

A legal structure has two key components the legal form and organisation type, and there are a number of options for each. This exercise is designed to assist you to identify the most appropriate ones for your venture.

The principle **options** are contained in the lists on page 10. The exercise will ask a series of **questions** and your responses will lead to some of these options being deleted or marked with brackets.

Deleted options are likely to be unavailable or at least inappropriate; those in **brackets** are possibilities but probably not first choice; and those remaining **unmarked** are the most likely candidates.

If more than one option remains unmarked in any list, you may well have a choice.

If an option ends up both deleted and with brackets, treat it as deleted. You will find that some questions will ask you to delete options that have already been deleted, as each question is “testing” a different factor.

If all options are deleted in any list, your project probably requires further analysis, or you may want a mix of constitutional features that simply cannot be achieved.

If some of the questions seem irrelevant, it is because this exercise is designed to cater for a very wide range of organisations.

And finally... DON'T PANIC! Although the exercise may look a little daunting, if you follow the instructions methodically you should get a result. You may find it easier if one person reads out the relevant instructions and someone else does the marking on the “options” sheet.

If you end up deleting everything or getting a different answer to what you expected, contact the Legal Team to discuss your requirements

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THE QUESTIONS

For each question, please read the introductory note and consider the alternative responses provided, then decide on the response that is the most appropriate for your venture. Only select one response per question. Then follow the instructions given in the analysis procedure that follows (page 8).

Question 1.

Note: This relates to the money needed to start up your organisation in the first instance, not to regular revenue income. In addition, an organisation may occasionally need a major injection of capital at other times in its life – when expanding, for example. Some organisations may raise capital by more than one of the methods given here, but this question asks which of these will be the **main** source.

1. How will you secure the majority of your **start-up** costs?
 - a grants and gifts
 - b loans
 - c issuing shares

☞ If you selected options (a) or (b) in question 1, IGNORE question 2

Question 2.

Note: Issuing shares is legally quite complex which is why there are several different options here. If you are thinking of using shares, consider the alternatives carefully before responding.

2. What sort of **shares** are you planning to issue?
 - a shares will be held only by voting members of the organisation (*these may be individuals or other organisations*)
 - b non-voting shares will be offered to “outsiders”, by personal contact
 - c shares will be offered to the public: all purchasers of shares will become voting members
 - d shares will be offered to the public: not all purchasers of shares will become voting members (maybe none of them)

Question 3.

Note: There are three main sources from an organisation may obtain its regular income:- grants and donations; selling things to its own members; and selling things to other people. Many organisations may have money coming from more than one of these sources, but this question asks which of these will be the **main** source.

3. From where do you anticipate getting the bulk of your **income**? (that's regular income, not start-up costs)
 - a grants and fund-raising
 - b selling services or goods to members of the organisation
 - c selling services or goods to non-members, or from contracts with public authorities or others
 - d significant income earned from trading but permanently reliant on additional grant income

☞ *If you selected options (b) or (c) in question 3, IGNORE question 4*

4. Where do you see your organisation getting most of its grant funding from?
 - a some or all of: grant-giving trusts; donations and gifts from the public; donations, gifts and sponsorship from the private sector
 - b public and statutory authorities
5. Will the organisation take on significant **debt** or incur **financial risks** generally (e.g. though borrowing money, running a business, employing permanent staff, or entering into major contracts such as long-term leases)?
 - a yes
 - b no

Question 6

Note. Several of the questions ask about “your members”, so it is important that the meaning of “membership” is clear. The members are, ultimately, the owners of the organisation. The defining characteristic of the members is that these are the people (or, sometimes, other organisations) who can vote at general meetings of the organisation – such as the annual general meeting. In a commercial company, they would be the shareholders.

It is the members who have the right to decide on significant issues, in particular amending the governing document, or winding up the organisation. They will usually elect some or all of the governing body, otherwise known as the “board of directors”, “management committee”, “board of trustees” or similar. The governing body is always accountable to the membership.

Some organisations actively wish to have a wide membership; but a small organisation may not have any other members except the people who serve on the governing body – this possibility is dealt with in this question.

