

Legal Aspects of Hybrid Civil Society Organisations: The Study of Social Enterprise and Community Enterprise

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Abstract

Civil society organisations (CSOs) comprise various types of organisations, particularly traditional non-profits such as foundations, NGOs, associations and charities. However, these organisations are not financially healthy since they heavily rely on grants and donations. This results in traditional CSOs adopting some business methods to help generate income, as well as traditional for-profit enterprises pursuing social mission. These hybrid CSOs are generally understood as “entrepreneurial non-profits” and “social purpose for-profits”. Social enterprise and community enterprise are examples of the new types of organisations in the civil society sector. Thailand adopts two types of legislation to regulate as well as incentivise CSOs in the country, which are legal forms for foundation and association; and standalone laws for social enterprise and community enterprise. This paper aims to analyse these standalone laws, namely the Community Enterprise Promotion Act B.E. 2548 (2005) and the Social Enterprise Promotion Act B.E. 2562 (2019), highlighting their differences as well as similarities, and raising the question whether they help promote the civil society sector or make its promotion and regulation more complicated. The results showed that Thai CSOs were not sure whether they should define their venture as a social enterprise or community enterprise. Some of them never heard of a social enterprise but they were happy to register as one as long as they could get some government funding. The two Acts are thus explored in order to compare and contrast their legal definitions, incentives and governance. It is hoped that the answers will help shed some light on what they are and whether they truly benefit those involved in the civil society sector, particularly social and community entrepreneurs and the regulators in making future decisions.

Keywords: social enterprise, community enterprise, law

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Introduction

Thailand adopts two forms of legislation to regulate as well as incentivise civil society organisations (CSOs) and NGOs in the country, which are legal forms incorporated in the Civil and Commercial Code (CCC) for CSOs and NGOs such as foundation and association; and standalone laws such as those on community enterprise and social enterprise. This paper aims to analyse these standalone laws, namely the Community Enterprise Promotion Act B.E. 2548 (2005) and the Social Enterprise Promotion Act B.E. 2562 (2019), highlighting their differences as well as similarities, and raising the question whether they help promote the civil society sector or make its promotion and regulation more complicated. People are not sure whether they should define their venture as a community enterprise or social enterprise. Some of them never heard of a social enterprise but they were happy to register as one as long as they could get some government funding. The two Acts on community enterprise and social enterprise are thus explored in order to compare and contrast their legal definitions, incentives and governance. It is hoped that the answers will help shed some light on what they are and whether they truly benefit those involved in the civil society sector, particularly community and social entrepreneurs and the regulators in making future decisions.

Research Methodology

The study has adopted the qualitative research methods using empirical evidence from in-depth interviews and focus group discussions, both face-to-face and online during May-July 2024. There are around 60 participants in total. Questions are semi-structured and open-ended and framed in consideration of the practical implications of how they are involved with community enterprises and social enterprises. The purposive sampling method is used for selecting participants including: (a) community and social entrepreneurs; (b) the two main regulators, namely, the Secretariat Office of Community Enterprise Promotion Board (SCEB) and the Office of the Social Enterprise Promotion (OSEP); (c) civil society organizations; and (d) academia and other stakeholders. The paper uses the thematic analysis approach to analyze the data from the interviews.

Findings and Discussion

Concepts of Community Enterprise and Social Enterprise

Literature shows that both community enterprise (CE) and social enterprise (SE) are civil society organizations which are both part of the third sector. According to Pearce's (2003) Three Systems of the Economy diagram, community enterprises could be considered as the subset of social enterprises. Somerville and McElwee (2011) see community enterprise as representing a form of social enterprise. The EMES approach specifies "an explicit aim to benefit the community" as one of the defining characteristics of social enterprise, meaning "a sense of responsibility at the local level" (Defourny et al., 2014, p. 26). Studies on community enterprise as a specific field of research are rather limited whereas numerous works on social enterprise have been carried out in almost every part of the world, particularly in North America and Europe, since the late 1990s.

This paper hopes to find out whether community enterprise has its own specific concept or rather being part of social enterprise. This is because Thailand has enacted two separate laws on community enterprise and social enterprise, each of which has its own legal definition. This leads to considerable confusion among community and social entrepreneurs in Thailand

on how to run their enterprises. This affects the growth and success of both sectors. Better understanding of the concepts will help make the laws more effective in regulating as well as promoting the civil society sector as a whole.

