



NEW ZEALAND CO-OPERATIVES: A START-UP GUIDE

Cooperative Business NZ's guide on
establishing a co-operative business

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COOPERATIVE BUSINESS NEW ZEALAND



DISCLAIMER

While we have endeavoured to provide comprehensive information to assist in establishing a co-operative, this guide is not exhaustive. The contents are provided for informational purposes only and does not constitute legal or professional advice. It is important for you to obtain your own expert legal and professional advice.

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ACKNOWLEDGMENTS

Thank you to Anderson Lloyd and the New Zealand Companies Office for their support in developing this guide.

ISBN: 978-0-473-66376-6

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■ WELCOME

Congratulations on taking the first steps in establishing a co-operative!

There has been an international resurgence in recognising that we need to do what's best for our people and the planet, and ensure profits are redistributed across the many, instead of the few. Co-operative and mutual businesses are purpose-led, privately and collectively owned businesses that are playing a significant role in making this happen.

We're thrilled that you are interested in learning about this business model.

Internationally, co-operatives generate GDP equivalent to the fifth largest economy behind the USA, China, Japan, and Germany. They employ one-tenth of the world's working population.

In New Zealand, we are highly experienced in establishing and operating these businesses both as commercial and social enterprises. They are fundamental to the way we deliver goods and services, and are some of our most successful and enduring businesses making a major contribution to our economy and communities.

In 2021 Cooperative Business NZ, alongside PwC, released the New Zealand Co-operative Economy Report. This revealed that the top 30 co-operative businesses in New Zealand earn nearly \$42 billion in revenue, accounting for approximately 13% of New Zealand's GDP by revenue. The 2021 World Co-operative Monitor published by the International Cooperative Alliance (ICA) considered that the entire New Zealand co-operative business community generated approximately 18% of New

Zealand's GDP by revenue. These businesses have a staggering 1.5 million members (many of them SMEs and businesses in their own right) and employ approximately 41,000 people, providing opportunities to a significant portion of the country's workforce.

There is a range of legislation that enables establishing a co-operative or mutual business in New Zealand. This guide aims to explain what co-operative businesses are, the benefits of establishing one, and provides a roadmap on how to set one up.

It has been prepared by Cooperative Business NZ with the support of the New Zealand Companies Office and our Corporate Associate Member, Anderson Lloyd. All content provided assumes the reader will seek the appropriate legal and financial advice to ensure the right framework is established.

We hope this information will help formulate your thinking when starting up a new co-operative or to help your consideration process if you are planning to become a member or employee of one.

Starting any business is challenging, and a co-operative is no different. It requires the founding members to have the patience, tenacity, resources, and passion to push past the roadblocks. This guide is here to assist you on your journey, and Cooperative Business NZ looks forward to supporting you along the way.

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WHAT IS A CO-OPERATIVE?

Co-operative enterprises are another form of business structure. These businesses run for the mutual benefit of their shareholders/members rather than the focus being on returns to investors.

Co-operatives can be defined as:

“An enterprise freely established, that is owned and controlled by a group of legal persons for the purpose of equitably providing themselves with mutual benefits arising from the activities of the enterprise and not primarily from investment in it”

The user-owners are called members. Typically, the members are also shareholders of the co-operative entity. They benefit in two main ways from the co-operative, in proportion to the use they make of it:

- The more they use the co-operative, the more benefit they receive in respect of their transactions
- Earnings are allocated to members based on the amount of business they do with the co-operative

As with other businesses, the individuals or groups that establish the co-operative must meet their legal obligations and draw up the appropriate documents. These vary depending on the exact legal type of the business established whether it be a co-operative company, society or mutual.

Members will elect a Board of Directors or officers. As with ordinary companies, the Board is responsible for the governance of the co-operative, sets policy and hires the managers and staff to run the day-to-day operations.

However, co-operatives are distinct from other businesses based on their purpose, operations, ownership and control, and how benefits are distributed. This is based on co-operative principles that define the unique aspects of doing business on a co-operative basis.

The most important element of any co-operative is its people (members). Co-operatives belong to, are operated by, and benefit the people who join them.

Members are the foundation of the co-operative. They establish the business, and their needs are the

reason for its existence. Their support, through their use of the co-operative’s services/products and capital investment, keeps it economically healthy – and their changing requirements shape the co-operative’s future.

Shareholders in a typical company invest their funds by buying shares. They have no active engagement with the business and are ultimately looking to maximise returns on their investment in the company through the receipt of dividends and an increase shares value.

Co-operative enterprises are also known as co-ops, societies, mutual organisations or mutuals. Throughout this guide, the term ‘co-operative’ is intended to capture all these terms

By contrast, members (also referred to as shareholders within this guide) of a co-operative benefit from investing in a co-operative by ‘actively trading’ with the business. The members are more concerned about the value they obtain from the co-operative through receiving or supplying goods or services, rather than dividends and an increased share price.

A member may receive dividends of profit or rebates from the co-operative. However, the primary value is in the value received as a member of the co-operative. The shares are usually issued at a nominal value and at the time of sale, the value of shares in a co-operative is typically equivalent to the shareholder’s initial investment ie. the price they originally paid for the shares.

HOW CO-OPERATIVES DIFFER FROM OTHER BUSINESS STRUCTURES

In many ways, co-operatives are just like any other business. They face the same economic challenges, provide similar functions, and offer the same services. They must have robust business practices and they need to conform to legislation.

There are, however, significant differences that provide unique challenges and benefits to their members. The most important differences relate to structure, philosophy, and purpose.

A key driver for co-operatives is that the owners are the customers, employees or suppliers of the co-operative. Typically, the returns of the co-operative are delivered to members by transacting with the co-operative business, not based on the amount of investment. This may include purchasing or supplying goods and services at favourable rates and/or providing rebates for transacting with the co-operative.

There is a requirement for the majority of members to 'transact' (ie. be an 'active member') within co-operative companies under the Co-operative Companies Act 1996. For a company to qualify as a co-operative company under this Act, 60% of its shareholders must be transacting shareholders. Other forms of companies that may be operating under similar co-operative principles, such as ordinary companies and societies, will specify the transacting requirements in their constitution or rules.

The legal requirement of having to do business with and transact with the co-operative safeguards the minimum commitment level and support needed from members to maintain the co-operative's business operations. Transactional membership may also be the 'quid pro quo' for democratic control of the entity with only transacting members

being able to vote and control the co-operative. This makes the decision-making more responsive and dynamic to members' interests and needs.

Another feature of a co-operative business which distinguishes it from other business structures is democratic governance. Voting structures within co-operatives can vary depending on the legal nature of the co-operative. For example, in a society it is one member: one vote. In comparison, in a co-operative company typically only transacting members can vote. Co-operatives may also have voting caps to ensure no one individual shareholder gains too much influence.

COMPANY STRUCTURES

In a company structure, decisions are typically driven by profit considerations. However, there is a growing recognition that decisions based solely on profit may lead to a detrimental impact on employees, communities, and the environment.

Company shareholders vote according to the number of shares they hold. They receive their return through the payment of dividends. If a shareholder is not satisfied, then they may dispose of their shares.

Co-operative companies, on the other hand, may place restrictions on disposal of shares, to meet business and capital needs.

INCORPORATED SOCIETIES

Co-operative companies are also different from incorporated societies. An incorporated society must not be established for pecuniary (financial) gain. Generally, Incorporated Societies are not-for-profit (NFP). This does not mean that they cannot make a surplus or profit from their activities; rather, it means that they cannot distribute any of that surplus to their members. Incorporated Societies



cannot pay a dividend, and capital can only be returned to the members on the winding up of the society. The broad intention of the legislation for the incorporation of a society is to provide a simple, cheap mechanism for industry, social, sporting, or charitable groups to allow their members to conduct non-profit making activities.

In comparison, co-operatives can be formed to pursue a not-for-profit purpose.

MUTUALS

Mutuals, like co-operatives, are member-owned but they might not be member-governed. Those electing the Board of Directors may be drawn from a specific group of members who have particular expertise, such as medicine in the case of a health fund mutual. Mutuals deal only with their members while co-operatives can trade with non-members.

Industry superannuation funds are sometimes considered mutuals, but their members are often compelled to join due to industrial agreements and the members do not directly elect the governing body.

The legal requirement of having to do business with and transact with the co-operative safeguards the minimum commitment level and support needed from members to maintain the co-operative's business operations

TYPES OF CO-OPERATIVE OWNERSHIP IN NEW ZEALAND

Fundamentally there are three basic structures of co-operative ownership. These are 'producer', 'consumer', and 'employee owned' (or a combination of the three, often referred to as multi-stakeholder).

In New Zealand, the most common forms of co-operatives that fall into one of these three structure types are:

PRODUCER CO-OPERATIVES

These tend to be concentrated in the primary industry where the members produce similar types of products such as crops, cattle, milk, or arts and crafts. By combining supply volumes, greater economies of scale are achieved. For example, large volumes of milk processed through single plants results in improved manufacturing yields and end product quality. These co-operatives also combine resources to more effectively market their products. Eg. Fonterra.

CONSUMER CO-OPERATIVES

A business owned by its customers, the people who buy the goods or use the services of the co-operative. Consumer co-operatives may sell consumer goods such as food, housing (a model highly prevalent in Europe), insurance, or electricity. Almost any consumer need can be met by a consumer co-operative.

EMPLOYEE (WORKER) CO-OPERATIVES

Sometimes considered another form of consumer co-operative, this is where the employees are the members. The ownership model supports staff retention by involving them in business decisions and sharing in the profits.

UTILITY CO-OPERATIVES

A type of consumer co-operative that is tasked with the delivery of a public utility such as electricity, water, or telecommunication services to its members. Profits are either reinvested into infrastructure or distributed to members in the

Internationally, the co-operative business model has been utilised by indigenous communities to assist in improving the lives and livelihoods of their people

form of rebates or credits paid on a member's investment in the co-operative. Eg. EA Networks.

RETAILER (ALSO KNOWN AS PURCHASING OR SUPPLY CHAIN) CO-OPERATIVES

A co-operative which employs economies of scale on behalf of its members (the members are businesses rather than individuals). This enhances purchasing power, lowers members' costs and improves their competitiveness and ability to provide quality services and products. It is common for locally owned grocery stores, hardware and pharmacies. Eg. Mitre 10 and Plumbing World.

BANKING CO-OPERATIVES

These are financial entities that belong to their members who, at the same time, are their owners and customers. They can be set up as a bank, a building society, or a credit union.

INSURANCE MUTUALS

These businesses are owned entirely by the individuals who take out the policies. Surpluses are either used to reduce future premiums or rebated to policyholders as a dividend.

PLATFORM CO-OPERATIVES

These co-operatives rely upon a technology platform to deliver their services. They can be producer, consumer, employee, or a combination of these ownership structures. We are starting to see more of these businesses being established in New Zealand as they are not limited by borders. Eg. Truестock.

WHY DO PEOPLE ESTABLISH OR JOIN CO-OPERATIVES?

Usually, the starting point for establishing a co-operative is when an individual or group of individuals identifies a compelling need or a solution to a problem faced by a specific group. A co-operative approach can often provide the answer.

The structure enables people to achieve social and economic goals that are not possible when working alone. A successful co-operative requires several people to share the same aspirations, such as affordable housing, energy generation, reliable communications, or a market for their product.

The structure can multiply the results of efforts made by like-minded individuals and gives members equality in determining how the goal is achieved. If a member needs a product or service, they will have the power to determine the characteristics of it. Group buying gives members the capital and volume to increase buying power and obtain results at a lower cost.

Members of an employee-owned co-operative can be both the boss and worker at the same time. They can be involved in determining their wages and benefit entitlements, as well as helping to guide the business and sharing in its profits.

Rural residents may join co-operatives to reduce costs or enhance their lifestyles by accessing services that they would otherwise be unable to secure - be it healthcare, communications, energy or childcare.

