

BOOK REVIEW

Social Enterprises in Asia: A New Legal Form BY ERNEST LIM [Cambridge: Cambridge University Press, 2023. 350 pp. Hardcover: US\$100.56]

In recent years, there has been growing interest in the legal dimensions of social enterprises. Several publications have offered broad international comparisons of the legal frameworks governing social enterprises. These include Dana Brakman Reiser *et al*, eds. *Social Enterprise Law: A Multijurisdictional Comparative Review* (2023), and Henry Peter *et al*, eds. *The International Handbook of Social Enterprise Law* (2023). These books primarily comprise jurisdiction-specific chapters authored by individual researchers.

In comparison, one of the most distinctive features of Professor Ernest Lim's latest book is that he conducts a comparative analysis across four Asian jurisdictions – India, Hong Kong, Singapore, and Malaysia – on his own. Moreover, in analysing these four jurisdictions, Lim contextualises his findings by referencing established models such as the UK's Community Interest Company ("CIC") and the US benefit corporation. As a result, the book effectively examines the legal frameworks of six jurisdictions.

While there is no set universally accepted definition of "social enterprise", Lim identifies two key elements common to working definitions. "The first is the deployment of business forms to achieve the primary objective of pursuing social goods, and the second is the prioritization of social good above profit-making" (at 22). According to Lim, a defining characteristic of social enterprises is the prioritisation of pursuing social good over pursuing profit. This conceptual foundation informs the book's central argument.

Lim observes that in most Asian jurisdictions, social enterprises operate under existing legal forms, especially the private company limited by shares. He contends that a bespoke legal form is required. This new framework, he argues, should satisfy five key criteria: (a) corporate purpose; (b) directors' duties; (c) decision-making powers; (d) reporting, impact measurement, and certification; and (e) distribution of dividends, assets, and tax benefits. The book comprises seven chapters, with five (Chapters 2–6) dedicated to a detailed examination of each criterion.

Regarding (a) corporate purpose, Lim insists that current legal frameworks are inadequate. For example, under existing laws, social enterprises are not required to prioritise social benefits over profits or to articulate their corporate purpose with sufficient specificity enough to be legally enforceable. To address these shortcomings, Lim proposes that a new legal form should mandate that social enterprises "have a purpose that contains wording that explicitly prioritizes social benefit above

profit except where doing so will have a material and adverse effect on its financial viability” and that their purpose be sufficiently particularised (at 77).

Lim next examines (b) directors’ duties. He notes that under the current legal regime, directors of social enterprises need not prioritise social benefit over profit-making. He argues that, in the proposed new legal form, the law should state that the duty to act in the best interests of the social enterprise means the duty to protect and promote the “corporate purpose”, and the “corporate purpose” here means the one discussed in (a) above.

Concerning (c) decision-making powers, Lim observes that current company law vests power solely in shareholders, while the beneficiaries of social enterprises have no legal power. To address this, he proposes five possible mechanisms: establishing an advisory panel comprising beneficiaries, giving this panel the power to appoint a director, designating an independent non-executive director to ensure that beneficiaries’ interests are prioritised, conferring upon beneficiaries the right to appoint directors, and making a regulator protect the interests of beneficiaries. Lim suggests that the law should make each social enterprise select among these five options because no single, uniform approach may suit all organisations.

Regarding (d) reporting, impact measurement, and certification, Lim’s analysis places particular emphasis on impact measurement. He observes that there are several impact measurement tools, and each tool has its own strengths and limitations. Accordingly, he proposes that social enterprises be required to engage in “a critically self-reflexive process on how they measure impact” (at 139). More specifically, social enterprises need to identify which stakeholder should be informed, what kinds of impacts this stakeholder wants to know, and which tool is the best for this purpose.

For (e) distribution of dividends, assets, and tax benefits, Lim draws attention to regulations such as the UK’s CIC, which is subject to a 35% cap on dividend distribution from profits. In contrast, Lim suggests that the proposed new legal form for social enterprises should require a minimum reinvestment of at least 55% of profits or surpluses to further social benefit. He also raises an issue for investors: “[a]n important question for the investors is whether the gains from the tax relief exceed the losses from the reduced dividends” (at 163). He contends that “a jurisdiction should design a structure such that the losses from reduced dividends (as a result of the distribution restriction) should not exceed the gains from tax benefits” (at 149).

One of the most outstanding features of this book is its comparative breadth: it covers six jurisdictions and highlights the distinctive legal framework and practices within each jurisdiction. For instance, it explores specific domains in which social enterprises operate, the prominence of the Work Integration Social Enterprise model across the four Asian common law jurisdictions, the varying roles of government support, and key characteristics of company laws in each jurisdiction, such as India’s legal requirement to promote stakeholder interests.

In addition, this book contains a list of 80 social enterprises listed across the four Asian jurisdictions. Therefore, Lim’s analysis is grounded in practice as well as theory, considering existing social enterprises. Another strength lies in the book’s attention to enforcement mechanisms. Lim insists that, in addition to the enforcement initiated by parties involved, public enforcement by regulators is necessary.

There is little doubt that this book constitutes a significant contribution to both the theory and practice of social enterprise law. At the same time, Lim's provocative and insightful arguments are likely to stimulate further discussion. Three particular issues may become significant points for future discussion.

First, as discussed above, the book's argument consistently maintains that social enterprises must "prioritize" the pursuit of social good over profit. However, this raises the question: how can one determine whether a social enterprise is truly prioritising social good?

Second, related to the above, the book does not fully address how the interests of shareholders are to be protected. One of the main advantages of social enterprises over non-profit organisations is their ability to raise capital from investors. If all the proposals in this book are adopted, might this deter investment from shareholders?

Third, some may argue against Lim's assertion that "a jurisdiction should design a structure such that the losses from reduced dividends (as a result of the distribution restriction) should not exceed the gains from tax benefits". The mechanism of social enterprise seems to assume that a certain number of shareholders will invest in the company even if the financial return is low, with the motivation aligned with social impact rather than financial gain. If this assumption holds, then the book's suggestion that jurisdictions must ensure that tax benefits outweigh dividend restrictions may not necessarily follow.

Although the primary focus is on four Asian jurisdictions, Lim's comprehensive and practical approach makes the book highly relevant for scholars, policymakers, and practitioners in other jurisdictions as well. It is an essential read for anyone interested in the legal architecture of social enterprises.

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