

National Council for Voluntary Organisations

Sustainable Funding Project



Trading: Choosing the right legal form

A thick yellow line graph is overlaid on the bottom half of the page. The background is a blue sky with white clouds. The line starts at the bottom left and trends upwards to the right, with several peaks and valleys, representing a fluctuating but generally increasing trend.

HEMPSONS

Leading Third Sector Lawyers

What is this tool for?

This tool sets out the key questions to ask about your organisation, so that you can adopt the best legal form to enable you to trade to deliver your objectives.

It is essential to go through this process if you are setting up a new Voluntary and Community Organisation (VCO) that may trade. Every enterprise is different, so it is important to explore all the options before you decide.

The tool is particularly useful for managers, staff, volunteers and trustees of VCOs. It is also useful for funding advisors, business advisors and consultants.

This is not a decision-making tool as there are many different options when setting up a new organisation. You should seek professional advice before embarking on any major trading initiative. However the tool will help you clarify key issues and identify priorities for your organisation.

How to use the tool

Read each Trading Issue and Key Fact carefully. Assess whether each issue is important for your organisation and for the type of trading you want to do. Mark a score against each Trading Issue in the right hand 'Priority' column. You can skip boxes if you feel they are not relevant to your organisation. In the example (right), being process-focused has been identified as a priority issue.



Trading issues

- **products:** To provide products or services that will directly contribute to your objectives
- **process:** To work in a particular way that prioritises a social objective
- **profits:** To make profits that can be used on your social objectives

Key facts

Your social objectives could be your organisation's mission, vision or values, and may be enshrined in the governing documents.

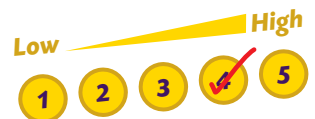
Many charities provide products or services that directly achieve their mission.

Involving beneficiaries in the trading process is a common way to achieve social benefits.

Retained profits can be transferred to support delivery of the mission, for example running a business in the UK to fund development projects in Africa

Your choices and priorities
(you can tick more than one)

- Founding principles
- Process
- Profit



Key questions for voluntary and community organisations when choosing a legal form

Many voluntary and community organisations (VCOs) are keen to increase their understanding of the legal options available so that they can trade more effectively. The legal form of your organisation can have a big impact on what is and isn't possible. Choosing the right form is a vital stage in business planning if trading and enterprise are to be strategic priorities and sources of income for your organisation.

Open up the tool to find the key questions for your trading initiative.





Why do you want to trade?

- products: To provide products or services that will directly contribute to your objectives
- process: To work in a particular way that prioritises a social objective
- profits: To make profits that can be used on your social objectives

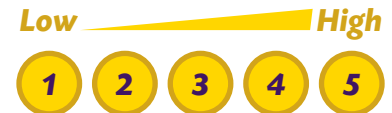
Key facts

Your social objectives could be your organisation’s mission, vision or values, and may be enshrined in the governing documents.

Many charities provide products or services that directly achieve their mission. Involving beneficiaries in the trading process is a common way to achieve social benefits. Retained profits can be transferred to support delivery of the mission, for example running a business in the UK to fund development projects in Africa.

Your choices and priorities (you can tick more than one)

- Product
- Process
- Profit



Who will benefit from your trading activities?

- members only
- specified sections of the community
- the wider community

Key facts

Some organisations restrict those who can benefit to their members.

Your trading activities might benefit a section of the community, for example defined by geography, people’s particular needs or social or environmental challenges.

Your choices and priorities (you can tick more than one)

- Members
- Section of community
- Wider community



What are the needs of the founders?

- to protect the founding principles
- to retain strategic control
- to earn a livelihood through employment and/or shareholding
- to ensure effective succession to senior positions

Key facts

The founders of an organisation set it up and can be crucial to its success. Founders may be individuals or organisations.

Sometimes the founders wish to retain strategic control as the organisation grows and develops. In other organisations they may wish to stand back and let others control.

Founders may be employed by the organisation or receive financial returns through their shareholdings, though this is restricted in some legal forms.

To ensure the organisation’s continuity, where founders retain a leadership or management role, they should plan for their succession.

Your choices and priorities (you can tick more than one)

- Founding principles
- Strategic control
- Earnings
- Succession



4

What management structure would be most effective for you?

- a Board responsible for strategic control and a separate Senior Management Team
- an integrated Board of "Non-Executive Directors" and Senior Management Team
- a Board where all members are remunerated
- Directors accountable to the Board
- Directors accountable to a wider membership

Key facts

Boards are there to set the mission and to ensure that the organisation works towards it.

Some Boards will delegate to staff operational decisions and day to day delivery of the mission.

Other organisations will use an integrated Board to create a single tier for major decision making.

Directors can be remunerated:

- as employees
- by fees
- for services outside normal Directors' duties

Accountability structures will vary depending on who has the power to appoint and remove Directors. Directors might be appointed and/or removed by the Board, a wider membership or by nominating organisations.