SO, WHAT ARE SOME OF THE BENEFITS OF CO-OPERATIVE MEMBERSHIP AND HOW DO THEY RELATE TO USE?

ACCESS TO QUALITY SUPPLIES AND SERVICES AT A REASONABLE COST

By banding together and purchasing business supplies and services as a group, individuals offset the market power advantage of the firms providing those supplies. Members can gain access to volume discounts and negotiate from a position of greater strength to obtain better delivery terms, credit terms, and other arrangements.

Suppliers will be more willing to discuss customising products and services to meet specifications if the purchasing group provides them with sufficient volume to justify the extra time and expense. The larger the group purchasing supplies and services through the co-operative, the greater the potential for savings. Further, the more each member uses the supply operation, the more they may save over doing business elsewhere.

Another option for co-operative members is to manufacture their own supplies and hire experts directly to provide essential services. This gives members even more reliable sources of supply and greater control over the types of products available, the cost, and the quality of the services received.

INCREASED CLOUT IN THE MARKETPLACE

Operating on a co-operative basis enables members to combine their strengths while maintaining their status as independent businesspeople. They can lower distribution costs, conduct joint product promotion, and develop the ability to deliver their products in the amounts and types that will attract better offers from purchasers.

The Commerce Act 1986 contains certain concessions for co-operative businesses in its provisions which prohibit anti-competitive behaviour in trade*.

Through co-operative marketing, members can share information and negotiate with buyers from a position of greater strength and security.

They can also develop processing facilities by themselves or as part of a joint venture with other co-operative (or non co-operative) firms.

A co-operative can also serve as a vehicle for providers of goods and services to work with their customers and promote industry research, reduce regulatory burdens, and develop markets for their products. The co-operative can help create a 'win-win' situation for the entire industry; a business environment where both producers and buyers have more income.

SHARE IN THE EARNINGS

Most co-operatives generate earnings, but they differ from ordinary businesses in how they allocate and distribute their earnings.

An ordinary business retains its earnings/profits for its own account or may pay part of them out to shareholders as dividends, based on the amount of shares each investor owns. On the other hand, a co-operative business typically rebates the profit based on the members' use of the co-operative.

Permitting their co-operative to accumulate retained rebates is a relatively easy and painless way for members to help finance activities and growth. Further, the co-operative may deduct both the cash pay-outs and the retained rebates from its taxable income. This makes co-operative earnings particularly tax efficient. The rebate, however, is taxable income in the shareholder's hands.

For example, if a co-operative has net earnings of \$20,000 during the year and conducts 2 percent of its business with Ms. Jones, she is allocated \$400 of those earnings ($\$20,000 \times .02$). Typically, Ms. Jones would receive her allocated portion of the co-operative rebate partly in cash and the remainder as a credit to her equity account in the co-operative

LOBBYING AND POLITICAL ACTION

Individual growers, small business owners, and other rural residents may be detrimentally impacted by legislation. Being part of a co-operative gives people a means to collectively lobby for change or effective political action.

The co-operative may have specialists who can represent the group in its interactions with legislators and regulators. These individuals will have more influence because they will be speaking on behalf of the group rather than one individual. They can also form coalitions with other groups who hold similar views on issues. The larger and more unified the voice calling for a specific action is, the more likely that the system will respond with favourable policy.

LOCAL ECONOMY ENHANCED AND PROTECTED

Having its businesses owned and controlled on a co-operative basis can benefit an entire community. Co-operatives generate jobs and salaries for local residents. When a business is a co-operative, the communities in which it operates are less likely to lose its benefits in the future.

A business owned by one person, or a subsidiary of a big company, can easily be moved to another community. When many local people share the ownership of a co-operative, no individual or company can take it from the local area or simply close it down. Only the membership as a whole can make such decisions.

*You should consult the Competitor Collaboration Guidelines issued by the Commerce Commission for practical guidance on how these concessions are applied.



CO-OPERATIVE IDENTITY, VALUES, AND PRINCIPLES

The International Co-operative Alliance (ICA) is a non-government, independent association that unites and serves co-operatives worldwide. It has members from more than 145 countries, representing around 1 billion individual co-operative members who, in turn, employ approximately 10% of the world's population.

The ICA is accepted as the ultimate authority for defining co-operatives. They determine the fundamental principles which characterise the unique identity of these businesses. The ICA sees these characteristics as “inherently practical principles, fashioned as much by generations of experience as by philosophical thought”.

Despite vast differences in cultures and practices across the world, the ICA has global responsibility for maintaining the principles. They are regularly reviewed to ensure they remain relevant.

*ICA co-operative definition:
A co-operative 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*

CO-OPERATIVE VALUES

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.



CO-OPERATIVE PRINCIPLES

VOLUNTARY AND OPEN MEMBERSHIP

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political, or religious discrimination.

DEMOCRATIC MEMBER CONTROL

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Individuals serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

MEMBER ECONOMIC PARTICIPATION

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing the co-operative (possibly by setting up reserves, at least part of which would be indivisible), benefiting members in proportion to their transactions with the co-operative, and supporting other activities approved by the membership.

AUTONOMY AND INDEPENDENCE

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

EDUCATION, TRAINING, AND INFORMATION

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operative. They inform the general public, particularly young people and opinion leaders about the nature and benefits of co-operation.

CO-OPERATION AMONG CO-OPERATIVES

Co-operatives work together through local, regional, national, and international structures to serve their members more effectively and to strengthen the co-operative movement.

CONCERN FOR THE COMMUNITY

Co-operatives work for the sustainable development of their communities through policies approved by their members.

These fundamental co-operative principles are also known as the Rochdale Principles





SUCCESS AS A CO-OPERATIVE

A co-operative's success depends on the structure and the involvement of its members. By ensuring members' actively input, have a clear understanding of co-operative principles and values, and have a commitment to the product or service being offered, they have 'skin in the game'.

A SUCCESSFUL CO-OPERATIVE NEEDS:

- Clear common objectives to achieve both its social purpose and operate as a sustainable commercial entity
 - A strong understanding of, and adherence to, co-operative principles and values
 - Involved members who are kept informed and educated, who are committed to success, and encouraging of other members
 - Competent management, which communicates well with the Board and members
 - Sound business planning and the ability to plan for change
 - A positive attitude, and the belief of its members that they can make a difference
 - A strong sense of the needs of its members and market(s), and a desire to meet them
 - A sufficient size to receive fair treatment from suppliers of its inputs and/or buyers of its produce
 - Strong community bonds, awareness and involvement in the community, capacity for self-reliance, and vitality
 - The ability to provide a service or product at a price that an investor-owned business can't beat
-
- If the basic structure is well thought out, the survival rate of a co-operative is twice as high as a traditional business*
-
- A viable business opportunity and a realistic focus
 - Access to skilled advisors when necessary
 - Supportive links with other co-operatives
 - Meetings that are clear, focused, and open, enabling members to speak freely and raise questions
 - Clearly defined marketing agreements and returns to members
 - Members who are loyal to the co-operative and who understand both their own interests and the interests of the group
 - Constructive members with a commitment to integrity and honesty, and ability to delegate authority
 - Sufficient capital
 - The patience to grow steadily and take a long-term view



NEW ZEALAND LEGISLATION

A co-operative company is incorporated under the Companies Act 1993. It is then also typically incorporated under the Co-operative Companies Act 1996 so that it can legally operate and call itself a co-operative company. The overarching provisions of the Companies Act will apply unless these are inconsistent with specific provisions of the co-operative company constitution or applicable terms of the Co-operative Companies Act.

While a company only incorporated under the Companies Act can still operate under co-operative

principles, in order to legally be called a co-operative it must be incorporated under both Acts.

Other forms of member-owned businesses are established under the Industrial Provident Building Societies Act 1965, the Friendly Societies and Credit Unions Act 1982, or the Farmers' Mutual Group Act 2007, which was established specifically for the Farmers Mutual Group.

See the following table detailing the legislation, industries, ownership type and examples of businesses using the model.

Legislation	Co-operative Companies Act 1996	Friendly Societies and Credit Unions Act 1982	Building Societies Act 1995	Industrial and Provident Societies Act 1908	Farmers Mutual Act 2007
Examples	Fonterra, LIC, Mitre 10, Foodstuffs, MG Group, Eastpack, Procure, NZPM, Loomio, Wealthpoint	Southern Cross Health Society, Frist Credit Union, NZCU Baywide	SBS Bank, Nelson Building Society	Farmlands, Accuro, Co-op Taxis	FMG
Industries	Healthcare, primary sector (agri/hort), construction, manufacturing, retail, housing, sport, platform technology, transport, insurance	Insurance, banking, financial services	Financial services, banking	Retail, insurance, transport	Insurance
Ownership	Produce, consumer, employee, purchasing/supply chain	Consumer	Consumer	Consumer/supplier	Consumer

In relation to obtaining funds from shareholders, issuing prospectuses, and making distributions/rebates, the following legislation is relevant to co-operative businesses:

- Financial Reporting Act 2013
- Financial Markets Conduct Act 2013
- Financial Service Providers (Registration and Dispute Resolution) Act 2008

Co-operatives also operate under the general New Zealand legislation pertaining to business activity such as the Fair Trading Act 1986, the Commerce Act 1986 (and the various amendments to these), amongst others.

Any type of business, regardless of sector, whereby the owners are also the principal traders (either buying or selling) can be operated as a co-operative. The advantages of a co-operative company under the Co-operative Companies Act include the special features relating to shareholdings that departs from the normal arrangements under the Companies Act.

These include the power to:

- Issue shares with a nominal value
- Redeem shares to ensure continuous active membership in the company
- Accept surrenders of shares
- Hold surrendered shares for later allocation
- Forfeit shares of untraceable shareholders
- Give rebates to shareholders, unless the constitution prohibits this

Some tax concessions and exemptions from certain provisions of the Commerce Act will apply but otherwise, the advantages of a co-operative company are the same as those applicable to companies incorporated under the Companies Act.

There are a number of additional features that characterise companies incorporated under the

Co-operative Companies Act. A co-operative company:

May use the word 'co-operative' in their name: Only registered co-operative companies may include the word in their company name, although it is not a requirement to do so.

Must carry out co-operative activity: The principal activity of a co-operative company must be to carry out a co-operative activity as defined by its constitution. Such activity may include providing shareholders of the co-operative company with goods or services, including processing and marketing services and other operations ancillary to the co-operative activity.

Requires continuously active membership: One of the key differences between a standard company and a co-operative company is that the features of co-operative ownership require the member to continuously transact with the co-operative. If they do not, they may be required to surrender their shares.

Members have control of the organisation: According to the Co-operative Companies Act, no less than 60% of the voting rights in a co-operative company must be held by transacting shareholders. In order to be a transacting shareholder, each shareholder must engage in commercial activity with the co-operative company. For example, a dairy farmer supplying milk to a co-operative dairy company would be a transacting shareholder as would a plumber buying products from a plumbers' supply co-operative.

