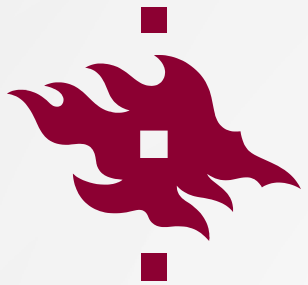


COOPERATIVE BUSINESS ENTITIES

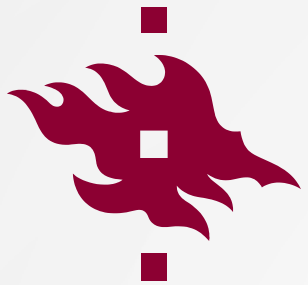
Jukka Mähönen

Purpose in Business: Steward Ownership and Enterprise 22-24 May 2025



WHAT ARE COOPERATIVE BUSINESS ENTITIES?

- ICA Statement on the Cooperative Identity: *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.*
- No one legal form for a cooperative business entity (CBE); can be
 - Cooperatives established according to national law
 - Cooperatives established according transnational law, e.g. European Cooperative Society (CSE) (I do not know anything of it – we have 0 SCEs in the North)
 - Mutual companies
 - What else
- Vast differences between jurisdictions



ONE SIZE DOES NOT FIT THEM ALL

- Firstly, “voluntary” nature of CBEs is relative: there is legislation making membership compulsory or *de facto* compulsory
 - E.g. Finnish water cooperatives: no membership, no water: take or leave it
 - Producer cooperatives: be a member or rot with your products
 - Relationship with freedom of contract and competition law
- Big and small:
 - Vast cooperatives as Mondragon, Arla, Crédit Agricole, REWE...
 - Tiny worker cooperatives with a couple of members



ONE SIZE DOES NOT FIT THEM ALL

- Not for profit?
 - It is said a CBE differs from a company as it is not for profit
 - But it is not for loss either (hopefully!): non-profit ≠ for-loss
 - Question: How surplus is used for the benefit of the CBE and its members?
- Role of asset lock and relationship to other business entities using asset lock?
 - No mandatory asset locks
 - Pu Tao and Jukka Mähönen, 'The Asset Lock: Its Role in the Governance of Social Enterprises' (March 21, 2025), University of Oslo Faculty of Law Research Paper No. 2025-01, Nordic & European Company Law Working Paper No. 2025-04, available at SSRN: <https://ssrn.com/abstract=5187909> or <http://dx.doi.org/10.2139/ssrn.5187909>



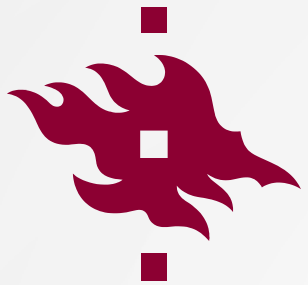
CBES AND ASSET LOCK

- ICA Cooperative Principle 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 cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.*
- Fine, but what is the law? Varies
 - Law seldom follows ICA Principles – Norwegian Cooperatives Act is an exception and they regret it



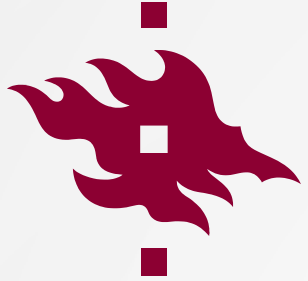
SPECIFIC CBE FORMS

- Eg Finland, Finnish Cooperatives Act § 16:5(1): *Surplus may be distributed to the members, membership shareholders and investment shareholders only if so provided in the rules. If there are no provisions in the rules concerning the distribution criteria, the distribution takes place on the basis of the use of the services of the cooperative by the members.*
- To avoid problems from this kind of ICA Principles based membership autonomy and freedom of contract, specific 'social' CBE forms have been enacted
 - 'Social cooperatives' (Italy, Portugal, Spain, Greece): the Mediterranean way
 - France, Poland: the Continental way
 - UK: the British way
- The North: no way



THE QUESTION AND A PARTIAL ANSWER

- Depending on jurisdiction, CBE can or cannot be vehicles for steward ownership
- Freedom of contract rooted in European law creates obstacle for e.g. asset lock
- If you want a business entity with air-tight steward ownership and asset lock, use
 - Foundation (and that is not air-tight either, but much tighter than companies and CBEs)
 - A specific business form (what many jurisdictions are not ready to do)
- What is important, there is no difference between CBEs and companies, per se – both are creations of the state, balancing between state interest and member interest – only foundations do not have members



THANK YOU!

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