



IWI

Investment Wānanga

Māori Economic Development Taskforce

# Appendix One: Legal Structures

Eric Lucas / Mark Paterson

August 2010



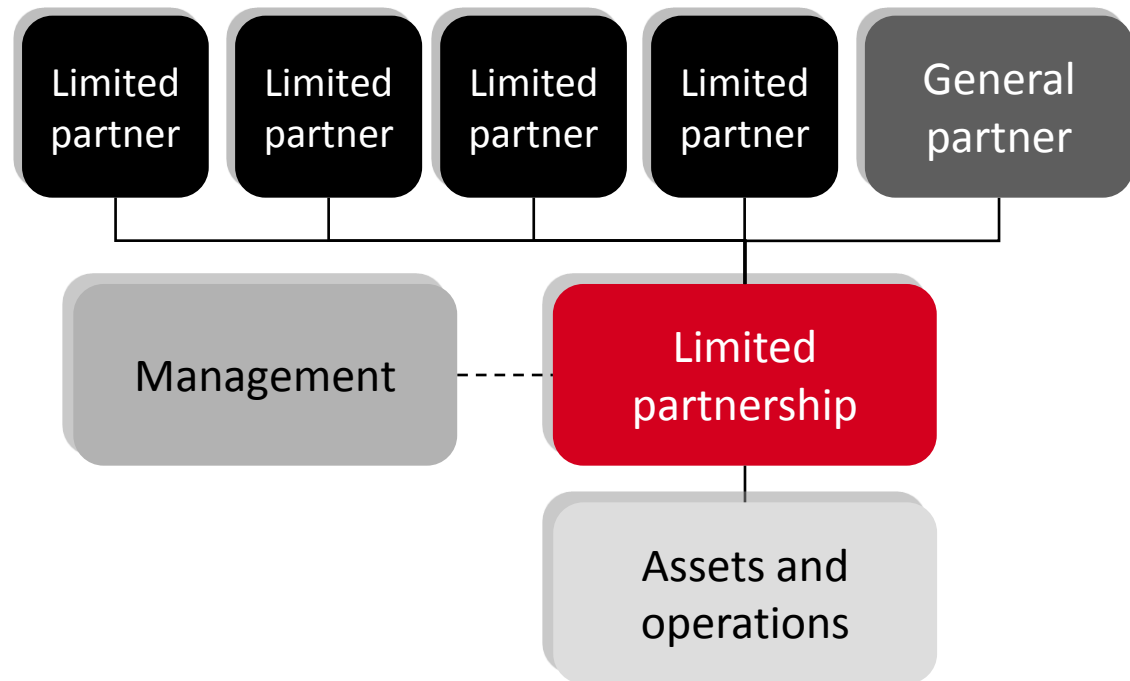


## What structures are available for the Special Purpose Vehicle?

- Limited Partnership
- Company
- Unincorporated joint venture
- Trust

# Limited partnership

- Limited partners hold 'shares' in the partnership
- General partner is a company
- General partner manages the limited partnership
- Limited partners hold shares/voting rights in the general partner





## Limited partnership

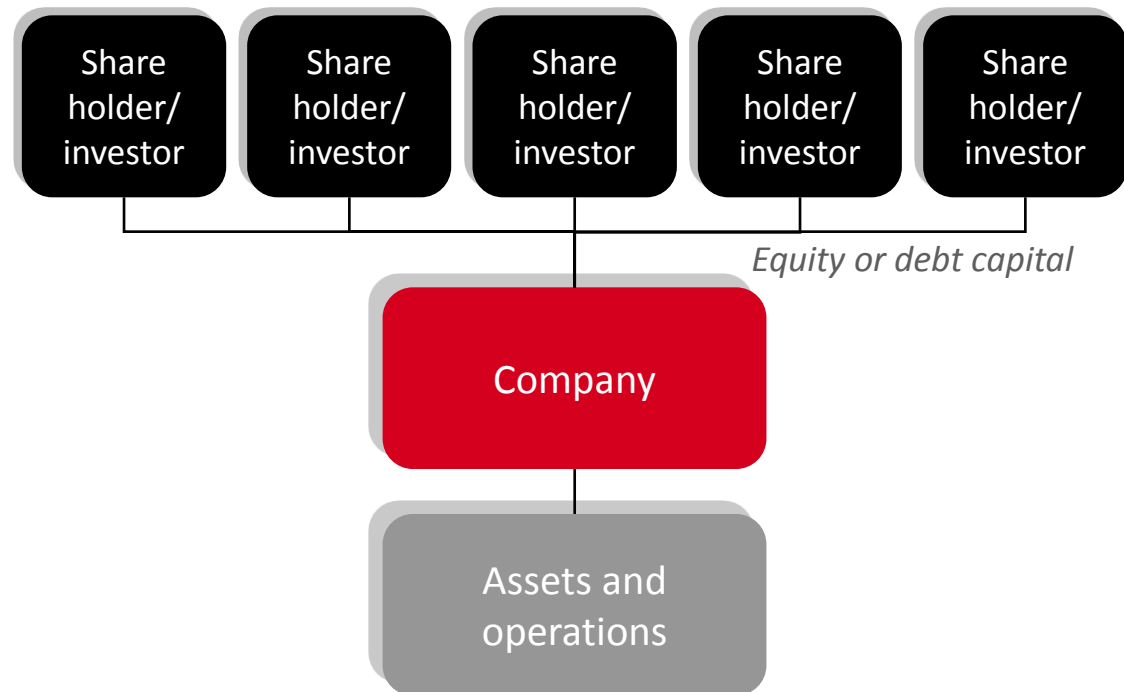
- Governed by:
  - Partnership agreement
  - Investment mandate
  - Board and Constitution of the general partner
- Limited partners not involved in day-to-day management
- Limited partners vote on key strategic decisions:
  - Changes to partnership agreement/investment mandate
  - Appointment of Board of general partner
  - Approving engagement of contract manager

