

# Taking on social investment: Top 10 legal checklist

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## What does the investor want?

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- To understand business case & why investment is required
- Repayment of capital plus interest or a risk adjusted reward
- A social return on investment (SROI)
- Social investment tax relief (SITR)
- Community investment tax relief (CITR)
- Security if available
- Availability of assets and requisite resources to deliver project
- Good governance (to help investor risk mitigation)

1. Constitutional power
2. Legal structure
3. Best interests of the charity
4. Governance structure
5. Team buy in and tie in
6. Due diligence
7. Security
8. Consents
9. Risk mitigation
10. What if it goes wrong?

- Charitable Co - Articles
- CIO – Constitution
- Trust – Trust Deed
- Express power to borrow and grant security?
- Implied power? Often not acceptable to investor
- No power:
  - amend constitution
  - obtain Charity Commission order

- Incorporated entity or trust?
- Do you need to or wish to incorporate?
- New subsidiary to risk fence risk?
- Is structure appropriate?
  - for granting security
  - for social investment tax relief
  - for a community share offer
- Is conversion required?

- Is project the right project?
- Is borrowing the best option?
- Is investor the right investor for the charity?
- Is grant / donor support available to lower financial risk?
- Trustee conflicts of interest
- Competing considerations - best value v social mission
  - bank, social bank, social investor, supporters

- What does the investor require?
- Adequate policies and procedures
- Project management skills
- Trustee oversight
- Identify your skills gaps – then plug them

- Who is the team to deliver the project?
- Agreements with staff & consultants
  - notice periods / restrictive covenants
- Key agreements to deliver the project:
  - commissioners / suppliers / customers



- Legal, financial, commercial
- Pre-investment legal audit
- Key contracts
- Key staff contracts
- Ownership or use of key assets
- Legal skeletons
- Undertake reserve due diligence on investor

- What can you offer and what does investor require?
- Constitutional power?
- Appropriate legal structure?
- Limited recourse clause
- Supporter guarantee
- S.124 qualified advisor
- s.125 certificate

- Trustee approval
- S.124 consent to charging land and granting debentures
- Regulatory consents
- Bank consent to loan from another person
- Counterparty consent under key contracts

- Identify key risks
- Maintain & review risk register
- Risk mitigation steps
- Keyman / director & officers insurance
- Diversification & multiple income streams

- What will be the investor's approach?
- Liquidation / administration
- Orderly shut down
- Trustee personal liability?
- Adverse publicity
- Charity Commission proceedings
- Insolvency practitioner legal proceedings



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