

## Defining Mutuality

This section provides guidance on how different co-operatives and mutuals are defined, how they fit into the corporate landscape, the different legal structures used, and the governance systems operated.

### Comparing corporate business purpose

- ⇒ The purpose of a shareholder owned company is to reward owners who make risk investments, through profits and capital gain
- ⇒ The purpose of a co-operative or mutual is to provide goods and services to its members, on an equitable basis
- ⇒ The purpose of a charity is to deliver specific benefits, to a defined community

### Defining a co-operative or mutual

- ⇒ Every co-operative or mutual has a business purpose that seeks to achieve equitable outcomes for its members
- ⇒ This means that a basic principle is that no member can benefit more than is fair - so benefits are either universal, or tied proportionately to business transactions
- ⇒ Co-operatives and mutuals constitute themselves in ways that ensure this outcome

### Legal Structures

- ⇒ In some parts of the world, co-operatives and mutuals have bespoke legal structures that only they can use
- ⇒ Co-operatives are recognised in the constitution documents of some countries
- ⇒ In many others, they adapt and use ordinary company legal systems

### Mutual Governance

- ⇒ In order to maintain equity, all co-operatives and mutuals choose a constitution that operates on the basis of one member one vote (OMOV) governance
- ⇒ Governance can either be direct, with all economic participants qualifying as members, or indirect, with proxy representation of stakeholder interests
- ⇒ The level of active engagement by members will depend on the type of co-operative or mutual and the level of engagement required

## Comparing corporate business purpose

### **The purpose of a shareholder owned company is to reward owners who make risk investments, through profits and capital gain**

Private purpose relies on creating shareholder value and is effective at delivering it. It dominates the commercial world today. It creates jobs, provides goods and services and generates tax revenue. It encourages constant innovation, improvement and progress and has driven many great advances.

Rewards for this success belong to the owner shareholders, for the whom the company exists. Directors have a legal duty to serve the interests of shareholders, above all other stakeholders.

### **The purpose of co-operatives and mutuals is to provide goods and services to its members on an equitable basis**

A mutual venture is one where people come together to achieve something for themselves and for each other. They have a shared need that none of them can meet on their own, but by pooling that shared need through a willingness to do something collaboratively, they provide a mechanism to meet the needs of all.

Co-operatives and mutuals can operate at lower cost to customers/members, other things being equal, because they are not required to reward investors. They can choose to share this advantage with members through higher service levels, lower pricing or rebates.

Co-operatives and mutuals are equitable because they reward membership in relation to its engagement with the co-operative or mutual, rather than in proportion to investor shareholding.

### **The purpose of a charity is to deliver specific benefits to a defined community**

Charities are a form of custodian ownership where individuals are precluded from obtaining any private benefit, and where the organisation exists for a purely philanthropic purpose. They are established by private individuals and generally seek their funding from private individuals, businesses and other benefactors.

Commonly, those who benefit from charities will be limited to a specified group of people living with a particular disadvantage. In many jurisdictions, charities are treated favourably for fiscal purposes, to reflect their purpose.

## **Defining co-operatives and mutuals**

**Every co-operative or mutual has a business purpose that seeks to achieve equitable outcomes for its members**

Co-operatives and mutuals emerge where there is a 'market failure', where traditional forms of business do not meet people's needs. Mutuality consists of people making a commitment to each other through the mutual organisation they have set up.

The venture is only sustainable if people commit to bringing their trade to the organisation, and if their needs change, then by changing what the organisation does to meet those changing needs. They are able to do this because, as members, they own and control the organisation.

**A basic principle is that no member can benefit more than is fair - so benefits are either universal, or tied proportionately to transactions**

Co-operatives and mutuals are a form of ownership which will only work and retain people's commitment if they are fair to everyone, and equitable.

This is achieved through members sharing equal power in the organisation, rebates from surpluses only distributed in proportion to economic contribution, underlying assets not being used to reward anybody and nobody gaining more than anyone else, except through the trade they have contributed to it.

**Co-operatives and mutuals constitute themselves in ways that ensure this outcome**

Mutuality is a form of collective or shared ownership between individual members on the basis of a mutual commitment.

Like a shareholder owned company, co-operatives and mutuals are based on a distinct legal entity, but their business purpose is different, and this is reflected in the way they are constituted.

There are many different legal forms used by co-operatives and mutuals - but rather than a particular legal form, they instead share a common approach in their constitutions.

## Legal Structures

**In some parts of the world, co-operatives and mutuals have bespoke legal structures that only they can use.**

Bespoke corporate structures for are maintained in many countries in order to cater for the different business purpose of these types of corporation.

Specific co-operative and mutual forms are maintained in a number of jurisdictions. Most often, these will adhere to the internationally recognised co-operative principles, see [https://www.ica.coop/en/cooperatives/cooperative-identity?\\_ga=2.101149633.1302101231.1591816102-1231190500.1588360737](https://www.ica.coop/en/cooperatives/cooperative-identity?_ga=2.101149633.1302101231.1591816102-1231190500.1588360737)

**Co-operatives are recognised in the constitution documents of some countries**

In a number of progressive countries, co-operatives and recognised under the nation's constitution. This status ensures that they receive equal treatment in legislation and often has resulted in particularly vibrant co-operative business sectors.

**In many others, they adapt and use ordinary company legal systems**

In many countries, co-operatives and mutuals adopt one of the types of company structure and add a mutual style constitution that reflects their needs as best can be established under the prevailing legislation.

## Mutual Governance

**In order to maintain equity, all co-operatives and mutuals choose a constitution that operates on the basis of one member one vote (OMOV) governance**

It is a fundamental principle of co-operatives and mutuals that members share equal power in the organisation.

Co-operatives and mutuals adopt constitutions that are based on the foundation of one member one vote. This contrasts with shareholder owned companies, where voting is proportional, in relation to investments.

When the Mutual Reforms Act 2019 was drafted, it was this feature that was selected as the essential characteristic for the definition of a 'mutual entity.'

**Governance can either be direct, with all economic participants qualifying as members, or indirect, with proxy representation of stakeholder interests**

Constitutions in co-operatives and mutuals will reflect the character, history and membership base of the business.

In most co-operatives and mutuals, membership is broad, with membership rights for all customers in consumer mutuals, or all producers in the case of those types.

Occasionally, member representation is on a proxy or delegate basis, with membership rights held by a smaller representative group on behalf of the wider stakeholders. In either case, OMOV is operated.

**The level of active engagement by members will depend on the type of co-operative or mutual and the level of engagement required**

Mutual constitutions vary according to their particular circumstances of a business. The level of engagement between individual members and the governance structure also varies.

As a general rule, the greater the financial relationship between the co-operative or mutual and the member, the higher the level of engagement that is experienced in the governance structure.