

You should read this fact sheet if you want to begin to:

- Understand the collaborative vehicles available for sharing services
- Understand the legal structures available for shared services
- Understand the legal implications of sharing services

Curious?

Creative thought can often be stifled by pragmatism and perceived hurdles. So at what point should you consider the difficult detail of legal structures and collaborative vehicles? For the most part, you won't be able to determine either of these until you know the shape of your project and the type of partners with whom you wish to collaborate. But there are rules surrounding certain types of partner that may make cost saving, therefore their inclusion, impossible. If you'd like to find out more, including the latest on VAT, TUPE and pensions, then read on.

Key questions

At the 2012 AoC Shared Services Conference, it was clear that delegates had many unknowns and concerns around the legal aspects of sharing services. Key questions included:

- Who will control the joint venture?
- Who will own the transferred assets that are currently ours?
- Will we be allowed to make a profit?
- Will there be any limitation on the scalability of our idea?
- Will partners have limited liability?
- Is charitable status available?
- What type of finance may be available?
- What are the implications for staffing: reductions, redundancies, and TUPE?
- Will our shared service be liable for VAT?
- Will our shared service initiative pass the Teckal exemption test?

Making the most of this resource

This isn't just a fact sheet; it's the start of a journey on which you will consider some key information and implications for your project. Throughout the text, you will be given the opportunity to complete a few short tasks to collect your emerging thoughts and ideas and translate them into your context. You can make notes on the *SS Ideas* back page.

Task 1: Read through the key questions in the 'Comparison of legal structures' on page 3 and begin to create a profile for your joint venture. Use the prompts on your *SS Ideas* page.

Key questions answered

On page three of this fact sheet, you will find a matrix of answers to all of these questions re-interpreted for 11 legal-structure options. This should be treated as an 'easy way in' to the many specific legal advice documents the AoC has commissioned over the last two years – all of which can be found in the 'Next steps' section of this fact sheet.

Arguably, the most appropriate legal structure and collaborative vehicle for your shared service ideas will largely be determined by the type of project and providers you will work with. This may well mean that these decisions should be considered later rather than sooner, but there are one or two questions it's worth considering early on. Take VAT and the Teckal exemption test for instance.

The European ruling, endorsed by HMRC, states that when two or more organisations (that carry out a degree of VAT exempt activity) give responsibility for a discrete element of their provision to a separate business entity which is wholly owned by themselves, they will not be liable for VAT on the services provided by their joint company – which, of course, is great for shared service initiatives.

The Teckal test was designed to ensure that public contract tendering and procurement was transparent, fair and encouraged healthy competition. So how does a shared service joint venture that is designed to ring-fence the provision of services to a jointly owned, but separate, company or 'entity' fit with the Teckal test? The news, again, is good. The 'Teckal exemption' recognises the value of organisations working together to create efficiencies. In a typical contract between, say, a College and a Commercial Provider (CP), the College will not have any direct influence over the CP's Board of Directors. In a shared service Joint Venture (JV), however, all of the Colleges own and have a direct influence over the Board/governance arrangements, just as they would if it were an in-house department. In this latter instance, then, the Teckal exemption applies.

Both the Teckal and HMRC exemptions work well for public service organisations whose substantive work is VAT exempt. The exemptions begin to break down, however, if a commercial organisation, such as a private training provider, is introduced into the joint venture.

Task 2: If you are considering including a private training provider in your Joint Venture, jot down the implications on your SS Ideas page.

Pensions

For those employees who move to your joint venture shared services company, but do not remain active members of the Local Government Pension Scheme (LGPS) or Teachers' Pension Scheme (TPS), under TUPE, the shared services company has an obligation to provide at least specific minimum pension arrangements. It is likely, however, that the transfer to a shared services company will be caught by specific rules relating to public sector transfers which require the shared services company to provide the transferring staff with a broadly comparable pension entitlement to the one which they enjoyed with their College employer. This is part of the "Fair Deal policy, which could be revoked following review by the Government. (Mills & Reeve).

Collaborative vehicle vs. legal structure

For readers new to the 'difficult detail' of shared services, the terminology around collaborative vehicles and legal structures can seem confusing, or even impenetrable. For instance, if you choose a collaborative vehicle, such as 'Consortium', you can go on to use any one of a number of legal structures to bring it into being, such as:

- Company limited by guarantee
- Company limited by guarantee with charitable status
- Company limited by shares
- Unincorporated association etc.

In the AoC's 'Shared Services Evaluation Report: the many faces of collaboration', we published three new draft taxonomies supported by a glossary:

- Vehicles for collaboration
- Legal structures
- Services to be shared

The 'vehicles for collaboration' taxonomy is based on Dr Kathy Bland's Continuum of Collaboration, and ranges from the low risk 'unitary' approach, up to the higher risk 'outsourcing'. Each subsidiary term is defined in the glossary so that you can find the right vehicle for your initiative. The 11 legal structures on page three of this fact sheet make up the second taxonomy. Using the questions in this fact sheet and the definitions in the glossary, you should be able to produce a short list of options on which to consult your legal experts.

You may also be interested in a number websites that offer legal structure diagnostic tools, such as:

Cooperative society – Select-a-structure:
www.uk.coop/select-structure-comprehensive

Legal structure Decision Tool:
www.getlegal.org.uk/user/registers.html

Task 3: Shortlist the collaborative vehicles and legal structures using this fact sheet and resources on the AoC website. Jot down your notes on your SS Ideas page.

