

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

BY EMAIL

31 January 2017

Your ref:

Our ref: fgf/34309.30

MHC-15163672-1

Matter: Public consultation on the operation and implementation of the Industrial and Provident Societies Acts 1893 – 2014

Dear Sirs

We are writing to you to you by way of submission in relation to the operation and implementation of the Industrial and Provident Societies Acts 1893 -2014 (the "**Acts**").

This submission has been prepared by the insolvency and restructuring department of Mason Hayes & Curran and addresses primarily issues in relation to the insolvency and restructuring provisions in the Acts.

1 High level issues

At a high level, we are of the view that it would be appropriate for the insolvency provisions under the Acts to be aligned with those that apply to companies under the Companies Act 2014 (as amended).

We would also welcome a consolidation of the Acts but acknowledge that this would be a substantial undertaking.

2 References generally

References throughout the Acts could usefully be updated to refer to the Companies Act 2014 (as amended). In particular:

- (A) As regards winding up, we note that section 19(1) of the Industrial and Provident Societies (Amendment) Act 1978 provides: " Subject to this section, a society may be wound up only in accordance with Part VI of the Act of 1963,

and, accordingly, that Part of that Act shall, subject to any necessary modifications, apply as if the society were a company."

Pursuant to Section 5 of the Companies Act 2014, that now appears to fall to be constructed as a reference to Part 11 of the Companies Act 2014.

- (B) Pursuant to Section 14 of the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014, the Companies (Amendment) Act 1990, which provides for examinership) is applied to Industrial and Provident Societies.

Pursuant to Section 5 of the Companies Act 2014, that now appears to fall to be constructed as a reference to Part 10 of the Companies Act 2014. However, it is difficult to construe Part 10 of the Companies Act 2014 as amended by sections 15 to 24 of the Act of 2014.

3 Provisions relating to debentures

Certain entities registered under the Acts can grant debentures, pursuant to the Agricultural Co-Operative Societies (Debentures) Act 1934. Two material issues arise, as set out below.

3.1 Filings

First, there is currently no ability under the Acts to lodge a notice to the effect that a receiver has been appointed, which would be available on a public register.

3.2 Preferential creditors

Second, and more significantly, we can identify no provision in the Acts that has the effect of applying the provisions of Part 11 of the Companies Act 2014 to a receiver appointed to a society pursuant to a debenture.

Section 440 of the Companies Act 2014 requires these provisions to be applied when a receiver is appointed to a company.

The effect of this lacuna is that where a receiver is appointed to a society pursuant to a debenture the preferential creditors can lose out.

Moreover, even where the receiver realises a surplus, the only ways in which the preferential creditors can be discharged appear to be either:

- (A) for the receiver to return the surplus proceeds to a functioning society, which proceeds to place itself into liquidation; or
- (B) for one or more of the preferential creditors to petition to place the society into liquidation.

We are aware of a situation where a receiver, who was appointed pursuant to such a debenture, realised a surplus and is currently holding significant funds pending the Social

Insurance Fund deciding how to proceed. [As disclosure of this paragraph has the potential to cause loss to the State, we suggest that this paragraph be redacted in any published version of this document.]

4 Conclusion

We are of the view that the issue in relation to preferential creditors, set out at 3.2 above, is an issue that merits being addressed as a priority as it has the potential to cause loss to employees and to the State.

If you wish to discuss the issues raised in this submission, please contact Frank Flanagan at fflanagan@mhc.ie or Maurice Phelan at mphelan@mhc.ie.

Yours faithfully

Sent by email, no signature

MASON HAYES & CURRAN