Four Legal Choices

This document describes the four legal identities for member-owned FairShares social enterprises (companies, cooperatives, partnerships and associations). The choices presented can be informed by answers to questions on a FairShares Canvass.

The four sections below describe the opportunities and constraints offered by four sets of model rules for constituting FairShares Enterprises. FairShares values and principles apply across all legal models. However, each legal form facilitates or constrains how the principles can be expressed. Legal forms can be combined in a group structure if members have the skills/knowledge to handle issues that arise.

1. Companies

Companies are popular for many types of enterprise and are currently the dominant legal model in many OECD countries. Recent legislative changes mean that companies can now be used for social economy development. For example, UK companies can be registered for 'private', 'charitable' or 'community interest' purposes. Legal tests to establish Benefit Corporations (B-Corps)[1] have developed in many countries and there are now 'social purpose company' laws in some EU states.[2]

To register a FairShares Company, you need company laws that allow for incorporation with bespoke Articles of Association or additional ByLaws. Investor Shares have many of the characteristics of ordinary shares (UK) and common stock (US). Investor shares change value depending on an enterprise's profitability. As a result, a FairShares company can engage with private sector institutions more easily than its cooperative, association and partnership cousins. Moreover, Investor Shares can can be relabelled to 'Ordinary Shares' or 'Common Stock' using the new FairShares Company Rules Generator. Investor Shareholders, however, still only get 1 vote irrespective of the number of shares held. Profits and value creation can be shared without undermining the social economy governance norm of one member, one vote.

Adopting a FairShares Company structure could create barriers to recognition as a co-operative in countries that do not recognise them unless constituted under Cooperative Law (or which require a cooperative or associational legal form for public / charitable funding). Choose a company if you are confident you can fund the enterprise primarily through market trading, member and private loans, but check further if you want to access public / charitable funds.[3]

2. Cooperatives

In an important sense, all FairShares Enterprises are cooperatives (coops) - they commit to advancing co-operative values and principles in their rules. However, a FairShares coop in the stricter sense is one registered under laws specifically designed for cooperative societies. There are three main differences to a company. Firstly, under Cooperative/Society Law, shares have a par value (a face value does not change when profitability changes). While par value shares are optional under Company Law, they are the norm under Cooperative Law. Secondly, there may be a cap on the number of shares that an individual can purchase. Thirdly, there are usually legislative requirements for democratic member control. There can be a fourth requirement - that part of the surplus is converted into 'cooperative capital' to ensure it can only be invested in the cooperative economy or other cooperatives.

---

1 For more information, see https://www.bcorporation.net/

2 Galera, G. and Borzaga, C., (2009) "Social enterprise: An international overview of its conceptual evolution and legal implementation", *Social Enterprise Journal*, 5(3): 210-228.

3 For a comparison of legal characteristics see 'The FairShares Model: an ethical approach to social enterprise development?'

Co-funded by the Erasmus+ Programme of the European Union

A FairShares coop, therefore, will issue all shares as par value shares. It is the number issued, rather than their face value, that determines entitlements to interest on financial capital and dividends based on participation.[4] FairShares coops are based on multi-stakeholder (solidarity) principles: they enfranchise workers, consumers, entrepreneurs and (financial) supporters within a single legal structure. Some countries may not support multi-stakeholder coops because their coop laws are designed for specific industries (e.g. Agriculture, Housing, Finance). So, check if the Cooperative statutes allow more than one class of member before you attempt establish a multi-stakeholder enterprise using co-operative law. If you can, the FairShares Cooperative Rules Generator allows you to choose your own labels for founder, labour, user and investor members, so you may be able to configure a FairShares coop to meet local industry norms. However, if there is no legislative support, you will have to choose between a company, partnership or association.

Adopting a FairShares coop legal form will be important if you need the kudos of being a *bone fide* coop for marketing / fundraising. However, if you want to operate as a hybrid with non-coop / mutual investors, you will have to weigh up the value of choosing between a coop and company legal form.

3. Partnerships

Next, there is the legal form of a partnership. Limited liability partnerships (LLPs) have increased their popularity over the last two decades and for this reason have become a viable choice for worker cooperatives. LLPs are also good for professional groups and corporate partnerships. Based on our investigations to date, we believe that partnerships offer one key benefit and disadvantage compared to the other legal forms. The benefit is equality in the status of partners. Partnership Law mitigates the employer-employee relationship. All the other forms necessarily must engage with employment law when they take on a workforce. FairShares rules mitigate employment law effects but cannot remove the legal responsibilities of employers towards their employees. In a partnership, this distinction does not exist so partners are not subject to employment law. This enables an egalitarian member-ownership culture to develop by changing the legal framework.

The key downside, however, is the tax position of partners. They are typically treated as micro-businesses that must register individually with tax authorities. The partnership may have obligations to inform tax authorities when partners join and leave. If there is high staff turnover (as there can be with seasonal employment), this creates an administrative burden. For this reason, we recommend you consider the FairShares Partnership Rules Generator if there is a stable group of professionals working together, or - more likely - there are corporate partners with different legal structures who want to create a FairShares enterprise together. For joint ventures, partnerships could be simpler than company groups or primary/secondary coops, particularly if the number of corporate partners is stable and they value their autonomy. As each corporate partner manages its workforce outside the (legal) boundaries of the partnership, it can simplify employment relations.

