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Discussion paper

# Organisational mechanisms that best serve the poor

*"Learning to stimulate poor people into organised actions is an art that has to be cultivated through practice rather than through formal training and mechanical guidelines." Sirisena Tilakaratna (1987)*



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## Abbreviations

AIDS	Acquired Immuno-Deficiency Syndrome
CBO	Community-based organisation
Corp.	Corporation
CPR	Common-pool resource
Dept.	Department
EDF	Electricité de France
ICA	International Cooperative Alliance
ICOM	Industrial Common Ownership Movement
IIED	International Institute for Environment and Development
ILO	International Labour Organisation
Ltd	Limited
MoU	Memorandum of Understanding
NGO	Non-governmental organisation
Plc	Public limited company
Pty	Private
PRS	Poverty Reduction Strategy paper
SME	Small to Medium-sized enterprise
VAT	Value Added Tax
WCSDG	World Commission on the Social Dimensions of Globalisation

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## Executive summary

This paper seeks to sharpen understanding on how poor and marginalised groups can address the forces that restrain their self-development through the creation of their own democratic economic organisations. Critical factors blocking pro-poor development are examined such as elite power, modes of living and other dependent-dominant relationships which inhibit the poor from pursuing organised actions to change their life situation. In seeking ways of overcoming these factors the paper analyses the need to provide some form of catalytic support to stimulate the poor to create informal and formal organisations under their ownership and control.

An examination of ‘*official*’ development policy that both explicitly and implicitly seeks to promote investor-controlled enterprise as the dominant business ownership model suggests that this approach is unlikely to bring lasting changes which will directly benefit the poor. “*Because well functioning markets are designed to bypass such people.*” (Sachs, 2005) Market interventions by pro-poor development partners needs to become more balanced. In particular they require to promote and support on an equal basis appropriate forms of member-controlled enterprise. It is through this self-organising approach that the poor obtain significant power to control their asset-base, promote economic democracy and retain economic surpluses.

The paper details a range of different forms – *association, trust, partnership, company and cooperative* - which can be used to achieve these objectives. Two charts provide details of key features such as legal incorporation, governing instruments, ownership, regulation, asset and financial controls, meetings, management structures and winding-up. Guidance is provided as to which legal forms, if any, would be most appropriate to ensure self-organised enterprises remain controlled by the poor and therefore best serves their interests.

## Introduction

The purpose of this paper is to identify the different types of formal and informal organisations which can best serve the economic and social interests of the poor. However navigating the conceptual, policy and legal territories which frame the various competing discourses and their varying applications of terminology such as *legal person, private organisation, small to medium-sized enterprise (SME), local economic development, and community-based organisation* – can be extraordinarily difficult. Some reference points are needed to help fix the territory, secure the appropriate organisational instruments and guide the way. Four directional bearings provide the paper with its main reference points.

Firstly this paper is about ***collective and democratic organisational mechanisms*** – organisation being defined as: *group, association, company, cooperative, syndicate, league, institution, body, concern, etc.* Secondly the focus is on approaches that ***use a business or enterprise model*** to drive their aims and objectives. In other words, *an organisation that carries out some kind of trade for a payment.* This may or may not include a profit element. Thirdly, the term SME is unpacked into a ***range of different enterprise categories: investor-controlled enterprise; state-controlled enterprise; family proprietorship; and member-controlled enterprise.*** And fourthly, this paper specifically discusses ***the member-controlled form of SME.***

The paper is divided into 4 parts covering: *reasons to act together; national policy frameworks and business models; member-controlled organisational options; and guidance.*

Attention is drawn to the fact that English organisational and legal concepts provide the underpinning for this paper. This is because in many parts of the world British colonial administrations often adopted ‘home-country’ legislation as the basis for laws in its former colonies. In other ex-colonies where the colonial influence was exercised by other European powers similar but different civil society and legal forms hold sway. Therefore, for many developing countries this legal legacy often provides the ‘*clogs and wheels*’ underpinning current laws, regulations and organisational modalities. However, in former soviet countries where property, contract law and functioning markets are often underdevelopment newer legal forms are emerging while in Islamic societies religious law forms, codes and modalities predominate.

## PART 1: Reasons to Act Together

This part examines bottom-up development processes which focus on self-organised actions of the poor. It broadly outlines where the poor are to be found, the range of potential self-development actions which can be pursued and the extent to which the right to association for the poor is respected and safeguarded. Critical factors in enabling pro-poor development are defined – *people's self-development; participation; and countervailing power*. This leads to an examination of the main characteristics involved in building organisations of the poor.

### The Potential for Self-organised Actions of the Poor

In development the concept of the 'local' community varies enormously. For the majority of the world's population the local community means *villages* (many of which are isolated, remote and ecologically fragile) and *urban shanty towns and slums*. In such situations there is typically a direct link between where people live and work. (De Soto, 2000) Rural communities subsist primarily on natural resource-based activities – agriculture, forestry, fisheries, pastoralism and hunting-gathering, while poorer urban communities largely depend on various activities in the informal economy. Many of these communities face endemic poverty and barring out-migration, arresting and reversing poverty requires sustaining and improving the local economic base and increasing the availability of basic social services. (WCSDG, 2004)

In many communities' self-organised initiatives by the poor themselves in the form of informal and formal membership organisations, resource pooling, reciprocity and collective action often constitutes local development. The activities undertaken by these *organisations of the poor* can vary substantially depending on the nature of the socio-economic context in which they operate, the specific interests that a particular group seeks to pursue, its history and cohesiveness, and the level of collective awareness and understanding which they possess. The potential activities that organisations pursue have been broadly categorised<sup>1</sup> by Tilakaratna (1991) as falling into 4 types: *defensive; assertive; constructive; and transformational actions*.

***Defensive actions*** – aim at protecting the existing sources, means and conditions of living against erosion or encroachment by actions of other interest groups or government. They represent collective actions initiated by the poor to prevent deterioration in their customary mode of living, which may result from a proposed project, policy shift or other external intervention. Examples are dislocations and displacements of people and loss of their traditional means of livelihood as a result of land grabbing or exclusion from forests, grazing land and fishing grounds on account of government expropriation in the interests of private and corporate enterprise. Other examples include government expropriation through the gazetting of conservation areas or the loss of traditionally cultivated land to commercial agribusiness and health hazards that can result from mining and other forms of industrial pollution.

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<sup>1</sup> There are a variety of different ways of categorising the various actions which organisations can pursue. A similar but different arrangement for SME associations is outlined by Macqueen in *Associations of Small and Medium Forest Enterprise*, IIED, 2004. These overlaying categories are: *Shaping Rights & Responsibilities; Coordinating Market Inputs & Outputs; Sharing Information & the Labour Pool; Sharing Research & Development Costs; Developing Quality Standards and Skills Upgrading; and Strategic Planning*.

Actions by organised groups can take several forms such as protest campaigns, making representations to the relevant authorities, submission of alternative project ideas, negotiations aimed at obtaining relief, and resort to court action.

When organised groups find their choices of action limited they can in certain situations resort to the use of violence as a means of resistance. In this situation it is rarely mindless, and usually has a specific goal. *Defensive aggression* can take a number of forms but the most common are riots, sabotage of public and private property, and rent strikes.

***Assertive actions:*** - take place when the poor exercise their economic and social rights under government legislation, policies and programmes as well as what they collectively consider to be their legitimate entitlements.

Experience shows that government legislation intended to benefit the poor (*e.g.* rights to sharecroppers or tenants, land and water re-distribution, etc) do not automatically reach the poor unless the latter are organised and able to act as a pressure group to assert their rights to entitlements. The same is true of government policies, programmes and projects intended to benefit the poor. The establishment of service delivery systems for instance in health, education, water, agricultural extension, etc do not by themselves ensure intended beneficiaries receive services. The poor need to organise themselves to make claims and to assert their rights.

Assertive action has a further dimension namely assertion vis-à-vis private vested interests such as traders-cum-moneylenders who attempt to make extractions from the poor through a process of unequal or unfair exchange (*e.g.* exorbitant interest rates charged on credit, supplies or low prices paid for produce and high prices charged for inputs used by poor producers). The outcome is likely to result in economic bondage, which creates a vicious circle of perpetual poverty.

In such a context, an important activity of the organised poor will be to initiate action to retrieve the economic surplus they lose as an important means of enhancing their resource base. Collective action to enhance their bargaining power vis-à-vis the mercantile interests or de-linking from them and initiating some form of self-organised alternative cooperative approach to credit and marketing arrangements becomes an important strategy aimed at asserting their right to economic surpluses. In this way, organisation enables the poor to achieve a measure of counter power vis-à-vis the power holders (politicians, bureaucracy and private business interests) in society.

***Constructive actions:*** - refers to self-help initiatives by groups of the poor primarily utilising their own resources. Instead of waiting for the government to address their needs, organised groups initiate actions to satisfy their need for services by mobilising their own resources in some cases with supplementary assistance from outside. The activities generated through such a process can take a variety of forms such as:

- *Infrastructural works* – feeder roads, simple irrigation works, small dams, school buildings and similar physical structures;
- *Economic projects* – consumer goods stores, schemes for collective harvesting and marketing, cultivation of new crops or animal husbandry, and diversification of economic activity by setting up small industries;

- *Social development activities* – community water supply construction and management, housing improvements, health and sanitation programmes, caring for AIDS orphans, pre-schools and community centres; and
- *Cultural and other activities* – festivals, drama, sports and religious activities.

In this way, organisations serve as an instrument to mobilise people's own resources to satisfy a wide variety of local needs.

***Transformative actions*** – these are innovative and creative initiatives of organised groups of the poor with a relatively high level of social solidarity and consciousness. Such groups explore and experiment with development styles that represent alternatives to mainstream development processes. These may be methods, which are ecologically sustainable and more appropriate to the people concerned, such as tackling appropriation and provision issues in common-pool resources<sup>2</sup> – forests, grazing, fisheries, water management, etc or organic farming, fair-trade ventures, renewable energy schemes, environmental protection and indigenous practices of health care are some examples. Evolving innovative organisational forms and methods of collective action, which are democratic and participatory in character and the prevention of elitist forms of leadership within organisations, are a further dimension of transformative actions.

The array of actions described above can often be initiated by the organised poor. Yet what is missing is not so much resources as the catalytic support for the people to get organised to obtain access to and to use the resources effectively for their benefit. The next section examines two critical factors in this catalytic support process. These are:

- the right of the poor to free association without fear of repression; and
- the process through which the poor are stimulated to organise themselves.

