Fostering Co-operative Growth through Law Reform in Ireland: three recommendations from legislation in the United States, Norway and Brussels

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This paper provides a review of several principles incorporated into new co-operative laws that have provided opportunities for growth in the co-operative movement. It adds to the discussion about how law reform should occur in Ireland regarding co-operative enterprise. Three main recommendations, key to this discussion, are discussed and offered pursuant to the current governmental review of the laws governing Irish co-operatives.

Introduction

This paper approaches the issue of how to stimulate the co-operative movement from the perspective of law reform. The research discussed in this paper is particularly relevant to Ireland at the moment since the government, with a lead from the Co-operative Legislation Unit in the Department of Enterprise, Trade, and Employment (DETE), is currently seeking public comment regarding the regulation of co-operatives. In a statement issued 15 April 2009, Minister for Trade and Commerce, Mr John McGuinness highlighted that the Irish co-operative movement is now worth in excess of €12.6 billion and said that it is important now to ensure that "the regulatory system facilitates the continuing growth and development of this highly valuable sector in our economy in the years ahead."

Given the current review of co-operative legislation, what are a few legislative principles to embody in a regulatory system that can grow the co-operative movement in Ireland? How have other jurisdictions approached the problem of co-operative law reform in order to increase the strength and vitality of co-operatives across industries? This paper attempts to answer these questions by providing a few succinct and clear recommendations for the drafters of the new co-operative law in Ireland to follow.

In developing these recommendations, this paper draws on innovative legislative approaches to regulating co-operatives in other countries, including the United States, Norway and at the level of the European Union. The intent of this paper is to provide a meaningful discussion of the reasons why other jurisdictions chose to implement these recommendations in the way they did, as well as why they might prove useful to the Irish co-operative movement.

One could easily write at great length about all the possible options for regulation of co-operatives in different industries. For example, credit union and mutual insurance co-operatives thrive in many countries where statutes provide specific provisions for their creation and operation. The scope of this paper, however, is limited to a few general principles relevant to all co-operatives. It also mentions specifically worker co-operatives, a particularly underdeveloped area of the co-operative movement in Ireland, since worker co-operatives are a newer form of co-operative enterprise and several recent laws have been enacted elsewhere that can serve as a guide for possible inclusion in the forthcoming reformed Irish co-operative laws. In addition, during the current economic crisis, when jobs become scarce, worker co-operatives provide an exciting and potentially far-reaching solution to the problem of job retention and creation.

This paper presumes that reformed regulation of co-operative societies will lead to an increase in the number, strength and vitality of co-operative societies. To prove this point, one could study a state where revised regulations were implemented and criteria developed to study the co-operative movement indicated that co-operative societies grew in number, strength or vitality. Admittedly this paper does not provide this information. This type of research is lacking and the researcher was not able to locate any particular data about this scenario in developed nations, where new regulation led to an increase or decrease in the strength of co-operative societies.

Coincidentally, the European Commission has just announced a call for tenders to study the impact of the 2003 Statute for the European Co-operative Society on the national legislation and the promotion of co-operatives in EU countries. The results of such a study could impact upon future legislation. We will discuss some of the unique provisions of the European Co-operative Society Statute below as well as

their potential to promote co-operatives in Ireland.

At the same time, comprehensive studies have compared co-operative laws globally. One particular report issued by the United States Agency for International Development (USAID) and the Cooperative Law and Regulation Initiative (CLARITY) in 2006, called "Enabling Cooperative Development: Principles for Legal Reform," explains several important principles for drafting new co-operative laws in the developing world. Since the CLARITY Report focuses on developing economies, it spends time explaining the importance for separating the co-operative movement from overly interventionist government actors. Government intervention in Ireland, on the other hand, has generally not been overly burdensome as the regulatory environment for co-operatives is rather hands-off, or "benign", as those in the movement have described it to me.

Nevertheless, this paper is a significant contribution to the literature because it fills a gap regarding principles to consider in the regulation of co-operatives in Ireland. It provides a description of the importance of new regulation, and how law reform can be put into place in the Irish context. While the reader may question the conclusion the author draws - precisely that reformed regulation leads to a stronger co-operative movement - the implications of the recommendations made here are nevertheless important to bear in mind as they impact upon critical aspects of co-operative society success, including member democratic participation, the strength of the co-operative as a brand, and the rise in co-operatives across industries.

