

Which NC Business Entity Is Right For Your Fourth Sector Enterprise?

Entrepreneurs motivated by social good often feel forced to choose between profit and mission when selecting an entity that best complements their business goals. Yet this decision does not have to be presented in such stark terms. In fact, North Carolina law establishes a number of business entities that can be both profit- and mission-driven. In addition, entrepreneurs may choose to form two or more related entities that work together to accomplish social and profit objectives.

Traditional For-Profit Business Forms

For-profit business forms, such as the **Business Corporation** or **Limited Liability Company (LLC)**, are attractive to many social entrepreneurs because these forms (1) permit a great deal of flexibility, (2) allow for private investment and the distribution of profits, and (3) may be viewed as more efficient than their nonprofit counterparts. Although the directors of Business Corporations must pursue profits as their primary aim, it is possible for them to weigh factors such as social benefit in their decision-making if consideration of these factors could make the business more successful over the long term. LLCs may offer comparatively more flexibility to pursue social benefit for its own sake, as the purpose of an LLC can be specified in its operating agreement.

For-Profit Business Forms with a Social Overlay

Third Party Certification: Social entrepreneurs who want the benefits of a for-profit corporation but also want to self-identify as an enterprise engaged in working for social good may seek certification of their Corporation or LLC through a reputable third party. One well-known certification is “B Corp” certification, which requires the business to perform well on an “impact assessment” and commit to a socially conscious mission. These requirements ensure that the certification is a strong signal of the organization’s commitment to social goals. However, B Corp certification should not be confused with the benefit corporation business form, which is available in some other states.

Low Profit Limited Liability Corporation (L3C)¹: Because the L3C is a for-profit business form (an LLC)

¹ Update (9/26/13) - As of Jan 1, 2014, the L3C business structure will no longer be an option in North Carolina.

with an explicit charitable mission, it is perhaps the best example of a true hybrid entity. To qualify as an L3C under North Carolina law, an organization must meet specific statutory requirements: (1) the entity must be organized to advance a charitable or educational purpose, (2) neither the production of income nor the appreciation of property can be a significant purpose of the entity, and (3) no purpose of the entity can be political or legislative. Organizing as an L3C sends important market signals about the centrality of the entity’s social mission. The form may also enable access to financing that is typically available only to charities, although this benefit may be somewhat limited because the IRS does not automatically recognize a foundation’s investment in an L3C as a program-related investment.

Tax-Exempt, Nonprofit Corporation

A tax-exempt **Nonprofit Corporation** can be an appropriate vehicle for many social entrepreneurs. The benefits of the nonprofit form are that it (1) ensures the priority of the entrepreneur’s social mission, (2) allows for the receipt of charitable support through donations and grants, and (3) clearly conveys the organization’s social mission to the public. Tax-exempt, nonprofit corporations can employ business methods to accomplish their social mission while retaining their tax-exempt status as long as the organization’s business activity is “substantially related” to its tax-exempt purpose or the business activity constitutes an insubstantial part of the organization’s overall activities.

