholds). Small LLPs do not need to have their accounts audited, medium LLPs require a special auditors report stating that the company is entitled to deliver abbreviated accounts, and in general LLPs must deliver accounts with an auditor's report as below.

It must also keep and maintain a register of members. If the LLP issues debentures it must keep a register of debenture holders and if it enters into a charge it must keep a register of charges together with the instrument creating the charge. All these register must also be kept available for inspection at the LLP's registered office.

Companies

A company must keep adequate accounting records under s386(1) CA, otherwise it commits an offence. It is the directors' responsibility to ensure that full accounts are produced for each financial year (s394 CA). These accounts must give 'a true and fair view of the state of affairs of the company as at the end of the financial year' (s396(2) CA). The form and content of company accounts are prescribed by SS396-413 CA and also governed by standards set by the accountancy profession and contained in Financial Reporting Standards (FRSs).

Under s415 CA, every company must prepare a directors' report for each financial year to accompany the accounts. The accounts, directors' report and, if required, auditors' report (see below) must be circulated to every shareholder in accordance with s423(1) CA. s417 CA requires the directors' report to include a business review which contains a balanced and comprehensive review of the development and performance of the company's business, the risk and uncertainties faces, and the position of the business at the end of the financial year. (Note that this does not apply to 'small' companies). Under s441 CA, companies must also file the accounts and directors' report for each financial year at Companies House. However, so called 'small' and 'medium-sized' companies may file an abbreviated version of the year-end accounts (s444 and 445 CA respectively).

A small company is defined in s382(3) CA as one which satisfies at least two of the following requirements:

1. Annual turnover of not more than £6.5 million;
2. Balance sheet total of not more than £3.26 million;
3. Not more than 50 employees.

A medium-sized company is defined in s465(3) CA as one which satisfies at least two of the following requirements:

1. Annual turnover of not more than £25.9 million;
2. Balance sheet total of not more than £12.9 million;
3. Not more than 250 employees

The time limit for filing accounts is nine months from the end of the accounting reference period for a private company (s442(2) CA).

Every company must also submit an annual return to Companies House (CH) within 28 days after the company's 'return date' (s854(1) and (3)) being the first anniversary of the date of its incorporation and every year after that.

There is a general duty on every company to appoint an auditor to review its accounts independently every year (s485 CA for a private company). The main duty of the auditor is, under s495(1), to prepare a report on the accounts to be sent to a private company's shareholders. This report must state whether in the auditor's opinion the accounts have been prepared properly and give a true and fair view of the company (s495(3) CA). A small company is exempt from the statutory auditory requirements (s477 CA). To benefit from the exemption the directors have to declare on the balance sheet, under s475(3) CA, that the directors acknowledge their responsibility to keep accounting records that comply with CA, and the shareholders must not have exercised their right under s476 CA to call for an audit.

The company must keep certain statutory books and records:

- Register of members containing the names and address of shareholders and the number of shares they hold
- Register of directors and secretaries
- Register of charges over the company's assets
- Particulars of charges should be registered with Companies House within 21 days of creation or the charge may be invalid. A fixed charge over land must also be registered at the Land Registry
- All directors' service contracts must be kept available for public inspection and members may request copies
- Minutes of general meetings, board meetings and written resolutions must be kept by the company
- Adequate accounting records must be kept by the company (s386(1) CA 2006). The accounts must give a 'true and fair view of the state of affairs of the company as at the end of the financial year' (s396(2) CA 2006).
- There is a general duty on every company to appoint an auditor to review those accounts independently every year (s485 CA 2006). The auditor is to prepare a report on the accounts to be sent to a private company's shareholders and the report must state whether in the auditor's opinion the accounts have been prepared properly and give a true and fair view of the company (s495(3) CA 2006)
- The statutory books must be kept at the registered office (or another registered location)

A company must submit an annual return and annual accounts to Companies House.

UK establishment by an overseas company

A European Economic Area ("EEA") company that is required to prepare, disclose and deliver accounting documents under parent law must deliver them to Companies House within 3 months from the date on which the document is required to be disclosed in accordance with its parent law. Where an EEA company is required to prepare and disclose, but not deliver, accounts under parent law it is not required to deliver copies of the accounting documents to Companies House. It is not required to have an auditors report delivered if the accounts are not audited under parent law.

A non EEA company that is required to prepare, audit and disclose accounting documents under parent law must deliver them to Companies House within 3 months from the date on which the documents are required to be disclosed in accordance with its parent law.

Accounting documents include the accounts of the company for a financial period; any annual report of the directors; any auditor's report on the accounts and director's report.

