Charity Organisational Structures and Community Interest Companies Explained

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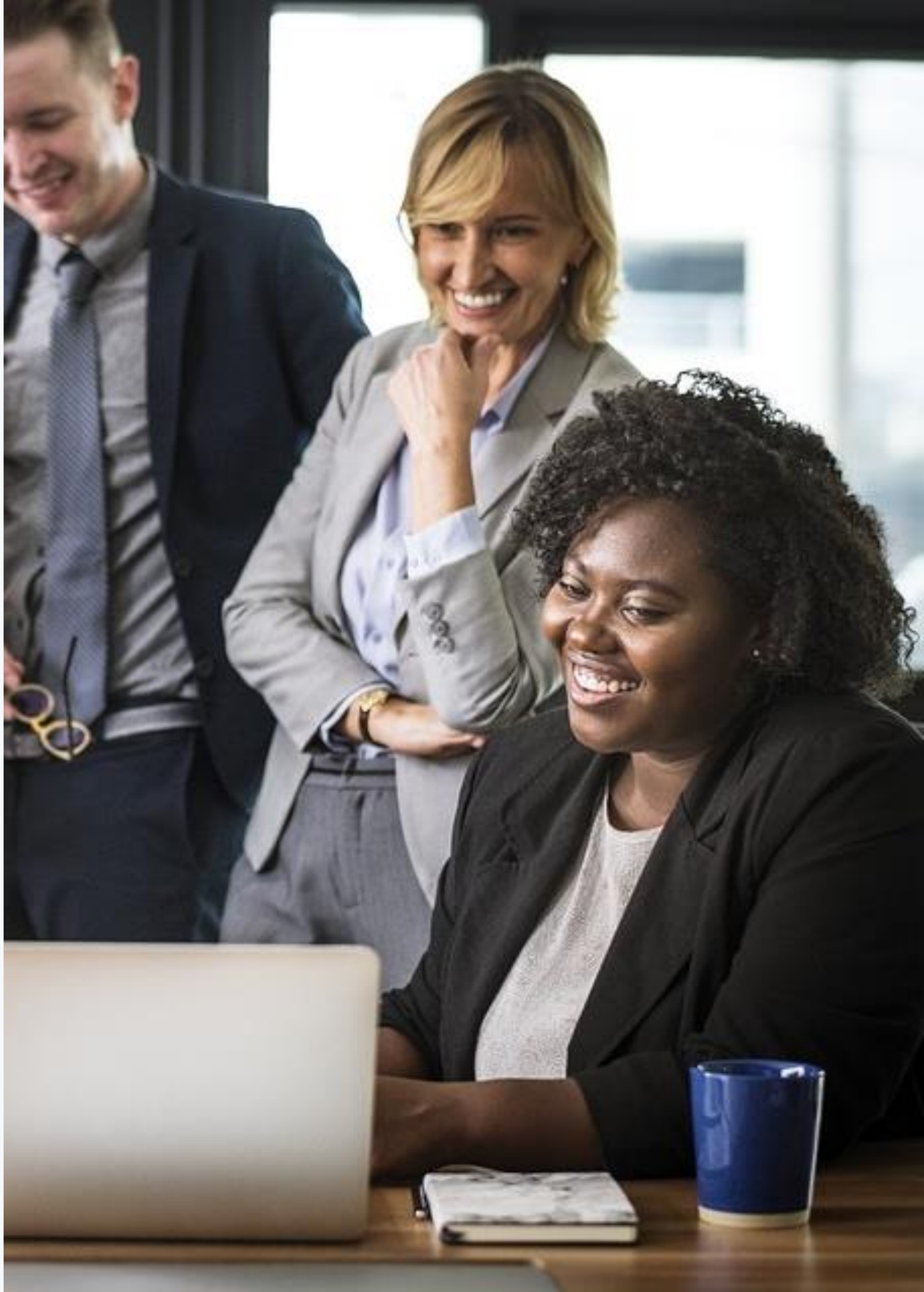
WHAT ORGANISATIONAL STRUCTURES ARE AVAILABLE?