4. Associations

Companies, coops and partnerships can create social value through the distribution of economic surpluses to Founder, Labour, User and Investor members. What about situations when you want a legal structure to ensure the reinvestment of all surpluses into a community or public service? For this situation, a FairShares Non-Profit Association Rules Generator exists. Trading surpluses are still divided amongst stakeholders, but they are allocated to restricted funds that are controlled by each stakeholder group. A FairShares Non-Profit Association ensures that surpluses are spent on projects

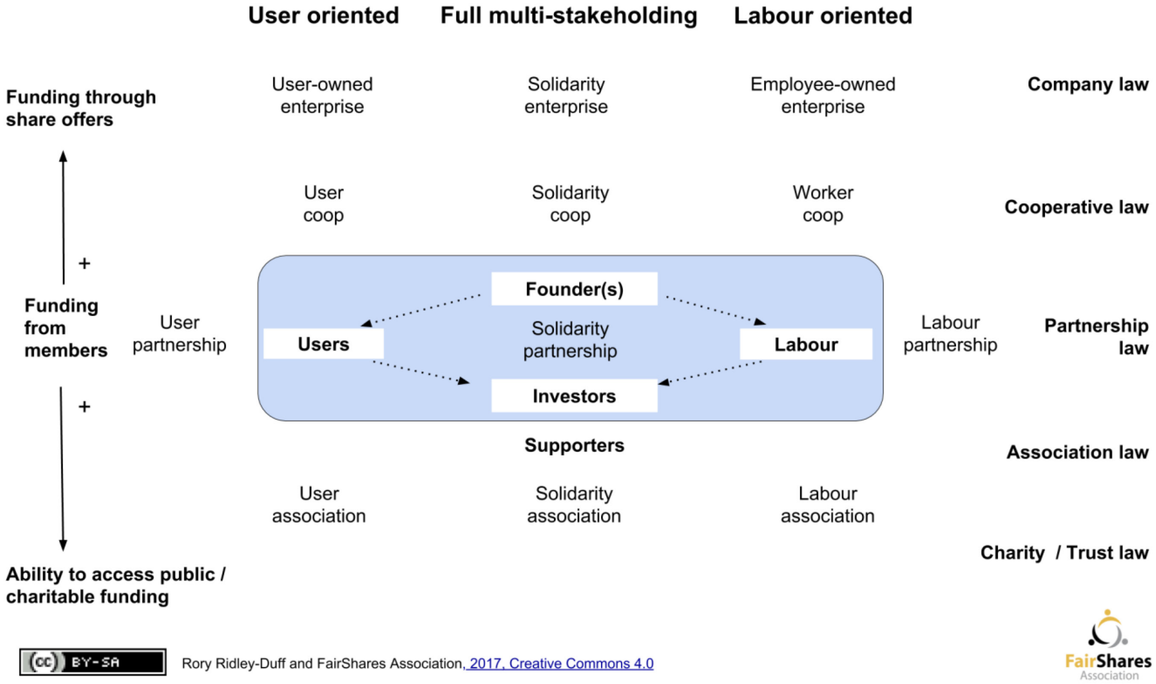
[4] This YouTube Video is particularly good at explaining how surpluses are handled in a (worker) cooperative.

aligned with the association's objects. Funds are controlled by, rather than distributed to, primary stakeholders.

A FairShares Non-Profit Association does not issue shares or have shareholders. It issues memberships that confer membership benefits through access to a collectively managed resource or service. On account of its non-profit status, it may be eligible for funds unavailable to companies and cooperatives, but it will be harder to raise funds from sources used by private companies. Crowdfunding technologies, however, are well-suited to the needs of associations and may provide a solution when financial capital is needed. Choose an associational legal form if non-profit status is important to your marketing and/or income generating strategy, or if you need to guarantee to funders that investments will go towards community and/or public services.

FairShares Rules Generators produce rules that can be used to incorporate under each of the legal forms. Each constitution also includes clauses about branding based on whether three or four of the primary stakeholder groups are enfranchised. The number of stakeholders is determined by qualifying contributions that are set after incorporation by members in General Meeting. The qualifying contributions for Founders and Investors are straightforward. Founders qualify through activities to establish and/or incorporating the enterprise. If a person signs the papers that bring the enterprise into existence, they are a Founder member. Investors can qualify in two ways (in companies and cooperatives): firstly, by generating financial surpluses (through work / trading activities) or by directly investing financial capital (through share purchases). To claim FairShares status (and use FairShares branding), however, additional qualifying contributions for Labour and/or User membership need to be agreed.

Legal identities and FairShares branding



If a qualifying contribution is set only for Labour membership, the enterprise is branded as an employee-owned enterprise, worker coop, labour partnership or labour association depending on the law of incorporation. If there is a qualifying contribution only for User membership, the enterprise is branded as a user-owned enterprise, user coop, user partnership or user association. If both qualifying contributions are set, then the prefix 'solidarity' can be used (e.g. solidarity coop) to indicate that both producers and consumers will co-own / co-manage the enterprise. The figure above provides a summary of way legal choices feed into the branding of FairShares enterprises.