SOCIAL ENTERPRISE: INCENTIVE AND CONTROL APPROACHES

BY

MISS KARNKAMON OUPARIKTATIPONG

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS PROGRAM IN BUSINESS LAWS (ENGLISH PROGRAM) FACULTY OF LAW THAMMASAT UNIVERSITY ACADEMIC YEAR 2018 COPYRIGHT OF THAMMASAT UNIVERSITY
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INDEPENDENT STUDY

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MISS KARNKAMON OUPARIKTATIPOONG

ENTITLED

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was approved as partial fulfillment of the requirements for
the degree of Master of Laws in Business Laws (English Program)
on May 14, 2019

Chairman

(Assistant Professor Viravat Chantachote, D.Sc.)

Member and Advisor

(Assistant Professor Nilubol Lertnuwat, Ph.D.)

Dean

(Professor Udom Rathamarit, Doctorat en droit)
Social enterprises, profit-making organizations that maximize improvements in financial, social, and environmental well-being, have attracted attention. They implement many of the United Nations Sustainable Development Goals (SDGs). As businesses, they promote Goal 8, decent work and economic growth, as well as social and environmental problems, as prescribed in the other goals. They do so by incentive and control. If incentive is lacking in social enterprises, they may fail, since their main challenge is absence of capital.

Being a social enterprise has innate value, as some socially and environmentally conscious consumers know. Governmental incentives may help, but rules for social enterprises must be controlled, otherwise businesses may falsely claim this status as a marketing device. If governments properly incentivize and control social enterprises, they will efficiently contribute to sustainable development. In 2018, a draft law on Social Enterprise Promotion Act was approved by the Council of State in Thailand. Its provisions proved inadequate, raising the question of how social enterprises should be governmentally incentivized and controlled in the Kingdom. A comparative study was made of relevant laws in the United Kingdom (UK) and South Korea.

Results were that the UK and South Korea approach the challenge differently, but succeed in facilitating social enterprises. In the UK and South Korea,
legal criteria for social enterprise establishment, incentive and control all correspond. Thailand might learn from both models, with appropriate modifications for the Thai context. In that way, social enterprises might address social and environmental problems, achieving sustainable development.

**Keywords:** Social enterprise, Incentive, control, Sustainable development
ACKNOWLEDGEMENTS

First of all, I would like to express my sincere gratitude to my advisor, Assistant Professor Dr. Nilubol Lertnuwat, who ignited the idea of this work and always welcome to give precious advice to me. This independent study could not be done without her guidance.

I also wish to thank Assistant Professor Dr. Viravat Chantachote, the committee, for devoting his valuable time to give me many helpful suggestions.

Additionally, I would like to give special thanks to Dr. Lalin Kovudhikulrungsri for her help and advice for my study plan throughout this master degree. I greatly appreciate her kindness.

Moreover, I would like to thank my English teacher, Mr. Graham Brocklehurst, for being a kindly proofreader for this work.

Last, but not least, I wholeheartedly thank my family who is always by my side for their support and love.

Miss Karnkamon Opariktatipong
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<tr>
<td>CIC</td>
<td>Community Interest Company</td>
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<tr>
<td>CAICE Act</td>
<td>The Companies (Audit, Investigations and Community Enterprise) Act 2004</td>
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<tr>
<td>CICR</td>
<td>The Community Interest Company Regulations 2005</td>
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<tr>
<td>SEPA</td>
<td>The Social Enterprise Promotion Act 2007</td>
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<td>CCC</td>
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CHAPTER 1
INTRODUCTION

1.1 Background and problems

Social and environmental problems exist all over the world. One of the most significant causes comes from business operation. At present, sustainable development is a concept that is frequently brought up by scholars since it can enhance communities, and solve social and environmental problems. In order to achieve sustainable development, the United Nations has launched the Sustainable Development Goals (SDGs) to guide member states on development actions. Its objective was to produce a set of universal goals that meet the urgent environmental, political and economic challenges facing our world.¹ This movement highlights the United Nations awareness about the importance of sustainable development. However, these goals are merely abstract concepts. There must be concrete solutions to implement this idea.

Investors are increasingly mindful of social and environmental indicators in their investment decisions, and some focus on investing in firms that purport to generate a positive social impact. Thus, there is a growing belief that combining profit and social mission is an effective way of producing social wealth.² Fortunately, social enterprise has emerged due to sustainable development. The exact definition of

² Ofer Eldar, 'The Role of Social Enterprise and Hybrid Organizations' (2017) Columbia Business Law Review 95
social enterprise depends on different cultural contexts in each country. However, it can be explained as an entity which embraces the dual mission of generating profits for owners and pursuing a social mission for society.

Significantly, social enterprise can implement many of the SDGs. For a business, it can promote sustainable economic growth and work for people (the 8th Goal), and it aims to tackle social and environmental problems which fall into the other SDGs. This shows that social enterprise can solve problems and enhance the

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5 The SDGs goals are as follows:
GOAL 1: No Poverty
GOAL 2: Zero Hunger
GOAL 3: Good Health and Well-being
GOAL 4: Quality Education
GOAL 5: Gender Equality
GOAL 6: Clean Water and Sanitation
GOAL 7: Affordable and Clean Energy
GOAL 8: Decent Work and Economic Growth
GOAL 9: Industry, Innovation and Infrastructure
GOAL 10: Reduced Inequality
GOAL 11: Sustainable Cities and Communities
GOAL 12: Responsible Consumption and Production
GOAL 13: Climate Action
GOAL 14: Life below Water
GOAL 15: Life on Land
GOAL 16: Peace and Justice Strong Institutions
living standard of communities, better than traditional non-profit organizations. Moreover, it contributes to sustainable development more than traditional profit making organizations because it takes into account not only its profits, but also the people and our planet. Thus, it is worth giving more attention to this type of business.

In order to achieve the SDGs, the importance of incentive and control should not be ignored. Incentives are vital for social enterprises. Social enterprises conduct business and help other people at the same time, so, they are more difficult to operate than traditional businesses who primarily aim to maximize profits. Inevitably, the main obstacle of operating a social enterprise is the difficulty in attracting capital. Investors generally seek businesses that provide the greatest rate of return. Since, social enterprises do not aim to maximize profits like traditional businesses. They do not have a vast amount of money to pay dividends to investors. Although they can generate significant income, it is restricted by a reinvestment restriction that their dividends cannot be freely paid. Thus, social enterprise may not attract investors who desire money. The result is that it is hard for social enterprises to seek capital for business operation. Moreover, in order to achieve their social missions, the operating costs of social enterprises are usually higher than other traditional businesses. The prices of products or services are also higher than traditional businesses. This factor may discourage consumers from supporting social enterprises. Thus, it is crucial to find approaches or tools to foster the performance of social enterprises. If there are no incentives, social enterprises may fail because they cannot compete with other traditional businesses. However, if social enterprises rely too much on provided incentives, it will be unsustainable. Social enterprises

GOAL 17: Partnerships to achieve the Goal

6 Eldar, 'The Role of Social Enterprise and Hybrid Organizations' 172
must have financial sustainability, generating the majority of their income through trade. Thus, to find a balance of provided incentives is a challenging issue.

As mentioned that besides the incentive, the control is also important for social enterprises. Inappropriate control will preclude social enterprises from attaining their expected goals. Since social enterprises have a dual mission which they have to prioritize of society over economic value creation, there is a high risk that they diverge from their main purpose, a process called mission drift. Undeniably, there are many pressures of being dependent on others. As social enterprises depend on investors to provide capital and the necessary resources for business operation, social enterprises will struggle to balance commercial and social performance. This leads to the prioritization of commercial performance. Eventually, social enterprises cannot avoid mission drift. At this point, control measures play an important role; as a legal mechanism, it can safeguard the social missions of social enterprises and preclude the mission drift.

In addition, some consumers are more loyal to this kind of business because of their social and environmental problems awareness. This directly affects the profits of these businesses. Initially, social enterprises make claims to consumers and investors, especially about their blended character. It is usually tricky for consumers or stakeholders to determine whether the social goals of social enterprise

9 Christopher Cornforth, 'Understanding and combating mission drift in social enterprises' (2014) Social Enterprise Journal 4
are met. Moreover, social enterprises also gain incentives from the government either directly or indirectly. If the principle of social enterprise is not controlled, it may be misused as a marketing tool by ordinary businesses in order to gain credibility from consumers and incentives from the government. Therefore, to protect consumers and investors from fraud or deception, control of social enterprises is necessary.

Governments should be aware of measures to incentivize and control social enterprises. If proper measures apply, social enterprises will be able to contribute to sustainable development efficiently, as expected. However, concepts of social enterprise under Thai law remain ambiguous because the Social Enterprise Promotion Act has yet to be launched yet. When the draft law on the Social Enterprise Promotion Act was examined, there were some clear drawbacks, i.e., excessive incentives and inadequate control, which will be further examined in Chapter 4. Meanwhile, when exploring other countries, many were also concerned about these issues, especially the United Kingdom (the UK) and South Korea. Interestingly, both have approaches to deal with these issues, but both countries are inspiring for developing social enterprises. Consequently, this leads to the research questions: How should Thai law create incentive and control approaches applicable to social enterprises? Namely, how should social enterprises be supported by the government, as well as how should social enterprises be controlled?

1.2 Hypothesis

The draft law on the Social Enterprise Promotion Act does not provide an appropriate incentive or control approach for social enterprise. The criteria of

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11 Reiser, 'Regulating Social Enterprise' 240
social enterprise establishment, incentive and control approach are inefficient since they do not correspond with each other.

1.3 Objectives of the study

1.3.1 To comparative study regulations relating to incentive and control of social enterprise in the UK, South Korea and Thailand.

1.3.2 To find alternative approaches of incentive and control of social enterprise to Thai law.

1.4 Scope of the study

This independent study focuses only on approaches of incentive and control of social enterprise. Only legal measures provided by the governments are examined. Its scope does not extend to private incentives or social measures.

In order to detail the current approaches, regulations relating to incentives and control of social enterprise in foreign laws were studied by examining UK and South Korean laws. Moreover, the draft law on the Social Enterprise Promotion Act of Thailand, which was approved by the Council of State in 2018 was studied and analyzed to see whether it has appropriate measures of incentive and control for social enterprise.

There are currently three theses which study social enterprise in relation to Thai law. However, the scope of this independent study examines different aspects:

1. Legal Entity for Social Enterprise

Thesis 1 studies the legal entity for social enterprise of the UK and the United States. However, this independent study examines the incentive and control

approaches of the UK and South Korea in order to find an alternative approach for Thai social enterprise.

2. Tax Measures to Promote Social Enterprise

Thesis 2 studies only tax measures, but this independent study examines both financial and non-financial incentives which are provided to social enterprises.

3. Legal Issues on the Draft of Thai Social Enterprise Promotion Act: Focus on a Private Company

Thesis 3 studies legal issues of the draft law issued by the National Reform Council in 2015 regarding the regulation of social enterprises. However, this independent study examines the latest version of the draft law which was approved by the Council of State in 2018. In addition to regulation, other measures of control applicable to social enterprise are explained.

1.5 Methodology

This independent study aims to answer how Thai law should create incentive and control approaches applicable to social enterprises. Namely, how social enterprises should be incentivized by the government as well as how social enterprises should be controlled. This independent study is based on documentary research from comparative studying concepts of social enterprise in textbooks, articles, scholars’ opinions and examining laws relating to social enterprise in the UK, South Korea and Thailand. Additionally, it also identifies the incentive and control approaches of each country which can be traced from historical background and applicable laws in order to propose an appropriate approach for Thai law.

UK law and South Korean law were chosen as foreign laws for comparison for the following reasons: UK law was examined because it has long-established the Community Interest Company (CIC) which is a specific type of limited company as a legal form for social enterprise. There are a large number of CICs established in the UK which have developed outstandingly and efficiently. Moreover, the UK accentuates the control approach, because it intends to prevent CICs from being misused. The Companies (Audit, Investigations and Community Enterprise) Act 2004 (CAICE Act) and the Community Interest Company Regulations 2005 (CICR) are two UK laws in place to that effect.

South Korean law was examined because of its well-established Social Enterprise Promotion Act. It was enacted in 2007 and it has been consistently reviewed. Moreover, South Korea has a distinct approach because social enterprises in South Korea have emerged from a different historical background to the UK. Notably, South Korea underlines the incentive approach as it aims to attract social entrepreneurs to establish social enterprises using the Social Enterprise Promotion Act and the Enforcement Decree of the Social Enterprise Promotion Act.