## **The Right of the Poor to Free Association without Fear of Repression**

While the right of association for workers in the organised sector (industry, commerce, public sector and plantations, etc) is available in most countries under trade union legislation, the workers in the rural sector and urban informal sector who are mostly self-employed or irregularly employed do not come within the ambit of such labour legislation. Industrial and labour legislation with its emphasis on employer-employee relations has little or no relevance to the majority of the poor who are either self-employed (farmers, fishers, pastoralist, forest farmers, artisans, vendors, etc) or casual wage earners without regular employment and often lacking a permanent employer. (Stiefel & Wolfe 1994)

To address these gaps in the right to free association and collective bargaining institutions such as the United Nations have sought to address issues faced by various marginalised groupings. The International Labour Organisation (ILO) has in recent times sought to establish global policy guidance on the rights of self-employed workers. To this end its Governing Body has adopted two international Conventions:

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<sup>2</sup> In Common-pool resource (CPR) literature the term *appropriation* is applied to the process of withdrawing resource units from a CPR system while the term *provision* refers to the actions taken to secure the long-term sustainability of the CPR system. (Ostrom, 1990, pp.30-31)



- ***Rural Workers' Organisation Convention and Recommendation, 1975;***
- and
- ***Indigenous and Tribal Peoples Convention, 1989***

These documents provide the rationale and guidelines for Member States to frame appropriate national legislation. In the Rural Worker's Convention the term rural worker is defined:

*“to include any person engaged in agriculture, handicrafts or related occupations in a rural area whether as a wage earner or as a self-employed person such as a tenant, sharecropper or small owner-occupier provided they work on the land themselves with the help of their family labour or with the help of occasional outside labour.”(ILO-C141, 1975)*

The definitions used in the Indigenous and Tribal Peoples Convention are:

*“Peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”*

*“Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.”*  
(ILO-C169, 1989)

However despite these and other similar economic democracy initiatives poor and marginalised workers around the world continue to suffer various forms of repression and denial of their rights.

Human rights reports regularly highlight abuses including the denial of freedom of association to poor and marginalised groups (e.g. armed vigilante attacks on land settlers and farmer workers in Brazil, Philippines and Zimbabwe; government exclusion of tribal peoples such as the San bushmen in Botswana, the Ba'twa in the Democratic Republic of Congo, aborigines in Australia and the Karen in Myanmar; slum evictions in Kenya, India and South Korea; and forced relocations due to dams in India and China to name but a few).

Currently one of the most important methods available for the poor to organise in the economic sphere and enjoy legal status is to form member-controlled organisations under Cooperative Law. Recent global concerns about poverty, job security, corporate profit-taking and the privatisation of basic services has led to renewed international interest in the cooperative form of democratic enterprise.

In 2002 the ILO passed a new Recommendation encouraging Member States to overhaul and revise their cooperative legislation. The Recommendation in addition to calling upon States to reform their cooperative legislation and policies in line with the International Cooperative Alliance (ICA) universal *Statement of Cooperative Identity* seeks to free national cooperative movements and their constituent societies from state, political and other forms of interference and control. Government institutions involved in cooperative work are now encouraged to play an enabling, regulatory and policy setting role and leave the running of cooperatives and their business operations to their members. (ILO-R193, 2002; Smith, 2004) To date, 15

developing countries have either revised their legislation or are in the process of doing so. (Bibby & Shaw, 2005)

Besides legislation, government policies and practices are a key determinant of the space available for the poor to form independent organisations of their own. The main issue of concern is whether there is the political will to permit free association for the poor.

Organisations of the poor result in a diffusion of power. Furthermore, organised people operate as pressure groups on the political and administrative system. (Chomsky, 1999) In many countries politicians may not be willing to see an erosion in their power base. They prefer to deal with the poor through their local political agents and government extension services, through community organisations having elite leadership such as traditional authorities (village government) or through company-community partnerships in which business interests determine the conditions of engagement. Thus they may not wish to encourage free association over which they lack control. Practices vary widely with some local politicians willing to allow the poor to take independent self-organised initiatives to improve their economic situation while others prefer a more paternalistic approach. (Tilakaratna, 1987)

### **Organised Efforts to Increase Control over Resources and Institutions**

In a classic piece of early 1980's development literature written towards the end of his working life the Sri Lankan economist G.V.S de Silva along with a number of other South-east Asian scholar-practitioners<sup>3</sup> unfolded a concept which they called *Social Change or People's Power*<sup>4</sup>. At the core of the concept were the twin ideas of *countervailing power* and *people's self-development*. The concept had four central principles:

- *Development cannot be delivered to the people as a package from outside.* It is essentially a process that originates from within the heart of each society;
- *Development must be locally rooted and is first and foremost lived by people where they work and live - namely at the local level;*
- *No development model can be universal* and the richness of development is due to its variety and plurality which stems from each society's culture and traditions; and
- *Self-reliance, participation and countervailing power are central components in the development process.* These three concepts are a unity, an *integrated whole*.

The essay explains the '*integrated whole*' by noting that self-reliance should not be confused with the narrow concept of self-sufficiency. It goes on to define self-reliance as '*the independent capacity to take decisions affecting one's livelihood and environment which are often appropriated and made by others*'. Therefore it is primarily a process of '*self-assertion*

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<sup>3</sup> The *Social Change* school in addition to G.V.S de Silva at various times included the following economists: Anisur Rahman (Bangladesh), Niranjana Mehta (India), Ponna Wignaraja and Sirisena Tilakaratna (Sri Lanka).

<sup>4</sup> Now more commonly referred to as *participatory development*.

*aimed at breaking away from dominant-dependent relationships and forging relationships on a more equal footing'. Participation as a central democratic value is 'organically linked with the assertion of self-reliance through people acting through their own-free will to take decisions pertaining to their lives'. Participation is defined as requiring 'organised efforts to increase control over resources and institutions on the part of people who have hitherto been excluded from such control'. It concludes by stating that 'Liberation from domination and exploitation requires that people build up and exercise a measure of counter power to the dominant interests in society. Power dominates. Countervailing power liberates'. (De Silva, 1988)*

A process of development as envisaged above requires that people (the disadvantaged, oppressed and the poor) investigate, analyse and understand the socio-economic reality of their environment, in particular the forces which create poverty and oppression. Through this confidence and capacity are built thereby enabling organised efforts to deal with these forces.

However the societal space available to the poor to create their own organisations is often constrained due to the existence of contradictions among different conflicting social groups. This is particularly marked in village life where the existence of dominant interests (such as traders-cum-moneylenders, landowners, rural elite groups and even rural bureaucrats) benefit from the status quo while the weak majority consisting of small and marginal farmers, landless workers, rural artisan, youth and female headed households live in poverty. In this context most rural institutions and so called neutral interventions by governments and NGOs get adjusted to the dynamics of these contradictions and may benefit the dominant interests and perpetuate the status quo. (Stiefel & Wolfe, 1994)

While there is a conflict of interest between different classes and groups in most rural societies, there are also mutually dependent on one another. These highly uneven relationships also create dependency attitudes among the rural poor; mental attitudes and value systems are created to legitimise the dependency relationships and the existing social structure. Moreover, the poor themselves are not a homogeneous category, being divided by asset ownership, means of living, social status, ethnicity, caste, faith, gender, age and many other issues. They also compete with each other for the limited economic opportunities in their locality.

The complexity is increased by the fact that individuals may hold several overlapping roles as smallholder, labourer, artisan and trader. These factors, namely dependency attitudes and disunity, inhibit the poor from taking initiatives to improve their situation, and tend to make them non-innovative, non-problem solving and non-experimental and acquiescent to the status quo. This explains why it is difficult for the process of self-reliant development to be a spontaneously generated process. Some form of catalytic intervention is, more often than not, a necessary initial input in the mobilisation of the poor for organised action. (Tilakaratra, 1987; De Siva, 1988)

A similar but different picture can be drawn for urban slum and shanty dwellers.

## **The Process of Group Formation**

Intervention in a community by sensitised (trained) animators/facilitators has often been the first step in the process of group formation. Such a catalyst could emerge from within the

community itself or from outside. Through a process of inquiry and investigation that the poor initiate (assisted by the catalyst) they raise their awareness about their problems and the possibilities for overcoming them. This is done through participatory training. The methodology for this is now well documented. (Tilakaratna, 1987 & 1991; Pretty et al, 1995) Overtime it will become increasingly clear to the poor that it is through organised efforts that changes could be brought about. It is at this point that group formation begins.

*“When groups of people having a common interest feel the urge to further their interests they will be stimulated to create their own organisational mechanisms as instruments of action. Self-help organisations of the poor are thus organs created by them to overcome poverty and to enhance their social and economic status.”* In a broad sense *‘the purpose of an organisation is to provide a continuing mechanism for the pursuit of the interests of its members as collectively identified by them.’*  
(Tilakaratna, 1987)

Organised efforts often start with informal groups undertaking small scale actions that people feel confident to undertake – the building up of small group funds and the use of these funds to start a project or an activity which yields some income – are some commonly observed initiatives. (Oakley et al, 1991; Albee & Gamage, 1996) However the dynamics involved in developing groups can be challenging and in many situations requires external facilitation. Groups mature and develop by going through a fairly clearly defined growth cycle. This growth pattern has been categorised by Handy (1985) into four successive stages: *forming; storming; norming; and performing.* (See box below)

The process of small group formation and capacity build-up is variable and can take 4 to 10 months of sustained support. After this a period of link-up or networking of groups begins to emerge when a number of groups in a locality begin to forge links and to initiate inter-group actions to tackle larger issues and problems which no single group could tackle on their own. Around the 12 to 15 month point successfully facilitated groups begin to evolve into a federated network of small groups. At this stage the network of informal groups may determine that there is a need to establish a formal legal structure and thus move to incorporating as a member-controlled organisation. (Tilakaratna, 1991; Oakley et al, 1991; Albee & Gamage, 1996; Albee & Boyd, 1997)

For this group formation process to build into a formal self-help organisation it requires to move through 3 distinct stages as illustrated in the diagram below: from ***ad hoc random actions*** to ***self-organised internal actions*** and onwards to ***self-reliant development actions***. This transformation takes place at the village and neighbourhood levels.