The co-operative movement in Ireland

Overall, the role of co-operatives in Ireland is limited by comparison to other countries (Forfás 2007, iv). The bulk of annual turnover of about €10.75 billion for 2005 was earned by about 30 dairy co-operatives (Irish Co-operative Organisation Society 2006, p22). This strong showing indicates the strength of the dairy co-operative sector, but also the singular focus of the Irish co-operative movement.

In recent years, however, dairy co-operatives have responded to new opportunities in providing retail services in rural areas. Retail outlets continue to generate profits and provide valuable services and jobs for rural communities (Briscoe & Ward 2007, p29). Dairy co-operatives have even used revenue generating activities in retail, property, food processing and other areas, to subsidise the milk price paid to farmer members (Forfás 2007, p19). Although, given current market conditions, it is unlikely that this type of model for subsidising milk prices will be sustainable. It is therefore important to consider ways to diversify the co-operative movement across new industries, and to keep this goal in mind while drafting new co-operative laws.

However, the strong organisation of co-operatives in Ireland in dairy and credit industries presents opportunities to expand into meeting social needs, including healthcare, housing and environmental protection (Forfás 2007, iv). Martin Cronin, Chief Executive of Forfás, the National Policy and Advisory Board for Enterprise, Trade, Science, Technology and Innovation in Ireland, recently said:

> … co-operatives may have the potential to play a role in addressing social and of quality of life issues … arising from long working days, commuting, isolation and lack of community facilities, by filling market gaps, providing public and community services, and developing community assets. (Forfás 2007, iv)

In order to meet current social needs, new co-operatives, and new co-operative members, must have the rights and responsibilities afforded by a co-operative law. Certain needs are currently not met. Part of the problem to expanding the co-operative movement to other industries is poor legislation. The Industrial and Provident Societies (IPS) Acts are not actually co-operative laws, and do not even mention the word "co-operative". The IPS Acts have been amended in a piecemeal approach to respond to the needs of co-operatives in specific industries instead of drafting a new co-operative law to provide for a clear definition of what it means to be a co-operative in Ireland, and how a co-operative operates according to Irish law.

For instance, the use of the word "co-operative" is not protected under Irish law. This means that it can be used indiscriminately. In addition, co-operatives are not authorised explicitly to be owned by employees or worker-members. Nor are co-operatives authorised under law to raise capital through investor members. It is laudable that the Irish government is currently consulting the co-operative movement, academic researchers, and others in the public concerned about the legal status of co-operatives in Ireland. With this review in

mind, this paper now addresses several recommendations for principles to include in a new co-operative law in Ireland.

Recommendations

The recommendations this paper suggests are as follows. First, law reform in Ireland should include a "co-operative society" statute that protects two key aspects of all co-operatives: (a) the restriction to use the words "co-operative society", or an abbreviation of those words, in its legal name; and (b) the requirement that governance of the society be on an equal one member, one vote, democratic model. An exception to the one member, one vote model, which is discussed further in the third recommendation, should include the authority for a society to define separate classes of membership to allow for the inclusion of investor members with limited or no voting rights.

Second, a revised Irish co-operative law should provide language specifically authorising workers to own the co-operatives who employ them and have the option to operate their worker co-operative society according to a system of internal capital accounts. This recommendation reflects a law passed in the state of Massachusetts, in the United States, in the 1980s based on the Mondragon model for worker co-operatives in Spain. This model has proven to be successful both in times of economic crisis and prosperity, which makes is particularly relevant at the moment.

Third, a new Irish co-operative law should include provisions authorising societies to include investor members with limited voting rights. Allowing for investor members solves the problem faced by many existing co-operative societies because of the current limitation on the amount of capital members may contribute, which severely limits the ability of co-operatives to finance operations through their members. Allowing co-operative societies to include investor members with limited or no voting rights maintains co-operative principles of member control, while acknowledging the necessity for increased capital that co-operatives need if they are to compete with traditional companies.

A related issue is that co-operatives should not be prevented from creating charges on personal property, such as equipment, receivables, or other floating assets, to use debt to finance operations. The *Agricultural Co-operative Societies (Debentures) Act 1934* created a register of charges to be kept by the Minister for Agriculture for agricultural co-operatives. To remedy this inability to register charges for non-agricultural co-operatives, a new co-operative law could allow co-operative societies to register charges with the Companies Registration Office, just as companies do. Another option posed by some is to enact a registration system akin to the Uniform Commercial Code Article 3, used in the United States. Arguments for this type of registration system have been considered elsewhere in the Irish business law community (eg Donnelly 2000).

