

Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014

Cooperative Society.

FCA says: We generally consider something to be a bona fide co-operative society where it is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. We consider it an indicator that the condition for registration is met where the society puts the values below into practice through the principles quoted below.

Values

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Principles

The co-operative principles are guidelines by which co-operatives put their values into practice.

1. Voluntary and open membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic member control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

3. Member economic participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4. Autonomy and independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, training and information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the

general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6. Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. Concern for community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

The main benefits of registering as a society under the Act include:

- Corporate body status • The society is a legal person. It can act, hold property, sue and be sued in its own name • It has 'perpetual succession'. This means a society continues to exist even if its membership changes, unless it stops being registered
- Limited liability • Members are only personally liable for the share capital they hold in the society and the amount of any share capital they have not yet paid for • Anyone can check that the society is a registered society under the Act and see any other information we receive from the society under the Act by searching the public register we keep • Members are not liable for any debts, contracts and other liabilities the society has taken on • The officers of the society can be prosecuted if they breach their duties under the Act

Other effects of registration

- The rules of a society are binding between the society and its members • The society's board can make, change or end contracts on behalf of the society • The society can recover debts that members owe it in court • If a member owes the society any money then the society can set the value of a member's shares against their debt

When a society is registered, it will appear on the Mutuals Public Register. We (FCA) also send a certificate bearing our seal and confirming registration to the society. This sealed certificate is conclusive proof of registration.

The Act gives societies the ability to:

- transfer engagements to another society or a company • convert to a company • amalgamate with other societies or companies

Once a society is registered it must:

- continue to meet the conditions for registration • have at least three members (or two members who are societies) • maintain a registered office in Great Britain or the Channel Islands, and tell us of any change to the registered office address • maintain a register of members • maintain accounts • submit an annual return and accounts to us within seven months of their financial year end • notify us of any change to the financial year-end date • register any rule changes with us (FCA)

Shares

6.2 Societies are limited by shares. All societies must have share capital.

In our view there are some unique features of society shares:

- their number can fluctuate significantly
- they remain at par value (unless written down)
- they do not automatically give the shareholder a share in the underlying value of the society
- they cannot be held by the issuing society itself
- they do not carry votes in proportion to the amount of shares held.

For society shares, legislation requires that the rules specify:

whether shares are withdrawable or not

Societies may, and generally do, issue withdrawable shares.

6.8 Society rules have to state if shares are withdrawable. If they are, the rules must state how they can be withdrawn, and how any residual balance will be paid to a member leaving the society.

6.9 Society rules must also state the maximum interest in the shares of the society someone may have. This can include stating the statutory limit (currently £100,000 for people other than societies).

The process of withdrawal should be laid down in the society's rules. Most society rules give the board power to suspend all share withdrawals. Others impose long notice periods for withdrawing shares. Some societies only allow shares to be withdrawn at fixed times or after a certain period of holding the shares.

6.11 Our view is that it is an indicator that a society is meeting its condition for registration if it only allows the withdrawal of shares if:

- it has trading surpluses that match or exceed the value of shares involved; and
- the directors believe the society can afford to pay its debts, taking into account:
 - all of its liabilities (including whether it will be able to pay its debts at the date of withdrawal and, for a year after that, any contingent or prospective liabilities) and
 - the society's situation at the date of the transaction

Whether shares are transferable or not

The Act allows societies to have 'transferable shares' and states that society rules must:

- state if any or all of the society shares are transferable
- provide for the form of transfer
- provide for registration of the shares; and
- require consent of the board to transfer or registration

Society rules can also cover forfeiture and cancellation of shares in certain circumstances:

- arrears in paying instalments due on a purchase of shares may lead to the forfeiture and cancellation of the shares
- if a nominal shareholding is a condition of membership, society rules may provide for the forfeiture and cancellation of shares when a member leaves
- shares may also be forfeited and cancelled to remove members who no longer have any active relationship with the society from the register of members. Societies will want to make reasonable attempts to contact or locate the member before removing them from the register

Share offers

6.20 In general, the share capital of a society should not be more than the level needed to support its activities. If the society can fund its activities from reserves then it ought not to need to issue additional shares. However, if a society does need to raise capital to pursue its purpose, it may wish to seek additional share capital from its members. Societies should take appropriate advice before inviting members and prospective members to acquire shares.

Societies can pay interest on shares. Generally speaking, interest on shares should only be paid where the society can afford to do so, having taken into account other liabilities and any contribution to the society's reserves.

The indicators outlined above on share interest are relevant for co-operative societies in relation to the capital subscribed by members over and above that subscribed as a condition for membership.

6.30 The amount of interest paid on capital subscribed as a condition for membership should be limited, if any at all.

6.31 Generally co-operative societies offer membership to people who can use their services (whether as workers, producers or consumers). However, a co-operative society may sometimes need to raise capital from people who cannot or do not use the society's services. We describe these members as 'non-user investor members' – people who have only an investment relationship with the society.