## Growth Stages of Groups

- **Forming:** The group is not yet a group but a set of individuals. This stage is characterised by discussion about: purpose, composition, leadership styles, roles, activities, etc.
- **Storming:** Most groups go through a conflict stage when the preliminary and often initial consensus on purpose, leadership and other roles; work patterns and behaviour, is challenged and re-established. Often at this stage individual agendas surface and a certain amount of inter-personal hostility is generated. If successfully handled this period of group development leads to a new, more realistic setting of objectives, procedures and a set of group rules. This stage is particularly important in testing levels of cohesion and trust between group members. At this stage a number of members may drop-out and or reduce their level of involvement.
- **Norming:** The group needs to establish norms and practices: when and how it should work; how it should take decisions; what type of behaviour is to be tolerated; what level of work; and what level of openness and trust are expected. At this stage a number of the less committed members or those who have not succeed in achieving dominance will either leave the group and or reduce their involvement.
- **Performing:** Only when the three previous stages have been successfully overcome will the group be at a stage when it can become fully productive. Group formation will have occurred and a sense of trust, cohesion and purpose will become evident as the group grows in internal strength. However, periodically there will be challenges to leadership, purpose and other issues but at this stage group members will be more mature and thus in a better position to resolve the issues internally amongst themselves. If the issue becomes too divisive some members may be forced out and or the group may split, falter and finally disintegrate.

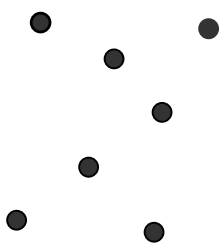
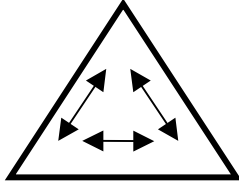
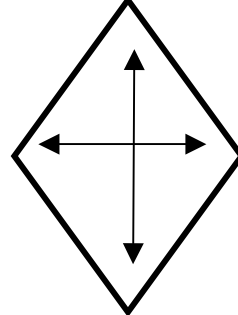
Source: Handy, 1985

The key to advancement is a process of catalytic support on: **social preparation** (awareness raising, education and planning); **organisational development** and **institutional development** focussed on:

- **Gathering and analysing information;**
- **Negotiating and agreeing development actions;**
- **Establishing an organisational mechanism to drive the actions forward and mobilising internal resources; and**
- **Reflecting on progress and broadening and deepening the actions through linking with other groups and to external resources**

If the support provided does not transform the abilities of a self-help organisation to both function internally and to build their capacities to link externally, then the actions will not be deemed successful by those involved. (Boyd, 2004)

**Self-help Organisation Capacity Building Stages**

<i>Stage 1</i>	<i>Stage 2</i>	<i>Stage 3</i>
<p><b>Social Preparation</b> [Awareness raising, education &amp; planning support]</p>	<p><b>Organisational Development</b></p>	<p><b>Institutional Development</b></p>
<p>Characterised by ad hoc and random activities with weak linkings to each other. Often lacking in planning, education and training.</p>	<p>Characterised by increased internal linkages, development of a more formal self-help organisational structure focussed on planning, education, organisational training and internal member resource mobilisation.</p>	<p>Characterised by increased social cohesion, self-management and capacity to handle greater resources. Institutional development significantly increases through links to external resources, inter-cooperation and capacity to make demands on government for enhanced social services and increased capacity to trade in competitive markets.</p>
<p><b>Random Development Activities</b></p> 	<p><b>Organisational Development</b></p>  <p>Training                      Mobilising Internal Resources</p>	<p><b>Institutional Development</b></p>  <p>Training                      Accessing External Resources</p> <p>Mobilising Internal Resources</p>
<p><b>AD HOC RANDOM ACTIONS</b></p>	<p><b>SELF-ORGANISED INTERNAL GROUP ACTIONS</b></p>	<p><b>SELF-RELIANT DEVELOPMENT ACTIONS</b></p>

Source: Boyd, 2004

## **PART 2: National Policy Frameworks and Business Models**

This part weaves together the new top-down orthodoxy of national poverty reduction and growth (PRS) frameworks and their promotion of private enterprise with a brief description of the main business ownership models.

### **Poverty Reduction, Growth and the Promotion of SMEs**

In recent years the dominant global development discourse known as *neo-liberalism* (corporate mercantilism and lightly regulated open markets) has shifted to a re-branded approach that emphasises country-led and owned strategies that focus on poverty reduction combined with economic growth. This new era of *Poverty Reduction Strategies* (PRS) has led to the growth dimension in national economies increasingly being promoted through policies that bolster the development of the small to medium sized enterprise (SME) sector. (Stiglitz, 2002)

In many developing countries poverty is predominantly a rural phenomenon. In seeking to create employment and generating increased levels of income for poor rural households many PRSs view SMEs as an important means of establishing in rural locations various dispersed forms of manufacturing and natural resource-based enterprise. Part of the attraction of SMEs to governments and policy makers is that they are seen as being easier to establish since their requirements for capital, technology and management capacity are viewed as less demanding than is the case of large scale enterprises.

SMEs are also considered, by others such as the ILO and its social partners (Member States, employers associations and trade unions), as being of special value in producing and sustaining quality jobs and having the potential to create jobs for women and disadvantaged groups. (ILO-R189, 1998)

There is no universally accepted definition of SME. Different countries use various measures of size depending on their level of development. The commonly used yardsticks are total number of employees, total investment and annual turnover. (Strathclyde, 2005) It therefore covers a very broad range of enterprise models both at Member State level and globally: *investor-controlled enterprise; state-controlled enterprise; family proprietorship; and member-controlled enterprise*. In addition in many developing countries the term ‘*micro*’ is used to capture very small-scale enterprises with only a few employees (1 to 4) the majority of whom are usually family members often undertaking survival activities. The majority of micro-enterprises in developing countries operate within the informal economy which is large and growing. (WCSDG, 2004)

The SME definition though useful for global comparisons, national statistical purposes, growth and supply chain analysis and the categorising of businesses for improved policy targeting, does little to reveal how the business is owned and controlled. This has led to ‘*official*’ development policy being skewed, explicitly and implicitly, towards the promotion of investor-controlled enterprise and family proprietorship as the dominant business ownership models.

## Different Ways of Owning and Controlling Business Organisations

There are many ways of doing business, but there are only a few ways of owning and controlling business organisations. (Birchall, 2004) The most familiar are:

**Joint stock companies**<sup>5</sup>: owned by people who invest money and who take the profits. They are extremely diverse and vary in operational size, economic activity and territorial reach from local to global. There are two main forms of joint stock companies – those in which the shares are privately owned and internally traded (*private limited company* – ‘Ltd’ or ‘Pty’) and those in which the shares are publicly traded in stock markets or bourses (*corporation or public limited company* – ‘Corp’ or ‘Plc’). In recent decades advocates of free-market capitalism have heavily promoted investor-owned enterprise as the dominant global model for owning and controlling business organisations. Their declared purpose has been to create so-called ‘*share-owning democracies*’ but it has also been used as an instrument for gaining access to new markets through privatisation of state-run enterprises, acquisition of local private companies and the elimination of local undertakings – banks; water, electricity and gas utilities; airlines; telecommunications; oil and gas producers; manufacturing plants; crop marketing boards; etc. (Chomsky, 1999)

**Public sector enterprises**: owned by government bodies that specify what public purpose they will pursue – railways; airlines; utilities – water, telecommunications, and electricity; oil and gas producers; forestry; mining; crop marketing boards; agro-industrial processing; manufacturing and production; and the distribution of medical supplies; etc. The majority of state-owned enterprises operate within their national boundaries however a number of the more successful public enterprises particularly in the oil, gas and public utilities sectors have global operations (*e.g.* French state enterprises: electricity - EDF and water utilities – Group Generale des Eaux; and Saudi Arabia’s Aramco – oil and gas production, etc).

**Family businesses**: owned by the people who have built-up or inherited a business. They are extremely diverse and include family farms, vending and retailing, manufacturing industries, and services and trading of all kinds. The majority of family businesses operate at a local and regional scale. However there are a number of ethnic groupings that operate regional and global kinship trading and business operations – Ishmaels, Chinese, Jews, etc.

**Philanthropic organisations**: owned in trust by people whose intention is to provide goods and services for other less fortunate than themselves – all kinds of charitable foundations, trusts and companies, some non-governmental development organisations (*e.g.* NGOs and CBOs), and many faith-based organisations. Operations range from local to national and to global scale.

**Member-controlled enterprises**: owned by their users, people who want to be provided directly with goods and services. These self-organised organisations are often but not always called cooperatives. They have developed along a variety of differing lines and are known by

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<sup>5</sup> Permanent joint stock companies were developed during the 17<sup>th</sup> century as a way of privatising the cost of European colonial expansion through the creation of state licensed trading monopolies. The Dutch led the process with the founding of the Dutch East India Company in 1602 (Vereenigde Oostindische Compagnie). The English rivalled this with the establishment of the English East India Company 1600 and 1613; the Guinea Company 1618 (Company of Adventurers of London Trading to Ports in Africa); Royal Africa Company 1660; the Hudson Bay Company 1670 (Honourable Company of Adventurers of England Trading Into Hudson Bay) and many others. (Fergusson, 2004 pp 18-20)



a range of names: *mutual, cooperative, self-help group, business club, farmer controlled-business, employee-owned enterprise, economic or producer association, partnerships, community enterprise, community benefit corporation, etc.* Each of these categories derives from the varying histories, traditions and legal forms from which they have evolved. The majority of member-controlled enterprises operate at either the local or national levels. Only a small number of cooperatives and mutuals have global operations (*e.g.* the Spanish-based Mondragon Cooperative Group, the Scottish-based mutual Standard Life Insurance, the Dutch-based Rabobank Group, etc)

Of the 5 ways of owning and controlling a business the last two categories are the most relevant to this particular work and will be explored in greater depth in the remainder of the paper.

## **PART 3: Member-controlled Organisational Options**

This part examines the main legal and fiscal powers which Member State legislation requires to facilitate if citizens are to be able to establish and operate democratic member-controlled organisations free from state and other forms of interference. A range of different forms are examined – *association, trust, cooperative, companies (share and guarantee) and partnership*.

### **What Legal and Fiscal Powers do Associations Require?**

There are considerable differences between countries with regard to the legal and fiscal capacity of associations, foundations and trusts (NGOs, CBOs, philanthropic organisations and charities). Differing legal traditions and approaches are taken into account when framing laws. There are, however a set of common legal powers which are relevant to all forms of associations. These are:

- the power to carry out economic activities (*e.g.* trade and undertake contracts);
- the power to receive gifts (and legacies); and
- the power to own land and property.

