Time to Reform IPS Legislation

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It this article Malcolm Lynch outlines his concern that the useful legal structure of cooperative and community benefit society has no future unless fundamental problems are tackled through reforming *industrial and provident society law* (IPS). He contrasts this situation with the active role that government has taken to introduce recent legislation establishing a new form of community-interest-company (*Companies – Audit, Investigations and Community Enterprise Act, April 2004*). This will further eclipse and marginalise the use of the cooperative and community benefit society model.

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Introduction

In the Prime Minister's office, there is a Strategy Unit which conducted an excellent review of charities and the wider not-for-profit sector in September 2002. This review, entitled *Private Action*, *Public Benefit*, included the first review since 1998 of industrial and provident societies.

The review was not extensive but it made a number of proposals for reform of industrial and provident society (IPS) law. Since, then some private members bills have introduced some reforms of industrial and provident society law, and the Treasury now will shortly be consulting on further changes. The changes which have been introduced, and those on which there will be further consultation, do not leave me with any comfort that the legal form of industrial and provident society will blossom and flourish as a legal structure of choice for persons wishing to establish cooperative and community enterprises.

Change

A welcome change is the proposal that instead of referring to industrial and provident societies, reference is made to cooperative and community benefit societies which are the two legal forms regulated under the IPS Act. This change should help remove some of the confusion which has existed in explaining this legal form for many years.

There has been a long term decline in the use of the cooperative and community benefit society legal form as evidenced by the number of new registrations of societies. At the same time, anecdotal experience demonstrates that there is continuing growth in registrations of community enterprise but as companies limited by guarantee and having no share capital. This is an issue of concern because many organisations which are registering using the legal form of a company limited by guarantee for their community benefit activities ought to be registered as community benefit societies. Community enterprise needs capital. Sometime this can be obtained by way of grants but there are many occasions when this is not possible and they should be seeking share capital from the community or from other community enterprises to further their aims rather than collapse. This is one of the advantages of the community benefit society.

Capital

The more limited restrictions on the issue of share capital by cooperative and community benefit societies is a distinct advantage over the form of the company limited by shares whose shareholders have enormous difficulty in satisfying legal requirements for issue of shares to third parties in order to raise capital, and the company limited by guarantee which is limited in the forms of capital it can attract.

Regrettably the cooperative or community benefit society legal form is not a first choice because the manner of registration is costly, awkward and slow. All of which are factors which should not be in the way of community enterprise.

The whole system of governance for cooperative and community benefit societies, starting with the banking division of the Treasury being the responsible Government department instead of the Department of Trade and Industry (DTI) as the promoter of enterprise; registration by the Financial Services Authority (FSA) rather than the Registrar of Companies; and a system which relies on sponsoring bodies to seek to obtain the cheapest form of registration conspire to ensure that progressive obsolescence will continue and the costs of using this legal model will increase.

Contrast

The contrast with the very active role played by the Social Enterprise Unit of the Department of Trade and Industry (DTI) in bringing forward the community interest company could not be greater. The introduction of the community interest company, which may well be in place by April 2004, is likely to accelerate the decline of the cooperative and community benefit society form for not very good reasons unless the fundamental problems are tackled.

If you want a democratic cooperative or community benefit enterprise then you should register as one. However, it is likely that many will take and convert into the form of a community interest company in the absence of fundamental reform.

Further Information

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