

IPS Legislation Review

Public Consultation on the Industrial & Provident Societies Acts

Views and Observations of Údarás na Gaeltachta

The views set out below are based on the experience in Údarás na Gaeltachta with Gaeltacht community development cooperatives in particular, as well as some specialist ones such as fishermen's cooperatives. These organisations play an important role in Gaeltacht community, island and rural development.

General

Much of the following relates to practical steps for a clearly set out model that provides for people in communities who have a common business or development purpose, to form a legal democratic entity that can do business, but at the same time is answerable and accountable regarding good practice, in the same way as Companies are regulated under the Companies Acts. Secondly, we suggest information relating to such entities should be available to the public in an easily accessible form, as in the case of www.cro.ie. Our basic question is therefore whether there is a need any more for two separate legal systems, the Companies Acts and the Industrial & Provident Societies Acts (IPS Acts) or should the two systems be merged.

The following comments follow the layout of the Consultation Paper.

A. Societies which may be registered

It appears to us that the scope of the legislation at present is sufficient to allow for the registration of Gaeltacht community development cooperatives and such organisations. However, for various reasons, sometimes based on legal advice, some community organisations have chosen to form companies limited by guarantee under the Companies Acts rather than societies under the IPS Acts. It would be worthwhile to explore the reasons for this. It may be that the lack of information and clarity surrounding the IPS Acts contributes to this, as well as the lack of on line search facilities for details of registration, membership, officers, accounts, charges etc.

B. Share Capital

Transferability has operated in practice, but as membership has grown older there is a problem in this area, especially where a member dies, and steps are not taken to transfer the shares. Údarás na Gaeltachta, with the advice of ICOS has sought to encourage Gaeltacht cooperatives to address this, in order to maintain an active membership.

At the request of Údarás na Gaeltachta, ICOS drafted “Model Rules for Gaeltacht Community Development Co-operatives” in 2008 (copy enclosed). To our knowledge these Rules have not been approved by the Registrar, and questions remain therefore regarding the legal basis for certain provisions if they were adopted.

These include provisions for repayment of amounts paid up or credited to persons on the share or shares they owned, in cases of expulsion and termination of membership. On the other hand, in Section 15 shares are said to be non-withdrawable.

On a different but related matter, the “Model Rules” provide for the imposing of an annual subscription, defined in Section 1 (q), as well as implications for membership and participation in Sections 5 (d), 12 (b), 14 (a) (i), 38 (b), 44 (v) agus 51 (j). If necessary, we suggest that provision be made to permit the imposing of such an annual subscription, as well as the existing provisions for the raising of share capital, and for the collection of levies by deductions from the amount payable by the cooperative to the members for products or services. This fee could be set annually by the directors, or by the annual general meeting. While agricultural cooperatives have been able to collect subscriptions by way of pricing on products or services etc, this is usually not open to community cooperatives, where an annual subscription may be more appropriate.

We note at the same time that the Memorandum and Articles of Association for Companies Limited by Guarantee, as set out in the Companies Acts, do not specifically provide for annual subscriptions. Nevertheless, the Revenue Commissioners’ “*Standardised Memorandum and Articles of Association for a Company Limited by Guarantee and Seeking Tax Exemption as a Charity Under the Provisions of Section 207, Taxes Consolidation Act, 1997*” does have such a provision in article 33, but the implications for membership rights and participation are not clear in that case.

On the question as to whether the statutory limit on individual shareholdings should continue, we suggest there should be more flexibility, depending on the nature of the business. Could this be provided for by allowing limits for different types of societies to be set by Ministerial regulation or suchlike?

C. Restrictions on Raising of Funds

As stated in the Consultation Paper, issues of raising funds arise sometimes in the case of grants from public authorities. In the case of Gaeltacht Cooperatives, cases arise where matching funding is required where State grants approved for capital works or other projects. It is important that community development cooperatives are not over-constrained by the need for permission to raise funds by way of share capital, which is non-withdrawable in any case. The maximum in any 6 month period seems restrictive in this context, if it applies to them.

D. Borrowing Powers

Again, if community development cooperatives are restricted regarding debentures secured on both floating and fixed charges, this could restrict their ability to raise funds for capital projects, particularly in the present difficult economic and banking circumstances.

Procedures regarding the registration of charges are not as satisfactory as those under the Companies Acts. One would expect charges to be registered on the file held by the Registrar for each Cooperative, rather than kept by the Minister for Agriculture. We refer again to the lack on line search facilities for details of registration, membership, officers, officers, accounts, charges etc.

Power to Make Loans

Section 10 of the 1978 Act also gave the Registrar power, after consultation with the Central Bank, to regulate the carrying on by the society of the business of **making loans**, and in exercising the power the Registrar may give a direction in writing to a society in relation to the making of loans, which direction may relate to a specified class or classes of society denoted by reference to such matters as the Registrar thinks fit, and may apply for a period specified in the direction.

If the above has not been replaced by other legislation (the strengthened bank licensing and supervision arrangements since 1971?), we suggest this area should be examined. The question of guaranteeing loans of other societies or connected bodies also arises. Guarantees are more controlled under the Companies Acts.

E. Financial Reporting

Neither small companies limited by guarantee, nor small societies under the IPS Acts are exempt from audit requirements. We suggest that an exemption should apply to such with small balance sheets/turnover/employment, as set out in Part III of the the Companies (Amendment) (No. 2) Act, 1999.

The question in the Consultation Paper regarding the need for “Public Auditors”, which applies also to credit unions, seems a valid one, subject to suitably qualified auditors being available in general, who would have to have sufficient knowledge of the relevant rules and legislation applicable to such societies. The arrangements under the Companies Acts regarding annual returns and accounts, appropriately modified, may be clearer and more practical for cooperatives.

F. Corporate Governance

Other Acts – Companies Acts and the Credit Union Act 1997, for instance - are much more specific on matters of corporate governance, and it is important that minimum standards are set out. Furthermore, there appears to be anomalies in provisions under the Companies Acts, the IPS Acts and the Credit Union Act 1997 regarding “special resolutions” and the procedures relating to the same – the required majority, the number of required votes etc.

G. Transmission of members' property

The Nomination Provision is very important in the case of Credit Unions, as shares and deposits and insurance on death in that case are realisable, and can be used for immediate expenses such as funeral expenses. The case for such in community cooperatives is not so clear, as nomination forms can be overruled by wills, and the assets are not likely to be in realisable form.

H. Other Matters

Reference is made to section 19 of the 1978 Act. To what extent do/should other provisions apply to Cooperatives – examinerships, powers of the Director of Corporate Enforcement etc?

Furthermore, it is not clear to us what restrictions exist on the payment of interest on shares (we note standard rules tend to refer to interest rather than dividends). Part IV of the Companies (Amendment) Act, 1983 set out the limitations on distributions in detail, and therefore it appears this matter needs to be addressed in the case of the IPS Acts.

I. Public Enforcement

While earlier forms of cooperatives may have entailed trading that was restricted to a large extent to members of the cooperatives, many of them now trade in a very similar way to other commercial companies, with trade creditors and tax responsibilities. More stringent requirements regarding reckless trading, directors interests etc may be appropriate.

The basic question then arises, as to whether there is a need any more for two separate legal systems, the Companies Acts and the IPS Acts, or should the two systems be merged.

One basic distinguishing principle may be of importance, however, the question of one vote per member, regardless of the value of share holdings. This could be addressed possibly by a model such as the Company Limited by Guarantee and Having a Share Capital, with suitable adaptations regarding restrictions on eligibility for membership and voting rights.

Údarás na Gaeltachta
30 June 2009