The legal and fiscal differences between countries in recent years with regard to companies, cooperatives and other forms of member-controlled enterprise are moving towards greater harmonisation and uniformity.

Economic reforms, privatisation and liberalised investment and trade rules have driven many countries to reform and update their commercial, contract, and property laws including the regulatory and institutional environment. This has resulted in many countries enacting new business, company and cooperative laws and regulations; land and property laws and the streamlining of institutional and regulatory arrangements such as business registration, business charges, land titling and tax matters. All of these reforms are aimed at creating an enabling environment for both domestic and foreign businesses.

For democratic member-controlled organisations to function there are a number of basic or constitutional rights beyond the right to free association which need to exist in a country's laws or civil codes. Countries require laws which enable the following:

- to make contracts and carry out other legal acts;
- to open and hold bank accounts;
- to acquire land, property and other assets;
- to receive loans and grants and make investments;
- to issue and hold shares;
- to receive gifts and legacies;
- to employ paid staff; and
- to go to court (to sue and be sued)

Countries often have a range of different and overlapping laws covering these rights some of which complement, qualify and in some instances supersede one or the other and in a small number of cases may even be contradictory. It is comparable to an old fashioned clock

mechanism made up of a number of different cogs and wheels each of which is set within the other but all of which connect together to ensure that the timepiece is in constant motion. In addition legislation may have been passed at different times and these reflect particular stages in a country’s development and legal traditions – colonial, independence and post independence.

Reviewing and comparing different forms of legislation in an effort to identify the ‘best fit’ for incorporating an organisation can be a complex and costly exercise. It is often more useful for groups to invest time and energy in clearly establishing their aims, objectives and main activities before seeking legal advice. In this way the group’s development purpose and governance preferences can guide the legal adviser in focusing on a small number of ‘best fit’ legal options which can then be considered in more detail.

Essentially, it should be noted that:

- **Associations** ( e.g. faith-based groups, professional bodies, NGOs, etc) **are responsible for representing people**, not holding assets, trading or undertaking commerce;
- **Philanthropic organisations** (e.g. trusts and foundations, etc) **are responsible for protecting gifted assets in the interests of either named beneficiaries or some kind of charitable or philanthropic purpose**, not representing people or trading; and
- **Member-controlled enterprises** (e.g. cooperatives, partnerships, community enterprises, etc) **are responsible for trading, holding member’s assets and representing the interests of their members**, not representing non-members, the local community or carrying out charitable work.

**What Organisational Mechanisms Best Serve the Poor?**

In this section we look firstly at *non-business models* before moving on to examine a number of different member-controlled organisational forms which use a *business or enterprise model*.

<b>Member-controlled Organisations</b>	
<b>Non-business Model</b>	<b>Business Model</b>
<b>Representative Associations</b>	<b>Member-controlled enterprises</b> <ul style="list-style-type: none"> <li>• Cooperatives</li> <li>• Partnerships</li> <li>• Companies (Share and Guarantee)</li> </ul>
<b>Philanthropic Organisations</b> <ul style="list-style-type: none"> <li>• Trusts</li> </ul>	

## Representative Associations and Philanthropic models

Two non-business models are examined – *representative associations* and *public or charitable trusts*.

### What is an Association?

Associations are formal or informal organisations which seek to represent the interests of their members; provide a service to them; or meet a set of defined needs as identified by the members. Associations do not normally have commercial objectives nor do they seek to earn or distribute profit. The primary purpose of an association is to meet the needs of its members. However in meeting the members' needs the association may require to own property and investments, undertake the delivery of various services for which a charge may or may not be made, or contract a third party and or be contracted to provide services to its members.

In most countries associations aspire to meet a range of social, spiritual, economic and cultural needs as defined by their members. In many countries the most common examples using this legal form are faith-based organisations, sports clubs, cultural organisations, professional bodies, business associations, non-governmental development organisations (NGOs) and community-base organisations (CBOs). Most associations are not established for commercial purposes and are registered in a variety of ways. Associations with national coverage and membership or those which operate in a number of different regions or districts usually are formally incorporated under some kind of national legislation such as a Societies or Associations law, NGO law or Non-profit law. These normally require that the organisation has a written constitution, elected management committee, audited accounts and holds an annual general meeting of its members at least once every 12-months.

In some countries the law governing associations separates out the running of the organisation from any assets that the organisation may hold. It does this by placing the organisation's assets in the hands of a set of elect trustees or guardians (3 or 4 members) that are usually specified as having to be individuals of good standing and legal titleholders to property. Because associations in many countries are not legal persons they have unlimited liability. Therefore such organisations can not sue or be sued in their own right and the liability falls on each of the elected office-bearers who are held personally and jointly liable. Contracts are often dealt with through both the management committee and the guardian structure as a means of ensuring that the organisation's assets have some form of secondary oversight thus slightly reducing the risk of ending up in court and having to sell-off assets to defray legal costs.

In many countries, associations that operate solely at regional, district or village level, often register with some branch of either regional or district government. The majority of registrations at the local level will be in the broad category of community based organisation (CBOs). Registration can take a variety of forms – *e.g.* at relevant local government departments, line ministries or specialised agencies (*e.g.* Irrigation authority, Rural workers bureau, etc.) Most registration processes tend to operate along some kind of sectoral basis such as: water users associations – Water Dept; farmers clubs, animal husbandry groups – Agricultural Dept; forestry user group – Forestry Dept; village rural development societies – Social Welfare Dept; youth groups – Labour & Youth Dept; and women's groups - Gender & Children's Dept; etc.

## What is a Trust?

A *Trust* is a legally acknowledged and binding agreement in which a person or a number of people, known as the *Trustee* or *Trustees*, become the legal owner(s) of assets transferred to them by a *Settlor* or *Settlors*. The person or entity giving the assets to a Trust is known as the Settlor and is named in the Trust documents.

Ownership by Trustees is qualified such that they hold assets for the benefit of another person or people, known as the *Beneficiary* or *Beneficiaries*. The assets which are placed in trust are called *Trust Properties* and can include anything which can be legally transferred such as: land, property, copyrights, cash, investments, equipment, infrastructure, and complete trading companies.

Although a Trust can be a verbal agreement and implied in law *i.e.* words and actions are legally acknowledged by previous, similar precedents, it is far more common for a Trust to be established through a written document called either a *Deed of Trust* or a *Declaration of Trust*. This describes the trust and details how it is to be administered and for whose benefit.

## Summary of Major Components of a Trust

Trust Components	Description
<b>Settlor/s</b> ( <i>Guarantors</i> )	These are the persons or organisation/s who formulate the Trust and who settle their assets into the Trust.
<b>Deed of Trust</b> ( <i>Trust document</i> )	This is the legal trust document which contains a full description of Trust's purpose and what its controlling Trustees can and cannot do according to the wishes of the Settlor/s. The Deed must comply with the laws of the country where the Trust is to be registered.
<b>Trust Property</b> ( <i>Assets</i> )	The assets which the Settlor/s place into trust from time to time. Depending on the type of trust, settled assets do not need to be specified in the initial Deed of Trust but may be added later.
<b>Trustees</b>	The named individuals or organisation/s appointed by the Settlor/s to administer their wishes according to the Deed of Trust. Trustees have absolute control over the Trust Assets
<b>Beneficiaries</b>	The persons to whom the Settlor/s wish the Trust assets or income to benefit according to circumstances dictated in the Deed of Trust. Depending on the type of trust, beneficiaries do not need to be specified in the Deed of Trust, but can be made known to Trustees privately.
<b>Protector</b> ( <i>Guardian</i> )	Settlor/s can name a third-party individual to 'oversee' a Trust to ensure that the Trustees are administering the Trust in accordance with their wishes.
<b>Letter of Wishes</b> ( <i>Memorandum of Wishes</i> )	Settlor/s can write a Letter of Wishes alongside a Deed of Trust which spells out exactly what actions they wish the Trustees to take under differing sets of circumstances. This letter is totally private between the Settlor/s and Trustees and whilst not legally binding, is an excellent guide to Trustees to follow, especially if the Settlor/s are no longer in contact with the Trustees for any extended period. The document may be changed at any time by the Settlor/s.

There are two main types of trusts – *Beneficial Trusts* and *Discretionary Trusts*. A Beneficial Trust is one in which the beneficiaries are specifically named in the trust document. This is an important means of protecting any assets such as land, property and investments by ensuring

that both the intended beneficiaries and assets are clearly and unambiguously recorded. Discretionary Trusts are ones in which the trustees make the decisions on who will benefit from the trust and to what extent.

## Business Models

In this section three business models are examined – *cooperative*, *company (share and guarantee)* and *partnership* and their differing legal features.

### What is a Cooperative?

Cooperatives are member-controlled businesses which operate in all sectors of the economy. Trade is a fundamental activity, and cooperatives are trading enterprises, providing goods and services, and generating profits. Profits are not taken by outside shareholders as with investor-owned businesses, but are under the control of the members, who decide democratically how they should be used. Some cooperatives have only a handful of members while others have hundreds.

A cooperative therefore is: “*an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.*” (ILO-R193, 2002)

Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. Cooperative members believe in the ethical values of honesty, openness, social responsibility and caring for others. Although they share many of the characteristics of other small businesses, they usually exhibit special features which include:

- Being corporate bodies<sup>6</sup> registered under a country’s Cooperative laws and democratically managed (in a small number of countries there is sometimes a number of different ways of incorporation);
- Being ***common ownership*** or ***joint ownership*** (often referred to as *co-ownership*). Common ownership means that although part of the surplus (profit) generated in a financial year may be distributed amongst members, the assets are the property of the cooperative and may never be divided amongst members. Upon winding up, assets will be donated to another common ownership cooperative. Joint ownership cooperatives allow for the division of assets amongst members; and
- Having governing rules or by-laws that if they are part of the International Cooperative Alliance (ICA)<sup>7</sup> include the following 7 universal principles:

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<sup>6</sup> This is a group of people acting together. The group has a separate legal identity to the individual member’s. A company, corporation and cooperative are examples of corporate bodies.