## The limited partnership has 3 key advantages

- Liability of limited partners is limited to their capital contribution:
  - Limited partners may not take part in day-to-day management
  - General partner has unlimited liability for the limited partnership's obligations
- Flow-through treatment for tax purposes
  - May allow income to be tax-exempt for limited partners with charitable status, or subject to Maori Authority tax rate of 19.5%
  - Change in limited partners may trigger taxable event
- Governed by clear Act of Parliament
- Also possible to apply more flexible governance structures depending on what the partners want

# Company structure

- Shareholders and investors provide debt and equity capital
- Equity capital confers voting rights in proportion to shareholding
- Operation of Company overseen by Board of Directors
- Company is a separate legal entity



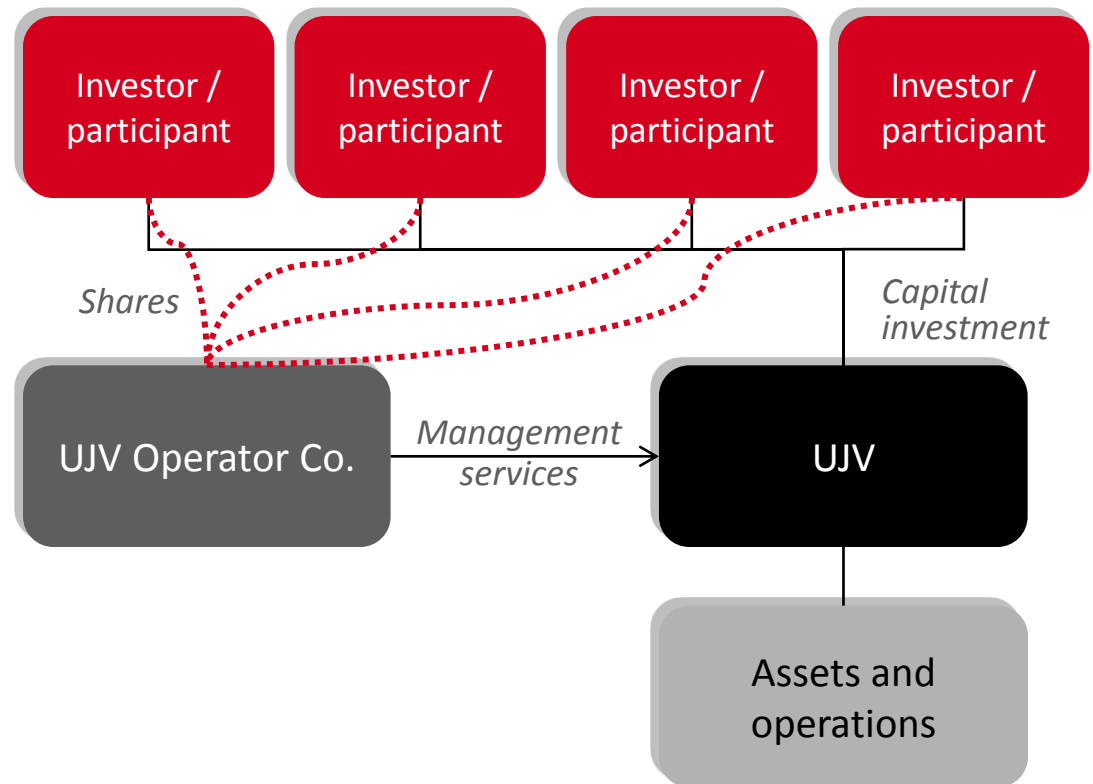


# The Company structure offers greater flexibility of funding options

- Key advantages:
  - Well-understood and straightforward to set up
  - Flexibility of funding options (equity, bank funding, external debt, preference shares, etc.)
  - Entry and exit of investors is generally straightforward
  - Shareholders' agreement can be prepared to govern relationship between investors
- Other aspects:
  - Company subject to 30% corporate tax
  - Investors may have to pay tax on dividends if not imputed
  - No flow-through tax treatment for shareholders

