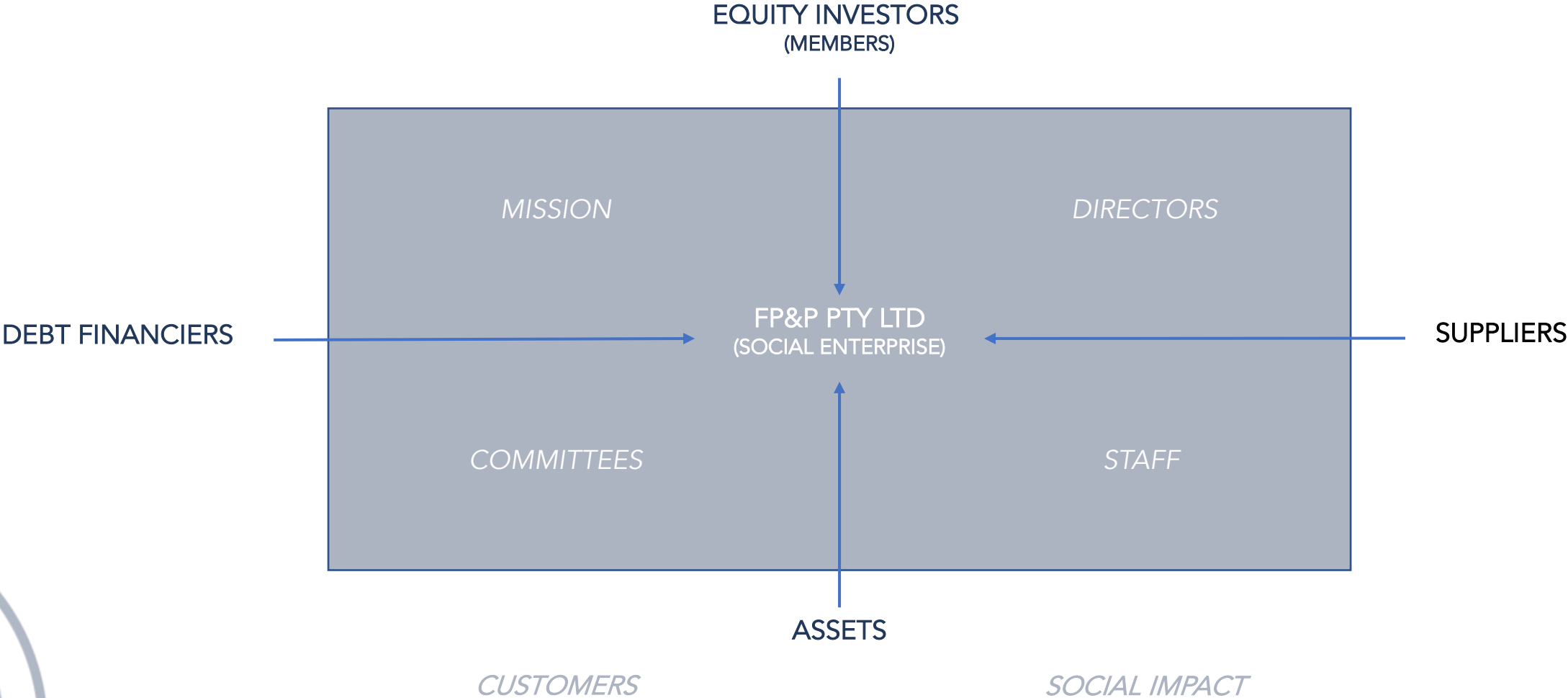


SOCIAL ENTERPRISE LEGAL TOOLKIT

FOR PURPOSE & PROFIT TEMPLATE STRUCTURE

FOR PURPOSE & PROFIT (FP&P) SOCIAL ENTERPRISE STRUCTURE DIAGRAM



FP&P – SOCIAL ENTERPRISE

FEATURE	COMMENTS
Business	This constitution is designed for a social enterprise which aims to generate net profits, and wishes to be able to seek investment capital for business growth, while also achieving a positive social impact
Sector	It can be used in all industry sectors and for all types of goods and services
Start-up or Scale-up	It can be used as the first constitution of a start-up social enterprise and also as the updated (or new vehicle) constitution for an existing enterprise which wishes to scale up
Not philanthropic but can be hybrid	A social enterprise which intends to source its funding primarily from donations should consider a not-for-profit constitution or a hybrid structure which includes this type of vehicle as part of a broader legal structure with blended finance
Not public	This constitution allows equity crowdfunding but enterprises which wish to raise money generally from the public or to list on a stock exchange should consider a public company structure. The company can convert to a public company limited by shares if it subsequently wishes to do so (s162)
Community enterprise	Where the social enterprise has a broad community involvement, other forms of community enterprise can also be considered (either separately or as part of a hybrid structure)
Tax treatment	This social enterprise will be subject to the usual tax treatment of “for profit” companies

