

CO-OP, SOCIETIES & MUTUALS BULLETIN

AUTUMN 2022

Welcome to the autumn edition of Wrigleys' co-ops, societies and mutuals newsletter.

We are excited to share that Wrigleys recently moved its Leeds office to new premises at Wellington Place. It is a significant change for us, but the new location has a BREEAM Excellent rating, EV charging points, and easy access to public transport links, which means we can work more sustainably and continue our commitment to reducing our environmental impact.

Another exciting recent development has been the launch of the UK Co-op Law Association. The Co-op Law Association aims to build a community of people to support each other and help shape and develop laws that affect co-ops in the UK. Wrigleys has a long history of lobbying for changes in the law to support our clients, so we are delighted to join the network and support their work.

If you scroll down, you will find links to recent articles on our website about societies. In this update you will find our analysis of the The Co-operatives, Mutuals and Friendly Societies Bill, as well as articles taking a closer look at conversions of societies. For any co-operatives considering their governance strategy, there are also pieces on The Co-operative Corporate Governance Code and ESG.

Please do forward this on to anyone you think might be interested. They can sign up to the newsletter [here](#).

We hope you enjoy the update and would welcome any feedback you have.

Wrigleys Societies Team

Contents

- 1.** The Co-operatives, Mutuals and Friendly Societies Bill: A new way to raise and retain capital for Co-operatives?
- 2.** Converting a community benefit society into a community interest company
- 3.** The Co-operative corporate governance code
- 4.** Putting the 'G' into ESG
- 5.** Conversions between registered societies and companies

The Co-operatives, Mutuals and Friendly Societies Bill: A new way to raise and retain capital for Co-operatives?

Article published on 16 September 2022

What does the proposed new legislation mean for co-operatives?

A new Co-operatives, Mutuals and Friendly Societies Bill (**Bill**) has been introduced in Parliament which proposes a way for co-operatives, friendly societies and mutual insurers to grow and develop their organisations while maintaining their commitment to member ownership and control. This is important as it will enable co-operatives to compete on a more even playing field with their corporate counterparts and increase their impact across all sectors.

The current legislation which governs the raising of capital for co-operatives is somewhat inflexible. The Bill would enable co-operatives to raise more money by issuing equity shares that are repayable at the option of the society, rather than being withdrawable at the option of the members.

By introducing repayable shares, the Bill would enable co-operatives to raise amounts in excess of the current £100,000 holding limit for withdrawable shares. The Bill would also provide legal certainty as to whether co-operatives can choose to repay non-withdrawable shares. These changes have the potential to lead to large capital-driven co-operative societies raising millions of pounds more each year in equity, which could then be used to invest in important initiatives tackling issues such as decarbonisation, technology and the current cost of living crisis. It remains to be seen whether the Companies Act restrictions on a company buying back its own share capital might apply to a co-operative society repaying its repayable share capital.

In addition, the Bill would give co-operative societies the option of adopting a statutory provision guaranteeing that any capital surpluses would be ‘non-distributable’ among members. It is important to note that this would not affect the application of members’ surpluses or interest payments on share capital. Most co-operative societies currently include non-distributable capital surplus provisions in their rules. However, as rules of a co-operative can be amended by its members from time to time, such rules-based provisions are often insufficient to provide the solid legal guarantee sought by many investors. Including a statutory provision may increase opportunities for investment and asset growth in co-operative societies given the increase in legal certainty. The additional available capital surplus could then be re-invested in economically, environmentally and socially productive enterprises.

The Bill would enable co-operatives to secure increased investment whilst retaining their democratic structures and ensuring they work in the interest of their members. [Co-operatives UK’s](#) head of policy, James Wright, confirmed that the Bill enjoys “widespread support” throughout the co-operative sector and has encouraged co-operatives to show their support before the Bill’s second reading on Friday 28 October 2022.

Converting a community benefit society into a community interest company

Article published on 2 August 2022

Can an asset-locked society be converted into a community interest company (CIC)?

