Suffolk County Council

Building on your Business Idea

Overview Guidance to Legal Forms & Organisational Structures

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Organisational Forms

Suffolk County Council Business Development
Version 1, May 2011

Purpose of this guide

Have you got an idea for a business venture, would you like to set up a new organisation or take a service outside your organisation to make a profit or as a social enterprise? If you are thinking about taking this step , do you know what type of company to set up or what legal framework you need to be able to achieve the right outcomes?

These guides are designed to give you some basic advice about what types of structures to look at and how they could help you to achieve your aims as an entrepreneur.

They are not meant to give you a definitive answer, and you should always seek independent professional advice, but they will provide you with information to guide your decision-making process, and lead you to advice and links to help your thinking.

Please note this document is for general information only and before acting upon its content you should always take independent professional advice.

If you would like more information please contact these people in the Business Development Team. They will be able to direct you to more information and may be able to put you in touch with others who have already been through this process.

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Introduction: Organisational types and legal forms

One of the first tasks for any prospective business is to understand legal and governance structures and choose ensure they are suitable for the aims and objectives of the organisation. The legal structure, and the governance arrangements it sets in place, are key to making sure the business can deliver according to its core principles.

Understanding the answers to these questions can help to determine what type of structure and corresponding legal form a business needs to fulfil its core purpose.

- What are the aims or purposes of the organisation?
- Will the organisation be taking on a level of financial risk, holding property or entering into contracts
- Would the organisation benefit from a participating membership?
- Will the organisation to be a registered charity?
- Do you want to share out any profits made by the organisation to its members?
- Do you wish to raise funds from the public by issuing shares?
- Do you wish to protect the assets of the organisation from being distributed to members, shareholders or for private benefit?
- Do you want employees of the organisation to sit on its governing body?
- Do you intend the organisation to trade in order to generate income?

If you're finding it difficult to understand the choices available and whether they will achieve what you need for your business there are decision-making tools on the internet that will help you through the process.

A decision making tool will take you through some of the key considerations when deciding what structures and forms to choose.

The tools in the box shown will take you through a thinking process. They provide different levels of detail and may lead you to different conclusions depending on your answers. Like this guide, they are not foolproof, but they will give you a good starting point

Good Luck with your idea!

Decision making tools

http://www.getlegal.org.uk/decision-tool.html/

http://www.selectastructure.uk.Co-op/

Organisational Structures

It is important to note that in law an organisation is identified by its legal form. Common organisational types include Co-operatives, mutuals, community enterprises and social enterprises.

Organisational structures describe how organisations function: who is in control, the objects and powers of the organisation, and how different parts of an organisation relate to each other. Most organisations have a governing document that describes their structure. The contents of a governing document are heavily influenced by the legal form used by the organisation, for example some voluntary and community organisations might also choose to become a specific organisational type to assist with their branding, support and recognition.

Legal Forms

This means the sort of body an organisation is in the eyes of the law, e.g. whether it is a company, a trust or an association. Some legal forms are governed by statute e.g. the Companies Acts; others are governed by case law. Legal forms can be either incorporated or unincorporated.

Choosing the most appropriate legal form for your organisation is important because it will determine the powers and objects of your organisation, how it is regulated and how it trades. It is important to decide whether your organisation should apply for charitable status, and how this might influence your choice of legal form.

The choice of organisational and legal form is critical for the long term sustainability of your organisation. It is important to look at both your organisational structure and your legal form together to assure yourself that they serve the correct purpose.

Organisational Structures

- Co-operative & Mutual
- Employee-owned business
- Community Enterprise
- Community Land Trust
- Social Enterprise
- Social Firm

Legal forms

Unincorporated

- Association
- Trust
- Partnership

Incorporated

- Company limited by guarantee/shares
- Industrial and provident society
- Community interest company
- Limited liability partnership
- Charitable incorporated organisation

Legal status

- Charitable status

Overview

Summary
Most public service externalisations are likely to be incorporated. There is a range of combinations of legal forms with charitable status, asset lock, and Co-operative or mutual structures.

Incorporated or unincorporated?

Incorporation means creating a legal identity for an organisation that is distinct from its members, a "corporate body", with its own rights and duties. In an unincorporated organisation, the law does not recognise any distinction between the organisation and its members; the organisation simply means a collection of its members. We expect in most divestment circumstances that incorporation will be advisable.

