



Law Society of Ireland

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CONSULTATION PAPER ON THE INDUSTRIAL AND PROVIDENT SOCIETIES ACTS 1893 – 2005

DRAFT SUBMISSION OF THE BUSINESS LAW COMMITTEE OF THE LAW SOCIETY OF IRELAND (“THE COMMITTEE”)

18 September 2009

The Committee welcomes this opportunity to participate in the review of the regulatory framework governing industrial and provident societies. It would answer the specification questions raised as follows:

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?**

The Committee is not aware that this restriction has restricted the scope of activities which may be undertaken by societies. Given the availability of other forms of legal entity for other activities, such as charitable and social activities, the Committee does not see a need to extend the traditional scope of activities of such societies.

2. **SHOULD SOCIETIES WHICH PURSUE OTHER ACTIVITIES BE PERMITTED TO REGISTER UNDER THE ACTS?**

As stated the Committee sees no reason and is not aware of any demand to extend the ambit of the current legislation.

3. **HOW HAVE THE PROVISIONS IN THE ACTS RELATING TO THE TRANSFERABILITY AND (SINCE 1978) NON-WITHDRAWABILITY OF SHARES OPERATED IN PRACTICE? ARE ANY CHANGES TO THESE PROVISIONS CONSIDERED NECESSARY OR DESIRABLE?**

The Committee is not aware of any adverse implications of these provisions.

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?**

It is the view of the Committee that there should be no statutory limit on individual shareholdings in societies. If any limit is considered desirable it should be left to individual societies to decide for themselves whether to impose it.

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?**

It would seem to make more sense that if a limit is to be imposed by legislation rather than by individual societies that the same limit apply to all societies as it may be quite difficult to classify different societies.

(b) **What should the actual limit or limits be?**

As stated the Committee sees little purpose in there being a statutory limit. Percentage limits would, in the view of the Committee, make more sense than a financial limit. While we offer no view on an appropriate percentage limit, it would seem that a holding of over 50% would be incompatible with the traditional nature and purpose of such societies.

(c) **How should the limit(s) be updated? Should this be a matter for primary or secondary legislation? Should co-operative representative bodies have a role in this?**

In our view it would be more convenient if the matter was dealt with by secondary legislation and cooperative representative bodies should have a role in this.

6. **SHOULD THE RESTRICTION ON THE RAISING OF FUNDS BY SOCIETIES BE RETAINED, VARIED OR REMOVED?**

It is the view of the Committee that these restrictions should be maintained. However, it might be appropriate to amend the restrictions so that it is possible to raise monies from existing members where that is required for the purposes of the particular activities of the industry, trade or business in question.

7. **SHOULD EXEMPTION FROM THE BILLS OF SALE ACTS BE EXTENDED TO ALL SOCIETIES AND, IF SO, WHY?**

The view of the Committee is that there is no logical reason why this exemption should not apply to all societies.

8. **WHAT ARRANGEMENT SHOULD BE MADE IN RELATION TO THE REGISTRATION OF CHARGES BY SOCIETIES?**

In the view of the Committee, registration should be with the Registrar of Friendly Societies rather than with the Minister and in a manner similar to the regime applicable to companies registered under the Companies Acts. This would give rise to greater transparency and convenience in facilitating the searching for such charges.

9. **HOW ARE THE FINANCIAL REPORTING OBLIGATIONS AS SUMMARISED IN PARAGRAPH 24 ABOVE OPERATING IN PRACTICE?**

The Committee is not aware of any difficulties associated with these obligations.

10. **ARE THEY CAUSING DIFFICULTIES FOR SOCIETIES OR ANY CATEGORIES OF SOCIETY?**

The Committee is not aware of any such difficulties.

11. **DO YOU THINK ANY CHANGES SHOULD BE MADE TO THE PRESENT ARRANGEMENTS?**

In the view of the Committee, the following changes should be made. Subject to what is stated below, accounts should be audited and they should be required to be filed with the Registrar. The annual return for an industrial and provident society should be made more like the annual return for a company and accounts should be filed separately rather than as part of the return. The Committee sees no purpose to the triennial return. Industrial and provident societies should be given equivalent exemptions from the obligation to file accounts as small companies have under the Companies Acts. As regards timing it is always going to be difficult to have timing that coordinates with annual business cycles so it is the view of the Committee that timing should not be changed. In the Committee's view, it is neither necessary nor desirable to retain the concept of "public auditor".

12. **HOW ARE THE PROVISIONS OF THE IPS ACTS IN RELATION TO GOVERNANCE OPERATING IN PRACTICE?**

The Committee is not aware of any problems in this regard.

13. **ARE ANY CHANGES TO THOSE PROVISIONS NECESSARY OR DESIRABLE?**

The Committee would like to see it clarified that the obligations and duties on board members are equivalent to the obligations on directors of a registered company. It is desirable, in the interests of clarity of the law and public understanding thereof, that similar standards and requirements apply to officers of all commercial enterprises operating in the State.

14. **OUTLINE THE TYPE OF CHANGES YOU WOULD LIKE TO SEE GIVING REASONS FOR EACH SUGGESTION?**

See above.

15. **HOW MUCH USE IS MADE BY SOCIETIES OF THESE PROVISIONS (TRANSMISSION OF MEMBERS PROPERTY)?**

The Committee does not have access to information in this regard.

16. ARE THE POWERS CONFERRED ON COMMITTEES BY THE IPS ACTS REGARDING THE PROPERTY OF MEMBERS APPROPRIATE TODAY?

In the view of the Committee, the provisions dealing with intestacy and insanity should be eliminated and the nomination provision retained but subject to compliance with law.

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 society should be made available to them**
- (c) **Any other matter relevant to the review of the IPS Acts**

It would be helpful if, similar to the procedure that operates with the Companies Office for a registered company, there is a procedure to reinstate a cancelled society within a certain period of time with the Registrar without the necessity for a court application. In addition any amendments to company legislation whereby reinstatement can be dealt with by courts lower than the High Court should apply equally to societies.