We begin now with a discussion of the first recommendation requiring the use of the words "co-operative society" in the legal name of a co-operative society, and the adoption of basic co-operative principles. To understand the reason for this recommendation we must first answer the question of why Ireland needs a law regulating co-operatives at all.

The co-operative identity & the case for why you need a law about it

In his paper published elsewhere in this edition of the Journal, Eamonn Carey asks the question: why does Ireland need a law governing co-operatives? That is, Ireland, and the Irish co-operative movement, has operated within the structure of the IPS Acts for the past one hundred and fifty or so years, so why do co-operatives now need a law to reflect their unique values and principles?

I argue that Ireland does need a law that protects the co-operative identity and gives the public a clear way to identify a co-operative society from another type of corporate entity. Laws in Ireland and elsewhere already require legal entities with limited liability to include some words or abbreviations in their legal names, such a "plc", and "Limited" or "Ltd". The reason for requiring the inclusion of these words is to put the public on notice that an entity has limited liability should they enter into contracts with that entity.

Similarly, if individuals engage in trade or business with a co-operative society, they should know that the co-operative is operating according to basic co-operative principles. A new co-operative society law should require that co-operative societies include the words "co-operative society", or an abbreviation of those words, such as "co-op" or another derivation, in addition to the word "Limited" or "Ltd" in the legal name of the society to put the

public on notice that the organisation is a co-operative. This provision of the co-operative society law would be enforced by the regulator that registers co-operative societies, either the Registrar of Friendly Societies, as it now exists, or the Companies Registration Office, and enforced by the Office of Attorney General.

As it is now drafted, the IPS Acts do not even mention the word "co-operative". This is a huge flaw in definition, and one that needs to be cured by law reform. One need only be reminded of the Book of Genesis in the Bible to understand the importance and power in naming. It is the role of government in a capitalist economy to play role of umpire and to exercise its power by restricting the use of some words in the legal names of new entities.

Concurrent with this naming provision in a new law, is to require a few basic restrictions on governance and operations to ensure that co-operatives are operating according to some standard co-operative guidelines. The point is not to set a ceiling for adherence to co-operative principles, but rather a floor, a minimum definition for what it means to operate as a co-operative. Co-operatives should be free to set their own individual guiding principles in their respective by-laws, or other membership guides or rules, provided they meet minimum statutory requirements.

Several jurisdictions have demonstrated how this recommendation can be reflected in legislation. The New York Cooperative Corporations Law, for instance, states in section 1(3)(j) that the words "cooperative" or "cooperation" or similar names may not be used by any other corporation (company whose liability is limited to the amount of capital invested in the company by individual members) not created under the Law. This section of the New York Cooperative Corporations Law goes so far as to grant co-operatives the right to enjoin other entities not created under the Law from impermissibly using the word "cooperative" in their name.

In addition to the naming provisions of the New York Cooperative Corporations Law, other sections provide a basic definition of co-operative principles. Section 1(3)(c) states that a co-operative is a corporation formed under the Law "for the cooperative rendering of mutual help and service to its members". Section 1(3)(d) acknowledges that co-operative corporations are non-profit corporations (with the exception of worker co-operatives, discussed below, and co-operatives that elect to be treated as business corporations) since the primary objective is not to generate profit, or pay dividends on invested capital, but to provide service and enjoyment of economic advantage through co-operative action, including fair return for a product offered or service provided.

The Co-operative Societies Act, passed by the Norwegian Parliament on 29 June 2007, has similar definitions for what it means to be a co-operative. Section (2) of the Act defines a co-operative society as a "group whose main objective is to promote the economic interests of its members by the members taking part in the society as purchasers, suppliers or in some other similar way," with two additional important conditions: (1) that any profits in excess of normal return on investment are retained by the co-operative or distributed on the basis of patronage; and (2) member liability is limited and does not include debts of the co-operative. In addition to these two conditions, there are also two exceptions. The first is when co-operative owns a secondary co-operative that exists to promote members' interest through trade, and the second is at the individual discretion of the King.