Advantages and disadvantages of incorporation

	Unincorporated organisation	Incorporated organisation
Liability	- Individual members of the unincorporated organisation have unlimited personal liability – so may have to meet any outstanding debts personally.	+ Individual liability is limited to guarantee (often nominal £1) or unpaid share capital.
Ownership	- Unincorporated organisation cannot enter into contracts or own property. Personal responsibility for contracts and property will be with one or more members of the organisation.	+ A corporate body may own property and enter into contracts in its own right.
Risk	- Risk (and liabilities) are likely to be unequally distributed among members.	+ Risk is more equal. All members are treated the same unless some other agreement is in place.
Cost	+ There are generally no or limited start-up costs.	- There will be start-up costs plus annual fees (although relatively small amounts)
Administration	+ None needed by law (unless a charity)	- Ongoing records to be kept and filed with the appropriate registry
Privacy	+ Completely (unless a charity)	- Certain details, such as governing body members' addresses, are on personal records.

Matching legal forms with organisational requirements

	Legal Form	Do its members have limited liability?	Is it suitable for charitable status?	Does it have an asset lock?	Can it be organised as a Co-operative or mutual?*
Unincorporated forms	Partnerships	No	No	No	No
	Associations	No	Yes	No (unless a charity)	No
	Trusts	No	Yes	No (unless a charity)	No
Incorporated forms	Limited Liability Partnership (LLP)	Yes	No	No	Yes
	Company Limited by Guarantee	Yes	Yes	No (unless a charity)	Yes
	Company Limited by Shares	Yes	Generally no	No (unless a charity)	Yes
	Community Interest Company (CIC) limited by guarantee or shares	Yes	No	Yes	Yes
	Charitable Incorporated Organisation (CIO)	Yes	Yes	Yes	No
	Industrial & Provident Society (IPS) – bona fide Co-operative	Yes	No	No	Yes
	Industrial & Provident Society (IPS) – society for the benefit of the community	Yes	Yes	Optional	Yes

**Note: A Co-operative/Mutual can generally not have charitable status*

Trusts, Partnerships, Associations
Unincorporated forms are unlikely to be suitable for most public service delivery.

Unincorporated forms – trusts, partnerships, associations

In an unincorporated organisation, the law does not recognise any distinction between the organisation and its members; the organisation simply means a collection of its members. It is likely that in most circumstances incorporation will be advisable.

Common unincorporated legal forms

Trusts

A trust administers funds or resources donated by individuals /organisations for the benefit of another group of people. A trust is an unincorporated body and does not distribute its profits. It is managed by trustees (one or more individuals or a single corporate trustee). Trustees do not benefit from the trust, but act on behalf of the community for whose benefit the trust is set up. Trusts make their own governing rules and have no legal identity of their own. A trust that is also a charity may only be created where there is a specific asset for the trustees to administer. Trusts may write an asset lock into their rules to secure assets for their intended community.

Note: A number of companies and societies describe themselves as a "Trust" and use the word "Trust" in their registered name. The term "trustee" is also generally used for directors of charitable companies and societies. In these cases, the organisations **do not** have the legal form of a trust.

Associations

This is the most common form of unincorporated organisation within the third sector. Usually chosen when a number of individuals agree or 'contract' to come together for a common purpose - which may be of a social nature. Unincorporated associations make their own rules for running the organisation and set these down in a democratic constitution. A management committee is elected to run the organisation on behalf of the members (if it has any). An unincorporated association cannot own property.

Partnerships

A partnership is a contractual agreement between two or more people that is set up with a view to profit and to share the profits amongst the partners. As a result they are generally not considered suitable for voluntary or charitable organisations.

Partners are treated as self-employed for tax purposes.
In some cases, a partnership may be a suitable starting point for very small organisations or to have a "trial run" of the business idea before committing fully.

What do I need to think about if I aim to choose an unincorporated form?