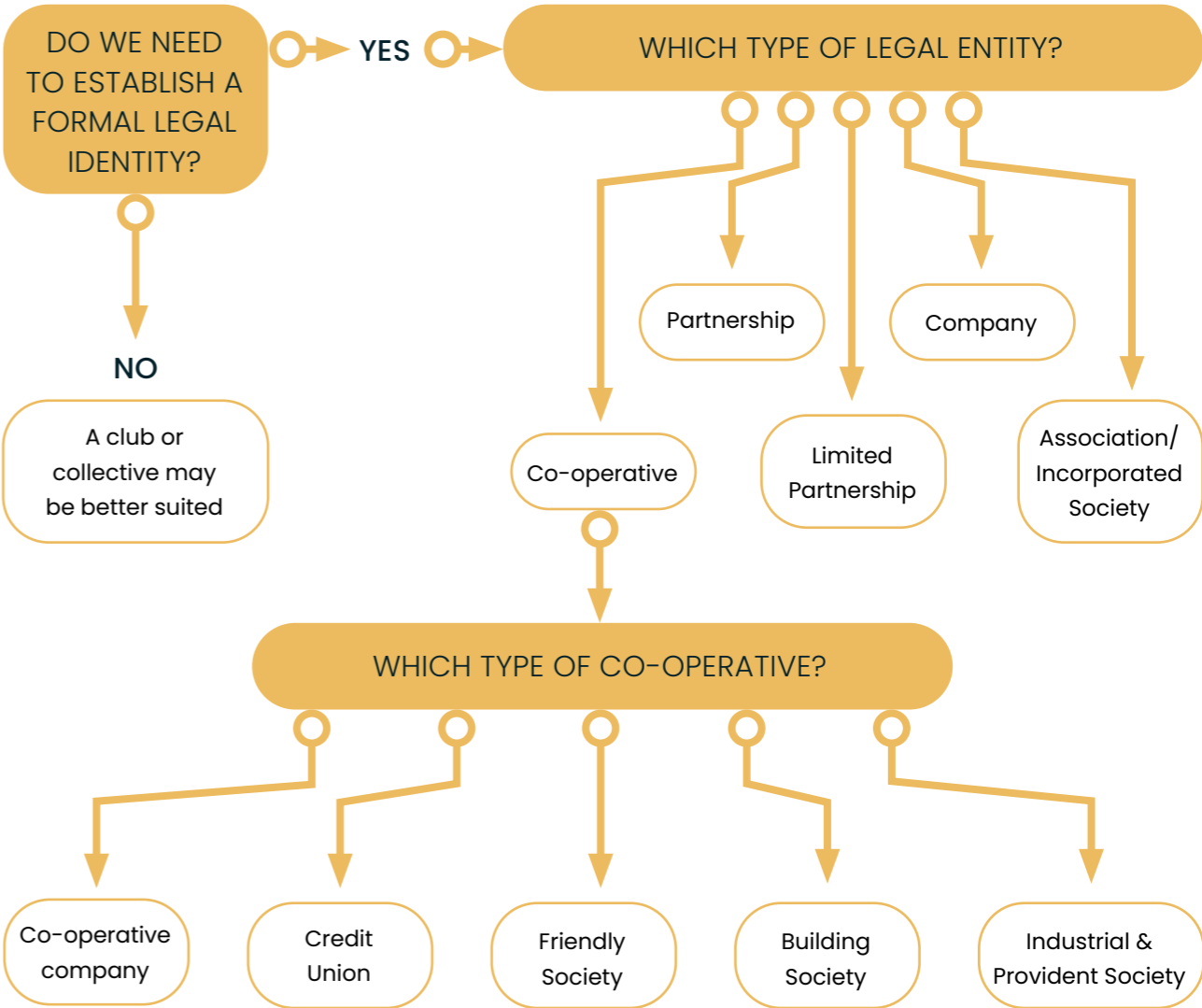
Profits are returned as rebates: the profits of a co-operative company are returned to the shareholders as cash rebates (or otherwise as shares in lieu of rebates). The amount of the payments is calculated in relation to the volume of 'transactions' made by each shareholder during the accounting period (financial year).

For example: (1) the amount of milk supplied measured in kgs of milk solids, (2) the amount of purchases made via a group buying office (typically the parent company), or (3) the amount of product or services sold over a financial year.



IS A CO-OPERATIVE THE RIGHT MODEL FOR OUR BUSINESS?

After you have identified an opportunity for a group of people/members to collectively work together, the next step is considering whether you need to establish a formal legal entity and, if so, whether the co-operative model will best meet the group's needs.



While co-operatives have many similarities to other businesses, they do also have special challenges arising from their ownership and democratic control by their members. It is the members' principles, collective dedicated effort, and group decision-making that give direction to the business.

This needs to be taken into consideration when determining whether the model is right for your business.

DO WE NEED TO ESTABLISH A FORMAL LEGAL ENTITY?

In some cases, such as community groups, a more informal structure like a collective or a club is appropriate. Both can be set up inexpensively with a simple set of rules. These groups generally have a president/chairperson, secretary and treasurer. On the other hand, an alternative legal entity structure may be better suited to your situation, such as an ordinary company or limited partnership. Here is a quick overview of these options.

Collective: A group of individuals/entities that share or are motivated by at least one common issue or interest to work together to achieve a common objective. They differ from co-operatives in that they are not necessarily focused on economic benefits or savings. This is not a common model in New Zealand. The structure of collectives tends to be less formal than a co-operative.

Club: An informal organisation involving a number of people united by a common interest or goal such as gardening, sport, music or art. A club might offer members facilities such as clubrooms or a website. A club can often be a legal entity such as an incorporated society incorporated under the Incorporated Societies Act 2022 (which replaced the 1908 Act. However if the intention is that members receive direct financial benefit from the club, an incorporated society is not an option.

Partnership: The partners enter an agreement to pool their collective assets and skills into the same business and share profits, but do not want or are unable to incorporate as a company. These are common in the professional fields such as law,

accounting, engineering, public relations, and architecture. Partnerships see two or more entities (individuals or companies) share the profits and losses of an unlimited liability business, with each partner taxed on their individual share of the net profits. Partnerships are also used as vehicles to own shared assets. For example, farmers may share ownership of machinery. Liability is joint, and profits and losses are shared by the partners in proportion to their share in the partnership.

Limited Partnership: Limited partnerships are established under the Limited Partnership Act 2008 and are made up of a General Partner which undertakes the business of the limited partnership and Limited Partners who are the investors. Limited Partnerships have the advantage of limited liability and the ability for Limited Partners to stream losses up to the value of their investment. They are a popular vehicle for primary industry investment such as horticulture where initial losses are anticipated during the development of the project. Eg. establishing a new cherry orchard.

Companies: An ordinary company incorporated under the Companies Act is the most common business vehicle with the advantage of limited liability and the ability to have a more complicated capital structure through share classes and ease of borrowing and granting of security. This suits the investment profit driven model, but ordinary companies are also used by co-operative businesses which require a company structure but do not need the additional advantages of registering under the Co-operative Companies Act.



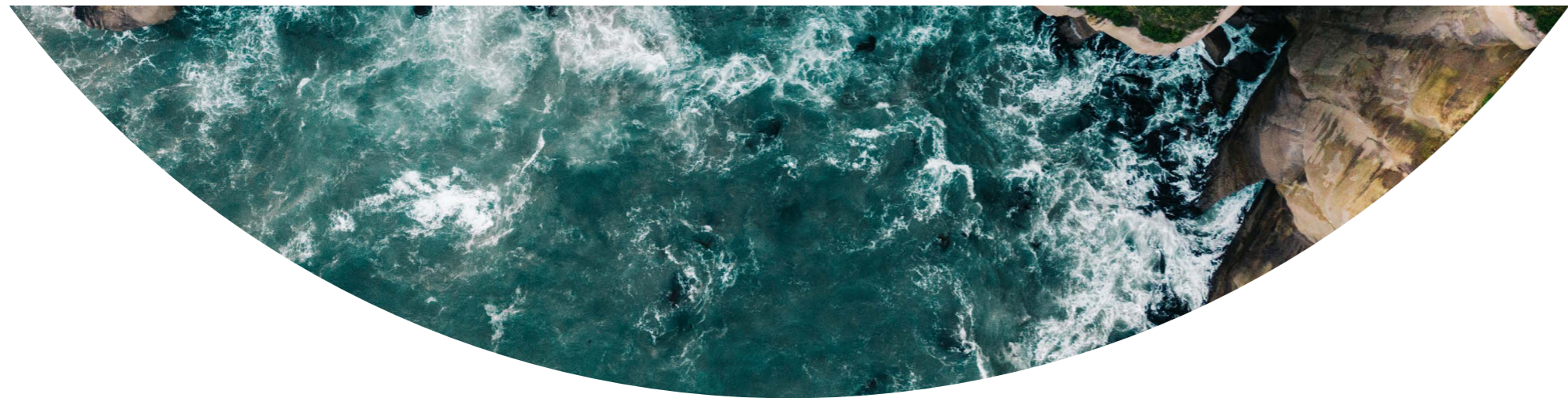
WHICH TYPE OF FORMAL LEGAL ENTITY?

Once you have decided you need to establish a legal entity it is time to consider carefully exactly what legal structure you need to achieve the outcome you are looking for. The main options are set out and compared in the table below.

Differences between Co-operatives, Companies and Associations/Incorporated Societies

	Co-operatives	Companies	Associations/ Incorporated Societies
Primary purpose	Undertake co-operative activity for the benefit of their members	Maximise profits for shareholders	Meet identified needs of the community (club members)
Organisation ownership	Owned by the users who benefit from membership/shareholding	Shareholders	No ownership, any assets acquired belong to the association/society and are never distributed to members, except on winding up
Ownership limit	None but often capped in proportion to level of transactions or at a set limit of say 10% to prevent to prevent large interests gaining control	One owner may hold 100% of issued share capital	No share capital. Members pay subscription fees and are entitled to an equal interest on winding up
Day-to-day management control	Board	Board	Management committee
Voting rights	Many co-operatives have a one member; one vote policy. However, a co-operative may choose to include in its constitution that members vote according to the number of shares held, which may in turn be based on level of use and transactions with the co-operative (ie. use of services, sale or purchase of goods and so on). The constitution can also contain an ability to limit any one member's (or associated members') rights in terms of control	One vote per share, which means that the majority shareholders can make all the decisions. A company's constitution may have restrictions on voting rights which could alter the one vote per share outcome	One vote per member
Number of members	Minimum of at least two shareholders holding at least one share each (either individual or corporate)	Minimum of one shareholder	Minimum of 10 members (this was changed from 15 under the Incorporated Societies Act 2022)

Membership	60% of shareholders must be transacting members	No restrictions, other than limits on foreign ownership of shares or substantial shareholding requirements	Anyone who supports the association's / society's purpose, meets the entry criteria, and pays any membership fees
Capital structure	Share capital from shareholders (this is not limited to transacting members only – it could be a hybrid). Debt funding can be comprised of private debt, member loans and publicly issued debt securities such as debentures	Share capital including share capital from public issues of shares. Debt funding through private debt, publicly issued debt or hybrid securities	Membership fees
Share ownership	60% of shares must be held by transacting holders	Shares can be acquired by any person or organisation, depending on the company's constitution	Not applicable
Share value	Co-operative shares may have a nominal value specified in the constitution, which can be changed by special resolution of shareholders. Shareholders are less concerned about share price than they are about the transactional benefits provided by the co-operative	Value of shares determined by issue price which must be at fair value	Not applicable
Share payments	Shareholders typically don't receive dividends, but instead receive rebates or payments linked to use	Focus is on maximising financial return	Not applicable
Benefit distribution	Proportion of surplus shared among members based on transactions with the co-operative	Share profits are based on share ownership with no limit on share dividend. Dividends distributed to investors according to the class of share	Surpluses belong to, and are retained by, the association/society. They cannot be distributed amongst the members
Liability (unless through wrongdoing)	Limited to unpaid amounts on shares and any other charges payable to the co-operative	Limited to the unpaid amounts on shares held	Limited to any outstanding fees owing to the association/society
Decisions of entity	Largely democratic, sometimes weighted towards members with greater use of the co-operative	According to majority shareholders	Democratic
Member involvement	60% of shareholders must be transacting members	Not applicable	Encouraged



WHICH TYPE OF CO-OPERATIVE?

If you have decided that a co-operative structure is right for your business, the next step is to think about what type of co-operative fits best with your members' requirements.

As discussed earlier in the Start Up Guide, there are a number of different co-operative legal entities

to consider, dependent on your business activity. The most common forms of co-operative in New Zealand fall under the Co-operative Companies Act, the Companies Act (an ordinary company registered under this Act only, but with a co-operative corporate policy), and the Industrial and Provident Societies Act.


