Form following function: getting the structure right for foundation trust business models
The Foundation Trust Network

The Foundation Trust Network (FTN) was established as part of the NHS Confederation to provide a distinct voice for NHS foundation trusts.

We aim to improve the system for the public, patients and staff by raising the profile of the issues facing existing and aspirant foundation trusts and strengthening the influence of FTN members.

The NHS Confederation is the only independent membership body for the full range of organisations that make up today’s NHS. Its ambition is a health system that delivers first-class services and improved health for all. As the national voice for NHS leadership, the NHS Confederation meets the collective needs of the whole NHS as well as the distinct needs of all of its parts through its family of networks and forums. The FTN is one of these.

Disclaimer

This document has been developed by the FTN with assistance from various parties to provide general guidance to foundation trusts on developing new business models. This document is intended to help foundation trusts understand some of the differences between business models, ask themselves questions concerned with business formation, and provide an overview of the key benefits, risks and considerations to take into account prior to setting up a new business model. This document is not, however, intended to address the circumstances of any particular person or entity and it should not be construed as a complete or comprehensive analysis or guide on the issues covered herein. Professional advice should always be sought in relation to specific circumstances. Any person or entity who chooses to rely on this document does so at their own risk.
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Foundation trusts may want to actively pursue the establishment of different business models for a wide range of different reasons, including to:

- expand core services
- diversify revenue streams
- reinvest surpluses
- bring in new resources
- bid for primary care services
- manage risk
- support failing NHS organisations
- participate in academic collaborations
- (not least) ensure sustainability.

Foundation trusts can use business models to harness staff skills, work in partnerships and deliver high-quality care to secure their position at the forefront of innovation.

For complex projects, it may be appropriate to set up a separate organisation in order to protect the trust's assets, develop a brand, bring in other skills and resources and raise finance. In any event, the creation and development of a new business model must be part of the trust's business planning, based on a robust analysis of need, bearing in mind issues and risks.

Foundation trusts embarking upon new business ventures, jointly owned enterprises and the development of products or services should, as part of their business planning, consider the business options available to achieve their objectives and ensure the effective management of risk and the realisation of surpluses. This guide is intended to help trusts understand some of the differences between different business models, ask themselves fundamental questions concerned with business formation, and provide an overview of the key benefits, risks and considerations to take into account prior to setting up a new business model. This guide will not, however, comprehensively cover the specific advantages and disadvantages of each type of business model; it should instead be used as a starting point to initiate discussions at board level, and any specific and detailed advice should be taken from professional advisors. A short section on engaging advisors is available on the FTN website at www.nhsconfed.org/ftn

Establishing new business models carries significant risks - both financial and reputational. Therefore, it is important that trusts are clear why they want to set up a new business model. They should only be established if they can help trusts enhance their core services or if they can help trusts to perform new services better.

It is equally important that form follows function and not the other way around. Trusts must first think about what they want to achieve in business development terms, whether setting up a new business model is appropriate and what activities will be carried out by the new organisation or joint venture - in short, what their aims and objectives are. The legal form chosen will determine who owns and runs the organisation, how their liability is limited, whether the organisation's surpluses can be distributed, whether shares in the organisation can be transferred, what happens to its assets on winding up, by whom it is regulated, and what its tax and accounting treatment will be. Each type of corporate model has various pros and cons, and the right choice will depend on the trust's individual circumstances and objectives.

Foundation trusts are reminded that they should always follow the mandatory guidance and best practice advice set out in Monitor's Compliance framework 2009/10, Risk evaluation for investment decisions guidance and Applying for a merger involving an NHS foundation trust. In addition, it is recommended that foundation trusts review the relevant content of the Transactions manual recently published by the Department of Health and Monitor before committing to progress a transaction.

The business models available to foundation trusts are examined from page 11. Some of the factors that should be taken into consideration when choosing a business model are also set out.

It is important to note that ventures entered into by foundation trusts, such as the establishment of subsidiary companies, should be undertaken on the basis of sound commercial rationale and not simply undertaken wholly or mainly to secure a tax advantage.

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1 Taken from Jocelyn Ormond's draft slides for the FTN's commercial seminar session on business models. The full slides are available at www.nhsconfed.org/ftn
Benefits and risks – deciding whether to set up a new business model

Forming a company or developing a new business model may provide many benefits, but there are also associated risks.

Foundation trusts may want to create a distinct legal entity through which to undertake business activities, in order to:

- undertake a new business or participate in an existing business which for commercial or marketing reasons it is important to separate from the foundation trust
- develop a particular product or service with a separate identity and perhaps different branding
- contain risks which if assumed by the foundation trust directly could affect the performance of the foundation trust and risk its profile or brand
- join together with another party to jointly pursue a business objective – this is generally known as a joint venture.

In the case of a joint venture, it is also possible to replicate many of the benefits of other business models through contractual undertakings. This kind of model is generally referred to as a contractual or commercial joint venture, as opposed to a corporate joint venture using a separate legal vehicle. This may have certain advantages in any given context, for example removing the need to wind up a corporate vehicle when the joint venture terminates, and providing a considerable degree of flexibility. Structuring a joint venture in this way can, however, make the relevant documentation more complex. Commercial joint ventures are not considered in detail in this guide, but foundation trusts should take them into account in deciding what type of business model to adopt (please also refer to Chapter 17 of the Transactions manual and www.nhsconfed.org.ftn for further guidance on joint ventures).

Trusts will want to consider the overarching benefits and risks that apply to setting up any business model before considering the type of model to set up. An overview of these is provided on pages 4 – 7.
The potential benefits and risks of setting up a new business model

Benefits

Focus
- A separate management team can provide drive and focus as loyalty is not divided.
- Key staff can be incentivised to meet goals.
- A separate profit and loss account, recognising the true income and costs of a business, can drive increased profitability/guide other investment decisions more readily.

Ring-fencing
- Trusts can set aside staff and resources so that they don’t get pulled back into other areas of the trust.
- A separate venture can provide stability to the trust – staff and resources are not constantly pulled out of the trust.
- A separate venture can help risk containment (management of risk).
- Employment of new staff under more competitive terms and conditions.

Pooling of resources
- A new venture can permit a foundation trust and other partners to pool resources and thereby reduce costs or increase efficiency.

Flexibility
- New ventures will generally have more freedom to operate than foundation trusts.

Protection
- On the basis that it is properly structured, a separate legal entity can ensure that ventures can self-contain risk, thereby limiting the foundation trust’s financial exposure.

Efficiency
- The use of certain business models can bring tax advantages, or go some way to maintaining the status quo from a tax perspective. For example, a charity may be exempt from Corporation Tax on profits where they are derived from the primary purpose of trading and are applied for the purposes of the charity, and property acquired is exempt from Stamp Duty Land Tax; and a limited liability partnership can operate to preserve the previous corporate tax exemptions available to a foundation trust, in certain circumstances.

Ability to obtain grants (including European grants)
- Some grants are more accessible through separate corporate structures, for example DTI regional and EU support and grants.

Ability to realise value
- A foundation trust may be able to generate a capital gain by selling the business or shares in the business (potential to exit through sale).

Ability to raise capital/income
- A new venture may have the ability to:
  - borrow
  - raise equity capital
  - generate income from a trading opportunity to increase financial headroom free from the constraints to which foundation trusts are subject.

Innovation
- A new venture:
  - can do things differently from the NHS
  - provides an opportunity for partnership and collaborative working
  - can attract outside investment or partners.

Plurality, choice and competition
- A new venture can offer:
  - greater choice to commissioners
  - a more competitive service, through additional freedoms, for example by offering more attractive recruitment packages in order to attract high-quality or specialist staff and thereby increase the ability to offer specialised services.

Brand and reputational protection
- A new venture offers the opportunity to establish a new identity.

Partnering
- A new venture can offer:
  - access to new markets and technologies through partnering with third parties
  - access to third party commercial and financial skills (for example, marketing, IM&T, international markets).
The potential benefits and risks of setting up a new business model

If not clearly thought about as part of a robust risk assessment, including a review of clinical, operational, financial and reputational considerations and the impact on estates management and service sustainability, then entering into a new business model might achieve little of real advantage and the process of setting up a new business may incur unnecessary costs (both initial set-up and exit/termination costs) and detract from the provision of core services.

Risks need to be identified as part of the business planning process and allocated or mitigated. Below is an overview of some of the significant risks, relevant to foundation trusts, that may be associated with the set-up of new business models. However, each trust should carry out its own risk assessment as part of its options appraisal process and a further substantive assessment once an option has been chosen.

At an organisational level, the main risks are lack of management and other skills, lack of resources and lack of foresight and contingency planning. Foundation trusts will need to ensure that there is board-level understanding and acceptance of the issues, and that the management and financial requirements, structures, funding and contingencies are all reflected in the business plan.

It is essential that a project leader or managing director is appointed to drive through the set-up of a new business model and that the executive team of the trust has a full understanding and ownership of the model.

### Issues to consider

**Financial**

Foundation trusts will need to consider:

- Impact of the venture on their EBITDA and net surplus.
- Accounting standards (for example, IFRS accounting treatment) – consolidation of balance sheets and borrowing of subsidiaries may have an impact on the ability of a foundation trust to borrow.
- Whether and what impact a new business model will have on their financial risk rating (FRR).
- Whether obligations of a new entity need to be guaranteed, if the new entity needs to borrow.
- Borrowing – borrowing for capital and revenue funding are treated differently by banks.
- Compliance with Monitor’s Prudential Borrowing Code.
- Funding (availability and repayment and the need to provide security).
- Impact on funding thresholds, particularly in a joint venture scenario. In the early stages, a new entity may lose money and the foundation trust may need to provide funding.
- Exceeding budgeted costs – it is important to identify costs at the start-up stage, for example including legal and financial costs, cost of contingencies and potential cost of additional insurances.
- Shifting interest rates and the resulting impact on costs need to be anticipated as far as possible, including the use of hedging instruments.
- Commissioner support or underwriting – how reliable is this and how long will the support or contract last?