Why?	Who will benefit from the organisation? Does the organisation wish to trade? If it does, incorporation may be advisable. How does the business plan stack up?
Is "unincorporated" the right way forward?	While an unincorporated form is easy and inexpensive to set up and run, consideration needs to be given to the restrictions of these forms. E.g. is it appropriate for the individual members/trustees of the organisation to hold unlimited liability, including for any outstanding debts? Another consideration is that an unincorporated association cannot as an organisation enter into contracts or own assets. Certainly for larger organisations, the incorporated options may usually be more feasible.
Which unincorporated form?	Once you have decided that the organisation should not to be incorporated, you need to consider which unincorporated form is most suitable: ***A trust*** is the most appropriate vehicle if the organisation is primarily administering funds or resources. ***An association*** may be appropriate if the organisation is relatively small in terms of assets, the objects of the organisation are to be carried out wholly, or partly, by or through its members (i.e. where members undertake office or voluntary work on behalf of the organisation), and the views of local residents and organisations need to be represented through membership or as users. ***A partnership*** may be appropriate when the organisation aims to make profit, and the profit is to be distributed amongst members. Trusts and Associations can also be registered as charitable organisations.
What are the legal requirements?	While unincorporated organisations do not need to be registered with a formal body, a governance document should still be set up – this will be a deed for trusts and partnerships, and a constitution for associations. Trusts and partnerships have their own Acts of Parliament, and there is a large amount of case law on all three forms. If a charitable status is sought for the unincorporated organisation, it must apply to be registered as a charity, unless they are exempt. (See charities)

Company limited by guarantee / by shares

What are they?

Limited companies are regulated by the Companies Act 2006. The Companies Act is flexible, allowing for almost any type of constitutional arrangements, thus, limited companies are commonly used by Co-operatives and other third sector organisations and can be suitable for a wide range of third sector organisations. The governing documents for a limited company are Articles of Association, and they must be registered with Companies House.

Limited Companies have to follow strict regulations and administrative requirements (see below).

What's the difference between a company limited by guarantee and a company limited by shares?

Limited by guarantee
Each member of the company guarantees a certain amount (usually £1), which will be the maximum amount that they will be liable if the company is wound up.

Limited by shares
This is the most common legal form for smaller commercial businesses. A private company issues shares to its members, but is restricted in those to whom it can issue and transfer shares

It is useful to note that, because it is flexible, a company limited by guarantee can operate on a not-for-profit basis.

Limited Company - Summary:
An incorporated legal structure which confers limited liability on its members, commonly used by third sector organisations due to its flexibility.

Key documentation limited companies have to file with Companies House

- Annual returns – a form detailing membership and directors and other key information
- Annual accounts – an annual report of an organisation's activity during the last financial year
- To provide copies of any special, extraordinary or certain types of ordinary resolution of the members

There are penalties for non-compliance.

What do I need to think about?

Why?	What will the company sell, who will benefit from it? How does the business plan stack up?
What is the organisational form?	Is there a particular model you want to run your venture under? Do you aim for employee ownership and/or Co-operative status? Does your company want/need charitable status? A limited company may be an appropriate legal structure for these forms. If, as a social enterprise, you want to include an asset lock, a limited company is not an appropriate form.
Limited by shares of by guarantee?	*Limited by Guarantee* is the most common form for voluntary, community and charitable organisations opting for company status. This form tends to be preferred by grant funders, and is certainly the preferred option if charitable status was considered. It is also the model traditionally preferred by workers Co-operatives, as it better protects the principle of common ownership and "one member one vote". *A private company limited by shares* is a common legal form for smaller commercial businesses. Co-operatives and employee-led businesses can use both guarantee and share models. However, the guarantee model does not permit share capital – if that was necessary go for the share model.
How to register the company?	It is fairly reasonable, easy and quick to register a private limited company with Companies House. There are Model Articles of Association available[1], which can be chosen in their entirety or with amendments. It is important to note that Companies House only checks some of the paperwork it receives for compliance wit the law e.g the name of the proposed company. It does not examine the Articles of Associations to ensure they comply with company law. It is possible to register using a set of articles that actually defy the law. If the articles turn out invalid the company does not really exist in a form that protects those involved in running the company from personal liability for its actions including liability for its debts.

Further info: Companies Act 2006 Guidance

[1] http://www.companieshouse.gov.uk/about/modelArticles/modelArticles.shtml

Community Interest Company (CIC)

What is it?

The Community Interest Company is a business entity established by 2006 legislation. The company will either be limited by share or guarantee. A CIC however, will have a community interest statement and an asset lock.

A community interest company is a company that makes a commitment in its registration process to operate for a social purpose. It will have locked assets; meaning that it cannot generally transfer its profits or assets for less than their full market value. It will also protect any remaining assets for the community if you dissolve the CIC.