<sup>7</sup> The ICA is the global apex organisation of the cooperative movement and one of the largest membership NGOs in the world. It has over 230 members from over 100 countries representing 760 million individuals. The business contribution of the global movement in terms of employment is estimated at 100 million people, rather more than the number working for multi-national corporations. For further information visit: [www.ica.coop](http://www.ica.coop)

## **ICA Statement of Cooperative Identity**

- ***Voluntary and open membership*** (*i.e.* all those who qualify for membership must be allowed to join.);
- ***Democratic member control*** (*i.e.* one member one vote.);
- ***Member economic participation*** (*i.e.* Members contribute equitably to and democratically control the capital of the cooperative, in order to prevent someone with a greater financial stake having more control. Members usually receive a limited return, if any, on capital subscribed.);
- ***Autonomy and independence*** (*i.e.* When a cooperative enters into agreements with other organisations, it should be on terms that protect the democratic control of the organisation by members, and protects the autonomy of the cooperative.);
- ***Education, training and information of members*** in cooperative principles and practice, business know-how, financial literacy, etc;
- ***Cooperation amongst cooperatives*** (*i.e.* Cooperatives do this through a linking-up process which enlarges the principle of self-help and enhances both capacity and competitiveness); and
- ***Concern for the community.*** (*i.e.* Cooperatives are part of and work for the sustainable development of their communities.)

### **The Reassertion of Cooperative Principles**

The cooperative model has been around for over 150 years in industrialised economies and in many developing and transitional economies it has a 75 to 100 year history. In economies which have a history of cooperatives there is usually some kind of national, regional and district level cooperative organisational infrastructure and capacity with regard to: *legislation and regulation, some form of government and or independent supported extension service, national cooperative financing institutions including cooperative banks, cooperative training centres and or a national college, a national federation and sectoral cooperative unions for savings and credit, agricultural marketing and supplies, health care, industrial or workers cooperatives, and export commodities (coffee, cotton, cocoa, tobacco, etc).*

However cooperatives have had a very chequered history in many countries particular in the former soviet states and those post colonial countries that operated centrally planned economies. In these countries the cooperative model was invariably distorted into some kind of variant form of state-controlled enterprise. This resulted in the independent, voluntary, and democratic member-controlled and owned principles along with member economic participation being either curtailed or marginalised by top-down state driven development processes. In addition during the period from 1950 to the mid-1980s in many developing countries UN agencies, bi-lateral aid organisations and international cooperative development agencies all too varying degrees contributed to this process of undermining both the independence and business ethos of cooperatives.

In many countries cooperatives were often co-opted as vehicles for the implementation of national development programmes and used to deliver services such as agricultural credit, mobilising rural savings, food distribution, and agricultural inputs for cash crops, etc. These and other state subsidised national development programmes were often abruptly curtailed from the mid-1980s onwards due to countries implemented economic and market reforms under IMF-World Bank structural reform programmes. This led to many national cooperative movements facing significant difficulties such as spiralling levels of debt, insolvency, withdraw of subsidised inputs and the loss of guaranteed prices and protected markets. During this period in many developing and transitional economies national cooperative movements and their supporting infrastructure suffered significant collapse and failure. This was often compounded through poor and corrupt leadership by elected office-bearers and managers many of whom misappropriated and misused cooperative resources and property. Therefore, in some countries the cooperative form has a tarnished and sullied image. (Birchall, 2003; & 2004; Bibby & Shaw, 2005)

During the late 1990s both the cooperative identity and legacy have undergone a re-appraisal resulting in the reassertion of cooperatives as autonomous member-controlled businesses independent of state and political institutions. The 1995 ICA *Statement of Cooperative Identity* and the 2002 ILO guidance on the *Promotion of Cooperatives* have greatly assisted in this rehabilitation process. These initiatives have provided international and national cooperative movements with re-formulated values and principles that firmly reassert their voluntary membership, democratic nature and business and market orientation. In addition, recent concerns over corporate globalisation and rising levels of poverty have led to a re-assessment of the role of cooperatives in national development efforts in relation to poverty reduction, decent employment and wealth creation. (Birchall, 2003; & 2004)

Given its chequered history in many developing and transitional economies it is important that the recent mistakes of the past are not repeated. Cooperatives are first and foremost organisations designed to meet the needs of their members through the application of a business approach. Perhaps the most concrete way of understanding the potential of the cooperative form in poverty reduction is as a means of enabling poor people to lift *themselves* out of poverty.

*“It is misleading to say cooperatives have members. It is more correct to say that members have their cooperatives. Cooperatives do not help the poor but, working together, by pooling their resources, by submitting themselves to group discipline and by accepting to combine self-interest and group solidarity, the poor can solve some of their problems by way of organised self-help and mutual aid better than alone.”*(Munkner, 2001)

### **What is a Company Limited by Guarantee/Shares?**

A company is a legal entity and is treated by the law just like a person. However, it must be run according to rules set out in each country’s Company law or Commercial statutes. There are a variety of different company forms but for our purposes there are only two that are relevant to this work, namely a *company limited by guarantee* and a *company limited by shares*.

Forming a company is more complicated than other legal forms of incorporation and registration such as an association, partnership, cooperative or trust. Two detailed governance documents need to be prepared prior to incorporation: *Memorandum of Association* and



*Articles of Association.* In addition there are a set of special forms that the registering authority – Registrar of Companies or its equivalent – requires to be submitted with the company’s governance documents. Legal advice and assistance is usually required from a qualified legal adviser knowledgeable in corporate law. Thus in many countries the cost of incorporating as a company is a costly affair in comparison to using the cooperative or partnership form.

The *Memorandum of Association* describes the company’s main purposes and how it will achieve them. The document must contain the following information:

<b>Company Limited by Guarantee</b>	<b>Company Limited by Shares</b>
Name of the company	Name of the company
Country of registration and location of the company’s offices	Country of registration and location of the company’s offices
Purposes (or objects) of the company	Purposes (or objects) of the company
Powers it has to achieve these purposes	Powers it has to achieve these purposes
Statement of the limited liability of its members	Statement of the limited liability of its shareholder members
Statement of the amount of each member’s guarantee	
	Amount of share capital
	How the share capital is divided into shares
Statement about the disposal of the assets to a similar type of organisation in the event of winding-up	Statement about the disposal of the assets to the shareholders in the event of winding-up

The *Articles of Association* describe how the company’s internal operations will be handled and must contain the following information:

<b>Company Limited by Guarantee</b>	<b>Company Limited by Share</b>
Qualifications for membership	Qualifications for membership
Rights and powers of directors and members (including the guarantor members)	Rights and powers of directors and members
Arrangements for calling Meetings	Arrangement for calling Meetings
Voting Arrangements	Voting Arrangements
Books of Accounts and Audit procedures	Books of Accounts and Audit procedures
	Issue of new shares
	Restrictions on transfer of shares

From an examination of these tables it becomes apparent that the main difference between the two models is that one operates a share arrangement while the other does not. In the share ownership model power resides with the shareholders who control the company on the basis of the number of purchased shares each owns. Voting rights are attached to the shares and those with the largest numbers of shares take the decisions. In addition the shareholders can at any time decided to wind-up the company and divide amongst themselves any remaining assets once all outstanding company debts have been paid.

The other model is the *company limited by guarantee* in which there are no shares only members with equal voting rights and equal responsibility for any liabilities. This is the democratic and non-profit distributing company form and is the one most commonly used by

membership-based organisations. Because of the special features of this type of company: no share capital; members liability usually fixed at a nominal sum (*e.g.* GBP£1 or US\$2); and no profit-distribution to individual members its operating criteria is therefore one of *public* or *community benefit* rather than individual financial gain. However if the members decide to wind-up the company once all outstanding debts have been paid they are prohibited by the *public-community benefit* criteria from dividing the balance assets amongst themselves and must either hand them over to another non-profit distributing organisation or allow the government Public Trustee to make the decision. In recent years two types of membership organisation have made significant use of this form of incorporation: *associations and community enterprises*.

In a number of countries many associations have used this legal form as a way of both reducing their members and the management committee's exposure to unprotected liability risk and as a means of providing great security for their assets – land, buildings and investments. While in other situations many civil society advocacy, research and campaigning organisations have opted to use the company form as a means of obtaining private sector protection against increased government intrusion due to more pro-active regulation under revised civil society association laws. Furthermore, with many development NGOs increasing turning their attention towards earned income strategies that require the application of business approaches such as contracting, levying of user charges, credit and loan operations, primary purpose trading, etc the company form has gained prominence due to its enhanced commercial and legal features.

On the other hand the community enterprise company form in which members pool their energies and abilities to create an enterprise as a means of capturing and retaining benefits locally has multiplied. (Boyd, 2003) Enterprises usually take one of three forms: a community of geography (*e.g.* those living in a particular place or neighbourhood); a community of interest (*e.g.* small farmers, unemployed youth, women, etc); and an intentional community (*e.g.* those with a faith-based purpose or some other common bond). Community enterprises began to emerge during the 1970s as a means of addressing the '*local dimension*' in area-based regeneration work in urban public sector housing projects and fragile and remote rural communities in Scotland and the United States. Prior to the emergence of this model the cooperative models - common ownership and joint ownership - were the mostly widely used business forms for those seeking to jointly undertaking trade, production or the provision of services to members.

In recent years the community enterprise model has begun to spreading in developing countries. Particularly in situations where livelihood and local economic development interventions have increasingly sought to focus upon business approaches to small scale production, service delivery, micro and small-scale enterprises and credit and loan operations. (Harper & Roy, 2000)

### **What is a Partnership?**

The term '*partnership*' has in recent times entered the vocabulary of both public policy making and the development industry. Used in this context it has come to mean '*joint working*', '*added value*', '*shared costs*' or other forms of shared activities and or risk pooling between a number of different organisations to achieve a commonly agreed set of goals and objectives. Two of the most commonly referred to examples of this type of partnership arrangement are *Public-private partnerships* and *Company-community partnerships*. Formal

relationships between the different organisations are usually spelt out in a *Memorandum of Understanding* (MoU) or *Partnership Agreement*. (Wilson & Charlton, 1997)

In this paper the term is applied in its more traditional and narrow form as meaning: ‘*a business partnership normally comprised of between 2 to twenty people trading together as one enterprise and sharing the profits*’. As well as sharing in any profits, each partner shares an unlimited liability for all the debts and obligations of the enterprise. This means that should one partner default or abscond the other partners are responsible for paying the debt.

