

## Malaysian Social Enterprise Blueprint 2015-2018: What's next?

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### Abstract

Social enterprise plays a noteworthy role in the society as it endlessly delivers social value very much needed by the community. In 2015, Malaysia has launched its Malaysian Social Enterprise Blueprint, a three-year blueprint that entails pivotal strategy to promote and accelerate development of the sector, of which by the year 2018, supposedly be self-sustaining, equitable, and people-centric in order to empower impact-driven entrepreneurs. The blueprint highlighted several challenges and issues that need to be resolved in order to fully unleash the potential of social entrepreneurship in Malaysia. This paper emphasizes the conundrums in legal and policy structures of social enterprise, which do not run parallel with the practices of other countries and need attention from all the stakeholders. In the course of writing this paper, references are made to South Korea and United Kingdom (UK); countries which legally recognize and shelter the well-being of social enterprises via legal enactment and entity registration. A legal framework is needed to provide legal recognition to social enterprises and to help plaster the loopholes in the area pertaining to financial distribution and support.

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## INTRODUCTION

The concept of social enterprise is hardly discussed in Malaysia even though the practice of conveying social values to the community has been around for years (Abdul Kadir, 2014). Only in recent years that the social enterprise concept and practices are making a momentous development and getting more interest from social entrepreneurs, academics and policy makers (Abdul Kadir & Sarif, 2016). Nevertheless, the term social enterprise still demands an unambiguous legal definition that may elucidate it well to the public. The existing terms of social enterprise only describe the purpose of a business, not its legal form (Manhart et. al, 2015). In general, social enterprise is a business-oriented organization, created to further improve a social purpose in a financially viable way. Majority of social enterprises in Malaysia focus on the areas of poverty, access to

education, rural and indigenous development, environmental sustainability and employment opportunities for marginalized and at-risk youth, and currently, it is reported that there are 100 social enterprises in the country. This is however, still considered a small number in comparison to other countries i.e. South Korea, Australia, Thailand and Philippines, which justifies why a dedicated regulatory or legal framework is needed that could administer social enterprise ecosystem which is yet to be developed (Malaysia Social Enterprise Blueprint, 2015). With an intricate and unique concept, social enterprise sector has been mainly ascribed as the convergence of the three sectors; private (for-profit), social (non-profit) and public (government). It emerged from the idea and concern of businesses contributing back to the community and society (Malaysia Social Enterprise Blueprint, 2015). Therefore, it is apparent that the “business for charitable purpose” (company limited by

guarantee under Section 45 of the Companies Act) is inadequate to cover the hybrid composition of social enterprise that practices best of both for-profit and non-profit activities concomitantly (Cabrelli, 2017).

Another issue pertaining to deficiency of legal definition for social enterprise is that it has led to confusion to many parties especially including potential entrepreneurs (Malaysia Social Enterprise Blueprint, 2015). Therefore, based on the previous literature, this study compares social enterprise legal setup with two other reputable legislations from two countries of different continents specifically enacted to govern the social enterprises in their respective countries. The Community Interest Company (CIC) of the United Kingdom (UK) is a legal structure that has been established for quite some time and it is a legal framework that covers hybrid nature of social enterprise (Defourny & Shin-Yang, 2011) and South Korean Social Enterprise Promotion Act 2006 (SEPA), which was enacted Under the Article 2 of SEPA, that defines social enterprise as follows (Malaysia Social Enterprise Blueprint, 2015);

“An enterprise certified in accordance with Article 7 as one that pursues a social objective, such as raising local residents' quality of life, etc., by providing vulnerable groups with social services or jobs while conducting business activities, such as the production and sale of goods and services”

The CIC of UK and SEPA of South Korea clearly manifested the commitment of policymakers to govern the domain and spur development of social enterprise sector in their respective countries. Nevertheless, as the sector in Malaysia lacking legal framework and structure, this research attempts to provide a judicious degree of clarity concerning social enterprise and provide opinions on the characteristics of workable model of legal governance of social enterprise sector in Malaysia. In addition, this research aims to set forth legal options for upcoming social entrepreneurs to set up their ventures with reference to UK's CIC and SEPA of South Korea.