Co-operative business types

Co-operative Companies	<p>In New Zealand many co-operatives are companies which are registered under both the Companies Act and the Cooperative Companies Act. The word 'co-operative' can only be used in the company name if it is registered under both Acts.</p> <p>However, a co-operative doesn't necessarily need to use the word in its name.</p>
Industrial & Provident Societies	<p>An industrial and provident society will typically consist of the owners of small businesses, who while continuing to operate independently, become part of the larger entity for their mutual benefit. The businesses work (hence they are 'industrial') and receive benefits (hence 'provident') from the society for their future well-being. Applications to register can be made to the Companies Office by seven potential members and the secretary for carrying on any industry, business or trade authorised by the rules in the Industrial and Provident Societies Act (except banking).</p> <p>A co-operative taxi society is an example of an industrial and provident society with independent operators benefiting from car insurance schemes and an internet booking system. Industrial and provident societies are identifiable by having names ending in 'Society Limited' or 'Co-operative Society Limited' and they operate according to a registered constitution.</p> <p>The advantages of an industrial and provident society are similar to those of other body corporates, including that a society becomes a separate legal entity once incorporated. The legislation dates back to 1908 and a Provident Society is no longer a common option for new co-operatives.</p>

Building Societies	<p>A building society is incorporated under the Building Societies Act 1965. Funds are raised by the issue of shares to members who usually pay for them by subscription over time.</p> <p>The funds may be used to provide broad range of financial services of a wide definition including, traditionally, mortgage advances for the purchases of house properties. There are two types of building societies: terminating (which terminate on a date fixed by their rules or when certain conditions are met); and permanent societies, which comprise all other building societies. Some Building Societies have subsequently registered as banks. Eg. SBS Bank.</p>
Credit Unions	<p>A credit union is a member-owned co-operative financial organisation set up to provide savings and loan facilities for its members. A common bond must exist among the members, for example, residing in a particular geographical location or being employed by a particular employer. Members invest their savings and receive a dividend.</p> <p>A credit union is registered under the Friendly Societies and Credit Unions Act 1982. Eg. First Credit Union and Unity.</p>
Friendly Societies	<p>A friendly society is formed to provide for, by voluntary subscriptions of members or with the aid of donations, the relief or maintenance of members and their families during sickness, old age or in widowhood.</p> <p>They are not corporate bodies and are registered under the Friendly Societies and Credit Unions Act 1982.</p>
Mutual Companies	<p>Mutual companies are commonly found in the insurance industry or exist as savings and loan associations. The definition of a 'mutual company' is a private company whose ownership base is made up of its clients or its policyholders. The defining feature of a mutual company is, since its customers are also its policyholders, that they are entitled to receive profits or income generated by the mutual company. Such distribution of profits may typically be in the form of dividends made on a pro rata basis, based on the amount of business each customer conducts with the mutual company.</p> <p>An example of a New Zealand mutual is Farmers' Mutual Group which primarily provides fire and general insurance to its members who are typically farmers or those who service or support farmers. It is incorporated under its own specific legislation, the Farmers' Mutual Group Act 2007.</p> <p>The term 'mutual' is believed to arise from the fact that in an insurance mutual company, for example, a policyholder is both the insured party (as the company's customer) and the insurer (as part owner). This structure could equally be described as 'co-operative'.</p>



ESTABLISHING A CO-OPERATIVE



Once you decide the co-operative model is right for your business or purpose, there are several important steps to get it off the ground.

Your first task will be to find the right people to work with you. They will need to have similar aspirations, a mutual need, and a high level of commitment to the success of the co-operative. It is important to educate the potential members of a co-operative so that they have a clear understanding of what a co-operative is, how it is governed and can commit fully to provide support to the venture. Always keep in mind that a co-operative is an organisation of people, and it will need strong foundations for it to be successful.

It is highly recommended that you talk to your representative body, such as Cooperative Business NZ, which has broad resources and networks with individuals, other co-operatives and associations in your community who may be able to assist you.

When engaging with other co-operatives that have already been through the process you will likely find that their members will be willing to help you. Many have a strong commitment to the co-operative movement and desire to see it grow. This is very

A co-operative that is well-organised from the start will operate more efficiently and encourage member participation and support

much in line with the sixth Co-operative/Rochdale Principle of 'co-operation among co-operatives'.

The next requirement, as with any other business, is to establish whether the concept is business worthy and whether the co-operative will deliver the benefits the members of your group are expecting.

The key to success is research. This entails gathering all available information so that you and your founding group are as well informed as possible. This process usually involves a feasibility study (which will inform the detailed business case), the development of your strategy, and making an informed decision on whether to proceed.



OVERVIEW OF STEPS: IDENTIFY A NEED, DELIBERATE, IMPLEMENT

As a general rule of thumb, the timeline from seeding the idea of becoming a co-operative to being fully operational can be anywhere from three months to two years. The process requires patience and tenacity.

Outlined overpage is a general, simplified, framework of how to move from your initial thinking through to an operational co-operative. Each stage requires a decision from the member base on whether to abandon the concept, proceed to the next step or tackle what needs to be revised in order to move forward.

Outside advisors (such as legal practitioners, consultants, technical advisors or industry analysts) can be used at any point in the process. Co-operatives are structures which typically require specialist advice and Cooperative Business NZ can assist with recommendations for legal and accountancy advice.

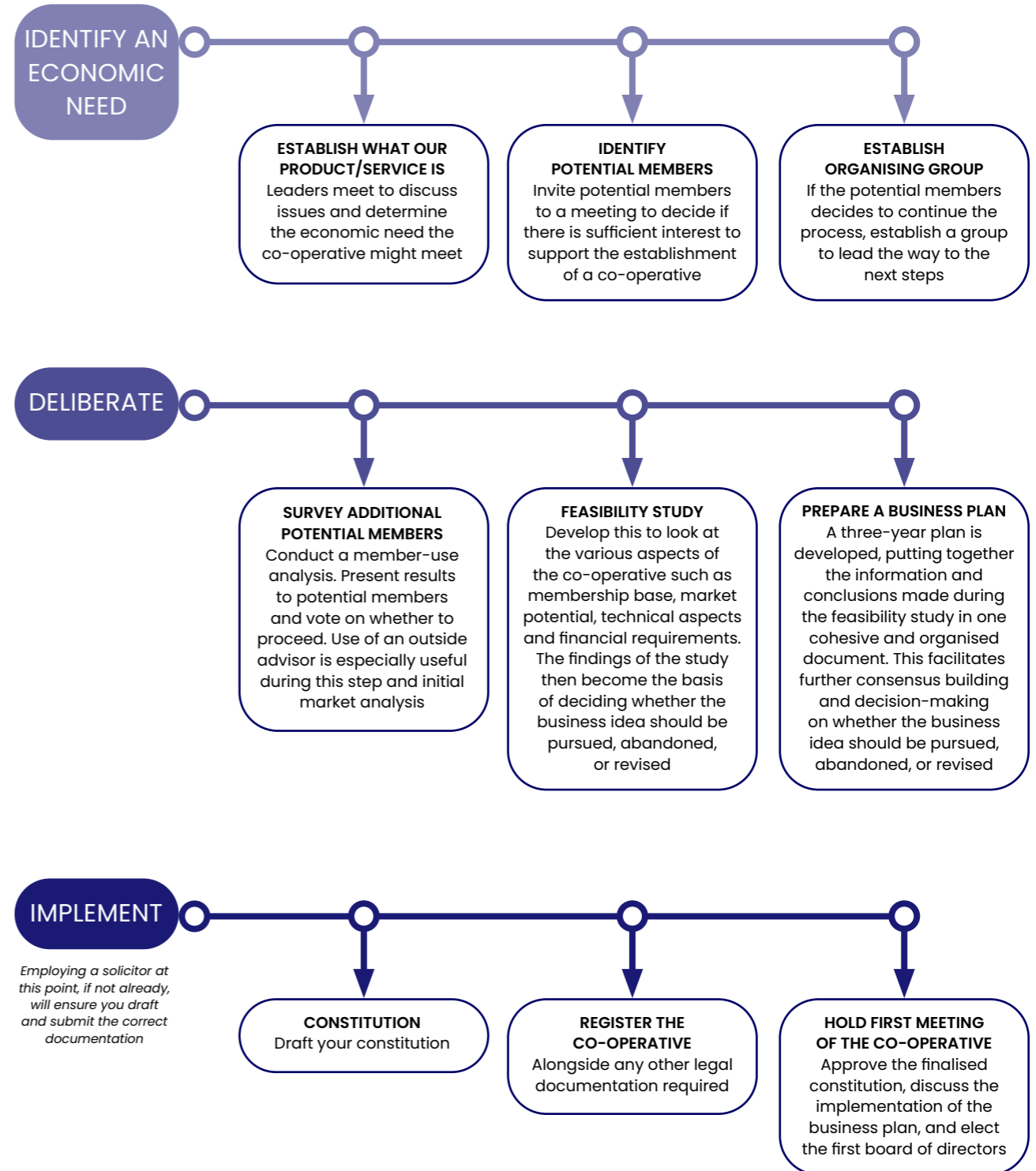
The responsibilities, and often the financial contributions of the founders, can be significant during the start-up phase.

It is important to be able to work together with the founding membership whereby all members commit to the principle of one member; one vote (or whatever alternative is agreed in your constitution). Having the capacity to collaborate and make joint decisions, ensuring high levels of communication, sharing, discussing, listening, and problem solving will be key to a successful start-up.

Your founding members must be prepared to share the risks, responsibilities and control. Furthermore, having the time, drive and commitment to establish the co-operative and ensure its success is critical.

You may also need advice on how the founders can fund the setting up of the co-operative as you build up of the membership through the start-up phase to breakeven levels.

The following sections look into some of the 'Identify', 'Deliberate' and 'Implement' stages further.



WHAT IS OUR PRODUCT OR SERVICE?

Often someone has a 'eureka!' moment, seeing a novel way to address a need, provide a service or supply a product. At other times, an opportunity arises when a local business is to be put up for sale, or when another regional or international business provides inspiration.

New business opportunities often come about at times of adversity when individuals and business leaders decide collaboration will enable a more effective response to challenging circumstances, i.e. a pandemic, sustainable development goals, or improving the lives and livelihoods of communities.

In developing the idea for your co-operative, you should consider what your motivation is, what exactly the business is going to do, whether anyone else is already doing it, the feasibility of the plans, and whether anyone else should be involved at an early stage. It is useful to discuss the business concept with friends or colleagues who may

identify flaws or think of ways in which the idea might be improved.

It is essential that the member-owners agree there is a clear need for the product or service, and that a co-operative structure is a suitable vehicle to meet the need. It is also crucial that the co-operative can efficiently produce the product or deliver the service at a competitive price to a sufficient number of people in order to make the business commercially viable.

The co-operative must be able to provide more accessibility, better prices, better quality or better services than the potential members could get elsewhere.

It would also be helpful to contact members of co-operatives in a similar field to see how they are run. Cooperative Business NZ can assist in connecting you with the wider co-operative community.

requirements for membership in the proposed constitution, including the level of transactions a member is required to have with the co-operative to qualify as an 'active' or 'transacting' member.

The members have to use or support at least one of the co-operative's primary activities and contribute any required share of capital. If a member becomes inactive and they cease to qualify as a transacting member, they may be required to sell their shares (depending on the type of co-operative and its rules).

A co-operative company requires a minimum of 60% of the voting shareholders to be transacting members. However, this is not a requirement for a society or an ordinary company which opts to trade according to co-operative principles.

CHOOSING MEMBERS

Choose your members wisely. It is important to seek out people who are positive, dedicated, can communicate well with other members, and will contribute to the co-operative's success.

Before deciding to include an early member, ensure they understand or are willing to learn what a co-operative is, how it works, and their rights and responsibilities as a member. The success of a new co-operative depends on 'all' the members (not just a few) understanding and accepting the values and principles that make co-operatives unique.

Be sure to have a vision of how the members will be involved with, and participate in, the co-operative. The members will need to develop a strong membership culture, enabling the co-operative to survive through subsequent changes of membership and leadership.

