



Chartered Accountants House
47-49 Pearse Street
Dublin 2

Tel +353 1 637 7200
Fax +353 1 668 0842
Email ca@charteredaccountants.ie

www.charteredaccountants.ie

2016 Cooperative Legislation Review
Co-operative Legislation Unit
Department of Enterprise, Trade and Employment
Earlsfort Centre
Lower Hatch Street
DO2PWO1

1 February 2017

Dear Sir/Madam,

2016 Cooperative Legislation Review

Chartered Accountants Ireland ('the Institute') welcomes the Department's public consultation on the operation and implementation of the Industrial and Provident Societies Acts 1893 – 2014.

As you are well aware, the recent consolidation of Irish Company Law resulting in the issuance of the Companies Act 2014 included significant legislative reforms for corporate bodies. The legislative reform included governance reform, operational and administrative reform. The following areas are areas where we believe the Department should consider changing the legislation pertaining to Industry and Provident Societies.

Electronic Filing

The case for electronic filing is clear in that it modernizes the existing legislation and would give co-operatives parity with companies. We understand that there are already efforts underway to make this option available to co-operatives and would fully support this.

Auditors

The Industrial and Provident Societies Acts 1893 – 2014 require auditors of societies to be Public Auditors. Not all Statutory Auditors under the Companies Acts would qualify as Public Auditors. We would strongly favour moving to allow all statutory auditors audit societies throughout changing the legislation to remove the term Public Auditor and replacing it with Statutory Auditor defined consistently with the Companies Act 2014.



Audit Exemption

An audit exemption is available to certain private companies while there is no equivalent provision within the co-operative legislation. The benefits of an audit exemption in terms of reduced costs and administrative burden may be equally applicable to small co-ops and small companies. In terms of measuring this cost relative to the benefit, ultimately, the value in audited financial information should be assessed from the stakeholder's perspective. The audit of the financial statements is likely to give members of a cooperative a degree of confidence that the entity is being run in line with their expectation as it relates to financial reporting matters; transparency and trust are critical to the effective functioning of a co-operative. However, this may in some cases be no different to a small private company. One could argue that a co-operative is more similar to a PLC, for which no audit exemption is available, than a private company in that co-operatives often have a large number of members. The minimum number of members for a co-operative is just seven while the largest co-operatives may have well in excess of the limit of 149 which would apply to private companies. This diversity should be considered in determining whether an audit exemption is justified and the appropriate eligibility criteria to be applied.

Governance

We support the aim of the consultation of providing an operational framework for the co-operative sector to ensure it can reach its full potential while ensuring good corporate governance practices. We note that most governance principles, applicable to corporate and other bodies both here and in other jurisdictions, are not enshrined in legislation but are promulgated through codes of governance. This provides a more flexible, principles based extension of regulation and is something we would expect to continue to see mirrored in the co-operative regulation. In our response we have focused our attention on matters that are currently dealt with in Company Law without an equivalent requirement for co-ops.

For example, the following governance matters addressed in the Companies Act 2014 do not appear to be dealt with in the existing co-operative legislation:

- The concept of a Registered Person as defined in S39 of the Companies Act 2014. Although this may be of limited benefit to co-operatives in practice, there may nonetheless be instances where it would be useful.
 - Donees of Power of Attorney are entitled to vote as members under the provisions of the Companies Act. While rules of co-operatives and general commercial practice likely allows for this currently, it may be beneficial to explicitly provide for this in the legislation. Similarly, provisions around proxies, management committee meetings (quorum, casting vote, notices) and the operation of sub-committees do not appear to be explicitly addressed in the legislation allowing for diversity in practice.
 - Maintenance of statutory registers other than members do not appear to be required under the current co-operatives legislation. This is an area where expansion of the requirements might be considered in order to maintain parity with corporate bodies.
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- Similarly, the definition of directors and officers may benefit from amendment to include shadow directors and de facto directors given the ability of such individuals to influence the operations of a particular entity.
- The Fiduciary duties of officers are not explicitly laid out in the current legislation. This may cause concern for prospective officers as they do not have a clear framework to guide their behavior. While this is in practice dealt with in a co-operative's rules, the fiduciary duties of directors are fundamental to the effective functioning of the entities and therefore we would suggest capturing them within the legislation.
- The provisions relating to disqualification of directors/officers generally within the Companies Act 2014 do not appear to be mirrored within the co-operatives legislation.
- Declarations of interest in contracts, etc. by officers do not appear to be explicitly addressed in the co-operatives legislation. Co-ops are by their nature, expected to have a significant level of relevant declarations and as a matter of standard practice, members interests would be well known to other members as transparency and trust are critical to the effective functioning of a co-operative. However, for parity with corporate bodies, it may be beneficial to explicitly set out minimum expectations regarding disclosures. Similarly, you may consider the issue of loans to Directors and officers.
- In relation to the preparation and publication of the annual directors' report and financial statements, we note that the Companies Act 2014 Part 6 updated Companies Legislation in these areas and we suggest that regard should be had to these updated provisions when amending the Industrial and Provident Societies Acts.

It may be expedient to deal with some of the above items by amendment to the second Schedule of the Industrial and Provident Societies Act 1893 which sets out the minimum requirements for a co-operatives rules.

We would welcome the opportunity to provide comment on any draft legislation or regulations in due course.

Please contact me by email at Anne.sykes@charteredaccountants.ie or on 01-6377313 if you wish to discuss any or our comments in more detail and/or to arrange a meeting with members of our technical committee.

Yours sincerely


Anne Sykes

Secretary, Audit and Assurance Committee of Chartered Accountants Ireland