Comparison of legal structures

	Limited liability partnership		Company limited by shares		Company limited by guarantee		Company limited by guarantee (with charitable status)		Cooperative society		Community interest company		Community benefit society		Industrial and provident society		Charitable incorporated organisation		Memorandum of agreement		Mutual	
	Partners*	Board of Directors*	Board of Directors*	Board of Trustees*	Management committee*	Board of Directors*	Management committee*	Board of Directors*	Management committee*	Members	Management committee*	Board of Directors*	Management committee*	Board of Directors*	Management committee*	Management committee*	Board of Directors*	Management committee*	NA	Fully or majority owned by members	Fully or majority owned by members	
Who will control the joint venture?	<i>* Principals are likely to be the partners, directors, trustees or management committee members and so will be responsible jointly for control</i>																					
Who will own the transferred assets that are currently yours?	Partners	Shareholders	Members	Members	The society	The society	Members or shareholders, depending on structure	Members	The society	Members	The society	Members	The society	Management committee*	Management committee*	The society	Members	Assets not transferred	NA	Fully or majority owned by members	Fully or majority owned by members	
Will you be allowed to make a profit?	Yes	Yes	No	No	Yes: shared by members	Yes: shared by members	No	No	Yes, but reinvested to benefit the community it serves	Yes, but reinvested to benefit the community it serves	Yes, but reinvested to benefit the community it serves	No	Yes, but reinvested to benefit the community it serves	Yes, but reinvested to benefit the community it serves	Yes, but reinvested to benefit the community it serves	Yes, but reinvested to benefit the community it serves	No	In accordance with agreement (may be subject to VAT)	Yes	Yes	Yes	
Will there be any limitation on the scalability of your idea?	No	No	No	No	No	No	No	No	Probably, due to community focus	Probably, due to community focus	Probably, due to community focus	No	No	No	No	No	(New legal structure, not yet available)	No	Yes	Yes	Yes	
Will partners have limited liability?	Yes	Yes	Yes	Yes	Yes	Yes	Yes, by shares or guarantee	Yes	Yes	Yes	Yes, by shares or guarantee	Yes	Yes	Yes	Yes	Yes	Yes	No	No	NA	NA	
Is charitable status available?	No	Very rarely	Yes	Yes	No	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes, only	No	No	NA	NA	
What types of finance may be available?	Loans, equity finance, rarely grants	Loans, equity finance, rarely grants	Grants and loans	Grants and loans	Loans, equity finance, rarely grants	Loans, equity finance, rarely grants	Grants, loans, equity finance	Grants and loans	Loans, equity finance, rarely grants	Loans, equity finance, rarely grants	Loans, equity finance, rarely grants	Grants, loans, equity finance	Loans, equity finance, rarely grants	Loans, equity finance, rarely grants	Loans, equity finance, rarely grants	Loans, equity finance, rarely grants	Grants and loans	Specific to each party	Specific to each party	NA	NA	
What are the implications for staffing: reductions, redundancies and TUPE?	The decision by a College to cease to undertake specified activities on its own behalf and have them carried out by another party is likely to amount to a relevant transfer for the purposes of TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006). As TUPE creates an automatic transfer of staff, TUPE planning will be vital.																					
Will your shared service be liable for VAT?	When two or more organisations (that carry out a degree of VAT exempt activity) give responsibility for a discrete element of their provision to a separate business entity which is wholly owned by themselves, they will not be liable for VAT on the services provided by their joint company.																		This is not a shared service structure			
Will your shared service initiative pass the Teckal exemption test?	Separate contracting organisations may operate a joint venture(JV)/company as a consortium provided that consortium has collective control over the JV's business. No one organisation is required to have a decisive influence. The Teckal exemption, (governing transparency in public contract tendering and procurement), will only apply in arrangements between jointly contracting organisations. Any private interest, or interest from parties outside of the JV, is incompatible with Teckal.																					

This document contains general advice and information only. Specific legal advice should be taken for individual circumstances and contexts.

Next steps

Attend the AoC Shared Services Conference, Tuesday 12 March 2013, to learn from real experiences. Register your attendance at: www.aoccreateevents.co.uk/sharedservices2013 or email aoc-create@aoc.co.uk to register your interest.

Valuable reading includes:

- **Mills & Reeves – Legal Information**
 - Legal structures, VAT, TUPE and pensions information
- **Eversheds Report – September 2012**
 - Governance, procurement and pension implications of a selection of collaborative vehicles
- **TUPE – Glossary of Terms**
 - Understanding TUPE terminology
- **VAT: Cost Sharing Exemption**
 - HMRC’s statement on exemption to be introduced into UK legislation in the Finance Bill 2012
- **Redundancies, avoiding and handling**
 - A joint agreement on guidance to provide a framework for Further Education Colleges to establish a locally agreed policy and procedure with recognised trade unions for avoiding and handling redundancies

All of the above resources can be found at: www.aoc.co.uk/shared-services/materials/legal

Make your contribution

Shared services are an important and growing agenda for the FE sector. To learn more, register to read the AoC Shared Services Briefings to keep abreast of the very latest developments and good practice, join the Shared Services LinkedIn Group www.linkedin.com/groups/AoC-Shared-Services to share experiences or email: sharedservices@aoc.co.uk

SS Ideas Page

<p>Who should control the Joint Venture? <i>Who will own the transferred assets?</i> <i>Do you want to be able to make a profit?</i> <i>Would you like to be able to ‘scale up’ your initiative?</i> <i>Do you want limited liability?</i> <i>Is charitable status important to you?</i> <i>Will your Joint Venture need access to finance?</i></p>	
<p>Including a private training provider <i>Benefits</i> <i>Restrictions</i></p>	
<p>Shortlist the possible collaborative vehicles Shortlist the possible legal structure</p>	
<p>Next steps <i>Make a note of any reports or analysis that might help you explore your ideas.</i></p>	
<p>Learn more</p>	<p>www.aoc.co.uk/en/briefings/index.cfm, click on the Briefings library to view all the Shared Services Briefings</p>