

CHOOSING THE RIGHT LEGAL STRUCTURE

For Catchment & Community Groups

Catchment groups, and other types of charities and not-for-profit groups, need to have a legal structure when applying for external funding. You need to think carefully about what kind of legal structure your group will have and whether you want it to have charitable status.

This guide outlines the different types of structures you can choose from in New Zealand. It is designed to help your group narrow down what might be the most appropriate. This guide does not replace the need to take professional advice in setting up your group.

	UNINCORPORATED GROUP	INCORPORATED SOCIETY*	TRUST	CHARITABLE TRUST BOARD	COMPANY	INDUSTRIAL AND PROVIDENT SOCIETY	MĀORI LAND TRUST
Best suited for	One-off situations. Informal and emerging groups with no staff.	Not-for-profit membership-based groups.	Using property or funds for charitable or community purpose but keeping control in few hands.	Not-for-profit bodies operating for charitable purpose (education, religion, relief of poverty, or other community benefit).	Keeping control in few hands, but enjoying limited liability and ease of transferring all or part of ownership.	Not-for-profit organisation for the purpose of industry, business or trade.	Only for Māori land owners or shareholders of incorporations.
Relevant legislation		Incorporated Societies Act 1908*.	Trustees Act 2019. Charitable Trusts Acts 1957 (part 1).	Charitable Trusts Act 1957 (Part 2).	Companies Act 1993.	Industrial and Provident Societies Act 1908.	Te Ture Whenua Māori Act 1993 (Maori Land Act).
Operates for benefit of...	Members and/or community.	Members and/or community.	Charitable purpose (education, religion, relief of poverty, or other community benefit) or community issue.	Charitable purpose (education, religion, relief of poverty, or other community benefit).	Shareholders.	Members and/or community.	Landowners and their descendants.
Minimum number of people required	2 individuals.	15 individual members or 5 corporate bodies at all times.	1 trustee (but usual to have 2).	If based on a charitable trust: 1 trustee (but usual to have 2). If based on a charitable society: 5 members.	1 shareholder, 1 director (can be same person).	7 individual members.	1 trustee (trustees are appointed by Māori land court).
Tax status	Income not taxed in group has charitable status with DIA Charities and IRD. Can also operate under a range of exemptions from IRD.	Income not taxed if group has charitable status with DIA Charities and IRD. Can also operate under a range of exemptions from IRD.	Income not taxed if group has charitable status with DIA Charities and IRD. Can also operate under a range of exemptions from IRD.	Income not taxed if group has charitable status with DIA Charities and IRD. Can also operate under a range of exemptions from IRD.	Charitable status possible.	Tax paid on profits over wages and expenses.	Charitable status possible.
Decision-making	By members at general meetings and/or by the management committee.	Usually by members at general meetings and/or by management committee - but will depend on society's rules, which may grant different voting rights to different levels of membership.	By trustees.	By trustees (if the board is based on a trust) or By members and/or management committee (if the board is based on a charitable society).	By directors generally. By shareholders at AGM in proportion to shares held.	Usually by members at general meetings and/or by the management committee - but will depend on society's rules, which may grant different counting rights to different levels of membership.	By trustees.
Members	Made up of members with spoken or written agreement between members.	Membership rules around joining or leaving the organisation.	No members - has trustees appointed under trust deed.	Boards can be based on either a trust or a society; the board members will be either the trustees or the members of the society.	No members, just shareholders.	Membership rules around joining or leaving the organisation.	No members - has trustees appointed by Māori Land Court.
Liability of management committee/ trustees	Personal individual and joint liability for debts, torts and statutory obligations and offences.	Limited liability if decision-makers act legally, prudently, within society's objects, and not for personal gain.	Trustees will be personally liable, but usually the trust deed will grant them the right to be indemnified out of the trust property.	Likely to be limited liability if decision-makers act legally, prudently, within board's objects, and not for personal gain.	Limited liability if directors act legally, prudently, within company's objects, and not for personal gain. Also specific legislative provisions for directors.	Limited liability if decision-makers act legally, prudently, within society's objects, and not for personal gain.	Limited liability if decision-makers act legally, prudently, within trusts's objects, and not for personal gain. Also specific legislative provisions for trustees.
Reporting requirements	None, unless the group has charitable status (reporting to DIA Charities).	Annual financial statement, register of members, change of rules and office - to Registrar of Incorporated Societies. Additional requirements if charitable status - to DIA Charities.	None, unless the group has charitable status (reporting to DIA Charities).	Changes of rules, name or office; changes in board members (if land is owned) - to Registrar of Incorporated Societies.	Changes of constitution, name or office; list of directors; and (for some companies) annual accounts - to Companies Office.	Annual financial return to Registrar of Industrial and Provident Societies.	Annual financial statement to Registrar of Maori Land Court.
Assets on winding up (liquidation)	Surplus assets will be disposed of according to the group's rules or as agreed by the members, unless the group has charitable status.	Surplus assets can be distributed among members, unless the society has charitable status.	Assets disposed of as provided in the trust deed: assets usually distributed to another trust or organisation with similar charitable purposes.	All surplus assets (after costs, debts and liabilities have been paid) are disposed of as provided in the trust deed or society rules, or as ordered by the courts.	Surplus assets are distributed among shareholders, unless the company has charitable status.	Surplus assets can be distributed among members, unless the company has charitable status.	As the courts direct or to beneficial owners or successors.

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