- Certainty of income against fixed overheads.
- Events and business continuity – are there any issues on the horizon that may impact on the business model?

**Taxation**

- Taxation (VAT, Corporation Tax and Stamp Duty Land Tax) – the formation of a new venture will normally be outside of the preferential tax environment of foundation trusts and therefore additional tax costs may need to be factored into the business model in respect of both the transfer of any business and/or the ongoing operation.

**Reputational (by association)**

- Business failure – this needs to be considered and an exit strategy needs to be agreed at the outset including, where there are other partners, consideration of what happens when one of the parties suffers from reputational damage. Foundation trusts need to be mindful of the impact of unplanned termination on service continuity and ensure contingencies are put in place.
- Patient/user/public/member/staff/governor and third party perceptions – foundation trusts need to consider the potential impact of negative perceptions on patient choice, the use by patients of personal budgets, and the impact on existing services. This may also impact on a trust’s ability to employ high-quality staff. It is therefore fundamental to carefully consider any potential partnerships and ensure that foundation trusts appropriately consult and engage with the full range of stakeholders.
The potential benefits and risks of setting up a new business model

### Issues to consider (continued)

**Brand** – foundation trusts should think about how any partnerships or business models will impact on their existing brand and how any new brand will fit with the existing corporate image. Also, trusts need to consider what impact reputational risk will have on an existing brand and the resultant impact on services.

**Growth** – foundation trusts need to consider how they will manage growth and success and whether there are any risks associated with growth, for example in managing expectations or if growth cannot be sustained.

**Control**

- **Loss of control** – the establishment of a new business model may lead to a loss of control by the trust. Foundation trusts should consider whether this is acceptable and, if not, how control can be ensured and maintained.

- **Voting and business decisions** – foundation trusts need to agree at the outset how business decisions will be made to ensure clarity.

- **Exit strategy** – the need to exit from a business model can arise for a number of reasons, for instance the need of a participant to realise its investment. Foundation trusts need to think about whether the business will have a natural end and, if not, in what situations the trust may want to wind up a business or end a joint venture partnership. Decisions must also be made as to the ownership or application of the resulting assets or liabilities.

- **Lock-up/buy-out provisions** – this refers to the terms within the constitutional documents which protect the rights of shareholders. In a joint venture, if one partner wants to sell its stake to another organisation, there is the opportunity to ensure that the other party can veto this providing they do not behave unreasonably. This can be quite important in protecting each of the parties to a joint venture and can also be used in companies where staff own shares to prevent the company being undermined or one shareholder affecting the rights of others. Foundation trusts should think about whether they want to include such provisions, particularly in a joint venture relationship, and the possible need for mechanisms to resolve deadlock between the participants.

**Liability**

- **There are existing rules to govern situations where members of foundation trust boards are also members of the board of a new business venture. This will also affect the way a company is constituted.**

- **Agreements should be in place to regulate any potential conflicts of interest of directors and officers.**

- **Foundation trusts should consider the adequacy of any existing insurance and whether further insurance is required, whether it is readily available and at what cost.**

- **Contractual commitments – directors’ terms of employment may need to be altered where directors are employed by a foundation trust but also work for a subsidiary, and this will need to be recognised in their terms and conditions.**

- **Insurance of any new venture should be sought using independent financial advice.**

- **Future funding requirements and the extent to which these will need to be met through the issue of shares.**

**Employment**

- **TUPE and pensions** – foundation trusts need to think about whether a new business model will have any impact on the pensions rights of existing staff, if any are being transferred across to the new business (please refer to the recent DH guidance on the use of retention of employment models: www.dh.gov.uk/en/publicationsandstatistics/lettersandcirculard Заареалуухаагийндоогосдоожурэдотоотоотооолотоо沦 at www.dh.gov.uk/en/publicationsandstatistics/lettersandcirculard

- **Terms and conditions of employment, including pensions entitlement and benefits of new staff, will need to be considered, as will the impact upon all foundation trust staff of possible differential terms and conditions.**

- **Union support** – if appropriate, foundation trusts should ensure that relevant unions are included during any consultation phase.

- **Redundancy costs** – these need to be taken into account, for example if a business fails, comes to an end or has a finite existence. Foundation trusts could consider risk-sharing arrangements with potential partners or commissioners.
The potential benefits and risks of setting up a new business model

Issues to consider

Administrative burdens
• Foundation trusts need to think about who will service a new company. Who will provide the administrative, financial and management support, and will this change as the company grows? Will the support will be bought in from a third party or will it be provided by the trust?

Enterprise
• Intellectual property - foundation trusts should identify any intellectual property and think about how to protect ownership.

Competition
• Foundation trusts will now also need to consider the impact of any decisions on competition, i.e. whether competition will be restricted. The Co-operation and Competition Panel’s (CCP) remit extends to any NHS-funded services. Therefore, it is recommended that where new business models are healthcare-related, foundation trusts consult the CCP where there is uncertainty (please refer to Chapter 27 of the Transactions manual for further guidance on competition). See www.ccpanel.org.uk for further details.

Governance

Foundation trusts will need to ensure that governance arrangements are proportionate to the size and purpose of the organisation. Particular emphasis should be given to ensuring that there are robust channels for communication and proper lines of accountability to the foundation trust. Mechanisms for resolving conflicts of interest and for dispute resolution will also need to be considered from the outset.

It is important that the boards of foundation trusts look ahead and consider the overall organisational structure that is required to best progress and manage the expansion of the trust’s activities; for example, should it first create a holding or controlling company below which will sit any individual project-based companies or other organisations? The board should be concerned with the policies adopted by any new organisation with which they are involved, for example health and safety, and should ensure that essential policies are implemented or adopted from the time of the creation of the new business.

Self-certification impact – the foundation trust board will be responsible for self-certification; therefore, it needs to know about the risks and how they are being mitigated. Foundation trusts need to consider how they will keep the board informed so that the board is risk-aware but not necessarily risk-averse.

Terms of authorisation - vires
Foundation trusts need to ensure that they have the power to set up a business model and provide the goods and services being considered and determine whether this might breach the terms of authorisation – for example, whether any new services will impact upon mandatory services and whether any potential income generation will breach the Private Patient Income cap.

Compliance Framework
It is important to engage in dialogue with Monitor in advance of setting up a new business model, to ensure that foundation trusts are compliant with the Compliance Framework, for example with transactional limits. Foundation trusts should also consider any potential impact on their financial risk rating and governance gradings.

Companies Act 2006
Foundation trusts will need to ensure compliance with the legislative and regulatory framework governing the various business models, for example compliance with Companies Act 2006. This will require forward planning and an understanding of the duties and responsibilities of the venture’s officers – it will be essential to ensure the involvement of the trust’s company secretary and advisable to obtain legal advice.
Next steps

If, after having considered the benefits and risks, trusts still wish to set up a new business, they will then need to think about the type of model they want to adopt and the key considerations which will determine the appropriate model.

As foundation trusts will know from the experience they have gained during the application for foundation trust status, forming a new business is complex and time consuming and a robust planning process is essential. There are always advantages and disadvantages with any model. The excitement of creating a new business has to be tempered with the important considerations involved, not just in its formation but in matters such as its ongoing management, ownership, staffing and funding; what is to happen to its surpluses; and what is to happen to its assets when its job is done and they are available to be realised. Some participants will consider their exit strategy to be just as important as the formation of the venture.

Some of the main factors that should be taken into consideration during the options appraisal process, and which may be used as part of your internal approvals process and to facilitate discussions at board level, are detailed on the following pages.

Which business models are most likely to be favoured by foundation trusts?

The nature and structure of the organisation selected for any business venture should be determined following consideration of many factors. Short-term and longer-term considerations must feature as part of that decision as, for example, the simplicity of a model on creation could be attractive but may cause difficulties in the future.

The type of business model chosen will be driven by factors such as:

• the extent to which risk needs to be contained
• the impact on existing NHS services, patients and staff
• requirement for funding
• the need to access third-party skills
• the use to which profits are to be put
• the need to accommodate any exit strategy.

A comprehensive review of a foundation trust’s options should reveal the differing characteristics of the models available. This should enable a board to identify the type of organisation which will best serve the foundation trust’s requirements and desired outcomes (although, in the case of a joint venture, the model used will also depend on any partner’s requirements). The information which follows is designed to help make that decision.
What types of organisation are available and which should you choose?

There are five types of commercial business model which are likely to be of interest to foundation trusts.

There are numerous commercial business models available, some of which are unlikely to be suitable business models for foundation trusts. Flexibility, in terms of what the enterprise can do in the short term and longer term, should be considered. Realistically, there are only five types of organisational format which are likely to be of interest to foundation trusts:

- private company limited by shares (see page 11)
- private company limited by guarantee (see page 16)
- charity and charitable trading company (see page 18)
- community interest company (see page 19)
- limited liability partnership (LLP) (see page 20).

Only the first and last of these are likely to be suitable for a venture in relation to which the foundation trust or any business partner is seeking a simple financial return on its investment. In particular, trusts may want to consider the option of an LLP, which combines the benefits of a private company limited by shares (limited liability, governance etc) with the tax transparency of a partnership and is particularly useful for joint ventures (although the LLP model is less commonly used than the company model in a joint venture context, they are becoming more commonplace in the public sector as a whole).

There are, of course, other forms of corporate vehicle which may be of interest in limited circumstances. There are two types of industrial and friendly society - the cooperative and the community benefit society (or BenCom) - which may be considered for a social enterprise.