FP&P – FOR PURPOSE FEATURES

FEATURE	COMMENTS
Purpose	The objects of the company – its “purpose” – are set out in rule 2.1. They include a general public benefit object and specific objects as set out in Schedule 1, as well as seeking a financial return. This allows the constitution to be tailored to the specific social enterprise
Mission lock*	The social purpose is protected against change that dilutes it in favour of shareholder economic interests through special controls given to the holders of Governor Shares, including control over constitutional amendments, and over a change of control of the company (see further below)
Directors’ duties*	The directors will be taken to be discharging their duties properly when they pursue the company’s purpose (rule 2.2). They are not limited to considering only financial returns (rules 2.2 to 2.3)
Amendments	The constitution can only be amended by special resolution of all members, approved by an ordinary resolution of Governor Members (rule 36). The Board can add to the specific objects to keep pace with the growth or evolution of the company but only as approved by the Governor Members (Schedule 2).
Change of control	A change of control could arise through an issue or transfer of shares. The directors have a discretion over these transactions and are not required to give primary consideration to the price offered (see rules 2.2, 24.1, 30.3, and 31.4). A sale of the company’s business requires Governor Member approval (rule 6.3)
No asset lock*	Unlike a not-for-profit company, on a winding up surplus assets can be distributed to members (rule 33)

FP&P – FOR-PROFIT FEATURES

FEATURE	COMMENTS
Standard equity rights	The constitution generally gives a shareholder the standard rights of an equity investor, including: <ul style="list-style-type: none">• the right to participate equally, in proportion to the number of shares held, in any distribution of income or capital (including on a winding up); and• the right to one vote per share (rule 3.3)
Classes of shares	There are three classes of shares: <ul style="list-style-type: none">• Governor Shares – which give the holders special rights to protect the company’s purpose• Ordinary Shares – which carry standard equity rights• Finance Shares – which enable preferential economic rights to attract equity finance (rule 3)
Capital raising restrictions	The company is subject to the usual proprietary company restrictions on capital raising, ie it cannot have more than 50 non-employee shareholders, or make a public offer of its shares or debentures (rule 1.1)
Crowdfunding*	The company may crowd-source equity funding if it complies with the additional requirements set out in the Corporations Act (rule 1.2). Crowd-sourced equity would be fully paid ordinary shares.
Grants and donations	The company can accept grants and donations (rule 2.6). They will not be tax deductible as gifts to a Deductible Gift Recipient but may nonetheless be sought for start-up funding.
Debt financing	The company can seek debt financing, including on a secured basis (s124)

FP&P – CLASS OF SHARES

FEATURE	COMMENTS
Governor shares	<p>Governor shares have standard equity rights but are designed to be held by a small group of individuals who are committed to the company's social purpose (rule 3.2) and can protect it through:</p> <ul style="list-style-type: none">• embedded rights to veto any change to the specific objects or to the constitution (rules 2.5, 36)• the right to appoint two directors, approve additional directors, and remove directors (rules 4.3-4.7)• the right to veto a sale of the main undertaking of the company (rule 6.3)• the right to cap non-executive directors fees (rule 11.2)
Ordinary shares	<p>Ordinary shares have standard equity rights (rule 3.3)</p>
Finance shares	<p>Finance shares can be structured to be the same as ordinary shares or to have preferential income or capital rights (rule 3.4). There can be multiple sub-classes of Finance shares, thus allowing different series with different preferential returns, according to market conditions at the time (rule 3.5)</p>
Class rights	<p>Class rights can only be varied with the consent of a special resolution of that class (rule 32)</p>
Transfer of shares	<p>Shares (other than Governor Shares) are transferable (rule 30.1) but the directors have a general discretion to refuse to register a transfer. This allows them to refuse a change of control that is not consistent with the company's purpose (rule 2.3). There are no pre-emptive rights</p>
Partly paid	<p>Shares may be issued on a partly paid basis (rule 27)</p>

FP&P – DECISION MAKING

FEATURE	COMMENTS
Day-to-day management	The directors have the power to manage the business of the company (rule 6.1).
Managing Director	The board may appoint a Managing Director (rule 8.1)
Committees	The directors may delegate their powers to a committee, an employee or any other person (s198D, rule 9). The constitution could be expanded to include specific committees tailored to support the company's social purpose.
Board composition	Unless it is a Single Director Company, the company must have between 2 and 6 directors, at least two of whom must have been nominated by the Governor Members (rule 4.2). A Governor Director may only be removed by the Governor Members (rule 4.3)
Members	Members have the usual rights of shareholders, including (subject to the special rights of Governor Members) to appoint and remove directors (rule 4.4), to amend the constitution (rule 36) and to wind up the company (s491, rule 33)
Day-to-day management	The directors have the power to manage the business of the company (rule 6.1).

FP&P – B CORP*

FEATURE

COMMENTS

B Corp elements

This constitution has been designed to be consistent with the legal requirements for B Corp certification (rules 2.1 and 2.2)

Important Note:

This document has been prepared by the Centre for Social Finance Law for general reference only. It does not take into account the objectives, needs or financial arrangements of any particular social enterprise, and it does not constitute legal or tax advice. It is not intended to be a comprehensive review of all relevant issues. Please take legal advice before applying anything contained in this document to specific issues or transactions.

This document is issued as at 10 September 2021.

Centre for Social Finance Law Pty Ltd ACN 623 728 129

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