The paper mainly relies upon the theoretical exploration of community enterprise by Somerville and McElwee (2011). To answer whether community enterprise and social enterprise are different from each other, they believe it is necessary to understand the social foundations of their ownership and control. In other words, it is to find what the social base of community enterprise and social enterprise is, or whether they need to have one. Before delving deeply into this issue, the term “enterprise” signifies the trading element of both community enterprise and social enterprise. According to the EMES approach to social enterprise definition (Defourny et al., 2014), there are four criteria for the economic and entrepreneurial dimensions, namely, (1) a continuous activity producing goods and/or selling services; (2) a high degree of autonomy; (3) a significant level of economic risk; and (4) a minimum amount of paid work. To put it simply, community enterprise and social enterprise both share this entrepreneurial characteristic. Thus, the paper will not focus on this issue.

According to Somerville and McElwee (2011), community enterprise has two types of social bases. First, it is known as “community co-operatives” which is based on a common ownership and is controlled by its members. The second type is called “community non-profits” which is based on charitable or social aims. They are generally governed by a board of trustees or directors, rather than members. This second social base seems to be similar to social enterprise in terms of wider social aims and objectives.

A community enterprise can now be characterized as an enterprise whose social foundation lies in a community of some kind. Community enterprises can also be classified as social enterprises insofar as they are controlled by their members and have social as well as economic aims. [...] Among community enterprises, one could also distinguish between ‘community co-operatives’, [...] where the emphasis is more on membership control, and what could be called ‘community non-profits’, where the focus is more on producing social benefits, particularly for the community. (Somerville & McElwee, 2011, p. 319)

Pearce’s (2003) categorization of community enterprises and social enterprises can help reflect on the explanation of community enterprise by Somerville and McElwee (2011). The terms “community”, “local”, “neighborhood”, “trust” or “worker or employee ownership” can represent the social foundations of community enterprise quite well. Also, it can be seen that Pearce considers a few organizations as being both community enterprise and social enterprise such as social firm, social co-operative and workers’ co-operative. However, literature shows that these organizations are widely known as social enterprise, rather than community enterprise. For example, Defourny and Nyssens (2017) introduce an international typology of social enterprise with four major models, namely, the entrepreneurial non-profit (ENP), the social cooperative (SC), the social business (SB), and the public-sector social enterprise (PSC). The social firm, social co-operative and workers’ co-operative can fit well with the SC and the SB models. Admitting to oversimplifying the definition of community enterprise, Pearce (2003) refers “the term [‘community enterprise’] to those with a definite local, geographical base and uses the term [‘social enterprise’] to include all those with a constituency which is not based on geography” (p. 29).

Table 1*Types of Community Enterprises and Social Enterprises*

COMMUNITY ENTERPRISES	SOCIAL ENTERPRISES
Common ownership company	Building society
Community-based housing association	Charity trading arm
Community benefit corporation	Consumer retail society
Community business	Credit union
Community co-operative	Fair trade company
Community credit union	Housing association
Community development corporation	Intermediate labour market company
Community Development Finance Initiative	Marketing co-operative
Community housing trust	Mutual co-operative society
Community interest company	Public interest company
Community trading organisation	Social business
Community trust	Social firm
Employee-ownership business	Workers' co-operative
Housing co-operative	
(Local) Development trust	
Local Exchange Trading Scheme	
Neighbourhood co-operative	
Neighbourhood enterprise	
Social co-operative	
Social firm	
Time bank	
Voluntary enterprise	
Workers' co-operative	
NEIGHBOURHOOD • LOCAL • DISTRICT	REGIONAL • NATIONAL • INTERNATIONAL

Source: Pearce, 2003, p. 29

An issue that needs to be considered in this connection involves the community interest company (CIC). CIC is actually a type of hybrid company form under the UK's Companies Act 2006, the Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Community Interest Company Regulations 2005. Despite its name, CIC is widely accepted as a legal form specially designed for social enterprise (Lim, 2023; Means & Yockey, 2018; Reiser & Dean, 2017). **Section 35(1)** of the Companies (Audit, Investigations and Community Enterprise) Act 2004 states that “A company satisfies the **community interest test** if a **reasonable person** might consider that its activities are being carried on for the **benefit of the community**”. This is a requirement for the CIC to demonstrate that its activities are being carried on for the benefit of the community throughout its operation (UK Community Interest Companies, 2024).

The CIC law prescribes “the benefit of the community” as the main purpose of the CIC. Even though the community interest test points towards the concept of community enterprise, the CIC Regulator explains that to determine whether a CIC's activities will benefit its community can be difficult. It is a test of motivation and not necessary that all of the activities are directly beneficial to the community. This should be considered in an overall picture and any wider community interest. In this sense, it reflects the concept of social enterprise.

But it is important that everything that a CIC does should in some sense benefit the community. For example, a CIC whose activities include manufacturing and selling a particular product does not have to show that that product benefits the community.