**Social enterprises**

Social enterprises are businesses which have primarily social objectives and whose profits are principally reinvested in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.

Social enterprises may take a number of different business structures. Companies limited by guarantee are a common form of social enterprise company, but trusts may wish to consider other forms, for example companies limited by shares and community interest companies.

The Foundation Trust Network has published a briefing (Social enterprises and community service provision, March 2009), which is available at www.nhsconfed.org/ftn or on request from the FTN team. More detailed information about setting up, commissioning or working in partnership with social enterprises will be available in our forthcoming publication on foundation trusts and social enterprise, due to be published in October 2009.
Alternatives to a single entity

Although this publication does not deal with these, some alternatives to the creation of a separate legal entity are outlined in the table below.

<table>
<thead>
<tr>
<th>Type of arrangement or relationship</th>
<th>Characteristics</th>
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<tr>
<td>A new division of the foundation trust</td>
<td>This may involve the creation of boundaries of responsibility, finance and activity, but the function remains within the foundation trust, and its assets, staff, risks and rewards do also.</td>
</tr>
<tr>
<td>Partnership (as opposed to a limited liability partnership)</td>
<td>A contractual relationship between two or more legal entities, with a view to profit, in which each of the parties accepts total liability for their combined or individual losses and acts, and who between themselves agree to share profits and losses in agreed proportions.</td>
</tr>
<tr>
<td>Joint venture by contract</td>
<td>A contractual agreement between two or more parties in which the parties agree objectives and (if applicable) the basis upon which contributions and losses are shared and profits and benefits allocated. Note that the term ‘joint venture’ can apply to this type of contractual agreement, as well as to the corporate model detailed below.</td>
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We have set out the principal alternative business structures for consideration on pages 11 – 28.
The first challenge is to choose a business model that will support the foundation trust’s business strategy. Business objectives and growth strategy need to be clear from the outset and based on rational analysis. Only then can business model options be measured against sound and supporting criteria. To ensure that the strategic context for a business model is sound, a comprehensive options appraisal should be undertaken against the foundation trust’s strategic objectives. Trust managers will want to reassure their boards that all necessary due diligence has been carried out (please refer to the FTN website www.nhsconfed.org/ftn and chapter 23 of the Transactions manual for further guidance on due diligence), and must therefore conduct a robust options appraisal, considering the kinds of questions referred to below and comparing relative benefits and risks, particularly any risks to the financial stability and authorisation of the trust. Some of the main factors that should be taken into consideration during the options appraisal process and which may be used as part of any internal approvals process, to facilitate discussions at board level, are listed below, in alphabetical order. This is not intended to be an exhaustive list, but intended to promote further analysis and decision making.

Here, we focus on the key questions and issues which should be considered as part of any decision to form a new business model. The questions and issues set out below are pitched at a basic level, and are designed to give rise to further questions and initiate examination of relevant issues which may influence the choice of business model.

<table>
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<th>Administration</th>
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<tr>
<td>What administration is required? HR, finance, secretarial, clerical, marketing etc.</td>
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<tr>
<td>Who is to provide it?</td>
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<tr>
<td>What will it cost? If provided by the foundation trust, is the cost to attract a profit margin?</td>
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<th>Advisors</th>
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<td>Has the organisation engaged appropriate advisors, including:</td>
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<tr>
<td>• tax advisors</td>
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<tr>
<td>• marketing advisors</td>
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<tr>
<td>• legal advisors</td>
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<tr>
<td>• accountants and auditors</td>
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<tr>
<td>• insurance brokers</td>
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<tr>
<td>• health and general economic advisors?</td>
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<thead>
<tr>
<th>Branding</th>
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<tbody>
<tr>
<td>What will the organisation’s name be?</td>
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<tr>
<td>Will it have a direct link to the NHS</td>
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<tr>
<td>Will it have a logo?</td>
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<tr>
<td>Will it have designs or other intellectual property assets which need protection?</td>
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<thead>
<tr>
<th>Business issues</th>
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<tr>
<td>Who are the organisation’s competitors?</td>
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<tr>
<td>Has a SWOT analysis been undertaken?</td>
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<table>
<thead>
<tr>
<th>Business planning</th>
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<tbody>
<tr>
<td>Has a business plan been prepared to outline the business concept and its viability?</td>
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<tr>
<td>Has a budget been prepared covering the early period of activity and financial projections, including a range of sensitivities?</td>
</tr>
<tr>
<td>Does the corporate model selected impact upon the plan and budget; for example, does it impose limitations upon the activities the business can undertake?</td>
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<tr>
<th>Commissioners</th>
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<tr>
<td>What kind of relationship does the foundation trust have with its commissioners and will this impact on the business model and objectives?</td>
</tr>
<tr>
<td>Is commissioner support required and, if so, have commissioners been consulted and engaged early?</td>
</tr>
<tr>
<td>Does the trust have a sufficiently mature relationship with its commissioners to ensure that such support will be sustained?</td>
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<tr>
<td>What are the benefits of the venture? Have these been communicated with the commissioner, if necessary?</td>
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<tr>
<td>If commissioner support will only be sustained during the subsistence of a services contract, what is to happen to the venture and any related commitments beyond that contract?</td>
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## Business models: Appraisal of key considerations and options

### Communication and consultation
Has the full range of stakeholders been identified and engaged with?
What are the formal consultation requirements?
Has both clinical and management buy-in been secured?

### Company secretary or other key administrators
Has a job description been written?
Is recruitment necessary and has this been planned?

### Conflicts
Have all apparent business conflicts been identified and addressed? It is important to note that a company's directors will be under a duty to promote the interests of the company, whether or not these coincide with the interests of the trust. This may give rise to conflicts between a director's duties to the company and duties to the trust. These conflicts are usually capable of management by active consideration of these issues and measures taken on establishment of the new business.
Does the constitution of the organisation address this topic?
Does the foundation trust have structures and rules in place dealing with this topic?

### Constitution
The organisation must have the equivalent of standing orders and standing financial instructions, for example Memorandum and Articles of Association and perhaps internal regulations. These will incorporate similar organisational and management rules and need to be considered carefully.

### Contractual relations
What contracts are in prospect?
What risks and liabilities are involved?
How are those risks to be identified, managed, valued, allocated and otherwise covered?
Will the organisation be awarding or bidding for contracts and will it have the appropriate skills and resources for this?

### Controls
What controls are to be imposed on the organisation regarding:
- borrowing and spending
- activities
- recruitment
- investment
- decision making?
Who is to be responsible for compliance?

### Costs of operation
Have all costs (including funding and depreciation) been identified?
Have all set-up and potential exit/termination costs been considered?
What recruitment costs are likely to be involved?

### Customer
Who will be the customers of the new organisation?
Has a competitor analysis/market analysis been carried out?

### Directors/trustees
Will the new organisation recruit these officers?
Have job descriptions been written?
How many officers will there be?
What will the executive/non-executive balance on the board be?
Have any potential conflicts of interest been identified and addressed?
Has directors' and officers' insurance been considered?

### Equipment
Is any additional equipment required?
What will it cost, how will it be financed, how long will it last?
Will existing equipment and related facilities need to be transferred into a new entity?
Who is responsible for maintaining and replacing the equipment?

### Exit strategy
Consider the ‘life’ of the organisation.
How will the organisation be wound up?
Consider costs and timing.
Who will have first call on the purchase of any shares?
Does the law relating to the type of organisation permit that outcome?
What is planned to happen to any proceeds from the winding-up and can that happen in the context of the type of organisation involved?
Has a dispute resolution process been agreed?

### Finance (funding)
What funding will the entity require and what for? (For example, capital expenditure, working capital.)
How will the entity be funded, for example through share capital, foundation trust loans or bank finance?
Where will the funding come from?
What will the funding cost?
Can the business afford the projected borrowings?
Will the borrowings need to be secured or guaranteed and, if so, by whom?
Consider the impact of the terms of the Monitor Compliance Framework upon the proposed borrowing.
Consider the impact of the borrowing in the context of the Monitor borrowing limit.

### Formation of organisation
Have you decided upon the most suitable type of organisation?
How long will it take, and what will it cost to form?
What regulatory issues arise?
### Funding (bank)
Banks or other funders will require considerable amounts of information before agreeing to lend money to the organisation. Look upon this positively as an objective assessment of the business model. In the prevailing banking environment you can expect a robust approach. Start early. Borrowing may be required for working capital, capital assets acquisition or other long-term funding requirements. Consider so-called ‘hedging instruments’ in the case of longer-term substantial borrowing to smooth interest rate changes and understand the potential breakage costs if their instruments need to be unwound. Consider the impact (if any) of the borrowing arrangements of the new organisation upon the borrowing limit placed upon the trust by Monitor. Could funding be made available from the trust’s resources and, if so, on what terms and with what security? Is any funding available by way of grant aid from regional development agencies, research bodies or the like? Is any of the borrowing of the organisation going to have to be guaranteed by the trust or other parties? Will the organisation be offering or be required to provide security for the debt?

### Governance
Is the venture lawful and what law and regulation will govern its existence and activities? Will the new organisation be accountable to regulatory authorities? If so, which ones and what are the regulations to be complied with and at what cost? What guidance is available and is it to be followed? What decision-making and accountability structures will exist? Is the organisation to have members and, if so, who will they be, who will select them and what will be their rights and obligations?

### Governance and accountability
The constitutional documents creating the organisation need to be considered in the light of circumstances and business objectives. Who will be the directors or other officers of the organisation? Who can appoint and remove them and what are their terms of office? Will they be paid? Will they be employees or non-executive officers? What accountability and reporting structures are required? What limitations are being placed upon the directors of the organisation?