Your choices and priorities (you can tick more than one)

- Separate Board
- Integrated Board
- Remunerated Board
- Directors accountable to Board
- Directors accountable to wider membership

Low High



5

Who are the stakeholders of your trading project and how important is stakeholder engagement?

- List and group your stakeholders on a separate sheet
- Prioritise by importance and power for your organisation

Key facts

Any project will have stakeholders both inside and outside the organisation.

Stakeholders might include staff, volunteers, service users, customers and the wider community.

They might also include funders, financial backers and commissioners.

List the main stakeholder groups you have identified

.....

.....

.....

.....

.....

.....

Low High



6

How does the management engage with the views of its stakeholders?

Stakeholders could be:

- Board members
- Non voting observers on the Board
- Members of the organisation
- Members of Board committees
- Consultation groups
- Consultation by other means, eg. questionnaires

Key facts

Organisations first need to decide what they want to achieve from engagement.

Engagement could involve:

- being informed
- feedback from services users
- consultation on design of new services
- influence of future strategy
- sharing and implementing new ideas

Your choices and priorities (you can tick more than one)

- Board
- Board Observers
- Members
- Committees
- Consultation Groups
- Other means

Low High



How will you fund the business?

- reinvestment of contract surpluses
- debt finance
- grants
- equity investment
 - from members
 - from external investors
- donations of cash or in kind

Key facts

It is important to think about how the organisation's activities will be funded long-term. Many organisations use a combination of funding.

Different income streams and sources of finance have different implications for the organisation.

Debt finance includes loans from banks and other finance providers.

Equity investment might include issuing shares in the organisation to members or to outside investors. Shares can carry rights to share in profits or capital returns on share sales or the organisation's winding up.

Donations might be sought from individuals or companies and could be for cash or gifts of property or equipment, pro bono services or volunteering schemes.

It is common to access different funding in the startup stage and growth stage of an organisation.

Your choices and priorities
(you can tick more than one)

- Contract surpluses
- Debt finance
- Grants
- Equity
- Donations

Low  High



Do you require the tax benefits available to a charity?

Key facts

Not all mission-driven organisations have charitable status.

Full details of the tax benefits available are accessed from HM Revenue and Customs and the Charity Commission.

Charities gain certain tax benefits that can increase retained income from trading activity.

Charities can also be eligible for Stamp Duty Land Tax and Business Rates Relief.

The two key concerns are Corporation Tax on profits from trading and VAT (Value Added Tax) on sales of products or services.

Your choices and priorities
(you can tick more than one)

- Charitable tax benefits required
- Charitable tax benefits not required

Low  High



What kind of regulation would be most suitable for your trading organisation?

- flexibility of lighter touch regulation
- tax benefits available through the higher regulation of charities
- public reassurance in fundraising
- stakeholder reassurance that assets and funds are locked into the organisation or dedicated to community benefit

Key facts

Different organisational forms have different levels and types of regulation.

Registering as a charity or obtaining charitable status leads to certain legal obligations.

Some legal forms are less heavily regulated, for example the Community Interest Company.

To protect the public when fundraising, charities must comply with various statutory regulations.

For some organisations it is essential that the assets and funds are 'locked in' only to be used for their missions, with restrictions on distribution.

Your choices and priorities
(you can tick more than one)

- Lighter regulation
- Tax benefits
- Fundraising reassurance
- Asset lock

Low  High



Further support

You can gain further support on trading and legal form from many sources including:

The NCVO website

www.ncvo-vol.org.uk/advice-support/funding-finance/income-sources/open-market

www.ncvo-vol.org.uk/sfp

Hempsons Third Sector Team

www.hempsons.co.uk/sectors/third-sector

NCVO's Good Guide to Trading

www.ncvo-vol.org.uk/products-services/publications/good-guide-trading-getting-ready-enterprise

Get Legal online tool

www.getlegal.org.uk

Keeping it Legal publication (SEC/BWB)

www.socialenterprise.org.uk

Charities, Trading and the Law (Jordans)

www.jordanpublishing.co.uk

Charity Commission

www.charity-commission.gov.uk

HM Revenue and Customs

www.hmrc.gov.uk

CIC regulator

www.cicregulator.gov.uk





The Sustainable Funding Project

National Council for Voluntary Organisations
Regent's Wharf, 8 All Saints Street
London N1 9RL

T: 020 7520 2519

F: 020 7713 6300

E: sfp@ncvo-vol.org.uk

HEMPSONS

Leading Third Sector Lawyers

Hempsons

Hempsons House
40 Villiers Street
London WC2N 6NJ

T: 020 7839 0278

F: 020 7839 8212

E: thirdsector@hempsons.co.uk

National Council for Voluntary Organisations

Regent's Wharf
8 All Saints Street
London N1 9RL

T: 020 7713 6161

F: 020 7713 6300

E: ncvo@ncvo-vol.org.uk

www.ncvo-vol.org.uk

Textphone: 0800 01 88 111

HelpDesk: 0800 2 798 798

Charity Registration: 225922

The paper used for this publication
is sourced from sustainable forests.

SteersMcGillan Design Ltd 01225 465546