With respect to Thai law, as the Social Enterprise Promotion Act has yet to be launched, the draft law on the Social Enterprise Promotion Act was examined. While incentive and control approaches of social enterprise under Thai law are unclear, the UK and South Korean laws have a strong notion for their approaches. Therefore, these laws may help Thai law create an appropriate approach in this regard.

1.6 Expected outcomes

1.6.1 To understand regulations relating to incentive and control of social enterprise in the UK, South Korea and Thailand.

1.6.2 To provide appropriate incentive and control approaches of social enterprise for Thai law.
CHAPTER 2
LAWS ON SOCIAL ENTERPRISE

2.1 The emergence of social enterprise

Both private and public sectors have struggled to alleviate social and environmental problems. Many countries believe that sustainable development is a concept that can help mitigate social and environmental problems. In order to attain sustainable development, the United Nations has launched the Sustainable Development Goals (SDGs) as a development action guide for its member states. As these goals have been developed and adopted by 193 member countries, they will be universally pursued by countries around the world. Its objective was to produce a set of universal goals that meet the urgent environmental, political and economic challenges facing our world.\(^\text{16}\) This highlights the United Nations stance on the importance of sustainable development. However, these goals are merely abstract concepts. There must be a concrete plan to supplement this idea.

According to the private sector, more and more businesses are conducting corporate social responsibility (CSR) activities. Nevertheless, this alone cannot efficiently deal with social and environmental problems in society. The reason is that the concept of CSR does not prioritize social over economic value creation.\(^\text{17}\) Businesses tend to conduct CSR activities when they have generated


\(^{17}\) Littlewood and Holt, 'How Social Enterprises Can Contribute to the Sustainable Development Goals (SDGs) – A Conceptual Framework' 2
satisfactory profits, so, the funds to support CSR activities depend on the yearly operating income. By this logic, CSR is not a sustainable solution.  

With regard to the public sector, initially, governments had tried to enhance the living standard in communities, however, it failed to solve social problems such as poverty, hunger, disease, and waste. As problems caused by many economic crises deepened, the awareness of the limitations of the traditional public and private sectors steadily grew. Eventually, it actively embraced the idea of the third sector.

Third sector organizations (also called nongovernmental organizations or non-profit organizations) are the organizations that stand between the state, the citizens and the private dimension. In other words, they belong neither to the for-profit private sector nor to the public sector. These organizations are very active in many areas of business. Moreover, they are already the subject of specific public policies. Typically, they deliver goods and services that are not available by the state or market. Moreover, one of their distinguishing features is that they use capital but do not work for capital.

There is a notion that the public, private, and third sectors cannot achieve a sustainable solution to social and environmental problems. However, social enterprise has emerged which can specifically achieve the Sustainable

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19 Jacques Defourny, ‘From Third Sector to Social Enterprise’ (2001) 3

20 Frank Martin and Marcus Thompson, Social Enterprise: Developing Sustainable Businesses (Basingstoke [England]: Palgrave Macmillan, 2010. 2010) 4

21 Ibid 19

22 Rory Ridley-Duff and Mike Bull, Understanding Social Enterprise: Theory & Practice (Los Angeles, Calif. : SAGE, 2011. 2011) 17
Development Goals.\textsuperscript{23} According to Teasdale, the emergence of social enterprise can be explained by these four theories:\textsuperscript{24}

1. State/ market failure theory

According to limitations of the traditional public and private sectors, states and markets fail to respond to people’s needs. States fail to provide goods and social insurance to all citizens. Additionally, they have no power to halt the inequities in society. Social enterprise is a tool that can overcome the bureaucratic and ineffective service delivery of governments. At the same time, social enterprise is a self-help response to the lack of market presence when the market is unavailable in some areas.

In the UK, Community Interest Company has emerged on the ground of this theory. Due to a lack of private investment in deprived areas, the government responded to the situation of market failure in such cases by promoting social enterprise can be seen as a governmental response to. As a result, with an intention to regenerate communities, CIC is recognized under UK law. In addition, South Korea has recognized social enterprise base on this theory. Previously, the state tried to solve unemployment problems resulting from financial crisis. It initiated many programs to contribute to people who are unemployed and disadvantaged. However, the state failed to tackle problems through those programs. Eventually, social enterprise has emerged in South Korea.

2. Resource dependence theory

The traditional non-profit organizations depend on external environment for resources with an attempt to shape organization to fit their purpose. Therefore, non-profit organizations generally represent as entities that adopt earned income to commercial revenue. Undeniably, these organizations always face financial obstacle


\textsuperscript{24} Simon Teasdale, 'What’s in a Name? Making Sense of Social Enterprise Discourses, Public Policy Administration' (2011) 4
because they purely rely on donations. Sometimes, the government also funds them, but it causes heavy burden to the government. In contrast, the resource dependence is not a problem for social enterprises. According to one of their salient characteristic, social enterprises have financial independence because they generate income through trading. Therefore, social enterprise is a tool that can help to reduce government funding.

3. Institutional theory

This theory is used to explain the marketization. Although it is generally believed that the legitimacy of social enterprise is originated from rational assessment of results, it is proposed that social enterprise has emerged from society’s wider fixation along with the idea of business operation and it is believed that a market-based approach is the best way to gain revenue for non-profit organizations. Moreover, they will also gain more bargaining power in comparison to sole organizations. Therefore, non-profit organizations start to adopt commercial characteristic to not only find new source of funding or group of client but also it is an acceptable and convenient way to conduct other activities beside its constitutional objectives. For instance, prior to CIC’s emergence, one type of social enterprise i.e. a trading company in the UK has emerged based on this theory. Charities usually establish trading company, which a limited liability company set up separately for running commercial activities. That is because charities themselves cannot freely conduct commercial activities. Therefore, social enterprise has emerged to serve this purpose.

4. Voluntary theory

Normally, third sectors are considered as substitutes of the state. However, they are actually complementary of the state. The third sector is developed to solve social problems but it does not have the capacity to address such problems directly because they still rely on the state to provide additional resources. For this reason, there is a high risk in the relationship between the third sectors and the state that the state is dominant. Eventually, social enterprise has emerged to fix the loophole of traditional third sectors.
2.2 Definition and characteristics of social enterprise

The term “social enterprise” was first used to distinguish marketing activities in state and cooperative enterprises from a private sector approach. The exact definition of social enterprise depends on different cultural contexts in each country. In general, social enterprises are key players within the third sector organizations. However, it is arguable that social enterprises are embedded within the third sector or placed at the margins of the third sector. They are hybrid organizations which have the ability to embrace dual missions. In other words, social enterprises are businesses that conduct trade in the market in order to fulfill their social aims.

Social enterprises have a series of characteristics that distinguishes them from other enterprises. They have different social aims, social ownership and are enterprise centered.

1. Social aim

The primary objective of social enterprise is to serve a social purpose. It may include, for instance, job creation, local service provision, and disadvantaged social support. In addition, it should take into account its social, environmental and economic impact.

2. Social ownership

Social enterprises do not consider shareholders or members as their owners. Therefore, their profits are mostly distributed to the benefit of the community or their stakeholders.

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25 Ridley-Duff and Bull, Understanding Social Enterprise: Theory & Practice 57
26 Martin and Thompson, Social Enterprise: Developing Sustainable Businesses 18
27 Ridley-Duff and Bull, Understanding Social Enterprise: Theory & Practice 31
28 Martin and Thompson, Social Enterprise: Developing Sustainable Businesses 7
29 Ibid 9
3. Enterprise center
In order to achieve social goals, social enterprises must conduct some form of trade. They are directly involved in the production of goods or the provision of services in a market.

2.3 The development of laws on social enterprise

With respect to the characteristics of social enterprises themselves, this kind of business has existed in societies for some time, especially in the business aspect. However, the origin of social enterprise growth is a longer traditional voluntary action. Many social entrepreneurs have voluntarily operated businesses called social enterprises. In the past, social enterprises were established and operated generally by the sole intention of the entrepreneurs. There were no explicit regulations which directly regulated or fostered this type of business.

The turning point to develop laws on social enterprise came when governments became aware of its importance which productively affected sustainable development. There are many rationales revealing the importance of social enterprises. For instance, they can fill an access gap to public services. They also can improve quality, affordability and equity of service provision in terms of reach and quality. Moreover, they help the government overcome economic and social challenges. Meanwhile, they provide opportunities for growth and sustainability for social enterprises themselves.

At present, governments play an important role in encouraging social entrepreneurs to operate social enterprises. In order to achieve this, they intend to

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31 Agapitova, 'Government Support to the Social Enterprise Sector: Comparative Review of Policy Frameworks and Tools'
foster the performance of social enterprises’ activities.\textsuperscript{32} At the same time, it is necessary to regulate social enterprises as well. Therefore, governments have started to place a control on social enterprises using legislative processes.

The movement towards a legislative process of social enterprise has grown dramatically in many parts of the world particularly in Europe, the United States and Asia.\textsuperscript{33} Increasingly, governmental policies mention social enterprise as a means of solving social problems and regenerating communities.\textsuperscript{34} The relationship between law and social enterprises appears. Social enterprises are no longer established or operated independently. When they are recognized under laws, they are dominated by laws and state policies.

Considering the UK and South Korea as examples, they are also active in this movement. Despite different historical background and rationale, both are aware of the importance of social enterprises. They have engaged with social enterprise and finally enacted concerning laws. With the hope that social enterprise is a legitimate means of addressing social problems, there is also a movement in Thailand. In order to understand the legal concept of social enterprise as a whole, it is crucial to explore the development of laws on social enterprise in these countries to answer why they recognized and started the legislative process of social enterprise.

\textbf{2.3.1 The United Kingdom}

Social enterprise has been recognized in Europe over two decades. Due to a lack of economic growth and unemployment, many European states were

\textsuperscript{32} Ibid5
\textsuperscript{34} McCabe and Hahn, 'Promoting Social Enterprise in Korea and the UK: Community Economic Development, Alternative Welfare Provision or a Means to Welfare to Work?' 387
in crisis, creating a movement towards social enterprise.\textsuperscript{35} In the late nineteenth century, many countries including the United Kingdom began a legislative process and announced legislation for social enterprise.\textsuperscript{36}

In the UK, social enterprise plays a significant role as a tool for neighborhood regeneration. It resulted from a lack of private investment in most notably, deprived areas. Thus, promoting social enterprise can be seen as a governmental response to market failure in such cases.\textsuperscript{37}

A significant movement of social enterprise in the UK came from the emergence of the Social Enterprise Unit in the era of business solutions to social problems.\textsuperscript{38} The creation of the Social Enterprise Unit within the Department of Trade and Industry (DTI) arose in October 2001 in order to promote and support the development of social enterprises.\textsuperscript{39} It found that charities, traditional organizations which aim to tackle social problems, face many restrictions. Although charities can engage in commercial activities, such activities must directly relate to their charitable purpose rather than merely raising funds for the charity. Moreover, it is arguable that social enterprise in the form of charity can operate a business through a trading company, a limited liability company set up separately for running commercial activities. However, that increases costs and creates further difficulties to social

\textsuperscript{36} Ibid 254
\textsuperscript{37} Neighbourhood Renewal Unit, 'A New Commitment to Neighbourhood Renewal, National Strategy Action Plan' (2011)
\textsuperscript{38} Teasdale, 'What’s in a Name? Making Sense of Social Enterprise Discourses, Public Policy Administration'12
\textsuperscript{39} Kerlin, 'Social Enterprise in the United States and Europe: Understanding and Learning from the Differences' 256
enterprises because they must adhere to additional requirements. Thus, the Social Enterprise Unit suggested to Parliament that there should be a new business entity to implement the needs of social enterprise. The result from this movement was that the social enterprise structure was expanded to fully incorporate social businesses. Consequently, the CIC legal form concept emerged. The Cabinet Office first intended to improve a range of legal forms for social purpose organizations, and the DTI provided more details in a proposal in 2003. In 2006, CIC was introduced as a new type of company embedded in the Companies (Audit, Investigations and Community Enterprise) Act 2004.

Under UK law, a CIC is an independent legal entity for social enterprise although there are various legal forms available for social enterprise, e.g., Industrial and Provident Society (IPS), Charitable Trust and Charitable Incorporated Organization. One of its aims was to offer greater flexibility and choice to the emerging social enterprise sector besides the established charity or IPS legal forms.

