

Governance and Organisational Structures





The Governance Hub aims to improve the quality of governance within the voluntary and community sector across England by:

- Increasing the supply of trustees and board members, with the range of profiles, skills and experience needed by VCOs.
- Enhancing the knowledge and skills of trustees, board members, senior managers and others involved in governance.
- Enhancing the governance capacity of organisations to deliver their mission, engaging and involving their key stakeholders.
- Promoting good governance in the voluntary and community sector.

The Governance Hub is a partnership of nine organisations that provide support to the voluntary and community sector: Association of Chief Executives of Voluntary Organisations (acevo), Black Training and Enterprise Group (BTEG), British Association of Settlements and Social Action Centres (bassac), Charity Trustee Networks (CTN), East Cornwall Council for Voluntary Services (ECCVS), National Association for Voluntary and Community Action (NACVA), National Council for Voluntary Organisations (NCVO), Social Enterprise Coalition (SEC) and Volunteering England. The accountable body for the Governance Hub is NCVO (charity number 225922).

The Governance Hub is one of six national Hubs of expertise, developed as part of the ChangeUp programme to build capacity and improve the infrastructure of the voluntary and community sector. The other five Hubs are concerned with: Finance, ICT, Performance, Volunteering and Workforce. The Hubs are funded by Capacitybuilders.

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Co-operatives^{UK} is the central membership organisation for co-operative enterprise throughout the UK, promoting co-operative and mutual solutions, working in partnership with its members to build a stronger and increasingly successful co-operative movement.

Our legal services team is a centre of excellence for the provision of advice, information and services on legal forms, organisational types, and registrations to the voluntary and community sectors in addition to its work with the co-operative sector of the social economy.

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- Voluntary and Open Membership
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- Concern for Community

Co-operatives^{UK} is the guardian of these values and principles for the UK movement, is a centre of excellence for the provision of services to co-operatives, and is a strategic voice for co-operation.

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Introduction

One of the most important tasks for any trustee is to know about their own organisation's legal and governance structure and make sure it is suitable for what the organisation was set up to do. The legal structure, and the governance arrangements it sets in place, are a vital part of making solid foundations and keeping an organisation safe and secure. It means that those who get involved in its work are protected, whether staff, volunteers, trustees or service users. It also means the wider community and society can see the basis on which it operates.

It is not surprising that the National Occupational Standards for Trustees and Management Committee Members (available from www.ukworkforcehub.org.uk) point out that trustees need to know and understand 'the advantages, disadvantages and implications for trustees of the different types of legal structures for an organisation' (Standards 2.a). The Standards also state that one of the competences that trustees need to have is a knowledge and understanding of their organisation's governance structure and why it is appropriate to the organisation (Standards 2.d).

The Governance Hub's experience and research suggest that many trustees and management committee members would like greater reassurance and access to practical information about legal structures and their implications. We have frequently been asked to suggest resources that will help in this area. This is why we asked Co-operatives^{UK} to revise and update their *Governance and Participation* toolkit, and make it more easily available by producing a shorter single document version of the legal and governance profiles contained in the toolkit. This text is the result. It presents the most widely used legal forms and governance models that organisations can use, together with other relevant information. It has been updated to include the newer forms now available: community interest companies (CIC) and charitable incorporated organisations (CIO).

Many trustees and committee members will already be aware of the new CIC structure, and the CIO structure that will shortly be available as a result of the Charities Act 2006. Some organisations will already be considering whether to adopt this structure. The Charity Commission is developing guidance on this that will be available in due course. This brief guide to legal forms does not attempt to give comprehensive briefing on these or any other particular forms. Rather, it is an introduction to the range of structures available and the difference each makes to how governance is done.

If your organisation needs to review or change its structure, either because it has grown or in order to take on new areas of work, this guide indicates directions and possibilities. It will also be useful to small associations who are just reaching the point where governance needs to be more formal and organized, or to those starting up new ventures. But whatever stage you have reached, if you plan to adopt or change a particular governance structure, the next step should include taking appropriate professional advice and ensuring you have read the relevant Charity Commission guidance, (if your organisation is, or will be, a charity).

This guide is for organisations operating in England and Wales and does not cover arrangements in Scotland or Northern Ireland.

Governance and Participation is a web-based pack of resources developed in 2004, with funding from the Home Office Active Communities Unit. It aimed to help local organisations develop robust, democratic governance structures, which actively involve local people in decision-making. The pack, and associated web pages, contain profiles of legal forms and organisational types. As well as case studies and background reading. For access to the full set of materials, go to www.cooperatives-uk.coop.

Where to Begin – Choosing a Legal Form and Organisational Type

There are a couple of important ideas that you will need to understand, and some key questions to ask, in deciding what structure is right for your organisation.

Legal Form

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 (see Interpretations on p.29). The next section of this guidance describes all the legal forms commonly used by organisations in the voluntary and community sector.

Organisational Type

Many organisations may also want to be known as a particular type of body, in addition to their legal form. There are many different types of organisation that are recognised in England and Wales although it is important to note that in law the organisation is identified by its legal form. Common organisational types include co-operatives, members' clubs, partnerships and social enterprises.

Charitable Status

Many organisations want to be a charity. It is important to understand that a charity is neither a legal form nor (strictly speaking) a type of organisation, but a separate legal status that may apply to some (but not all) organisations.

In order to be a charity, an organisation must:

- a) exist for purposes that the law recognises as exclusively charitable; and
- b) exist for the public benefit.

The current legal definition of charitable purposes is contained in the preamble to the (now repealed) Charitable Uses Act 1601, case law and a handful of other statutes. The Charities Act 2006 clarified these purposes (the relevant provisions come into effect from 2008; all existing charitable purposes will still be charitable).

At present, charitable purposes fall within the four 'heads of charity': the advancement of education; the relief of poverty and need; the advancement of religion; and other purposes beneficial to the community. The Charities Act 2006 sets out thirteen charitable purposes:

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;

- i) the advancement of environmental protection or improvement;
- j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
- l) 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;
- m) any other purposes recognised as charitable under existing charity law or analogous to, or within the spirit of, legally charitable purposes.