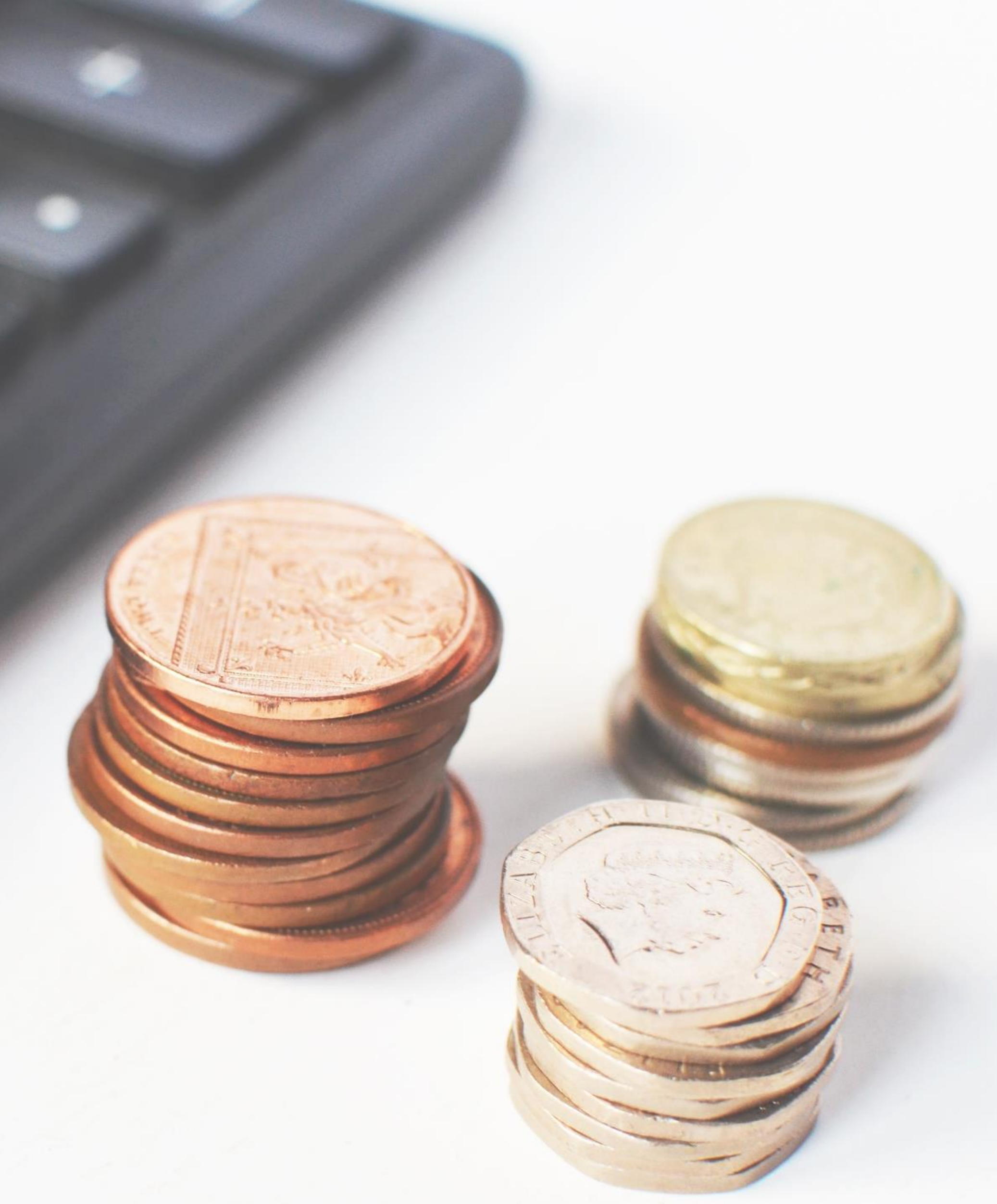
Charitable & Voluntary Groups

- Unincorporated association.
- Charitable trust.
- Charitable Incorporated Organisation (CIO).
- Charitable Company.

Social Enterprises

- Sole trader, Partnership or LLP.
- Limited Company (Limited by guarantee or shares).
- Community Interest Company (CIC).
- Cooperative & Community Benefit Societies.





UNINCORPORATED ASSOCIATION

- A membership association with a set of rules governing who can be a member and what the organisation does.
- Tends to be used for a club, housing association or cooperative.
- Very easy to set up and cheap to run as essentially little or no regulation.
- If charitable aims and income above £5,000 need to register with the charity commission.
- Main drawback is setting up a bank account and getting insurance cover and contracts signed.

CHARITABLE TRUST

- A charitable trust is a more formal arrangement than an unincorporated association which is run by a group of trustees. (You can still have members as well).
- Fairly easy to set up and quite cheap to run although better accounting record do need to be kept.
- If charitable aims and income above £5,000 need to register with the charity commission.
- Main drawback is that the trustees are personally liable for any debts.