41 Ibid 312
42 Teasdale, 'What’s in a Name? Making Sense of Social Enterprise Discourses, Public Policy Administration' 13
44 Department of Trade and Industry, 'Enterprise for Communities: Proposals for a Community Interest Company' (2003)
45 Regulator of the Community Interest Companies, 'Report to the Secretary of State For Trade and Industry: Year To 31 March 2006' (2006)
For this reason, the CIC legal form was designed to be a quick, easy and inexpensive way to set up a social enterprise.\textsuperscript{46}

For instance, Blues and Beers and The Fold Bransford are interesting examples of CIC in the UK. Blues and Beers is a CIC limited by guarantee, which was found in 2006. It aims to provide activities that benefit the Wallingford community. That is an annual Blues and Beer festival, which provides locals with live blues and traditional draft beers, and raising money to support local youth development projects. For 12 years ago, part of the profit from the festival has been reinvested back into youth projects in Wallingford and the surrounding villages. Over 60 volunteers hold the festival from the community involved in its establishing. The festival not only brings live music to the town but also provides a showcase for local breweries and food producers.\textsuperscript{47}

In addition, The Fold Bransford is a company limited by guarantee, which became a CIC in 2007. As claiming that it is a social enterprise making a stand for creativity, sustainability and health, it set up the Fold, a collection of restored barns forming a place of inspiration. Currently, the Fold provides a lot of people with a glimpse of a sustainable way of life. Visitors can see trader producing locally made goods, eat organic food and enjoy a tranquil place to visit that has an additional

\textsuperscript{46} Alex Nicholls, 'Institutionalizing Social Entrepreneurship in Regulatory Space: Reporting and Disclosure by Community Interest Companies' (2010) 35 Accounting, Organizations and Society 396

community benefit. There are different courses and classes taking place daily at the Fold, which includes workshops such as basket making and specialist treatments.\(^{48}\)

### 2.3.2 South Korea

In 1997, South Korea was adversely affected by the IMF financial crisis\(^{49}\) - foreign exchange crisis. Consequently, many people lost their jobs,\(^{50}\) and unemployment rapidly increased.\(^{51}\) The government tried to solve these issues creating two programs in response to the crisis.\(^{52}\)

The first program launched was the Public Work Program in 1997. It was created for job creation. Unfortunately, it was not a practical solution because it could not eradicate poverty and consequently, the number of programs significantly reduced. Moreover, the program was temporary. It would end when the fiscal expenditure which was supported by the government ended. Consequently, it resulted in the need to create sustainable and secure jobs.\(^{53}\)

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\(^{49}\) Seok Yoon and Yoon-Doo Kim, 'A Note on the Renovation of Social Enterprise in Korea: Current Status and Future Prospects' (2016) American Journal of Applied Sciences 711

\(^{50}\) Choi and Jang, 'Analysis of Current Conditions Facing Social Enterprises in Korea: Policy Issues Regarding Their Sustainable Development'120

\(^{51}\) McCabe and Hahn, 'Promoting Social Enterprise in Korea and the UK: Community Economic Development, Alternative Welfare Provision or a Means to Welfare to Work?'389


\(^{53}\) Ibid 7
The second program launched was the National Basic Livelihood Securities Act in 2000. The program guaranteed a minimum income, giving cash benefits, regardless of working ability or status, on the provision of participation in the Self-Sufficiency Program. Scholars see that this program was the basis for the subsequent job creation type of social enterprise.

Surprisingly, both programs could not sufficiently address the income gap resulting from the crisis. Meanwhile, there was a belief that jobs could lead people away from poverty and it would be even better if jobs could simultaneously support social service delivery. Therefore, the social service sector received much more attention because of its high job creation potential. Then, the Social Work Program (also called Social Job Project) was introduced by the Ministry of Employment and Labor (MOL) in 2003. According to previous experience, it emphasized job creation for disadvantaged people and the main purpose of the program was to deliver social services. This program almost succeeded because it

54 Ibid 6
55 McCabe and Hahn, 'Promoting Social Enterprise in Korea and the UK: Community Economic Development, Alternative Welfare Provision or a Means to Welfare to Work?'
56 Deok Soon Hwang and others, 'Social Enterprise in South Korea' (2016) 35 ICSEM Working Papers 8
57 Choi and Jang, 'Analysis of Current Conditions Facing Social Enterprises in Korea: Policy Issues Regarding Their Sustainable Development' 120
58 Kim, 'Formation of Social Enterprise Policy and Prospects for Social Enterprise in Korea' 9
59 Ibid 9
60 Choi and Jang, 'Analysis of Current Conditions Facing Social Enterprises in Korea: Policy Issues Regarding Their Sustainable Development' 120
61 Kim, 'Formation of Social Enterprise Policy and Prospects for Social Enterprise in Korea' 7
could provide a new source of income for the poor and the disadvantaged persons received social services provided at a low expense.\textsuperscript{62} This is an essential foundation for the development of social enterprise.\textsuperscript{63} However, again, the program was temporary. Its existence depended on expenditures granted by the government like the Public Work Program.\textsuperscript{64} It should be noted that the Social Work Program was expanded to other programs for the creation of social services jobs and it led to the emergence of one type of social objective, i.e., social services provision.\textsuperscript{65}

With an intention to get rid of such weakness, the Social Work Program was transformed to create the Social Enterprise Promotion Act. The draft law on establishment and promotion of social enterprise were proposed by two opposite political parties in 2005 and 2006. This fact reflected a consensus on the need to foster social enterprises in South Korea.\textsuperscript{66} The draft law was reformulated by the MOL,\textsuperscript{67} and finally, the Social Enterprise Promotion Act was enacted on 3 January 2007. With respect to the rationales of the past, social enterprise in South Korea is a means of reducing unemployment and expanding the supply of social service.\textsuperscript{68}

\begin{itemize}
  \item \textsuperscript{62} Ibid 10
  \item \textsuperscript{63} Choi and Jang, 'Analysis of Current Conditions Facing Social Enterprises in Korea: Policy Issues Regarding Their Sustainable Development' 120
  \item \textsuperscript{64} Kim, 'Formation of Social Enterprise Policy and Prospects for Social Enterprise in Korea' 10
  \item \textsuperscript{65} Hwang and others, 'Social Enterprise in South Korea' 8
  \item \textsuperscript{66} Kim, 'Formation of Social Enterprise Policy and Prospects for Social Enterprise in Korea' 12
  \item \textsuperscript{67} Eric Bidet and Hyung-Sik Eum, 'Social Enterprise in South Korea: History and Diversity ' (2011) 7 Social Enterprise Journal 8
  \item \textsuperscript{68} Choi and Jang, 'Analysis of Current Conditions Facing Social Enterprises in Korea: Policy Issues Regarding Their Sustainable Development' 120
\end{itemize}
For instance, BeautifulStore and Seongmisan Village are interesting examples of social enterprise in South Korea. BeautifulStore is the first registered social enterprise in South Korea. Unused items will be donated to this foundation to find new owner who is underprivileged person. It aims to promote environmental awareness through recycling activities, to support community activities and strengthen local grassroots projects. In addition, it grants chances to the marginalized in society, hiring the homeless, ex-conicts, and vulnerable women.70

In addition, Seongmisan Village is categorized in social service provision type. It began when a group of young parents with small children who were living near Seongmisan Mountain arranged communal daycare center because there is no nearby daycare centers for their children. Eventually, the 17 households decided to set up their own daycare center, which invest equal sums of money, recruit, and interview teachers by themselves. As their children grew up, these parents continued to hold gatherings regarding other shared interests and concerns. This network of relationships has diversified into around 70 new neighborhood gatherings, which now include a daycare center, alternative school for local teens, neighborhood cafe, and a community enterprise.71

McCabe and Hahn, 'Promoting Social Enterprise in Korea and the UK: Community Economic Development, Alternative Welfare Provision or a Means to Welfare to Work?' 389
BeautifuStore, 'Who we are' (2018) <http://eng.beautifulstore.org> accessed 1 March 2019
2.3.3 Thailand

Social enterprise seems to be a new word in Thailand. Contrarily, entrepreneurs frequently raise corporate social responsibility (CSR) which shares some similar characteristics with social enterprises’ business and social impact. They usually conduct and advertise CSR activities, so Thai people are more familiar with CSR than social enterprise. In fact, some social businesses can be considered social enterprises. It appears that there are various types and social purposes of social enterprises either to develop communities and society or to protect the environment. In Thailand, it can be said that social enterprises are an evolution of the traditional third sector, which began to rely on earned revenue rather than donations. It means that social enterprise is not a completely new issue in Thailand. Nonetheless, they are not common, and their performance cannot effectively create a true social impact as they are merely small businesses, or otherwise an incubation stage.

Not only the private sector, but also the government has realized the importance of developing businesses, society, and environment simultaneously in order to create sustainable development. In addition, there was a global trend of social enterprises which were set up to tackle social and environmental problems. As a way to deliver both positive a social impact and economic growth, the government intended to promote social enterprises, and the initial stage of the

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74 Sakda Siriphattrasophon, 'A Conceptual Study of Social Enterprise Development in Thailand' 32
75 Thaipublica, 'Government Kicks off Social Enterprise'
<https://thaipublica.org/2018/06/social-enterprise/> accessed 1 November 2018
Social Enterprise Master Plan (B.E. 2553-2557) was launched in 2010. According to the Master Plan, Thai Social Enterprise Office was established in 2011 in order to promote social enterprises in Thailand. It tried to propose a Social Enterprise Promotion Act, but it failed.

After that, the National Reform Council became the responsible body to study, analyze and prepare the guidelines and proposals for future reform. They aimed to eliminate economic and social inequity for sustainable development, according to the Constitution of the Kingdom of Thailand (Interim) B.E. 2557. Recently, the National Reform Council maintained that it was still necessary to enact new laws for social enterprise. The reason begin that there were many social businesses in private sectors and this kind of business provided a positive impact on society. However, they had not been sufficiently supported, and could not compete with traditional businesses. Therefore, incentive measures needed to be specified to promote social enterprises. Consequently, the draft law on the Social Enterprise Promotion Act was significantly revised and proposed by the National Reform Council. Fortunately, in October 2018, the Council of State has approved this draft law of the Social Enterprise Promotion Act, and it now awaits Cabinet approval.

For instance, Doi Kham and Chao Phya Abhaibhubjhr Hospital Foundation are interesting examples of social enterprise in Thailand. Doi Kham Food Product Company was founded under His Majesty, King Bhumibol Adulyadej’s Royal Project in 1969. It was His Majesty the King’s vision to enhance the quality of life of Thai people, due to the widespread of poverty and opium plantation along the hills.

76 Office of the National Economic and Social Development Board, Thai Society in First Quater of 2018 (2018)
77 Witawat Netsansak, 'Big Private Sectors Want SE' Prachachat <www.prachachat.net/csr-hr/news-133292> accessed 1 November 2018
in the Northern part of Thailand. To promote the safety of national security and natural resources, H.M. the King initiated “Project for Hills Tribe,” to educate and inform people about the effects of opium plantation, shifting cultivation and alternatives to these agricultural plantation. Farmers were encouraged to plant winter crops that are suitable and sustainable for each area such as peaches, lychees, apples and tomatoes. This helps control price fluctuation of agricultural products and commodities, as well as preventing intermediaries from taking advantage over Thai farmers. The production was processed under the trademark “Doi Kham,” to increase product value.

In addition, Chao Phya Abhaibhubejhr Hospital Foundation was founded in 2002 to take over the production and sales of Abhaibhubejhr herbal products from the hospital. The foundation has been committed to operate as a social enterprise aiming to make social, economic and environmental impact beyond its business activities. Its development of herbal products and Thai Traditional Medicine has been geared to be the high quality herbal products. It also aims to enhance self-reliance in drug’s system of Thailand and to provide jobs to people in society.

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CHAPTER 3
THE UNITED KINGDOM AND SOUTH KOREAN LAWS
ON SOCIAL ENTERPRISE

In this chapter, the approaches of the UK and South Korea will be explained by examining four subjects: the historical background, which gives reasons behind the approaches; the criteria of social enterprise establishment, which is an initial measure of governments to inspect social enterprises; control measures which shape social enterprises to serve dual missions; and incentive measures provided to support such enterprises to enhance their performance.

3.1 The United Kingdom

Social enterprise in UK law is a separated entity which is called Community Interest Company (CIC). This type of company has to abide by the Companies Act 2006, the Companies (Audit, Investigations and Community Enterprise) Act 2004 (CAICE Act), and the Community Interest Company Regulations 2005 (CICR).

3.1.1 Criteria of CIC establishment

(1) Legal status

The legal status of the CIC is an entity specifically set up for facilitating the development of a social enterprise. This status expressly stresses the business character of CICs. The basic legal structure for CICs is the limited liability company which can be divided into three forms:

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83 Companies (Audit, Investigations and Community Enterprise) Act 2004 (CAICE Act) s 26(1).
- Private company limited by guarantee without share capital
- Private company limited by shares
- Public company limited by shares

Moreover, as they are limited companies, all CICs are registered by the Registrar of Companies.