Charities receive some fiscal and other benefits from the state and may have an advantage in raising funds from certain sources. However, they are subject to the jurisdiction of the courts and are subject to restrictions on what they are permitted to do and how they may expend their resources.

Charities based in England and Wales must register with the Charity Commission unless they fall within one of the categories of exceptions or exemptions in the Charities Acts (covering some very small charities and charities that are regulated by other bodies). The Commission does not confer charitable status by registering a charity.

Some legal forms and organisational types (e.g. community interest company and co-operative) are incapable of being charities because they are designed to provide non-charitable benefits, for example members or shareholders may be automatically entitled to certain payments.

For further information on charitable status and registration see the Charity Commission's guidance *Registering as a Charity* (CC21) and online guidance at www.charitycommission.gov.uk.

Incorporating – Beginning, or Beginning Again?

For some organisations, it is clear from the start that they need one of the incorporated legal forms. Other organisations start out unincorporated, but decide later to incorporate because of changing circumstances. In legal terms, "incorporating" an existing organisation means not just changing from one legal form to another, but replacing one legal body (or organisation) with another.

Key Questions to Consider

1. What are the aims or purposes of your organisation?

This is a fundamental question, which should influence all other decisions, and should influence the choice of legal form and organisational type.

For example, certain purposes are exclusively charitable in law; others may be more appropriate to a co-operative or a social enterprise. Different legal forms may be more or less suitable to a charitable or non-charitable organisation.

2. Will your organisation be taking on a level of financial risk, holding property or entering into contracts (including employing staff)?

If you have answered yes to any of these questions you should probably consider choosing one of the incorporated legal forms to limit the liability of the members. Some funding bodies require an organisation to be incorporated before they will offer funds.

3. Do you wish to further the organisation's aims through a participating membership?

Organisations whose purposes focus on a particular cause, community or shared interest may be able to encourage support and participation by having a membership (in addition to the members of the governing body). Many legal forms, including association (unincorporated) and company (incorporated) allow for a participating membership. Conversely, for organisations that simply give grants, membership may not be a priority.

4. Do you intend your organisation to be a registered charity?

Charitable status only applies to organisations with exclusively charitable purposes. Some of the legal forms and organisational types explained in this guidance (e.g. community interest company, limited liability partnership, co-operative) cannot be used by charities; one (charitable incorporated

organisation) can only be used by charities; others are suitable for a charity or non-charity.

Most charities in England and Wales must register with the Charity Commission, but a few categories of charity are exempt or excepted from registration. At the moment charitable industrial and provident societies are exempt charities (and cannot register voluntarily), but the rules will change when the registration provisions in the Charities Act 2006 come into effect in 2008.

The answers to the following questions will affect whether your organisation can be a charity:

5. Do you wish to have the ability to share out any profits made by your organisation to its members?

This can be a useful way of enhancing participation in organisations and also providing an economic incentive to become involved.

Profit distribution can result in an organisation being eligible for fewer types of funding. Also, organisations wishing to be charities cannot distribute profits. Many organisations wishing to distribute profits adopt a legal form that allows them to operate as a co-operative.

6. Do you wish to raise funds from the public by issuing shares?

This is one way of financing organisations but only some legal forms allow for it: industrial and provident society, company limited by shares and community interest company (limited by shares). There are limited circumstances in which a charity could issue shares, though payment of dividends or dealing in the shares would not be permitted.

7. Do you wish to protect the assets of your organisation, in the future, from being distributed to members, shareholders or for private benefit?

This method of protection is known as asset locking and ensures that the assets and profits of an organisation can only be used to fulfil the objectives of the organisation or to assist other organisations who have an asset lock. Organisations with charitable status automatically have an asset lock but the activities they are permitted to carry out are restricted to charitable purposes. Community interest companies and one type of industrial and provident society (society for the benefit of the community) allow for an asset lock but also allow for commercial trading (see below) and non-charitable activities to be undertaken.

8. Do you wish employees of the organisation to sit on its governing body?

This method of participation helps employees to take ownership of the organisation and can enable increased job satisfaction and productivity.

Whilst all legal forms can permit employees to sit on governing bodies, organisations wishing to be charities should be aware that charity law restricts the extent to which this can be permitted. For further information see the Charity Commission's guidance *Payment of Charity Trustees* (CC11).

9. Do you intend your organisation to trade in order to generate income?

Charity law allows charities to trade in the course of the actual carrying out of a primary purpose of the charity, and to make a surplus. This is called "primary purpose trading". An example of primary purpose trading is the sale of tickets for a theatrical production staged by a theatre charity.

You may also wish to use non-charitable trading activities as a way of raising money. If fundraising is the main or sole aim of such trading activities (rather than primary purpose trading which also happens to produce an income) this is called "non-primary purpose trading". Charity law limits the extent to which charities can directly carry out non-primary purpose trading, and charities that wish to carry out non-charitable trading on a larger scale may need to do so through a separate trading subsidiary. For details see the Charity Commission's guidance *Trustees, Trading and Tax* (CC35).

No such restrictions apply to organisations that are not charities, and the profits of their trading are taxable in the same way as any commercial business.

Legal Forms and their Characteristics

The following are types of legal form (both incorporated and unincorporated) available for use by organisations operating in the voluntary and community sectors:

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

On the following pages each legal form is described according to a common set of parameters to enable ease of comparison.