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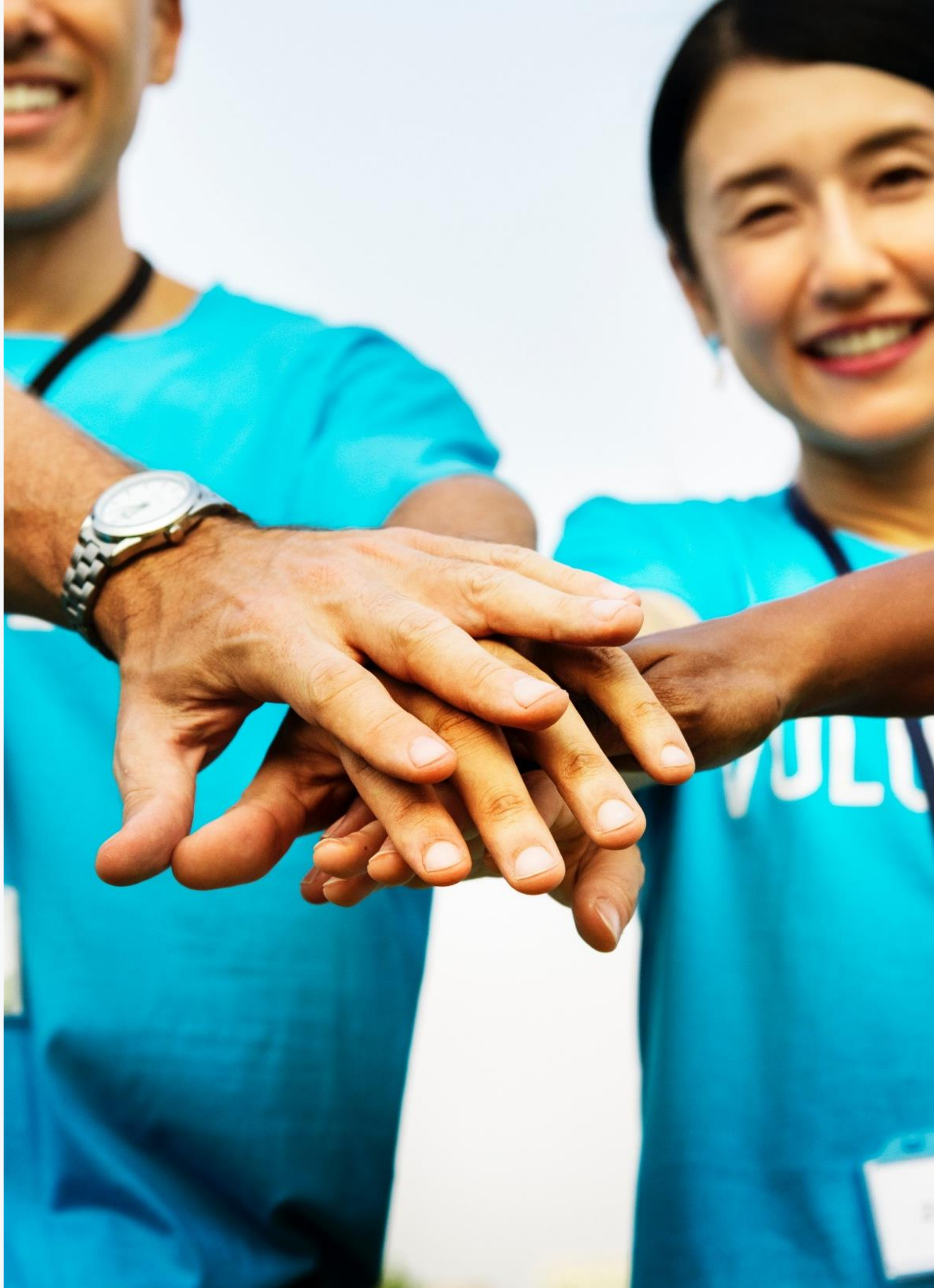
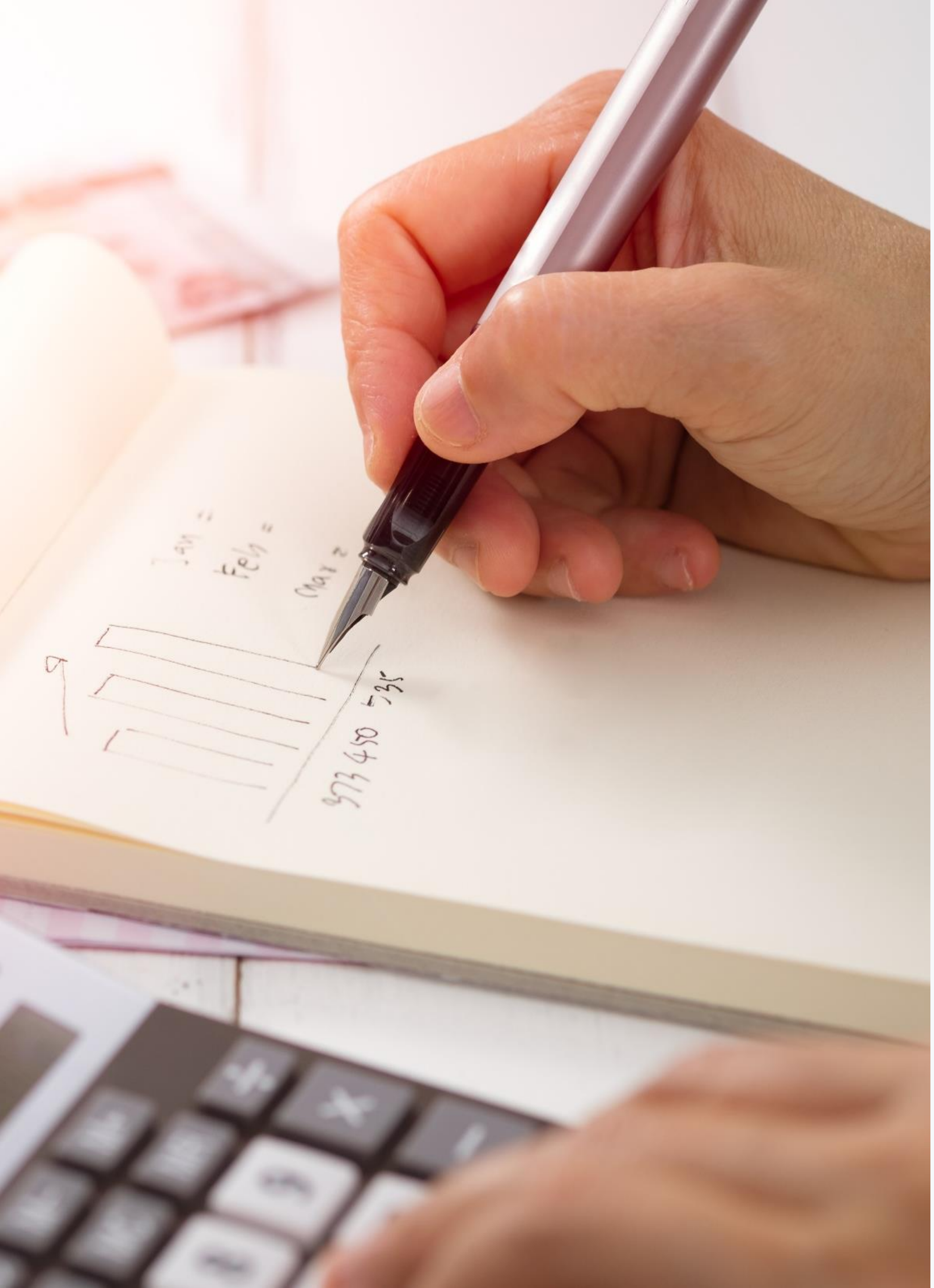
CHARITABLE INCORPORATED ORGANISATION (CIO)

- A CIO is a new (since 2013) legal form of entity.
- You are only registered with the charity commission (not Companies House) but still benefit from limited liability.
- You have to file accounts annually but these can be receipts and payments accounts if turnover is under £250k.
- All charitable companies, regardless of income, have been able to apply to convert from 1 August 2018.

CHARITABLE COMPANY

- A charitable company is registered with both companies house and the charities commission.
- A charitable company is a separate legal entity and the trustees enjoy limited liability.
- You have to file accounts annually and these have to be accrual accounts with charity SORP disclosures no matter what your turnover.
- Main benefit is that the company can own property and borrow money more easily than the other options.