In many countries partnerships can be formed with the minimum of legal formalities and usually involving a fairly straight forward and inexpensive registration process. For instance most former British colonies make use of some adaptation of the English Partnership Act of 1890 which requires the preparation of a simple Partnership Agreement. This agreement should contain the following:

- The amount of capital to be provided by each partner and whether interest is to be paid on it;
- The apportionment of profits and losses, liabilities and assets between partners;
- That proper books of accounts must be kept and that they should be audited at least once per year (such accounts, when signed by the partners, are legally binding);
- How much each partner should be allowed to draw from the business (usually specified as monthly, quarterly or some other specified time);
- How each partner’s share of the business should be valued if they wish to withdraw from the partnership;
- How new partners are admitted;
- How each partner’s share should be valued when they retire or die;
- How long the partnership should operate for and under what conditions it can be terminated;
- Whether all partners have equal voting rights;
- Who signs banking, financial, legal and other kinds of official paperwork;
- What insurance arrangements should be made for the partnership;
- What arrangements if any are to be made for holidays, insurance and pensions for the individual partners;
- What happens should illness strike the partnership; and
- What happens if a partner leaves and wants to start-up in competition.

## PART 4: Guidance

In this part some general guidance and advice is provided to help the reader narrow down the legal options. It does this through reviewing the key features of *associations, public and charitable trusts, partnerships, companies and cooperatives* and examining their main advantages and disadvantages. To further aid the process of narrowing down the options a set of guiding questions and a chart comparing the main organisational characteristics enables a ‘*best match*’ assessment of legal structure with development objectives to be carried out. However, there are no ‘*exact fits*’ between an initiative’s primary objectives, governance and ownership criteria and the range of available legal options. Adjustments and compromises will need to occur thereby allowing ‘*best judgements*’ to be made.

### Informal Group

#### *Advantages*

Often when resources and assets are small many informal organisations or groups manage to function quite effectively on the basis of a simple constitution and or a set of verbal agreements reinforced by a high level of mutual trust between members. Creating and applying a simple written constitution can often for many poor people be an empowering process. It is sometimes their first introduction to the formal world of written technology and a mode of operating based upon formalised and guided actions as opposed to orature (memory, listening and speech) in which spontaneous and ad hoc actions tend to dominate.

Simple constitutions require the following:

- Name of the organisation;
- Geographic location of the organisation and offices (if any);
- Primary objectives of the organisation;
- Powers:
  - (a) to seek, receive and collect funds, grants, donations and subscriptions in money or kind;
  - (b) to receive payment to cover the costs of development activities;
  - (c) to employ staff and volunteers to carryout the functions of the organisation; and
  - (d) to make grants, loans, awards and payments to individuals and organisations in furtherance of its objectives;
- Membership (*any upper limits on numbers and categories of membership – full and or associate*);
- Board of Management (*office bearers – Chair, secretary and treasurer – and how they are appointed*);
- General Meeting of Membership (*frequency and voting rights*);
- Financial Matters:
  - (a) keeping of books of accounts and other records (*stock, equipment, etc*) and;
  - (b) auditing of accounts and stocktaking procedures;
- Amendments to Constitution (*how and number of votes required to approve changes*);
- Winding-up the organisation.

However, where an organisation or group is receiving, investing and disbursing large and significant amounts of money and or owns or intends to acquire land and property it will require to stand on firmer legal ground.

## **Association**

### ***Advantages***

The association legal form as outlined in Part 3 is capable of accommodating a very broad range of civil society organisational types. It is also capable of undertaking a wide range of functions such as receiving, investing and disbursing significant amounts of money and holding assets such as land and property. And it can if it chooses pursue some kind of limited earned income strategy from which it can derive a profit but this must be re-invested in furthering its objectives.

### ***Disadvantages***

There are however a number of distinct disadvantages with this legal form. Firstly, it is not a fully fledged commercial, production or trading entity and therefore cannot apply a business or enterprise model as a means of achieving both its objectives and as a way of running its operations. It is first and foremost a representative organisation established to meet the needs and objectives of its members. Secondly, the protection provided to officer bearers and members with regard to liability risk is extremely limited in comparison to that of an incorporated body such as a company or a cooperative. Thirdly, because an association is not an incorporated body it is not considered to be a legal person and cannot go to court and sue or be sued in its own right. Any court action has to be mounted either on an individual basis or by a group of individuals. Fourthly, because associations are recognised in many states as fulfilling some kind of '*public benefit purpose*' such as meeting charitable and philanthropic objectives<sup>8</sup>. they are usually exempt from a range of local taxes such as: business taxes, VAT and import duties. However, if the tax authorities consider that the association is operating as a commercial enterprise then these tax privileges will be removed and the association may find itself being de-registered by the Registrar of Societies or its equivalent.

Given these limitations and the manner in which both an association's members and assets become exposed when commercial contracts and business operations are pursued this legal form is not a prudent option if sizable sums of money and assets are at stake.

## **Public and Charitable Trusts**

### ***Advantages***

A public or charitable Trust is one means of giving an organisation more stability, continuity and clearly defined written powers in relation to financial and other asset ownership matters. Establishing such a structure is not as complicated, restrictive or expensive as a company limited by guarantee or a common-ownership cooperative, but a trust does have disadvantages.

### ***Disadvantages***

Firstly, it is not a business model and is normally established for charitable and philanthropic purposes. Secondly, it is not a democratic and member-controlled organisation: the trustees

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<sup>8</sup> Recognised *Charitable purpose* includes: the relief of poverty; the advancement of education; the advancement of religion; and general public utility (health, public amenity, the environment and relief of distress).  
*Philanthropic purpose* includes: the arts and culture, environment, medical research, care of animals, etc.

once appointed have virtual permanent tenure and they normally appoint their successors. This can be altered but requires the use a secondary agreement which adds further to the complexity of managing and administering a Trust. In addition trustees have sole responsibility for the assets (*Trust Properties*) entrusted to them. However trustees must act responsibly and exercise due care in administering the Trust and its assets. Furthermore, Trust assets are indivisible and cannot be divided-up and distributed to trustees or any other person.

Thirdly, in many countries Trust are restricted in terms of the extent to which they can undertake trading and commercial activities for a profit. In some countries they are permitted to undertake what is termed *primary purpose trading*. For example if the Trust has been established to provide credit for private entrepreneurs and to use part of the profits made from these investments to support orphans and vulnerable children the trustees do not have a freehand that permits them to go off and start running different kind of commercial undertaking. A Trust must operate within its stated and often narrowly defined primary purposes. These are specified in its Deed of Trust with which it must comply or it runs the risk of forfeiting any special charitable tax status that it has been granted by the tax authorities. If more serious breaches occur the Trust can be annulled by the Registrar of Trusts or its equivalent. Fourthly, a Trust has a separate existence from the organisation or individuals who establish it and may continue to function indefinitely or until it is wound-up and any balance assets remaining transferred to a similar charitable or philanthropic body or to the state Public Trustee.

In many countries formulating a trust deed can be a complicated affair because often there are no standard '*model*' Trust Deeds available in comparison with partnerships, companies, cooperatives and societies where there are often a number of different '*model*' documents. In addition in a number of countries the use of this type of legal instrument has usually been limited to wealthier citizens, government institutions and overseas aid donors so there may be restrictions on what social status of individual (titled property owner) or organisation is eligible to be appointed to a trustee positions. In this situation appointees are usually middle-income and professional persons such as lawyers, accountants, bankers and senior government officials, aid officials, etc.

If you select this option hire a knowledgeable legal adviser who has experience in drafting and registering trusts. In addition take note that in some countries some organisations which include the term Trust in their business name may in fact not be legal trusts but may be incorporated under other legislation such as the Companies Act, Societies Act, etc or perhaps even established through a Deed of Trust passed in the country's legislature.

## **Cooperative**

### ***Advantages***

Cooperatives along with partnerships are two of the oldest and most widely used member-controlled business forms. The cooperative model in particular has proved to be extremely adaptable and accommodating thereby enabling it to be applied to a wide range of human and economic situations. Cooperatives are active in all spheres of economic life: *agriculture supply and marketing; banking, insurance and credit unions; fisheries; forestry; health care; housing; industrial production; livestock production; public utilities – electricity, water and telecommunications; oil refining; and shops and retail operations.*

Recently the international cooperative movement and its supporting institutions have begun to reassert the underlying principles and identity of member-controlled enterprises. (See the *ICA Statement of Cooperative Identity* on page 22.) This re-formulation and re-statement of cooperative values provides all forms of member-controlled enterprise with a common and easily understandable set of organising principles for establishing and running democratic enterprises.

In many countries establishing a primary cooperative is a relatively straight forward and inexpensive task due to the existence of *model* by-laws, technical support from cooperative extension services, and peer support from secondary cooperative structures (e.g. cooperative union). In addition operating and running a small to medium cooperative business is fairly straightforward provided that adequate and regular training and education of members occurs. Furthermore, in many countries cooperatives benefit from a number of government incentives and special measures. Cooperatives usually pay taxes at slightly lower rates than investor-controlled enterprises, plant and equipment can be written down over a number of years, and in some sectors such as for cooperatives handling commodity crops there are special export credit guarantee schemes.

### ***Disadvantages***

The term *cooperative* in many countries and for many individuals and organisations is associated with forms of state-directed participation and other negative perceptions. Similar perceptions can also be found in some international development agencies particularly the International Financial Institutions where cooperatives are characterised as *old style development and thus a form of dependent state enterprise*. However, in many countries creating proper and functioning markets, especially as a result of economic liberalisation, de-regularisation and privatisation has proved difficult. For weaker sections of many societies accessing the market on an individual basis is extremely difficult. Thus the cooperative form in which individuals pool their limited resources for joint business efforts has significant potential though it now often operates under a variety of other names: *rural producers association, employee-owned enterprise, women's income generating group, youth economic group, farmer controlled business, etc.*

Cooperatives like companies face problems with organisational governance issues, financial record keeping, business know-how, finding markets for their products and product development. However, the cooperative form is in some ways an easier organisational and legal structure to operate than the company form. In most countries the Cooperative laws including *model* by-laws for incorporating individual cooperatives are usually available in the main languages of a country. In addition cooperative extension services operating at a local or regional level are able to provide guidance, inspection, audit and other types of support services.

However in some countries where Cooperative law and policies have not been fully reformed in line with the ILO's *Recommendation on the Promotion of Cooperatives* (ILO-R193, 2002) there is still considerable scope for government intervention in the internally affairs of individual cooperatives. Where reform has not occurred the government Minister in charge of cooperatives and the Registrar of Cooperatives (or its equivalent) often have wide ranging powers to intervene. For instance they can amalgamate, divide and annul cooperatives, amend resolutions passed by the members, instruct on investments, issue directives to cooperatives and intervene in internal disputes. (Bibby & Shaw, 2005) These powers are far greater than those available to the Minister in charge of regulating companies.

