

Legal Update

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Practitioners Forum 2018



Legislative Framework

- Refresher...
- Previously:
 - Industrial and Provident Societies Act 1965 as amended
 - Co-operative and Community Benefit Societies Act 2003
 - Co-operative and Community Benefit Societies and Credit Unions Act 2010
- Now:
 - The Co-operative and Community Benefit Societies Act 2014

Legislative Framework

- There are three types of societies:
 - Pre-commencement societies
 - Co-operative societies
 - Community benefit societies
- “Bona fide co-operative”:
 - S2(3) “...co-operative society” does not include a society that carries on, or intends to carry on, business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with, or lent to, the society or any other person.

Legislative Framework

- FCA registration guidance:

Guidance: *“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.*

- Expect to be able to verify/validate Principles 1 – 4
- Principles 5 – 7 as indicators that condition for registration is met
- Other factors: amount distributed pro rata trade; interest paid, nature of relationship between members and society

Brexit...

- “There are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns — the ones we don't know we don't know.”



Brexit...

Likely long term legal implications - impact

HIGH

Financial services, immigration, competition law, data protection, environment, energy, IP, life sciences, dispute resolution, public law, agriculture

MEDIUM

Business crime, commercial, corporate, finance, tax, employment, media, insolvency, pensions, local government

LOW

Arbitration, construction, private client, property, shares schemes, planning

Brexit...

The overall legal position:

- *“EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day.” (EU Withdrawal Act)*
- Some EU rules have been put into force with UK Acts or SIs (Competition Act 1998)
- Some EU rules have “direct effect”
- All will still apply after... “exit day”

Brexit...

Major sector impact - agriculture

- **Repeal of Common Agricultural Policy**
- **Access to labour of non UK nationals**
- **Animal welfare standards**
- **Trade agreements**
- **Impact on future legislation**

Brexit...

Major sector impact – commercial environment

- **Consumer protection etc.**
- **Commercial contracts**
 - **“force majeure” clauses?**
 - **“Brexit” clauses?**

Brexit...

So what should you do now?

- Prepare for uncertainty, especially if there is no withdrawal agreement and Brexit goes ahead
- Consider the terms of any longer term contracts with an international dimension
- Be aware of the possible impact on your particular sector

Contracts – variation

- When saying something out loud can have absolutely no effect:
- *Rock Advertising v MVB Business Exchange Centres*
 - The contract has an express clause that requires variations to be in writing (or that there can be no oral variations)
 - Even if both parties agree to an oral variation, it is **unenforceable**.
 - Read the contract terms – you must comply with the contractually agreed methods of variation.

Contracts: GDPR – the saga continues

- 25 May 2018 – GDPR Day
 - All contracts should now contain clauses which enforce GDPR;
 - No longer sufficient to refer to the Data Protection Act 1998.
- All organisations (including co-operatives) are required to have a Data Protection Officer (DPO).
- DPO required to monitor compliance with GDPR – may fall within the remit of the society Secretary.

Corporate tax evasion

- Bear with us....
- Applies to all organisations, including co-operatives
- Criminal Finances Act 2017 – liability from ‘facilitating tax evasion’ now extends to organisations
- Captures ‘Associated persons’ – agents, employees, service providers acting on your behalf
- Previously only individuals and prosecutors had to show that *senior members* of the organisation were involved and aware of illegal activity.

Corporate tax evasion

- What does this mean?
- You must ensure that there are '*reasonable procedures*' in place to prevent tax evasion by anyone associated with the organisations.
- Liability – unlimited fine.
- Review employee and service contracts to ensure provisions address the facilitation of tax evasion.
- Note – in some circumstances can justify not having prevention procedures in place if unreasonable. E.g. assessed the risks and considered very low and the costs of implementing procedures are disproportionate.

Case law

- The Watford Printers case (Re Watford Printers Ltd [2018] EWHC329 Ch)
 - What happens to the surplus assets of a cooperative society on a solvent winding up where the society's rules do not make express provision?
 - Here: determined that those assets are to “be divided amongst the shareholder proportionately to their respective shareholdings”.

Case law

- Lessons to be taken away from decision:
 - Co-operative society law is still not ‘main stream’
 - This case sets a precedent that distribution will be according to shareholding
 - Important to consider Rules and review provisions
 - Model Rules should always include provision for what should happen to surplus assets on solvent winding up
 - Check your existing Rules. If they don’t deal with this, consider amending the Rules.



Questions?