Association

Corporate status	Unincorporated. (Note that the unincorporated association is a particular legal form but the word “association” may be used in a wider context in the voluntary and community sectors to describe an organisational type e.g. “XYZ Community Association” which may, in fact, be a limited company and not structured as an association.)
Governing document	Normally referred to as “the constitution” but may occasionally have some other title.
Governing body	Commonly called “the management committee” but there are no fixed rules about the name given to the governing body. If the activities of the association are charitable in nature then they may be called “the trustees”.
Management/governance structure	Generally two-tier, with a governing body accountable to a wider membership (sometimes referred to as a “participating membership”). Members will typically hold voting rights at general meetings and will elect all or some of the governing body.
Membership	<p>May comprise individuals or other organisations or a combination of the two. Eligibility for membership may be subject to specified criteria, e.g. living or working in the area of benefit; or the constitution may simply say that anyone who supports the objectives may apply for membership.</p> <p>Admission to membership is usually at the discretion of the governing body, but an “open membership” system may apply where strict criteria are laid down, e.g. anyone who lives on a particular housing estate is eligible to become a member. The constitution should always allow for the expulsion of members who act against the interests of the association.</p> <p>Where there are members who have rather different interests in the organisation’s work, the membership may be divided into two or more classes, e.g. representatives of statutory bodies, representatives of local business, community members etc.</p> <p>An association must have a minimum of two members.</p>
Governing legislation	Not governed by a specific statute (Act of Parliament). There is some case law establishing defaults applying to associations, but the governing document (constitution) is the main source of regulation.
Charitable status available?	May be set up as a charity.
Profit distribution permitted?	No.
Special features	The unincorporated association is a very common, relatively informal structure for voluntary and community organisations of all types. It will often be the starting point for a new organisation that may later adopt one of the more formal incorporated structures. Because it features a participating membership, it is suitable for representative organisations such as tenants’ associations and pressure groups, where it is necessary for the governing body to be accountable to the people the organisation claims to represent. The association is not generally recommended for use where there is a significant element of financial risk involved in the activity undertaken due to it being unincorporated.
Participation issues	Associations are membership-based, so encouraging an active membership is an appropriate method of promoting participation – especially where the members share something in common. Otherwise associations are free to utilise most of the other common methods of encouraging participation, though not of course profit distribution.

Trust

Corporate status	Unincorporated. (Note that the unincorporated trust is a particular legal form but the word “trust” is also used in a wider context in the voluntary and community sectors, e.g. “XYZ Development Trust” which may, in fact, be a limited company and not structured as a trust. In particular, many charities use the word “trust” in their name, whatever their structure.)
Governing document	Deed, often called a “trust deed” or “deed of trust”, but could also be a will, conveyance (of land), or declaration of trust.
Governing body	“The trustees” or “the board of trustees” (other terms may be used e.g. governors for educational charities).
Management/governance structure	A single-tier structure, with no members other than the trustees (who perform the dual roles of governing body and membership).
Membership	Usually, the only members are the trustees. Trustees must be individuals or corporate bodies, but in the voluntary and community sectors they are usually individuals. Strictly there is no minimum membership size, but any trust intending to become a registered charity should have at least three trustees (if the trustees are individuals) to satisfy the Charity Commission’s expected minimum standards of good practice. How the trustees are appointed should be laid down in the trust deed but otherwise will be governed by trust law. In some cases, trustees are effectively self-perpetuating, with future trustees appointed by the present ones. In other cases, the trust deed will specify organisations or agencies that are entitled to nominate one or more trustees, or detail some other procedure by which trustees are identified and appointed.
Governing legislation	Not governed by a specific statute (Act of Parliament). There is a body of case law establishing defaults applying to trusts, and some statutes that affect trusts (e.g. the Trustee Acts 1925 and 2000), but the governing document (trust deed) is the main source of regulation.
Charitable status available?	May be set up as a charity.
Profit distribution permitted?	No.
Special features	The unincorporated trust is the traditional form for an endowed, grant-giving charitable trust. It can also be suitable where there is a specific task to achieve, e.g. a disaster relief fund that wishes to swiftly raise and disperse funds, and then wind up. A trust is not generally recommended for use where there is a significant element of financial risk involved in the activity undertaken, where an incorporated structure might be more suitable.
Participation issues	As the trust structure does not usually feature a participating membership, it is rarely the first choice for an organisation that wishes to encourage participation in its own affairs and governance. Otherwise trusts are free to utilise most of the other common methods of encouraging participation, though not of course profit distribution.

Partnership

Corporate status	Unincorporated. (Note that the unincorporated partnership is a particular legal form but the word “partnership” may also be used in a wider context in the voluntary and community sectors to describe an organisational type e.g. “XYZ Community Partnership” which may, in fact, be a limited company and not structured as a partnership.)
Governing document	“Partnership deed” or “partnership agreement”.
Governing body	“The partners”.
Management/governance structure	A single-tier structure, with no members other than the partners (who perform the dual roles of governing body and membership). A partnership must exist for business purposes: it is a for-profit legal form.
Membership	The only members are the partners. Partners must be individuals or corporate bodies; there must be a minimum of two partners. As the partnership is a for-profit business structure, new partners are normally admitted by the existing partners. Partners personally own all the assets of the partnership, and are personally liable for all its debts.
Governing legislation	Governed by the Partnership Act 1890.
Charitable status available?	No.
Profit distribution permitted?	Not just permitted, but necessary – profit distribution is a defining feature of a partnership.
Special features	A partnership is never likely to be a primary-level organisation in the voluntary and community sectors because of its requirement to exist “for business purposes” and to distribute profits to the partners. However, a partnership may be formed by a number of voluntary or community organisations to generate trading income, e.g. a group of charities might form a partnership to produce and sell Christmas cards, distributing the profits amongst the participating charities.
Participation issues	As the partnership structure does not feature a participating membership, it is unlikely to suit an organisation that wishes to encourage participation in its own affairs and governance. It may be used as a starting point for small business ventures. As partnerships are for-profit businesses, the form is never likely to be of much use in promoting participative methodologies.