## Company Limited by Shares

### *Advantages*

A *company limited by shares* is one of the most common forms of corporate business model. It is widely used by a variety of private enterprises of varying sizes. The model is favoured because its legal structure is very accommodating and comprehensive thereby permitting a wide range of commercial and economic activities to be pursued.

There are a number of particular advantages in establishing a share company. The liabilities of the company are the sole responsibility of the company only and shareholders are normally only liable to lose the capital they have invested in the purchase of company shares. In some countries there are tax advantages particularly with regard to corporation tax when profits are retained within the company and re-invested in expanding the business. For instance investment in plant and equipment is usually treated in such a way that it can be used to reduce the amount of tax paid by the company over an extended number of years. In addition tax on company profits under a certain amount is often assessed at lower tax rates. Furthermore, share companies have greater flexibility and capacity to raise finance since lenders can take a stake in the company through the guarantees of the directors or by having any loan secured against the company's share capital. Finally, ownership of the company can be extended or transferred more easily through the flexibility of the share structure either by sale or transfer. (Clayton, 1991; BDO, 1990)

### *Disadvantages*

However great care needs to be exercised in deciding to establish a share company as a member-controlled local economic development vehicle because though a share company has considerable operational flexibility its legal and financial management can become quite complex. A major draw back with the model is the manner in which the shares and other company assets are held and owned. (BDO, 1990)

In this model individual shareholders and directors are free to dispose of their shares and the company's assets as they see fit. It does this by leaving the decision on asset distribution open to the shareholders and board of directors to decide. One of the main dangers is that its share structure can quickly be captured by unscrupulous members and directors conniving to gain control of the both the Board and the company's share structure. Once in control they can instigate either the distribution of the company's assets amongst themselves and their cronies or engineer fraudulent company loans which will eventually force the company into insolvency and bankruptcy.

To guard against these potential dangers such companies require a high level of specialist professional expertise to ensure that procedures and practices are transparent and accountable to all the shareholding members. Although government regulation often requires a significant degree of public disclosure this is usually limited to the Company Registrar (or its equivalent) where monitoring and checking is often minimal.

Due to this and other complexities involved in running a shareholding company this model is very rarely used as a suitable legal structure for incorporating a member-controlled enterprise. The preferred model company is the non-profit model – *a company limited by guarantee*.



## Company Limited by Guarantee

### *Advantages*

A *company limited by guarantee* has many similar features to those of a local NGO or community-based organisation (e.g. local economic development body) with regard to:

- overall developmental aims,
- local ownership and membership control,
- forms of accountability; and
- return of social benefit to the community.

However there are significant differences in the way in which it approaches these matters with regard to the need to establish a corporate structure which balances cost-effective decision-making, finance, accounting and tax efficiency with sound management for a sustainable future growth of the company and its activities. (Boyd, 2003)

These features are summarised below:

- A company limited by guarantee has limited liability, is owned and controlled by its members, is non-profit making for members and operates and is regulated under Company law or its equivalent.
- A registered Community Enterprise or Community Interest Company can use this structure to: *acquire property, plant and equipment; trade; employ staff; raise and lend finance; and act as a holding company for major community assets (e.g. land and property).*
- To become a legal incorporated non-profit community interest company a set of *Memorandum and Articles of Association* requires to be drawn up. These are detailed documents, which are vetted by the Registrar of Companies or its equivalent who then issues a *Certificate of Incorporation*.
- The three most important clauses in the *Memorandum and Articles of Association* are ***profit distribution*** (where does profit go?); ***membership*** (who are eligible for membership?); and ***governance and management structures*** (what organs and type of structure will be adopted?).

Due to the widespread use of company structures there are a range of private professional firms and individuals who are able to provide legal, financial (including audit) and management support services. However care needs to be exercised in hiring appropriate professionals who understand both the operating principles of non-profit companies and the dynamics of voluntary boards of directors. In addition due to the close similarities with cooperative enterprises much of the training provided by Cooperative Departments and Colleges for members and leaders, boards of directors and key employees such as bookkeepers, accountants and managers is applicable to community enterprise companies.

### *Disadvantages*

This form of company has a number of limitations. Company law is complex and places significant responsibilities and duties upon those appointed to be company directors. The law expects these individuals to be both knowledgeable and competent at running a commercial

enterprise. Company directors and voluntary Boards cannot claim in court to be unaware of the actions of the company. Therefore, being a director, member or employee of a community enterprise company requires that resources and time are devoted to education and training on governance, legal aspects, regulation, business planning and other matters so that the company is run in a responsible manner. Given these and other demands in running a company it can sometimes prove difficult to find suitable individuals who are willing to take on the role of voluntary company directors. In addition companies limited by guarantee can face difficulties in raising investment capital to finance either an expansion of on-going operations or new activities. This is because the company does not have a share capital structure and is thus less attractive to investors who are unable to take an equity stake or to have the finance guaranteed through the share structure. If the company needs to raise capital it requires to borrow from a bank or credit institution, solicit donations and loans for its members or seek grant assistance from a state agency or donor.

For a more detailed examination of the characteristics and issues related to the structure and operation of Community Interest Companies readers are referred to the paper: *Community Enterprise Companies*<sup>9</sup>.

## Partnership

### *Advantages*

After an informal group a *partnership* is perhaps the simplest small-scale (2 to 20 person) member-controlled organisation to establish. It has all the similar characteristics of an informal group but with two important advantages namely that it is bankable and contractible.

Establishing and registering a partnership is in many countries a simple and inexpensive process which usually can be executed at district government level through the business licensing authority or its equivalent. Usually all that is required is a copy of the Partnership Agreement or Deed, the completion of one or two simple forms and the payment of a small registration fee. Public reporting requirements are often modest with regard to the preparation accounts and the maintenance of records in comparison to that required for a company or cooperative. In addition audits of the accounts are not legally required unless the partners choose to have this done.

This form of business model has many advantages when personal trust, member-control and management capacities are limited. It is ideally suited for undertaking various kinds of small public works through community contracting as well as the sub-contracting of outsourced work from large scale commercial undertakings such as forestry enterprises, agri-businesses or manufacturing and processes companies. In addition it is a popular form used by youth and women's income generation groups. However its use in these situations it is often loosely categorised by many development workers as being a *community-based organisation or CBO* rather than a member-controlled enterprise.

### *Disadvantages*

There are however a number of drawbacks such as each partner has unlimited liability for all debts and liabilities incurred by the partnership. Obtaining loans can be more difficult than is the case with cooperatives and companies. In some countries tax arrangements with regard to

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<sup>9</sup> *Community Enterprise Companies*, G. Boyd, Caledonia Centre for Social Development, February 2003. Available at: <http://caledonia.org.uk/companies.htm>

retained profits are often slightly less advantageous than is the case with cooperatives. In addition because each partner is individually responsible for their own income tax and pension arrangements this can along with the division of profits and other issues lead to disputes between partners.

Care therefore requires to be taken in choosing partners and attention needs to be given in preparing the Partnership Agreement to establishing simple methods for addressing differences before they turn into full-blown disputes. When disputes do occur partnerships like informal groups can quickly disintegrate unless they have access to independent third party arbitration in the form of respected leaders whose decision all parties are willing to accept. Finally transferring ownership, say to other family members, can pose difficulties due to problems involved in calculating the value of each partner's stake in the partnership.

### ***Opportunities***

However despite these and other drawbacks partnerships are a very valuable business model for the poor due to the ease with which informal groups can transition to a stronger legal arrangement when they feel the need. Viewed in this way a partnership is a useful *pre-cooperative structure* that enables the poor to develop and grow their enterprise at a pace and within a legal framework that they can easily understand and master. And if in the future the enterprises grow and or a number of partnerships in a particular locality link-up then they can be easily transferred into a higher legal form either in the shape of a cooperative or some form of company.