PROS & CONS OF UNINCORPORATED ASSOCIATION

Pros

- Simple & Flexible
- Cheap to run
- May be able to get some grants if you register as a charity.
- Suited to where activities do not give rise to a significant legal risk (i.e. sole activity is grant giving)

Cons

- Many funders want something more formal
- Members are personally liable
- It cannot easily own property
- I cannot easily employ staff or enter contracts (rent)

PROS & CONS OF A CHARITABLE TRUST

Pros

- Quite cheap to establish
- Regulation gives “weight” and makes grants easier to apply obtain

Cons

- Have to produce accounts
- It cannot own property (easily)
- I cannot employ staff or enter contracts (rent)
- Trustees are personally liable (potentially insurable)

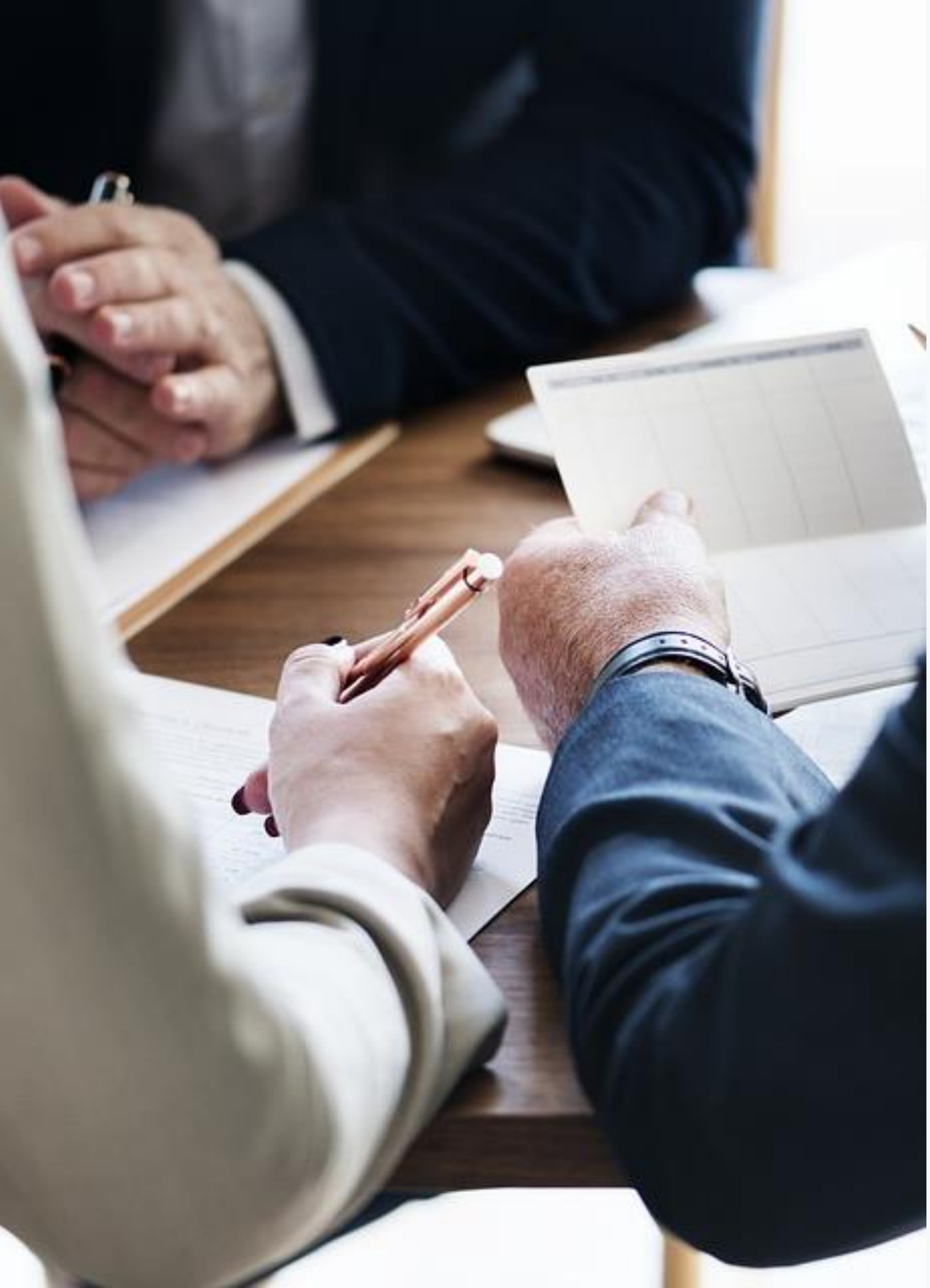
PROS & CONS OF A CIO

Pros

- Simple registration and regulation at Charities Commission.
- No minimum income threshold to register.
- Separate legal entity so can employ staff and enter contracts.
- Trustees have limited liability.
- Accounts only have to go to the charity commission and receipts and payments may be acceptable.

Cons

- In the event a CIO loses its registration at the CC it will cease to exist. Companies limited by guarantee may lose charitable status, but continue to exist as companies registered with Companies House.
- All CIOs have to register with the Charity Commission, regardless of their income, even if they have an income of less than £5,000.
- Perhaps more suited to *smaller* or *simpler* organisations.