Concerning the basic legal structure of CICs, CICs are companies which are also subjected to the Companies Act 2006. This means that the nature of CICs is to engage in economic activities and to generate income through trade, like other companies. Although it is not expressly specified as to revenue of CICs, most of the turnover should come from trading.  

(2) Social objectives

In order to be a CIC under UK law, a company must declare its social objectives through a community interest statement and specify the objectives in its Articles of Association (AOA). The objective has to pass a community interest test, not only in the registration stage, but it also throughout operation. The test is based on whether in the view of a reasonable person, the company’s activities can be considered as being carried out for the benefit of the community.  

The dimensions of the test reflect the historical background of the CIC which mainly focused on the value of communities.

Moreover, the concerning laws are needed to clarify what a community is in order to determine the community interest test. A community is a group of individuals who share readily identifiable characteristics.  

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84 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter1: Introduction' (2016) 9 
85 Anna Triponel and Natalia Agapitova, 'Legal Framework for Social Enterprise: Lessons from a Comparative Study of Italy, Malaysia, South Korea, United Kingdom, and United States' (2017) World Bank Group 18 
86 CAICE Act, s 35. 
87 Community Interest Company Regulations 2005 (CICR) regulation 5.
“community” is very broadly defined. It does not explicitly determine either category of social purpose or aspect of benefit. So, instead of a particular group of people or issues, a wide range of interests qualifies as a benefit. For instance, matters concerning community regeneration, employment issues, disable persons and environmental problems can be included in the range of benefits to the community. Nonetheless, if an activity benefits only the members of a particular body or the employee of a particular employer, it does not benefit communities. 88

It should be aware that a company which is a political party or political campaigning organization or their subsidiary is an excluded company 89 which is not considered a CIC since political activities are not deemed benefit the communities. 90

The requirement for decision-making is not a criterion of CIC establishment. Although CICs are obliged to describe the process and outcomes of consultation with involved persons affected by the company’s activities in the CIC report, 91 it is not mandatory. The CIC report only encourages companies to consider stakeholders in their decision-making activities. 92 It shows that UK law does not apply much weight on stakeholder involvement in CIC operation.

Also, the CAICE Act stipulates about asset lock which is a unique feature of CIC as one of its criteria of the establishment. However, the author sees that it is a measure of control by its nature. It is appropriate for this independent study to elaborate on this principle in the control section below.

88 CICR, regulation 4.
89 CAICE Act, s 35(6) and CICR, regulation 6.
90 CICR, regulation 3.
91 CICR, regulation 26.
3.1.2 Incentive

(1) Financial incentive

(a) Taxation support

Taxation support is considered an indirect state support. Unfortunately, by the legal status of CICs, there is no tax exemption or deduction for the CIC itself. In other words, they are subjected to income and value-added taxes like other companies in the UK. The reasons are that the government has attempted to promote fairness in the tax system by ensuring that everyone plays by the same rules and to secure a sustainable tax base. Tax relief undeniably reduces CICs’ operational cost, so, it is unfair to other entrepreneurs in the market. In summary, CICs do not receive this support, which creates business uncertainty for CICs.

However, there is intention to provide a new source of finance to CICs and encourage individuals to support them. Thus, the CIC is stipulated as a social enterprise under the Tax Relief for Social Investments (Accreditation of Social Impact Contractor) Regulations 2014, which is a law that provides tax privilege to

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93 European Center for Not-for-Profit Law, 'Comparative Analysis of the Regulatory Framework for Social Enterprises'
94 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter7: Financing Community Interest Companies' (2016)
95 Office of the Regulator of Community Interest Companies, 'Leaflets Information Pack' (2016)
97 Council, 'Social Enterprise'
98 HM Treasury, 'Guidance Social Investment Tax Relief' (2016)
investors of social enterprises. The investors of the CICs benefit from this regulation;\textsuperscript{99} namely, they receive income tax relief and capital gains tax relief when specified criteria are met.\textsuperscript{100}

(b) Financial support

Financial support can be seen in various forms such as grants, subsidies, and loans. This kind of support is considered direct state support,\textsuperscript{101} provided to social enterprises by the state directly.

Under UK law, CICs are encouraged to generate income through their trading activities. It is believed that the central financing resource of CICs should be their trading income. This resource will indeed lead to sustainability of CICs. Moreover, funds preclude CICs’ business from the operation on a practical commercial basis, and CICs have to depend on social impact which limits the capacity of CICs in commercial finance.\textsuperscript{102} For these reasons, the CAICE and its regulations do not provide any funds for CICs explicitly. However, there are some specific private funds granted to CICs. In order to be funded from such resource, CICs have to meet specific criteria because it is not their automatic right.\textsuperscript{103}

(c) Preferential purchase

CICs are not granted any rights of preferential purchase directly. The relevant law is the Public Services (Social Value) Act 2012 whose main idea is that when public authorities enter into any public services contract, it must take into account economic, social and environmental well-being. Eventually, CICs will play an

\textsuperscript{99} Agapitova, 'Government Support to the Social Enterprise Sector: Comparative Review of Policy Frameworks and Tools' 28

\textsuperscript{100} Kittisak Rojnantakij, 'Tax Measure to Promote Social Enterprise 54

\textsuperscript{101} European Center for Not-for-Profit Law, 'Comparative Analysis of the Regulatory Framework for Social Enterprises' 11

\textsuperscript{102} Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter7: Financing Community Interest Companies' 12

\textsuperscript{103} Ibid 12
essential role benefiting communities. Although CICs can benefit from this act by nature of their social objectives, the act does not provide any priority to CICs by virtue of their status.

(2) Non-financial incentive

The Regulator of Community Interest Companies must issue guidance or otherwise, and assist with matters relating to CICs. The guidance provides necessary information in general. It does not advise specific CICs.  

3.1.3 Control

(1) Transfer of asset restriction

The CAICE Act has recognized the asset lock principle which is a method to prevent assets of CICs from being used for other designated purposes. It can ensure that assets of CICs, including either profits or other surpluses generated by their operations, are retained within the companies to support their activities or otherwise used to benefit communities. This restriction places control on the distribution of the assets of CICs, not only during the operation period, but also liquidation of CICs.

CICs are required to stipulate provisions about asset lock in their constitutional document, or the AOA. Consequently, during business operation, CICs shall be governed by these provisions. The asset lock requires that CICs shall not transfer their assets at less than full consideration, i.e., below market value. It is notable that CICs’ assets can be used as collateral, although such assets may be

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104 CAICE Act, s 27(5).
105 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter11: Regulator' (2016) 6
106 Cornforth, 'Understanding and combating mission drift in social enterprises' 10
107 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter6: The Asset Lock' (2016) 4
108 CICR, regulation 7, 8 and schedule1,2,3.
seized. CICs still have the usual duties and obligations like any other limited company.  

However, some exceptions allow CICs to transfer assets below market value:

(a) The transfer is made to another asset-locked body which is specified in the AOA of the CIC, or the Community Interest Companies Regulator gives consent to the transfer.

Asset-locked body is a CIC or a charity. In order to specify an asset-locked body, a CIC can name another CIC or any charity in the AOA or adjust it later by a special resolution of shareholders. However, if a CIC aims to transfer its assets to an asset-locked body which is not specified in the AOA, it must obtain consent from the regulator who takes into account the best interests of the CIC.  

(b) The transfer is made for the benefit of the community.

When a transfer is not made for full consideration or to an asset-locked body, it must be made for the benefit of the community. This exception is left to the discretion of involved persons because the dimension of benefit depends on the particulars of each case.

As mentioned above, CICs are subjected to their control of the asset distribution, even in dissolution. If a CIC is wound up and there are residual assets, i.e., properties of the CIC remaining after satisfaction of the CIC’s liabilities, these restrictions shall apply.

Firstly, the residual assets are returned to the shareholders in the amount of paid up value of their shares. It means that members of CICs do

109 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter6: The Asset Lock' 5  
110 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter10: Transfer of Assets and Ceasing to be a CIC' (2016) 3  
111 Ibid 4  
112 CICR, regulation 23.
not get any surplus profits of the CICs. This restriction contrasts the traditional company principle. After liquidation, the remaining assets are generally distributed to the shareholders, pursuant to their right under company law, but members of CICs have no right to receive an amount exceeding the paid up value of their shares.

Next, the remaining residual assets are distributed to other asset-locked bodies which are specified in the AOA or directed by the regulator concerning these matters;

(a) The CIC does not specify an asset-locked body that is set to receive the asset in the AOA.
(b) The specified asset-locked body is in the process of being wound up.
(c) The specified asset-locked body is considered an inappropriate recipient.\(^\text{113}\)

In summary, this asset lock principle is a special feature of the CIC. Unlike traditional companies, CICs must adhere to this principle. Consequently, they run their businesses less freely. It can be seen that the extent of restriction is vast and it can cause permanent long-term consequences because it controls asset distribution throughout the whole life of CICs. Therefore, this principle inarguably serves its purpose to ensure CICs’ assets are used for the benefit of the community. Concerning these restrictions, CICs’ assets cannot be distributed to its members, however, the payment of dividends is one of the few exceptions which will be explained in the next subsection.

(2) Reinvestment restriction

According to the social objective prioritization, this rule aims to ensure that CICs’ profits are used to serve their social purpose as the primary objective. However, if CICs were prohibited from paying dividends, they may not attract investors anymore. The key is a balance between encouraging people to invest in CICs and the principle that the profits of a CIC should be devoted to the

\(^{113}\) CICR, regulation 23.
benefit of the community. Consequently, dividends are proportionally distributed to investors and the company.\textsuperscript{114} The reinvestment principle closely relates to the restriction of CICs’ dividend payment and both cover profit generated by CICs. The amount of reinvestment and dividend payments are also inversely correlated. When CICs pay more dividends, they will have less money to reinvest in the business or vice versa. So, UK law applies a dividend payment cap for CICs.

Initially, it should be noted that there is no shareholder in a company limited by guarantee without share capital. So, this type of company cannot pay dividends. A company limited by shares or by guarantee with a share capital might be subjected to this dividend payment rule; it depends on their constitution. As to dividend payments, such companies can adopt the statutory provisions provided in schedule 2 and 3 of CICR. If a CIC adopts schedule 2 into its AOA, it cannot pay dividends because the AOA does not allow it to do so. In contrast, if a CIC adopts schedule 3 into its AOA, it can distribute dividends because the AOA has authorized it.\textsuperscript{115} However, it must simultaneously take into account the dividend cap which is the amount of payable dividend.

In the past, the restriction of a dividend cap had three elements as follows;\textsuperscript{116}

(a) The dividend per share cap
(b) The maximum aggregate dividend cap
(c) The capacity to carry-over unused dividend payments for up to 5 years

However, with an intention to make CICs more attractive to investors, the share company dividend caps were removed.\textsuperscript{117} Since the first October

\textsuperscript{114} Office of the Regulator of Community Interest Companies, ‘Information and Guidance Notes Chapter6: The Asset Lock’ 8
\textsuperscript{115} Explanatory Note of CICR
\textsuperscript{116} Office of the Regulator of Community Interest Companies, ‘Information and Guidance Notes Chapter6: The Asset Lock’ 8
2014, the dividend cap has had only a single element, i.e., the aggregate dividend cap. This cap is expressed as a percentage of distributable profits and specified by the regulator under the Secretary of State’s suggestion.

At present, the aggregate dividend cap is restricted 35% of the relevant company’s distributable profits. Namely, CICs can declare dividends only if they are not higher than the maximum aggregate dividend threshold for the financial year. Therefore, the rest will be reinvested to continue their activities. Nonetheless, the dividend cap does not apply if an asset-locked body holds the shares. That includes both (a) the body specified in the AOA and (b) the body not specified in the AOA, but the regulator has consented to the payment of dividends. In summary, this dividend cap ensures that 65% of the CICs profits are reinvested back into the company or, in the case of a dividend cap exception, used for the community it was set up to serve.

(3) Report submission

UK law applies the self-reporting method as one of its control measures. CICs have a statutory obligation to annually submit a community interest company report to the registrar of companies for the public record and for scrutiny. This report is also forwarded to the regulator.

According to the preparation, the directors of CICs are the responsible persons who have to prepare this report. Actually, CICs are expected to

118 CICR, regulation 22(6).
119 CICR, regulation 22(8).
120 CICR, regulation 22(1)(b).
121 CICR, schedule 3.
122 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter6: The Asset Lock' 8
123 CAICE Act, s 34.
provide information to their fullest capability. However, the report must at least, detail the following matters:

(a) Company’s activities which have done to benefit the community

(b) Consultations with persons affected by its activities

(c) Assets transferred for less than market value

(d) Dividends declared for such year

It means that, in addition to the annual report which is usually submitted by every company with the end of year accounts, the CIC has to deliver an annual community interest company report which specifies its activities during the financial year. Then, the report will be placed on the public record by the Registrar, and it is open for public inspection. If the report contains false information, a penalty will be imposed on the directors.