Company Limited By Guarantee

Corporate status	Incorporated.
Governing document	“Memorandum and articles of association”, usually abbreviated to “mem and arts”.
Governing body	“The directors” or “the board of directors”, although the mem and arts may use some other term to describe the directors. For example, if the company is also a charity, the directors may well be described as “trustees” (charity trustees being the generic term in charity law for members of the governing body). Currently there is no age limit for directors but the Companies Act 2006 will introduce a minimum age of 16 years from October 2008.
Management/governance structure	<p>Essentially two-tier, with a board of directors accountable to a wider membership (sometimes referred to as a “participating membership”). Members will typically hold voting rights at general meetings and will elect all or some of the directors. However, it is possible to create a single-tier structure by simply stating that only directors may be members and vice-versa. Although these two roles will still exist within the company, the same people will perform both.</p> <p>All companies are required to have a secretary. This person may also be a member or director, but need not be. In funded community and voluntary organisations, the post of secretary will often form part of the job description of a member of staff. The Companies Act 2006 will remove the requirement to have a company secretary unless the governing body of the company opt to have such a post. This provision is not due to be implemented until April 2008.</p>
Membership	<p>A company limited by guarantee may be either private or public (public limited company or plc). A plc is not usually a legal form used by the community and voluntary sector and so is not covered here.</p> <p>Eligibility for membership will be detailed in the company’s articles of association. Members may comprise individuals or other organisations or a combination of the two. Eligibility for membership may be subject to specified criteria, e.g. living or working in the area of benefit; or the articles may simply say that “anyone who supports the objectives” may apply for membership.</p> <p>Admission to membership is usually at the discretion of the directors, but an “open membership” system may apply where strict criteria are laid down, e.g. anyone who lives on a particular housing estate is eligible to become a member. The articles should always allow for the expulsion of members who act against the interests of the company.</p> <p>Where there are members who have rather different interests in the company’s work, the membership may be divided into two or more classes, e.g. representatives of statutory bodies, representatives of local business, community members etc. Voting is most commonly on a one member, one vote basis, but the articles may specify some other pattern of voting.</p> <p>A company must have a minimum of one member. As the single member may be another organisation, a one-member company is a useful legal form for a trading subsidiary.</p> <p>Members are not required by law to subscribe any money in order to become a member. However, they agree to pay a sum towards the company’s debts should it become insolvent while they are members. In the voluntary sector this guarantee is commonly a nominal £1, but it may be more or less than this.</p>
Governing legislation	Governed primarily by the Companies Acts 1985 and 1989. The Companies Act 2006 will replace these Acts when all of its provisions are implemented, which is due to be completed by October 2008. There are also a number of other statutes applying to companies (e.g. the Enterprise Act, the Insolvency Act and the Company Directors Disqualification Act).
Charitable status available?	Currently the company limited by guarantee is the most common incorporated legal form for organisations to adopt if they wish to be charities. The Charities Act 2006 provides for a new legal form – the charitable incorporated organisation – that will enable organisations to incorporate and become a registered charity without having to register as a company limited by guarantee. See “Charitable Incorporated Organisation”.
Profit distribution permitted?	The memorandum and articles will specify whether or not profit distribution is permitted. Distribution will not be possible in a company that is a charity and is very uncommon in any type of voluntary or community organisation.

Special features	The company limited by guarantee is a very common, extremely flexible structure for voluntary, community and social enterprise organisations of all types where a corporate body is required. Companies have few inherent characteristics and so it is possible to design almost any sort of structure within a company vehicle.
Participation issues	Companies have the potential to be membership-based, so encouraging an active membership is an appropriate method of promoting participation – especially where the members share something in common. Otherwise companies are free to utilise most of the other common methods of encouraging participation, including profit distribution in appropriate circumstances.

Company Limited By Shares

Corporate status	Incorporated.
Governing document	“Memorandum and articles of association”, usually abbreviated to “mem and arts”.
Governing body	“The directors” or “the board of directors”, although the mem and arts may use some other term to describe the directors. Currently there is no age limits for directors but the Companies Act 2006 will introduce a minimum age of 16 years from October 2008.
Management/governance structure	<p>Essentially two-tier, with a board of directors accountable to a wider membership (sometimes referred to as a “participating membership”). Members will typically hold voting rights at general meetings and will elect all or some of the directors. However, it is possible to create a single-tier structure by simply stating that only directors may be members and vice-versa. Although these two roles will still exist within the company, the same people will perform both.</p> <p>All companies are required to have a secretary, this person may also be a member or director, but need not be. In funded community and voluntary organisations, the post of secretary will often form part of the job description of a member of staff. The Companies Act 2006 will remove the requirement to have a company secretary unless the governing body of the company opt to have such a post, this provision is not due to be implemented until April 2008.</p>
Membership	<p>A company limited by shares may be either private or public (public limited company or plc). A plc is not usually a legal form used by the community and voluntary sector and so is not covered here.</p> <p>In a company limited by shares, someone becomes a member by acquiring shares in the company. This may be by purchasing them, or the company’s articles may specify that certain people, e.g. employees, are automatically entitled to receive one or more shares.</p> <p>In a private company limited by shares, admission to membership is usually at the discretion of the directors, but an “open membership” system may apply where strict criteria are laid down, e.g. anyone who lives on a particular housing estate is eligible to become a member. The articles should always allow for the expulsion of members who act against the interests of the company.</p> <p>Where there are members who have rather different interests in the company’s work, the membership may be divided into two or more classes, e.g. representatives of statutory bodies, representatives of local business, community members etc. In a conventional share-capital company, voting rights are apportioned in accordance with the number of shares each member holds (one share, one vote), but the articles may specify one member, one vote.</p> <p>A private company must have a minimum of one member. As the single member may be another organisation, a one-member company is a useful legal form for trading subsidiaries.</p>
Governing legislation	Governed primarily by the Companies Acts 1985 and 1989. The Companies Act 2006 will replace the aforementioned Acts when all of its provisions are implemented, which is due to be completed by October 2008. There are also a number of other statutes applying to companies (e.g. the Enterprise Act, the Insolvency Act and the Company Directors Disqualification Act).
Charitable status available?	This legal form is not suitable for a charity unless the memorandum and articles prevent profit distribution and dealing in the company’s shares.
Profit distribution permitted?	The memorandum and articles will specify whether or not profit distribution is permitted. The ability to distribute profits to members is the norm in a share company but it is not obligatory.
Special features	Companies have few inherent characteristics and so it is possible to design almost any sort of structure within a company vehicle. A share company may be used by a group of voluntary or community organisations for a for-profit trading venture.
Participation issues	Companies have the potential to be membership-based, so encouraging an active membership is an appropriate method of promoting participation – especially where the members share something in common. Otherwise companies are free to utilise most of the other common methods of encouraging participation, including profit distribution in appropriate circumstances.