If your community benefit society has a statutory asset lock, your options for changing legal form are limited, as the asset lock may not be altered or removed from the rules.

Generally, if an asset-locked society wishes to transform into something else (such as a charitable society or charitable company), it needs to set up a new charitable society or company, and merge with it. This is typically achieved through a statutory transfer of engagements or amalgamation process. It cannot be converted into a non-charitable or non-asset locked company, or into a charitable society.

However, the law does permit an asset-locked community benefit society to convert directly into a community interest company (a CIC). If an asset-locked society wishes to become a company, it can therefore follow the conversion process set out in sections 112 – 114 of the Co-operative and Community Benefit Societies Act 2014.

This process requires a special resolution to be passed by 75% of the society's members who vote at a general meeting. A second general meeting must also be held between 14 days and one month after the first, where the resolution must be confirmed by over 50% of the members who vote. At least 50% of the society's total members must vote at the first meeting, which means the society needs a relatively high level of member engagement to get this through. This can be a barrier in some cases, so it's worth assessing your membership to see what your chances are.

Converting a community benefit society into a company is a well-worn path and recent case law has confirmed the long-held view that a conversion is not a change of legal entity, but merely a change of status. This means that conversion is a simpler process than other forms of society transformation, which require contracts to be assigned or novated to the new entity. It may also have implications for tax / VAT registration, so it's always worth talking to an accountant who understands societies at an early stage.

If you are an asset-locked society looking to transform, conversion into a CIC may well be something to consider.

The Co-operative corporate governance code

Article published on 30 September 2022

Good governance is crucial to the effective operation of societies – particularly those looking to grow – regardless of size, legal form or business sector.

Over the past few months we have been asked by a number of Co-ops about how they bring the key features of their society's governance into one document in a way which is clear, user friendly and easy to understand – both internally, for the society's officers and employees, but also externally, for the society's stakeholders. The answer - The Co-operative corporate governance code.

Developed by Co-operatives UK, the Co-operative corporate governance code is a great tool to help implement good governance. It's applicable to all co-ops, regardless of size or sector. The code offers a set of principles that all Co-ops can reflect upon and use to encourage and enable good governance practice – operating on a so called “comply or explain” basis. Alongside the code, Co-operatives UK have a range of appendices, covering roles and responsibilities for various key roles within a Co-op including a co-op secretary, co-op directors and co-op chairs; terms of reference for a range of committees; codes of conduct for directors; model induction checklists; and whistle-blowing.

The code covers six distinct areas:

- Member voice, participation and engagement
- Co-operative leadership and purpose
- Roles and responsibilities
- Board composition, succession and evaluation

- Risk, financial management and internal controls
- Remuneration of the board and executive leadership

Each area sets out a series of principles against which commentary is included as to the steps (provisions) that a Co-op should take to achieve those principles. For example, under roles and responsibilities, the code includes the following principle...

Directors must promote the success of the co-operative and act in the best interests of the co-operative as a whole, for the benefit of its members and should discharge their duties in ways that are consistent with the ICA Values and Principles. Directors should act objectively and fairly and serve the interests of the members, including the protection of the assets of the co-operative and its members.

...and to achieve this, the code states that...

A conflict of interest policy should be in place and should be provided to all directors, executive leadership and senior employees. All conflicts of interest should be dealt with appropriately and recorded in a register that is available for inspection by members.

You can download a copy of the Co-operative corporate governance code [here](#).

Putting the ‘G’ into ESG

Article published on 8 September 2022

ESG is a hot topic but the ‘G’ is often overlooked. We look at what it is and why it’s important for charities and other not-for-profit organisations.

What is ESG?

ESG, short for environmental, social and governance, is a set of standards used to help stakeholders understand an organisation’s wider impact. In the investment and corporate worlds ESG is well-established, and we are now seeing it on the rise in the charity sector too.