### Human resources
Who will be the directors and officers of the organisation? Who will be the employees of the organisation? What will be their terms and conditions of employment?

### Human resources (continued)
Will any TUPE transfers be required? Will they be eligible to join or continue as members of the NHS Pension Scheme? Will individuals be seconded into the organisation?

### Image and reputation
What structures will be in place to protect or enhance the ‘brand’? What is the potential impact on existing NHS services and patients? What standards of business conduct will be imposed on the organisation? Does any intellectual property need to be protected? (see also below)

### Insurance
NHSLA pool cover is probably not available so commercial insurances will be required. Consult the NHSLA pool managers to ensure what cover (if any) is available, but in any event seek the services and advice of independent risk and insurance advisors. Business continuity cover should be considered to provide continuing income following a serious untoward incident or loss.

### Intellectual property
Will the organisation wish to use the intellectual property of a third party for which it will need a licence or other authorisation? Will the organisation itself create or use intellectual property which will need protection?

### Issues log
Create a central log, recording all issues, and assign resolution to individuals. Pass relevant sections to advisors.

### Licences or consents
Are any licences or consents required for the conduct of the business?

### Management
Who is to manage the entity? Do they have the time? Do they have the skills? What will be the management cost? What will be the terms of reference and limitations?

### Marketing
Has a marketing plan been prepared? Has marketing literature been considered? What media connections are required? Will a website or web-based communication be required? Have advertising media and costs been identified?
**Monitor**

Initial and frequent liaison with your Monitor contact is important.

Make sure that you follow Monitor’s advice including, for example, REID (risk evaluation for investment decisions).

Make sure you follow the requirements of the Monitor Compliance Framework and Code of Governance.

Review the content of the guidance contained in the Transactions manual published by the Department of Health and Monitor.

If the organisation is in any way providing health services, registration with the Care Quality Commission (CQC) and other regulatory bodies needs to be pursued.

**Pensions**

Will the employees have access to the NHS Pension Scheme?

Are there any specific company models that preserve entitlement to the NHS Pension Scheme?

If not, what other pension provision needs to be made?

**Premises**

Are any premises required?

Are they to be leased or bought and, if so, by whom?

Will any form of guarantee be required?

Will related costs need to be borrowed?

**Private Patient or other charges**

Is this relevant?

Consider Monitor’s position and the Department of Health’s position.

Clarify source and nature of charges, for example direct patient charges or charges for support/administration.


Seek legal advice.

**Procurement rules**

Will the organisation itself be subject to EU procurement rules?

Will the organisation be bidding for work awarded in accordance with EU procurement rules?

Will it have the relevant skills?

Please refer to chapter 26 of the Transactions manual and OGC guidelines for further information, www.ocg.gov.uk/procurement.asp. If the trust is planning to purchase goods or services from the new business entity, the value of those purchases and the nature of the ownership of the entity will be critical to the application of EU procurement rules.

**Regulatory compliance (continued)**

Establish the requirements of any relevant regulator, for example the CQC, Monitor, the Charities Commission and Companies House, and make sure the organisation will be capable of satisfying them.

Plan for on-going compliance with applicable regulations and the costs of so doing.

**Risks**

Consider financial risk – what could the impact of any risk be on EBITDA/surpluses?

Consider reputational risk.

Consider and log all ‘what if’ and ‘what could go wrong’ scenarios in a risk register which assesses the probability and potential impact of each risk, along with ways in which risks can be mitigated.

Analyse any risks associated with any contracts and commitments and address these risks in this context.

How can risks be avoided or mitigated? Can and should risks be insured?

**Strategic context**

Ensure that the strategic context for a new business model is sound. An options appraisal should be undertaken from the outset against the foundation trust’s strategic objectives.

**Selling the business**

Is this a possibility? Does the choice of business model permit a sale of the business? How would this be effected?

**Surpluses**

How will the trust utilise surpluses generated by the business?

Is it intended to distribute surpluses generated by the business? If so, the business model must permit this.

**Taxation**

Are there any taxation liabilities from the transfer of assets/goodwill to the new venture? (VAT, CT, SDLT)

What are the taxation costs attaching to the ongoing operations of the venture and how can these be minimised?

What tax administration requirements will the venture need to adhere to and who is responsible for ensuring that these are met?

Are there any specific tax requirements that need to factored in when considering the future needs of the business eg exit/future investment/incentivisation?

Anticipate Corporation Tax on profits (although no Corporation Tax may be payable in the case of a charity or other body with “charity exempt” status).

Seek accountancy advice to establish relevance and impact.

Refer to chapter 22 of the Transactions manual for further guidance on tax issues.

**TUPE**

Will there be any TUPE considerations to think about?

What will happen to staff that have been transferred if the business is wound up?

For further information, please see the Joint Venture Checklist, available at www.nhsconfed.org/ftn
Business models in detail

This section considers each type of model in greater detail, and includes case studies drawn from the experience of foundation trusts in setting up these types of venture.

Private company limited by shares

This is the most common form of registered company and, indeed, business vehicle. A private company is managed by its directors but is ultimately controlled by its shareholders, and the liability of shareholders is limited to the value of the shares which they have subscribed and paid for. There is no minimum shareholding.

Shareholders of a company limited by shares may be individuals or organisations. The shareholders are not responsible for the company’s debts unless they have given guarantees (for example, of a bank loan). However, they may lose the money they have invested in the company by way of loans or share capital if it fails.

1. Set-up
1.1 A company must be registered (incorporated) at Companies House.
1.2 A company must have at least one director and will ordinarily have a company secretary, both of whom may also be shareholders.
1.3 To be incorporated, a company needs one or more persons to have subscribed for one or more shares.

2. Governance
2.1 A company will have a Certificate of Incorporation and two governing documents – a Memorandum of Association and Articles of Association:
   (a) Memorandum of Association. This will:
       • include the objects (purpose) and the powers of the company
       • set out the company’s share structure.
   (b) Articles of Association. This will, amongst other things:
       • contain details of the company’s governance arrangements and management structure
       • set out procedures for appointing and dismissing directors
       • set out the powers of shareholders.
2.2 In the event that the company is to be jointly owned, for example it is to be a corporate joint venture, a Shareholders’ Agreement will typically be required, recording the rights and obligations of the shareholders.
2.3 Founders of the company must make a statutory declaration confirming that all Companies Act requirements have been met.
2.4 The directors will be under a duty to produce annual accounts and an annual return.

3. Management and finance
3.1 A company has a two-tier management structure – the board of directors makes the management decisions, but certain matters will require shareholder approval (either as a matter of law or under the terms of the Articles of Association or any Shareholders’ Agreement) and the shareholders will have the right to remove directors from the board.
3.2 There is considerable flexibility around internal structures.
3.3 Finance comes from shareholders, borrowing or retained profits.
3.4 Private limited companies cannot raise money by offering shares to the public.

4. Records and accounts
4.1 A company needs to ensure that its statutory accounts are filed with the Companies Registry.
4.2 A company’s accounts may have to be audited each year.

5. Profits
5.1 Profits are usually distributed to shareholders in the form of dividends, apart from profits retained in the business as working capital.

6. Tax
6.1 Generally, companies pay Corporation Tax and must make an annual return to HM Revenue & Customs (HMRC). A company limited by shares can make a gift aid payment and receive a tax deduction in respect of a payment to a charity. The nature of the company’s activities must be considered from a VAT perspective especially if the company is involved in the exempt activity of healthcare, as VAT may be an additional cost in the business plan. Tax and VAT administration will need to be set up.

7. Liability
7.1 Shareholders are not personally responsible for the company’s debts unless they have entered into guarantees.

Source: This is an amalgamation of information obtained from Business Link (www.businesslink.gov.uk), the FTN working group on business models and Beachcroft.
Rationale and objectives
OML was established in order to enable the commercialisation of patented intellectual property with a view to benefiting more patients across the world and creating value at the same time.

Goods and services supplied
OML supplies devices and services to enable people suffering from ‘dropped foot’ after a stroke or other neurological problems to be able to walk. Customers include many primary care trusts (PCTs), physiotherapists trained in fitting the devices, acute trusts and, more recently, providers across various countries worldwide.

Staffing
OML has 20 members of staff, most of whom are seconded from the NHS under NHS terms and conditions. Six members of staff are employed under the company’s own terms and conditions. The company has established a pension scheme, as required legally.

Governance arrangements
Governance is in accordance with the Memorandum and Articles of Association.
Shareholdings: 68% Salisbury Foundation Trust (A shares); 18% SDH trustees (A shares); 12% staff (B shares); 2% Bournemouth University (A shares).
Board membership currently consists of two foundation trust representatives (the chair of the company is a non-executive director of the foundation trust and the finance director of the foundation trust is on the company board); a staff shareholder representative, who is one of the two inventors; and the managing director. The role of the company secretary has been assumed by local solicitors. Minutes of board meetings go to the foundation trust’s finance committee on a monthly basis.

Challenges
The company was formed prior to the trust achieving foundation trust status and was therefore approved by the Department of Health (DH), who had never done this before. Accordingly, there was a lot of caution about setting a precedent and this delayed approval.

Developing the business plan was challenging given the need to structure it in a way that would gain DH support. The trust did commission external organisations to take this forward but the end product was poor. Finally, the trust’s finance director wrote the business plan. This required a huge amount of time and effort whilst at the same time working towards foundation trust status.

Legal support was obtained from a large, provincial firm of solicitors who were aware that the company formation was a national ‘first’ and wanted to ensure that no eventuality was missed. Whilst this was good, it meant that a much simpler approach could have been taken and the process became very frustrating.