In a small co-operative, members must be willing to take the responsibilities of membership seriously and take on a fair share of the duties.

During the early stages of establishing your new co-operative, it's important to choose members who are dedicated and committed to seeing the co-operative vision come to life. However once you are a fully-fledged and operating co-operative, you won't be able to 'choose' your members, per say. If a potential member fits the requirements as set out in your constitution, then they are entitled to become a member. This is part of the co-operative principle of 'open membership'

In a larger co-operative, it will not be necessary for every potential member to be involved in planning at an early stage. For practical reasons, it is difficult to discuss every aspect and detail of a start-up in large meetings. It may be worthwhile to create smaller working groups that focus on one particular aspect of the business, such as legal requirements or financing.

A steering group, comprised of representatives of working groups, might oversee the whole start-up process, organising meetings of the prospective membership to report on progress and to continue the planning process. The steering group might also coordinate and monitor the progress of the working groups. Often the members of the steering group become the first directors of the co-operative.

No matter how this initial stage is coordinated, each member needs to know where they, and their peers, fit into the process. If in doubt, consider seeking specialist help.

INITIAL MEMBERS

Members are at the core of your co-operative so be sure to work through this part of your co-operative journey carefully.

WHO CAN BE A MEMBER?

A co-operative must have a minimum of two members (people or corporations). However, this will also depend on which legislation the company is established under.

A person aged under 18 years may become a member of a co-operative unless the constitution states otherwise. Minors may not hold office in a co-operative, and may only vote if they are in a

joint membership where at least one other joint member is not a minor.

A member may appoint a proxy or representative to vote for them at a meeting. The co-operative's constitution or rules (depending on the type of co-operative) will set out the voting process which may vary from one business to the next.

Consider who can benefit from the services of the co-operative, and what relationship they will have with the co-operative - whether they are customers, suppliers, employees, users or a mixture of these. The members should satisfy any



■ FEASIBILITY STUDY

A feasibility study looks at the various aspects of the co-operative such as membership base, market potential, technical aspects and financial requirements. The findings of the study then provides the basis to decide whether the business idea should be pursued, abandoned, or revised.

The feasibility study is not an automatic guarantee of success. Its primary purpose is to improve the likelihood of the proposed co-operative succeeding. It will take time to develop so share the work among several of your proposed members. This will be another test to see if you can work together to start and operate your co-operative.

While the feasibility study can be handled by the prospective members, you should also consider getting assistance from a consultant experienced in developing similar studies. The size and cost of this work will depend upon the complexity of the operations the co-operative intends to undertake.

To better manage the cost, you may want to consider dividing the feasibility study into two stages.

CONDUCT A PRE-FEASIBILITY STUDY FIRST TO DETERMINE:

- Whether the co-operative model is suitable and, if so, whether the type of co-operative proposed is appropriate
- How many members are expected to join the co-operative
- How receptive the local community or prospective consumers are to the co-operative business
- What the anticipated benefits to co-operative members are expected to be
- The market the co-operative intends to operate in, whether the market is large enough, whether it will pay enough, and whether it needs the products and services the co-operative proposes to offer
- The availability and cost of professional, technical, and financial assistance

If the pre-feasibility study casts doubt over the potential viability of the business idea, re-evaluate the idea. If the study shows that the business idea has merit, proceed to developing a full feasibility study.

A full feasibility study requires careful research of the products, services and markets, and planning and involvement of other people outside your proposed co-operative.

THE FEASIBILITY STUDY SHOULD AT LEAST PROVIDE A BROAD OVERVIEW OF:

- The business structure including the type of co-operative, the members, the size and location, and strategic objectives
- What the products or services are
- How products will be produced, and who will produce them; how services will be delivered, and who will deliver them
- How much it will cost to produce the products or deliver the services
- Who will be the buyers/users of the products and services? Where are the customers? How much will they buy? How much will they pay?
- What the risks, benefits, strengths, opportunities, weaknesses and threats are
- Identifying if there are competitors who offer the same or related products and services, and what they sell them for
- What it will cost to set up and operate the business, including premises, equipment, staff, insurance, and operating costs
- How much money will need to be raised to make the co-operative viable, where will it come from, and when
- How much the co-operative expects to earn and when that money will be received
- Projected cash flow budget
- Taking everything into account, is it viable?

Making sufficient profits is an important part of doing business. If the co-operative does not make profit, it will not have the money to invest in its business growth and will not be able to provide rebates to its members

CONSIDER VOLUMES

It is important that there is sufficient demand from the members for the product or service that the co-operative is planning to deliver in order for it to operate at a scale that is commercially and financially viable. Having knowledge of anticipated business volumes from members will also help in the planning of facilities, equipment and other resources needed to deliver the service or product.

CONSIDER MARKET ANALYSIS

A market analysis provides answers to questions such as:

- Who are the target customers for the product or service?
- How strong is the demand for the proposed product or service?
- How effective is the existing supply of the proposed product or service?
- What are the characteristics required of the product or service?
- What is the level of competition?
- How much are customers willing to pay for the product or service?

A market analysis helps the working group determine whether they have the right product or service for their targeted market, identify what prices are acceptable to the market, and estimate the potential share of the market that they can get.

The results of the market analysis will provide information about the market potential, forming the basis for the sales forecasts and the marketing strategy. These are then articulated in the business plan.

CONSIDER WHO YOUR TARGET CUSTOMERS ARE

Customers of a co-operative are the individuals or organisations that receive and pay for the goods and services from the co-operative. Customers of a co-operative may be categorised as follows:

- Member producers/workers with whom a co-operative transacts its products/services to support their production activities and businesses
- Member users/consumers to whom a co-operative provides its products/services for their final consumption
- External customers to whom a co-operative or its members provide its products/services either for their production activities or final consumption

ASSESSING YOUR COMPETITORS

A critical evaluation of competitors and the level of competition in the market will help the working group determine if their co-operative can compete with existing competitors and how it will do so.

Competitors are enterprises producing/selling the same or similar products or services to the same end-users that the co-operative plans to target.

CONSIDER START-UP COSTS

Start-up costs are incurred in the business establishment costs, acquisition of capital goods (land, buildings, stock, equipment etc.), and the working capital. You will need to consider what sources of financing are available and how the co-operative will raise the money to cover start-up costs. You will also need to conduct a profitability analysis to determine whether the business will bring in enough income to cover operating expenses.

UNDERSTANDING PRICING TRENDS

The price is the amount customers are charged for products or services. Getting the price wrong can spell disaster for a co-operative. Setting a price that is too high or too low will, at best, limit the business growth of a co-operative. At worst, it could cause serious problems for the sales and cash flow of the business.

Price is used by consumers and buyers to assist them in positioning a brand in their minds, and

impacts buyer behaviour. Understanding the different pricing strategies employed by existing enterprises, price movements, and the factors influencing price will help the co-operative decide whether it can compete in the market and how to set competitive prices for its products or services.

CONSIDER PRICING AND PROFITABILITY

The breakeven price is the minimum price for a product or service that will cover production costs at a specific volume of sales. It is computed by dividing the production cost by the quantity of products.

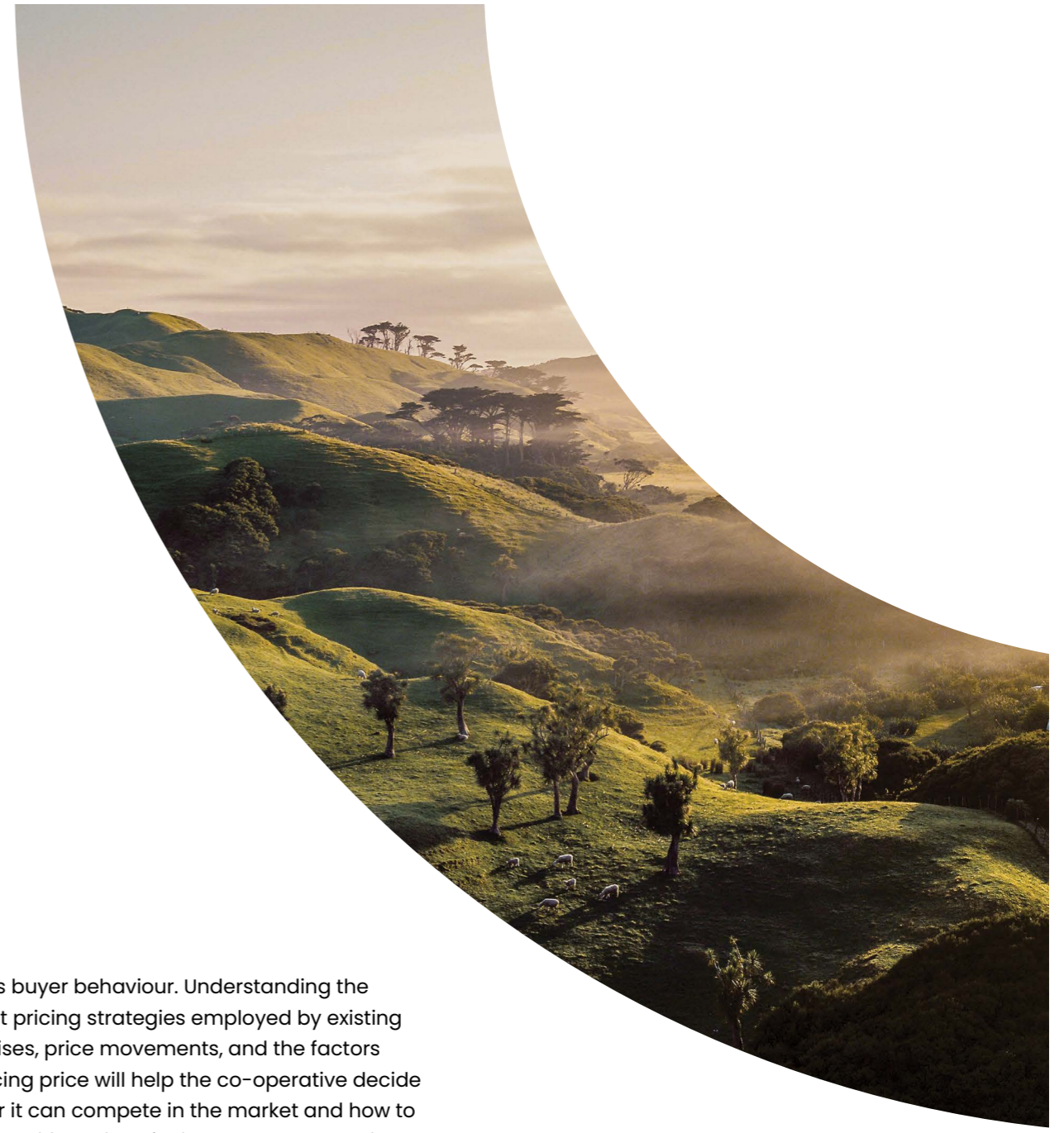
- If the co-operative sells the product or service at a price lower than the breakeven price, it will lose money
- To make a profit, the co-operative should sell the product or service at a price higher than the breakeven price
- For the co-operative to be price competitive, the price of the product or service should be comparable with competitors' pricing, all things being equal (e.g., at similar quality, customer service levels, etc.)

Consider price competitiveness by conducting a comparison of the projected breakeven price to the prevailing market price.

NEXT STEPS

If the full feasibility study indicates that the co-operative's business ideas are not commercially viable, consider whether they can be reworked, or whether the venture shouldn't proceed at all.

However, if the feasibility study does suggest the business ideas are sound and are likely to be viable, the next step should be to develop a business plan.



BUSINESS PLAN

Assuming the findings of the feasibility study are positive, and the members have agreed to proceed, a three-year (recommended) business plan should be developed.

The business plan brings together information and conclusions made from the feasibility study in one cohesive and organised document which facilitates further consensus building and decision-making.