(Sometimes businesses talk about “members” when really they mean customers – a book

club, for example, will give you a membership number but you will not have any voting rights or other constitutional role. The “club” simply sells you books. We are not referring to this sort of “member” here. Voting rights are the key factor to consider.)

6. Will the organisation have a **membership** other than the people who serve on its governing body (i.e. directors, trustees or management committee)?
- a yes
 - b no

Question 7.

Note: It is normal to establish some criteria for membership, based on one of these five options. Once again, an organisation may draw its membership from more than one of these sources but you are asked to anticipate which of these groups will provide **most** members.

7. Who in the main will be eligible to be members of the organisation?
- a employees or workers in the business (possibly including volunteers)
 - b customers / clients / users of the services provided (*who may be individuals or organisations*)
 - c some stakeholder group **other than** those listed in (a) and (b) above (such as organisations of a particular type, or providers of the services offered by this organisation)
 - d members of the community generally or some section of it, by application, regardless of any involvement in the organisation’s activities
 - e selected individuals or organisations, named in the governing document or invited into membership
8. What is the minimum number of members you expect to have at any time?
- a three or more
 - b less than three

Question 9.

Note: The answer here will be “no” for most people completing the exercise. A “yes” response to this question will only apply to self-help organisations made up of the self-employed, small businesses or other organisations, which will usually wish to be a co-operative.

9. Will the primary purpose of your project be to assist your **members** (not clients) to operate their own businesses or organisations more effectively?
- a yes
 - b no

Question 10.

Note: In order to be able to register as a charity an organisation needs to be carrying out charitable purposes, and to be doing so for the benefit of the public. The Charities Act 2006 lists a number of purposes which are considered to be charitable and it may be that your organisation if all of its activities fall within the list can be recognised as a charity, although the decision on charitable status does not just depend on the purposes but also relates to the way the organisation is governed and how it operates. The following is the list of legally charitable purposes from the 2006 Act:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown; or the efficiency of the police, fire and rescue services or ambulance services.

Charitable purposes do not include running a business **unless** that business directly contributes to one of these purposes. For example, a charitable organisation for “the advancement of education” may “sell” its educational services to students or trainees. A charitable organisation concerned with “the relief of those in need by reason of age” may have a contract with a local authority to deliver domiciliary care to the elderly. For further guidance on charitable status contact Co-operatives^{UK} Legal Team.

10. Are your activities **charitable** in law?
- a all our organisation’s activities fall within the list of legally charitable purposes
 - b our organisation’s primary activities fall within the list of legally charitable purposes, but we shall also be doing a substantial volume of non-charitable activity
 - c a minority or none of our organisation’s activities fall within the list of legally charitable purposes

Question 11.


Note: In the private sector, profits are used to reward shareholders or other investors. In the voluntary and social enterprise sectors, organisations are often prohibited from paying any of their *profits (or surpluses)* to anyone: they must be kept within the organisation (option **d**). However, co-operatives will often be permitted to reward their members by way of a bonus (as in option **b**) and, if an organisation has raised capital through issuing shares (see question 1), it will inevitably have to offer these shareholders some return on their investment, even if this is limited (options **a** and **c**).

11. After deciding how much of the **surplus or profit** is to be retained in any financial year, what will the organisation be able to do with the rest?
- a pay a dividend to shareholders
 - b give a financial bonus to the members (or otherwise provide material benefits for the personal benefit of members only)
 - c both of the above
 - d neither of the above

Question 12.

Note: An **asset lock** restricts what an organisation is permitted to do with its funds and assets. This is intended to reassure funders, supporters, and the people who set the organisation up that its resources will never be diverted for personal gain. To be meaningful, the asset lock must be applied by an external regulator. Charities, Community Interest Companies and some IPS Community Benefit Societies feature a regulated asset lock. The features of an asset lock will vary depending on the legal form chosen but in generally applying an asset lock to an organisation means that if the organisation is wound up while it is solvent, any surplus assets must be transferred to another asset locked body.

12. Should your organisation feature a general **asset lock**?
- a yes
 - b no

 *If you selected option (a) in question 12, IGNORE question 13.*

13. If the organisation is wound up and has funds left over, can these be distributed amongst the members?
- a yes
 - b no

Question 14.

