



## **Public Interest Corporation: A New Business Platform for Social Entrepreneurship in Malaysia**

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### **ABSTRACT**

Social entrepreneurship is one of the mechanisms to tackle social or community's economic issues and to achieve sustainable development of a country. In Southeast Asia, business entities are mostly private and there are few social and economic enterprises. Therefore, United Kingdom had enacted special laws to govern and to promote the development of social enterprises. These were introduced to address lack of laws to form - charitable social enterprises. In contrast with commercial legal framework, these laws were designed to facilitate social enterprises to prioritise social goals rather than private shareholders interest. The objective of this paper is to explore the possibility of introducing a new legal framework for social entrepreneurs in Malaysia. This legal framework could be used to carry out business activities and gain profit with a clear purpose that profits of the business shall be used for public interest. This paper analyses statutory laws and other legal doctrines to see how this law could be applied in Malaysia.

*Keyword:* Legal entity, public interest, social entrepreneurship, statutory laws

### **INTRODUCTION**

Countries witnessing rapid economic growth also experience many social problem, such as unemployment, inequalities in terms of access to health care and social services (Catford, 1998), poverty, crime and social exclusion (Blackburn & Ram, 2006). Social entrepreneurship was introduced to combat these social problems. This paper hence, focuses on how social entrepreneurship in

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Malaysia can help tackle social problems in the country.

This paper is divided into four parts. The introduction will discuss briefly the concept of social entrepreneurship. The second part explains the role of social entrepreneurship to combat social problem looking at experiences from various countries. This was followed by a brief discussion of Community Interest Company (CIC) in United Kingdom and social entrepreneurship in Malaysia. The final section proposes introducing Public Interest Corporation Act as a new legal framework to govern social entrepreneurial activities in Malaysia.

### **Social Entrepreneurship**

According to Dees (1998), Alvord, Brown and Lett (2002), and Okpara and Halkias (2011), social entrepreneurship refers to practices that employ entrepreneurial activities to manage social problems. According to Paton (2003), social enterprise is a generic term encompassing many different types of organisations where people conduct businesses without monetary rewards. Defourny and Nyssens (2006) explained the concept of social enterprises as a democratically controlled organisation with explicit aim to benefit the community, and profit distributions to external investors are limited.

Social entrepreneurship has also been described as an innovative approach to solve social problems as well as an entrepreneurial action that serves a social objective (Austin, Stevenson, & Wei-Skillern, 2006; Peredo &

Chrisman, 2006; Peredo & McLean, 2006) and a consequence of a pressure to tackle societal illnesses (Thompson, Alvy, & Lees, 2000).

### **Roles of Social Entrepreneurship**

For a long time, social entrepreneurship has been recognised as playing an important role in economic sustainability economy and community's life (Christie & Honig, 2006; Dees, 1998; Harding, 2004) Studies show that some of the social entrepreneurship practices have succeeded in improving the social well-being of their communities (Alvord et al., 2002). In UK for example, social entrepreneurs have contributed immensely to transforming society. It was reported almost a million people have been employed by social enterprises, contributing more than 5% to UK's GDP (Malaysian Social Enterprise Blue Print, 2015).

### **Social Entrepreneurship in Malaysia**

In Malaysia, the concept of social entrepreneurship is commonly associated with voluntary based business activities by government agencies and non-governmental organisations (NGOs) to overcome social problem, especially related to poverty (Farok, 2011). Some of these organisations are registered and governed by various legislations, such as the Companies Act 1965, Trustees (Incorporation) Act 1952, and Society Act 1966.

In promoting development of social entrepreneurship, the Malaysian Government introduced several incentives to promote business activities, such as tax

exemption and initial funds for the operation (Malaysian Social Enterprise Blue Print, 2015).

Therefore, it can be said concept of social entrepreneurship in Malaysia is still new and exists in many forms and governed by various legal frameworks.

However, different legal framework may impede the development of such practices. Kelly (2009) suggested that social entrepreneurs need an appropriate business entity and legal framework to promote their development and sustainability. He further explained that an out-of-date law and inappropriate legal framework can become a major obstacle to transforming society.

**Doctrine of Separate Legal Entity as Fundamental element to Public Interest Corporation.** Therefore, a specific legislation to govern social entrepreneurship in Malaysia is vital.

