

## SBSM Legal, Regulatory, and Fiscal Framework

# United Kingdom

## Table of Contents

1. Which is the legal framework for social enterprises in your country? .....	3
2. How social enterprises are defined according to the country's legal framework?3	
3. Which are the main types of social enterprises that exist in your country? .....	4
4. What is the process of registering a social enterprise in your country?.....	5
5. How social enterprises are treated under tax law in your country? Are there any tax incentives for social enterprises? If yes, which?.....	7
6. Procurement: Any special provision for social enterprises? Please describe.....	7
7. Links and References .....	8

## **1. Which is the legal framework for social enterprises in your country?**

The Labour government of the 1990s referred to the *Big Society*, a vision of community where action and power shifts from the state towards individuals and organisations. The organisations that grew to meet this challenge were referred to as the Third Sector (hence the title of the project, EU Sector 3). The Third Sector refers to and includes social businesses, social enterprises, community interest companies (CICs), charities and NGOs (Non Government Organisations) and what distinguishes them all is that profit does not go back to shareholders but are invested into community projects. These organisations do not normally have shareholders and those that work for, or own a social business take a wage, but do not receive dividends in the same way as they would if they were a public limited company (PLC), an SME, for example. The exception is when a PLC changes to become a CIC.

Social businesses conform to the same regulations and laws of any company in the UK. Every law that relates to Health & Safety, Equal Opportunities, Employment Rights is universal. Social businesses also have to comply with fiscal regulations, although many will be exempt from Value Added Tax (VAT) because of level of turnover or because of their charitable status.

## **2. How social enterprises are defined according to the country's legal framework?**

The Third Sector refers to and includes social businesses, social enterprises, community interest companies, charities as well and what distinguishes them all is that profit does not go back to shareholders but are invested into community

projects. These organisations do not normally have shareholders (with the exception of some CICs) and those that work for, or own a social business take a wage, but do not receive dividends in the same way as they would if they were a public limited company, an SME, for example.

Social enterprises are defined by their constitution. They can be charities, companies limited by guarantee, Community Interest Companies (CICs) each of which will have strategic boards (directors or trustees) but not shareholders.

### **3. Which are the main types of social enterprises that exist in your country?**

There are now over 2,000,000 people working in the Third Sector in the UK, with increasing growth amongst the 18-24 age range. In 2012, 24% of SME employers thought of themselves to be social enterprises, or as businesses with social or environmental aims. However in reality a social enterprise must fit into the following categories: it should not pay more than 50% of profit or surplus to owners or shareholders; it should not generate more than 75% of income from grants or donations; it should not generate less than 25% of income from trading and it should have social and environmental objectives and reinvest for that purpose. In the UK, they are most likely to be limited companies (PLCs), social enterprises (CLGs) or CICs. It is noticeable that the average annual turnover for a social enterprise is approximately 33% to 50% lower than that for PLCs/ SMEs.

In Greater Manchester there are an estimated 14,592 organisations operating in the voluntary sector, this includes social enterprises in their various forms and also charities and co-operatives. They tend to work in key areas such as health and well-being (37%); community development (37%); education, training and research (28%) and sport and leisure (27%). In general they work with specific groups of beneficiaries such as children (24%), young people (24%) and women (26%).

#### **4. What is the process of registering a social enterprise in your country?**

To register a social enterprise (company limited by guarantee) or a CIC the founder has to register on-line or in writing with Companies House. It is normally £15 to register a company on-line. Every company has to complete Articles of Association signed by each Director and a Memorandum of Association which explains the operations of the board and the legal framework of the company. Every company registered with Companies House will have a unique number and the names of the directors and the annual accounts are placed on-line within the public domain.

The community interest company, or CIC, is a relatively new regulatory regime that can only be applied to organisations that are registered as companies (whether limited by guarantee or by shares).

Essentially, CIC status offers a degree of regulation for social enterprises that is less stringent than that applying to charities, but still protects the CIC's assets in the hope that this will re-assure its founders and potential funders and supporters. CICs are regulated by the CIC Regulator, who is an officer within the UK's Companies House.

The key features of CIC status are:-

- CIC status is an overlay on one of the existing forms of limited company. An organisation registers as a company limited by guarantee, or as a company limited by shares (public or private) and – either simultaneously or at a later date – applies to the CIC Regulator for CIC status. (This is comparable to the present situation of charitable companies, which are regulated both by Companies House and the Charity Commission.)
- It is not possible for an organisation to be both a CIC and a charity, though a charity's subsidiary company may be registered as a CIC if it qualifies.
- A company must pass a “community interest test” to register as a CIC.

- The CIC is an “asset-locked” body: it may not give its income or assets away, to members or to others, except to another asset-locked body (usually either another CIC or a charity).
- CICs are subject to fewer rules than charities but do not at present have the financial benefits of charitable status, in terms of tax exemptions, rates relief and so on.
- As with charitable status, it is not possible to de-register. If a CIC is wound up its assets must go to another asset-locked body.
- A CIC which is a company limited by shares may pay dividends, but only up to prescribed limits.
- It is permissible for a CIC to pay its own directors (unlike a charity). Excessive salaries could, of course, be seen as a breach of the asset lock – a means of getting money intended for community benefit into the pockets of individuals. CICs are therefore required to “consider whether the particular level of remuneration paid to directors is justified in terms of the benefit to the community resulting from it”.
- Directors’ salaries, if any, must be published in the annual report, alongside information on any dividends and interest paid, and this information is available to the public through Companies House.

The Regulator has prescribed powers of enforcement that can be used if there are believed to be “matters of concern” and intervention in the affairs of a CIC is “necessary to maintain confidence in CICs”. These powers include removing directors and confiscating assets. Without any power of intervention, regulation would be effectively meaningless; but the Regulator stresses that these powers will only be used when really necessary and there has been little evidence as yet of the Regulator interfering in the affairs of CICs.

**5. How social enterprises are treated under tax law in your country? Are there any tax incentives for social enterprises? If yes, which?**

Employees of social businesses are taxed like any other worker in the UK. CICs, CLGs and charities cannot pay dividends to shareholders and therefore cannot pay Corporation Tax. Earnings of everyone involved in the social business sector are taxed according to normal rates of personal tax. As previously mentioned charities maybe exempt from Value Added Tax. Dividends for CIC shareholders maybe eligible for Corporation Tax if (1) their value exceeds £40,000 and (2) the CIC developed from a PLC.

**6. Procurement: Any special provision for social enterprises? Please describe.**

None -they are taxed and treated just like a business. There maybe some closed calls for funding programmes that are only available to social businesses but these are a small number. There are Trusts and Associations that may have grants for the social business sector. Normally they would compete for tenders and apply for grants without any advantage over government organisations or private companies.

## 7. Links and References

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

<https://www.gov.uk/set-up-a-social-enterprise>

[www.socialenterprise.org.uk/news/new-start-guide-for-building-social-entrepreneurs](http://www.socialenterprise.org.uk/news/new-start-guide-for-building-social-entrepreneurs)

<https://www.startupdonut.co.uk/set-up-a-business/setting-up-a-social-enterprise.pdf>

Ten Tips for Starting A Social Enterprise: Susan Aktemel. <http://www.convergechallenge.com>

What is a Social enterprise: Laura Smith. <http://www.convergechallenge.com>

A Guide to legal forms for Social Enterprise. Department for Business, Innovation & Skills. November 2011. [www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

State of Social Enterprise Report, 2015. Villeneuve-Smith, F & Temple, N (Social Enterprise UK)

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