Note: The **governing body** means the group of individuals with legal responsibility for managing the organisation and its resources., They may be referred to as the board of directors, the management committee, the board of trustees or otherwise. Most responses to this question will be (a). Only answer (b) if the governing body will be appointed by truly external bodies – not by agencies that are in fact members of his organisation.

14. How will a majority of the people on the **governing body** be appointed?
- a elected or appointed by the membership (or comprising all the members)
 - b appointed by external bodies

Question 15.

Note: Two things to note here. First, this question only asks if you want the **power** to pay members of the governing body – it doesn't mean the organisation has to do so, just that it could if it wished. Second, the answer is only "yes" here if you anticipate **more than half** of the governing body being paid for services rendered to the organisation.

15. Do you want to be able to pay a **majority** of the members of your governing body (as employees or otherwise) out of the organisation's income?
- a yes
 - b no

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ANALYSIS PROCEDURE - INSTRUCTIONS

For each question, delete or mark options in accordance with the response selected.

1. (a) Delete: 4, 6, 13, 14, 20
Mark with brackets: 11, 15, 16, 17
(b) Mark with brackets: 1, 2, 3, 14
(c) Delete: 1, 2, 3, 4, 5, 7, 9, 10, 13, 19

2. (a) Do nothing
(b) Delete: 12
(c) Delete: 6, 8, 11
(d) Delete: 6, 8, 12

3. (a) Delete: 4, 6, 11, 13, 14, 15, 16, 17, 18, 20
(b) Delete: 1, 2, 4, 7, 8, 9, 10, 12, 13, 14, 17, 20
(c) Delete: 15
(d) Delete: 4, 6, 11, 13, 14

4. (a) Delete: 3, 5, 7, 8
(b) Do nothing

5. (a) Delete: 1, 2, 3
(b) Do nothing

6. (a) Delete: 1, 4, 13
(b) Delete: 14

7. (a) Delete: 1, 2, 9, 10, 15, 16, 19
(b) Delete: 1, 4, 13, 17
(c) Delete: 15, 16, 17
(d) Delete: 1, 4, 11, 13, 15, 16, 17, 20
(e) Delete: 11, 12, 15, 16, 17

8. (a) Do nothing
(b) Delete: 11, 12

9. (a) Delete: 1, 12, 15, 17
(b) Delete: 16

10. (a) Delete: 10
(b) Mark with brackets: 4, 6, 11, 13, 14, 15, 16, 17, 20
(c) Delete: 1, 2, 9, 10
11. (a) Delete: 1, 2, 3, 4, 5, 7, 9, 10, 13, 19
(b) Delete: 1, 2, 3, 7, 8, 9, 10, 12, 18, 19
(c) Delete: 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 18, 19
(d) Delete: 4, 13, 20
Mark with brackets: 6, 8, 11, 14
12. (a) Delete: 3, 4, 5, 6, 11, 13, 14, 15, 16, 17, 20
(b) Delete: 1, 2, 7, 8, 9
13. (a) Delete: 3, 12, 18, 19
(b) Delete: 4, 13, 20
Mark with brackets: 6, 14
14. (a) Do nothing
(b) Delete: 7, 8, 11, 12, 15, 16, 17
15. (a) Delete: 1, 2, 9, 10, 19
(b) Delete: 17

THE OPTIONS

A. LEGAL FORMS

1. Charitable Trust (unincorporated)
2. Charitable Unincorporated Association
3. Unincorporated Association (non-charity)
4. Partnership
5. Company Limited by Guarantee
6. Private Company Limited by Shares
7. Community Interest Company (limited by guarantee)
8. Community Interest Company (limited by shares)
9. Charitable Company Limited by Guarantee / Charitable Incorporated Organisation
10. Charity with subsidiary company
11. Industrial & Provident Society (co-operative)
12. Industrial & Provident Society (society for the benefit of the community)
13. Limited Liability Partnership
14. Public Limited Company (plc)

B. TYPE OF ORGANISATION

15. Consumer (or Users') Co-operative
16. Co-operative Consortium or Marketing Co-operative
17. Worker Co-operative
18. Social Enterprise
19. Voluntary/Community Organisation
20. For-Profit Business

"SELECT-A-STRUCTURE"
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