To fulfil CIC status, when registering the company you must provide a community interest statement, stating your social purpose and activities which will be carried out to achieve social good. This will be assessed by a regulator. Details are given at the end of this guide.

CICs cannot have charitable status. Charities can transform into CICs however, they will lose their charitable status and any tax benefits associated with charitable status. What is more usual is that a charity will own a CIC in order to trade, and generate profit for use in the social objectives of the charity.

Community Interest Company (CIC) - Summary:
This is a trading company that aims to make a profit and to commit that profit to projects that achieve social good. Its assets are locked

Liabilities and distribution of profits

The personal liability of each member is as high as his/her share/guarantee. Again, this is dependant on the legal form of the CIC.

Salaries can be paid to directors, but this is regulated to prevent high levels of surplus being committed as salaries.

The profit (or surplus) must be used to achieve social good, as stated in the statement of community interest. It is not usual that core public services / statutory services can be classed as social uses.

Distribution of a small % of profits for non social purposes is possible; this % is linked to the Bank of England base rate and is called a dividend cap which must have been approved by the Regulator when the CIC is established. Any profit taken out of the business would be subject to corporation tax at the appropriate level.

What do I need to think about?

Why?	Does the company need to distribute profit from its trading to anything other than social projects, or for re-investment in the business? Do you want to lock in your assets? If you need to distribute profit amongst company members, this isn't the ideal organisational structure to adopt.
Who are the members? How will they benefit?	This is a key question when deciding what legal form to adopt when setting up a CIC. A CIC allows various forms of company ownership, but limits the benefits (profit/divided) that they can realise from the business. You can pay directors and staff market rates in order to attract staff of sufficient calibre to develop the business effectively.
What are the assets?	One of the main reasons for the establishment of a CIC is to create a secure organisational structure which locks assets and commits surplus to community good. This links with the increasing cultural and financial interest on social investment and the generation of wider social good.
Who will be on the board?	Board members will need to be appionted as a part of the governance structure of the business. You should note that from 1 October 2011, the chairman of a CIC will no longer have the right to have a second or casting vote in the case of an equality of votes at a board meeting. In addition, an alternate director will no longer have the right - in the absence of their appointer - to have a separate vote on behalf of their appointer in addition to their own vote. CICs can expand through selling shares, although dividend payments are capped, which ensures that the majority of the money invested in a CIC is tied to that company and its social objectives and are used to benefit the community rather than the shareholders.

Further info:	CIC Regulator website
	Companies House CIC
Advice:	CIC Association

Industrial Provident Societies (including Bone Fide Co-operatives and Societies for the Benefit of the Community)

How can an IPS be distinguished from other businesses?

Industrial Provident Societies are organisations conducting an industry, business or trade, either as a Co-operative or for the benefit of the community, and will be registered under the Industrial and Provident Societies Act 1965. They are mutuals, hence exist broadly to trade and provide benefit to their members. IPSs fall into two categories:

'Bona Fide Co-operatives' (soon to be re-named 'Co-operative Societies). These trade for the mutual benefit of their members

'Society for the Benefit of a Community' (BenCom) (soon to be 'Community Benefit Societies') trade to benefit the broader community. BenComs can apply for exempt charity status with HRMC, but are not regulated separately by the Charity Commission and are not "Registered Charities" (this may soon change).

IPSs may in general conduct any legal business except that of investment for profit. The governing documents of an IPS are known as 'Rules'. IPS's are administered by the Financial Services Authority (FSA), and face fewer administrative and legal requirements compared to those of private companies. They are required to file an annual return and their accounts to the FSA.

So are all Co-operatives and Mutuals IPS's?

Mutuals and Co-operatives are wider terms to describe an organisational structure. An IPS is one of many legal forms that an organisation following Co-operative and mutual principles can follow (see 'Co-operatives and Mutuals')

Liabilities, distribution of profits

Both types of IPS have par value shares, which can only be redeemed (if at all) at face value (often £1, for example). The personal liability of each member is as high as his/her share.

In Co-operatives, any profits may be put into reserves, in Co-operatives it may be put to social/community purposes, or distributed as a bonus to its members.

In a Bencom, surplus must be used for the community uses specified on company start-up.

Industrial Provident Society (IPS) - Summary:

This is a legal form which trades as either a bona fide Co-operative or a society for the benefit of the community (BenCom).

An IPS is democratically run. It can trade and own property; however profits generated can only be distributed amongst members or the community.

