



Oifig an Stiúrthóra um  
Fhorfheidhmiú Corparáideach  
Office of the Director  
of Corporate Enforcement

**ODCE Submission to the Department of Enterprise  
Trade and Employment (DETE)**

**DETE Consultation Paper on the Industrial and  
Provident Societies Acts 1893-2005**

**2 July 2009**

1. The Office of the Director of Corporate Enforcement (ODCE) welcomes the opportunity to respond to the Department's Consultation Paper on the Industrial and Provident Societies (IPS) Acts 1893-2005.

### **Introduction**

2. At the outset, we would like to say that we are not experts in the IPS Acts, but having regard to the similar content of company law and the IPS Acts in a number of respects, we feel that we are in a position to contribute meaningfully to the Paper at a general level. We have however refrained from commenting on a number of the detailed questions in the Paper.

3. We have no argument with the Paper's acknowledgement of the contribution, value and role which industrial and provident societies have played and continue to play in Irish society. General reference is made in the Paper to the incidence of industrial and provident societies in agriculture, housing, group water schemes and community development. We would however observe that many of the same forms of activity are discharged equally well by companies limited by guarantee or by other forms of company.

4. We note too that Section 4 of the 1893 IPS Act envisages industrial and provident societies to be commercial in nature ("a society for carrying on any industries, businesses or trades specified in or authorised by its rules"). This focus is obviously shared by many companies. As a general principle therefore, the democratic and cooperative ethos of industrial and provident societies is, it seems to us, equally achievable in the form of a company incorporated under the Companies Acts.

5. Accordingly, we believe that in undertaking this review of the IPS Acts, the Department needs to separate the beneficial role of the cooperative for society (about which we have no argument) from the specific utility of IPS Acts. We do not accept that the advantages of the cooperative model can only be delivered through an entity formed and registered under the IPS Acts, and we have the impression that the Paper fails to distinguish sufficiently between these two distinct topics.

### **Linkages between Company Law and the IPS Acts**

6. The Consultation Paper notes that industrial and provident societies share many of the legal concepts and life-cycle phases which are applicable to companies (i.e., registration, the pursuit of an economic, social or community aim and liquidation). In a number of areas (e.g., winding up, qualification of auditors, etc.), the Paper recognises the linkages which already apply between the IPS Acts and the Companies Acts. It goes on to suggest that more of the concepts of company law (e.g., examinership and the registration of charges) should be formally applied to industrial and provident societies. Subject to our comments below, we have no particular difficulty in the law being amended in this fashion.

7. However, there are some particular issues which we would like to bring to the Department's attention. A primary purpose of disqualification in company law is to protect the public from the consequences of potential future misconduct by persons who have abused their position in the past. The definition of a disqualification order

in Section 159 of the Companies Act 1990 provides that a disqualified person is prohibited from being involved not only in a company but also in an industrial and provident society. We are aware of course that no counterpart provision yet exists in the IPS Acts which would allow persons engaged in misconduct in industrial and provident societies to be disqualified in the same manner and to have that disqualification apply to protect company creditors and other stakeholders. This anomalous situation should be rectified in any new IPS Bill.

8. As indicated earlier, the general winding up provisions in company law already apply to industrial and provident societies. Where an insolvent industrial and provident society is wound up, it seems to us that the directors of the society should similarly be held to account in the manner that now applies to the directors of an insolvent company. This implies that unless the director of an insolvent industrial and provident society can satisfy the High Court that s/he has acted honestly and responsibly in the 12 months prior to the commencement of its winding up, s/he should be restricted in the manner envisaged under Section 150 of the Companies Act 1990 in the overall interests of the body of creditors. This implies also that a provision like Section 56 of the Company Law Enforcement Act 2001 should be introduced into IPS law and applied to the liquidators of insolvent industrial and provident societies.

9. Occasionally too, we receive complaints of alleged misconduct in an industrial and provident society. You will be aware that the investigative provisions in the Companies Acts 1990 have been regularly amended in recent years to keep up with market developments. While there are, we understand, investigative provisions in the IPS Acts, there is a danger that unscrupulous promoters may occasionally choose to register as an industrial and provident society in order to take it beyond the more modern and extensive investigative and enforcement provisions of company law. Accordingly, we would also urge that IPS law apply to industrial and provident societies the investigative provisions which are now available in the Companies Acts.

10. We understand too that the Courts have opined that many of the common law principles relating to the responsibilities and duties of company directors apply with equal force to the directors of industrial and provident societies.

11. It is clear therefore that there are significant amounts of actual or potential resonance between the provisions in the IPS Acts and the Companies Acts. Notwithstanding those similarities, the IPS Acts can clearly be updated along the lines suggested above.

#### **Need for a Stand-Alone IPS Code of Law?**

12. However having regard to the common ground which exists between both forms of corporate entity, we find ourselves posing a question which seems not to be explicitly addressed in the Consultation Paper, namely: do we need to continue to have separate legislation for industrial and provident societies?

13. It is not evident to us that there is a continuing need for the IPS Acts if the activities of industrial and provident societies can be equally accommodated via companies under the Companies Acts. At a time when the Department is preparing a

major piece of legislation in the form of the Companies Consolidation and Reform Bill, we wonder if the opportunity should now be taken to provide either:

- that industrial and provident societies should cease to exist and be re-incorporated as companies limited by guarantee, designated activity companies or some other form of company with appropriate transitional provisions, or
- that a specific type of society would be recognised as a separate form of corporate body in Pillar B of the Companies Consolidation Bill to which particular Parts and provisions would be applied, where certain industrial and provident societies cannot be easily accommodated in one of the corporate forms already envisaged in the Bill.

14. Such an approach would, we suggest, have a number of benefits:

- it would make a number of the questions in the Consultation Paper largely moot (e.g., extending corporate governance standards and examinership to industrial and provident societies);
- the more sophisticated and modern framework of company law would increase the legal options available to the stakeholders of industrial and provident societies to resolve particular issues as they arise;
- it would streamline compliance, investigation and enforcement with respect to corporate structures which contain both companies and industrial and provident societies;
- it would serve to counter the activities of any unscrupulous individuals who decide to incorporate as an industrial and provident society under existing law because it offers more flexibility and less regulatory risk;
- consolidating the reform process for the Companies and IPS Acts would be likely to simplify decision-making and implementation of this major strategic objective for the Department. We are particularly conscious that Departmental resources are limited at present and may reduce further in the prevailing economic climate. If the Companies Consolidation Bill and reform of the IPS Acts continue to be separate tasks, this may necessitate making difficult choices with respect to resource allocation between them;
- amalgamating the process would also obviate the substantial risks of IPS legislation again becoming obsolete in the future due to a lack of attention and resources.

15. We will be happy to respond to any queries which the Department may have in relation to this submission.

**Office of the Director of Corporate Enforcement**  
**2 July 2009**