Although that might be one way in which it could satisfy the community interest test in relation to these activities. It could equally well satisfy the test by virtue of the fact that the profits from its sales are to be devoted to charitable or other community benefit purposes [...] However, a company will be disqualified from satisfying the community interest test if it engages in activities that a reasonable person might consider to benefit its members or employees without contributing towards any wider community benefit. (UK Office of the Regulator of Community Interest Companies, 2013, pp. 17–18)

Since community enterprise involves many different types of organizations, it is important to consider the participation of community members to understand the concept of community enterprise (Somerville & McElwee, 2011). For example, a type of community enterprise called “community-based enterprise” (CBE) expects all members and sections of the community to participate in a CBE. This is indeed very difficult in practice. They instead propose that community enterprise should involve various types of members and different sections of community to be able to portray the reality of community enterprises. But at the same time, if outsiders such as business experts or investors are allowed to be members of a community enterprise, there is a concern about the protection of community benefits since community enterprises need to serve not only their community, but also their enterprise.

Clearly, this is not just a matter of membership, whether of community or enterprise, but of what the members do, who or what they represent, and in what sense the community is the social base of the enterprise’s ownership and control. This means that the key (interlinked) issues are those of participation, representation and the mobilization of social capital within a community. (Somerville & McElwee, 2011, pp. 321–22)

The CIC law has a function called “statutory asset lock” which is designed to ensure that the assets of the CIC (including any profits) are used for the benefit of the community (UK Community Interest Companies, 2024). This legal clause is widely used in legal forms for non-profit organizations (e.g. foundation) and social enterprises (e.g. CIC and L3C). One requirement to prescribe the asset lock is for an enterprise to have a legal entity. Community enterprises in Thailand are not required (although encouraged) to set up a legal form. Members of the community can gather together to become a community enterprise. The community enterprise law of Thailand, which will be discussed in the next section, does not provide this asset lock function whereas it appears in the social enterprise law as it is required to adopt a legal entity.

There is no one right answer to how to involve members of community and members of community enterprise. It could range from a community enterprise having only members of the community, to non-community members being allowed to be involved. No matter what type of membership arrangement is adopted, the question that needs to be answered is whether it is for the benefits of the community. If it is, then it is simply a community enterprise. However, such a simple summary will not suffice for law which requires a certain degree of clarity. Designing a law based on an unclear spirit/objective of the law (or what the law wants to regulate) could affect its effectiveness. Therefore, to have two separate laws regulating community enterprise and social enterprise, it is still necessary to figure out what differentiates the two concepts. I agree with the conclusion of Somerville and McElwee (2011) that community enterprise is part of the wider social enterprise sector, but its distinctive social foundation is rooted in “place” and “members” of that place. These are the

two key characteristics of community enterprise that the community enterprise law needs to recognize. However, since community enterprise also embraces some characteristics of social enterprise, the law should also show such traits. The laws of community enterprise and social enterprise of Thailand will be analyzed in the next section.

Thailand's Community Enterprise Promotion Act B.E. 2548 (2005) and Social Enterprise Promotion Act B.E. 2562 (2019)

According to some results of the in-dept interviews and focus group discussions, most of the participants who were local entrepreneurs did not know the differences between community enterprise and social enterprise, and some of them had never heard of social enterprise. They knew about community enterprise because it was easy to set up and they could get some start-up funds. We might thus expect that they would be interested in becoming social entrepreneurs if the incentives were stronger than those provided by the community enterprise sector. However, they were actually worried about burdens arising from setting up a legal entity and tax. They thought that social objectives of social enterprise were mainly about making donations or organizing charitable events. The participants who were government agencies believed that community enterprises were not much different from SMEs; they were only being smaller in size and based in local communities whereas social enterprises were similar to charitable non-profit organizations due to their social purposes. The SME Development Bank said that the social objective of social enterprise required by law makes it a charitable organization which is barred from borrowing for commercial purposes. Social enterprises thus have to apply for personal or guarantor loans instead. Most community enterprises are not in any legal form and their members are generally agriculturists without regular income, so it is very difficult for them to borrow from commercial banks. In this section, the comparison of the two laws will be discussed in terms of their respective rationale, definition, and requirements.

Table 2

Rationale of Community Enterprise Promotion Act and Social Enterprise Promotion Act

Community Enterprise Promotion Act	Social Enterprise Promotion Act
Community economy is the basis of the development of the sufficiency economy. Thus, community enterprises should be promoted and incentivized to raise their competitiveness in both national and international markets, to strengthen their community economy, to generate local wisdom and revenue, and to be developed into SMEs.	Business with social mission such as those that aim to create jobs for disadvantaged people, to solve social or environmental problems, or to bring benefits to society should be promoted and incentivized. Office of the Social Enterprise Promotion (OSEP) should be established to assist in the promotion of social enterprise sector.