In summary, being a CIC seems easy at first stage because its criteria of establishment are roughly stipulated. But the laws hardly incentivize CICs because CICs have emerged to serve as a flexible entity for social enterprise. So, it is acceptable that the laws focus more on the structure of this entity. However, the control is stringent and detailed. The UK approach emphasizes the characteristics of hybrid organization and prioritizes the social objectives. Therefore, UK law has a strong control approach in order to preclude mission drift.

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124 Office of the Regulator of Community Interest Companies, ‘Information and Guidance Notes Chapter8: Statutory Obligations’ (2016) 4
125 CICR, regulation 26.
126 CICR, regulation 27.
127 CAICE Act, schedule 7.
3.2 South Korea

Social enterprise in South Korea is subjected to the Social Enterprise Promotion Act 2007 and the Enforcement Decree of the Social Enterprise Promotion Act 2016.

3.2.1 Criteria of social enterprise establishment

South Korea applies a certification system to establish social enterprises. The certification can ensure the credibility of social enterprises, and make it easier to grant them the supports. Social enterprises are subjected to stringent criteria for certification as follows:

(1) Legal status

The organizational form of social enterprises is not limited to non-profit organizations. Although not all forms of organization under the law can be certified as a social enterprise, there is more flexibility and choices than what CICs have under UK law. The fundamental legal status of social enterprises is provided in four forms:

(a) Corporation or association under the Civil Act;
(b) Company or limited partnership under the Commercial Act;
(c) Corporation under specific acts such as Public Interest Corporation, Social Welfare Corporation; and
(d) Non-profit, non-governmental organization such as consumer cooperative, federation of cooperative, social cooperative, and federation of social cooperative.

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128 Euncheong Lee, 'Examining the Sustainability of Social Enterprise in Contemporary Korea' (Doctor Degree Thesis, The University of Birmingham 2014) 24
129 Social Enterprise Promotion Act 2007 (SEPA) s 8 and Enforcement Decree of the Social Enterprise Promotion Act 2016 (Decree) s 8.
(2) Business activity

Social enterprises must employ paid workers and conduct business activities such as the production and sale of goods or services.\(^{130}\) For the purpose of sustainability, social enterprises must conduct a business activity which is carried out by at least one paid worker. However, it is not limited to regular workers. That is to say, other workers are also included such as part-time workers.\(^{131}\)

(3) Social objective

Social enterprises have to pursue a social objective. It must belong to one of the following five categories:

(a) Job creation type

Notably, this type has been influenced by the Self-Sufficiency Program.\(^{132}\) Offering jobs to vulnerable groups is the primary purpose of this kind of social enterprises. That is at least 50% of all employees in the enterprise must be disadvantaged persons.\(^{135}\)

(b) Social services provision type

As mentioned previously, this type has been influenced by the Social Work Program.\(^{134}\) The main purpose of social enterprises in this type is to provide vulnerable groups with social services. It is required that at least 50% of the recipients receiving social services by such social enterprise must be disadvantaged persons.\(^{135}\)

(c) Mixed type

\(^{130}\) SEPA 2007, s 8(1)2.

\(^{131}\) Choi and Jang, 'Analysis of Current Conditions Facing Social Enterprises in Korea: Policy Issues Regarding Their Sustainable Development' 121

\(^{132}\) Hwang and others, 'Social Enterprise in South Korea' 9

\(^{133}\) SEPA 2007, s 8(1)3 and Decree 2016, s 9(1)2.

\(^{134}\) Hwang and others, 'Social Enterprise in South Korea' 9

\(^{135}\) SEPA 2007, s 8(1)3 and Decree 2016, s 9(1)1.
The primary objective of this social enterprise is a combination of job creation, and social service provision type. The proportion of employees and social services recipients who are disadvantaged persons must at least 30% of all employers and recipients respectively.\(^{136}\)

(d) Local community contribution type

Due to the global financial crisis in 2008, local governments began to participate in social enterprise policies. They intended to foster regeneration in regional communities,\(^{137}\) and in 2010, the local community contribution type was added. Social enterprises of this type must contribute to an improved quality of life to people in a local community. In other words, social enterprises which aim to increase income and employment of community residents, to solve social issues or indirectly support any social enterprise which has community contribution objectives can be classified into this type.\(^{138}\)

(e) Miscellaneous type

The Minister of Employment and Labor has the authority to determine other objectives in addition to the aforementioned types. It appears that this provision makes the dimension of social objective more flexible.

(4) Decision-making structure

Social enterprises must have a decision-making structure regarding interested parties,\(^{139}\) and the method of this matter must be stipulated in the social enterprise’s article of incorporation from the very beginning.\(^{140}\) In every important social enterprise meeting, they have to operate with a decision-making structure

\(^{136}\) SEPA 2007, s 8(1)3 and Decree 2016, s 9(1)4.

\(^{137}\) Hwang and others, 'Social Enterprise in South Korea' 9

\(^{138}\) SEPA 2007, s 8(1)3 and Decree 2016, s 9(1)3.

\(^{139}\) SEPA 2007, s 8(1)4.

\(^{140}\) SEPA 2007, s 9(1)5.
which involves the stakeholders of the social enterprises, e.g., representatives of workers, beneficiaries and respected persons in the local community.\textsuperscript{141}

(5) Revenue from business activities

It is required that a social enterprise generates income through business activities. It must clearly indicate that the total income generated by its business activities, six months prior to the certification application, exceeds 50% of its total labor costs. Its total income must be twofold the total labor costs.\textsuperscript{142}

(6) Reinvestment restriction

In addition to the said requirements, the law also stipulates the restriction of reinvestment, which is one of the criteria of establishment. However, the author sees that it is a measure of control, so, it is more appropriate for this independent study to elaborate as to this restriction in the section of the control further.

3.2.2 Incentive

Under South Korean law, there are considerable measures designed to incentivize social enterprises, both financial and non-financial.

(1) Financial incentive

(a) Taxation support

With respect to certification, social enterprises can receive a reduction of or exemption from national and local taxes such as the corporate tax and special local tax. However, these tax privileges are only provided for a set period.

In addition, corporations or individuals who make donations to social enterprises can enjoy the reduction of or exemption from various kinds of tax. For instance, local tax and corporate tax for corporation donors and income tax for individual donors.

\textsuperscript{141} Choi and Jang, 'Analysis of Current Conditions Facing Social Enterprises in Korea: Policy Issues Regarding Their Sustainable Development' 121

\textsuperscript{142} SEPA 2007, s 8(1)5 and Decree 2016, s 10.
(b) Financial support

This kind of support can be divided into the two groups of subsidies and loan systems. For subsidies, the government provides substantial support to social enterprises. The first subsidy is a labor cost subsidy, granted particularly to the social service provider, i.e., social enterprises which have the second type of social objective. This support focuses on personnel expenses which include professional personnel. In addition, it covers operating expenses, advisory fees and other expenses incurred through operating as such social enterprises. In the case of establishment and operation of a social enterprise, the state or local government will even subsidize land purchasing costs, facility costs, and other costs if it deemed necessary.

Another source of subsidies is the social insurance subsidy. Social enterprises can be partially subsidized many social insurances by the government. The subsidy covers the four significant social insurance premiums that companies have to pay. The first two premiums are for employment insurance and industrial accident compensation insurance which relate to employment matters. The third insurance premium concerns with health insurance matters and the last one is the pension premium which concerns pension benefits for old-age, disability or death of employees. Secondly, the loan system is created to help social enterprises easily access capital. The main method is lending. Social enterprises can borrow money from the state or local government. Moreover, the said authorities can permit social enterprises to use public properties.

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143 Yoon and Kim, 'A Note on the Renovation of Social Enterprise in Korea: Current Status and Future Prospects' 710
144 SEPA 2007, s 14.
145 SEPA 2007, s 11.
146 SEPA 2007, s 13(2).
147 SEPA 2007, s 11.
In addition, the Korea Credit Guarantee Fund (KODIT) - a public financial institution - provides a loan guarantee for social enterprises when they want to access a loan from financial institutions. In 2018, due to difficulties of accessing formal lenders, the KODIT plans to further increase the amount of funds for the next five years. 148

(c) Preferential purchase

Public institutions such as national institutions and local governments 149 are encouraged to purchase goods or services produced or provided by social enterprises. Namely, when governments seek public procurements, social enterprises are preferred as potential parties of the contract.

Moreover, every public institution has a duty to annually notify three issues to the Minister of Employment and Labor. The notification consists of an annual plan which specifies, firstly, how to increase purchases of social enterprises’ goods and services in the current year, secondly, the record of purchases and the proportion of social enterprise products purchased, and lastly, the total purchases of the institution from the previous year. 150 Unfortunately, it is not efficient in practice because other relevant laws do not recognize the priority of social enterprises in the same direction. 151

149 Act on facilitation of purchase of small and medium enterprise-manufactured products and support for development of their markets, s 2.
150 SEPA 2007, s 12 and Decree 2016 s 12-2.
151 Lee, 'Examining the Sustainability of Social Enterprise in Contemporary Korea’ 211
(2) Non-financial incentive

(a) Support for business management

When operating social enterprises, entrepreneurs usually face many obstacles. Therefore, the MOL provides professional consultation with subsidies for the consultation cost. Moreover, in order to establish and operate social enterprises smoothly, there is a lot of support for them regarding business management, technology, taxation, labor relations, and accounting.152

(b) Education and training

An important milestone of incentive measures under South Korean law is the support for education and training to social enterprises. This policy was newly inserted in the SEPA in 2010. It aims to nurture social enterprises to be successfully established and operated. Meanwhile, it does not ignore the employees. Thus the abilities of employees in social enterprises are enhanced as well.153 Actually, the government gives priority to and has created a long-term policy for educational support, evidently through the Social Enterprise Master Plan. The plan is mandatorily updated by the MOL every five years for the promotion of social enterprises. Notably, it is required to stipulate matters about educating and training the managers and workers of social enterprises.154 For this reason, the Social Entrepreneurs Academy has emerged with the efforts of the Korea Social Enterprise Promotion Agency (KoSEA) - an authority responsible for promoting social enterprise. There are many courses provided by institutes or universities selected by the KoSEA in order to support the sustainable growth of social enterprise.155

152 SEPA 2007, s 10.
153 SEPA 2007, s 10-2.
154 Decree 2016, s 6.
155 Korea Social Enterprise Promotion Agency, 'Specialized Course for The Startup of Social Enterprises' <www.socialenterprise.or.kr/eng/exploring/special.do> accessed 20 October 2018
3.2.3 Control

(1) Transfer of asset restriction

There is a transfer of asset restriction which is compulsorily stipulated in social enterprises’ article of incorporation. It must include a provision specifying that if a social enterprise faces dissolution or liquidation, such enterprise has to donate at least two-thirds of the remaining property to another social enterprise or a public-interest fund.\(^{156}\)

However, this restriction will only apply when such social enterprise is a company or partnership with distributable residual property. That is to say, if social enterprises have other fundamental organization forms besides a company and partnership, they do not fall into this restriction. This consequence also occurs if social enterprises in the above forms do not have any residual assets.

(2) Reinvestment restriction

Since the reinvestment principle clearly correlates with the restriction of social enterprises’ dividend payments, it is necessary to examine it through dividend payments restrictions. It is required that more than two-thirds of the profits must be reinvested for social purposes if a social enterprise make any distributable profits during a fiscal year.\(^{157}\) For this reason, social enterprises can only pay dividends up to one-third of their distributable profits each year. Consequently, two-thirds of profits are available to contribute towards the social objectives. However, this restriction is applied only to social enterprises in the form of a company or partnership.

(3) Report submission

Social enterprises have to submit a business report to the Minister of Employment and Labor, by the end of April and October, by each financial year. The report must encompass business performance and the details of participation in

\(^{156}\) SEPA 2007, s 9(1)9.

\(^{157}\) SEPA 2007, s 8(1)7.
decision-making by interested parties.\textsuperscript{158} If a social enterprise does not submit a business report by negligence or submitting the false report, the punishment is a fine not exceeding five million won.\textsuperscript{159} The punishment is against the responsible person instead of the social enterprise directly. This shows that South Korean law applies a self-reporting method which is based on information provided by the social enterprise itself as a measure of regulating the social enterprise, the same as UK law.

In conclusion, being a social enterprise under South Korean law seems complicated in the beginning because its criteria of establishment are very detailed. In addition, by virtue of social enterprise certification, there are considerable incentives provided by the government. Consequently, the level of control is rather high.

