

Legal Structures for Social Enterprises

SkyLaw

Corporate & Securities Law
— Est. 2010 —

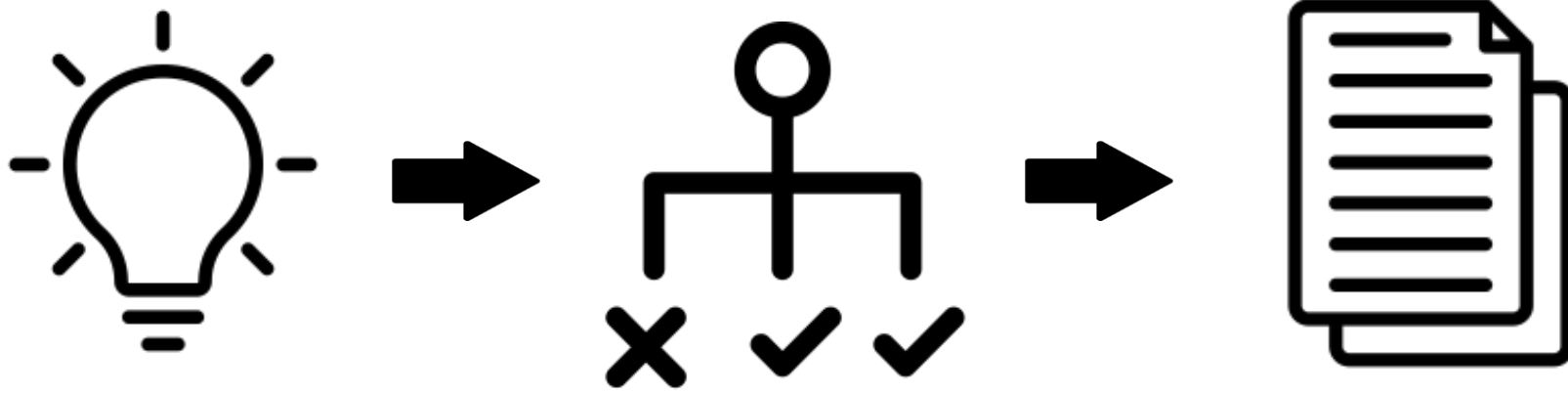
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Who we are and what we do

- **Who we are:** Corporate & securities boutique law firm in Ontario
- **What we love to do at SkyLaw:**
 - Work on interesting work and challenging matters with great people.
 - Guide clients through any phase of their business cycle from getting organized as a start-up, raising an investment with family and friends, negotiating terms of a sophisticated investment, to expanding and buying other businesses or exiting and selling the business.
- **We work with:**
 - exciting new start-ups in all industries
 - growing companies ready for investments
 - companies buying & selling businesses

Who we are and what we do



Start with an idea > Map out options > Document your decision



solarpanda



Who We Are

Solar Innovators

Solar Panda is an innovative company providing home solar systems to rural African communities without access to electricity.

Financial Includers

Our loan-to-own model allows millions of families to have electricity for less than the daily cost of kerosene and mobile phone charging.

Environmental Defenders

By harnessing the power of the sun, our customers have a clean, safe and healthy source of electricity.



solarpanda

Solar Panda secures additional C\$5M in Series A funding

PRESS RELEASE

Toronto, November 1, 2022

Export Development Canada (EDC), a Canadian Crown corporation, has invested C\$5 million in Solar Panda Corporation as part of the company's Series A round. EDC joins Oikocredit and Electrification Financing Initiative (EDFI ElectrIFI) in the Series A round, which is now closed.



News



News

Solar Panda secures US\$8M in Series A funding

PRESS RELEASE

Solar Panda secures US\$8M in Series A funding to further its goal of bringing energy access and services to millions of people living without reliable electricity

July 6, 2022, Toronto, Canada; Nairobi, Kenya; Amersfoort, the Netherlands; and Brussels, Belgium

[Solar Panda Corporation](#), a Canadian company that designs, manufactures, and sells pay-as-you-go (PAYGo) solar home systems in Kenya, has raised US\$8 million in Series A funding, jointly led by impact investors [Oikocredit](#) and the EU-funded [Electrification Financing Initiative \(EDFI ElectrIFI\)](#).

What is a social enterprise?

Revenue-generating organization with a social impact

No specific legal structure

Wide spectrum from a charity to a for-profit corporation with a social impact goal

Social or a commercial venture

Legal Structures vs Status/Certification

Legal Structures

INCORPORATED

1. Business Corporation
2. Not-for-profit Corporation
3. Cooperative

UNINCORPORATED

4. Sole Proprietorship
5. Partnership
 - Limited Partnership
 - General Partnership
 - Limited Liability Partnership
6. Association

Certification/Status

1. B-Corp
2. Charity
3. Nonprofit

LEGAL STRUCTURES FOR SOCIAL ENTERPRISES

1. Corporation

Distinct legal entity that issues shares to its owners. Shareholders have votes proportional to the type/number of shares purchased

PROS

- Limited liability
- Better suited to attract investments
- More scalable than not-for-profits
- No limit on profits
- Mission set by shareholders

CONS

- Additional costs to maintain the corporation and file tax returns
- Risk that business objective can be replaced by resolution
- Taxed as regular business (no reliance on tax-deductible donations)

2. Not-for-Profit Corporation

Distinct legal entity that issues memberships and does not distribute dividends.

