

Startup Kit

Summary:

1. Determine the organizational structure that best enables you to accomplish your social mission
2. If you decide to incorporate, determine where to incorporate
3. Determine a business name and check for availability
4. Select individuals to serve on the board of directors (if you incorporate)
5. Draft and file articles or certificate of incorporation and any other state-specific documents with the Secretary of State or other appropriate state agency (if you incorporate)
6. Establish bylaws, operating agreements and board policies (if you incorporate)
7. Obtain an employer identification number (EIN)
8. Open a bank account and establish check signing procedures
9. File for federal tax exemption (if applicable)
10. Recruit staff and prepare employment agreements, a personnel manual, and a system to comply with maintaining records
11. Establish a payroll system and procure necessary insurance coverage
12. Register with the states where you plan to engage in charitable fundraising
13. Develop good governance and accountability measures
14. Consider protecting your intellectual property
15. Familiarize yourself with lobbying opportunities and restrictions

1. Determine the organizational structure that best enables you to accomplish your mission

There are many issues to consider when deciding which organizational structure is best for a given organization. No form is inherently better than another, and each has merits and drawbacks. Below is a chart comparing various structuring options and some questions to consider when deciding which form of organization is best suited for your social sector venture.

	Formation	Management and Control	Liability	Tax Factors	Capital and Loans
Nonprofit 501(c)(3) Corporation	File articles or certificate of incorporation (containing specific info required by IRS) with state and pay filing fee. File application on Form 1023 for tax-exempt status unless below gross	Managed by directors who appoint officers to run day-to-day operations as specified in bylaws. Some nonprofit corporations have members (like	Members, directors, officers and employees are generally not liable for debts and obligations of the corporation, including for unlawful acts of others involved in the affairs of the	Generally exempt from federal and state taxes if receive 501(c)(3) exemption. Liable for tax on unrelated business income, and other taxes such	Can accept charitable donations and grants. Eligible for program related investments (PRIs) by foundations. Can borrow money and issue debt instruments but cannot raise



	Formation	Management and Control	Liability	Tax Factors	Capital and Loans
	receipts threshold. Recruit directors, draft bylaws and hold organizational meeting. Take steps to comply with license, tax and employment law/regs.	shareholders) who elect directors.	corporation. They can be held liable for injuries due to their own misconduct but some states provide limited immunity to such persons and also to volunteers.	as property and sales (unless local and state exemptions apply). Donors can deduct contributions	capital by issuing stock.
For-Profit Corporation	File articles or certificate of incorporation with state and pay filing fee. Decide on board of directors, draft bylaws, hold organizational meeting and issue stock. Take steps to comply with license, tax and employment laws/regs.	Managed by directors that are elected by shareholders. Directors appoint officers to run day-to-day operations as specified in bylaws.	Shareholders are generally not liable for debts and obligations of the corporation, including for unlawful acts of others involved in the business. Unless indemnified by the corporation, directors, officers and employees can be held liable for injuries caused by their own acts or failures to act.	Subject to corporate tax on net income. If net income is paid to shareholders as dividends, the individual shareholders are taxed.	Can raise capital by issuing stock (equity) and by borrowing money through loans or other debt instruments. Corporation may be able to accept PRIs from foundations in the form of loans or equity.
B Corp (a for-profit corporation with a social mission that is licensed to use the trade name “B Corporation”)	See for-profit corporation	See for-profit corporation. The B Corp license requires the corporation to incorporate specific socially beneficial performance standards into its governing documents and operating principles.	See for-profit corporation.	See for-profit corporation.	See for-profit corporation. A B Corp should be in a better position to attract PRIs from foundations in the form of loans or equity.
LLC	File articles of organization or certificate of formation with state and pay filing fee. Negotiate and execute operating agreement. Take steps to comply with license, tax and employment law/regs.	Flexible structure like a partnership with management responsibilities specified in operating agreement (usually management committee or single manager).	Same as a corporation.	Usually not taxed as an entity because most LLCs choose “pass through” treatment whereby the member/owners report profits and losses on personal tax	Can raise capital through contributions by member/owner. Otherwise, same as for-profit corporation.