The rules of a society which wants to raise capital from non-user investor members expressly provide for non-user investor shares, and the terms attached to these shares are clearly stated • The voting rights of non-user investor shareholders are restricted by the rules of the society. The society's rules prevent this category of shareholders voting on a motion to convert the co-operative to a company. Societies can, however, include a power to elect one or more non-user investor share representatives to the board.

Accounting requirements

7.2 Every society must keep proper books of account giving a true and fair view of the state of the society's affairs and explaining its transactions. Societies are also required to maintain satisfactory systems of control of their books, cash holdings and receipts, and payments.

7.3 Accounts must be produced to at least the minimum standards required by the legislation and the society's own rules. This means either a revenue account dealing with the affairs of the society as a whole, together with any balance sheet, must give a true and fair view of the society's income and expenditure and of its affairs at the date of the balance sheet.

Publication and display

7.5 Every society must display its latest balance sheet in a clearly visible position at its registered office.

7.6 In addition, a society must give a copy of its latest annual return, including the accounts and auditor's report (where required), free of charge to any member or other person interested in its funds who asks for it. With the member's agreement, that can be done through the society's website.

7.7 As a general rule, every published revenue account or balance sheet must be signed by the secretary and two members of the society's committee and be audited or include a report on the accounts.

A society must send us their annual return and accounts within seven months of the society's financial year-end. Annual return forms can be found here. We make the society's annual return available for public inspection on the Mutuels Public Register.

Small Society Exemption

7.25 A society can appoint two or more lay auditors instead of a qualified auditor if, in its preceding year of account, it had:

- turnover of less than £5000, and
- assets of less than £5000, and
- fewer than 500 members

Anyone can be a lay auditor, as long as they are not an officer or employee of a society or a partner, employee or employer of any society officer or employee.

If a society chooses not to have a full audit from a qualified auditor they must, if their turnover was over £90,000 in the preceding year of account, appoint a qualified auditor to prepare a report on the accounts and balance sheet. The report on the accounts and balance sheet is less onerous than a full audit. The report must state whether, in the opinion of the qualified auditor making the report:

- the revenue account or accounts, the other accounts (if any) to which the report relates, and the balance sheet are in agreement with the books of account kept by the society
- on the basis of the information contained in the books of account, the statutory account complies with the requirements of the Act, and the financial criteria allowing the production of a report instead of a full audit have been met.

The qualified auditor preparing the report has the same kinds of powers as an auditor. These include carrying out any necessary investigation, seeing the society's books and other documents at any time, and being able to demand information and explanations from the society's officers. They are also entitled to attend and speak at society general meetings and get the same communications about the meeting as members. The auditor should sign their report.

7.41 Where the relevant conditions are met, and the society produces unaudited accounts, the revenue account and balance sheet must still be signed by the secretary and two committee members of the society acting on behalf of the society's committee.

Financial year end date

8.27 When a new society is registered, it can choose its own financial year-end date. Societies can also change their financial year-end date. There are a few requirements:

- The period the first financial year covers cannot be shorter than six months or longer than eighteen months
 - No financial year can be longer than eighteen months
 - The society cannot give us notification that it is extending its financial year if it has already extended its financial year any time within the last five years
- 8.28 Societies must notify us of a change to their financial year-end. We will check the notice to make sure it complies with the requirements above, and give the society confirmation that it can change its financial year-end.

8.29 Societies can change their current or subsequent financial year end dates. However, they cannot change a previous year-end date retrospectively

Obligations on names

8.3 A society must make sure it displays its registered name outside its registered office and in every other place where it carries out its business. The notice should be in a conspicuous position and clearly legible. *(Societies are required to have a registered office address in Great Britain or the Channel Islands.)*

8.16 Societies give us their registered office address when they register with us. Societies must tell us as soon as possible if their registered office address changes.

8.17 We only post documents to the registered office address, including any legal documents, so it is vital that societies tell us about any changes.)

8.4 A society must also include its registered name in legible characters:

• in all of its notices, advertisements and other official publications • in all of its business correspondence • in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, purporting to be signed by or on behalf of the society • in all its other business documentation, and • on all its websites, including any content about the society on another website if the society either provided it or authorised it.

Duties of directors

8.6 The Act is generally silent on the duties of directors, but common law duties have been established over time. Here we provide a summary of some of those common law duties.

8.7 Directors, executives and employees are entrusted with control over the society's assets and should not use those assets for their own benefit. The ultimate duty is to act in the best interests of the society – even if a director has been appointed by a particular member or elected by a particular group.

8.8 The society's rules and the law must be used to deal with any conflict between the personal interests of a director and the society's interests.