PROS

- Limited liability
- Better suited to attract donations (as a charity, in exchange for tax receipt)
- Members have similar rights as shareholders
- Focus on social cause since no dividends are payable

CONS

- Additional costs to maintain the corporation and file tax returns
- Members do not have a financial stake in the corporation and do not receive dividends
- Cannot seek equity financing
- More challenging to make it scalable

3. Cooperative

Democratically owned association that issues memberships. Members typically have one vote regardless of stake, but cooperatives can also issue non-voting investment shares.

“one member, one vote” rule – regardless of size of investment

PROS

- Easy to start up with like-minded members
- Easier to raise capital than a not-for-profit corporation (investment shares)
- Purpose is built into business model and must be adhered to

CONS

- Purpose may evolve with member goals
- Limits on dividends to members fixed in charter
- Administrative and regulatory barriers are higher
- Difficult to raise capital vs corporation
- Cannot rely on tax-deductible donations
- Scalability is limited by number of members

4. Sole Proprietorship

Unincorporated business owned by a single person. No distinct legal entity.

PROS

- Simpler and easy to set up than a corporation
- Owner is the decision maker (investing profits, etc.)
- All profits go to owner

CONS

- Unlimited liability
- Difficult to raise capital and find government funding
- Taxed at personal rate (could be high if profitable)
- Lack of continuity (if you are unavailable)

5. Partnership (General, Limited and Limited Liability)

Business relationship between 2 or more persons with a view to making a profit.

PROS

- Simple to create and dissolve
- Flexible to operate
- Share costs with partner(s)
- Equal share in management, profits, assets
- Taxed individually
(beneficial if income is low)

CONS

- Unlimited liability (personal assets to pay off debt)
- Difficult to raise capital
- Financially responsible for partner's decisions
- Finding the right partner (potential for conflict in decision-making)

6. Association

Unincorporated collection of individuals acting together.

PROS

- Flexibility on operations and governance as it is not governed by specific law
- No requirement to file annual corporate forms

CONS

- No liability protection as it is not legally independent from members
- Less guidance on dispute resolution
- Cannot enter contracts, sue/be sued, hold property

CERTIFICATION/STATUS

Certification or Status

B-Corporation



Certification by B-Lab of companies that meet high standards of social and environmental performance, accountability, and transparency.

Charity



Registered status granted by the Canada Revenue Agency making the enterprise exempt from tax.

Nonprofit



A status of an organization recognized by the CRA if it fulfills certain requirements to be exempt from paying tax.

B Corp

Certified enterprises from B Lab (a nonprofit organization) if they meet certain social and environmental standards.

PROS

- Recognized globally
- Trusted status with communities
- Ability to attract employees and investors

CONS

- Rigorous requirements – minimum score of 80 on Impact Assessment, pass risk review and meet baseline standards for multinational corporations
- Time investment to get certified
- High level of scrutiny from activists

B-Corp Example – Unwrapit Inc.

**UN
WRAP
IT**



Certified



Corporation[®]

Unwrapit is on a mission to help companies break free from the conventional thinking that surrounds corporate gift giving. Our digital gifting platform offers a way for companies to give gifts to their clients, event attendees or employees through a fully brandable and personalized gift experience, at any scale. The gifts are low/no waste and sustainably-minded, and recipients are able to choose a gift that resonates most with them.

B-Corp Example – Unwrapit Inc.

UN
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3. The purpose of the Corporation shall include, but is not in any way limited to or restricted by, the creation of a positive impact on society and the environment, taken as a whole, from the business and operations of the Corporation, which impact is material in view of the size and nature of the Corporation's business.

4. The directors shall, when deciding what is in the best interests of the Corporation, consider the short-term and the long-term interests of the Corporation and the interests of the Corporation's shareholders, employees, suppliers, creditors and consumers, as well as the government, the environment, and the community and society in which the corporation operates (the "Stakeholders"), to inform their decisions.

5. In discharging his or her duties, and in determining what is in the best interests of the corporation, each director shall consider all of the Stakeholders (defined above) but shall not be required to regard the interests of any particular Stakeholder as determinative.

6. Nothing in this article express or implied, is intended to create or shall create or grant any right in or for any person other than a shareholder or any cause of action by or for any person other than a shareholder.