However, as a legal branding for Malaysia social entrepreneurs, awarding corporate personality through the establishment of Public Interest Corporation is key. It will invoke the doctrine of separate legal entity.

The doctrine of separate legal entity was accepted as a basic principle in company law. It was found in the common law case of *Solomon vs Solomon* [1897] AC 22.

In this case, The House of Lords, had unanimously agreed and held the company is an independent entity, in which its rights and liabilities belong to itself.

In *Macaura v Northern Assurance Co* [1925] ALL ER 51.

*“My Lords, this appeal relates to insurance on goods against loss by fire. It is clear that the appellant had no insurable interest in the timber described. It was not his. It belonged to the Irish Canadian Sawmills Ltd, of Skibbereen, co Cork. He had no lien or security over it and, though it lay on his land by his permission, he had no responsibility to its owner for its safety, nor was it there under any contract that enabled him to hold it for his debt. He owned almost all the shares in the company, and the company owed him a good deal of money, but, neither as creditor nor as shareholder, could he insure the company’s assets. The debt was not exposed to fire nor were the shares, and the fact that he was virtually the company’s only creditor, while the timber was its only asset, seems to me to make no difference. He stood in no “legal or equitable relation to” the timber at all. He had no “concern in” the subject insured. His relation was to the company, not to its goods, and after the fire he was directly prejudiced by the paucity of the company’s assets, not by the fire”*

The House of Lord’s decision in *Macaura’s* case was a clear position of doctrine of separate legal entity where the company was allowed to own the property and register it under its own name.

In Malaysia, the doctrine of separate legal entity has been accepted and applied under the Malaysian Company Law Act 1965. This statute has been repealed by Company Law Act 2017.

In the case of *Tan Lai v. Mohamed Bin Mahmud* [1982] MLJ Salleh Abas, held that the company's legal persona is the result of statutory acts of the Registrar of Companies under section 16 of Companies Act 1965. Thus, as an entity with an identity, the company has a right to sue and being sued.

The court in *Abdul Aziz Bin Atan v. Ladang Rengo Malay Estate Sdn. Bhd.* [1985] MLJ case ruled that although there are changes in the membership, the corporate entity remains.

### **Company Act 2017**

#### **Separate Legal Entity.**

20. A company incorporated under this Act is a body of corporate and shall –

- (a) Have a legal personality separate from its members; and

Continue in existence until it is deregistered.

#### **Companies have unlimited capacity.**

21. (1) A company shall be capable of exercising all the functions of a body corporate and have the full capacity to carry on or undertake any business or activity including-

- (a) To sue and be sued
- (b) To acquire, own, hold and develop or dispose if any property and
- (c) To do any act which it may do or to enter into transactions

Significantly, the doctrine of separate legal entity will confer benefits for the business as the doctrine will ensure low risks for the management through limited liability principle and promote sustainability of the organisation.

In Malaysia, the doctrine of separate legal entity has also been applied in Partnership through Limited Liability Partnership Act 2013, the latter is a hybrid business entity whereby the partnership will have corporate attributes in its business operation.

### **Limited Liability Partnership Act 2012.**

#### **3. Separate Legal Personality and capacity**

- (1) A limited liability partnership is a body corporate and shall have legal personality separate from that of its partners.
- (2) A limited liability partnership shall have perpetual succession.
- (3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
- (4) A limited liability partnership shall have unlimited capacity and shall be capable of-
  - (a) suing and being sued;
  - (b) acquiring, owning, holding and developing or disposing of property; and
  - (c) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer

Hence, it's obvious that the doctrine of separate legal entity is not restricted to companies only, but also to any other entities regardless of their characteristics. Therefore, a legal research should be conducted on this doctrine to justify its application. Through this legal doctrine Public Interest Corporation will have its own legal entity and attributes similar to other corporate bodies which would enable it to conduct business activities with least restrictions. Moreover, this legal doctrine would provide social entrepreneurs a bigger scope to conduct their business, minimise operating cost and maximise benefits to the community.

