



The Consultative Committee of Accountancy Bodies-Ireland

The Institute of Chartered Accountants in Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

1/7/3, 1/7/21(c)

1st July 2009

Anita Byrne
Co-operative Legislation Unit
Department of Enterprise, Trade and Employment
Earlsfort Centre
Dublin 2

“CO-OPERATIVE SOCIETIES”

Dear Ms. Byrne

This Committee, on behalf of the Consultative Committee of Accountancy Bodies (“CCAB-I”), has considered the Consultation Paper (“the Paper”) on this topic issued by the Department at end-April 2009.

We note this consultation has been restricted to identification of “...any practical difficulties in the IPS Acts as they currently stand and to consider what action should be taken to deal with them”. The Department will, based on responses to this Paper, determine whether “broader legislative issues and options” need to be addressed.

Societies have corporate capacity and limited liability in the same manner as entities (with the exception of unlimited companies) incorporated under the Companies Acts, 1963 to 2006. Accordingly, the significant provisions of those Acts could be equally applicable to co-operative societies.

In the longer term, the continuing need for separate legislation for co-operative societies and the practicality, following an appropriate transitional period, of incorporating, as a self-contained and tailored part, the statutory framework for cooperatives within the Companies Acts merits consideration.

Our responses to the detailed Questions in this Paper (attached) are in the context of the general comments above.

Yours sincerely

John Bowen-Walsh
Secretary
Business Law Committee

“CO-OPERATIVE SOCIETIES”

CONSULTATION PAPER ISSUED BY DEPARTMENT OF ENTERPRISE, TRADE AND EMPLOYMENT

- Q.1* Registration under the IPS Acts is confined to societies which carry on any “industries, businesses or trades”. Has this restricted the scope of activities which may be undertaken by societies?
- A.1* We are not aware of major restriction on societies’ activities as a consequence of Section 4, Industrial and Provident Societies Act, 1893. (“the 1893 Act”).
- Q.2* Should societies which pursue other activities be permitted to register under the Act?
- A.2* Other than banking, yes.
- Q.3* Have the provisions in the Acts relating to transferability and (since 1978) non-withdrawability of shares operated in practice? Are any changes to these provisions considered necessary or desirable?
- A.3* Not aware of practical difficulties arising.
- Q.4* Should there continue to be a statutory limit on individual shareholdings in societies or should this be left to individual societies to decide for themselves?
- A.4* We see no principled or practical reason why legislation should set a generic limit on individual shareholdings in cooperative societies.
- Q.5* In the event of there continuing to be a statutory limit:
- (a) Should there be one single limit for all societies or different limits for different classes of society? How should classes of society be defined for this purpose?
 - (b) What should the actual limit or limits be?
 - (c) How should the limit/s be updated? Should this be a matter for primary or secondary legislation? Should cooperative representative bodies have a role in this?

- A.5* (a) As noted in A.4 above the CCAB-I does not favour retention of a statutory limit on individual shareholdings.
- (b) Not applicable.
- (c) If the statutory limit is retained, the Minister for Enterprise, Trade and Employment should be empowered to amend the limit in the future by Regulation. Proposed changes should be discussed with cooperative representative bodies.
- Q.6* Should the restrictions on raising of funds by societies, as summarised in Paragraphs 18-21 above, be retained, varied or removed?
- A.6* The restrictions on deposit taking activities introduced by the Industrial and Provident Societies (Amendment) Act, 1978 (“the 1978 Act”), should be maintained. There should be statutory provisions similar to Section 33, Companies Act, 1990, prohibiting any invitation or offer to the general public to subscribe for shares in the society.
- Q.7* Should exemption from the Bills of Sale Acts be extended to all societies and if so why?
- A.7* There is no principled reason why cooperative societies in general should not be entitled to issue a debenture secured on floating charges.
- Q.8* What arrangements should be made in relation to the registration of charges by societies?
- A.8* Part A7, Debentures and Charges, Companies Consolidation and Reform Bill 2009, currently in preparation by the Department, should be used as the template for the revised statutory framework governing debentures issued by co-operative societies.
- Q.9* How are the financial reporting obligations, as summarised in Paragraph 24 above, operating in practice?
- A.9* As audited annual accounts must be laid before the co-operative society AGM, we propose a copy thereof be filed with the Annual Return. The Annual Return should no longer contain annual accounts in a prescribed format which format is inconsistent with generally accepted financial reporting practice.

The Triennial Return is unnecessary.

Q.10 Are they causing difficulties for societies or any categories of society?

A.10 See A.9 above.

Q.11 Do you think that any changes should be made to the present arrangements?

A.11 Instead of a return date no later than 31st March, consideration should be given to applying the annual return date model contained in Section 127, Companies Act, 1963, as amended.

Q.12 How are the provisions of the IPS Acts in relation to governance operating in practice?

A.12

Q.13 Are any changes to those provisions necessary or desirable?

A.13 Yes

Q.14 Outline the type of changes which you would like to see giving reasons for each suggestion.

A.14 The Registrar of Friendly Societies should have intervention, inspection and enforcement powers, in specified circumstances of default or omission, by a society.

Many cooperatives adopt the Model Rules developed by ICOS. The CCAB-I suggests the Registrar assess the adequacy of the Rules as regards corporate governance, consider whether changes and/or additions are needed thereto, and then endorse those provisions. Future changes to the corporate governance provisions, or departures therefrom by an individual cooperative society, should require the Registrar's prior approval.

Q.15 How much use is made in societies of these provisions (transmission of member's property)?

A.15 The CCAB-I is unaware of the extent to which societies use these provisions.

Q.16 Are the powers conferred on committees by the IPS Acts regarding the property of members appropriate today?

A.16 We query whether this approach to deceased members' property remains necessary or desirable.

Q.17 Do you wish to offer views or observations on

- (a) Any other provisions of the IPS Acts
- (b) Whether any of the mechanisms of the Companies Acts not currently available to industrial and provident societies should be made available to them?

A.17 Both the 1893 and 1978 Acts envisage the winding up procedures of the Companies Acts then existing should also apply to co-operative societies: Accordingly, we suggest the examination process under the Companies (Amendment) Act, 1990, should also be made available to co-operative societies.

Provisions governing the appointment of auditors, resolutions on their appointment or removal, as well as the formalities governing the resignation of auditors – equivalent to those specified in Sections 160 and 161, Companies Act, 1963, and Sections 185 and 186, Companies Act, 1990 – should be included within the revised legislation on cooperatives.

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