Plunkett's brief guide to Legal Structures
The Plunkett Model Rules and Community Shares

Committees

In the early days, a committee is required to take on the responsibility of managing and leading a community group with the aim of setting up a community-owned enterprise. The committee is effectively the management group of an unincorporated organisation.

The committee should set out its aims and objectives from the outset as well as allocating roles and responsibilities for its members in order to have a clear purpose, and a clear goal in sight. This can be incorporated into a 'Memorandum of Association' which can be used to communicate to the community at large the purpose and scope of the committee and the persons involved.

The committee will be required to assess the viability of a community-owned enterprise in the community, and will explore all possible options for how it would be set up and managed. They should also represent the interests or concerns of the wider community.

As committees have overall responsibility for the management of an organisation's affairs, committee members can face personal liability should things go wrong. That is why it is important to meet regularly and make sure that the correct information comes to meetings so that committee members can make informed decisions.

Committees should consist of a minimum of three people, and a maximum of twelve. At the very least, a committee should consist of a Chair, Secretary and Treasurer.

Incorporation

All community-owned enterprises are businesses and as such Plunkett believe they must have a recognised legal structure in order to trade. Adopting a legal structure is also known as incorporation.

Incorporation = referred to as 'incorporating' the business or creating a 'corporate body'. It is essentially the process of creating a business with a separate legal identity and limited liability distinct from its members.

Why incorporate:
- Members no longer personally or financially liable for the organisation – limited liability
- Unincorporated organisations cannot own property
- Unincorporated bodies cannot enter into contracts
- Overcomes the issue of death or absence of members

There is a great table of the advantages and disadvantages of being incorporated and unincorporated in the Simply Legal Guide.

Organisational Model

The structure of an enterprise comprises an organisational model and an underlying legal structure. The *organisational model* describes who the owners of the enterprise are and how they govern it. The *legal structure* is the underlying legal form of the organisation and its governing documents.

A community-owned business may be owned in one of three ways:

1. By the intended customers. This is described as a **co-operative** form of enterprise
2. By its members. This is described as a **community enterprise**
3. By a range of stakeholders. This is described as a **multi-stakeholder** form of ownership

Legal Structures

The legal structure is the form of legal status by which an organisation is legally established, together with its detailed constitutional arrangements. The same legal form can be used as the basis to represent more than one organisational structure. The 4 main choices available to a community-owned business are as follows:

- Companies Limited by Guarantee (not normally shares)
- Industrial Provident Societies (Co-operative or for Community Benefit)
- Community Interest Companies (small or large membership – not normally small)
- Charitable Incorporated Organisation

Governance

All organisations, incorporated or otherwise, should have a governing document. This is the written statement that sets out the purpose of the organisation, its structure and describes how the organisation will operate. It should include the aims of the organisation, who the members are and how they make decisions, what happens to operating surpluses, and what happens to the assets if the organisation is sold or broken up.

- For unincorporated associations it is called the 'Constitution'
- For partnerships it is the 'Partnership Agreement' or 'Deed'
- For an IPS it is the 'Rules'
- For companies it is the 'Articles'

Most businesses decide to adopt 'off the peg' governing documents when adopting a legal structure. This is often cheaper and allows a group to follow best practice and benefit from a tried and tested model. For example, the Plunkett Foundation has Model Rules for an Industrial and Provident Society for the Benefit of the Community.

Choice of legal structure

Plunkett feel that a community-owned business should not adopt a structure which affords ownership according to the level of investment which stakeholders make in the enterprise. As communities are able to choose from an array of legal structures, and shape the governing documents to meet their own needs, we look for the following characteristics to confirm that they are genuinely community owned:

- Open and voluntary membership
- 1 member 1 vote

Additionally;

- The interests of the business are linked into community control
- The distribution of profit does not enable some members greater control than other

Co-operatives UK have an online select-a-structure to guide community groups through choosing the most appropriate structure for their needs. Communities are also advised to take advice when choosing which structure is most appropriate to their needs.

The remainder of the document considers only the IPS for the Benefit of the Community structure and IPS Co-operative Society. For more information on other structures, download or order from Cooperatives UK a copy of ***Simply Legal***.