\textsuperscript{158} SEPA 2007, s 17.
\textsuperscript{159} SEPA 2007, s 23.
CHAPTER 4
ANALYSIS ON THAI DRAFT LAW

4.1 The details of draft law

In 2018, the Social Enterprise Promotion Act had yet to be launched. Concepts of social enterprises remain ambiguous and uncertain. Therefore, in this independent study, the draft law on the Social Enterprise Promotion Act approved by the Council of State, which is the lasted version, is examined in order to trace the approach behind the upcoming social enterprise’s regulations.

4.2.1 Criteria of social enterprise establishment

According to the draft law, the certification system will be applied to distinguish social enterprise from other traditional businesses. Social enterprises will be divided into two groups for certification. One has the objective to distribute a dividend, and the other not.\(^{160}\)

(1) Legal status

The original status of social enterprise are companies, partnerships and other juristic persons under Thai law which operate a business activity for production, a sale of goods or provision of services.\(^{161}\) Firstly, if the fundamental status of social enterprise is a company, there are two types of companies, i.e., private limited company and public limited company. Moreover, it should be noted that only public limited companies can be listed in the stock exchange. Secondly, in the form of partnerships, there are three types: ordinary partnership, registered ordinary partnership and limited partnership. Lastly, the juristic persons who operate a business in manufacturing, selling goods, or services can be certified as social

\(^{160}\) Draft law on the Social Enterprise Promotion Act, s 6.

\(^{161}\) Draft law on the Social Enterprise Promotion Act, s 3.
enterprises. At this point, juristic persons under Thai law can be classified into two types:

(a) Juristic person under the Civil and Commercial Code

Besides registered partnerships and private limited companies, juristic persons under the Civil and Commercial Code are associations and foundations.

(b) Juristic person under other laws

For instance, a cooperative under Cooperative Act. It should be aware that a political party is also a juristic person. However, it may not be appropriate to allow political parties or entities substituting for them to be social enterprises.

(2) Social objectives

The social objective must be a primary purpose of social enterprise. The draft law specifies three categories of social objectives:

(a) To promote employment of disadvantaged persons. Unfortunately, it fails to identify who are considered advantaged persons. This loophole will undoubtedly cause uncertainty of the definition in social enterprise.

(b) To solve problems of and develop communities, society, and the environment.

(c) For other benefits of the community according to the Prime Minister’s notification.

(3) Business activity

It is required that a social enterprise has to generate income through business activities. At least 50% of total income must be generated from the sale of goods or services.

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162 Organic Act on Political Parties B.E. 2560, s 20.
163 Draft law on the Social Enterprise Promotion Act, s 5(1).
164 Draft law on the Social Enterprise Promotion Act, s 5(2).
(4) Good governance

Social enterprise must have good governance. Good governance is a very broad and too abstract term for being a criterion of social enterprise establishment. At least, it should include the decision-making structure. However, it fails to identify who are the involved persons that a social enterprise must adhere to.

(5) Reinvestment restriction

In addition to abovementioned requirements, the draft law also stipulates restriction of reinvestment as one of the criteria of social enterprises establishment. However, the author sees this is a measure of control. So, it is more appropriate for this independent study to elaborate this restriction in the control section.

4.2.2 Incentive

(1) Financial incentive

(a) Taxation support

Social enterprises may enjoy tax privileges pursuant to the Revenue Code. In 2016, the Royal Decree issued under the Revenue Code in Relation to Tax Exemption (No.621) B.E. 2559 was announced. It provides a tax exemption of corporate income tax for social enterprises. However, some certified social enterprises may not receive tax relief according to the different definition of social enterprise in the tax decree and the draft law.

In addition, tax privileges will be provided for individuals who support social enterprises. Donations through the social enterprise fund and particular social enterprise are also accepted. Moreover, it includes individuals, whose support directly relates to social enterprises’ business, i.e., investing in a social enterprise and providing technology, innovation, or knowledge in the manufacture of, or business management to a social enterprise.

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165 Draft law on the Social Enterprise Promotion Act, s 5(4).
166 Draft law on the Social Enterprise Promotion Act, s 59(2).
167 Draft law on the Social Enterprise Promotion Act, s 63.
(b) Financial support

Social enterprises can borrow money from the social enterprise fund in order to establish, improve, and develop social enterprises themselves.\(^{168}\) Moreover, the fund also provides subsidies for the initial stage the business operation; this does not usually exceed two years, but the period can be extended to not exceeding four years.\(^{169}\) It should be noted that social enterprises are required to contribute towards the social enterprise fund.\(^{170}\) Certification would be revoked if social enterprises did not give money to the fund. Consequently, they would no longer receive incentives from being a social enterprise.\(^{171}\)

(c) Preferential purchase

Social enterprises may enjoy the incentives of preferential purchase according to the Public Procurement and Supplies Administration Act B.E. 2560.\(^{172}\) In 2018, there were no provisions in the act which supported preferential purchase to social enterprises directly. When considering and selecting proposals, the act and its regulations vaguely mention that a state agency shall take into account the benefit of agricultural and disadvantaged groups.\(^{173}\)

It should be noted that although the draft law has already recognized the core principle of social enterprises’ preferential purchase, the relevant law fails to specify details clearly. So, the priority of social enterprises should be added to the Public Procurement and Supplies Administration Act. Otherwise, Thai social enterprises may face the same experience as their South Korean counterparts.

\(^{168}\) Draft law on the Social Enterprise Promotion Act, s 59 and 48(1).

\(^{169}\) Draft law on the Social Enterprise Promotion Act, s 59 and 48(2).

\(^{170}\) Draft law on the Social Enterprise Promotion Act, s 13.

\(^{171}\) Draft law on the Social Enterprise Promotion Act, s 70.

\(^{172}\) Draft law on the Social Enterprise Promotion Act, s 59(3).

\(^{173}\) Public Procurement and Supplies Administration Act B.E. 2560, s 65.
(2) Non-financial support

The Thai Social Enterprise Promotion Office has to provide consultation and training to social enterprises and promote them to develop efficient business management.\(^{174}\)

4.2.3 Control

(1) Transfer of asset restriction

According to the draft law, there is no provision concerning the transfer of asset restriction. It means that social enterprises which have fundamental status as companies and partnerships can transfer their assets freely, like traditional business.

Since associations and foundations can be registered as social enterprises as well, there are provisions in the CCC about asset management in case of dissolution of such organizations. This is similar to the asset lock principle of the UK, but does not concern matters about transfer of assets during operation. In the author’s point of view, provisions in the CCC alone, cannot deal with associations and foundations which intend to be social enterprises because of the differences in their nature.

(2) Reinvestment restriction

The draft law has recognized the reinvestment restriction of social enterprises. At least 70% of social enterprises’ profits have to be reinvested to fulfill their social objectives.\(^{175}\) Actually, the reinvestment for social objectives relates to the dividend payment. In the case of social enterprises which intend to distribute profits to partners or shareholders, they are allowed to distribute profits of social enterprises not exceeding 30% of the profits.

\(^{174}\) Draft law on the Social Enterprise Promotion Act, s 24(3).

\(^{175}\) Draft law on the Social Enterprise Promotion Act, s 5(3).
(3) Report submission

Thai draft law uses self-reporting methods as a measure to regulate social enterprises, the same as UK and South Korean law. Social enterprises have to submit the three following reports to the Thai Social Enterprise Promotion Office:\(^{176}\)

- Annual business performance report
- Financial report
- Social activity report

If social enterprises do not comply, certification will be revoked.\(^{177}\) They will no longer receive any incentive by virtue of certificated social enterprises such as incentives provided in section 59, i.e., taxation support, financial support, and support of preferential purchase.

In this regard, the draft law has some loopholes. The draft law fails to clearly specify details of the reports and time limits of report submission. However, the Office has authority to specify further details on these matters. Therefore, it may be more explicit when there are regulations issued by the Office in the future. Moreover, if the reports contain false information, there is no punishment against responsible persons. It is unlike the UK and South Korean measures which punish responsible persons. The author sees that enforcing this measure, will indirectly enhance transparency of social enterprises of enforcing responsible persons.

4.2 Alternative model for incentive and control approaches

After examining foreign laws, it turns out that the UK has an interesting approach to cope with incentive and control issues and South Korea’s approach should not be ignored because of its equally outstanding measures. Inevitably, these two approaches can contribute to Thai law. In this section, the UK, South Korean,

\(^{176}\) Draft law on the Social Enterprise Promotion Act, s 12.
\(^{177}\) Draft law on the Social Enterprise Promotion Act, s 70.
and Thai approaches will be compared. Then, the author will propose an appropriate approach in each topic to improve the Thai draft law.

4.2.1 Comparison

As examined in chapter 3 and chapter 4.1, a summary of requirements and details of social enterprise under UK, South Korean and Thai law can be compared as follows.

Table 4.1 Comparison of criteria of establishment, incentive and control

<table>
<thead>
<tr>
<th>Criteria of establishment</th>
<th>The UK</th>
<th>South Korea</th>
<th>Thailand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal status</td>
<td>Limited liability company</td>
<td>Corporation, Association, Company, Company, Limited partnership, Non-profit organization</td>
<td>Company, Partnership, Juristic persons</td>
</tr>
<tr>
<td>Social objective</td>
<td>Community interest test</td>
<td>Job creation, Social service provision, Local community contribution, Miscellaneous</td>
<td>Employment of disadvantaged persons, Community, society and environment</td>
</tr>
<tr>
<td>Business activity</td>
<td>Not required</td>
<td>Required</td>
<td>Required</td>
</tr>
<tr>
<td>Decision-making structure</td>
<td>Not required</td>
<td>Required</td>
<td>Not required</td>
</tr>
<tr>
<td>Revenue from business activities</td>
<td>Not required</td>
<td>Required</td>
<td>Not required</td>
</tr>
</tbody>
</table>

Ref. code: 25616001040044KTW
Table 4.1 Comparison of criteria of establishment, incentive and control (Cont.)

<table>
<thead>
<tr>
<th>Incentive</th>
<th>The UK</th>
<th>South Korea</th>
<th>Thailand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation support</td>
<td>Provided (for investors)</td>
<td>Provided (for social enterprises and donors)</td>
<td>Provided (for social enterprises and donors)</td>
</tr>
<tr>
<td>Financial support</td>
<td>Not provided</td>
<td>Provided</td>
<td>Provided</td>
</tr>
<tr>
<td>Preferential purchase</td>
<td>Not provided</td>
<td>Provided</td>
<td>Provided</td>
</tr>
<tr>
<td>Non-financial incentive</td>
<td>Provided</td>
<td>Provided</td>
<td>Provided</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Control</th>
<th>The UK</th>
<th>South Korea</th>
<th>Thailand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer of asset restriction</td>
<td>Controlled</td>
<td>Partly controlled (Only the dissolution stage)</td>
<td>Not controlled</td>
</tr>
<tr>
<td>Reinvestment restriction</td>
<td>Controlled</td>
<td>Controlled</td>
<td>Controlled</td>
</tr>
<tr>
<td>Report submission</td>
<td>Controlled</td>
<td>Controlled</td>
<td>Controlled</td>
</tr>
</tbody>
</table>

4.2.1.1 The United Kingdom approach

Criteria of establishment

As visible from the table 4.1, the UK has the loosest criteria of the establishment compared with South Korean and Thai law. The criteria of establishment concerning the initial stages are broad, and CICs can be easily established since it is the need of social enterprise from its historical background aiming to regenerate overall communities. After examining the legal status of CICs, it appears that UK law lacks the flexibility of choice. Namely, only a limited liability company is permitted to be a CIC, as it resulted from the initial purpose of CIC
emergence which intentionally emphasized the business structure. In addition to the legal status, the company’s objective is another important criterion. The community interest test is the principle to determine the social purpose of CICs. The test merely relies on a reasonable person standard which is entirely objective. Unfortunately, the attributes and characteristics of the reasonable person are absent. The interpretation of this test is given to the discretion of officers from the stage of registration until business operation through the CIC report submission which is one of the control measures. In this point, the author wholly agrees that this create an uncertain standard of objectives determination. On the other hand, the author also sees that an advantage of a loosely defined standard is that the range of social objectives is broader and can supplement the entrepreneurs’ need to operate various kinds of businesses.

Incentive

When compared with South Korea and Thailand, the UK grants the fewest incentives to CICs. There is no direct financial incentive provided to CICs, but investors of CICs are entitled to taxation relief. Inevitably, the incentive approach of the UK is not a stimulus to attract social entrepreneurs. The government does not directly grant financial support to CICs on the basis that giving support to CICs is unfair to other enterprises in the market and it lessens the sustainability of CICs. However, the UK still gives priority of the provision of information to CICs through guidance. The author believes this approach is reasonable because the CIC has emerged to serve as a flexible entity for social enterprise, not a government tool.