Company secretary arrangements were initially carried out by the trust’s finance director, advised by a commercial accountant and the solicitors. Whilst he underwent relevant training, the appointment of an experienced company secretary should, with hindsight, have been done at the outset.

Establishing the company as a separate, free-standing entity has also been difficult due to the need to use seconded staff. Initially, PCTs were very suspicious of OML but gradually, through national publicity and marketing materials, there is now much less reticence to pay for services.

Benefits
The main benefit is focus and the ability to progress ideas quickly. Money can be spent on advertising without raising concerns and there are good streams of R&D running through to commercialisation. National press publicity on a regular basis encourages the staff to perform well.

Having a separate managing director who can oversee all aspects of the business is very good news and has enabled the creation of excellent marketing materials, development of license agreements with distributors, new product lines, new premises, and a drive to move forward.
Risks
The main risk was that the services would be undermined by PCTs being unwilling to pay the company rather than an NHS trust.

The company was starting to trade overseas in a number of countries, including the USA, where FDA approval had been obtained.

There was a risk to the foundation trust application as Monitor, surprisingly, was concerned about the presence of a subsidiary. Monitor was also concerned that trust management might be distracted from their prime responsibilities.

The risk of potential claims was covered through insurance arrangements.

The short-term cash-flow risks were addressed through extending credit from the trust.

Issues to do with staffing were addressed through regular meetings and by ensuring staff were kept fully informed. By seconding staff, issues such as the loss of NHS pensions were avoided.

The amount of time needed to ensure a successful launch was a concern and finding the right managing director to lead the company forward also represented a major risk.

Operational risks became apparent in respect of the new standalone accounting systems which were installed, especially in the context of a company which needed cash flowing in order to survive. In retrospect, it may have been better to use existing trust systems rather than trying to segregate everything initially.

Recommendations, hints and tips
• Get solicitors involved but challenge their advice.
• Appoint a company secretary from the outset and be very clear about their objectives (for example, dealing with Companies House, maintaining the company register).
• Sort out staffing arrangements, including the inventors (where appropriate).
• Decide on who holds the intellectual property and, if necessary, complete a licence agreement for its use. An agreement may be needed between the company and the trust for the use of facilities, and also an agreement covering the transfer of business. All this should be in place before trading commences.
• Professional advisors - you should be very careful when thinking about which professional advisors to appoint and be clear about what you want them to do.
• Not having done this before, the foundation trust had many questions for the solicitors. With hindsight, they would ensure that they were much more aware of company matters before talking with solicitors. In particular, it is worth attending a company secretary training day to get a reasonable understanding of how to deal with the solicitors and on what issues. It is also well worth spending a day browsing the Companies House website as this has lots of useful information.
• It is worth looking at Memorandum and Articles examples from other companies, but the emphasis should be on ensuring there are no inappropriate restrictions on what you want to do. It is important to think ahead about potential changes such as new share issues and who approves possible future sale of the business and who would need to agree; and what authority would be needed to distribute shares to other staff.
• It is worth reading about the various types of company to ensure the vehicle you choose meets the purpose for which you are designing it.
Background

Birmingham Children’s Hospital receives referrals for secondary care predominantly from Birmingham PCTs, and tertiary referrals as a centre of national repute. Consequently, patients may have travelled long distances and the medicines that they require are often complex, expensive and difficult to obtain. In addition, many patients require ongoing therapy at home. There is limited capacity to dispense medicines for outpatients on site and the majority of patients receive a primary care prescription (FP10) which they then take to their local community pharmacy in order to obtain their medicines.

Rationale

The trust noticed that expenditure on FP10 medicines more than doubled in a three-year period. The causes included:
• the way in which these prescriptions were being written
• the high cost of specially formulated medicines, known as ‘specials’, that were being prescribed.

The trust had closed its outpatient pharmacy a few years ago due to difficulties in recruiting staff and lack of suitable space being available at the city-centre site. It contracted its outpatient business out to a large community pharmacy operator. Due to the specialised nature of the medicines that patients require, this proved to be less than optimal and led to the development of an alternative business model.

Aims and objectives

Key aims were:
• to find a safe, cost-effective, efficient solution that sat comfortably within the ethical patient-centric ethos of the trust, and that complied with foundation trust guidance, SFIs and relevant regulations
• to create an alternative model by which hospital outpatients would receive their medication other than through an on site dispensary
• to develop a vehicle by which a selected portfolio of readily identifiable patient-oriented services could be delivered, in cooperation with commercial partners. Some of these services have been traditionally sub-contracted out to homecare companies; others have not.

Goods and services supplied

Outpatients:
• consultant generates a medication order that is reviewed by a trust paediatric clinical pharmacist
• patient leaves clinic and goes home whilst medication order is transmitted to the off-site facility
• the medicines are assembled, packed for delivery and delivered to the patient’s home or community pharmacy of choice, subject to local pharmaceutical committee (LPC) approval
• further supplies can be made from that community pharmacy with the confidence of knowing that they have all the relevant information needed.

Specials (unlicensed preparations for individual patients who can’t take licensed available medicines):
• another commercial partner (Quest Healthcare) has specials production capability. These medicines will be compounded at carefully negotiated rates for supply to the off-site unit
• opportunity exists to supply these specials to various purchasers.

Governance

The trust will have a controlling interest in the prospective company and therefore governance will pass through current trust structures. The detail of this is currently being worked out and the trust is proceeding very cautiously as there appears to be little or no precedent. One of the main issues is the question of probity and potential conflict of interests, and hence the cautious preparation and consultations that have and are taking place.

Challenges so far

These include:
• property rights guidance is well thought through in the academic world but less so in the NHS to date, where it is usually deployed to manage exploitation of inventions rather than management systems
• foundation trust regulations and their application – foundation trust formation encourages the consideration of financial independence, but is lacking in details.

Case study

Birmingham Children’s Hospital NHS Foundation Trust

A private company limited by shares

It is anticipated that the trust will set up a company limited by shares. The shares will be majority owned by the trust, with other shareholders including trust staff and possibly the main commercial partner. Other commercial partners will be sub-contracted for specific tasks.
This is one of the reasons why there is enthusiasm to explore new ideas and ways of approaching commercial partnerships but reticence to actually proceed. Universities have thought this through over the years and have much experience with commercial partnerships and relationships with staff becoming involved

- understanding VAT regulations
- understanding the position with regard to medicines supplied in primary care
- HR considerations:
  - terms and conditions, including pension arrangements for trust employees who are also shareholders
- partnerships and legal matters
  - ensuring probity and transparency with the company arrangements.

Risks
These include:

- probity/transparency of arrangements
- taking appropriate legal, HR and financial advice
- understanding commercial as opposed to NHS business plans and planning
- retaining control of the venture and protecting standards and reputation
- patients’ perception of the arrangements.

Benefits
These include:

- increased safety by being able to control the formulation of the final product
- decreased costs by applying trust formulary control to the medicine orders
- increased patient satisfaction as a result of removing the waiting for medicines element and enabling continuing supply of difficult medicines
- cost savings by virtue of VAT savings and better pricing of specials and other medicines. The savings stay within the company to pay for running costs
- income generation through sales of specials medicines.

Next steps
There is the potential to expand this model, and other patient services have been identified for consideration, including discharge medication and a variety of therapy groups that currently utilise homecare services for the delivery of complex medicines.

Recommendations, hints and tips

- Have a clear business plan with all costs/assumptions/risks – a commercial rather than NHS approach.
- Ensure plenty of planning and preparation.
- One of the difficulties the trust faced was in trying to look at things in a different way, outside the trust’s historical culture. Creative business thinking is required, tempered by NHS foundation trust regulations – but actual regulations rather than culture.
- Patience – it takes time to introduce innovation of this nature in the NHS, for a variety of reasons, not least of which is that no one is quite sure where this is going!
- Identify and negotiate with prospective commercial partners early. In this case, two partners were identified, one to undertake the assembly part of the dispensing process and also to deliver the complete prescriptions, and a second to compound specials medicines to the trust’s requirements.
- Engage with the consultants responsible for the specialties involved and ensure clinical buy-in to the proposals.
- Conduct legal, HR and trust meetings to ensure all the legal implications and associated HR issues of such a venture have been addressed.
- Gain external approval – in this case the trust had to obtain LPC approval, which was required to enable patients to choose to have their medication delivered to their local community pharmacy.
- Provide training for all those involved in providing the new service.
Private company limited by guarantee

This is one of the simplest forms of organisation to set up. It is easy to manage, there is flexibility around the governance structure, liability of the directors and/or shareholders is limited, and financial liability of members is limited to £1.

This is a registered company with members rather than shareholders and with no share capital. The reference to ‘guarantee’ is to the obligation whereby members guarantee to pay a nominal sum in the event of the company failing and there is an insolvent liquidation of the company. This liability is limited to the amount they have agreed to contribute, which is usually £1. Clearly this is not onerous.

Companies limited by guarantee may qualify for charitable status if their objectives are exclusively charitable. In view of this, and the fact that they have no share capital, they are popular vehicles for social enterprises.

Members of a company limited by guarantee may be individuals or organisations. The members are not responsible for the company’s debts unless they have given guarantees (for example, of a bank loan). Ordinarily, the members will not pay anything to become members.

1. Set-up
   1.1 Must be registered (incorporated) at Companies House.
   1.2 Must have at least one director and will ordinarily have a company secretary, both of whom may also be members.

2. Governance
   2.1 It has a Certificate of Incorporation and there are two governing documents – a Memorandum of Association and Articles of Association:
      (a) Memorandum of Association:
          • includes the objects (purpose) and the powers of the company
          • records the restrictions upon the distribution of the profits of the company and the distribution of the assets of the company on its winding up.
      (b) Articles of Association:
          • details governance and management structure
          • sets out procedures for appointing and dismissing directors
          • sets out rights and powers of members.
   2.2 In the event that the company is to be jointly owned, perhaps hosting a joint venture, a Members’ Agreement will be required recording the rights and obligations of the parties.
   2.3 Promoters must make a statutory declaration confirming that all Companies Act requirements have been met.
   2.4 Duty to produce annual accounts and an annual return.