	Formation	Management and Control	Liability	Tax Factors	Capital and Loans
				returns. Tax-exempt member/owners treat their share of income as exempt or subject to unrelated business taxable income, depending on the character of the income.	
L3C (low-profit LLC)	Similar to LLC but must be formed for a charitable or educational purpose. Only permitted in certain states (e.g., VT, IL, MI, UT, ME, WY)	See LLC	Same as a corporation	See LLC.	Same as for-profit corporation except L3C enabling legislation is written to comply with PRI regs and is thus intended to attract equity or debt investments by foundations.
Partnership	No filing requirements unless limited partnership (LP) or limited liability partnership (LLP), but partners should sign partnership agreement. Take steps to comply with name, license, tax and employment law/regs.	Partners have equal, full control unless otherwise specified in partnership agreement.	Partners are personally liable for the debts and obligations of the partnership, including for unlawful acts of other partners and employees. Risk can be limited by creating an LP or LLP.	Generally not taxed as an entity. Partners report profits and losses on personal tax returns.	Can raise capital through contributions by partners and by borrowing money through loans or other debt instruments.
Sole Proprietor	No filing requirements. Has no legal existence apart from owner. Take steps to comply with d/b/a name, license, tax and employment law/regs.	Owner has full control.	Owner is liable for all debts and obligations, including for unlawful acts of employees.	Not taxed as an entity. Owner reports business profits and losses on personal tax return.	Owner provides funds for capital investment and owner can borrow money through loans or other debt instruments.

Questions to consider:

- Do you need to create a new organization or can you partner with an existing organization and/or find a fiscal sponsor? More information about fiscal sponsors is available here: http://foundationcenter.org/getstarted/faqs/html/fiscal_agent.html
- How do you plan to finance the new organization? Equity investments, loans, grants and donations?

- What will be your primary source of income (e.g. donations from individuals/foundations, generated earned income, etc.)?
- What is the core mission of your organization? How will a specific structure contribute to or detract from that mission?
- What type of financial return, if any, will the founders and/or funders expect?
- How will a specific organizational structure affect your ability through branding and marketing to achieve your social mission and to attract funds?

Other resources:

- Effective Social Enterprise-A Menu of Legal Structures
http://www.intersectorl3c.com/goopages/pages_downloadgallery/download.php?filename=71836112577.pdf
- Nonprofit v. For-Profit Social Ventures
<http://www.entrepreneur.com/startingabusiness/smsmallbiz/article195242.html>
- How-to: An Insider's Look at the L3C and What it Could Mean for You and Your Social Enterprise
<http://www.socialearth.org/how-to-an-insider's-look-at-the-l3c-and-what-it-could-mean-for-you-and-your-social-enterprise>

2. Determine where to incorporate and file your articles/certificate of incorporation [applicable only if you decide to incorporate, see step #1 above]

An organization may incorporate in any US state, but many organizations choose to incorporate in the state where one or more directors reside and/or where the organization operates. It is permissible and may be beneficial to incorporate in a state where directors do not reside or where the organization does not operate if a specific organizational form is available in that state or if there are significant tax advantages in that state. For example, it is only possible to incorporate as a Low-Profit Limited Liability Company (L3C) in a few states, and likewise the nonprofit LLC is not available in every state.

Here are some questions to consider as you decide where to incorporate your organization:

- Where do most of your organizations' operations take place?
- Where will your principal or only office be located?
- Where do your board members reside?
- What is the cost of incorporation and are there significant expense savings or tax advantages to incorporating in a specific state?
- Does the state afford immunity from liability to board members and/or volunteers?
- If you do not reside or operate in a state, how much does a registered agent cost?

3. Determine a business name and check for availability

Check with the state's Secretary of State or other appropriate office for name availability. Your name may not be the same as, or deceptively similar to, other names previously filed with the Secretary of State.

4. Select individuals to serve on the board of directors [applicable only if you decide to incorporate, see step #1 above]

A board of directors is a body of elected or appointed individuals who jointly oversee the activities of a corporation. The size of the board typically ranges from 3 to 15 members, but the minimum number of required board members varies by state and in some states one director, which can be the founder or owner, is all that's required.