Where overseas companies deliver accounting documents to Companies House they must be accompanied by form OS AA01 containing the following information:

- The legislation under which the accounts have been prepared and, if applicable, audited
- Whether the accounts have been prepared in accordance with generally accepted accounting principles and the organisation which issued the principles
- Whether the accounts have been audited and if so whether they were audited in accordance with generally accepted auditing standards and the organisation that issued them
- If there has been no audit, whether the company is required to have its accounts audited

Some overseas companies may not be required to prepare and disclose accounting documents under parent law. Such companies are still under a duty to prepare, sign and deliver accounts to Companies House. There are detailed requirements for such accounts in the OCR and these include the following:

- Calculation of a financial year (normally 12 months), accounting reference period and accounting reference date
- Individual or group overseas company accounts must be prepared in accordance with the company's parent law (provided the content of such accounts meets the requirements set out in the OCR); in accordance with international accounting standards or the requirements detailed in the OCR
- The accounts must be approved by the board of directors and signed on behalf of the board by a director on the company's balance sheet
- The directors of the company must deliver accounts to Companies House within 13 months of the end of the relevant accounting reference period unless it is the company's first accounting reference period and adapted rules apply as set out in the OCR.

(ii) Case Law

(b) Not-For Profit Organizations

(i) Laws

Non-charitable non-profit organizations will follow the same rules as the above relevant structure.

Charities

Charities must prepare a set of accounts and registered charities must prepare a Trustee's Annual Report, a set of accounts, and an Annual Return. The Annual Report should explain the aims of the charity and how it is achieving them.

All accounts, reports and returns are submitted via the Charity Commission Online Service. The type of accounts and report which needs to be prepared depends on its legal structure, its income, and the value of its assets. Every charity, even if not registered with the Charity Commission, must keep accounting records and prepare annual accounts. There is no requirement to have the accounts examined or audited by an external body if the annual income is below £25,000 but the annual accounts must be made available to the public on request and must be retained for 6 years.

Charities with an annual income of between £5,000 and £25,000 (charities with an annual income of below £5,000 are not required to register with the Charity Commission) must produce a Trustee's Annual Report and make it available on request. Those with an annual income of below £10,000 are required to submit an Annual Update to the CC, which includes changes to details, and any income and expenditure for the year. Those with an annual income of above £10,000 must submit an Annual Return to the Charity Commission within 10 months of the end of their financial year, which includes the Annual Accounts and Trustee's Annual Report.

For charities with an annual income over £25,000, the annual accounts must be independently examined or audited. These form part of the Annual Return, which must be submitted to the Charity Commission within 10 months of the end of the Financial year along with the Annual Report.

If a charity has an annual income of over £250,000 there are additional requirements which depend on its structure.

A charitable company must also comply with company law and thus, regardless of size, must comply with the rules set out above.

A CIO only has to report to the Charity Commission.

All charities with an annual income above £1m (or an income over £250,000 and assets above £3.26m) are required to have a full audit.

**A. Summary of requirements applicable to non-company charities, including unincorporated associations and charitable trusts.**

Accounting Requirements	Gross income up to £5,000	Gross income above £5,000 and up to £10,000	Gross income above £10,000 and up to £25,000	Gross income above £25,000 and up to £250,000	Gross income above £250,000 and up to £500,000 and gross assets up to £3.26m	Either gross income above £1 million or gross assets above £3.26m (and income above £250,000)
Register with Charity Commission	Not required	Yes	Yes	Yes	Yes	Yes
Type of Accounts	Receipts and Payments. May choose Accruals	Receipts and Payments. May choose Accruals	Receipts and Payments. May choose Accruals	Receipts and Payments. May choose Accruals	Accruals	Accruals
Scrutiny of Accounts	No independent examination of accounts or full audit required, unless stated in constitution	No independent examination of accounts or full audit required, unless stated in constitution	No independent examination of accounts or full audit required, unless stated in constitution	Either Independent examination of accounts or full audit, unless specified in constitution.	Either Independent examination of accounts or full audit, unless specified in constitution.	Full Audit
Trustees' Annual Report	Not required by Charity Commission but must be available to public on	Not required by Charity Commission but must be available to public on	Not required by Charity Commission but must be available to public on	Simplified Annual Report.	Simplified Trustees' Report, but with 'full disclosure'	Full Annual Report

	request.	request	request			
<b>Filing of Annual Report and Accounts</b>	Filing not required. Keep accounts available for inspection	Filing not required. Keep accounts available for inspection	Only if requested by Charity Commission	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months
<b>Annual Return</b>	Not required	No. Fill in Annual Update only	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year

