

as to encompass industrial and provident societies also, for instance by providing for an owners' management cooperative society (OMCS)?

I attach for your information a copy of a short letter dated 20 February 2007 that I wrote to the Law Reform Commission, in the context of the possible advantages of a co-operative society as a vehicle for such management functions.

What might be called the aspirational aspects of co-operative principles might usefully be set out in a statute or as a required provision in rules. Section 253 of the Companies Act 1990 which relates to investment (or "part XIII") companies requires that the memorandum of association of such a company should state its sole object to be the collective investment of its funds in property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds. By way of analogy, and if there was to be any change, new legislation specifying material that was to be contained in the rules of a society might include a proviso that the purpose might be implemented or carried on by reference to some (stated) statutory co-operative principles?

With respect to paragraphs 18-23 in the paper (Q6-Q8) any uncertainties about the powers of societies to make investments and give guarantees, and to enter into financial transactions and relationships of the type that companies typically engage in, should be clarified.

With respect to paragraphs 30-34, it would seem sensible that the procedure of court protection or examinership would be made available to societies. The powers of the court to appoint an inspector under the Companies Act 1990 may already be extended (section 9) to include an investigation of the affairs of any body corporate (i.e., including a society) that is related to the original company. It would seem undesirable, in the light of a review of the law relating to industrial and provident societies, that a society could be the subject of an examinership only in an ancillary way but not as the primary subject?

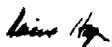
A disqualification of a director of a company by the High Court under s160 of the 1990 Act would prevent him or her being a director of any body corporate, although a restriction order under section 150 applies only to being a director of any company.

The Registrar's historic powers of appointment of an inspector to inspect the books of a society (section 18) or to examine into and report on the affairs of a society (section 50) have been limited.

The amending act of 1978 made provision (in sections 11-15) for the Registrar to have a wider power to initiate investigations of societies, in a manner broadly analogous to that applicable at the time under company law. Those powers, in part II of the act, are not applicable to agricultural co-operative societies (as defined), which of course may represent a very substantial segment of the overall number of co-operative societies).

If there was to be a view that the general powers of investigation of the Registrar ought to be enhanced then the relevant sections from the 1978 Act might be made applicable to agricultural and fishing co-operative societies?

Yours faithfully



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Consultation paper on multi-unit developments

Dear Patricia

One observation occurred to me on the Commission's recent consultation paper on multi-unit developments which I offer for what it may be worth.

The paper refers throughout to what it calls an "understanding deficit" of the owners/occupiers of multi-unit developments about the nature of their relations with each other and with the management company and any managing agent. Substantial work has been done in considering and recommending how the structures of company law might be simplified and made more user friendly in their application to management companies.

Would it be worthwhile considering whether, in terms of addressing both this understanding deficit and achieving simplification, the concept of a co-operative society might be put forward as an alternative framework for management of a multi-unit development?

A co-operative society (literally, an industrial and provident society, under a statute of 1893) is a body corporate. It has a share capital and a board of directors (typically although not necessarily called a "committee"). Its constitutional document is a set of rules (equivalent to the memorandum and articles of association of a company). The objects of a society would include the holding of property, etc. Rules may be changed by resolution of the members, and there is an obligation to file various returns with the Registry of Friendly Societies.

Some parts of companies legislation (auditing of accounts, and winding up) have been made applicable to societies, and concepts such as the fiduciary duties of directors would be the same. Otherwise societies operate under a much less substantial generally applicable body of statute law than do companies, and for all practical purposes the rules of a society will be the only document that members will need to refer to.

The 1893 legislation makes provision for a company to convert itself into a society, and vice versa.

There may be advantages, in purely legal terms, of a management body corporate being structured as a society rather than as a company, although plainly these have not generally occurred, or recommended themselves, to people in the legal profession or building industry. However the concept of a "society", never mind a "co-operative" society, may seem more acceptable and useful, or less off-putting, than a company to people without a business or a legal/professional background? People from a rural background would of course be familiar with the concept of agricultural co-operatives, group water schemes, etc.

If, at least as an additional option for a management structure, what is said above seemed to be of any interest, in the context of the consultation paper, you might find it useful to speak to the Registrar of Friendly Societies Mr Paul Farrell (who is also the registrar of companies) and/or to Mr Seamus O'Donohue who is the secretary general of the Irish Co-operative Organisation Society, in Merrion Square.

With kind regards

Yours sincerely

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