PROS & CONS OF A CHARITABLE COMPANY

Pros

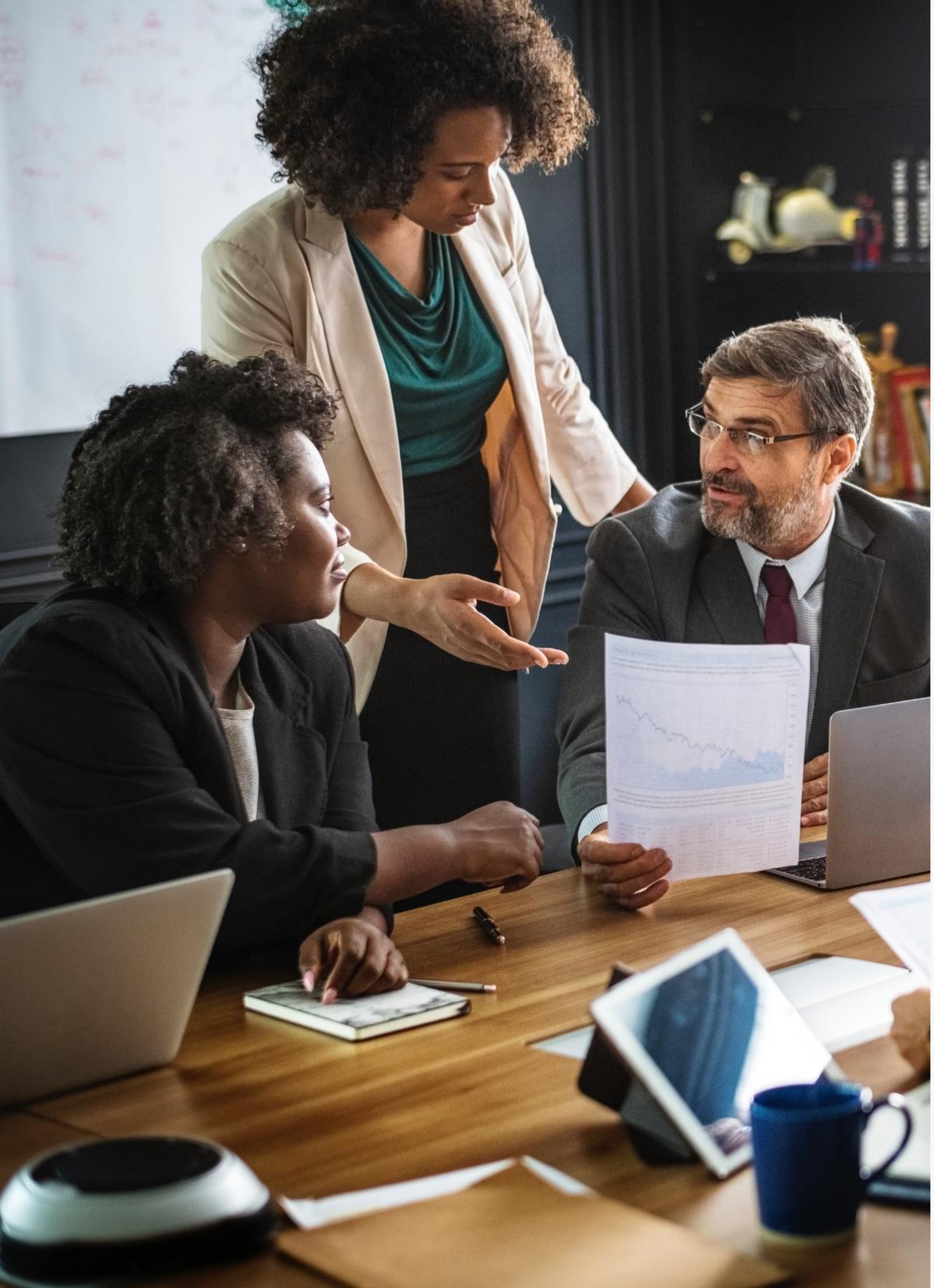
- Tried and trusted, widely known and understood.
- Separate legal entity so can employ staff and enter contracts, Trustees also have limited liability.
- Can borrow money and register a charge enabling it to obtain mortgages .
- Some grant funders only work with charitable companies.

Cons

- More expensive to set up and run
- Problem of duel regulation
- Accounts have to be produced and they have to be SORP accrual accounts

SOLE TRADER, PARTNERSHIP OR LLP

- Rarely if ever used for social enterprises
- Partnership agreement could be use to give social aims but difficult to demonstrate asset lock
- Sole Trader and partnerships do not offer limited liability but LLP’s do and have to file accounts and returns with Companies House.