3. Management and finance
   3.1 Two-tier management structure – board of directors makes the management decisions, members create business plan and drive fundamental business decisions, including the appointment and dismissal of directors and also direct and make changes to governance.
   3.2 There is flexibility around internal structures.
   3.3 Finance comes from borrowing or retained profits or from members.
   3.4 Companies limited by guarantee have no share capital so cannot raise money by selling shares on the stock exchange.

4. Records and accounts
   4.1 Accounts are filed with the Companies Registry.
   4.2 Accounts may have to be audited each year.

5. Profits
   5.1 Profits cannot be distributed to members by way of dividend or otherwise. They have to be retained in the business and be applied in satisfying the objects of the company.

6. Tax
   6.1 Generally, companies pay Corporation Tax and must make an annual return to HM Revenue & Customs (HMRC). A company limited by guarantee can make a gift aid payment and receive a tax deduction in respect of a payment to a charity. The nature of the company’s activities must be considered from a VAT perspective especially if the company is involved in the exempt activity of healthcare, as VAT may be an additional cost in the business plan. Tax and VAT administration will need to be set up.

7. Liability
   7.1 Members are not personally responsible for the company’s debts unless they have entered into guarantees.

Source: This is an amalgamation of information obtained from Business Link (www.businesslink.gov.uk), the FTN working group on business models and Beachcroft.

Principles of a limited company

- The liability of members is restricted to the amount guaranteed or the nominal value of the shares.
- Only one person is required to form a company (for an industrial provident society, a minimum of three members if required).
- As a separate legal entity, a company is able to borrow money, enter into contracts and hold its own assets.
- Directors owe a duty to promote the success of the company.
- Two-tier management and governance system is required – directors carry out the day-to-day running of the company and members need to approve certain key steps, for example changing governing documents, winding-up of the company.
Case study
Dorset HealthCare NHS Foundation Trust
New Wave Integrated Care
A private company limited by guarantee

New Wave Integrated Care is an organisation comprising of four partners: Dorset Healthcare NHS Foundation Trust; Help and Care, a charity; a Bournemouth GP consortium called Centrepoint Healthcare Provision Limited, which includes 21 practices across Bournemouth and approximately 90 GPs; and Bournemouth Churches Housing Association.

Rationale
One of the main reasons why the company was established was to strengthen the trust’s bid for a GP-led healthcare centre, which was tendered by the PCT as part of the Darzi policy initiative on polyclinics.

It was felt that the combination of all four partners would be more attractive to commissioners and strengthen the bid because all the partners are well-established organisations who work with local people. Between them, the partners have extensive knowledge of the local population and its diversity.

New Wave Integrated Care’s bid was successful and the GP-led healthcare centre will be operational from July 2009, initially from a temporary base, before moving to a brand new building in 2011/12.

Goods and services supplied
As well as offering core general medical services to registered patients, the health centre will offer a range of additional services such as phlebotomy, minor surgery, cervical screening and other services to meet local need. The health centre will also offer urgent services to unregistered patients. It will provide integrated support, with a strong focus on outreach and promotion of health, mental health, well-being and decent housing, and will drive down inequalities of all kinds - health, lifestyle and housing.

A key goal of the initiative was not to destabilise services, hence there are limitations within the contract on how quickly the service can grow. This will not, however, preclude the social enterprise from expanding its services in the future.

Governance
Governance is in accordance with the Memorandum and Articles of Association and includes an asset lock, which means that on winding-up the assets of the company will be transferred to another charity. The company has its own board of directors, which includes the chief executive, non-executive directors and trustees of the partner organisations. The company is a not-for-profit organisation, therefore any surpluses will be reinvested into the company to help the local community.

Challenges
Two main challenges were faced. The first was actually deciding which type of business structure to use and why, then agreeing this across all the partners and setting up the governance arrangements. Secondly, there were significant challenges in getting the four organisations, with different ways of working and ethos, to come together and operate as one company.

Risks
The trust carried out an assessment of the risks. The main ones included factors such as whether or not the healthcare centre would receive the projected footfall – a footfall either too high or too low would present challenges both in terms of capacity and cashflow.

Capacity for the establishment and running of the company and the service was also a major risk. The trust had to take careful consideration of the amount of time and resource being used to establish the company and the resource that would then be required for running the healthcare centre. There were risks around cashflow that needed careful and detailed modelling.

Benefits
The formation of the social enterprise was a factor in New Wave Integrated Care winning the tender, together with its costing, for the provision of a GP-led healthcare service. As a result, the trust has increased its status and standing within the local healthcare and wider community. It also means that the trust will have the ability to expand and deliver new community-based services in the future.

Recommendations, hints and tips
It is crucial to know your partners very well, be clear why you are working together, and ensure that the business structure has been agreed well in advance of tendering for a service.
Charity and charitable trading company

Charitable status is available to all organisations which have exclusively charitable purposes and activities and providing certain tests are passed. The legal requirement is that all charities must have a ‘public benefit’, identifiable benefits and defined qualifying charitable purposes.

A charity may take two forms. The first is a so-called trust, which is not a strict legal entity and acts through its trustees; the second is a company, which is a legal entity and acts through its directors. Once the decision as to the legal status of the charity has been made, trusts or companies can then, if necessary, apply to register their charitable status with the Charity Commission. Companies will also need to register with Companies House.

Organisations with charitable status are regulated by the Charity Commission, which deals with new applications and can advise on an organisation’s constitution and whether or not it qualifies for charitable status (although not until after the application for registration has been made). It should be noted that not all charities have to be registered.

Further information on charities is available at www.charity-commission.gov.uk

Although there are clear benefits to setting up a charity, as highlighted in the section on benefits on page 4, it is important to note that this is also a very regulated area, with strict governance requirements. Setting up a charity is considerably more complex than setting up, for example, a company limited by guarantee without charitable status.

To become a charity:

- a governing document needs to be drawn up, which ensures that the purposes of the trust or company are charitable and benefit the public (model documentation is available on the Charity Commission website). The precise model documentation will depend upon whether a simple trust is to be formed or a charitable company
- a Charity Commission application form, with declaration completed by trustees/directors, needs to be completed, including any supporting documentation.

It is anticipated that from 2010 it will be possible to set up a charitable incorporated organisation. This corporate structure is designed specifically for charities. It will permit charities to be incorporated but without being registered with and regulated by Companies House as well as the Charity Commission.

A charity has preferential tax status: it is exempt from Corporation Tax on its primary purpose activities and it can access certain VAT and Stamp Duty Land Tax reliefs.
Community interest company

Community interest companies (CICs) were primarily designed for social enterprises which wish to use their profits and assets for public good. It follows that surpluses need to be reinvested in the business or the community rather than benefiting members.

CICs combine the features of the conventional company form with those normally associated with a charitable organisation. The main features include: the requirement to satisfy a ‘community interest’ test; profit distribution is not permitted (the model does allow a dividend to be paid to investors, but the rate is tightly controlled); there is a cap on investment returns; limits on investor control and stakeholder influence; and a lock on assets to ensure they are held for community benefit if the company is wound up. This means that the assets and profits must be retained within the CIC and used solely for community benefit, or transferred to another organisation that itself has an asset lock or similar restrictions.

1. Set-up
1.1 To register as a CIC you must register as either a company limited by shares or a company limited by guarantee.
1.2 When registering the CIC with Companies House, you will need to provide additional documents, including a community interest statement describing your social purpose. The CIC Regulator will approve your application if your statement passes the community interest test – i.e. the business activities you intend to undertake will be carried out for the benefit of the community or a section of it.

2. Governance
• The requirements applicable to a limited company are also applicable to CICs.
• As with a limited company, there are two governing documents – Memorandum of Association and Articles of Association.
• Additionally, the community interest you wish to benefit must be identified, as must the activities to be carried out and how they will benefit the community.
• CICs are subject to dual regulation – by Companies House and the CIC Regulator (but are perceived to have more flexibility and less regulation than a charity).
• CICs cannot qualify for charitable status (although a charity, with approval from the Charity Commission, may convert to a CIC).
• In addition to an annual report, annual accounts and a directors report, there is a duty to produce an annual community interest company report detailing salaries, assets transferred and a description of how the CIC has benefited the community.
• CICs must also publish an annual social report explaining how it is serving a specified community of interest, or locality, to the CIC Regulator.

3. Management and finance
• CICs have a two-tier management structure, as per a company.
• It is possible for CICs to obtain finance through grants and loans but awareness of CICs amongst lenders is still low, so this may be difficult.
• Directors’ remuneration packages may be subject to scrutiny by the CIC Regulator.
• There are no special tax reliefs attaching to a CIC, and an assessment of the Corporation Tax, VAT and Stamp Duty Land Tax liabilities will need to be made.

Source: This is an amalgamation of information obtained from Business Link (www.businesslink.gov.uk), the FTN working group on business models and Beachcroft.

Principles of a community interest company
• As a separate legal entity, the company is able to borrow money, enter into contracts and hold its own assets.
• Two-tier management and governance system is required – directors carry out the day-to-day running of the company and members need to approve certain key steps, for example changing governing documents and winding-up of the company.
• ‘Asset lock’ – assets, cash and property can only be used for the stated community interest purpose.
• Community interest test – organisations must demonstrate that a reasonable person would perceive their activities as being in the interests of the community.
• Dividend cap – payments from profits are restricted, so there is a maximum amount that can be paid on shares regardless of performance; therefore, private investors would only receive nominal returns on investment.
Limited liability partnership

A limited liability partnership ( LLP ) is a hybrid organisation, similar to an ordinary partnership in that a number of individuals or organisations share in the risks, costs, responsibilities and profits of the business; and the LLP is transparent for tax purposes, but similar to a company in that it is a corporate body the members of which enjoy limited liability (and requiring registration at Companies House). LLPs have the same audit requirements as a company.