7. Notwithstanding the foregoing, any director is entitled to rely upon the definition of "best interests" as set forth above in enforcing his or her rights hereunder, and under federal law and

such reliance shall not, absent another breach, be construed as a breach of a director's fiduciary duty of care, even in the context of a change in control transaction where, as a result of weighing other Stakeholders' interests, a director determines to accept an offer, between two competing offers, with a lower price per share.



Charity

Organizations or foundations that use their resources for charitable purposes, registered with the Canada Revenue Agency.

PROS

- Issue official donation receipts
- Exempt from paying income tax
- Credibility
- Many goods and services are exempt from HST

CONS

- Obligation to file annual forms
- Meet annual filing and spending requirements
- Maintain status as registered charity
- Devote resources to charitable purposes
 - the relief of poverty
 - the advancement of education
 - the advancement of religion
 - other purposes that benefit the community
- Public disclosure of financial statements and information

Non-Profit Organization

Organizations operating solely for social welfare, civic improvement or any other purpose except profit.

PROS

- Generally exempt from paying income tax if recognized by the CRA
- No registration process for income tax purposes
- No spending requirement

CONS

- Cannot issue donation receipts for tax purposes
- No designation
- Few supplies are HST exempt

OUR ROLE

POINT you in the right direction.



- **Purpose**
 - How important is the mission/cause?
- **Ownership**
 - Who controls the entity?
- **Investors**
 - Will you need funding? What will attract investors?
- **Navigating Decisions**
 - Who is involved in the governance?
- **Tax**
 - Consider tax implications with a tax advisor!

Purpose

Questions to Consider

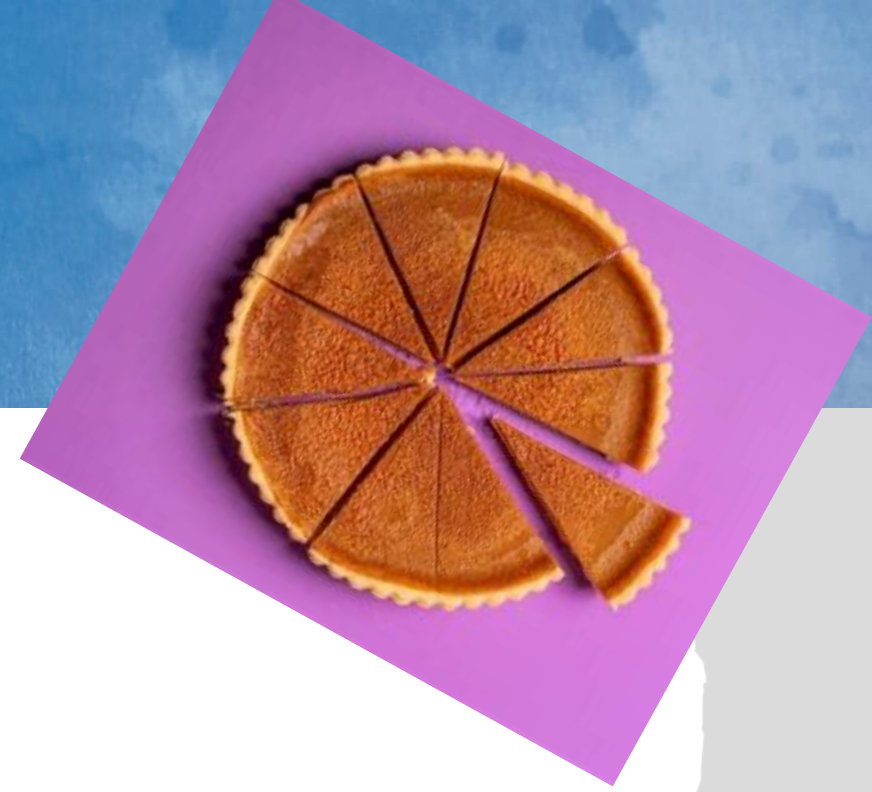
- Who determines the purpose/mission?
- How easy is it to change the mission over time?
- How does the risk of the purpose changing affect other considerations such as funding?



Ownership

Questions to Consider

- Who are the owners/members of the enterprise?
- What rights do the owners/members have to participate?
- What liabilities do owners/members have?
- Is it important for investors that they own a piece of it?



Investors

Questions to Consider

- What type of funding is needed (government funding, private or institutional investors)?
- Based on the funds needed, what legal structure is preferred?
- Is the structure attractive to investors?
- What do investors receive in return?



Navigating Decision-Making



Questions to Consider

- Who will make the decisions for the business?
How will it be governed day-to-day?
- What documents will govern decision making?
 - Shareholder Agreements:
 1. How money comes in
 2. How money goes out
 3. How decisions are made
 4. How shareholders exit
- How can decision-making change over time?

Tax

Questions to Consider

- Is a tax-exempt status important?
- Is the goal to issue tax receipts to donors?
- Will the business be taxed as a separate entity or flow through your personal taxes?
- How onerous are tax obligations?



Ask yourself, what's the POINT?

Thank you!