Industrial And Provident Society (IPS)

Corporate status	Incorporated.
Governing document	“Registered Rules”.
Governing body	“The committee of management” or just “the committee” although the rules may use some other term to describe the governing body. The minimum age of committee members is 16 years.
Management/governance structure	<p>Essentially two-tier, with a committee of management accountable to a wider membership (sometimes referred to as a “participating membership”). Members will typically hold voting rights at general meetings and will elect all or some of the committee. However, it is possible to create a single-tier structure by simply stating that the society shall be managed by general meetings.</p> <p>All IPSs are required to have a secretary, this person may also be a member or director, but need not be. In funded community and voluntary organisations, the post of secretary will often form part of the job description of a member of staff.</p>
Membership	<p>All IPSs must issue shares, so someone becomes a member by purchasing the minimum stipulated shareholding (which will often be one £1 share).</p> <p>There are two types of IPS: the bona fide co-operative, and the society for the benefit of the community. In a bona fide co-operative, eligibility for membership will be based on sharing a common economic relationship with the society – employees in a worker co-operative, tenants in a housing co-operative, etc. The eligibility criteria will feature within the registered rules. In a society for the benefit of the community, eligibility for membership may be detailed in the society’s rules, e.g. living or working in the area of benefit, or the rules may simply say that “anyone who supports the objectives” may apply for membership.</p> <p>IPS legislation does not permit membership to persons under 16 years. Members may comprise individuals or other corporate bodies or a combination of the two (unincorporated organisations cannot themselves become members but the rules may allow such bodies to nominate individuals to membership). In a bona fide co-operative, eligibility for membership will be automatic for people who meet the specified criteria. In a society for the benefit of the community, admission to membership is usually at the discretion of the directors, but an “open membership” system may apply where criteria are laid down, e.g. anyone who lives on a particular housing estate is eligible to become a member. The rules should always allow for the expulsion of members who act against the interests of the society.</p> <p>An IPS must have a minimum of three members (except where the members are themselves IPSs, when the minimum is two). As an IPS must operate on the basis of a participating membership, it is unlikely to be an appropriate legal form for subsidiaries.</p>
Governing legislation	Governed primarily by the Industrial and Provident Societies Acts 1965 to 2002, plus a number of other statutes applying to societies (e.g. the Co-operatives and Community Benefit Societies Act 2003).
Charitable status available?	A society for the benefit of the community (but not a bona fide co-operative) may be set up as a charity.
Profit distribution permitted?	Profit distribution is not permitted in a charitable society for the benefit of the community). The rules will specify whether or not profit distribution is permitted.
Special features	<p>The bona fide co-operative form is the traditional legal vehicle for co-operative enterprises and working men’s clubs. Any type of co-operative should be able to register as an IPS.</p> <p>The society for the benefit of the community is commonly used by certain sectors of the voluntary and community sector, e.g. housing associations and community transport groups.</p> <p>The Co-operatives and Community Benefit Societies Act 2003 introduced an “asset” lock for IPSs registered as societies for the benefit of the community. The asset lock is not compulsory but is a provision that can be included in the rules to ensure that the assets of the IPS (including any surpluses) are permanently “locked” within the IPS and are used to meet its objects or are transferred to another asset locked body. The asset lock can be partial whereby only specified assets are covered or can cover all assets.</p>

As it is far easier and cheaper to register an IPS using model rules, the structure is most commonly adopted by organisations for whom such model rules are available. It is possible to register a “free draft” set of rules i.e. rules that have been written specifically for the society.

As IPSs generally, and societies for the benefit of the community in particular, enjoy certain privileges regarding issuing shares to the public, the IPS form will often be attractive to social enterprises and not-for-profit organisations wishing to raise substantial funds from the public.

Participation issues

As IPSs are inherently democratic (one member one vote is enshrined in the rules of IPSs) and membership-based, encouraging an active membership is an appropriate method of promoting participation. Otherwise IPS's are free to utilise most of the other common methods of encouraging participation, including profit distribution in appropriate circumstances.

Limited Liability Partnership (LLP)

Corporate status	Incorporated. (Note that the limited liability partnership is a particular legal form but the word “partnership” is also used in a wider context in the voluntary and community sectors to describe an organisational type, e.g. “XYZ Community Partnership” which may, in fact, be a limited company and not structured as a partnership or LLP.)
Governing document	“Partnership deed” or “partnership agreement”.
Governing body	“The partners”.
Management/governance structure	A single-tier structure, with no members other than the partners (who perform the dual roles of governing body and membership). A LLP must exist for business purposes: it is a for-profit legal form.
Membership	The only members are the partners. Partners must be individuals or corporate bodies; there must be a minimum of two partners. As the LLP is a for-profit business structure, new partners are normally admitted by the existing partners.
Governing legislation	Governed by the Limited Liability Partnerships Act 2000.
Charitable status available?	No.
Profit distribution permitted?	Not just permitted, but necessary – profit distribution is a defining feature of a partnership.
Special features	It is unlikely that an LLP will become a primary-level organisation in the voluntary and community sector because of its requirement to exist “for business purposes” and to distribute profits to the partners. However a LLP may be formed by a number of voluntary or community organisations to generate trading income, e.g. a group of charities might form a LLP to produce and sell Christmas cards, distributing the profits amongst the participating charities.
Participation issues	As the LLP structure does not feature a participating membership, it is unlikely to suit an organisation that wishes to encourage participation in its own affairs and governance.