## B. Summary of requirements for Charitable Incorporated Organisations (CIO)

Accounting Requirements	Gross income up to £5,000	Gross income above £5,000 and up to £10,000	>Gross income above £10,000 and up to £25,000	Gross income above £25,000 and up to £250,000	Gross income above £250,000 and up to £500,000 and gross assets up to £3.26m	Either gross income above £1 million or gross assets above £3.26m (and income above £250,000)
<b>Register with Charity Commission</b>	Yes	Yes	Yes	Yes	Yes	Yes



<b>Type of Accounts</b>	Receipts and Payments. May choose Accruals	Receipts and Payments. May choose Accruals	Receipts and Payments. May choose Accruals	Receipts and Payments. May choose Accruals	Accruals	Accruals
<b>Scrutiny of Accounts</b>	No independent examination of accounts or full audit required, unless stated in constitution	No independent examination of accounts or full audit required, unless stated in constitution	No independent examination of accounts or full audit required, unless stated in constitution	Either Independent examination of accounts or full audit, unless specified in constitution.	Full Audit. If gross assets are below £3.26m an Independent Examination is sufficient.	Full Audit
<b>Trustees' Annual Report</b>	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months
<b>Filing of Annual Report and Accounts</b>	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months	File with Charity Commission within 10 months
<b>Annual Return</b>	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year	Complete Return within 10 months of end of financial year

**C. Summary of requirements for company charities (which qualify as small companies- (either annual turnover below £6.5m; gross assets below £3.26m; up to 50 employees)**

<b>Accounting Requirements</b>	<b>Gross income up to £5,000</b>	<b>Gross income above £5,000 but not exceeding £10,000</b>	<b>Gross income above £10,000 but not exceeding £25,000</b>	<b>Gross income above £25,000 but not exceeding £500,000 and with assets up to 3.26m</b>	<b>Either income above £1 million or assets above £3.26m (and gross income exceeds £250,000)</b>
<b>Register with Charity Commission</b>	Not required	Yes	Yes	Yes	Yes
<b>Type of Accounts</b>	Accruals	Accruals	Accruals	Accruals	Accruals
<b>Scrutiny of Accounts</b>	No independent examination of accounts or full audit required unless specified in the Articles of Association.	No independent examination of accounts or full audit required unless specified in the Articles of Association.	No independent examination of accounts or full audit required unless specified in the Articles of Association.	Either independent examination of accounts or full audit, unless specified in Articles of Association.	Full Audit by registered auditor
<b>Trustees' Annual Report and Directors' Report</b>	Directors' Report combined with simplified Trustees' Report	Directors' Report combined with simplified Trustees' Report	Directors' Report combined with simplified Trustees' Report	Directors' Report combined with simplified Trustees' Report, but with 'full disclosure'	Directors' Report combined with full Trustees' Report
<b>Filing Annual Report and Accounts</b>	File with Companies House within 9 months. Only file with Charity Commission if	File with Companies House within 9 months. Only file with Charity Commission if	File with Companies House within 9 months. Only file with Charity Commission if	File with Companies House within 9 months and with Charity Commission	File with Companies House within 9 months and with Charity Commission

	requested	requested	requested	within 10 months	within 10 months
<b>Annual Returns</b>					
<b>to Charity</b>	Complete	Complete			
<b>Commission</b>	Companies House	Companies House	Complete both	Complete both	Complete both
<b>and Companies</b>	return. For Charity	return. For Charity	returns by	returns by	returns by
<b>House</b>	Commission, fill in	Commission, fill in	dates specified	dates specified	dates specified
<b>(sent to the</b>	Annual Update	Annual Update	on the returns	on the returns	on the returns
<b>charity by each</b>	only	only			
<b>body)</b>					

## CIC

A CIC is required to file an annual community interest report as well as its accounts which will be placed on public record at Companies House and will be copied to the Regulator.

### (ii) Case Law

(did not look for case law)

### (c) Analytical Comparison

A charitable company will find that it is subject to dual regulation by CH and CC which is a higher burden than that placed on other non-profits or on for-profits. However, there are broadly similar requirements from CH and the CC as to auditing and reporting.

## **6. Penalties for Non-Compliance**

### (a) For-Profit Organizations

#### (i) Laws

## Civil

It is prohibited for a private company to offer its shares to the public (s755 CA). If s755 is breached, a court has the power to re-register the offending private company as a public one under s758 of the Act. If the company does not meet the requirements to become a public company, however, the court may either order that the company is wound up (s758), or it may make a remedial order under s759 of the CA. The remedial order seeks to put a person affected by a breach of s755 back into the position he was in before the breach. The court has wide-ranging powers to achieve this. The application to court for a s758 or s759 order may be made by a shareholder or creditor of the offending company, or by the Secretary of State for BIS.