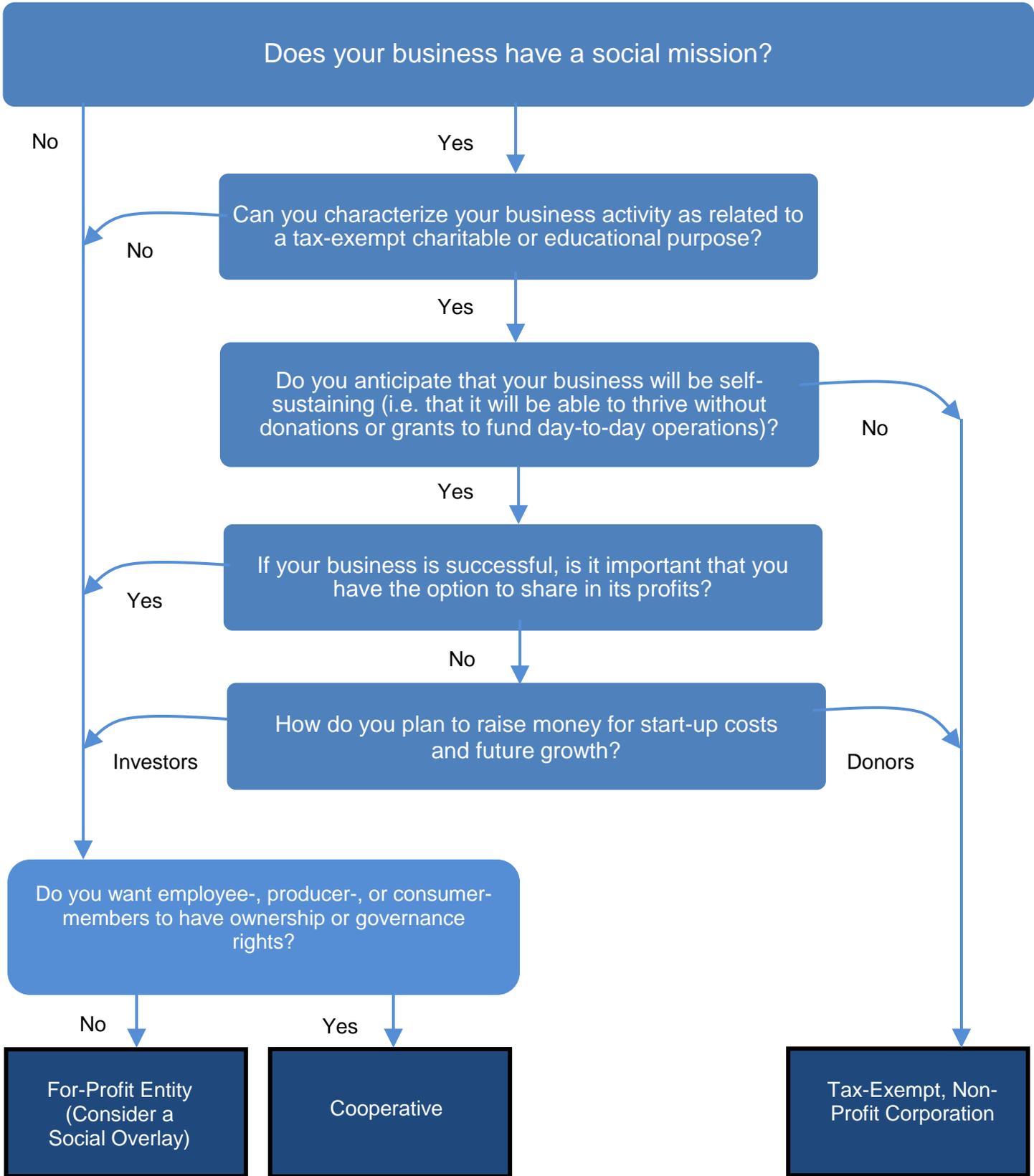
Organizations Founded on Cooperative Principles

Cooperatives are a traditional business form in which all members have ownership and governance rights. Social entrepreneurs have used creative legal means to incorporate cooperative principles into other business forms, as well. With appropriate legal advice, cooperative structures can be an effective vehicle to accomplish social entrepreneurs’ goals.

This resource is intended as a starting point; for more specific guidance and for assistance in drafting organizational documents, it is important to consult an attorney and a tax advisor.

We gratefully acknowledge the assistance of the Community Enterprise Clinic at Duke Law School in preparing this document. Information is accurate as of April 10, 2013. For the most recent updates, please visit <http://ncfsrp.org/business-structures>.





This decision tree is intended to provide general guidance that might help a North Carolina social entrepreneur narrow down the options listed on the reverse. It will be most useful after creating a business plan, and thinking through other preliminary business considerations. For a more complete discussion, including links to business and legal resources, visit <http://ncfsrp.org/business-structures>.