Regardless of the minimum number of board members required by your state, a board that consists of independent members can be instrumental in helping your organization succeed. Some factors to look for in board members include:

- Level of commitment to the social mission of your organization.
- Professional focus. If possible, you may want to include a lawyer, social worker or accountant as a board member
- Willingness and ability to attract and raise funds/capital
- Depth of experience and reputation
- Diversity. A diverse board of directors will allow you to see problem and opportunities from multiple vantage points
- Availability. Time to commit to your organization

Prospective board members are almost always concerned about their potential liability should they agree to join the board. Therefore, you should be prepared to address their concerns and questions. Among other things, you will need to know whether the state of incorporation provides certain immunities for directors, you will need to know the extent to which the corporation will indemnify officers and directors and you should have some idea whether the corporation will provide liability insurance to officers and directors. Experienced counsel can provide you with advice to address these questions and concerns.

Other resources:

- Creating a non-profit board: http://non-profit-governance.suite101.com/article.cfm/creating_a_nonprofit_board
- How to select a board member(for-profit focused): <http://managementhelp.org/boards/boards.htm#anchor98036>
- Board Source, Building Effective Nonprofit Boards: <http://www.boardsource.org/>

5. Draft and file Articles or Certificate of Incorporation and any other state-specific documents with the Secretary of State or other appropriate state agency

If you select a partnership (other than LPs and LLPs), sole proprietorship or joint venture as your organizational form (step #1 above), you may do not need to register with the state.

A corporation or LLC must file articles or a certificate of incorporation to officially register with the state. The form and content of the articles or certificate of incorporation varies by state and by organizational structure (i.e., for-profit, nonprofit, LLC). Many states also supply forms on their Secretary of State's office website.

Regardless of your state of incorporation or chosen organizational structure, there are certain fundamental issues that you will need to address before filing your articles or certificate of incorporation:

- Name of the organization (see step #3 above). Your name must be sufficiently different from all existing organizations to avoid tradename or trademark infringement suits. Deciding on a name for your organization can be a time consuming process and it is helpful to have multiple possibilities in mind.

Here are some ways to verify if a name is appropriate:

- Start searching on the Internet. If an organization is already using the name or has a domain name that includes your proposed name, then you will probably need to select another option.
- Check the Federal trademark database at <http://tess2.uspto.gov/>. All trademarks are not listed on this site, but if one of your possible names is on the list then you must consider another option.
- Check your state name registries (tradenames, trademarks, corporate names). Contact the Secretary of State's office to identify and locate registries for your state.

- Where the organization will be headquartered (see step #2 above). If you are registering in a state where you are not headquartered, you must specify the name and location of your registered agent. A registered agent can be an individual who resides in the state or a registered agent service company.
- The overall purpose of your organization. In the case of for-profit corporations and LLCs, it is important to describe your purposes as broadly as possible so that as your organization grows and develops it will not become necessary to amend your articles or certificate of incorporation. In the case of nonprofit corporations that intend to seek tax-exempt status, the purposes clause must be very carefully drafted to satisfy IRS requirements. Advice by experienced counsel on the language of the purposes clause is essential.

6. Establish bylaws and operating agreements [applicable only if you decide to incorporate, see step #1 above]

Corporations (both nonprofit and for-profit) must adopt Bylaws and LLCs typically adopt Operating Agreements to regulate how their boards of directors and officers (in the case of corporations) and their managers (in the case of LLCs) will manage and operate the entity. The specifics of these Bylaws and Operating Agreements will vary depending on the goals of the organization, whether it is nonprofit or for-profit, whether the organization has members, and a variety of other factors.

The basic elements of corporate Bylaws and LLC Operating Agreements are described in the Forms of Organization section for your state.

Other resources:

- How to Write Non-profit Bylaws: http://non-profit-governance.suite101.com/article.cfm/how_to_write_bylaws_for_nonprofits
- Sample LLC Operating Agreement: <http://www.formation-llc.com/freesingleoperatingagreement.htm>
- Corporate Bylaws Template: <http://www.realbusinessplans.com/members/bylaws.htm>

7. Obtain an Employer Identification Number (EIN)

An EIN is the equivalent of a Social Security Number for organizations. It is issued to everyone, including individuals, who pay withholding taxes on employees.