What do I need to think about?

Why?	Will the business exist purely to benefit its members or the community? What will the IPS/Co-op/BenCom business sell, who will benefit from the IPS's services? How does the business plan stack up?
Who are the members? How will they benefit?	This is a key question when deciding what organisational type of IPS to set up. There are two main options for IPS: Co-operatives and societies for the benefit of the community. The choice regarding which society to go for depends largely on the purpose of the company and the vision for distribution of profits: should it primarily go to members or social activities in the community? Membership of BenComs will typically be based around a community or locality, and the profits of a BenCom can only be used for community good. A BenCom can also have an asset lock to retain community assets, which is a key objective of many public service spin-offs.
What is the decision making?	An industrial and provident society is always democratically controlled by its members, with a "one member one vote" principle i.e. each member has one equal share, and is equal in decision making, independent of their status or levels of investments. If it is to be a bona fide Co-operative, the regulator requires that the rules of the society comply with the seven Co-operative principles (see Co-operative chapter). For a BenCom, a statement of community benefit is submitted and regulated, as with a Community Interest Company.
How to register?	An IPS has to be registered with the Financial Services Authority. Using a bespoke set of 'Rules' can be expensive and tends to be slower than registering a company, as the FSA examines the 'Rules' carefully. Using 'model rules' can reduce registration costs and timescales. These are available and must be presented through a "sponsoring body" – a list is available from the link below.

Further info: FSA IPS Guidance on BusinessLink website: See also references for Co-operatives and

Incorporated Legal Form

Other legal forms
A Limited Liability Partnership must be engaged in profit making activity. A Public Limited Company (PLC) has substantial costs of establishing and managing.

Other legal forms

Limited Liability Partnership (LLP)

A legal form which provides a corporate body with limited liability for its members, but has a flexible structure and the tax advantages associated with a partnership (i.e. individual income tax, rather than corporation tax, applies to profits and tax is only payable when profits are distributed). A key restriction is that LLPs must be engaged in profit-making activity. It is recommended (but not legally required) to set up a governing document (called a members' or LLP agreement) and file it with Companies House. Membership can be made up of individuals and/or corporate bodies.

This form has recently been used by a number of worker Co-operatives, but is usually not suitable for many third sector organisations due to its requirement to undertake profit making activity.

Public Limited Company (PLC)

In contrast to a Company Limited by Shares, a Public Limited Company (PLC) is largely unrestricted as to whom it may issue and transfer shares. The cost of establishing and managing a PLC are substantial, which makes it appropriate only for larger enterprises that require free movement of its share ownership.

A PLC is unlikely to be an appropriate legal form for a social enterprise.

Legal Status/ Legal Form

Charity and CIO - Summary:
Charities must provide benefit to the public, and their objectives, purposes or aims have to be recognised by law as charitable. Being a charity grants an organisation a legal status on top of its legal form. A Charitable Incorporated Organisation is a new legal form which will be introduced soon.

Charity (and Charitable Incorporated Organisation)

Being a charity grants an organisation legal status on top of its legal form. Charities must provide benefit to the public. Their objectives, purposes or aims have to be exclusively those recognised by law as charitable. Not all charities must register with the Charities Commission. Incorporated charities can also be a limited company, an industrial and provident society or, in time, a charitable incorporated organisation.

Unincorporated charities can be trusts or associations.

Why would we register our organisation as a charity?

Charities enjoy a number of tax exemptions and reductions. Charities have a good public image, and may find it easier to raise finance from donations. A charity may have increased options for applying for and receiving funding, as many funders are only allowed to grant funds to charities.

What are the restrictions and duties?

There are a number of restrictions for charities, particularly related to trading, limitations on the extent of private (including members') benefits, campaigning etc.

Charities with a gross income exceeding £10,000 have a legal duty to send the Annual Return to the Charity Commission each year.

Charities with a gross income exceeding £25,000 must additionally send the Charity Commission their Accounts, Examiner's or Auditor's Report and Trustees' Annual Report.

What is a Charitable Incorporated Organisation (CIO)?

This will be a new legal form for a charity, the regulations of which have not yet been agreed by Parliament. The CIO is created in response to requests from charities for a new structure which could provide some of the benefits of being a company, but without some of the burdens.