Legal Structure	Summary: most typical features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets 'locked in' for community benefit?	Can it be a charity and get charitable status tax benefits?	Differences in the law as it applied in Scotland or Northern Ireland
Unincorporated association	Informal; no general regulation of this structure; need to make own rules	Nobody owns: governed according to own rules	No: can create problems for contracts, holding property and liability of members	Depends on own rules	Yes (if trust established for community benefit)	Yes if meets the criteria for being a charity	No specific differences
Trust	A way of holding assets so as to separate legal ownership from economic interest	Assets owned by trustees and managed in interests of beneficiaries on the terms of the trust	No: trustees personally liable	Trustees/directors no, unless trust, court or Charity Commission permit	Would need bespoke drafting in articles (which could be amended by members)	Yes if it meets the criteria for being a charity	No, subject to differences between English and Scots trust law
Limited company (other than Community Interest Company)	Most frequently adopted corporate legal structure; can be adapted to suit most purposes	Directors manage business on behalf of members. Considerable flexibility over internal rules	Yes: members' liability limited to amount unpaid on shares or by guarantee	Yes (but no dividends etc to embers if it is a company limited by guarantee)	Yes, through standard provisions which all CICs must include in their constitutions	Yes if it meets the criteria for being a charity	Scotland: no. Northern Ireland: separate but similar legislation
Community Interest Company (CIC)	New 'off-the-peg' limited company structure for social enterprise with secure 'asset lock' and focus on community benefit	As for other limited companies, but subject to additional regulation to ensure community benefits	Yes; members' liability limited to amount unpaid on shares or by guarantee	Yes, but must benefit wider community as well. Can pay limited dividends to private investors	Would need bespoke drafting in articles (which could be amended by members)	No, but can become a charity if it ceases to be a CIC	Scotland: no. Northern Ireland: legislation not yet in place
Industrial & Provident Society (IPS) (Co-operative)	For bona fide co-operatives that serve members' interests by trading with them or otherwise supplying them with goods or services	Committee/officers manage on behalf of members. One member, one vote (regardless of e.g. sizes of respective shareholdings)	Yes; members liability limited to amount unpaid on shares	Yes, but should do so mostly by members trading with society, using its facilities etc. not as a results of e.g. shareholdings	Yes (asset lock only survives dissolution if new statutory form of asset lock adopted)	No – would have to be constituted as community benefit type of IPS	Scotland no. Northern Ireland: separate (but similar) legislation
IPS & BenCommm	Benefit community other than just own members and have special reason not to be companies	Like co-op type, but new legislate provides option of more secure form of asset lock	Yes; members liability limited to amount unpaid on shares	Must primarily benefit non-members; asset lock applies	Yes	Yes if it meets the criteria for being a charity	Scotland: no. Northern Ireland: legislation not yet in place
Charitable Incorporate Organisation (CIO)	First ready-made corporate structure specifically designed for charities	Similar to company but with different terminology (e.g. for 'directors' read 'charity trustees')	Yes; members either have no liability or limited liability	Members: no. Charity trustees: only if constitution, court or Charity Commission permit		Cannot be anything but a charity, and must met the criteria for being a charity	Scotland: separate (but similar) legislation and Regulator. Northern Ireland: legislation not yet in place

The Industrial and Provident Society for the Benefit of the Community

An industrial and provident society is an organisation conducting an industry, business or trade, either as a co-operative or for the benefit of the community, and is registered under the Industrial and Provident Societies Act 1965.

Co-operative societies are run for the mutual benefit of their members, with any surplus usually being ploughed back into the organisation to provide better services and facilities.

Societies run for the benefit of the community provide services for people other than their members. There need to be special reasons why the society should not be registered as a company.

The FCA (as opposed to Companies House or the Charity Commission) is the registering authority for societies which register under the Industrial and Provident Societies Act 1965 (I&P Act 1965).

Key characteristics of an IPS:

- It must have a minimum of 3 members
- In the event of the winding up of the society, surplus net assets are not distributable amongst members but transferred to another common ownership enterprise or to a charity nominated by the members
- Voting control must be vested in the members equally, not in proportion to their financial interest in the society
- Interest paid on share and loan capital if any, must not exceed a rate necessary to raise and retain sufficient capital to carry out the society's objectives
- Membership must not be artificially restricted with the object of increasing the value of members' propriety rights and interests
- Any trade profit to be distributed or reinvested for social or charitable purposes
- If the society meets the usual charity criteria it may apply to the Inland Revenue to be treated as a charity for taxation purposes which, if granted, will give the society full charitable status. It will not be granted a charity registration number.

Plunkett Foundation Model Rules

The Plunkett Foundation can be used as the 'promoting body' to register a community owned business as an Industrial and Provident Society (IPS) for the Benefit of the Community. This means that communities can use our FCA approved model rules (template governing document for an IPS) which have been specifically devised for community-owned enterprises. The advantages for this are a quick registration and a reduced registration fee.

Other organisations such as Co-operatives UK also have IPS Model Rules. Plunkett does not currently have Model Rules for an IPS Co-operative Society.

Why the Plunkett Foundation promotes IPS Benefit of the Community structure?