## Guide to Selecting an Organisational Structure

Guiding Questions	A: Legal Structure	B: Type of Organisation	C: Management Style	D: Ownership
<p><i>For each question, circle a letter (a,b,c or d) next to the answer which most applies.</i></p> <p><b>Q1: What will your primary activities be?</b></p> <p><b>a</b> running a business, small industry or providing commercial services</p> <p><b>b</b> offering non-commercial or grant-aided services</p> <p><b>c</b> a combination of the <i>a</i> and <i>b</i> above</p> <p><b>d</b> administering trust properties on behalf of the beneficiaries</p>	<p><b>A1:</b> Share Company</p> <p><b>A2:</b> Company limited by Guarantee</p> <p><b>A3:</b> Cooperative</p> <p><b>A4:</b> Partnership</p> <p><b>A5:</b> Association</p> <p><b>A6:</b> Trust</p>	<p><b>B1:</b> Community Enterprise</p> <p><b>B2:</b> Joint Ownership Cooperative</p> <p><b>B3:</b> Common Ownership Cooperative</p> <p><b>B4:</b> Partnership</p> <p><b>B5:</b> Representative Association</p> <p><b>B6:</b> Public or Charitable Trust</p>	<p><b>C1:</b> Collective</p> <p><b>C2:</b> Democratically elected management</p> <p><b>C3:</b> Appointed Trustees</p>	<p><b>D1:</b> Common ownership</p> <p><b>D2:</b> Joint or share ownership</p> <p><b>D3:</b> Beneficial or protected ownership</p>
<p><b>Q2: Who will be eligible to be members?</b></p> <p><b>a</b> only employees</p> <p><b>b</b> only users of the services</p> <p><b>c</b> the community or some section/s of it whether or not they use the services</p> <p><b>d</b> no members only trust beneficiaries</p>	<p><b>Analysis Procedure:</b></p> <p><i>Delete terms from lists A to D above according to the instructions given below. If you end up with only one term in each list, then the terms remaining indicate the most appropriate set of organisational arrangements. If you have more than one term in any list, you have a choice. If you have no terms left in any list, you need to re-appraise the questions and repeat the exercise.</i></p>			
<p><b>Q3: To whom will the services be available?</b></p> <p><b>a</b> only members</p> <p><b>b</b> non-members as well as members</p> <p><b>c</b> named beneficiaries</p>	<p><b>Instructions (for each question follow the instructions for the answer circled)</b></p>			
<p><i>If you circled (b or c) in Question 3, move to Question 5</i></p>	<p><b>Q1:</b></p> <p>(a) Delete from list <b>A5, 6 &amp; B5, 6</b></p> <p>(b) Delete from list <b>A1, 4 &amp; B2, 4</b></p> <p>(c) Delete from list <b>A1, &amp; B2</b></p> <p>(d) Delete from list <b>A1 to 5 &amp; B1 to 5</b></p>	<p><b>Q2:</b></p> <p>(a) Delete from list <b>A1, 2, 5, 6 &amp; B1, 3, 5, 6</b></p> <p>(b) Delete from list <b>A1, 6 &amp; B2, 6</b></p> <p>(c) Delete from list <b>A1, 6 &amp; B2, 6</b></p> <p>(d) Delete from list <b>D1, 2</b></p>	<p><b>Q3:</b></p> <p>(a) Delete from list <b>A6 &amp; B6</b></p> <p>(b) Delete from list <b>A6 &amp; B6</b></p> <p>(c) Delete from list <b>A1 to 5 &amp; B1 to 5</b></p>	
<p><b>Q4: Will the organisation be financially supported entirely or mainly by members paying for goods or services?</b></p> <p><b>a</b> yes</p> <p><b>b</b> no</p>	<p><b>Q4:</b></p> <p>(a) Delete from list <b>A5, 6 &amp; B5, 6</b></p> <p>(b) Delete from list <b>A1, 3, 4 &amp; B1, 2, 3, 4</b></p>	<p><b>Q5:</b></p> <p>(a) Delete from list <b>A 1 to 5 &amp; B1 to 5</b></p> <p>(b) Delete from list <b>A6 &amp; B6</b></p>	<p><b>Q6:</b></p> <p>(a) Delete from list <b>A2, 5, 6 &amp; B1,3, 5, 6</b></p> <p>(b) Delete from list <b>A6 &amp; B6</b></p> <p>(c) Delete from list <b>A2, 5, 6 &amp; B1, 3, 5, 6</b></p>	
<p><b>Q5: If there is a profit at the end of the year, should members be able to distribute it, amongst themselves or to re-invest it in other activities?</b></p> <p><b>a</b> no</p> <p><b>b</b> yes</p>	<p><b>Q7:</b></p> <p>(a) Delete from list <b>B1, 3, 5, 6 &amp; D1, 3</b></p> <p>(b) Delete from list <b>B2, 4 &amp; D2, 3</b></p>	<p><b>Q8:</b></p> <p>(a) Delete from list <b>C2, 3</b></p> <p>(b) Delete from list <b>C1, 3</b></p> <p>(c) Delete from list <b>C1, 2</b></p>	<p><b>Q9</b></p> <p>(a) Delete from list <b>A6 &amp; B6</b></p> <p>(b) Delete from list <b>A4, 6 &amp; B4, 6</b></p> <p>(c) Delete from list <b>A1 to 5 &amp; B1 to 5</b></p>	
<p><i>If you circled (a) in Question 5, move to Question 7</i></p>	<p><b>Q10:</b></p> <p>(a) Delete from list <b>A1, 6 &amp; B6</b> (b) Delete from list <b>A2 to 5 &amp; B1 to 5</b></p>		<p><b>Repeat the exercise if required using a different combination</b></p>	

## Guide to Selecting an Organisational Structure

Guiding Questions	A: Legal Structure	B: Type of Organisation	C: Management Style	D: Ownership
<p><i>For each question, circle a letter (a,b,c or d) next to the answer which most applies.</i></p> <p><b>Q6: After deciding how much of the profit is to be retained, what will the members be able to do with the balance?</b></p> <p><b>a</b> Share it out amongst the members  <b>b</b> make a donation for social or charitable purposes  <b>c</b> both of the above</p>	<p><b>A1:</b> Share Company  <b>A2:</b> Company limited by Guarantee  <b>A3:</b> Cooperative  <b>A4:</b> Partnership  <b>A5:</b> Association  <b>A6:</b> Trust</p>	<p><b>B1:</b> Community Enterprise  <b>B2:</b> Joint Ownership Cooperative  <b>B3:</b> Common Ownership Cooperative  <b>B4:</b> Partnership  <b>B5:</b> Representative Association  <b>B6:</b> Public or Charitable Trust</p>	<p><b>C1:</b> Collective  <b>C2:</b> Democratically elected management  <b>C3:</b> Appointed Trustees</p>	<p><b>D1:</b> Common ownership  <b>D2:</b> Joint or share ownership  <b>D3:</b> Beneficial or protected ownership</p>
<p><b>Q7: Should the membership be able to wind-up the organisation and share out its assets amongst themselves?</b></p> <p><b>a</b> yes  <b>b</b> no</p>				
<p><b>Q8: Who will control the day-to-day management of the organisation?</b></p> <p><b>a</b> all the members  <b>b</b> a committee elected by the members  <b>c</b> appointed trustees</p>				
<p><b>Q9: What is the expected maximum number of members that the organisation will have in the next 3-years?</b></p> <p><b>a</b> Twenty or less  <b>b</b> More than twenty  <b>c</b> No members</p>				
<p><b>Q10: Should all members have equal decision-making rights?</b></p> <p><b>a</b> Yes  <b>b</b> No</p>				

*Source:* This chart is based upon *Select-a-Structure*, Community Business Model Rules, ICOM, Leeds, 1988. The chart has been both adapted and expanded.

## Comparison of Key Features in Member-Controlled Organisations

Key Feature	Association	Trust	Partnership	Company Limited by Shares	Company Limited by Guarantee	Cooperative Society
<b>UN and other International Apex body Guidance</b>			ILO Job Creation in SMEs Recommendation 189 (1998)	ILO Job Creation in SMEs Recommendation 189 (1998)		ILO Promotion of Cooperatives Recommendation 193 (2002) ICA Statement of Coop Identity (1995)
<b>Legal Framework</b>	Societies Act; NGO Act; etc	Trustee Incorporation Act	Partnership Act	Companies Act	Companies Act	Cooperative Act or similar
<b>Type of Model</b>	Non-business model: Associative/Representative	Non-business model: Charitable/Philanthropic	Business model	Business model	Business model	Business model
<b>Governing Instrument</b>	Constitution	Deed of Trust or Declaration of Trust	Partnership Agreement	Memorandum of Association and Articles of Association	Memorandum of Association and Articles of Association	Rules or By-Laws
<b>Formation</b>	5 or more persons no upper limit	3 persons or more	2 to 20 persons	5 to 50 persons	2 or more persons no upper limit	2 or more people no upper limit
<b>Objectives</b>	Promotion of members interests as specified in constitution	Specified in Deed of Trust or Declaration  Two types of Trusts: Beneficiary Trust or Discretionary Trust	To serve the economic and commercial interests of partners	To carryout an industry, business or trade designed to maximise profits as specified in its Memorandum of Association	To carryout economic and social activities for the benefit of a defined community as specified in its Memorandum of Association	To carryout an industry, business, trade or service to its members and users as specified in its Rules or By-Laws.
<b>Ownership</b>	Full Members	Settlor/s No specific owners but beneficiaries	Partners	Shareholders with the majority shareholder having the largest number of votes	No specific owners but beneficiaries	Members
<b>Management &amp; Administration</b>	Elected Executive Committee	Appointed Trustees	Partners	Appointed Board of Directors	Elected or Appointed Board of Directors/Board of Trustees	Elected Coop Development Committee/Board of Directors
<b>Control of the body and assets</b>	Members and in some countries an appointed Trustee Committee	Appointed Trustees	Partners	Shareholders	Members or Guarantor members	Members
<b>Accounts &amp; Audits</b>	Left to the Members to decide but in some countries audited accounts are required	Left to the Trustees to decide but in some countries audited accounts are required	Left to the partners to decide	Audited by a qualified external auditor	Audited by a qualified external auditor	A number of arrangements exist: internal auditor; qualified external auditor; or Coop Dept/Ministry auditor

## Comparison of Key Features in Member-Controlled Organisations

Key Feature	Association	Trust	Partnership	Company Limited by Shares	Company Limited by Guarantee	Cooperative Society
<b>Regulatory Control</b>	Registrar of Societies/NGOs <ul style="list-style-type: none"> <li>Annual Return</li> <li>Audited Accounts</li> </ul> In some countries new legislation is bringing increased government scrutiny.	Registrar General or Attorney General <ul style="list-style-type: none"> <li>Annual Return</li> </ul> Minimum Control	Registrar of Companies Minimum control	Registrar of Companies <ul style="list-style-type: none"> <li>Annual Return</li> <li>Audited accounts</li> </ul> Minimum control	Registrar of Companies <ul style="list-style-type: none"> <li>Annual Return</li> <li>Audited accounts</li> </ul> Minimum control	Registrar of Cooperatives or similar <ul style="list-style-type: none"> <li>Annual Return</li> <li>Audited Accounts</li> </ul> In some countries heavily controlled by Cooperative Dept/Ministry
<b>Meetings</b>	Annual General Meeting	Left to Trustees to determine or specified in Trust Deed	Left to the Partners to decide or specified in Partnership Agreement	Annual General Meeting of Shareholders Minimum of 1 Directors Meeting every year	Annual General Meeting of Members Minimum of 1 Directors Meeting every year	Annual General Meeting and 1 or 2 Ordinary General Meeting
<b>Accountability</b>	Members and Registrar of Societies/NGOs	Registrar General or Attorney General	Partners and Registrar of Companies	Shareholders and Registrar of Companies	Guarantor members and Registrar of Companies	Members and Registrar of Cooperatives
<b>Investment of Funds</b>	Restricted	Not restricted Specified in Trust Deeds	Not restricted	Not restricted	Not restricted	Restricted Specified in Coop Rules or By-Laws
<b>Return on Investment</b>	Run on a non-profit making basis. Any surpluses that occur must be applied to furthering the association's objectives	No distribution of surpluses to any person is permitted. All surpluses are ploughed back into the Trust to further its objectives	Distributes its profits by common agreement of the partners	Distributes its profits as a dividend to its shareholders on recommendations made by Board of Directors	No dividends are paid to any member. All profits (surpluses) are ploughed back into the Company for further development	Joint-ownership Cooperatives distribute surpluses as a dividend to their member/users on recommendations made by Board of Directors Common-ownership coops are usually barred from distributing surpluses and these must be applied to some social or community purpose.
<b>Winding up</b>	Assets transferred to state Public Trustee or to another named association	Assets transferred to state Public Trustee	Assets divided amongst partners based upon the amount invested in partnership.	Assets divided amongst shareholders based on number of shares held	Assets transferred to state Public Trustee or to another named non-profit organisation with similar objectives	In Joint-ownership coops assets divided amongst members In Common-ownership coops assets transferred to a similar type of cooperative.

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