## 2.0 LITERATURE REVIEW

### 2.1. The Concept and Definitions

Social entrepreneurship combines the concept of attaining profit in order to aid social causes (Social Enterprise Malaysia, 2014) even though various civic movements which were purposely launched to serve social problems have been around for ages. Nevertheless, the impacts of any civic movements or social initiatives would come progressively in a later time (Khor & Malek, 2008). If in the past society and community are more patient to see occurrence of social changes, in recent years, with the advancement and proliferation of social media usage combined with global consumerist culture, people demand for prompt recognition and gratification. In the pursuit of making social changes happen, people recognize the need of sustaining the civic movements and social initiatives beyond public services provided by the government. This concept of pursuing social goals rather than profit motive is in the recent years greatly referred to the idea that was coined by Muhammad Yunus of Grameen Bank (Yunus, 2007).

The definitions of social enterprise have evolved through various direct practices that complicate its nature and distinguish it from non-profit organization and for-profit business. In recent years, social enterprise concept has largely been accepted throughout the world by both practitioners and policymakers notwithstanding the fact that in many countries, it is still not legally recognized and has been critically deliberated due to lack of constant and legitimate recognized definition (Loric, 2014). Nevertheless, many countries have already established the legal framework, structure and have clearly defined the sector that helps to promote the sector and guide the practitioners to have a clear direction on running social enterprises.

### 2.2. The Legal Structure Contention

Apart from having a legal convention to its practice, in some countries the standard practices were not appropriately documented thus confounding the legal recognition and making it difficult to be comprehended and referred to by the public, particularly those budding and inspiring start-up entrepreneurs. Therefore, it is important to disseminate the right information and knowledge about social enterprise to those groups of people so that they would have better understanding of the concept, boundaries, constraints and flexibility of the domain of which will enable them to better position their ventures.

In the case of Malaysia, in spite of having a general reference in the form of a blueprint, neither a standard

guideline for implementation nor conventions have been established and documented for public reference. This situation is a huge disadvantage to the practitioners, social entrepreneurs and those who inspire to start a social enterprise as there is no definitive legal framework that can be a reference to them. For instance, companies running their businesses for social causes are required to register their businesses with the Companies Commission of Malaysia (CCM) and declare their social causes to Inland Revenue Board (LHDN) before they were given tax exemption. There is no legal provision that allows the business with social mission to automatically be eligible for tax relief from the Inland Revenue Board without additional procedure or declaration. This scenario is brought to the core of this research which attempts to make the existing law in Malaysia applicable to all social enterprises and social businesses in the country that all this while have been established to support public causes.

It is crucial to investigate the appropriate law or regulation needed to oversee social enterprises as the entity itself possesses a very unique and different nature compared to the normal 'commercial profit-oriented enterprise' status. Social enterprise converges both the profit making elements of a commercial enterprise with social value and mission of a non-profit organization. Therefore, it is postulated that the existing legal structure must be of consideration by the policy maker to be revisited in order to show its inclusiveness with regards to social enterprises. It should take into account the elements that are not only able to control the newly introduced concept of social enterprise but also fulfil the needs of relevant stakeholders. As a result, it will help to better support the social causes by taking into consideration all possible rights whilst regulating proper jurisdiction to evade exploitation of power.

Conventional regulation like Malaysian Companies Act 2016 is yet to incorporate a regulation to administer social enterprises or social purpose businesses as the Act merely governs traditional classification of for-profit businesses and corporations. The Act does not elucidate distinct characteristics of a social enterprise including the rights, liabilities, privileges and limitations. Conversely, the CIC of the UK and SEPA of South Korea clearly spell out the privileges, rights and limitations with regards to the formation of social enterprise and specify the provisions in a single document. Both CIC and SEPA highlight the issues pertaining to the distribution of surpluses or profits made by a social enterprise of which

to be used back by the entity to achieve the social mission. The CIC also highlights the laws relating to tax exemption of which social enterprises are entitled to get based on the nature of their operation vision and mission that is clearly beneficial to the society of choice.