BUSINESS PLAN STRUCTURE

Your business plan should include the following:

Executive Summary: summarises important information about your business plan

Business Profile: explains the objectives of the co-operative, the business model through which the objectives will be achieved, and the reasons why the business will be a success

Marketing Plan: describes the products and target markets of the co-operative and explains how the co-operative is going to persuade customers to buy its products and/or services

Operations Plan: describes the (i) physical resources, facilities, and equipment; (ii) work process and system; and (iii) mainstreaming of co-operative principles into the operations system

Risk Management: describes the potential risks and the identified strategies to manage these risks

Management Plan: describes how the co-operative business will be structured and identifies the human resources and skills that the business will require to meet the demands of customers

Financial Plan: explains or projects how the co-operative is expected to perform financially over a period of time (e.g. one year to five years)



A business plan describes the nature of the business of the co-operative, its products or services, how they will be produced and marketed, the risks the co-operative faces, approaches to mitigating risks, and the financial situation and projections of the business

A business plan is like a map. It guides the members in their planning and operations

A business plan can serve as a reference every time a new set of Board of Directors or officers is elected. This reduces the risk of disruptions and abrupt changes in direction

A business plan can be used as a sales document (prospectus) for raising money. A formal business plan is usually a prerequisite for obtaining loans and grants. When raising funds for a start-up co-operative, a good business plan will include all the information required to meet the requirements of a funding institution or sponsor

ACCESS TO CAPITAL AND FUNDING

A co-operative needs capital to get established, and cash flow to keep it running until its income is sufficient to cover costs. The feasibility study should give you a good indication of how much capital you will need for premises, equipment and supplies, staff, products, licences, fees, and other expenses.

Once you determine how much needs to be raised, and when, consider the capital requirements of the co-operative, how much the co-operative will charge its members for their shares, and how many members there are likely to be initially and within the first three years. There is likely to be a gap between capital raised from membership and the expected capital needs of the co-operative.

There are many ways to finance a co-operative. The sources of finance will depend on what type of co-operative you establish, the business activity of the co-operative, and whether the co-operative is likely to be able to repay the finance.

Be prepared; you will be unlikely to raise finance unless you can convince the sources of the finance that the co-operative will be viable and worthy of their investment. It is essential to allow sufficient time and resources to get both your feasibility study and your business plan right.

LEGAL COMPLIANCE WITH CAPITAL RAISING

When establishing a co-operative, care needs to be taken in complying with the Financial Markets Conducts Act 2013 ("FMCA") which regulates capital raising and offers to the public. A formal Product Disclosure Statement may be required. However, a new co-operative in the start-up phase may be able to rely upon various legal exclusions or exemptions under the FMCA. Specifically, exemptions may be provided under any current Financial Markets Conduct (Small Co-operatives) Exemption Notice.

The FMCA is a complex piece of legislation with harsh penalties for non-compliance. Specialised

legal advice will be required. Again, Cooperative Business NZ can make suggestions of appropriately qualified advisors.

Before committing to capital raising costs, it can be a useful hypothetical exercise to survey prospective members regarding their appetite to join the co-operative if, say, the capital requirement was X, the annual charges Y, and the service Z. There are provisions within the FMCA that allow this to occur where it is clear that no money is actually sought during the exercise.

SHARES IN THE CO-OPERATIVE

A share or other interest in a co-operative is personal property. It can only be issued to an eligible member, is transferable (if permitted by the law or in the constitution) and can be bequeathed in a will (if permitted by the constitution).

Share capital requirements will vary depending on the type of co-operative but typically there is a minimum holding and capital requirements linked to usage of the co-operative's product or services.

Shares in a co-operative company may have a nominal value. If they do the nominal value must be stated in the constitution (Section 15, Co-operative Companies Act). While shares cannot be issued at a discount, a co-operative may issue shares at a premium to their nominal value.

For example, a co-operative may issue shares to foundation members for \$1000 each. The foundation members will have invested in the co-operative and undertaken the risk that the co-operative might not be successful. Later, when the co-operative is operating and making a profit, others might wish to buy shares. As the risk has been reduced, the co-operative might issue the shares at \$1000 with a \$150 premium.

If shares are sold at a premium, the premium may be either cash or some other valuable



DEVELOPING THE CONSTITUTION

A co-operative's constitution (also referred to as its rules) is its most important document. It is the foundation for the manner in which the co-operative operates and fulfils its obligations to its members. It also forms the contract with its members, binding them to their obligations under the constitution. Unlike an ordinary company, which can be incorporated without a constitution, a co-operative company must have a constitution.

Generally, a co-operative's constitution needs to be individually drafted to take into account the particular needs and objectives of its members. However, there are some general considerations which will be covered in the constitution of all co-operative companies:

- What is the nature of the business to be conducted between the co-operative and its members, ie. what goods or services will the co-operative provide to/transact with its members?
- What are the requirements for membership of the co-operative, ie. transacting levels?
- In what circumstances will a member be regarded as no longer carrying on business with a co-operative, and therefore potentially required to sell its shares?
- What capital contribution threshold is required on joining, ie. how many nominal value shares (the nominal value must be specified in the constitution) must a new member hold?
- Must the investment in shares be in proportion to the level of transaction that a shareholder has with the co-operative?
- What are the voting rights of shareholders? For example: equal, in proportion to shares held, or in proportion to the level of transactions?
- What is the composition of the Board and how is it elected or appointed?

- What are the rights of shareholders to distribution of assets on liquidation? For example: equal, in proportion to shares held, or in proportion to the level of transactions?

Once the constitution is registered with the Companies Office, it can only be changed by a special resolution passed by the members.

TEMPLATES

It is useful when drafting your constitution to review other businesses with similar structures (producer, supplier, employee-owned) and operating in similar industries. It is possible to obtain copies of other co-operative companies' constitutions for reference purposes by searching the online records of the Companies Office.

THE FOLLOWING ARE SOME OF THE SECTIONS THAT SHOULD BE INCLUDED IN THE CONSTITUTION.

PRINCIPAL ACTIVITY

To qualify as a co-operative company under the Co-operative Companies Act, the principal activity of the company must be a co-operative activity within section 2(1) of the Act.

That co-operative activity must be identified in the constitution. Section 3 of the Co-operative Companies Act defines what constitutes a co-operative activity (which in simple terms means supplying goods or services to shareholders or processing or marketing goods or services of shareholders).

MEMBERSHIP

Model constitutions typically state that every application for membership must be considered by the Board, and the Board does not have to give reasons for rejection of an application. Consider if this is appropriate for your co-operative's

LOANS

A co-operative may borrow from the bank or other financial institutions. Borrowing may be in the form of a loan, overdraft or line of credit, and interest rates and time to repay will vary widely. The repayment of the loan principal and interest costs needs to be factored into the costs of the co-operative for the term of the loan.

If a co-operative requires a secured loan, there will be a security charge over assets of the business. The security gives the lender priority over unsecured debtors, and the ability to take possession of secured assets if the co-operative experiences financial difficulties and defaults in its repayments.

DEBENTURES

A debenture is a promise to repay money borrowed from an investor. A co-operative can issue a debenture and commit to pay interest for a defined term and then repay the loan. A debenture is usually unsecured. Debenture can be a convenient way for a co-operative to raise funds from its members with issuing shares that tend to be linked to activity. It is a debt security and must comply with the FMCA in the same way that any other share must comply.

GRANTS

A co-operative may be eligible to apply for non-repayable government and non-government grants from community welfare and philanthropic organisations. Grants may assist with establishment expenses, including equipment and planning.

consideration. The co-operative transfers an amount equivalent to the value of the premiums to a share premium account, which can be used in a variety of ways, including to pay preliminary expenses, pay dividends, and unpaid balances on previously issued shares.

A co-operative's constitution may require members to buy additional shares relative to their level of use or transactions with the co-operative. Payment for such additional shares may be deducted from amounts due to members for their dealings with the co-operative. Any further issue of shares will need to comply with the Financial Markets Conduct Act.

Shares may be issued partly paid, so that co-operative has the flexibility to call on members for more capital as it is needed and may mean they can avoid the need to issue additional shares.

A co-operative may have more than one class of shares as long as the shareholding and the rights of shareholders comply with the constitution, Companies Act and the Co-operative Companies Act.



constitution. Keep in mind the first co-operative principle of voluntary and open membership and the obligations under equal opportunity legislation. However, it will be important that the applicants are properly qualified to be members. The constitution will need to set out any qualifying criteria. These usually focus on the nature of the applicant's business and the way in which they will transact with the co-operative.

TRANSACTIONING SHAREHOLDERS

To qualify as a co-operative company under the Co-operative Companies Act, 60% of the shareholders must be transacting members.

ALTERING THE CONSTITUTION

Sometimes a co-operative company's constitution no longer suits its business needs. This might be because the operational rules aren't working, are out of date, or the co-operative membership or primary activities have changed.

To change the constitution, a draft of the proposed amendment must be drawn up and approved by a special resolution of the shareholders in accordance with the constitution and section 32 of the Companies Act.

The following details the requirements for registering a co-operative company with the New Zealand Companies Office. These requirements are set out in the Co-operative Companies Act and the Companies Act.

An application for the registration of a pre-existing limited liability company (that is already registered under the Companies Act) as a co-operative company, or an application to register a co-operative company directly under the Co-operative Companies Act must be sent or delivered to the Registrar of Companies and must be—

- (a) in the prescribed form (Form 1 (CCA96)); and
- (b) signed by a person acting with the express or implied authority of the company; and
- (c) accompanied by a statutory declaration made by each director stating that, in the opinion of the director, the company is a co-operative company within the meaning of the Act and the grounds for that opinion. "Co-operative company" is defined in section 2(1) of the Act and the meaning of co-operative activity is set out in section 3 of the Act.

Section 2(1) of the Act states that all co-operative companies must have constitutions that set out their co-operative activities. The constitution needs to be provided to the Registrar with the application documents described above.

Every application must also be authorised by the constitution of the company or by a special resolution of the shareholders of the company, and, where the application is authorised by a special resolution, the application must be accompanied by a copy of the resolution.

It is important to note that an application can be made to register a co-operative company at the same time as an application is made to register

a limited liability company under the Companies Act. Section 7 of the Co-operative Companies Act permits this simultaneous registration under both Acts to occur. The applications need to be provided together so that registration under both Acts can take place at the same time. A fee is payable on the application to register the limited liability company under the Companies Act. Refer to the New Zealand Companies Office for the most up to date fees.

There are some different requirements for signing the application and completing the statutory declaration with the co-operative company simultaneous registration process. These are highlighted in bold below.

An application must be—

- (a) in the prescribed form (Form 1 (CCA96)); and
- (b) signed by a person acting with the express or implied authority of **the persons named in the application under section 12 of the Companies Act as directors of the company**; and
- (c) accompanied by a statutory declaration made by **each person named in the application under section 12 of the Companies Act as a director** stating that, in the opinion of that person, the company will, upon registration, be a co-operative company within the meaning of this Act and the grounds for that opinion.

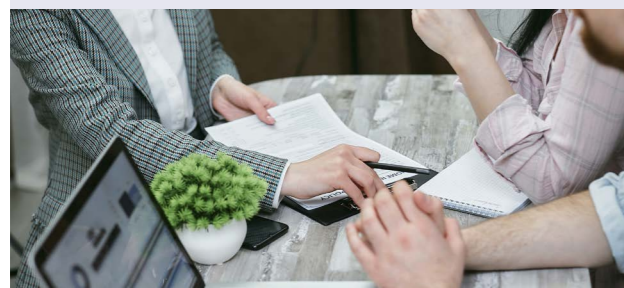
Every application must be authorised by the proposed constitution of the company or by a resolution of such number of **persons who consent to become shareholders of the company and who will hold, in aggregate, not less than 75% of the shares to be issued by the company**. Where the application is authorised by a resolution, the application must be accompanied by a copy of the resolution.