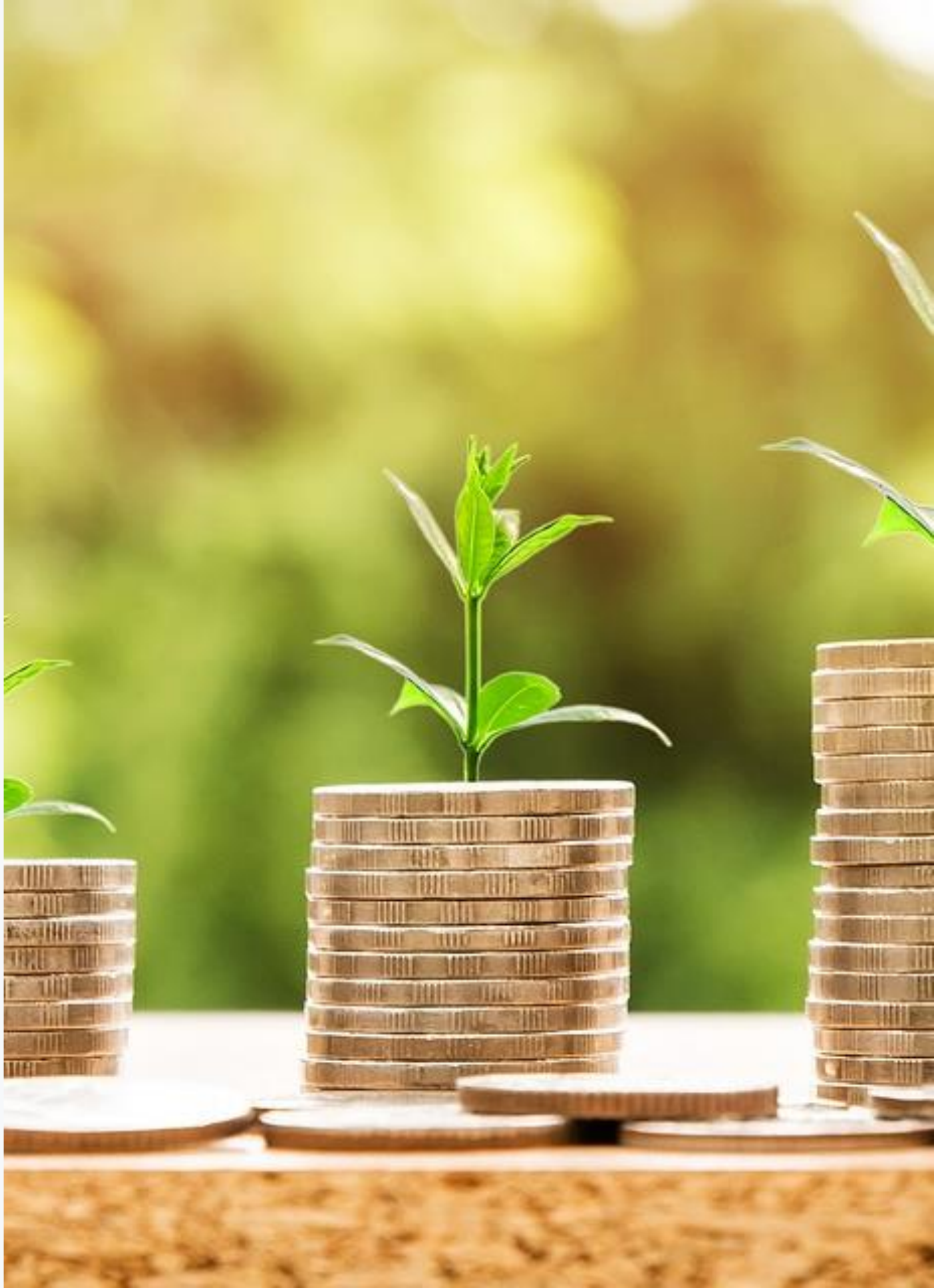


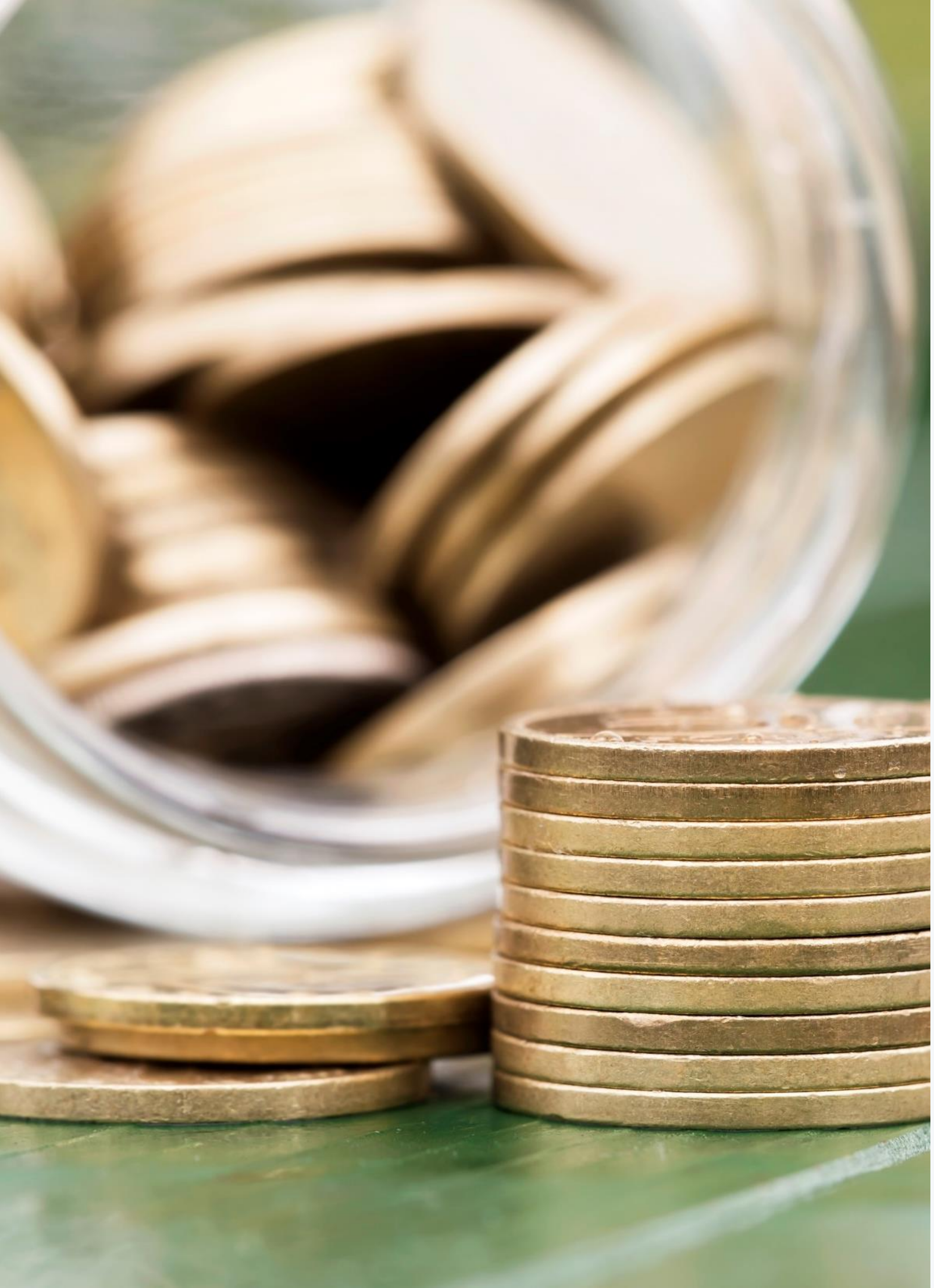
LIMITED COMPANY

- A company has members and a register of the members has to be kept at Companies House
- Can be limited by shares or by guarantee and is a the most common structure used for social enterprises
- Flexible structure and commonly used for both trading subsidiaries and stand alone social enterprises
- Main drawback is having to produce full accrual accounts and pay tax

COMMUNITY INTEREST COMPANIES (CIC)

- A CIC is a limited company with special features to ensure it works for the benefit of the community.
- It has less regulation than a charitable company but does have an “asset lock”
- Grants are generally easier to access than a company but most funders still prefer charities.
- Accounts have to be prepared on an accrual basis and a report has to be prepared for the CIC regulator.
- A CIC can pay its directors but has to pay tax.





