

## Appendix B: Hewitsons' assessment of potential incorporation entities for Visit Cambridge

	<b>Company limited by shares/ guarantee</b>	<b>Community Interest Company</b>	<b>Charitable Incorporated Organisation</b>	<b>HCR Hewitsons' recommendations for Visit Cambridge</b>
<b>Structure</b>	<p>A limited company is a legal personality, and therefore can hold property and enter into agreements in its own name.</p> <p>A company can be limited by guarantee or by shares. A member's liability upon winding up is limited either to any unpaid shares it holds or, if limited by guarantee, by the sum it has agreed to contribute.</p> <p>In order to incorporate, among other requirements a limited company must create a memorandum of association, articles of association, choose at least one director, and</p>	<p>A CIC is a limited company, and therefore is structured in the same way as a company limited by shares or guarantee.</p> <p>A CIC must prepare all of the same documents that a limited company is required to produce. Additionally, it must complete an application form to become a CIC, in which it must explain how the CIC will benefit the community. The Regulator of Community Interest Companies will then use this information to determine whether the proposed company is eligible to become a CIC.</p>	<p>A CIO is a charity and a legal personality. It can own property, employ staff and enter into commercial contracts in its own name. A CIO can have both members and trustees and it is possible for a CIO to pay its trustees.</p> <p>The liability of charity trustees and members of a CIO is limited: the CIO may decide that members are not at all liable to contribute to the CIO's assets if it is wound up.</p> <p>To form a CIO, an application must be made to the Charity Commission. In its application, Visit Cambridge would need to explain how the CIO will be funded so that it could continue to work to further the public benefit.</p>	<p>A company limited by guarantee is the least burdensome to incorporate and then manage from an administrative perspective and is the most flexible structure.</p> <p>However a CIC is not significantly more difficult to set up.</p>

	register with Companies House.		Once you submit the application to register the CIO, the Charity Commission will either register the CIO straightaway or they will come back with further questions. If this happens then it can take weeks or even months before it is registered. This is considerably longer than the registration process for a limited company, which may be completed within a day.	
<b>Funding</b>	<p>Where a company is limited by shares, it may raise funds by way of issuing of new shares and returning profits to investors by way of dividends and capital returns when the company is dissolved.</p> <p>A company limited by guarantee does not have the ability to raise funds in the same way as a company limited by shares, however it is entitled to provide distributable profits to its members, and to</p>	There are limited distributable profits available to investors in CICs limited by shares only, and the majority of assets owned by a CIC are not available for distribution to members at dissolution of the company because they are subject to an asset lock. It may therefore be more difficult for a CIC than a standard company limited by shares or by guarantee to raise funding.	Details of any charges over property owned by a CIO are not published by the Charity Commission: by contrast, charges over property owned by a company are detailed at Companies House. This lack of visibility may create difficulties in the event that Visit Cambridge incorporates as a CIO and seeks funding that will need to be secured against any property that it owns.	<p>If Visit Cambridge incorporated as a CIO, it may find doing so would be beneficial for fundraising, as a registered charity would have public confidence.</p> <p>We understand that Visit Cambridge does not expect significant running costs, and that it anticipates making a small profit from the online ticketing system, which should cover the entity's costs. However, incorporation as a CIC may allow Visit Cambridge credibility with "soft" funders, as compared against a standard limited company. From a</p>

	distribute any assets upon dissolution of the company to its members. This may be attractive to investors, in the event that Visit Cambridge requires funding from parties other than the initial members.			funding perspective, a CIC may therefore be the most appropriate model.
<b>Profit</b>	A limited company can make a profit and deliver returns to investors as set out above.	If a CIC is limited by shares, it can pay dividends from profits to its shareholders so long as it has obtained agreement from the members and subject to the dividend cap, which is currently 35% of the distributable profits.  It cannot distribute profits to members if the CIC is limited by guarantee.	A CIO's profits or funds may be spent on its charitable purposes and on matters that are incidental to those purposes. Additionally, a CIO may in occasional circumstances seek permission from the Charity Commission to use profits or funds for other purposes, where it considers that it has a moral obligation to do so.  This is a strict regime, under which it is not possible to return profits to investors or members.	Visit Cambridge's Memorandum of Understanding details that it will use any income generated to reinvest in the DMO and sustainable tourism development. Restricting the distribution of profits does not appear to be a key priority. Therefore, either a company limited by guarantee or a CIC would therefore be suitable.
<b>Assets</b>	Limited companies have flexibility to distribute or sell assets where it is in the interest of the company to do so. However, the	The CIC's assets are 'locked' into the company. They cannot be transferred other than for full value or for specific purposes, including for the benefit of the	A CIO's trustees may dispose of assets where they consider that it is in the public benefit and doing so furthers its charitable purpose.	Visit Cambridge holds certain intangible assets that previously belonged to Visit Cambridge & Beyond. If it incorporates as a CIO or as a CIC it may be limited as to who