### **2.3. The Community Interest Company (CIC) of the UK and Social Enterprise Promotion Act (SEPA) of South Korea**

The UK has legislated a legal structure primarily devised for social enterprise namely Community Interest Company (CIC). CIC is an entity that can be formed as a company limited by guarantee or by shares. Nevertheless, CIC cannot operate in a similar manner to limited company but instead possesses distinct features such as asset lock, dividend threshold and specific model constitutions to protect the asset and hybrid features of social enterprise. CIC is considered an appropriate legal structure for social enterprise as it recognizes the crossbreed disposition of social enterprise, flexible and low cost compared to conventional company and it does not offer tax benefits to for-profit business (Stone King, 2014).

Social Enterprise Promotion Act 2006 (SEPA) of South Korea is another example of social enterprise legislation developed for the purpose of inducing the growth of social enterprises. South Korea is the only country in Asia Pacific Region that has elevated its social enterprise law through explication of legal definition for social enterprise in the legislation when other countries in the region were still contending with the domain and concept, not to mention the legislation which is far from over. SEPA is considered one of the best references for Malaysia as South Korea has proceeded with social enterprise in Asia Pacific and due to some similarities in economic practices.

Prior to passing the SEPA in 2006, South Korea had referred to different legal forms and development of social enterprises in various European countries as well as in the United States for the last 20 years and one of the major European social enterprise legislations was the CIC model of the UK (Defourny & Shin-Yang, 2011). Bidet and Eum (2015) advocate that the significant features and relevancy of SEPA of South Korea is it distinctly and legally defines social enterprise. South Korea had considered several different elements on social enterprises in the process of defining its own legal definition for social enterprise. Those elements comprise of three main models which are self-sufficiency, economic self-sufficiency and foreign social enterprise development and experience.

## 2.4. Legal Set Up and Malaysia Social Enterprise Blueprint (MSEB) 2015-2018

Currently, social entrepreneurs in Malaysia can register their social enterprise or social business under Section 45 of Companies Act 2016 as a company limited by guarantee, or as a company limited by shares. These are the available options for social enterprises to be legally registered under Companies Act 2016 notwithstanding the fact that it does not address the unique nature of social enterprise. Another option is to register the entity under Section 2 of Societies Act (Societies Act, 1966) of which the entity will be entitled for tax exemption under section 44(6) of the Income Tax Act 2015 (Income Tax Act, 2015). Nevertheless, only organizations with charitable purposes can be registered under Societies Act and not those entities that demonstrate the for-profit nature in their operations. Hence, both of the above mentioned provisions under Companies Act 2016 and Societies Act are inappropriate for entities that show both their for-profit and non-profit natures.

Therefore, this research focuses on establishment of an applicable legal framework for the practice of social enterprise in Malaysia. Most of the programmes or activities set forth by either home grown or international social enterprises are to spur the initiatives of deploying public causes through charitable activities, social work and at the same time able to improve the socio economic conditions of the beneficiaries. The notion of having a structured legal framework for social enterprise is to document specific provisions that deliberate the extent of rights, privileges and limitations with regards to social enterprise in one recognizable and classifiable Act, if necessary able to complement the existing Companies Act 2016 and/or Societies Act 1966. Hence, this research exemplifies countries that have gazetted their social enterprise legislation, namely the UK and South Korea, which have legislated the CIC and SEPA respectively, as points of reference for social enterprise legal framework in Malaysia. This leads to the necessity of studying beyond MSEB and focus on a legal framework that may facilitate better development of social enterprises in the country.

### 3.0 PURPOSE OF THE STUDY

The main purpose of this study is to comparatively analyse legislation or legal frameworks that govern the hybrid disposition and character of social enterprise (for-

profit and non-profit entity). It is to enable Malaysia's social enterprise ecosystem to have an ideal practice of the legislation on how the sector can move forward in governing such entity in the country. In addition, it is also to help the policy maker to spell out the essence required in order for social enterprise to be acknowledged as a legal entity.