Control

The UK applies the highest level of control measures to regulate social enterprises during the operation stage. There are three measures applied: transfer of asset restriction, reinvestment restriction and report submission. The most significant measure is the asset lock principle. It restricts the transfer of asset during the operation stage until the CICs’ status ends. The term “transfer” is defined using various factors. It includes every description of disposition, payment, release or distribution of movable properties and estates. Moreover, it covers other interests in and rights over any property. It is confirmed that the scope of asset transfer must
have a broad interpretation. The author sees that this broad definition makes the asset lock principle very strict. Moreover, the other two measures concurrently enhance the level of control of CICs. The first is the reinvestment restriction which correlates with the dividend cap. The importance of this rule besides ensuring reinvestment of CICs is that it makes the CIC a unique entity that creates a distinct social enterprise law in the UK. In the case of ordinary companies limited by shares, companies rarely include a dividend cap in their constitutions owing to outside investors’ dependence. They would be devoid of capital. The second is report submission. The purpose of this report is to disclose to the public that CICs still satisfy the community interest test during operation. Moreover, setting the report submission as an obligatory requirement could helpfully compel CICs to reflect on their activities. Consequently, the report itself will indicate how the CIC prioritized community interest in its activities.

In summary, the UK approach has a low level of criteria of establishment because they are roughly stipulated. The government hardly incentivizes CICs because they have emerged to serve as flexible entities for social enterprise. Therefore, it is acceptable that the laws focus more on the structure of CICs. However, the control is very strict and detailed. The government seeks to ensure that CICs really serve their primary purpose in order to protect consumers and preclude mission drift.

178 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter6: The Asset Lock’ 5
179 Cabrelli, 'A Distinct “Social Enterprise Law” in the UK? The Case of the ‘CIC’” 14
180 Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes Chapter8: Statutory Obligations’ 4
181 Reiser, 'Regulating Social Enterprise’ 243
4.2.1.2 South Korea approach

Criteria of establishment

It appears that South Korea has the strictest criteria of establishment among these three countries. The criteria of social enterprise establishment are strict according to the government’s need to set social enterprises as a tool to solve problems resulting from the financial crisis. Although there is more flexibility of choice for the fundamental status of social enterprises than the CIC under UK law, the scope of social objectives is narrow. The social objectives mainly rely on unemployment and social services provision. In each category of social objective, it specifies the proportion of essential matters in which the government intends to intervene. This requirement screens the qualification of social enterprise in the first stage. Additionally, business nature and decision-making structures are required. Therefore, being certified a social enterprise at the first stage seems very difficult under South Korean law.

Incentive

South Korea provides the highest level of incentives to social enterprises. With the intention to set social enterprise as a policy tool of the government to tackle unemployment and social services provision problems, the government grants considerable support to social enterprises in order to incentivize their performance. There are many sources of financial support given directly to social enterprises, for instance, through taxation, subsidy, loan, credit guarantee, and preferential purchase. In addition to social enterprises, support is provided to various players relating to social enterprise such as investors and employees. Giving various incentives indeed enhances social enterprise performance. Therefore, the expected aims of promoting social enterprises are met. Social enterprises in South Korea can testify to this claim according to the tenfold increase in employment rate after eight years of introducing social enterprise.\(^{182}\) By doing so, however, there are also

\(^{182}\) Yoon and Kim, 'A Note on the Renovation of Social Enterprise in Korea: Current Status and Future Prospects' 709
drawbacks. Undoubtedly, many scholars criticized that granting excessive financial incentives is contrary to the sustainability of social enterprises. The reasons are that their performance does not reflect the real cost of operation and they are not able to run effectively their businesses as a going concern after these incentives are withdrawn, similar to previous programs such as the Public Work Program and the Social Work Program.

Moreover, non-financial support provided by the government is remarkable. This support resulted from the negative feedback of the previous incentive approach. Considerable financial incentives were provided in the initial stage after social enterprises had been introduced in South Korea. This superfluous support received much negative criticism, that the support had impeded the possibility of social enterprise sustainability by depending purely on the government. Consequently, the government has further emphasized educational incentives believing that giving education and training to social entrepreneurs will lead to the sustainability of social enterprises, and they can survive among market competition by themselves, regardless of governmental financial support. The government, therefore, has started to incentivize social enterprise through business consultation, education, and training with the intention to create sustainable conditions for social enterprise.

Control

South Korea has a high level of control measures, but it is slightly less strict than the UK. Although South Korea applies reinvestment restrictions and report submissions, similar to the UK, its level of asset transfer restriction is not high. The most apparent difference is the transfer of asset restriction. Although this restriction can be compared with the asset lock principle of the UK, the South Korean restriction applies only with the dissolution stage and just some parts of the assets are prohibited. In other words, the transfer of assets during operation is not restricted, unlike in the UK. It means that in the case of dissolution or liquidation of social enterprises, the entities are obliged to donate some parts of their assets to another social enterprise after all obligations are met, instead of distributing assets to its members. It can be said that social enterprises have the
freedom to transfer their assets as much as traditional companies during the operation period.

When comparing South Korea with the UK, South Korea grants more incentives to social enterprises than the UK but its control measures are less strict than the UK. It may be questionable whether the incentive approach of South Korea corresponds with the control approach or not. The answer is that South Korea has stricter criteria of establishment. Therefore, social enterprises in South Korea are controlled at a similar level to that of the UK.

In conclusion, being a social enterprise under South Korean law seems complicated in the beginning, because its criteria of establishment are very detailed. In addition, by virtue of social enterprise certification, there are considerable incentives provided by the government. As a result, the level of control is high.

### 4.2.1.3 Thai approach

**Criteria of establishment**

According to the table, the level of criteria of establishment in the Thai draft law is between the UK and South Korea. The Thai draft law requires more details of social enterprise establishment than the UK which specifies only legal status and social objectives. However, the Thai draft law does not mention the proportion of essential matters in each category of social objectives which South Korea uses to screen social enterprises. This point makes the Thai criteria less stringent than South Korea.

With respect to the social objective of social enterprises, the rationale of this provision can be traced from the Social Enterprise Master Plan (B.E. 2553-2557). It received criticism that specifying social objectives of social enterprises in a narrow dimension would restrict their purposes and performance, and other social problems would be ignored. Additionally, the definition of social enterprise must be clearly identified, but it should not be too strict. Consequently, details of social objectives under the draft law, for instance the proportion of disadvantaged employees, are not specified.
Incentive

The Thai draft law provides considerable financial incentives to social enterprises which are quite similar to South Korean law. As in the South Korean approach, the Thai draft law provides taxation support to both social enterprises and their donors. It also provides funds and loans directly to social enterprises. Moreover, they have preferential status in public procurement. Additionally, non-financial support such as consultation and training will be provided.

Doubtfully, the Thai draft law grants overabundant incentives to social enterprises, similar to the South Korea approach, even though the intentions of establishing social enterprise under both jurisdictions are different. In fact, South Korea raised social enterprise as a policy tool of the government to tackle their unemployment problem. So, it is reasonable that the government provides incentives to support social enterprises in order to achieve the goal which, traditionally, is the government’s task. However, South Korea has appeared to reduce the financial incentives in recent years. That is because it is aware that granting too many such incentives is detrimental to the sustainability of social enterprises. Meanwhile, Thai social enterprises intentionally cover a wide range of social objectives unlike South Korea, and Thailand still has an unclear purpose of promoting social enterprises.

Control

The Thai draft law has the lowest level of control approach when compared with the UK and South Korea. Despite reinvestment restriction and report submission, a big loophole remains in the Thai draft law: a lack of asset transfer restriction. Lacking this rule means that the control approach is significantly weakened. It will be doubtful whether assets of social enterprises generated by their operations are retained within the social enterprises to support their activities or not. Furthermore, credibility and transparency of social enterprises will be adversely affected, especially social enterprises of a non-dividend distribution type. That is

183 Social Enterprise Master Plan (B.E. 2553-2557) 24
because investors and consumers cannot know that for what activities the assets are utilized. It is a huge drawback that directors and shareholders can seek benefit from social enterprises’ assets which undeniably increase from provided incentives.

Overall, the author still sees that the Thai control approach is inappropriate because the level of control does not correspond with the incentive, which is at a very high level. Considering the UK approach for example, although the CICs are not provided many incentives, the control approach is rigorous because it aims to preclude mission drift and protect consumers. It applies the asset lock principle which can indeed uphold the standard and credibility of CICs’ operation. Comparing that to the Thai draft law, Thai social enterprises will gain more incentives than the CICs, but the control approach is much weaker than the UK.

In summary, the Thai approach which is traced from the draft law is unreasonable because the criteria of establishment, incentive and control do not correspond with each other. That is to say, the criteria of establishment are mediocre. However, Thai draft law grants overabundant incentives to social enterprises; meanwhile, the level of control is low.

4.2.2 Alternative approach for Thailand

4.2.2.1 Problems of the current Thai approach

After examining the Thai draft law, it appears that the Thai approach is illogical. The criteria of establishment, the incentive and the control do not correspond with each other. It may cause problems from such an unclear approach. Apparently, incentives which are provided to social enterprises attract businesses to be certified as social enterprises under the law. At the same time, they also have the drawback that some entities can seek benefits from being a social enterprise. It is possible that some entities are not actually social enterprises but they try to be certified as social enterprises to be entitled to the considerable incentives. In addition to the misuse, the initial purpose of social enterprise’s emergence is not served. An inappropriate approach of incentive and control cannot lead to sustainable development because social enterprises are under the dependence of outside resources. Moreover, the social objectives are not served. Consequently, the social problems cannot be sustainably resolved.
4.2.2.2 Suggestion for improvement

Since the Thai approach does not serve the purpose of social enterprise establishment, eventually, social enterprises will fail in Thailand. The point is that the Thai approach should be revised in its entirety. As a result, social enterprises would be able to achieve the initial purpose and the aforesaid problems which may appear from the current approach would not occur.

First, the author intends to explain the interrelationship of the criteria of establishment, incentive and control in order to set the conceptual framework as follows.

The criteria of establishment and incentive

The criteria of establishment reflect purpose of social enterprise’s recognition in that country. They can shape social enterprises to contribute to social impact as the state expected. In addition, at the same time the criteria of establishment indicate the details and level of incentive measures. That is because incentive measures are provided in order to promote social enterprise operation. In this sense, the provided incentives will be really served the purpose of social enterprise establishment. Eventually, social enterprises are indeed the tool that can solve social and environmental problems.

The criteria of establishment and control

They are measures that are used to shape social enterprise by the government but in different stage. In the beginning, social entities must conform to criteria of establishment which are determined in order to serve the social enterprise recognition. Meanwhile, the control is the measure to inspect unique characteristics of social enterprise during operation stage. Notably, the relationship of these two things should be balance. If the criteria of establishment are lax, the control measures should be strict, or vice versa. That is because social enterprises cannot effectively operate when the level of these matters is imbalance. That is to say, if both matters are loose, social enterprises are not inspected at all. However, if both matters are strict, it will discourage social entrepreneurs to set up social enterprise and phenomenon of social enterprises may be inactive.
Incentive and control

The control approach is set to ensure that the provided incentives will be really used to promote social enterprise and prevent misuse of incentives. Importantly, social enterprises are easily misused when receiving incentive without safeguards to protect this dual vision. Moreover, protecting consumers and investors from fraud or deception is constitutional purpose of the control. If the government provides incentives without proper control measures, the incentives will be exploited instead of promoting social enterprise. For this reason, the level of incentive and control should be correlated.

Secondly, the author intends to propose overall suggestions as to the criteria of establishment, incentive and control in order to provide concurrent understanding for fundamental improvement.

Criteria of establishment

In this regard, Thai law struggles with determining the scope of social enterprise establishment, since there is no clear supporting rationale to recognize and promote social enterprises in Thailand. Moreover, the draft law has been revised by different authorities over many years. Setting moderate criteria of the establishment is not a good idea because it will affect the incentive and control approaches. So, the criteria of social enterprise under the Thai draft law should be revised.