- Completely democratic structure: one member one vote
- Prioritises the interests of the wider community over the needs of its members or investors
- Allows for community investment (innovative form of fundraising)
- Bespoke for the needs of community enterprises
- FCA approved and registered with Companies House
- Compliant with up to date legislation and include automatic updates
- Over 50% of community shops have used this structure

Noteworthy Aspects of the Rules:

- States why the society exists
- Explains the role of the Membership; Management Committee; and Secretary
- Open membership rule
- Outlines what happens to members on cessation of membership
- Prescribes the type and number of meetings that need to take place, and voting procedures
- Prescribes the accounting requirements and procedures

The share offering

The community need to set the share value at an accessible price. The shares are withdrawable which means they can withdraw their investment at a later date. They do so by selling the share back to the society, not another individual. Share prices do not rise or fall in value over time – they always stay the same.

The rules protect the business at the discretion of the committee members in regard to share withdrawal. For instance, they normally state:

- Withdrawals are not permitted within the first 5 years
- They are dependant on the business being able to cope with withdrawals
- A limit of withdrawals would be made each year
- Withdrawals need to be made by application
- Withdrawals can only be made from surplus profit or new share capital
- The committee can suspend withdrawals at any time

Interest Payments

The society may (but is under no obligation to) pay interest out of trading surpluses. They may only pay to those with a share holding over a certain amount, and not above 2% of the Bank of England's base rate.

What are "community shares"?

Plunkett Foundation is one of only four sponsoring bodies nationally that has appropriate rules to carry out a community issue using withdrawable share capital.

Community investment is a way of raising money from communities through the sale of shares or bonds to finance enterprises serving a community purpose. It is defined as: *The sale, or offer for sale, of more than £10,000 of shares or bonds to communities of at least 20 people, to finance ventures serving a community purpose.*

Community shares empower communities by giving members – as part-owners – a direct say in the success of an enterprise, encouraging them to play an active part in its future. In a community shop, your shareholders will become your customers, your volunteers, your staff, and your supporters. As well as sharing in the social, environmental or community benefits of the enterprise, members can be offered a financial return on their investment. There is no legal definition of community shares. However the term is now recognised as referring to a unique form of share capital called "withdrawable shares", which can only be issued by Industrial & Provident Societies (IPSs). When a share is *withdrawable* as opposed to *transferable*, it can only be withdrawn from the organisation in which it is invested. Its value remains constant, unlike a transferable share in a normal company.

Shareholders should be aware that there is only one vote irrespective of the number of shares held, and that there will be conditions imposed on the timing of withdrawal and the amount of interest paid if any. Community shares should be viewed primarily as having a social return for the wider community and are exempt from the Financial Services and Markets Act 2000 which means there is no right of complaint to an ombudsman.

Different types of community share offer

Membership offer: This is where the amount invested is restricted to a nominal sum. It is a simple form of raising money from the community but is unlikely to generate large sums.
Pioneer offer: This is a possible way of generating funds when in the initial stages of setting up a project. An offer for the founding members of the Society, for high-risk capital in order to get investment-ready.

Time-bound offer: A target amount and timescale is stipulated, and if it not successful the money is returned to investors. The timed element galvanises the community.
Open offer: An offer that is not subject to a target amount or timescale.

Most communities opt for either a *membership offer* or a *time-bound offer*. A typical time-bound offer would be over four to eight weeks.

Plunkett Co-operative Pubs Online

Decisions to be made by the Committee

- Legal Structure
- Type of share offer (see above)
- Minimum Shareholding
- Timescale of a timed offer
- Investment target
- How will the shareholder database be administered?
- Is it worth having subscriptions?
- Should investors be encouraged with interest/dividends? If so, how much?
- Restrictions on withdrawals

Developing a Share Prospectus

Good practice would mean that a share offer or prospectus should include the following:

Contents:
Purpose of the investment
Projected social returns
Maximum/minimum investment
Withdrawal terms
Projected financial returns
Risk factors
Members rights
Crudentials of promoters
Legal format of the society
Regulation of the offer

Supporting evidence:
Website address
Contact person
Rules of the society on website
Business plan for time bound offers
Annual accounts for open offers
Annual report and social performance report for open offers

What about regulation?

Due to the lack of regulation, the committee of an IPS interested in issuing a community share offer should impose stringent self-regulation. Three points really must be made to the community:

1. *You may lose some or all of the money you invest*
2. *There is no regulation to protect you*
3. *There is no right of recourse*

Support available from the Plunkett Foundation

The Plunkett Foundation is one of only four organisations that have Model Rules that allow for withdrawable shares. For organisations that have used the Plunkett Model Rules, additional support and guidance is available to aid the development of a community share offer; including one-to-one advisor time, telephone support, seminars and training sessions, and resources of best practice.

It is strongly recommended that copies of share prospectuses and issue documents are shared with the Plunkett Foundation prior to public release; so that we can be assured the most important self-regulatory points have been adhered to.