The Companies (Trading Disclosures) Regulations 2008,<sup>80</sup> made under s82 CA, set out the requirements for a company to identify itself at certain locations (including any place of business), on certain

<sup>80</sup> SI 2008/495 (which can be accessed [here](#))

documents (including letters and order forms) and on its websites. Breach of these requirements may result in a fine for the company and any officer of the company who is in default. The company must therefore update its websites and order new signs and company documentation, which will reflect its new identity, in advance of re-registration to ensure that it is able to meet these requirements with effect from the date the certificate of incorporation on re-registration is issued.

An organization that is required to register for VAT must do so within 30 days of business turnover exceeding the threshold. If registration is late, the business must pay what it owes from when it should have registered. A penalty may apply depending on how much is owed and how late registration is.

### Criminal

It is an offence to apply for striking off when the company is ineligible, to provide false or misleading information, not to copy the application to all relevant parties within 7 days, not to withdraw the application if the company becomes ineligible. The offences attract a potentially unlimited fine.

If the directors of the company breach the requirements to give a copy of the striking off application to relevant parties and do so with the intention of concealing the application, they are also potentially liable to not only a fine but also up to seven years imprisonment.

It is a criminal offence not to deliver the annual return within 28 days of the made-up date. There is an automatic fine for late filing of accounts.

#### (b) Not-For Profit Organizations

##### (i) Laws

### Civil

#### *Charities*

As an independent, non-ministerial government department with quasi-judicial powers, the CC operates within a clear legal framework and follows published policies and procedures. Trustees are the people trusted to manage charities. Their duties and responsibilities are explained in our guidance. If something goes wrong in a charity, trustees should take responsibility for putting things right. The CC gets involved when it is concerned that Trustees are not fulfilling their duties towards their charity.

In the most serious cases, the CC may open a statutory inquiry which aims to stop the damaging activity and put the charity back on track.

The CC has more compliance and remedial powers as opposed to penalties and is a civil regulator. If criminality is discovered, it will work with the police and law enforcement agencies. It will be the trustees who are subject to criminal sanctions.

Information gathering powers take the form of an order or direction to obtain information or documents or require named individuals to meet the commission to answer its questions. They will only ask for information that is relevant to the case and our functions as regulator. These powers allow the CC, among other things, to direct a person to:

- provide accounts and statements in writing

- provide the CC with copies of documents
- attend a meeting to give evidence or produce documents

In using these powers, the CC have regard to the principles of best regulatory practice, including proportionality.

Temporary protective powers enable the CC to protect charity property at risk for a temporary period while we continue investigating. These powers include:

- suspending a trustee, charity trustee, officer, agent or employee of the charity from their office or employment
- preventing a person who holds charity property from parting with it without the CC's consent
- restricting the transactions a charity can enter into or the nature or amounts of payments that can be made without the CC's consent
- appointing an interim manager to manage the affairs of the charity alongside or instead of the trustees.

Remedial powers - also known as permanent protective powers- enable the CC to implement long-term solutions to problems identified by an investigation. These powers can only be used in the context of an inquiry and to use them, the CC must be satisfied that there is or has been misconduct or mismanagement in the administration of the charity. Before using permanent protective powers the CC makes sure that they are necessary and proportionate. Permanent protective powers include:

- removing a trustee, officer, agent or employee of a charity who has been responsible for or privy to misconduct or mismanagement in the charity or has contributed to it or allowed it to go on
- establishing a scheme for the administration of the charity
- direct specific action with regard to the charity's administration or its property

#### *CICs*

The CIC Regulator has a similar relationship with the CIC as companies have with Companies House (i.e. registration followed by annual returns). The very active regulation which is necessary for charities is not required for CICs. However, the Regulator is able to investigate complaints from stakeholders and has powers to act if it is found that a CIC is not working in the interest of the community or that the profit/asset lock is not being observed. These powers include the ability to change the directors or wind up the company.

#### Criminal

See above.

#### (c) Analytical comparison

The CC takes a more remedial approach aiming to put the issues right rather than the more punitive approach taken by CH and the CIC Regulator.

## OVERVIEW CHART

Although not exhaustive of all the similarities and differences discussed in the above sections, this is to help highlight some of the biggest differences or similarities.

Please identify 3-4 of the main issues discussed above for each category.

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures			
Tax Laws			
Financial Transaction Laws			
Auditing/Reporting Requirements			
Penalties			