8.9 Directors should act prudently, lawfully and comply with the society's rules. They should use their powers only for the purpose they were given.

8.10 Directors have a duty to bring to the role of director the skills that they have and the skills reasonably required to perform the role. This is determined by the definition of the role of director in the rules and governance arrangements of the society. It is important that the powers and duties of directors and executives are made clear in the society's rules and governance arrangements.

Rule amendments

8.30 Societies must register rule amendments with us. A society can only start using the new rule when we have registered the rule amendment. We will confirm registration of rule amendments.

8.31 Rule changes come into effect on the date we register them. We cannot register rule amendments retrospectively.

8.32 Societies should send the rule changes to us using this form²⁵. Amendments can be complete or partial. Complete amendments mean a whole new set of rules is registered in place of the existing rules. Partial amendments change, add to, or delete some rules from the existing registered rules.

Amalgamations

8.66 Two or more societies may amalgamate and become one society. A society and a company may amalgamate to become one company. The amalgamation can, but need not, involve the dissolution of one or more of the societies or companies first or a division of funds among members where allowed. On the amalgamation, the property of each society or company vests in the new amalgamated entity without needing any form of conveyance or ownership transfer other than the special resolution that carried out the amalgamation.

Conversion to a company

8.78 Societies can pass a resolution to convert into a company. Societies can convert into companies limited by shares or companies limited by guarantee. Currently, the legislation does not allow societies to convert to a Charitable Incorporated Organisation.

Winding up

8.113 Winding up, or 'liquidation', is a process by which an entity's assets are used to pay off its debts, usually with any remaining money distributed in accordance with the society's rules. The winding up provisions of the Insolvency Act 1986 apply to societies. A society can be wound up by a:

- Members' voluntary winding up by members' resolution if it is solvent; or
- creditors' voluntary winding up by members' resolution with creditor involvement if it is insolvent; or
- court winding up order at the petition of the society itself, a creditor, or member.

Dissolution

8.122 Dissolution is where the assets and property of the society are redistributed and the society's registration is brought to an end. Societies can be dissolved either by:

- an instrument of dissolution, or
- at the end of an insolvency procedure – such as winding up or administration

Member liability

8.145 Society members have limited liability for the society's debts. They will normally lose the value of their shares if the society is wound up. Any additional liability they have to contribute towards payments to creditors is limited to the amount they may owe on their shares.

8.146 Shares are usually fully paid up when they are issued and so no further payment will be required by members. However, the liability of members to contribute to paying creditors lasts for one year after their membership ends.

8.147 So anyone who held withdrawable shares and gave notice to withdraw their shares less than a year before winding up began may still have to contribute as part of the winding up process.

8.148 This liability is only triggered if the total amounts paid by current members for unpaid shares is not enough to pay the society's debts.

Prosecution

9.25 We (FCA) can prosecute societies for offences under the Act. These are criminal offences and include:

- not sending us annual returns or other documents we require
- an officer not carrying out any duties which an officer of the society is required to do
- deliberately ignoring or refusing a request for information from us or from anyone we have authorised, e.g. an auditor
- giving false or incomplete information or returns

9.26 If an officer personally did not commit any of these offences, but was aware of the offence or did not try to prevent the offence, that officer may still be prosecuted.

Disputes

We do not determine disputes. That is a matter for the society's rules and, ultimately, for the courts. Members may take legal action against the society or its committee.

10.3 Disputes between a society or its officers and a member (or a former member who left within the last six months) must be decided in the way laid down in the society's rules.

10.4 Many societies choose to include a provision for arbitration or alternative dispute resolution in their rules. Many of the model rules give that role to the sponsoring body.

10.5 If the rules state that the dispute is to be decided by us (or our predecessors) then the dispute must be referred to the county court (or Sheriff in Scotland). It cannot be decided by us.

10.6 However, if members are concerned that the society is not being operated in accordance with the relevant registration requirements for a society, they can complain to us. This would be on the basis that we should exercise our statutory powers and we will consider the information provided by the member.

Members' rights

10.7 Members are shareholders of the society. They have voting power and can exercise democratic member control together with other members. They should try and resolve any issues they have through these processes.

10.8 As well as any rights given in the rules of a society, the Act gives members a right to:

- receive a copy of the annual return and accounts of the society
- receive a copy of the society rules. If the member has already been provided with a copy (e.g. on joining) and requests another copy then the society may charge a fee
- inspect the society's register of members at reasonable hours in the society's registered office. The society should not disclose a member's financial holding

request that the FCA appoints inspectors to look at the accounts of the society. This request must be made by at least 10 members of the society, who must deposit money with us as security for the costs of the process

- request that the FCA orders an inspector to look into the society's affairs or to call a special meeting. This request must be made by at least 10% of members, or 100 members if that is a smaller number. The request must be supported by evidence that there are good reasons to do this, and that the request is not malicious.