Liability is limited to the amount of money members have invested in the business and to any personal guarantees they have given to raise finance.

1. Set-up
   • There is no restriction on the number of members, but LLPs require a minimum of two designated members.
   • If the LLP reduces in number and there are fewer than two designated members, then every member is deemed to be a designated member.
   • LLPs must register at Companies House.
   • It is customary to draw up a written agreement between the members.

2. Management and raising finance
   • Usually, the members manage the business, but can delegate responsibilities to employees.
   • Finance comes from members, borrowing or retained profits.

3. Records and accounts
   • The LLP itself and each individual member must make annual self-assessment returns to HM Revenue & Customs (HMRC).
   • All LLPs must file accounts with Companies House.
   • An annual return needs to be completed and returned to Companies House with the appropriate fee.

4. Profits
   • Each member takes an equal share of the profits, unless the members’ agreement specifies otherwise.

5. Tax
   • The partners of a partnership are taxed on their share of profits and pay tax according to their status.
   • An individual will therefore pay income tax and NICs, and a limited company member will pay Corporation Tax.
   • The profits of a member of an LLP are taxable as profits of a trade, profession or vocation and members remain self-employed.
   • If the partner has tax-exempt status, then the use of an LLP may enable profits from that activity to be exempt from Corporation Tax.
   • There are no special VAT rules attaching to an LLP.

Source: This is an amalgamation of information obtained from Business Link (www.businesslink.gov.uk); the FTN working group on business models and Beachcroft.
Case study
Guy's and St Thomas’ NHS Foundation Trust:
SSAFA GSTT Care LLP
GSTS Pathology LLP
Limited liability partnerships

SSAFA GSTT Care LLP is a limited liability partnership established on behalf of the trust and the Soldiers, Sailors and Airforce Families Association (SSAFA). GSTS Pathology LLP is a limited liability partnership established on behalf of the trust and Serco PLC.

Rationale
The trust has an unusually long and successful history of income generation through the provision of health and health-related services to third parties. This history pre-dated its establishment as an NHS foundation trust by almost a decade.

As a result, the trust is well equipped to seek, negotiate and establish commercial ventures and also has a good understanding of the legal and financial issues involved. For the reasons set out elsewhere in this guide, the trust took a decision in principle that new commercial ventures would be operated through an appropriate corporate structure where this brought benefits. A group structure was established as described in the governance section below.

The LLP model was evaluated as the appropriate vehicle for a joint venture in both cases.

Goods and services supplied
SSAFA GSTT Care LLP provides primary and community health services to British forces and their families stationed in Germany under contract to the Ministry of Defence.

GSTS Pathology LLP provides pathology services to the trust under contract and also provides services to other clients.

Governance
After careful consideration of the potential benefits and disadvantages, the trust decided that (post foundation trust) commercial ventures would be operated though a group company structure, and a holding company (Guy's and St Thomas' Enterprises Limited) was established as an initial measure.

Two second-level companies were established – GTI Forces Healthcare Limited and Pathology Services Limited – which are each wholly owned by Guy's and St Thomas' Enterprises Limited. The directors of Guy’s and St Thomas’ Enterprises Limited are main board directors of the trust. The directors of the two next-level companies are (non-trust board) directors and other senior and clinical managers of the trust.

GTI Forces Healthcare Limited and Pathology Services Limited each act as member of the two respective LLPs to the extent agreed between the trust and its two joint venture partners.

The trust board's Finance and investment committee closely monitors the trust's commercial ventures.

Challenges
The process of scoping and specifying the services, of negotiating and concluding agreement with the trust's partners and clients, of taking advice and determining the exact form of the legal structures, and bringing each stage of this to the board (with thorough due diligence reports) was intensive and time consuming.

Risks and benefits
The due diligence was broad in scope and focused on the principle risks of legal and financial liability to ensure that the trust would at no time be compromised in delivering its mandatory services and other obligations. The principal benefits were seen to be managerial flexibility and financial efficiency.

Recommendations
To ensure that proper due diligence and full consideration preceded every board decision, workloads were heavy and timetables were tight. This was complicated further by the inevitably unpredictable nature of the outcome of negotiations with third parties. For that reason, early steps to establish a detailed project plan and a fully resourced and supported project team are essential.

Continued overleaf
Illustration of the Guy’s and St Thomas’ NHS Foundation Trust business models

This flowchart illustrates the business models established by Guy’s and St Thomas’ NHS Foundation Trust and how they interrelate.

Guy’s and St Thomas’ NHS Foundation Trust

Wholly owns

GSTT Enterprises Ltd (Holding Company)

Wholly owns

GTI Forces Healthcare Limited
Pathology Services Limited

Which participates in
 Which participates in

Partner: SSAFA
SSAFA GSTT Care LLP

Partner: SERCO
GSTS Pathology LLP

Provides services to MOD
Provides services to GSTT/third parties
Industrial and provident society

Industrial and provident societies (IPS) are ‘mutual’ societies – organisations whose members come together for a shared purpose. They are democratically controlled and members must typically join to access their benefits. Mutuals also include friendly societies, building societies and credit unions.

There are two principal legal forms of IPS – an ‘industrial and provident society for the benefit of the community’ (a ‘BenCom’), and a ‘bona fide cooperative’.

1. Governance
   • IPSs are regulated by the Mutual Societies Registration division of the Financial Services Authority (FSA), to which any application for registration must be submitted.
   • Participants must agree to be bound by a set of ‘rules’ – model rules are produced by various bodies, such as Cooperatives UK, and use of these rules can reduce registration fees. One of the distinctive features of IPSs is that, since changes to the rules need to be approved by the FSA, it is more difficult to amend their rules.
   • IPSs must file an annual return plus revenue account and balance sheet and an auditor’s report (unless their turnover is less than £5.6m and they have a balance sheet value of less than £2.8m).

2. Management and finance
   • The set up of an IPS requires at least three individuals or two other IPSs.

BenComs reinvest all their profits for the benefit of their community, as defined in their constitution, rather than for the benefit of their members. The bona fide cooperatives are formed for the benefit of their members rather than society at large. They can distribute profits to members, which BenComs are unable to do, in relation to the volume of trade.

IPSs are governed primarily by the Industrial and Provident Societies Act 1965–2002 and the Cooperatives Community Benefit Societies Act 2003.

Source: This is an amalgamation of information obtained from Business Link (www.businesslink.gov.uk), the FTN working group on business models and Beachcroft.

Principles of an industrial and provident society

• It has the ability to issue shares to the public to raise capital.
• It is possible for a company to convert to an IPS and vice-versa.
• Rules in relation to the financial promotion of investment are more relaxed for an IPS (see Financial Services and Markets Act 2000).
• Funders are less familiar with IPSs, so borrowing may prove difficult.
• The Companies Acts and Part II of the Insolvency Act do not apply, which can cause difficulties.
• BenComs may apply an asset lock, preventing assets or cash being distributed.
Cooperatives can be defined as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. Basically, a cooperative is a business owned and controlled equally by the people who use its services or who work at it. Membership is open, meaning that anyone who satisfies certain non-discriminatory conditions may join. Economic benefits are distributed proportionally according to each member's level of participation in the cooperative, for instance by a dividend on sales or purchases, rather than divided according to capital invested.

A defining point of a cooperative is that the members have a close association with the enterprise as producers or consumers of its products or services, or as its employees.

**Principles of a cooperative**

- Their focus is on working for and developing the community.
- They are autonomous and controlled by members who have equal voting rights irrespective of shareholding.
- Membership is voluntary and open to all individuals who use the services of the cooperative and are willing to accept the responsibilities of membership.
- Members participate by contributing capital and allocating surplus for reinvestment.
- They have a focus on education, training and provision of information to members and the wider public.
Franchise

Although it is not a corporate vehicle, some detail on franchise has been included here as it is a business model that foundation trusts may wish to consider using.

Buying a franchise is a way of taking advantage of the success of an established business. As the ‘franchisee’, you buy a licence to use the name, products, services, and management support systems of the ‘franchiser’ organisation (alternatively, trusts could consider selling their own brand to others). This licence normally covers a particular geographical area and runs for a limited time, after which it should be renewable if you meet the terms of the franchise agreement.

The way a franchise is paid for may be through an initial fee, ongoing management fees, a percentage of turnover, purchases of goods from the franchiser, or a combination of these.

A franchise business can take different legal forms. Whatever the structure, the franchisee’s freedom to manage the business is limited by the terms of the franchise agreement.

1. Set-up
   • This depends on the business structure that the franchisee chooses for their business - usually a sole trader, partnership or limited company.

2. Management and raising finance
   • Franchise agreements usually set out how the franchised business should be run, although they may allow some flexibility. Franchisers usually provide management help and training to franchisees.
   • Normally, the franchisee must find the money needed to start up the business, but franchisers may sometimes loan some of this.

3. Records and accounts
   • The relevant requirements depend on the business structure that the franchisee chooses for their business. As well as the usual legal requirements, franchisers often expect franchisees to show them detailed financial records.

4. Profits
   • Franchisees often pay a percentage of their turnover to the franchiser, which brings down the overall profits.

4. Tax and National Insurance
   • These depend on the business structure that the franchisee chooses for their business. If an NHS foundation trust enters into a franchise arrangement directly, then an assessment will need to be made as to whether the income earned would be subject to Corporation Tax. VAT will need to be considered.