Charitable purposes, defined in the Charities Act 2006:

1. The prevention or relief of poverty
2. The advancement of education
3. The advancement of religion
4. The advancement of health or the saving of lives
5. The advancement of citizenship or community development
6. The advancement of the arts, culture, heritage or science
7. The advancement of amateur sport
8. The advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity
9. The advancement of environmental protection or improvement
10. The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
11. The advancement of animal welfare
12. The promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
13. Other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognised as charitable

What do I need to think about?

Why?	Does the organisation have a purpose included in the charitable purposes defined in the Charities Act 2006? Does it meet the public benefit criteria set out in the Act? Do the benefits of registering as a charity (tax relief, image, access to funding) outweigh the administrative burdens and restrictions (e.g. limited scope for trading)?
What is the legal/organisational form?	If incorporated, a charity can operate as a company (limited by shares or guarantee) or Industrial and provident society, or soon as a Charitable Incorporated Organisation. If unincorporated, it can be a trust or an association. Co-operatives cannot gain charitable status, as they act for their members, rather than in the public interest.
What is the governance structure?	Charities are run by a govening body of 'trustees' (who may be called trustees, directors, board members, governors or committee members). The 'trustees' are responsible for "the general control and management of the administration of a charity". Most trustees are volunteers, and receive no payment (except out-of-pocket expenses). Trustees must be recruited before registering as a charity. A charity requires a Governing Document - the legal document defining how the charity will operate. Model governing documents are available from Charity Commission
Do we need to register?	Some organisations that are charities don't have to, or are not allowed to, register with the Charity Commission. These include those "exempt" or "excepted" from registering - exempted charities currently (and this is likely to be subject to change) include those set up as Industrial and Provident Societies, and governing bodies of voluntary and foundation and stage. Charities with an annual income of less than £5,000 can also not register. In these instances, you can still apply to Her Majesty's Revenue and Customs (HMRC) for tax relief. Like a registered charity number, you can use an HMRC charity number as evidence of your charitable status.
How to register?	If the charity is to be incorporated as a company, it needs to be registered with Companies House before an application for charitable status can be made. Registrations are online via the Charity Commission's website. Governing documents, along with other evidence such as trustees' declarations, need to be submitted. If charities use approved governing documents, the registration process is more straightforward. Bespoke governing documents, whilst making the registration process longer, may be appropriate to ensure more specific and robust governance arrangements.

Further info: Charity Commission: A wealth of information on setting up and running a charity.

Charity Commission: Model governing documents

Charity Commission: Information about Charitable Incorporated Organisations:

HM Revenues and Customs: Tax guidance for charities:

Note: Whilst it has a wealth of information and advice on its website, the Charity Commission can not advise you individually on setting up your charity or advise you if it is the right decision for your organisation.

Co-operatives, Mutuals and Employee-owned businesses

'Co-operative', 'Mutual' or 'Employee-Owned Business' do not describe a legal status, but an organisational form.

What's the difference between Mutuals and Co-operatives, and what is an Employee-owned business?

in a public sector context, *Mutuals* are businesses that are owned by their members. They can operate as employee-owned, co-operative or social enterprises. Mutuals may abide by the Co-operative values and principles, but do not have to.

Co-operative values:

Self-help, self-responsibility, democracy, equality, equity, solidarity. Ethical values of honesty, openness, social responsibility and caring for others.

Co-operative principles:

- Voluntary and open membership
- Democratic member control
- Member economic participation
- Autonomy and independence
- Education, training, information
- Co-operation among Co-operatives
- Concern for community

Co-operatives are democratically controlled by members and act in the interests of members. Co-operatives should follow the International Co-operative Alliance values and principles.

In an *employee-owned business*, employees will own at least 51% of the business (a Workers Co-op would be fully owned by its members); remaining shares can be owned by others. Employee ownership can involve a direct shareholding where employees own individual shares, or indirectly where shares are held in a trust for the employees' benefit.

Decision making

Mutuals and Co-ops have a culture of Co-operation, openness and employee empowerment at their heart. They are democratic organisations, with the key principle of "one member one vote", i.e. each member has one equal share, and is equal in decision making, independent of their status or levels of investments. They will have a Board of Directors, with the directors being voted by all members. For employee-owned businesses, there is no requirement that any Directors are also employee members, but there should still be a strong element of employee empowerment and influence in the governance structure.

