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Our Ref
DMCC

Your Ref

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Dear Mr Carey

**CONSULTATION PAPER ON THE INDUSTRIAL AND PROVIDENT SOCIETIES ACTS 1893 – 2005
(THE “CONSULTATION PAPER”)**

Thank you for inviting me to comment on the matters outlined in the Consultation Paper. I have not had significant experience in dealing with, or in advising clients on the Industrial and Provident Societies Act. Accordingly, I did not think it appropriate that I would respond to each of the questions set out in the Consultation Paper issued by the Department of Enterprise Trade and Employment.

However, I thought it would be useful to give you my general views in relation to questions 6 – 8 inclusive as set out below:

Q 6. Should the restrictions on the raising of funds by societies, as summarised in paragraph 18-21 above be retained , varied or removed? Give reasons for your views?

It might be useful, rather than retaining the current restrictions on the raising of funds by a society, to introduce provisions similar to Section 33 of the Companies Act 1963 (not 1990 as mentioned in the Consultation Paper), as most recently amended by the Investment Funds, Companies and Miscellaneous Provisions Acts 2005. This might in particular be a useful alternative to the restrictions mentioned in paragraph 21(b) and (c) of the Consultation Paper.

Q 7. Should exemption from the Bills of Sale Acts be extended to all societies and if so, why?

I am aware that the granting of floating charges by Industrial and Provident Societies (other than agricultural co-ops) has been problematic. It might be useful in any amending legislation to include provisions similar to Section 4 of the Agricultural Co-Operative Societies (Debentures) Act, 1934. There does not seem to be any reason for the facility extended to agricultural co-operative societies not to be available to other forms of societies.

The text of Section 4 of the Agricultural Co-Operative Societies (Debentures) Act 1934 is set out in the Appendix to this letter for convenience.

Q 8. What arrangements should be made in relation to the registration of charges by societies?

Perhaps, particularly if the facility for granting floating charges were to be extended, the rules applicable to companies (set out in Section 99 of the Companies Act 1963) upon the registration of charges could be replicated in the cases of societies.

Yours sincerely



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APPENDIX

The Agricultural Co-operative Societies (Debentures) Act 1934 states:

- "4. —(1) An agricultural co-operative society which is authorised by its rules to borrow money may at any time, subject to the provisions of this section and with such consent of the Minister as is mentioned in this Act and whether the issue of debentures is or is not authorised, or is or is not forbidden by the rules of such society, issue debentures to any authorised lender for the purpose of securing to such lender the repayment, with or without interest, of any capital sum of money lent by such lender to such society before the issue of such debentures (whether before or after the passing of this Act) or intended to be so lent at or after such issue, or partly so lent and partly so intended to be lent.
- (2) An issue of debentures shall not be made by an agricultural co-operative society under this section unless either the committee of such society has power under the rules of such society to borrow money and the amount to be borrowed on the security of such debentures is within such borrowing power or a resolution approving of the making of such issue has been passed by a special meeting of the shareholders of such society convened expressly for the purpose of considering and, if thought fit, passing such resolution.
- (3) The following provisions shall apply to debentures issued by an agricultural co-operative society under this section, that is to say:—
- (a) such debentures may be expressed to charge the money secured thereby in either or both of the following ways, that is to say, by way of fixed charge on any specified property (including uncalled capital) of such society or by way of floating charge on the assets, property, and undertaking (either with or without specified exceptions) for the time being and from time to time belonging to such society;
- (b) such debentures may contain all or any such provisions for enforcing or making effective the security thereby afforded as are usually contained in debentures issued by a limited company;
- (c) such debentures shall operate and have effect in accordance with the terms thereof so far as such terms are authorised by this Act.
- (4) An issue of debentures made by an agricultural co-operative society under this section may consist either of a single debenture to secure the whole amount of the sum of money for the securing of which such issue is made or of a series of debentures for separate sums ranking *pari passu* and amounting in the aggregate to the full amount of the said sum of money, and in any event shall rank in priority to any issue of debentures subsequently made by such society under this section.
- (5) An issue of debentures made by an agricultural co-operative society under this section may be accompanied and collaterally secured by a trust deed of the general character usual in respect of trust deeds entered into for similar purposes in relation to an issue of debentures or debenture stock by a limited company.
- (6) Whenever an issue of debentures is made under this section by an agricultural co-operative society, the authorised lender to whom such debentures are issued shall, within twenty one days after the issue thereof, apply in the prescribed form and manner to the Minister for the registration of such issue in the register, and if such authorised lender fails so to apply for such registration every debenture comprised in such issue shall, upon the expiration of the said period of twenty-one days, become and be null and void."