## CONCLUSION

With the recent economic downturn, it is high time for Malaysian government to focus on social entrepreneurs as one of the measures to assist the public. By introducing Public Interest Corporation, the Government may spend less on the public spending but enable the community to create and sustain its own revenue generating entity. With the suggested legal doctrine, Public Interest Corporation could exist independently and perpetually. This new entity could strengthen the spirit of community as the managing a corporation demands teamwork and cooperation within the community and it is independent of the Government.

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## REFERENCES

- Alvord, S. H., Brown, L. D., & Letts, C. W. (2002). Social entrepreneurship. Leadership that facilitates societal transformation — An exploratory study. Retrieved from [https://www.researchgate.net/profile/L\\_Brown4/publication/44209514\\_Social\\_Entrepreneurship\\_Leadership\\_that\\_Facilitates\\_Societal\\_Transformation\\_An\\_Exploratory\\_Study/links/590f9fed4585159781875697/Social-Entrepreneurship-Leadership-that-Facilitates-Societal-Transformation-An-Exploratory-Study.pdf](https://www.researchgate.net/profile/L_Brown4/publication/44209514_Social_Entrepreneurship_Leadership_that_Facilitates_Societal_Transformation_An_Exploratory_Study/links/590f9fed4585159781875697/Social-Entrepreneurship-Leadership-that-Facilitates-Societal-Transformation-An-Exploratory-Study.pdf)
- Austin, J., Stevenson, H., & Wei-Skillern, J. (2006). Social and commercial entrepreneurship: same, different, or both? *Entrepreneurship theory and practice*, 30(1), 1-22.
- Blackburn, R., & Ram, M. (2006). Fix or fixation? The contributions and limitations of entrepreneurship and small firms to combating social exclusion. *Entrepreneurship and Regional Development*, 18(1), 73-89.
- Catford, J. (1998). Social entrepreneurs are vital for health promotion—but they need supportive environments too. *Health Promotion International*, 13(2), 95-97.
- Christie, M. J., & Honig, B. (2006). Social entrepreneurship: New research findings. *Journal of World Business*, 41(1), 1-5.
- Dees, J. G. (1998). Enterprising nonprofits. *Harvard business review*, 76, 54-69.
- Defourny, J., & Nyssens, M. (2008). Social enterprise in Europe: recent trends and developments. *Social Enterprise Journal*, 4(3), 202-228.

- Farok, Z. (2011). Social enterprise in Malaysia: The UMK experience. In Paper presented at the Asian Solidarity Economy Forum, Seri Cempaka Suites (Menara PGRM), Kuala Lumpur. Retrieved from [umkeprints.umk.edu.my/599/1/Paper%207.pdf](http://umkeprints.umk.edu.my/599/1/Paper%207.pdf)
- Harding, R. (2004). Social enterprise: The new economic engine? *Business Strategy Review*, 15(4), 39-43.
- Kadir, M. A. B. A., Sarif, S. M., & Universiti Teknologi, MARA. Social enterprise sustainability; an exploratory case of selected private Islamic school in Malaysia. *International Academic Research Journal of Social Science*, 1(2), 255-263.
- Katz, R. A., & Page, A. (2010). The role of social enterprise. *Vermont Law Review*, 35, 59.
- Kelley, T. (2009). Law and choice of entity on the social enterprise frontier. *Tulane. Law. Review*, 84, 337.
- Low, C. (2006). A framework for the governance of social enterprise. *International Journal of Social Economics*, 33(5/6), 376-385.
- Malaysian Social Enterprise Blueprint. (2015). Kuala Lumpur: MaGic.
- Okpara, J. O. & Halkias, D. (2011). Social entrepreneurship: an overview of its theoretical evolution and proposed research model. *International Journal of Social Entrepreneurship and Innovation*, 1(1), 4-20.
- Paton, R. (2003). *Managing and Measuring Social Enterprises*. London, SAGE.
- Peredo, A. M. & Chrisman, J. J. (2006). Toward a theory of community-based enterprise. *Academy of Management Review*, 31(2), 309-328.
- Peredo, A. M., & McLean, M. (2006). Social entrepreneurship: A critical review of the concept. *Journal of World Business*, 41(1), 56-65.
- Thompson, J., Alvy, G., & Lees, A. (2000). Social entrepreneurship-a new look at the people and the potential. *Management Decision*, 38(5), 328-338.