REGISTERING A CO-OPERATIVE COMPANY IN NEW ZEALAND

PROFESSIONAL ADVICE

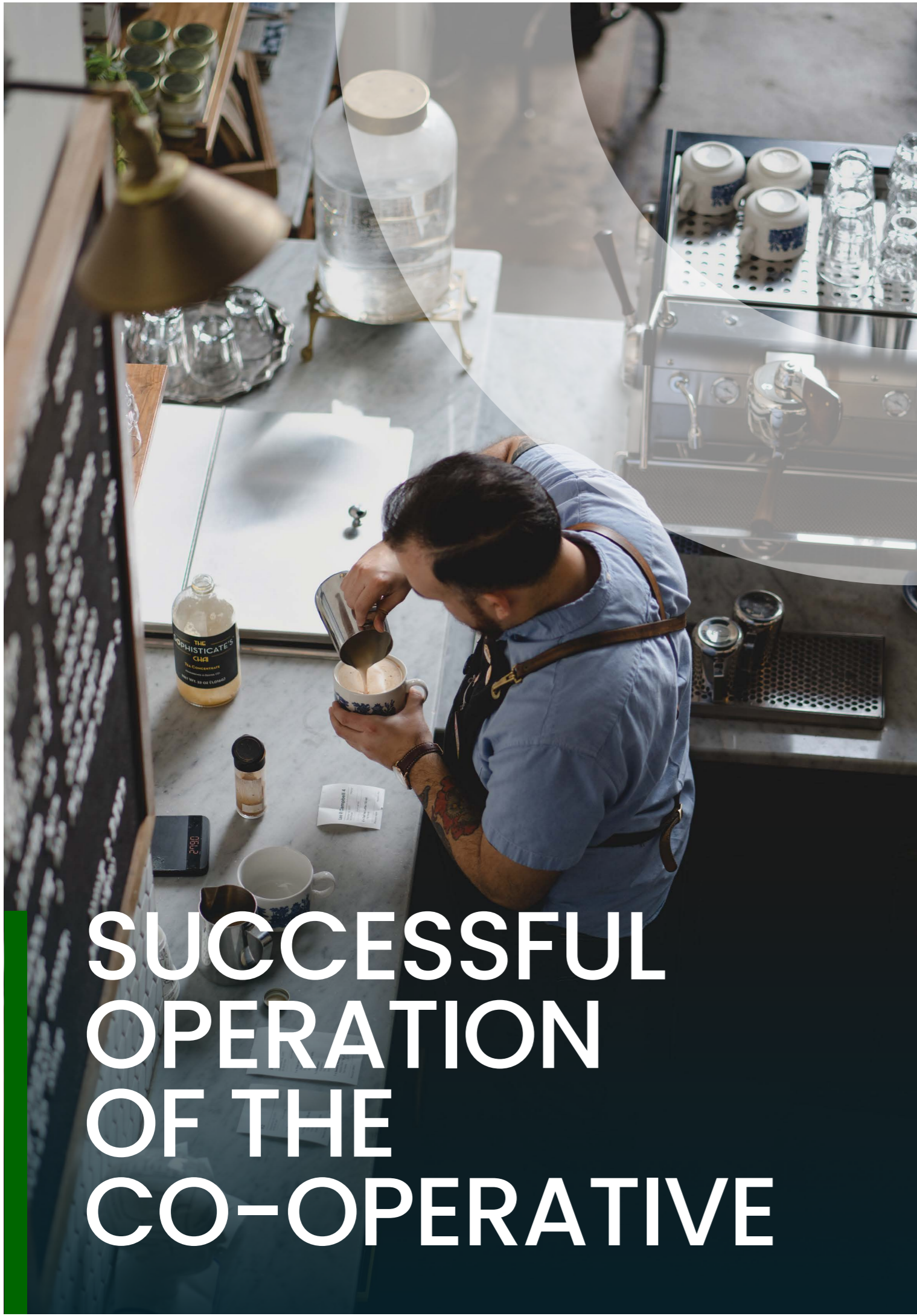
It is highly recommended to engage with appropriate specialists, including lawyers and accountants who are knowledgeable on the co-operative model to provide support as you go through the various steps of establishing the business.

If you need suggestions, Cooperative Business NZ can provide a list of individuals or organisations who should be able to assist.



It is important to get the co-operative registered for a number of reasons: the co-operative, not the individual members, will be liable for debts; the co-operative will have legal recognition and credibility; the co-operative will be able to continue regardless of changes in membership; the co-operative will be able to enter into loans and contracts; and will be able to sell and purchase property. A co-operative company may, by law, do all acts and things that ordinary corporations can do; and it will have on-going affiliation and support from co-operative organisations and peak bodies.

There are obligations attached to incorporating a co-operative company. The directors have similar responsibilities (and face similar penalties) to company directors. The co-operative must keep proper financial records, membership records and registers. It can sue or be sued in its corporate name, and decisions must be approved by members if they have a significant impact on the co-operative.



SUCCESSFUL OPERATION OF THE CO-OPERATIVE

Now that you have implemented the steps required to set up your co-operative, it's time to execute on your plans.

HERE ARE SOME POINTS TO CONSIDER AT EACH STAGE OF THE 'EXECUTION' PHASE.

Convene the First Meeting of Board of Directors:

New directors are elected according to the requirements in the constitution. The meeting agenda may include:

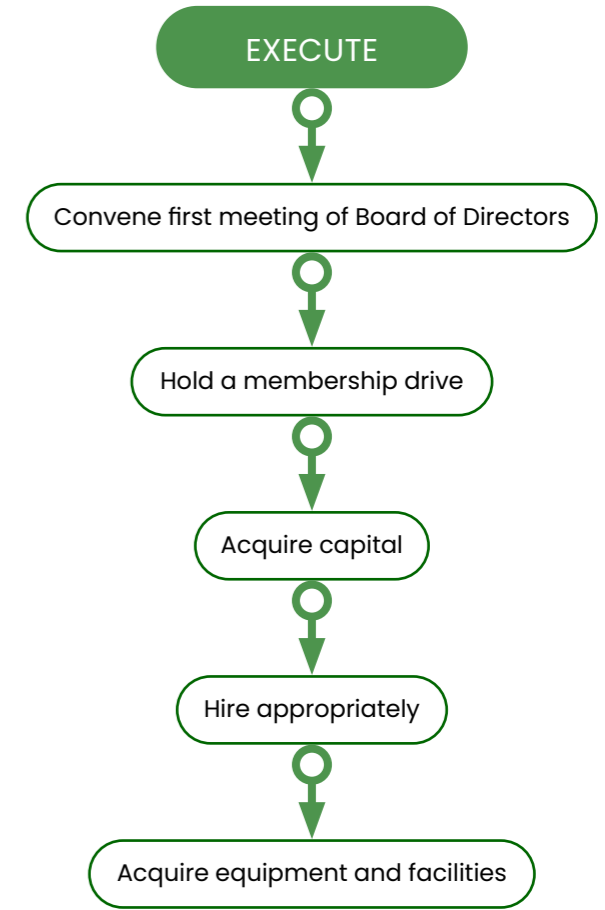
- Membership drive
- Membership application or stock subscription
- Acquisition of capital
- Bank selection
- Initiate hiring of suitably qualified managers and staff
- Authorise officers/employees to handle funds
- Provide for audit and accounting services
- Ensure distribution of articles, by-laws and member documents
- Choose a business location (if not already selected) and seek bids for equipment and facilities

Hold a Membership Drive: This is necessary when the new co-operative needs more members than those who had shown commitment and taken part in early meetings.

Arrange informal meetings and communicate the vision and goals of the new co-operative and how it will benefit members.

While many members may already be committed, the co-operative may seek other potential members to ensure there is enough for a successful business.

Acquire Capital: The Board of Directors needs to arrange for adequate capital to finance the new co-operative's start-up operations. These are most often raised from members' purchasing shares (equity) and borrowing funds (debt) from a lending institution. The projected cash-flow analysis and financial statements from the feasibility study and business plan should clarify the capital needs.



Members need to have 'skin in the game' (an equity investment) for the co-operative to prosper.

Hire Appropriately: An individual will need to be hired who will be responsible for the day-to-day operations of the co-operative such as a Chief Executive Officer. They will then execute the business plan. This person should have business acumen, experience, and fully understand what a co-operative is, and how they are governed and function.

Acquire Equipment and Facilities: The Chief Executive Officer and Board will together determine what location, facilities and equipment are needed and then acquires (or rent) them. The business plan often provides the blueprint for this step.

ATTRACTING AND RETAINING NEW MEMBERS

Although the groundwork for establishing a co-operative is laid from the first meetings of the founding group of members, additional co-operative members can still be targeted throughout the establishment process with meetings, surveys and regular updates.

Initial membership costs can also be calculated which means that when it comes time to actually purchasing their shares, the potential members should be aware of the amount they will need to pay towards the capital of the co-operative.

Going forward, the co-operative should have an ongoing, active information programme to attract new members to join, and maintain ties and engagement with existing members. Recruitment and retention of co-operative members should be treated as an essential and ongoing process.

To grow and meet constant challenges, a co-operative needs to maintain a strong, experienced and diverse Board and competent management and staff

MANAGING THE BUSINESS

Co-operatives, like other organisations, will always face challenges to their survival and growth. The co-operative will need to continuously provide the good quality and affordable services and products that the market and members want. It will need to find ways to grow financially and build member equity, attract finance, and attract and maintain membership.

People can become attached to old ways of doing things, which can create problems when a co-operative needs to change. It is therefore important that members are kept abreast of impending changes in the market and the business of the co-operative so that change can be anticipated and planned.

c It will need clear lines of responsibility and accountability, have the appropriate systems in place to provide timely and accurate financial and operational information, keep abreast of changes in legislation and the industry, commit to member and employee education, work with other co-operatives, and maintain (or improve) its primary objectives.

The co-operative may need to consider whether the current structure or operating procedures are still relevant and sufficiently flexible to allow the co-operative to grow.

The Board is responsible for recruiting the Chief Executive Officer (or a General Manager). These roles are not mandatory but having a carefully selected individual for any managerial position is crucial to ensure the co-operative remains viable, meets its objectives and can compete in the marketplace.

The Chief Executive Officer's duties include ensuring the co-operative operates according to its business plan, constitution, strategies, policies, and principles; understanding the co-operative's objectives and achieving them;

giving the Board information and suggesting new objectives; employing, training and supervising staff; and ensuring the co-operative operates on a sound financial basis.

Depending on the requirements in the constitution, a co-operative needs to have a management contract approved by special resolution before employing a person who is not an officer of the co-operative to perform a substantial part of the functions of the co-operative, or who directs the co-operative to perform its functions in a particular way.

MERGERS, ACQUISITIONS AND CO-OPERATIVE CLOSURE

Mergers or acquiring another company, whether a co-operative or not, are relatively commonplace transactions in the modern business world.

As with other business models, co-operatives may also expand their footprint to increase their competitive standing by joining with businesses located in different regions which have similar strategies, or by expanding their value proposition through collaboration. Generally speaking, co-operatives will undertake such transactions and arrangements in the same way as ordinary companies.

There may also be times when a decision needs to be taken to close or demutualise a co-operative. Even though the co-operative business model is one of the most sustainable, closure may be the most appropriate business decision to take. Under either of these scenarios, professional business advice must be taken to ensure that the co-

operative's legal and constitutional requirements are satisfied.

The co-operative can be wound up voluntarily by members on the passing of a special resolution by a special vote in favour of doing so. A members' voluntary winding up comes into effect when the result of the special vote is noted in the minutes by the secretary of the co-operative.

The members of the co-operative have limited liability. A member of a co-operative may be liable for any charges payable to the co-operative in accordance with its rules; a member of a co-operative with share capital is also liable to the co-operative for the amount remaining unpaid on the shares held. There are special rules for the liability of members who have cancelled shares, or where the co-operative has purchased the shares or repaid some or all of their value to the member within two years of the winding up.





ADDITIONAL RESOURCES

Like any other business, establishing a co-operative business is a complex process that involves a number of steps. The precise sequence of steps will be dependent on the type and scale of the co-operative.