	<p>Companies Act 2006 includes restrictions on certain transactions between the company and its directors, which require the approval of its members.</p>	<p>community for which the CIC was established. Whilst this protects the CIC's assets, at dissolution there are limitations as to where any surplus assets may be distributed. At dissolution members that are entitled to may share in the distribution of surplus assets that are not 'locked in', however members cannot receive more than the paid-up value of any shares that they hold in the CIC.</p> <p>The asset lock does not prevent CICs from using any assets as collateral to secure funding.</p>	<p>When closing a CIO, the trustees should consider if any funds may be transferred to another charity with a similar purpose, and must detail how any assets will be distributed on winding up. The governing document may contain a provision which states where the funds/assets are to go, should the CIO be wound up. Any assets that remain with the CIO when it is wound up may be transferred to the official custodian for charities.</p> <p>Therefore, any assets transferred to Visit Cambridge by any investors or members would not be returned to them upon dissolution.</p>	<p>it can distribute those assets to on a winding up.</p> <p>We understand that the intention is to keep those assets from being exploited for commercial gain, and therefore Visit Cambridge may choose to transfer the assets to an organisation with similar aims, which it would be entitled to do if it incorporated as a CIC.</p> <p>Soft funders may consider restrictions on transfers of assets to be beneficial.</p> <p>Therefore a CIC would be an appropriate model in this respect.</p>
<b>Community interest test</b>	N/A	<p>CICs must pass the community interest test before the Regulator will approve its application. This test is whether a reasonable person might consider that the CIC's activities are being carried out for the benefit of the community. It seems likely that this will be satisfied in this case.</p>	<p>A CIO needs to be established for charitable purposes and for the public benefit exclusively, which includes advancement of the arts, culture and heritage.</p> <p>The Charity Commission will assess whether a CIO's purpose is for charitable purposes only and, within an application to register as a CIO,</p>	<p>There will be no community interest requirement if Visit Cambridge chooses to incorporate as a company limited by guarantee.</p> <p>If Visit Cambridge chooses to incorporate as a CIC or CIO, the test that must be met will be an additional burden. The</p>

		<p>CICs must ensure that they continue to satisfy the community interest test.</p>	<p>details of what the CIO will be set up to achieve, how it will achieve its aims, and who the CIO will help. The Charity Commission may ask for a business plan and a document explaining the benefit that will be provided by the CIO's charitable purpose.</p> <p>If Visit Cambridge would like to set up as a CIO, it is possible to draft charitable purposes for the entity. However, this may limit some of the existing work of the charity which may not fall under the charitable purpose.</p> <p>If the gross income exceeds £500,000 an external audit must also be carried out.</p>	<p>requirement to satisfy the test will be a continuing obligation, however we discussed that it was likely that Visit Cambridge would be capable of satisfying this test, based on the proposed activities.</p>
<p><b>Filing obligations/transparency</b></p>	<p>Limited companies are required to provide Companies House with, among other things, details of directors, registered company address, the number of shares in circulation (if any), details of any person with significant</p>	<p>CICs are required to file the same information as a limited company. Additionally, the directors of a CIC must provide the Registrar of Companies with a financial report each year, including information about directors' remuneration and how its activities have benefitted the</p>	<p>A CIO must file an annual report with the Charity Commission that explains how it carried out its purpose for the public benefit: this only needs to be a brief summary unless the charity's income exceeds £500,000.</p>	<p>Incorporating as a CIO or CIC will increase Visit Cambridge's administrative burden with regard to filing obligations, in particular because they must detail how they benefit the community for which they are set up, or ensure that their activities are for the public benefit.</p>