The rationale of the community enterprise law focuses on strengthening the community economy by helping community members generate income by running community business. This will help them rely on themselves rather than on government grants and support. The law also hopes that community enterprises could turn into SMEs. This supports the view that community enterprise is for-profit. The community benefit purpose clearly portrays the concept of community enterprise with everything circling around the "community". However, in practice, there are only a few community enterprises that can turn into SMEs and most community enterprises still heavily depend on the state support. One of the main reasons why community enterprises fail to survive is their lack of expertise in business and

law. The rationale of the social enterprise law clearly focuses on the social objective of the wider society. It is not limited to areas or members like that of community enterprise. A question has been raised whether helping members of communities in the underdeveloped areas can be considered a social objective. If it is, should such venture be registered as community enterprise or social enterprise?

Table 3*Definition of Community Enterprise and Social Enterprise*

Community Enterprise Promotion Act	Social Enterprise Promotion Act
“Community enterprise” means community business regarding producing goods and providing services, which are run by a group of community members. It can be set up with or without a legal form, whose aim is to generate income and be self-reliant.	“Social enterprise” means a company or registered partnership, i.e., legal entities being set up for production and distribution of goods and services, and having a social objective as its main goal.

The two laws clearly show that both community enterprise and social enterprise have an entrepreneurial element as their defining characteristic; that is, they are required to generate income from selling goods and services. The community enterprise law specifies that there must be community members taking part in it whereas anybody can run a social enterprise. A significant difference between these two enterprises is that social enterprise must adopt a legal entity such as company or partnership. However, there are some social enterprises that are set up as foundation or non-profit company. As a foundation, a social enterprise will be restricted to do a wide range of business whereas as a non-profit company it is not allowed to pay any dividends to shareholders, making it difficult to raise equity finance. This is in conflict with both the concept of social enterprise and the legal definition. For a community enterprise, even though the law does not require it to have a legal entity, without a proper legal form for business, it will be very difficult to grow into SMEs or compete in international markets. For example, a company form provides some protection against risks, particularly the limited liability and separate legal personality.

Table 4*Statutory Requirements of Community Enterprise and Social Enterprise*

Community Enterprise Promotion Act	Social Enterprise Promotion Act
<ul style="list-style-type: none"> - To have a group of at least 7 members from the same community areas. These members do not include family members or members under the same house registration. - To run a business relating to production and provision of goods and services. - To generate income, be self-reliant and for the benefit of the community members. 	<ul style="list-style-type: none"> - To have social objectives of employing disadvantaged people, solving community, social or environmental problems or other social benefits. - To generate at least 50% of income from selling goods or services. Non-profit social enterprise can generate business income of less than 50%. - To reinvest at least 70% of profit in social enterprise. - Dividend payment to be capped at 30%. - To have good governance. - To have an asset lock.

It is obvious that there are more statutory requirements for social enterprises than for community enterprises. It is no wonder why the number of social enterprises is much smaller

with currently only around 200 social enterprises, comparing to over 15,000 community enterprises. Community enterprises are only required to have a group of 7 community members and business ideas for the benefit of the community; then they can register as community enterprises. However, because the social enterprise law provides several incentives such as tax benefits, low-interest loans, start-up funds, procurement privileges, among others, the requirements will be much stricter to ensure that they maintain their social objectives. This is very similar to the UK's CIC law, particularly the community interest test, dividend cap and asset lock. Even though these rules could be burdensome for some people, it does not mean they are bad and should be gotten rid of.

Conclusion

Even though Thailand's Community Enterprise Promotion Act and Social Enterprise Promotion Act can portray the concepts of community enterprise and social enterprise quite well, implementing them is not that easy. Community enterprises can be easily set up but they tend to rely too much on government support. It is difficult for them to grow into SMEs and many have to terminate their operations due to lack of funding and expertise. Business professionals should be allowed to help manage community enterprises, but the law should make sure that community benefit will be protected such as prescribing an asset lock provision. The law of social enterprise prescribes several legal provisions to ensure that the social objective is maintained, but they become burdens to social entrepreneurs. This clearly affects the growth of the sector. In addition, the entrepreneurial element of social enterprise should be highlighted; otherwise, it will not be different from non-profit and charitable organizations. Instead of encouraging people to make donations to social enterprises, OSEP, the regulator, should facilitate them by clarifying the law and regulations and facilitating the registration procedures. On the one hand, it might be seen that these two laws are competing against each other. But on the other hand, their rationale, definition and legal requirements are different. Even though there are some overlapping parts of their concepts, it seems impossible to merge the two laws. But it is also obvious that both laws have some shortcomings that need to be fixed. It is very important that the lawmakers and the regulators clearly understand the concepts of community enterprise and social enterprise.

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