# Unincorporated joint venture

- Participants in the JV make a joint agreement to undertake a particular transaction(s)
- A UJV is not a separate legal entity
- UJV is treated as transparent for tax purposes.





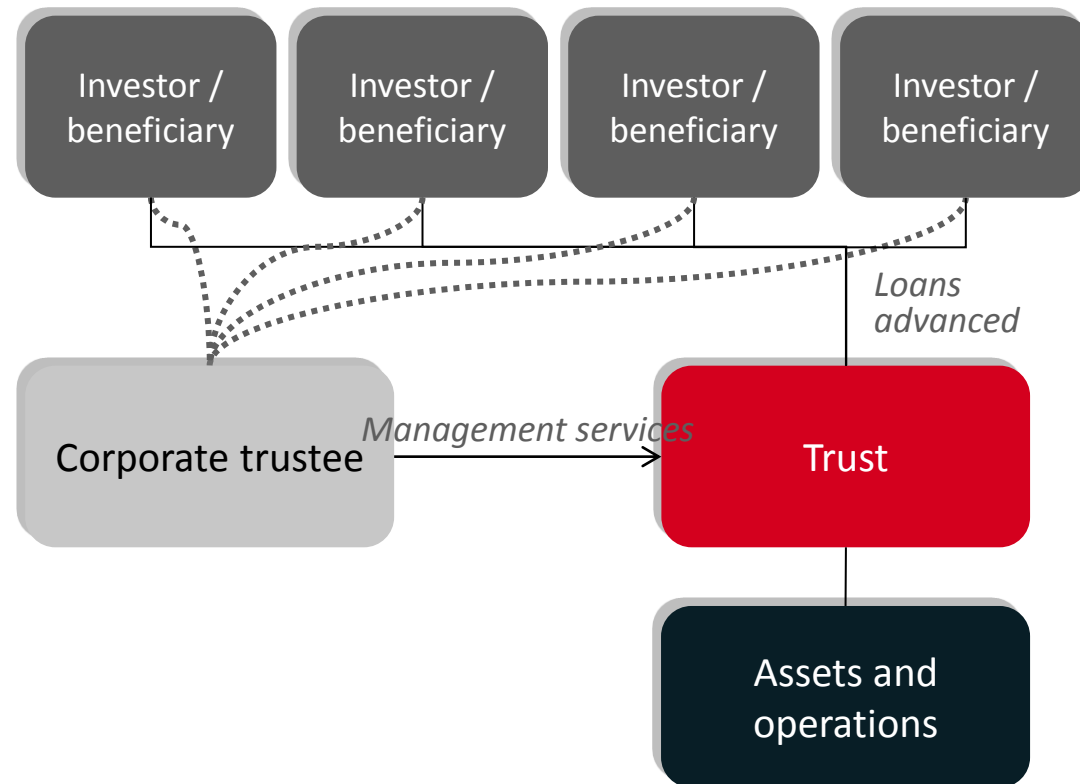


## Unincorporated joint venture – key points

- Income and expenses are attributed to the participants in accordance with the terms of the joint venture agreement (e.g. generally in proportion to the amount invested).
- Participants in an UJV will be liable for the obligations of the UJV (generally on the same basis)
  - Can limit this by participants entering JV via a company
- UJV is not a separate legal entity
  - Funding options are limited to the ability of its participants to provide funding
- Joint ventures are not commonly used in NZ as an investment vehicle, due to the complexity and the large capital contribution needed.
- Participants generally incorporate a management company overseen by a Board

# Trust

- Trust is a legal arrangement rather than a separate legal entity
- Constituted with settlor, trustees and beneficiaries
- Corporate trustee
- Trust can borrow but cannot issue equity
- Trustees are personally liable for the trust
- Beneficiaries may be required to guarantee trust obligations





## Trust – key points

- Trustee has fiduciary interest to act in best interest of beneficiaries and in accordance with Trust Deed
- Board of corporate trustee would sign resolutions for any actions to be taken by management
- Exit/entry more complicated than other structures