Community Interest Company (CIC) Limited By Guarantee

Corporate status	Incorporated.
Governing document	“Memorandum and articles of association”, usually abbreviated to “mem and arts”.
Governing body	“The directors” or “the board of directors”, although the mem and arts may use some other term to describe the directors.
Management/governance structure	See “Company limited by guarantee”, a CIC must first be registered as a limited company. Becoming a CIC is an additional status overlaid on the basic company structure.
Membership	A CIC may be either private or public (public limited company or plc). A plc is not usually a legal form used by the community and voluntary sector and so is not covered here. A CIC must first be registered as a limited company (see “Company limited by guarantee”). Becoming a CIC is an additional status overlaid on the basic company structure.
Governing legislation	Governed by the Companies Acts 1985 and 1989. The Companies Act 2006 will replace the aforementioned Acts when all of its provisions are implemented, which is due to be completed by October 2008. CICs are also governed by the Companies (Audit, Investigations and Community Enterprise) Act 2004.
Charitable status available	CICs are not eligible for charitable status. Although it is possible for existing charities to convert to a CIC, this would mean that its charitable status, and all associated financial benefits, would be lost and assets of the charity could not be transferred to the CIC.
Profit distribution permitted?	A level of profit distribution is permitted, in the form of bonuses, but is subject to the discretion of the CIC Regulator. On dissolution the CIC is bound to distribute any surplus assets to another organisation with an “asset lock”. See ‘Special features’ below.
Special features	<p>Community interest companies are a relatively new type of legal form that was introduced to offer a recognised form for social enterprises and those organisations wishing to carry out socially motivated objectives and use any profits for the benefit of the public good, where a corporate body is required but charitable status is not. For organisations wishing to issue share capital to raise funds from the public see “Community interest company (CIC) limited by shares”.</p> <p>The “asset lock” is a fundamental provision that must be present in the memorandum & articles. The asset lock is designed to ensure that the assets of the CIC (including any surpluses) are permanently “locked” within the CIC and are used to meet the objects of the CIC or are transferred to another asset locked body. A CIC may specify the asset locked body that any assets may be transferred to, or if this is not provided for in the articles, the CIC Regulator will decide.</p> <p>The “community interest test” must be satisfied by all organisations wishing to register as a CIC. This test must demonstrate how the CIC will benefit a community (“community” may be defined geographically but may also be a community of interest) by providing a “community interest statement” showing that everything that the CIC intends to do will in some sense contribute towards achieving a purpose that is beneficial to a community. Political campaigning and activities that may be considered to benefit only the members of a particular body or the employees of a particular employer cannot be undertaken by a CIC. The “annual community interest report” must be prepared by CIC’s to demonstrate that it is still meeting the community interest test and that it has engaged with its stakeholders at some level. As well as providing details of the activities undertaken, the report should also provide evidence that any surplus has been used appropriately and for the benefit of the community and also detail any remuneration paid to its directors.</p>
Participation issues	See “Company limited by guarantee”.

Community Interest Company (CIC) Limited By Shares

Corporate status	Incorporated.
Governing document	“Memorandum and articles of association”, usually abbreviated to “mem and arts”.
Governing body	“The directors” or “the board of directors”, although mem and arts may use some other term to describe the directors.
Management/governance structure	See “Company limited by shares”, a CIC must first be registered as a limited company. Becoming a CIC is an additional status overlaid on the basic company structure.
Membership	A CIC may be either private or public (public limited company or plc). A plc is not usually a legal form used by the community and voluntary sector and so is not covered here. See “Company limited by shares”, a CIC must first be registered as a limited company. Becoming a CIC is an additional status overlaid on the basic company structure.
Governing legislation	Governed by the Companies Acts 1985 and 1989. The Companies Act 2006 will replace the aforementioned Acts when all of its provisions are implemented, which is due to be completed by October 2008. CICs are also governed by the Companies (Audit, Investigations and Community Enterprise) Act 2004.
Charitable status available	CIC’s are not eligible for charitable status. Although it is possible for existing charities to convert to a CIC, this would mean that its charitable status, and all associated financial benefits, would be lost and assets of the charity could not be transferred to the CIC.
Profit distribution permitted?	Profit distribution is permissible in the form of a dividend payment on the shares held by a member. Dividends must be declared by the members of the CIC and cannot be declared by the governing body alone. The way dividends are paid depends on what is laid down in the articles. Depending upon what is found in the articles the extent of dividend payments are subject to a cap. See ‘Special features’ below. The provision to distribute profits to shareholders is important to those organisations wishing to issue share capital to raise funds from the public. On dissolution the CIC is bound to distribute any surplus assets to another organisation with an “asset lock”. See “Special features” below.
Special features	<p>Community interest companies are a relatively new type of legal form that was introduced to offer a recognised form for social enterprises and those organisations wishing to carry out socially motivated objectives and use any profits for the benefit of the public good, where a corporate body is required but charitable status is not.</p> <p>The “Asset lock” is a fundamental provision that must be present in the mem & arts. The asset lock is designed to ensure that the assets of the CIC (including any surpluses) are permanently “locked” within the CIC and are used to meet the objects of the CIC or are transferred to another asset locked body. A CIC may specify the asset locked body that any assets may be transferred to, or if this is not provided for in the articles, the CIC Regulator will decide.</p> <p>The “community interest test” must be satisfied by all organisations wishing to register as a CIC. This test must demonstrate how the CIC will benefit a community (community may be defined geographically but may also be a community of interest) by providing a “community interest statement” showing that everything that the CIC intends to do will in some sense contribute towards achieving a purpose that is beneficial to a community. Political campaigning and activities that may be considered to benefit only the members of a particular body or the employees of a particular employer cannot be undertaken by a CIC.</p> <p>The “annual community interest report” must be prepared by CICs to demonstrate that it is still meeting the community interest test and that it has engaged with its stakeholders at some level. As well as providing details on the activities undertaken, the report should also provide evidence that any surplus has been used appropriately and for the benefit of the community and also detail any remuneration paid to its directors.</p> <p>The “Dividend cap” is a fundamental provision that restricts the dividends paid out to the shareholders of the CIC. The cap is designed to encourage people to invest in the CIC but also to ensure that the principle of community benefit remains at the heart of the CIC – meaning that any dividends paid out should not be disproportionate to the proportion of the profits dedicated to benefiting the community. For further information on the dividend cap see www.cicregulator.gov.uk.</p>
Participation issues	See “Company limited by shares”.

Charitable Incorporated Organisation

NB: This legal form was provided for in the Charities Act 2006 but is not yet available to use at the time of writing (currently this is expected to be early 2008). The following provides an outline of the proposed legal form based on the information available.

