

Forming a Co-operative or Mutual

This bite size resource is for charitable organisations who wish to start a co-operative or mutual.

What is a Co-operative or Mutual?

A co-operative or mutual is not a form of legal structure, it is a model that can work flexibly in a number of ways. It is important to ensure you spend time choosing the structure or legal form that is the best fit with your business plan to avoid difficulties in the future.

Typically, members of a co-op or mutual don't contribute to capital but derive their right to profit and vote through their customer relationship:

- Raises funds from members/customers to provide common services to all members
- No external shareholders
- Often don't pay income tax as they are not for large profit/capital gain
- Examples; co-operative banks, mutual insurance, credit unions
- Owned by it's members:
Voluntary membership

Choosing structure or legal form for your co-operative or mutual

Selecting a structure for your organisation is important as this will be a necessary part of your framework. To help choose an appropriate structure and governing document for your co-operative it is recommended that you seek legal advice.

Members of a co-operative or mutual should decide together if they wish for incorporation.

Incorporation will mean creating a legal identity for an organisation that is distinct from its members. An unincorporated structure would give no distinction in the law between members and the organisation.

There are advantages and disadvantages that apply in this choice and some organisations will find specific factors more important than others. Factors may include liability, risk, ownership, cost, administration and privacy. Depending on if your organisation is incorporated or not will determine the lawful requirements for the organisation and its members.

Examples of unincorporated forms may be / are not limited to:

- Voluntary partnership – governing document needed is a deed
- Unincorporated association – governing document needed is a constitution

Members do not have limited liability.

Examples of incorporated forms may be / are not limited to:

- Limited company – Governing document needed is articles of association
- Community Interest Company (CIC) – governing document needed is articles of association
- Charitable Incorporated Organisation (CIO) – governing document needed is a constitution

Members have limited liability.

Choosing organisational type

In addition to the legal form your organisation may wish to be known as a particular type of organisation. Although this helps to show the picture of what your organisation does it is important to remember that in the eyes of the law your organisation will purely be identified by legal form.

Examples of organisational type may be / are not limited to:

- Worker co-operative
- Consumer co-operative
- Co-operative consortium

- Agricultural co-operative
- Credit union
- Community co-operative
- Development trust
- Social enterprise

Ownership

Co-operative's and mutual's will generally be seen to be owned by the individuals identified as having a vote on the governing document. The governing document will go into detail about which members have what level of authority on a day-to-day basis.

It is usual to have a board of directors or a management committee who will operate at the highest level.

Ownership will involve several associated items depending on the structure. Some examples are:

- Common ownership – assets are held indivisibly rather than in the names of its members
- Asset lock – prevents the assets of a company being used for personal gain or in a way other than stated in the purpose of the organisation
- Beneficial ownership – enjoy the benefits of ownership of a security or property without nominally owning the asset itself. Should the organisation wind up, only the value of their share hold will be returned to them.

Registration

Depending on your structure and income you may be required to register with regulatory bodies.

To find out if you need to register with the Charity Commission, Companies House or any other regulators please visit the GOV.UK website: <https://www.gov.uk/> or seek legal advice.

Other considerations

When forming a co-operative there may be implications based on the structure you choose, the following list shows a few examples:

- Tax – charitable status may allow tax reductions
- Funding – types of eligible funding will depend on structure
- Public image – public perception of charitable cause is generally good
- Regulation – frameworks around accounting and not paying trustees a wage etcetera apply
- Charities must abide by rules on trading around the annual turnover limit and type of campaign work allowable
- Employees - will have questions about how changes will affect their work, wage, pension and benefits

Support

For support starting up visit the Gov.uk website: <https://www.gov.uk/guidance/start-a-public-service-mutual-the-process> .