### 4.0 RESEARCH QUESTION

Taking into consideration what has been highlighted in the MSEB, the main research questions that direct the objective of this study is, what is next after Malaysia Social Enterprise Blueprint? Should Malaysia have its own social enterprise legal framework or should Malaysia utilize the existing legislations i.e. Companies Act 2016 and Societies Act 1966 – which presumably are sufficient to govern social enterprises' activities and the expansion of the sector in the country.

### 5.0 RESEARCH METHODOLOGY

Data collection and analysis in this study were based on the qualitative approach. It is considered appropriate as it fits the nature of this study which is to discover how people think, experience, behave and react to a certain phenomenon via interview as well as a comprehensive comparative legal documents analysis. Qualitative approach also allows collection of data in multiple forms such as words, sentences, photos, symbols and images and enable the researchers to ascertain opinions, attitudes, behaviour, likes and dislikes (Yaqin, 2007). There were three qualitative data collection techniques employed in this research; personal interview, doctrinal legal research and comparative document review. Personal interviews were conducted with legal experts, representatives from government agencies, social entrepreneurs and social entrepreneurship experts from universities. The interview transcripts were coded and analysed using thematic analysis whereby tables and arrays were used to identify significant themes. Social enterprise legal documents such SEPA of South Korea and CIC of the United Kingdom were scrutinized to compare the distinct characteristics of each document. Themes from personal interviews and those extracted from legal documents were triangulated to see the convergences that validate the methodological procedure.

#### 5.1. Personal Interview

Personal interview is considered as a qualitative data collection technique. Data is collected through a semi-structured interview process. In this study, a few respondents were purposefully selected based on their experience and direct involvement in social enterprise. Interview protocols were strictly observed to ensure the validity and reliability of data. Prior to interview sessions, the researchers sought for consent from the respondents and appointments were made according to the respondents' schedule so as to not interrupt their normal activities and chores. The respondents were clearly informed of the main purpose of the interview and the permission to record the interviews were granted by the respondents before the interview sessions took place. Later, the audio recordings of the interviews were transcribed into meaningful transcripts for analysis. Thematic analysis using tables and arrays was conducted to see the patterns and extraction of themes from all the transcripts to see the relevant findings acquired from the interview.

### 5.2. Doctrinal Legal Research

Another data collection technique employed in this study was doctrinal legal research. It was a desktop library-based research in which the materials were gathered from libraries, archives and other databases (Yaqin, 2007). The main objective of this technique is to uncover, elucidate, scrutinize, analyse and present the findings, facts, provisions, principles, concepts, theories or the practice of certain laws or legal institutions in a systematic manner. Data analysis and findings of this study on social enterprise is mainly based on journal articles, case studies, government documents and supplementary legislations of social enterprise sector with special reference to the United Kingdom and South Korea.

This research scrutinized the relevant laws and legislation that governed social enterprises so that it matches the Malaysia's local scenarios in order to have its own social enterprise regulation. This research has assessed a few primary resources with regards to local organization laws and regulations such as Companies Act 2016, Societies Act 1966 and also foreign laws such as Social Enterprise Promotion Act 2006 (South Korea) and the United Kingdom Companies (Audit, Investigations and Community Enterprise) Act 2004. Besides that, the research also examined a case study as its source of information to obtain the relevant data. The justification of the use of case study for this research is due to the fact that case study is a powerful tool that offers a way for the

exploratory initial phase of a research project which will become a foundation for later development of a better advanced and structured tools required in surveys and experiments (Rowley, 2002). In this study, the researcher selected Arkitrek as a case study due to its distinct "social enterprise features" demonstrated by the entity. Arkitrek is a for-profit based company but the practice of this company is that their profit will be contributed back to the entity and used for society which makes it to resemble a charitable body (Hall, 2014).