From the author’s point of view, it is acceptable to specify a wide range of social objectives, similar to the UK approach, if social enterprises are expected to tackle overall community problems. However, the control approach should be suitably robust. Furthermore, screening social enterprises using strict criteria of social enterprise establishment is an excellent choice in the author’s opinion. When a country faces a financial crisis, the government can set social enterprise as a policy tool to tackle specific problems such as unemployment. It is a useful framework from South Korea which should be noted by Thailand in the future.
Incentive

It turns out that the UK and South Korea incentivize social enterprises in both financial and non-financial ways. However, the level of incentive approach in the UK and South Korea are different. That is because the incentive approach depends on background concepts and the state policy of each country. Additionally, the level of incentive should depend upon the approach of social enterprises which correlates with the criteria of establishment, and should correspond with the control. However, the Thai draft law grants overabundant incentives to social enterprises. Obviously, it does not correlate with the criteria of establishment and control. The author, therefore, sees that financial incentives for social enterprises in the draft law should be revised.

Another critical point is the non-financial incentives. The Thai government should further promote this kind of support rather than financial incentives for sustainability. The Thai draft law stipulates only a duty of the Office which is an abstract ideal. Notably, the South Korean measure is a useful model which Thailand could learn from. The SEPA has provided professional consultation for social enterprises, and they must not rely merely on the officers who may not specialize in specific areas. Moreover, there are academies which cooperate with academic institutes particularly for educating and training social entrepreneurs and staff. Thus, it would be better if the Thai draft law provides non-financial incentives in a solid plan.

Control

The control of social enterprises is a significant matter, and it should not be disregarded. Both the UK and South Korea emphasize this matter either by criteria of establishment or control measures. The author considers that the UK and South Korean approaches should ideally be the minimum standard of the control approach which can solely control social enterprises effectively and efficiently. Namely, if the criteria of social enterprise establishment are lax, the control measures should be strict, or vice versa. With respect to the Thai draft law, the author finds that the criteria of social enterprise establishment and control approach do not meet the minimum standard, so, it cannot be expected to control
social enterprises to efficiently contribute to social impact. In this regard, the control approach should be reconsidered.

In next step, the author aims to propose a specific improvement to the Thai draft law. The main problem of the Thai draft law is the illogical approach as a whole since each matter does not correspond with the others. Thus, the draft law should be improved in this regard by considering the foreign approaches. As both the, UK and South Korean, approaches have different advantages which are appropriate for different situations and purposes, it would be better if the Thai draft law applied both of them. The author, therefore, proposes that the Thai draft law should develop its approach to be more transparent and reasonable. The draft law should apply a two approaches model to divide social enterprise into two groups. Each approach derives from the UK and South Korean approaches respectively. In both approaches, the criteria of establishment, incentive and control indeed correspond with each other. Consequently, the incentive and control of social enterprises under the Thai draft law will be more reasonable and efficient. The details of each approach are as follows.

(a) Approach I

This approach is available for social enterprises that aim to solve specific problems. In this approach, criteria of establishment are strict. Social enterprises are entitled to various incentives. However, they are subjected to a high level of control measures. Undeniably, the South Korean approach is a good model for this approach.

Criteria of establishment

The first approach will include specific categories of social objectives which the government intends to solve such problems via social enterprises. According to this approach, the Thai draft law should pay attention to the South Korean criteria of establishment as a model to specify their criteria. This approach requires strict criteria of establishment such as the proportion of essential matters. For instance, the draft law has specified a clear social objective which is to promote employment of disadvantaged persons. It seems that Thailand intends to enhance the employment rate of these persons, so, any enterprise which has this
kind of social objective will be established in the first approach of social enterprise. Moreover, in order to screen entities which intend to be certified as social enterprises in this approach, they must indicate that they comply with the additional requirements. For example, they employ disadvantaged persons in an amount that meets the designated proportion.

**Incentive**

Social enterprises in this approach are set as a policy tool to tackle specific problems under the government’s responsibility. Therefore, it is reasonable to maintain those current incentives and provide more incentives which are necessary for and can enhance the performance of such social enterprises. For instance, the government may grant social insurance subsidies for employees of social enterprises which have a social objective in the unemployment category.

**Control**

As proposed in the criteria of establishment section, the first approach of social enterprise must conform to strict criteria of establishment. Social enterprises are screened at the initial stage. However, the existing control measures, which are reinvestment restriction and report submission, are not sufficient. The draft law should recognize the transfer of asset restriction because this rule is a significant measure which can be controlled in social enterprise. However, it is not necessary to restrict the transfer over the whole lifetime of social enterprises; it is acceptable to restrict the transfer of assets only in the dissolution stage.

As social enterprises in this approach are entitled to considerable incentives, it might be a question whether they should be subjected to strong control measures or not. The author sees that it is possible that Thai law will apply a more intense method, i.e., it specifies strict criteria of social enterprise establishment from the start and creates strict control measures during the operation. However, it will discourage entrepreneurs who wish to contribute social strength via this enterprise, and it will preclude entities to be qualified as a social enterprise under Thai law because the standard is extremely high. Consequently, social enterprises may not be attractive or successful in Thailand and we will lose a
useful tool to enhance the living standards in neighborhoods or solve social and environmental problems.

(b) Approach II

This approach benefits social enterprises in general. It represents an alternative business structure that intends to regenerate overall communities. In this approach, criteria of establishment are loosely defined. The government hardly provides incentives. Therefore, social enterprises are subjected to a lower level of control than the first approach. Undeniably, the UK approach is a good model for this approach.

Criteria of establishment

The second approach will embrace a broad scope of social objective and specifies loose criteria of establishment to develop communities or to solve social and environmental problems. This approach can close the loophole of the narrow scope of social enterprises resulting from the first approach, and can encourage social entrepreneurs to establish social enterprises in Thailand.

Incentive

Social enterprises in the second approach have a broad scope of social objectives. The government will give a wide range of flexibility for entrepreneurs to establish social enterprises in this approach. When there is no specific problem that the government intends to use social enterprise as a policy tool for, the government should not excessively incentivize social enterprises; it should let them operate their businesses themselves. Social enterprises have to survive in the market regardless of incentives from the government because sustainability is their core concept. The author sees that tax relief and subsidies should be eliminated because the operational costs will not reflect the real costs and social enterprises may fail when support ends.

Control

The second approach to social enterprise covers a broad dimension of businesses, and it requires loosely based criteria for establishment. When the criteria of social enterprise establishment are less rigid, the control measures should be stricter. Therefore, they must be subjected to an intense level
of asset transfer restriction because the existing control measures in the draft law are not sufficient. Social enterprises in the second approach should have restrictions on the transfer of assets, both during the operation stage and in the dissolution stage. Consequently, the Thai draft law should adopt the asset lock principle from UK law to control social enterprises in this approach.
CHAPTER 5
CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Social and environmental problems are a big concern and the United Nations has tried to solve these problems in a sustainable way. Lately, the belief that combining profit and social missions is an effective way to produce social wealth is being increasingly common. Fortunately, social enterprise has emerged. It is a tool which consists of business entities and private sector participation to solve social problems. It can embrace the dual mission of generating profits for owners and pursuing social missions for society. Ideally, it can tackle long term environmental and social problems. However, to achieve the expected goals is not easy. Many external factors deter social enterprises from these goals. Thus, incentive and control measures are essential in order to ensure that social enterprises can contribute to sustainable development.

Incentive is a crucial factor for social enterprises because the main obstacle of operating this kind of business is the difficulty in attracting capital. Moreover, in order to achieve social missions, the operation of social enterprises may incur higher costs than traditional businesses. Therefore, more suitable approaches or tools are needed to foster the performance of social enterprises because if there is no incentive, social enterprises may fail; they would be unable to compete with other traditional businesses.

On the other hand, it is also necessary to control social enterprises. Although they have dual missions, i.e. to tackle social problems and earn income through trade, the social missions have to be prioritized. Undeniably, there are many pressures from resource dependency. These pressures lead to a high risk that social enterprises eventually diverge from their primary purpose via a process called mission drift. In addition, if social enterprise is not controlled, it may be exploited as
a marketing tool by ordinary businesses in order to gain credibility from consumers and incentives from the government.

Importantly, the government should be aware of measures to incentivize and control social enterprises. In the past, however, social enterprises were established and operated, generally by the intention of the entrepreneurs. The turning point was the development of social enterprise laws put in place by governments. This promoted their importance, productively affecting sustainable development. Therefore, governments have started to place controls on social enterprise using the legislative process.

Foreign countries are also concerned about these issues, especially the UK and South Korea. They have been working on the legislative processes for over a decade. Interestingly, they have different innovative approaches to dealing with these issues, but they are inspiring for the future of social enterprises.

The UK recognizes the CIC as one type of social enterprise to regenerate overall communities. The UK approach applies a low level of criteria of establishment. Moreover, the government grants very little financial incentive to social enterprise. That is because CICs have emerged to serve as flexible entities for social enterprise. The UK prefers to let social enterprises survive by themselves instead of intervening in the market by granting incentives. However, the control is very strict and detailed. As it puts loose criteria of social enterprise establishment, it creates strict control measures during CICs’ operation. The government seeks to ensure that CICs truely serve their primary purpose in order to protect consumers and preclude mission drift.

In comparison, South Korea sets social enterprise as a policy tool to solve problems resulting from the financial crisis. The South Korea approach has a high level of establishment criteria. In addition, the government significantly supports social enterprises. By virtue of social enterprise certification, there are considerable incentives provided to them. However, the consequence of providing various incentives is that the level of control is high. It specifies strict criteria of social enterprise establishment from the beginning but slightly reduces the level of control measures.
Social enterprise is becoming more relevant in Thailand. The government realizes the importance of incentive and control of social enterprises. It has tried to enact the Social Enterprise Promotion Act. The challenging issues for Thai lawyers now are how Thai law should create incentive and control measures applicable to social enterprises. Namely, how social enterprises should be incentivized by the government as well as how social enterprises should be controlled. Unfortunately, according to the draft law on the Social Enterprise Promotion Act, it appears that the approach of social enterprise is unreasonable because the criteria of establishment, incentive and control are not interrelated.

Firstly, the level of criteria of establishment in the Thai draft law is between the UK and South Korea’s level. As the purpose of recognizing social enterprise under Thai law is not clear enough, it struggles with determining the scope of social enterprise establishment. As a result, the incentive and control approaches are adversely affected.

Secondly, the study finds that although both the UK and South Korea incentivize social enterprises in financial and non-financial ways, the levels of their approaches are different depending on the historical rationale and state policy of each country. When considering this result, the Thai draft law has some drawbacks in this regard. The incentive approach is unreasonable due to excessive financial incentives and unclear non-financial incentives.

Lastly, it appears that efficient and sufficient control measures are crucial to inspect conductibility of social enterprises in order to ensure that they actually serve dual missions. In fact, the draft law on the Social Enterprise Promotion Act of Thailand does not correlate with the criteria of establishment. That says that the criteria of social enterprise establishment are loose and the existing control measures are insufficient.

5.2 Recommendations

The major problem of the Thai draft law is the illogical approach as a whole, since each matter does not correspond with the others. Thus, the draft law
should be improved in this regard by considering foreign approaches. Due to the success of social enterprise in the UK and South Korea, using an approach from these countries as a model is an attractive way to create incentive and control approaches of social enterprises under Thai law. Each approach has both strong and weak points resulting from their historical background. However, both approaches can be adapted to Thai law.

The author proposes that the Thai draft law should develop the overall approach to be more clear and reasonable. According to the different purposes of establishing social enterprises, the Thai draft law should divide social enterprises into two approaches which have different criteria of establishment and subject to different incentive and control approaches.

**Approach I**

The criteria of establishment of this approach will include specific categories of social objectives which the government intends to solve via social enterprises. In this approach, social objectives should be categorized in obvious types and stipulate specific requirements in each type so that there is a standard to determine clear quality of certified social enterprises. Besides social objective, additional requirements should be added such as revenue conditions. Giving various financial incentives is acceptable when the government sets social enterprises as a policy tool to tackle specific problems which are under government responsibility. Thus, social enterprises in this approach should be supported in order to achieve specific goals. Concerning the control, it is necessary to set a high level of control. However, social enterprises in this approach must comply with the strict criteria of establishment. Therefore, it is acceptable that the control measures of this approach are not as strict as the second approach.

**Approach II**

The second approach will embrace a broad scope of social objectives and specifies loose criteria of establishment such as to develop communities or solve social and environmental problems. As they aim to tackle social and environmental problems in a wide area, the government should not give excessive financial incentives to social enterprises in this approach because it is unsustainable.
Social enterprises in this approach must subject to stricter control measures than the first approach. Indeed, the transfer of asset restriction which is still absent in the draft law should be recognized.
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BIOGRAPHY

Name
Miss Karnkamon Oupariktatipong

Date of Birth
July 1993

Educational Attainment
2016: Bachelor of Law, Thammasat University
2017: Barrister at Law, The Thai Bar

Publication
Karnkamon Oupariktatipong, ‘Social Enterprise: Incentive and Control Approaches’
(LL.M. Independent Study, Thammasat University, 2018)