Realistic assumptions and accurate information leading to realistic projections are critical in the decision-making stages. There must be a critical mass of loyal members willing to make a personal, business, and financial commitment to the co-operative.

All potential members, advisors, and partnering organisations involved in the development of the co-operative must have a thorough understanding of the unique principles and practices of a co-operative business and support them.

If you get it right, these businesses are highly sustainable. They provide significant potential to improve the lives and livelihoods of their members for current and future generations through employment, community engagement, opportunities for education, profits being recirculated back into the economy, and achieving sustainability goals.

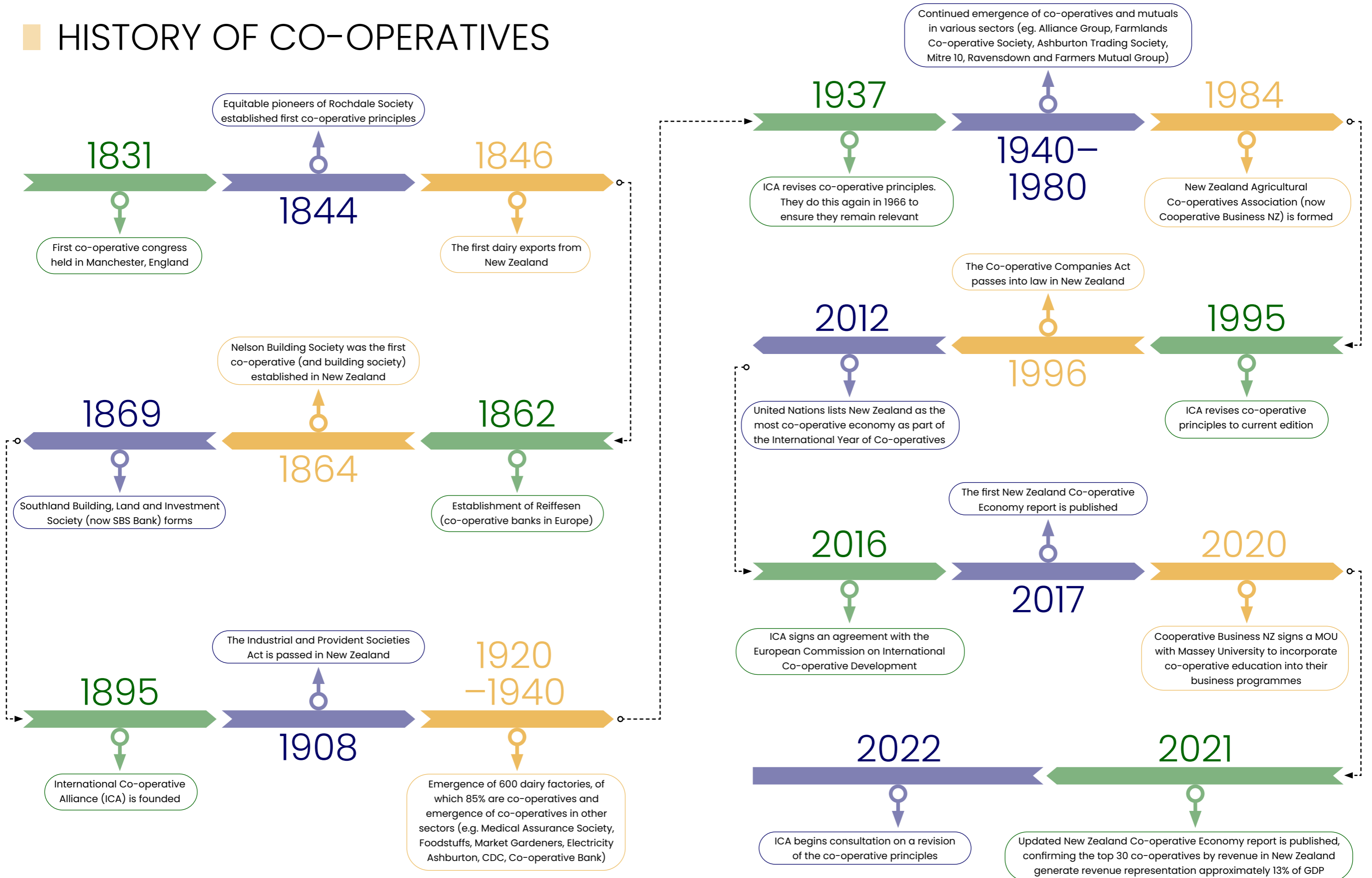
External advisors often play an important role in many aspects of the process, but strong leadership from within the group of potential members is imperative throughout the entire process

Cooperative Business NZ is delighted that you are embarking on a co-operative journey, and we hope this guide is helpful in formulating some of your thinking throughout the process.

We wish you all the best with leading the start-up, evolution, and growth of another co-operative business in New Zealand. The legacy set by those businesses already operating under the model is a testament to their sustainability, endurance and long-term success.

In the following pages, you'll find additional resources, templates and information to complement the information in this guide. Cooperative Business NZ has additional resources on hand should you require more information.

HISTORY OF CO-OPERATIVES



TOP 30 NEW ZEALAND CO-OPERATIVES

The New Zealand Co-operative Economy Report, released August 2021

	2015*	2020	CHANGE
Revenue (NZD millions)	\$41,373	\$41,652	0.7%
Total Assets (NZD millions)	\$33,250	\$39,522	18.9%
Employees	47,319	41,159	(13.0)%
Members	1,217,107	1,517,570	24.7%

* 2015 data has been updated to reflect restatements made following the release of the New Zealand Co-operative Economy report published by Massey University and The University of Auckland in 2017 (<https://nz.coop/>).

For the purpose of this report, we have categorised each co-operative into an industry of the following; agri-food, wholesale & retail, insurance, banking and finance and other. Although some co-operatives and mutuals may fall under multiple, we have chosen the category that best suits their primary operations.

Co-operative	Category
Fonterra Co-operative Group	Agri-Food
Foodstuffs - North Island	Wholesale & Retail
Zespri	Agri-Food
Foodstuffs - South Island	Wholesale & Retail
Alliance Group	Agri-Food
Silver Fern Farms	Agri-Food
Southern Cross Medical Care Society	Insurance, Banking & Finance
Farmlands Co-operative Society	Wholesale & Retail
Ballance Agri-Nutrients	Agri-Food
Ravensdown Fertiliser Co-operative	Agri-Food
MG Marketing (Previously known as Market Gardeners)	Agri-Food
CDC Pharmaceuticals	Wholesale & Retail
Capricorn Society	Other Services
Tatua Co-operative Dairy Co	Agri-Food
FMG (FMG Insurance Limited)	Insurance, Banking & Finance
Livestock Improvement Corporation	Agri-Food
NZPM Group	Wholesale & Retail
Dairy Goat Co-operative (NZ)	Agri-Food
Southland Building Society (SBS Bank)	Insurance, Banking & Finance
Mitre 10 (New Zealand)	Wholesale & Retail
Eastpack	Agri-Food
Pharmacy Wholesalers (Bay of Plenty)	Wholesale & Retail
Medical Assurance Society	Insurance, Banking & Finance
The Co-operative Bank	Insurance, Banking & Finance
Union Medical Benefits Society	Insurance, Banking & Finance
Foodfirst	Wholesale & Retail
EA Networks (Previously known as Electricity Ashburton)	Other Services
Independent Timber Merchants Co-operative	Wholesale & Retail
Rural Co (Previously known as Ashburton Trading Society)	Wholesale & Retail
Seasonal Solutions Cooperative Limited	Other Services

GLOSSARY

AGM – Annual general meeting that is held every year to report back on results to shareholder members

Building society – A particular form of co-operative, relating to organisations providing financial services of a wide definition, but traditionally mortgages. Building societies are incorporated in New Zealand under the Building Societies Act 1965

Board of Directors – The elected group of directors which govern the co-operative

Business plan – A written plan for the co-operative developed from the results of the feasibility study

Club – An informal organisation of people united by a common interest or goal. These are often registered as Incorporated Societies

Collective – A group of entities that share or are motivated by at least one common issue or interest or work together to achieve a common objective. Collective is not a term in common usage in New Zealand

Co-operative – The Cooperative Business NZ definition of a co-operative is: An enterprise, freely established, that is owned and controlled by a group of legal persons for the purpose of equitably providing themselves with mutual benefits arising from the activities of the enterprise and not primarily from investment in it.' Also known as 'cooperative' or 'co-op'

Cooperative Business NZ – The industry body that unites and represents New Zealand's diverse range of member-owned businesses. Also known as Cooperative Business New Zealand

Co-operative Companies Act – Co-operative Companies Act 1996 that New Zealand co-operative companies are registered under

Company – An entity incorporated under the Companies Act 1993

Companies Office – A division of the Ministry of Business, Innovation and Employment, registering and giving advice for and about New Zealand companies

Companies Act – The Companies Act 1993 is the legislation under which all New Zealand companies are incorporated

Constitution – The written rules for a co-operative, which governs all activities for the enterprise

Co-op – Short form of 'co-operative'

Credit union – A credit union is a member-owned co-operative financial organisation set up to provide savings and loan facilities for its members

Enterprise – An organisation engaged in the trade of goods or services normally operating within the context of the market. The definition includes both businesses that operate with the purpose of generating profit and those that are 'not-for-profit'

Fair trading – All New Zealand businesses must conduct business according to the Fair Trading Act 1986

Feasibility study – The groundwork research which should establish whether a co-operative concept is going to work

Friendly society – These are co-operative organisations formed to provide for by voluntary subscriptions of members and donations, the relief or maintenance of members and their families in sickness, old age or widowhood, residing in a particular location or for a particular employer

Governance – Governing, or controlling, an organisation according to financial and legal requirements

ICA – International Co-operative Alliance

Incorporation – The official process of incorporating an entity under the Companies Act 1993 or other relevant legislation



Industrial & Provident Society – A particular co-operative form which consists of the owners of small businesses who, while continuing to operate independently become part of a larger entity for mutual benefit. For example, taxi operators

Legal entity – A formally set up legal person that is fully incorporated with the Companies Office under the Companies Act 1993, or other legislation. Some legal entities may be created under their own legislation

Member – An individual or corporation who is a member, or shareholder, of the co-operative enterprise

Member-controlled enterprise model – A term coined by international co-operative expert Edgar Parnell. The member-controlled enterprise model represents a comprehensive set of systems that are essential for the effective operation of the model, and which ought to be the basis of operating all forms of member-controlled enterprise

Mutual – Another name for a co-operative organisation, run for the mutual benefit of its shareholders/members

Non-profit enterprise – An enterprise that is not set up to make a profit, rather to benefit its shareholders or a certain group. Surpluses may be spent on beneficial items for the group, reinvested or redistributed to charity

Partnership – A business form where people who want to work together pool collective assets and skills into the same business

Rebates – Profits (surpluses) of a co-operative company are returned to co-operative members as ‘rebates’ referable to transactions during the particular accounting period, or as ‘shares’ in lieu of rebates

Registrar – The Registrar of Companies in the Companies Office. There are also Registrars of Building Societies, Friendly Societies and Credit Unions, Incorporated Societies and Industrial and Provident Societies

Rules – The co-operative’s written constitution which governs all activities for the enterprise

Shareholder – An individual or corporation who is a shareholder, or member, of the co-operative

Steering committee – An organising group chosen from the members of the founding group that is responsible for researching and planning a new co-operative

Transacting shareholder – A member of a co-operative who actively transacts with the co-operative, such as supplies or purchases the co-operatives goods and/or services

REFERENCES AND FURTHER LINKS

- Cooperative Business New Zealand
✦ www.nz.coop
- International Cooperative Alliance
✦ www.ICA.coop
- The New Zealand Co-operative Economy Report (August 2021)
✦ www.nz.coop/research-and-insights
- The New Zealand Companies Office
✦ www.companiesoffice.govt.nz
- For more information on the Small Co-operatives Exemption Scheme
✦ www.fma.govt.nz/business/



nz.coop
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