### 5.3. Comparative Document Review

In order to better structure the legal framework of social enterprise in Malaysia, the study deployed a comparative approach to match up the applicable laws and guidelines on the structure of social enterprise between Malaysia, South Korea and United Kingdom (UK). The differences between these countries provide better perspectives to the researcher to frame a comparable legal structure of social enterprise in Malaysia. For instance, UK had introduced a Community Interest Company (CIC), a special category of legal entity dedicated for social enterprise to encourage better involvement in the sector. The comparative approach has allowed the researcher to better explore the legal aspects that are lacking with regards to social enterprise in Malaysia and at the same time enable the researcher to address the objective of the research which is to compare legal provisions, principles or institutions in one particular legal system with other legal systems (Stone King, 2014).

## 6.0 RESULTS

This section presents the findings, triangulated from data analysis of three different data collection techniques, which are personal interviews with subject matter experts and doctrinal legal research in comparison to the UK CIC and SEPA of South Korea. Table 1 summarizes the comparison of legal documents of South Korea, United Kingdom and Malaysia.

Clearly, in comparison to both CIC and SEPA, existing legal system in Malaysia does not govern the nature and objectives of social enterprise. As a result, budding social entrepreneurs in the country are currently running their social enterprises legitimately with various names such as social business, impact driven enterprises and social purpose enterprise merely to fit the entity with the current classifications of companies and corporations provided under the Companies Act (company limited by share and limited by guarantee).

Item\ Country	South Korea	The United Kingdom	Malaysia
Legislation/ Act	Social Enterprise Promotion Act 2006 (SEPA)	The Community Interest Company (CIC) Regulations 2005	No specific legislation/act on social enterprise
Regulating/ Governing Agency	Ministry of Employment and Labour	1. Companies House 2. Her Majesty Royal Custom (HMRC) 3. CIC Regulator	1. Companies Commission of Malaysia 2. Registrar of Society
Tax benefits	Special Tax Treatment Control Act 2014	Social Investment Tax Relief; 30 percent deduction of the cost of investment from income tax liability	Tax deduction from for companies practicing Corporate Social Responsibility (CSR)
Legal definition	Social enterprise as an enterprise that pursues a social objective.	Social enterprise as a business with social objectives.	No legal definition
Existing legal framework	SEPA Article 8; Certified Social Enterprise	Community Interest Companies (CICs)	Section 45 of Companies Act 2016

Table 1: Summary of Legal Documents Comparison

**7.0 CONCLUSION**

Existing legislation for social enterprise in Malaysia is clearly not supportive in terms of regulatory, tax, and administrative frameworks to support social entrepreneurs. So, what is next? The findings suggest that social enterprise sector needs a standard and consistent guideline for compliance and audit of social enterprises on top of what has been stated in the Malaysia Social Enterprise Blueprint 2015-2018. Recommendations that appeared to be appropriate solutions for lack of legal recognition for social enterprise include the establishment of legal definition of social enterprise and legal structure, a social enterprise tax structure and benefits as well as establishment of social enterprise regulatory body. All of these recommendations are based on the practice in countries with remarkable growth of social enterprises in the last decade.

Recent development in Malaysia has seen the new initiative made by the government via the Ministry of Entrepreneur Development that introduced the Social Enterprise Accreditation (SE.A) Guideline. This guideline acts as a point of reference to explain the definition, procedures and criteria involved in the

accreditation process and related matters pertaining to social enterprises in the country. It defines social enterprise as a business entity registered under any written law in the country that proactively creates positive social and environmental impact and at the same time, is financially sustainable (SE.A, 2019).

Introduction of SE.A Guideline 2019 came just at the right time when some agencies are starting to move away from the term ‘social enterprise’ and adopt new terms such as social business and impact driven enterprise. It is in some ways realigning the direction of those agencies and practitioners with that of the government’s direction. As of now, there is no indication from recent developments that social enterprise will be legislated under a new legal framework . It will be treated as a business entity and registered under any existing written law which is sufficient for the entity to be called as social enterprise with the conditions that it is self-sufficient and is able to create social and environmental impacts. Future research should be conducted to investigate the effects of homogenizing social enterprises as business entities and the magnitude of impacts on social mission and social values upheld by the social enterprises operating under the existing legislation.

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