5. Liability
   • This depends on the business structure that the franchisee chooses for their business.

Source: This is an amalgamation of information obtained from Business Link (www.businesslink.gov.uk), the FTN working group on business models and Beachcroft.
Joint ventures

A joint venture involves two or more businesses or individuals combining resources and and/or expertise to achieve a particular goal and share the risks and rewards.

Setting up a joint venture can represent a major change. However beneficial it may be to your potential for growth, it needs to fit with the trust’s overall business strategy, and it is important to review the business strategy before committing to a joint venture as this should help define expectations. It is important to distinguish a joint venture from a partnership. In the latter, both parties are responsible for all liabilities of the business, whereas in a joint venture that is not normally the case.

Before starting a joint venture, the parties involved need to understand what they each want from the relationship. Trusts may want to access a larger partner’s resources, specialist employees or financial resources. They might benefit from working with a more flexible, innovative partner or from access to new products or intellectual property. Whatever the goal, the aims and objectives must be clarified and agreed at an early stage and the arrangement needs to be fair to both parties.

Any deal should:

- recognise what you each contribute, plus the agreed business strategy and agreed objectives
- ensure that you both understand what the agreement is expected to achieve
- set realistic expectations and allow success to be measured.

Prior to entering a joint venture, trusts should carry out a SWOT analysis to discover whether the two businesses are a good fit and to ensure that the joint venture partner complements the trust’s strengths and weaknesses.

Types of joint venture

How a joint venture is set up depends on what a trust is trying to achieve.

One option is to agree to cooperate with another business in a limited and specific way. For example, a trust with a new product might want to sell it through a larger company’s distribution network. The two partners could agree a contract setting out the terms and conditions of how this would work. However, it should be noted that such an arrangement need not be a joint venture, even of the contractual kind: a distribution agreement could work in a similar way.

Alternatively, trusts might want to set up a separate joint venture business, possibly a new company. A joint venture company (for example, a private company limited by shares) can be a very flexible option. The partners each own shares in the company and agree how it should be managed.

To help decide what form of joint venture is most appropriate, trusts should consider what might potentially happen if the venture is not successful and how much risk the trust is prepared to accept.

The way joint ventures are set up affects how they are run and how any profits are shared and taxed. It also affects liability if the venture goes wrong. A clear legal agreement setting out how the joint venture will work and how any income will be shared is necessary.

Further information on choosing the right joint venture partner, creating joint venture agreements and making a joint venture relationship work, including checklists, is available at www.nhsconfed.org/ftn
Case study
Sheffield Teaching Hospitals NHS Foundation Trust and Burkert
A 50/50 joint venture

Sheffield Teaching Hospitals NHS Foundation Trust is entering into a 50/50 joint venture between the teaching hospital and Burkert, a manufacturing company, in order to jointly develop and market a range of clinical liquid waste disposal systems.

This new technology will improve efficiency, reduce costs and increase the environmental sustainability of clinical operations.

Background
The trust came up with the original innovation to satisfy a clinical problem and developed a working prototype. Key components for the prototype were supplied by Burkert, who also provided significant technical assistance during the original prototype build and offered to develop a commercial prototype for the trust to evaluate. This eventually led to a joint venture agreement being proposed between the trust and Burkert in order to develop and market the new idea.

Rationale and objectives for establishing the company
The normal commercial arrangements that the trust has engaged with in the past, as advised by Medipex, the Yorkshire and the Humber NHS Innovation Hub, would involve licensing of the technology to a commercial partner or, if the technology is unique but required significant investment, then a spin-out company would be the preferred model.

However, in this case the rationale for a joint venture rather than licence or spin-out was two-fold. Firstly, Burkert is not a recognised medical technology company (it is a supplier of components to the medical industry). It would be much harder for a relatively unknown company to start marketing a new medical product. All parties felt that the prototype had been successfully developed as a cooperative effort between the clinical engineering department of the trust and the product development team within Burkert, and in the spirit of cooperation a joint venture was agreed to best represent the roles and responsibilities each party was able to contribute towards the successful marketing of the product.

Secondly, additional enhancements and new products are envisaged covering different clinical applications which would be best handled under this cooperative type of arrangement.

Services and goods supplied
Under the joint venture agreement, Burkert will undertake manufacture, marketing, sales and maintenance of a range of environmentally friendly clinical fluid waste disposal systems. The first product will be used in urology theatre and is designed to take fluids (either saline or glycine) contaminated with small quantities of human blood and safely dispose of them to the foul-water drain.

Under the joint venture arrangement, the trust is responsible for clinical input, environmental and regulatory affairs expertise, the ongoing development of the commercial unit, and to explore other clinical applications. The trust also agreed to act as a reference site and make introductions to other trusts who might be potential customers. Burkert will be responsible for manufacture, sales and marketing and servicing of the units. First sales are anticipated during 2009.

Governance arrangements
A project management group has been set up consisting of, from the trust, the business development director, head of medical physics, lead clinical scientist, workshop superintendent; from Burkert, the business development manager; and the CEO of Medipex. The group will oversee the development, with meetings as and when required.

Continued overleaf
Heads of terms between the parties were developed by Medipex, the trust’s innovation advisors, and agreed in December 2008. The details were agreed in further discussions during the first quarter of 2009. This arrangement recognises the relative strengths that both partners bring to the joint venture. For example, the manufacturing skills, sales and service provided by Burkert are complemented by the clinical and regulatory expertise within the trust. The joint venture model encapsulates this arrangement by providing a legal framework to jointly undertake commercial development and marketing of the product and splits the rewards between the partners.

**Challenges**

An initial challenge was identifying a suitable commercial partner prepared to get involved in prototype development at its own cost and willing to work with a large public body (the trust) to commercially exploit the new product. Another challenge was identifying a suitable commercial arrangement that was satisfactory to both partners.

A third challenge was quantifying the risks and liabilities to the trust associated with this type of arrangement, where it cost-shares, risk-shares and hence shares in the rewards.

**Risks**

Environmental risk was assessed to ensure that the product complies with current waste disposal requirements and that the trust has the necessary waste disposal permits.

The trust also undertook a technical/clinical risk assessment to ensure no patients were likely to be put at risk due to the intended operation of the unit and also to ensure that theatre operating staff are not required to handle or dispose of any clinical waste or containers filled with clinical waste. In its initial operation, the unit is not a medical device.

The trust, as a partner in the joint venture, will also need to evaluate any commercial risk associated with entering into a trading relationship with Burkert.

Product liability insurance will be taken out by Burkert, who will be responsible for sales, marketing and after-sales care of the products.

**Benefits**

The major benefits of this type of arrangement rather than licensing are that each partner agrees to undertake agreed roles and responsibilities according to their capabilities and skills.

The trust benefits from having access to a manufacturer with design, fluid handling, mechanical/electronic design and manufacturing skills plus a UK sales team. Burkert is the UK subsidiary of a multinational, German-owned group, with other subsidiaries in the EU and USA, and hence has the potential for worldwide sales and marketing should the product prove successful. By entering into a joint venture the trust will have a more direct say in all aspects of marketing, which should help to build its profile and lead to a commercial return on its investment.

**Professional advisors used**

The trust has made use of Medipex, which has experienced business development staff with a mix of legal, intellectual property and finance backgrounds.

The main issues were around ensuring the trust got the best advice on which business model to adopt and how to structure the agreement provided by Medipex. Clarification of the environmental and regulatory requirements was provided by inhouse trust expertise.

The ‘normal’ avenues of a licence deal or spin-out company would not have been applicable in this case and/or would not have maximised the commercial potential of this particular innovation.

**Recommendations, hints and tips**

- Ensure that the trust has access to expert commercial advice, and that the board is risk-aware, but not risk-averse, in taking innovations of this kind forward. In Sheffield Teaching Hospitals NHS Foundation Trust’s case it was important to discuss ideas with the local NHS innovation hub which had the necessary expertise to provide commercial advice and, if appropriate, identify potential commercial partners.
So, which business model should you choose?

Foundation trusts are clearly thinking about how they can maximise their freedoms to optimise their business outcomes and deliver wider benefits to their patients, staff and the trust.

Foundation trusts will need to think carefully about what it is they want to achieve before deciding on an appropriate business model. This publication addresses some of the fundamental questions concerned with business formation and gives an overview of the benefits, risks and key considerations, but it is important that trusts carry out a robust options appraisal and risk assessment and seek the necessary legal, financial and other advice before embarking upon any particular model.

Establishing new business models can be time consuming, expensive and complex, so foundation trusts need to ensure that they are doing it for the right reasons. The case studies demonstrate that if business models are established for the right reasons, they can help deliver wide-ranging benefits. Foundation trusts are on the first steps of the journey to using business models; this publication shares some of those and supports foundation trusts who are beginning to explore how new business model can help deliver strategic objectives.
References and further information

The following documents, designed to complement this publication, are available on the FTN website at www.nhsconfed.org/ftn:

• Setting up a joint venture
• Choosing the right joint venture partner
• Fundamental questions and possible selection of organisations tool
• Foundation trust business models options table
• Engaging advisors.

The following documents are available at www.monitor-nhsft.gov.uk/home/our-publications:

• Risk evaluation for investment decisions (REID) guidance
• Applying for a merger involving an NHS foundation trust
• Compliance Framework 2009/10


Social enterprises and community service provision. FTN briefing, March 2009.
www.nhsconfed.org/ftn

Business Link
www.businesslink.gov.uk

OGC procurement
www.ogc.gov.uk/procurement.asp

Companies House
www.companieshouse.gov.uk

The Charity Commission
www.charity-commission.gov.uk
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