Corporate status	Incorporated.
Governing document	Is referred to in the Act as the “constitution”.
Governing body	Is referred to in the Act as the “trustees”, the generic term in charity law for members of the governing body.
Management/governance structure	Unknown as yet, but it is proposed that there will be the possibility to have either a two tier structure, with a board of trustees accountable to a wider membership (sometimes referred to as a “participating membership”); or a single-tier structure whereby only the trustees may be members and vice-versa, although these two roles will still exist within the company, the same people will perform both.
Membership	Unknown as yet, but it is expected that membership shall comprise individuals or other organisations or a combination of the two, with the ability to define specific criteria and membership classes.
Governing legislation	Charities Act 2006.
Charitable status available?	Essential. This legal form is only available to organisations that are charities.
Profit distribution permitted?	No.
Special features	The introduction of the CIO removes the requirement for organisations requiring incorporation and charitable status to have dual registration with both Companies House and the Charity Commission. The CIO will be singly registered with the Charity Commission and so will ease the burden of regulation.
Participation issues	Unknown as yet.

Organisational Types and their Characteristics

The following are organisational types available for use by organisations operating in the voluntary and community sector. There are, of course, many more not listed here:

- Co-operative
- Club (members' club)
- Partnership
- Social enterprise
- Community enterprise (or business)

On the following pages, each organisational type is described according to a common set of parameters to enable ease of comparison.

Co-operative

General characteristics	Co-operatives are democratic, member-benefit organisations operating under the International Co-operative Alliance co-operative principles. There are many different types of co-operative, and each type would have different criteria for membership, e.g. the members of a worker co-operative would be its employees, in a consumer co-operative they would be persons using the services offered by the co-operative etc. Control is normally exercised on a one member, one vote basis; the governing body is elected by and from the membership; and – although operated fundamentally as a business – there is a strong commitment to social welfare, sustainability, and support for the community.
Ownership	Co-operatives are owned and controlled by their members and have no external shareholders.
Charitable status	Co-operatives are not eligible for charitable status.
Examples of use	There are many different uses for a co-operative, e.g. self employed therapists who wish to come together to purchase a clinic and market their services as one rather than individually may establish a marketing co-operative to meet their common aims; members of a community wishing to purchase their local village shop or post office may join forces and purchase the business as a community co-operative; a group of printers get together to set up an ethical small business as a worker co-operative.
Legal forms used	Traditionally co-operatives have registered as industrial and provident societies, but many are registered as companies (both limited by shares and by guarantee) and some have used the community interest company form. New or small co-operatives may choose to operate as a partnership or a limited liability partnership.
Profit distribution	Participation may be rewarded by a return, or dividend, on each member's contribution to the co-operative, e.g. in a consumer society the more a customer has spent, the more she or he receives back as a dividend. A mutual co-operative may reward its members by reducing charges rather than paying out dividends.
Participation issues	Participation will generally be promoted amongst the membership and by encouraging others to join. Members are expected to attend meetings of the co-operative and take part in the governance of the co-operative by becoming a member of the governing body.

Club (Members' Club)

General characteristics	The term "club" can be used in a wide range of circumstances, but a members' club will generally be run along co-operative lines, as a form of consumer co-operative. People join the club because they wish to access the services offered, and will usually pay an annual subscription plus the purchase price of anything consumed (e.g. food and drink).
Ownership	A members' club is owned by its customer-members, unlike a proprietary club which may be owned privately.
Charitable status	A members' club would only be eligible for charitable status if it existed for exclusively charitable purposes, (e.g. clubs for disabled people, some youth clubs, amateur sports clubs etc.).
Examples of use	Working men's clubs; British Legion clubs; and a wide selection of similar institutions.
Legal forms used	Most are registered either under Friendly Society legislation (it is no longer possible to register using this) or as industrial and provident societies. It is possible to register a club as a company (both limited by shares and by guarantee).
Profit distribution	Any distribution of profits to members is in effect a rebate on overpaid fees for services provided, and will commonly be allowed (though sometimes "in kind" rather than in cash – some working men's clubs give all members a certain volume of free alcohol as a dividend). However, a club making a surplus on members' fees may just reduce its charges instead.
Participation issues	Participation is generally restricted to members.

Partnership

General characteristics	Not to be confused with the legal form of partnership (which is a for-profit business structure), the term is used for any arrangement that brings together a range of different interests in pursuit of a common aim.
Ownership	Partnership organisations are generally concerned with the strategic management of resources owned by others, though some may acquire their own assets. In this case ownership of the organisation rests with the members.
Charitable status	A partnership may be eligible for charitable status if it has a suitable legal form and is established for charitable purposes.
Examples of use	Regeneration partnerships will commonly involve local people, statutory authorities, voluntary organisations and local businesses to participate, at some level or another, in the management of resources intended to improve a specific geographical area. Other such partnerships groupings may be issue-based, e.g. drugs, mental health, community safety, promotion of sport, etc.
Legal forms used	Some partnerships are not in reality separate organisations and thus will not have a legal form, but just a set of standing orders regarding respective roles and so on. Discrete partnerships are usually constituted as associations or companies limited by guarantee.
Profit distribution	None.
Participation issues	May be complex – as well as the differential participation of the partners, each will have a constituency of interest from which further participation is required or desired. The principle behind the establishment of most partnerships is to achieve maximum input from a range of different stakeholders and interests.

Social Enterprise

General characteristics	A business that trades in the market place, but with a view to securing primarily social (rather than economic) ends. Typical social objectives may include: local job creation; filling gaps in local service provision (e.g. childcare, services to the elderly, preventing the village hall from closing); environmental projects; combating social exclusion.
Ownership	A social enterprise is usually owned by its members, but this can vary depending on the legal form chosen and also the business that the enterprise undertakes.
Charitable status	Some social enterprises are also registered as charities where they meet the criteria for charitable status.
Examples of use	Social enterprises may be found engaging in all types of economic activity, from international organisations (e.g. Fair Trade businesses) to small enterprises meeting very local needs.
Legal forms used	As the term “social enterprise” spans such a range of organisations, examples will be found using all available legal forms. The Community Interest Company (CIC) was introduced as a recognised legal form for social enterprises and those organisations wishing to carry out socially motivated objectives and use any profits for the benefit of the public good.
Profit distribution	Most do not feature profit distribution, though co-operatives and Community Interest Companies may do.
Participation issues	Most social enterprises are membership organisations and so will feature internal democratic participatory activities. As social enterprises have to trade successfully to survive, they will also need to engage with their customers/clients, suppliers and others.