INDUSTRIAL & PROVIDENT SOCIETY (IPS)

- An incorporated organisation whose members benefit from limited liability.
- Either a Co-operative society or Community benefit society.
- It has less regulation than a company but must register with the Financial Conduct Authority.
- Run by its members and several sets of model rules offering some flexibility.
- If an IPS has wholly charitable aims it is considered an ‘exempt charity’ but not regulated by the CC.

CIC VS CHARITABLE COMPANY (CC)

- A CIC is more flexible and run by directors who can be paid.
- It has less regulation than a charitable company.
- A CIC can distribute some of its profits to its investors but there are limits.
- Accounts are simpler to produce for a CIC.
- A CIC has to pay tax where as a CC does not.
- CIC's are required to submit an additional community interest company report (form 34) when submitting accounts to companies house.

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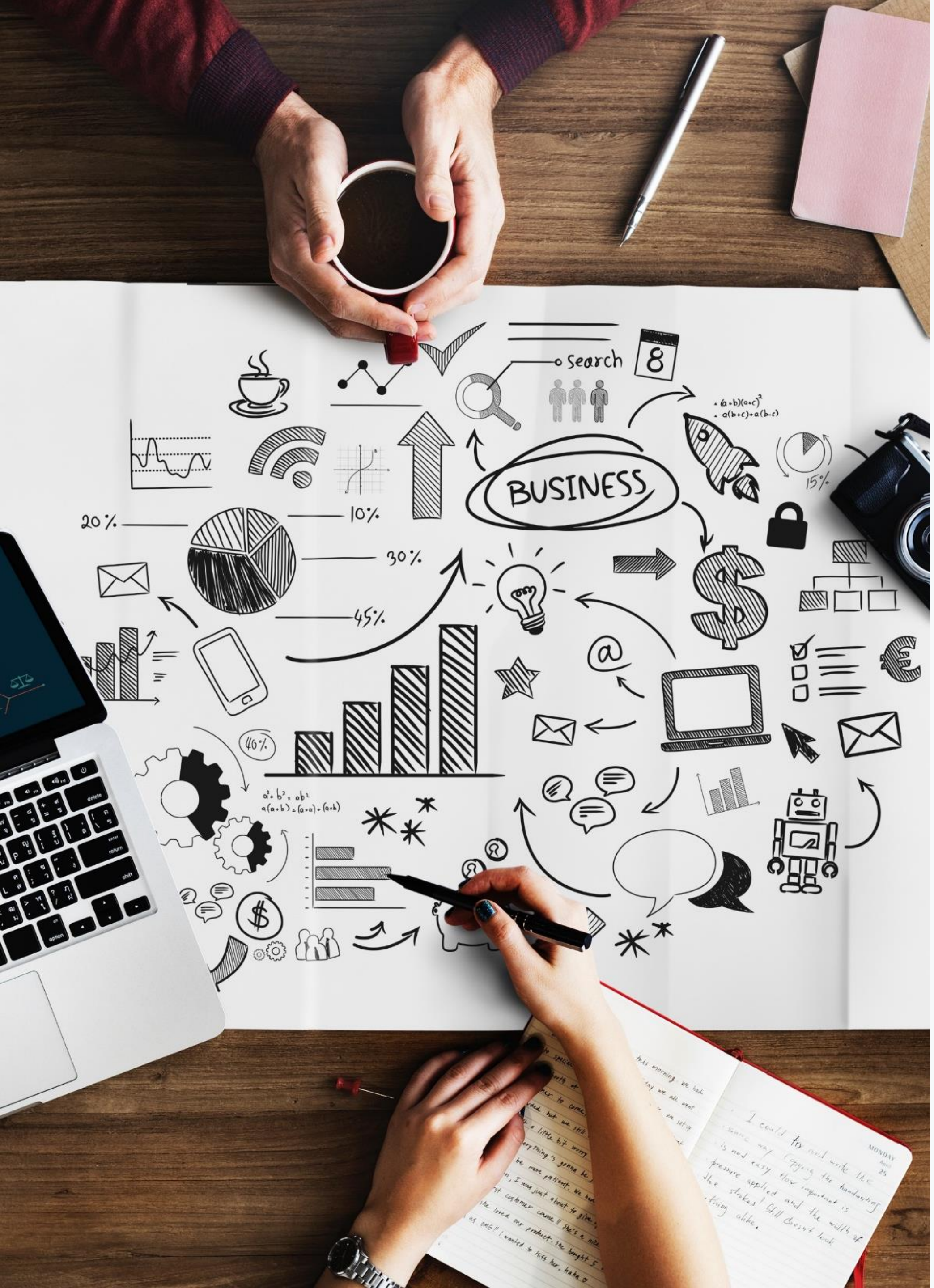


CIC VS LIMITED COMPANIES

- A CIC has an asset lock meaning it profits have to be reinvested in the company or passed to a similar body.
- It is more transparent than a Limited company and greater disclosure of directors remuneration has to be given.
- Legal protection to ensure assets cannot be paid out to directors and members if the CIC is wound up.

WHEN DOES A CHARITY PAY TAX?