You will need an EIN in order to open one or more bank accounts in the name of the organization and, if applicable, to file Form 990 and other forms with the IRS and state taxing authorities.

Obtaining an EIN usually takes no longer than 30 days, and there is no filing fee. An EIN may be obtained by filing Form SS-4 with the Internal Revenue Service. For more information on the EIN and how to apply, please visit: <http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>

8. Open a bank account and establish check signing procedures

9. File for federal tax exemption, if desired

If you choose to become a nonprofit corporation and want to attract tax deductible donations/grants, you must apply for tax-exempt status with the Internal Revenue Service (IRS) and with the appropriate office or department in your state. You must obtain official recognition that you are a registered nonprofit corporation in your state before you can apply for federal tax-exempt status.

In order to receive tax-exempt status under Section 501(c)(3) of the Internal Revenue Code you will need to file a Form 1023 with the IRS. To learn more about applying for federal exemption, please visit <http://www.irs.gov/charities/article/0,,id=96109,00.html>. Be aware that it can take 12 months or more for

the IRS to make a decision. You will need to determine whether it is necessary to also file for exemption in a specific state.

Although you can complete Form 1023 without assistance, it is not advisable to do so. Success in securing federal tax-exempt status usually requires the assistance of an experienced attorney that can help you successfully navigate the process.

10. Recruit staff and prepare employment agreements, a personnel manual, and a system to comply with maintaining records

It is advisable to have employment agreements with employees of your social sector organization. When appropriate, you may also want to consider non-compete and nondisclosure agreements with certain employees.

It is important to develop and adopt employment policies and employee handbooks to prevent unlawful acts in the workplace and to limit your organization's liability due to unauthorized and unlawful acts by employees.

Both the state and federal governments require organizations to keep certain records regarding their employees.

11. Establish a payroll system and procure necessary insurance coverage

12. Register with the states where you plan to engage in charitable fundraising

Most states regulate fundraising by charitable organizations that are located in the state or that solicit donations from residents of the state.

Some questions to ask as you consider where to register include:

- Will you be mailing information to addresses in other states to solicit donations? Mailings may be sufficient to constitute charitable solicitations, thus requiring registration even though you are not headquartered or otherwise operating in the state. State registration requirements often differ, so be sure to check the statutes of each state into which you plan to mail fundraising solicitations.
- How many states will your charitable solicitation efforts reach? The Unified Registration Statement is a single form that can be submitted to many states. Not all states accept only this form, but it can save you substantial time if you are fundraising in many states.
- Are you fundraising online? Literally read, most state statutes that regulate fundraising cover online fundraising that reaches state residents. However, if the only contact you have with a state is through online fundraising, you usually do not need to register unless you specifically target persons in that state on an ongoing basis. This is a complex area of the law. Therefore, you should be sure to consult potentially applicable state Fundraising laws and experienced counsel.

13. Develop good governance and accountability measures.

In the wake of the Sarbanes-Oxley Act in 2002, governance issues have become increasingly important for both for-profit and nonprofit organizations.

14. Consider protecting your intellectual property (IP).

You should consider trademark protection of your organization's name and logos. Also, if you will be creating a new technology or innovation, inventing a product or authoring any written material, you should consider protecting this intellectual property. Though IP protection may not be appropriate for every social venture, in some circumstances it can help contribute to the social mission and/or provide a future

revenue stream. An outline of intellectual property issues can be found here:
http://www.lawforchange.org/lfc/Intellectual_Property.asp

15. Familiarize yourself with lobbying laws if you will be lobbying the federal or state government on behalf of your organization or if you hire a lobbyist

NOTE: Once your social sector organization is operational you should be aware of ongoing filing and other requirements, for example:

- All necessary federal and state payroll and tax forms applicable to your organization.
- If you are a tax-exempt organization, Form 990 and any state required annual financial reports.
- Check to make sure all employee files listed in “General Issues” of the state specific employment section are maintained and up to date.
- As your organization matures, reexamine your bylaws / operating agreement to make sure that they are still appropriate for your organization and the work you are doing.