

P5 Study Programme Unit 3: Legal forms

Three good reasons why legal form should not be given too much importance:

- As a matter of the co-operative movement's **autonomy**, the definition of a co-operative is decided by the global co-operative movement, and not by legislators.
- Legal form only extends across a given **jurisdiction**, eg. “UK”, “England & Wales”, Brazil, Japan, etc. Eg. “Community Benefit Society” might have a clear legal definition in the UK, but there may be no such legal category in say the USA. Or, it might be defined in law in some other country, but that definition could differ in some of the details. And so on...
- In the UK at least, a co-operative constitution can be built into (or built onto) a company's articles of association. For example, the “basic” articles of a company mention directors and shareholders, but not “members”. However, clauses about members can be added in. So we do have quite a flexible situation where a co-operative can be registered “literally” as a co-operative, but can instead be legally registered as a company whose articles are amended in such a way as to make it a co-operative in practice. Other countries may have similar situations, but maybe others again might say “if you want to call yourself a co-operative, you have to be a co-operative in law”.

What do “incorporated” and “unincorporated” mean?

Incorporation is the act of making an entity (organisation) into a “legal body”, thereby conferring many rights and duties of a person onto the entity, eg. Right to buy, sell, and hold property, goods and to contract to hire labour, as well as be held liable for any of the consequences. Incorporation implies registration (see below), and normally the reverse, but not always – UK charities above a certain threshold must register with the Charities Commission whether incorporated or not.

Where an entity is unincorporated, its existence is not recognised by authorities, eg. It doesn't have to keep accounts or pay tax, and all of the persons involved in the entity share any losses or profits, either in equal shares or in shares according to a partnership agreement which has been signed. These persons then declare any loss or profit as part of their personal taxation, just as if they were a sole trader.

Example: 5 persons agree to form a co-operative. They decide not to incorporate the co-op, and therefore they don't have to register. They agree to do all investment, profit and losses in equal shares – 1 fifth each. Each person is responsible for including all these financial aspects in their own personal tax returns. They choose a trading name and rent a shop premises. They have to be joint tenants as persons. They are liable as persons, so the persons can get sued for an injury in the shop, and if the co-op goes bust, they are responsible for the debts.

When the co-op was formed, the persons agreed on a constitution which has all of the norms of co-ops, and therefore it is a bona fide co-op even though it is not registered anywhere and does not have a registration number.

Registrar/Regulator

A registrar is an entity which is responsible for keeping an up-to-date register of a given category of enterprise. Eg. Companies House is the registrar of entities which are legally constituted as companies. Being a registrar but not a regulator, it holds articles of association, annual accounts and records of the identity of directors. It does not scrutinize or verify any of these.

A regulator may (quite likely) also be a registrar. Eg. The Financial Conduct Authority registers mutual societies on its Mutuals Register, and it also does some regulation, principally by scrutinizing new and amended constitutions and rule books for conformance to basic regulations.

Regulation can get complex, eg. A financial mutual would be regulated as above by the FCA, but would be regulated in its “functionality” by the Prudential Regulation Authority (PRA), the regulator for banks, building societies, insurers etc.

Question: what body registers, and what body regulates, a mutual society in Scotland?

CICs

CICs are regulated by the CICs Regulator, which is housed by Companies House (registrar, see above). The regulator only scrutinizes 2 things: (1) are they satisfied that the CIC genuinely has community purpose(s); (2) does it have asset lock(s) to other CICs and/or entities with community purpose.

Co-ops v. community benefit societies.

Difference said to be that a co-op is there to benefit its members but a bencom – whilst also having members - is there to benefit a community. Is this really a clear distinction? A better way to classify mutuals would be co-operative vs. “non-co-operative mutual”.

Mutuals register – not changed retrospectively.

The Co-operatives and Community Benefit Societies Act 2014 changed the range of types of mutuals (that had all been covered by the term “Industrial & Provident Society”). However, the registrar has not applied this change retrospectively (which would require intellectual work to be applied in each case). Only new registrations and constitutional/rule book amendments submitted after the act came into force trigger the the new classification (co-op or bencom). A mutual which existed before the act came into force, and which has not submitted an amendment, remains classified on the register as previously, eg. An IPS registered before 2014 and with no constitutional amendments or rule changes since then, is still today registered as an IPS.