



Registration and Regulation of Social Enterprises

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Overview

- What is a social enterprise?
- Legal forms
- Registered societies
 - Co-operative societies
 - Community benefit societies

What is a social enterprise?

Defined by the purpose of a business, not its legal form.

"A business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners".

Legal forms

- Unincorporated entity
- Company limited by shares
- Company limited by guarantee
- Community interest company
- Registered societies
 - Co-operative societies
 - Community benefit societies

Registered societies

Co-operative and Community Benefit Societies Act 2014 (CCBS 2014) replaced the Industrial and Provident Societies Act 1965 on 1 August 2014

The CCBS 2014 replaced the 'industrial and provident society' legal form with two new legal forms:

- Co-operative society
- Community benefit society

Registration

- Financial Conduct Authority
- Separate legal entity
- The society must:
 - Carry on an industry, business or trade
 - Satisfy the conditions for either type
 - Have at least three members or two registered society members
 - Rules contain provisions required by CCBS 2014
 - Registered office in Great Britain or the Channel Islands

Registration: Co-operative societies

- Community of interest
- The business will be run for the mutual benefit of the members
- Control lies with all members
- Interest on share and loan capital – must be reasonable
- Profits must be distributed amongst members
- No restriction on membership

Registration: Community benefit societies

- Must be run primarily for the benefit of people who are not members of the society
- Interest on share and loan capital – must be reasonable
- Profits and assets must not be distributed to members
- Must not allow its assets to be distributed to members on dissolution

Registration: Application

- Application form submitted to FCA
- Fee - between £40 and £950
- Application form must state:
 - Full name of the society
 - Details of business, trade or industry
 - Funding
 - Financial year end date
 - The type of society and justification

Registration: Application – specific details

- Co-operative society:
 - how the members will benefit
 - whether you have to be a member to obtain benefit
 - how members will participate in primary business
 - how members will democratically control the society
 - how any surplus or profit will be applied
- Community benefit society:
 - the community that will benefit
 - how the community will benefit
 - how the surplus/profit will be applied
 - whether the society has charitable objects

Registration: Application – name

- FCA approval - flexible
- Must end in Limited or the Welsh equivalent
- FCA guidance - should reflect the character of the society:
 - The business it operates
 - The people it serves
 - The members it permits
 - Its geographical locations

Regulation: Continuing obligations

- Books of accounts
- Prepare and file annual accounts
- Annual return
- Register of members
- Must notify the FCA of any changes to the society
- Charges register

Regulation: The society's rules

- The characteristics, powers and working methods of a society are set out in its rules – public document
- The registered rules are a binding contract between the society and all its members
- Section 14 of the CCBS 2014 sets out the specific requirements for a society's rules
- A society can add further rules of its own – has an effect on registration cost

Regulation: Members

- At least three members (or two if made up of other registered societies)
- Members have ultimate control over the rules and the appointment and removal of directors
- Co-operative society – the accountability of the directors to the members is direct and clear
- Community benefit society - fundamental obligation of the society, acting through its board of directors, is to trade for the benefit of the community and not of its members

Regulation: Directors

- Elected by members under the society rules
- Range of duties based on the same underlying principles as those of company directors – codified duties under the Companies Act 2006 do not apply
- Ultimate duty is to act in the best interests of the society
- The duty of skill and care
- Important that powers and duties are clear
- Possible civil or criminal legal sanctions

Regulation: Share Capital

- Nominal value - do not give the holder a share in the underlying value of the society
- No right for holders to receive any return on their shares
- Power of members is generally equal (one member one vote) and not determined by the number of shares held
- Society shares can be forfeited or cancelled without any provision being made for the value of the share
- Society shares can be withdrawn at will by the shareholder at any time

Regulation: Dissolution and winding up

- Insolvency Act 1986 (e.g. liquidation, administration or a company voluntary arrangement (CVA))
- Instrument of dissolution under the CCBS 2014:
 - Less expensive
 - Requires approval of three quarters of members
 - Instrument of dissolution, resolution and statutory declaration must be filed with FCA

Regulation: Dissolution and winding up

Rights and obligations of members on a winding up

- Contribution if insolvent and shares are unpaid
- If any assets remain in the society:
 - Co-operative society – distributed amongst its members in accordance with the rules
 - Community benefit society – no assets can be distributed to its members on dissolution. The assets should be transferred to some other body with similar objects



Thank you