	<p>control, and to file their annual accounts. Limited companies must also keep a register of members.</p>	<p>community for which it was set up. CICs' reporting requirements are therefore more onerous than normal limited companies.</p> <p>CICs are also regulated by the Regulator of Community Interest Companies, who must ensure that the CIC satisfies the community interest test.</p>	<p>Details of CIOs, including their constitution and financial information, are held on the register of charities. CIOs must keep a register of trustees, which must be available for the public to inspect, along with a register of members which must be open to inspection by its members.</p>	<p>However, the additional transparency may be considered to be beneficial by soft funders.</p>
<p><b>Decision-making</b></p>	<p>Directors and members of a limited company are entitled to make decisions for the company. Directors owe a duty to act in the best interests of the members of the company.</p>	<p>CIC members and directors have the same decision-making role as in any limited company, but they owe an obligation to the wider community that the CIC serves. They should involve community stakeholders in activities or decisions where relevant.</p>	<p>Trustees are able to make decisions for a CIO. They must ensure that they exercise any powers or duties in the way that they think will further the CIO's purpose.</p> <p>Trustees owe a duty of care to exercise such skill and care as is reasonable; where trustees have specialist knowledge or experience, this will be taken into consideration when deciding whether trustees have acted reasonably.</p>	<p>If Visit Cambridge chooses to incorporate as a company limited by guarantee or as a CIO, the decision-making process will be fairly straightforward as the directors or trustees will be responsible for making decisions.</p> <p>However, if Visit Cambridge decides to incorporate as a CIC, it must consult community stakeholders where relevant. Given that Visit Cambridge intends for one of its primary functions to be marketing, it may consider that stakeholder involvement will not be relevant often.</p>

				In addition, several key stakeholders will already be involved in Visit Cambridge as members and directors.
<b>Conversion</b>	<p>It is possible for a limited company to become a CIC.</p> <p>It is also possible for a company limited by guarantee to convert into a charitable company limited by guarantee by completing a Charity Commission application.</p>	It is not possible for a CIC to convert to a normal limited company.	<p>It is possible for a CIC to convert into a CIO, although the Charity Commission may refuse an application for conversion in certain circumstances. An application to convert a CIC into a CIO when converted would mean that the CIC is no longer in existence, as part of the conversion process the CIC will be removed from the Companies House register.</p> <p>It is unlikely that a standard limited company will be able to convert to a CIO.</p>	
<b>Summary</b>	A limited company offers far more flexibility as an incorporated entity. It is not subject to as many limitations, but it is possible for the company to place further limitations on its directors to ensure that decisions	<p>A CIC is subject to restrictions and supervision from the regulator. There is additional administration required, but this is not a significant additional burden.</p> <p>The requirements for the publication of directors'</p>	A CIO is a charitable structure. It is therefore governed and regulated by the Charity Commission to ensure that its activities and aims are for a charitable purpose which benefits the public. There is little flexibility afforded to a CIO in comparison to a limited	If Visit Cambridge chooses to incorporate as a CIO, there may be limitations placed on its activities. In addition, the reporting and governance requirements will be more burdensome than the requirements of a CIC or a company limited by guarantee.

	<p>require input from all members if it wishes, or to carry on the business in accordance with certain DMO principles.</p> <p>A limited company is less transparent than a CIC, and does not offer the same protection for its assets (if it has any) or limitations on distribution of profits. Depending upon the profits generated by the limited company, this may be considered as a positive where there are excess cash reserves. Additionally, at dissolution, it is easier to distribute any surplus assets.</p>	<p>remuneration and an annual update of the activities carried out by the CIC that year require a higher level of transparency. In addition, the CIC must involve the community in some decision-making. Although this is more onerous, stakeholders and the community may consider this a benefit. Similarly, whilst the dividend cap and asset lock may cause some complications at dissolution of the CIC, the CIC model provides clear protection of assets and ensures that profits are predominantly used for the benefit of the community for which the CIC was established.</p>	<p>company, although the restrictions ensure that assets and profits are protected.</p> <p>The requirements regarding publication of annual accounts are similar for a CIO and limited company, however a CIO additionally must publish an annual report setting out how it achieved its aims. This is similar to a CIC's obligation to publish an annual update of activities. This additional transparency, whilst an additional administrative burden, may be considered beneficial as it ensures that there are adequate checks in place on a CIO's activities.</p> <p>At the dissolution of a CIO, investors are not able to receive the return of any assets or receive a share of any profits. This is more restrictive than a CIC (whereby members may receive a share of assets that are not locked in).</p>	<p>Whilst there are a number of benefits available to charities, it does not seem likely that Visit Cambridge would use them, and therefore the less burdensome options of a CIC or company limited by guarantee are more appropriate.</p> <p>You have indicated that you consider incorporating as a CIC will provide Visit Cambridge with credibility, and that you believe that you can satisfy the requirements of a CIC relatively easily. We cannot therefore see any reason why incorporating as a CIC would be problematic.</p>
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