Despite the increasing awareness of ESG, it is often seen primarily through the environmental lens, with people thinking of environmental sustainability, carbon footprints, and reducing waste alone.

Increasingly, the social aspect is also being considered, with organisations becoming more concerned about their supply chains and the working conditions of their employees and suppliers.

However, arguably most important aspect of all, governance, is often overlooked. Good governance is crucial to the success of any organisation and without it, it would be very difficult for a charity to deliver its purposes successfully, let alone reduce its wider impact through the ‘E’ and ‘S’ aspects of ESG.

What is good governance?

Good governance is about ensuring that an organisation is effectively and properly run, now and in the future. It helps organisations to meet their legal and regulatory requirements, helps to prevent misconduct and mismanagement and provides comfort to stakeholders.

As the Charity Governance Code states, “good governance in charities is fundamental to their success. It enables and supports a charity’s compliance with the law and relevant regulations. It also promotes a culture where everything works towards fulfilling the charity’s vision.” It is therefore crucial that charities take good governance seriously and keep it under review

throughout the life of their organisation.

How can we ensure we have good governance in our charity?

There are many different elements that make up good governance but some things you may want to consider include:

1. Reviewing your governing document and policies regularly and make sure that they are up to date, fit for purpose and in line with current law and best practice.
2. Ensuring all of your trustees understand their legal duties, by providing them with the Charity Commission's '[Essential Trustee](#)' guidance and by offering trustee training.
3. Carrying out a skills audit of your board of trustees, identifying any missing skills and recruiting accordingly or sourcing appropriate training to fill the gap.
4. Considering the diversity of the board and recruiting accordingly.
5. Considering your charity's decision-making and delegation frameworks, checking they comply with the law and best practice and are implemented correctly.
6. Using the [Charity Governance Code](#) as a toolkit to identify areas of governance where your charity needs work.

Conclusion

ESG considerations are becoming increasingly important to stakeholders in all sectors and charities could be seen to have a head start with this as their purposes often align with ESG principles already. However, it is crucial that charities ensure they demonstrate good governance as this underpins all other aspects of ESG, as well as the general success of the organisation and its ability to deliver its charitable objects for the public benefit.

Conversions between registered societies and companies

Article published on 4 October 2022

Statutory conversion routes provide a streamlined way to change legal structure.

Usually, changing from one legal structure to another involves 1) the incorporation of a new entity, 2) the contractual transfer of assets and activities from the old entity to the new entity using a transfer agreement, and 3) winding up the old entity. This can be an expensive process depending on complexity of the organisation's activities.

However, under sections 112 and 115 of the Co-operative and Community Benefit Societies Act 2014 (CCBSA 2014), it is possible to convert from a society to a company, and from a company to a society, using statutory conversion processes. These routes are available for both companies limited by guarantee and companies limited by shares. However, there are restrictions, including in relation to community benefit societies with a statutory asset lock.

The statutory conversion routes provide a streamlined way to change from one legal structure to another. If a statutory conversion route is used, the existing entity remains the same legal person, and there is no need to transfer property or assets over.

The High Court provided helpful clarity on this point, confirming the long-held view of many society practitioners, in the case of *Mount Wellington Mine Ltd v Renewable Energy Co-operative Ltd* [2021] EWHC 1486. In this dispute regarding a lease, the court considered whether a company which had converted into a society under the CCBSA had become a different legal entity. This was relevant as it determined whether the society was entitled to exercise its right under the lease, which had been granted when the entity was a company. The court held that the society was the same legal entity, and so was still party to the lease and able to exercise its rights. The conversion

was merely a change of legal form.

It confirmed that the assets and liabilities remain with the entity when using a CCBSA 2014 conversion route. Therefore, if you opt to convert using those statutory conversion routes under the CCBSA 2014, you do not need a transfer agreement, conveyance or assignment to transfer property on a conversion. This includes both leasehold and freehold land held by the society.

If you would like to contact us please email
malcolm.lynch@wrigleys.co.uk

www.wrigleys.co.uk