Community Enterprise (or Business)

General characteristics	A democratic, membership organisation where membership is open to all those who live (and sometimes those who work) in the area served. The aims of a community enterprise are to provide local services and/or create employment for local people. Control is normally exercised on a one member, one vote basis, and the governing body is elected by and from the membership.
Ownership	A community enterprise is owned by its members who are drawn from the community served, although members do not personally have any access to the enterprise's income or assets.
Charitable status	Some community enterprises are also registered as charities where they meet the criteria for charitable status.
Examples of use	Community enterprises will usually be found providing local services that are unattractive to the private sector because of low profit margins, including community property management (such as workspaces), care services, village shops, security, and community transport.
Legal forms used	Most are either companies limited by guarantee or societies for the benefit of the community.
Profit distribution	It would be unusual for profits or assets to be distributed amongst the members and not possible for a charity.
Participation issues	Community enterprises are membership organisations and so will feature internal democratic participatory activities. As community enterprises have to trade successfully to survive, they will also need to engage with their customers/clients, suppliers and others.

Interpretations

Incorporated	Incorporation means creating a legal identity for an organisation that is separate from its members – a 'corporate body'. A corporate body exists in its own right and offers good protection to its members. Corporate forms limit the liability of their members unless otherwise indicated and a corporate body can enter into contracts and own property in its own right. Organisations that have a moderate to high level of risk may decide to incorporate to protect their members in the future.
Unincorporated	Members of unincorporated organisations do not enjoy the levels of protection offered by incorporated organisations. In an unincorporated organisation the law does not distinguish between the organisation and its members, it is simply a group of people acting together under a common name, but in law nothing new has been brought into existence: members of an unincorporated organisation have unlimited liability, and usually that liability is joint and several (this means if an organisation is unable to meet its debts its members may have to meet them and the burden of payment will fall to those most able to pay), and unincorporated organisations are not able to enter into contracts or hold property. Therefore, one or more persons will be personally responsible for any contracts the organisation may hold. Small organisations with a low risk usually choose to be unincorporated as it is a less formal and less expensive option.
Exempt charity	While most charities in England and Wales are required to register with the Charity Commission, there are certain types of organisation that are exempt from this requirement, but may still qualify to be treated as charities for tax and other purposes. In particular, this currently applies to societies for the benefit of the community registered under Industrial and Provident Society legislation (but this will change under the Charities Act 2006). Exempt charities are recognised as charities for tax purposes by HM Revenue and Customs.
Governing body	The generic term for the group of named individuals who have legal responsibility for the management of an organisation and its resources.
Governing document	All formal organisations must have a written set of rules laying down their objectives, the rights of members, how their assets may be applied, etc. The generic term for this set of rules is "governing document".
Members/membership	The term "member" in this context means those who have constitutional rights (normally including voting rights) in an organisation by virtue of its governing document.
Registered charity	Indicates that the organisation is registered with the Charity Commission for England and Wales, which maintain the Central Register of Charities.
International Co-operative Alliance co-operative principles	Seven principles, agreed by the ICA, by which co-operatives put their values into practice: voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and information, co-operation amongst co-operatives and concern for community.
Subsidiary	A limited company where more than 50% of the voting rights are held by another organisation or where one organisation is a member of the Company and has the right to appoint or remove a majority of its governing body. Commonly used by charities to undertake trading activities which charities are not themselves permitted to do; subsidiaries are also used by all types of organisation to put specific projects or business activities into a separate legal vehicle to isolate risk.

Useful Resources

Organisations providing relevant support and information

Charity Commission

www.charity-commission.gov.uk

The Charity Commission for England and Wales is established by law as the regulator and registrar of charities in England and Wales. Its website provides links to a range of publications and guidance on all matters relating to charities.

Companies House

www.companieshouse.gov.uk

The main functions of Companies House are to:

- incorporate and dissolve limited companies
- examine and store company information delivered under the Companies Act and related legislation
- make this information available to the public.

Co-operatives^{UK}

www.cooperatives-uk.coop

Co-operatives UK is a centre of excellence in the provision of advice, information and support services to the social economy in the area of legal structures, organisational types, charitable status, registrations, etc.

Governance Hub

www.governancehub.org.uk

The Governance Hub is a partnership of organisations working to promote good governance throughout the voluntary and community sector in England. The Hub website provides access to a wide range of resources on governance and trusteeship.

International Co-operative Alliance (ICA)

www.ica.coop

ICA is the independent, non-governmental association which unites, represents and serves co-operatives worldwide.

National Council for Voluntary Organisations (NCVO)

www.ncvo-vol.org.uk

NCVO is the umbrella body for the voluntary sector in England. It gives voice and support to voluntary and community organisations and its website includes wide-ranging guidance on a variety of subjects including trusteeship and governance.

UK Workforce Hub

www.ukworkforcehub.org.uk

The UK Workforce Hub helps voluntary and community organisations make the best of their paid staff, volunteers and trustees through workforce development. The UK Workforce Hub produces a range of resources including the Trustee and Management Committee National Occupational Standards.

Useful publications

Trustee and Management Committee National Occupational Standards; UK Workforce Hub; 2006.

Good Governance: A Code for the Voluntary and Community Sector; Governance Hub; 2005.

Reducing the Risks - a guide to trustee liabilities; J. Sinclair Taylor for Governance Hub; December 2006.

CC21 - Registering as a Charity; Charity Commission.

CC35 - Trustees, Trading and Tax; Charity Commission.

CC43 - Incorporation of Charity Trustees; Charity Commission.

RS7 - Membership Charities; Charity Commission.

GBA1 - Directors and Secretaries Guide; Companies House.

GBF1 - Company Formation; Companies House.



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