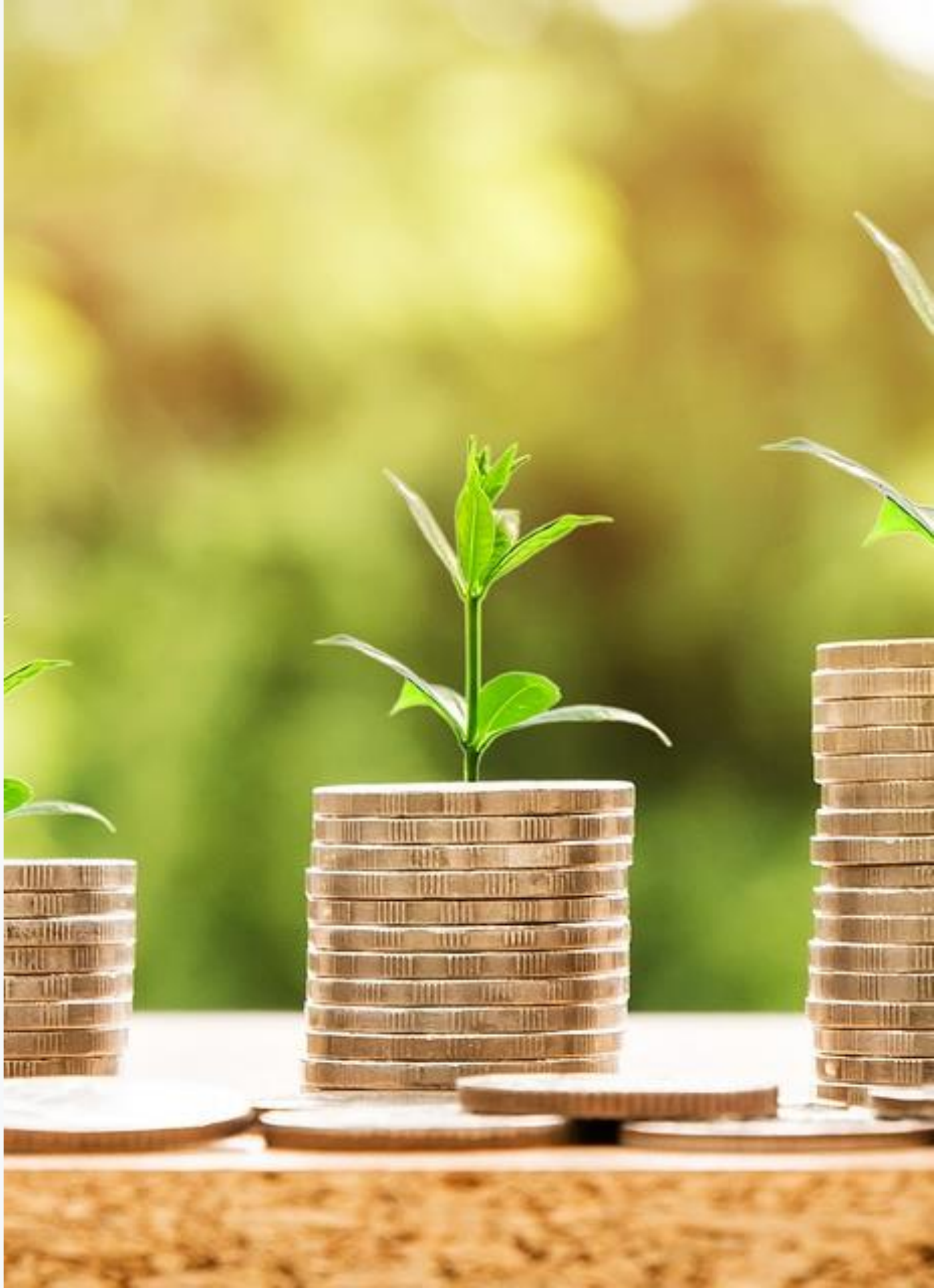
- Charities are generally exempt from paying corporation tax
- Profits from primary and ancillary trading are normally exempt
- Other trading is taxable even in a charity if is more than 25% of turnover or over £50k (whichever is lower)
- Charities also have to register for VAT if the have a taxable business activity and it exceeds the registration threshold.

CAN A CHARITY AVOID PAYING TAX?

- The most common way to get around the problem is to set up a trading subsidiary to carry out the trade
- The company can they gift the profits to the charity and the gift is tax deductible reducing the tax charge
- Be careful as the charity has to own the subsidiary 100% and the gift has to be "paid" (not accrued) prior to the year end as it is deemed a distribution. The only way around this payment is to have a "Deed of Covenant" in place.
- A charity with a subsidiary may be able to avoid the need to register for VAT.

SHOULD THE TRADING SUBSIDIARY BE A LIMITED COMPANY OR A CIC?

- Currently vast majority of trading subsidiaries are companies limited by shares
- To use a CIC you must pass the "community interest test"
- You may find it easier to attract a loan from a "philanthropic investor" as a CIC trading subsidiary
- CIC's now qualify for social investment tax relief which may be of interest if you are looking to attract other investors



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WHAT STRUCTURE WOULD YOU CHOOSE IN EACH SITUATION?

SITUATION 1

- Run by the members
- Elected management committee
- Hoping to apply for grants
- Want to pay the committee
- (What if the committee was voluntary?)

SITUATION 2

- Run by the members
- All members involved in decision making
- Hoping to apply for grants

WHAT STRUCTURE WOULD YOU CHOOSE IN EACH SITUATION ?

SITUATION 3

- Closed membership
- Controlled by the people carrying out the work
- Hoping to apply for grants
- No paid staff
- Surpluses reinvested

- (What if you want to pay staff in the future)

SITUATION 4

- Open membership
- Unelected committee
- Non charitable aims
- Hoping to get grants

SITUATION 5

- Open membership
- Unelected committee
- Charitable aims Hoping to get grants
- Significant trading income


QUESTIONS?

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