Liabilities and distribution of surplus: The personal liability of each member is as high as his/her share. Usually, in Co-operative and Mutuals, the share is a notional £1, which is thus the level of liability. The distribution of surplus depends on the legal and organisational form - it may be put into reserves, in Co-operatives it may be put to social/community purposes, or - depending on the legal form chosen - it may distributed as a bonus to its members. There are examples of social employee-owned businesses where the co-owners do not receive any share of the profits, but profits are fully re-invested in the organisation.

Co-operatives & Mutuals – Summary
Organisational forms describing a business owned by their members. Members typically are employees and/or users of the service and/or members of a community. Co-operatives need to follow a set of principles and values. Both can take a range of legal forms.

What do I need to think about?

Why?	What will the Co-op/Mutual/Employee-owned business sell, who will benefit from its services?
Who are the members? How will they benefit?	This is a key question when deciding which of the organisational types to set up. For Co-operatives, there are five main types (see below). Co-operatives must follow the Co-operative principles. Mutuals and employee-owned companies may give your business additional flexibility – they do not need to follow Co-operative principles. An employee-owned business requires >51% of the business to be owned by staff – but does allow private sector shareholders.
What legal structure?	As a Co-operative/Mutual/Employee-owned business is not a legal structure, the legal structure needs to be considered. Different legal structures will have different advantages/disadvantages. The right legal structure has to be chosen based on the purpose of the organisation. Typical legal structures for Co-ops and Mutuals can be Company limited by guarantee or shares, a Community Interest Company or an Industrial Provident Society.
How to embed cultural change?	One of the main reasons for public sector mutuals to fail is that the culture is not changed towards Co-operation and openness. It is highly important to think through what will be different in the new organisation. These organisational forms need to embed an open management style, where staff feel that they are fully kept informed, have an influence in top management as well as every day decisions, and can lead change.

Types of Co-operatives

Workers Co-operative: Owned and controlled by its employees. Members = Employees.

Consumer Co-operative: Owned and controlled by customers. Members = Customers.

Community Co-operative: Owned and controlled by members of a geographical community or community of interest who take part in a business involving whole or large part of community.

Multi-stakeholder Co-operative: Co-operative with a mix of member types as above.

Co-operative Consortium: Owned and controlled by organisations who use the services provided by the Co-operative. Members - usually organisations using services

Further info:	There is a lost of information available on Mutuals and Co-operatives. Start with: *Co-operatives UK "Starting a Co-operative":* *Co-operatives UK "Set up a public service Co-operative"* *OPM: "How to become an employee owned mutual"* *TPP Law: "Developing a mutual for Local Authority Service Delivery"*
Further advice:	Mutuals Information Service: Free helpline providing advice and support on setting up a public service mutual. Telephone 020 7296 6705. Co-operatives UK The initial consultation is free of charge. Employee Ownership Assocation: Free no-fee initial conversation with an expert adviser. Baxi Partnership: Free "Transition Readiness Survey" for organisations considering employee ownership

Other organisational forms

Social Enterprise

These cover a wide range of organisational and legal forms. Office of the Third Sector definition: "A business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners".

More info: http://www.socialenterprise.org.uk/

Community Land Trust

Set up specifically to acquire and manage land and other assets for the benefit of the local community. Individuals who live or work in the specified area can be become members.

More info: www.communitylandtrust.org.uk

Community Enterprise (Community Business)

A democratic membership organisation where membership is open to everyone who lives (and sometimes also work) in the area served, with aims related to provision of local services or creating local employment. These are normally controlled on "one member one vote" basis, with governing body elected by and from its members. Members do not benefit financially. Typical legal forms: Company limited by guarantee, Industrial and Provident Societies, Community Interest Companies.

Social Firm

Set up specifically to create employment for people severely disadvantaged in the labour market, and working around three main values - enterprise, employment and empowerment.

More info: www.socialfirms.co.uk

Web references - General advice

More advice on organisational structures and legal forms

Guide “Simply Legal” - A clear, simple and understandable guide to the legal and governance processes required to support the third sector - from Co-operatives to social enterprises.

Business Link: Starting up a business: go to “Starting Up” – “Choosing and setting up a legal structure”

The National Council for Voluntary Organisations – advice, tools and resources to help you to think about how to set up organisations – funding and support, governance and leadership.

Further advice and guidance on legal forms and structures from The Times

Advice and guidance on legal forms and structures for social enterprises from The Finance Hub

Mutual Advantage - Legal Formats and Structures that Social Enterprises use