In addition to adhering to these definitions, the Co-operative Societies Act in Norway requires that the legal name of a co-operative society contain the words *samvirkeforetak* (co-operative society) or the abbreviation SA. This is in contrast to the statutory creation in the UK of the "bona fide co-operative", which instructs societies on how they should operate in order to be considered co-operatives, but does not require the use of the words "co-operative society" in the legal name of the "bona fide co-operative". Instead, the UK law just requires the word "Limited" in the society's legal name. This lack of a naming requirement causes potential for confusion among the public and fails to protect the genuine co-operative from operating in a market where consumers or other businesses recognise it as a brand.

Article 10 of the Statute for a European Co-operative Society, or *Societas Cooperativa Europaea* (SCE), restricts the use of the abbreviation "SCE" in the legal name of the society only to entities that form under the SCE Statute, along with the word "limited" in jurisdictions where it is appropriate. In addition, article 1(3) gives guidance on the goals and objectives of the SCE: namely, that an SCE shall have as its "principal object the satisfaction of its members' needs and/or development of their economic

and social activities." But beyond just defining purposes of SCEs, article 59 of the Statute codifies the principle of one member, one vote.

Interestingly, however, this same provision authorises member states in implementing the SCE Statute to allow for increased voting rights based on participation in the co-operative. This authorisation for increased member voting rights based on patronage might be useful in some instances. However, given that members who already participate regularly in co-operative activity tend to exert greater control through involvement in the enterprise, it does not seem that this authorisation is necessary in a new law.

On the other hand, the authorisation to allow member-owners, or employee-members to become member-owners, is a critical aspect of a new co-operative law.

The need for a worker co-operative law

One type of co-operative at risk of being neglected in the current review of Irish co-operative law is the worker co-operative. The IPS Acts, not unsurprisingly, do not mention worker co-operatives. While the Consultation Paper recently published by the DETE does not specifically refer to worker co-operatives, it does ask for additional comments on areas not currently covered by the law. This section provides a brief overview of why worker co-operatives could be important for Ireland and what an Irish worker co-operative law might look like.

Worker co-operatives thrived in various communities throughout the world during the second half of nineteenth century. The question is: why? Some reasons include economic necessity brought on by isolation and the desire to bring about practical solutions to extreme poverty. This was certainly the case in Mondragon when Father José María Arizmendiarrieta began organising and teaching workers about the benefits of democratically managed, self-help organisations.

The idea of a mutual organisation based on democratic principles and self-reliance is not new. What is perhaps unique is how the worker co-operative movement has developed over recent years, and the potential it has to be a driving economic engine in today's systemic economic crisis. The worker co-operative movement is a grassroots, bottom-up movement. It has developed and grown despite a lack of cohesive top-down direction and guidance. While formal and informal associations and support organisations exist in many regions and countries, worker co-operatives rely on each other and the ability to teach and learn democratic decision-making and governance structures in order to operate, grow and thrive.

Over the past decade, the worker co-operative movement has continued to grow. Yet, as a business model, worker co-operatives are still underused and unknown among the general public. This is certainly the case in Ireland.

The 2007 Forfás Report mentions workers co-operatives specifically as one type of co-operative that could be developed further within the Irish economy. The Forfás Report even states that the success of the worker co-operative as a business model can be attributed to the strong personal incentive for workers to be productive, yet acknowledges that worker co-operatives are still in their infancy in Ireland.

The most recent effort supported by the Irish government to stimulate the worker co-operative movement was in 1998 when the FAS Co-operative Development Unit assisted 82 worker co-operatives in forming. Included in this figure, however, were entities that were registered as companies but included co-operative principles in their governing documents (Hughes 2000). No more recent numbers of worker co-operatives are available. Hughes suggests that part of the problem for the lack of prevalence of worker co-operatives is that the key individuals who advise business start-ups are ignorant of the worker co-operative as an enterprise vehicle, or even hostile to it, perhaps because of lack of understanding. If the worker co-operative is not understood by accountants, and solicitors, those on the front lines of small business creation, Hughes says, it will continue to be viewed among entrepreneurs as a weak business structure.

How and in what ways can interest in worker co-operatives be expanded and developed in Ireland? What models, including law reforms, have worked in other countries that show evidence of promise for renewing interest in the co-operative movement and in worker co-operatives particularly? One solution to enable entrepreneurs to form worker co-operatives, and to educate business service professionals about these types of co-operatives, is to enact a worker co-operative statute.

In August 1982, Massachusetts became the

first state in the United States to enact a statute designed for worker co-operatives in the Mondragon model (Ellerman & Pitegoff 1983). The drafters of the statute, David Ellerman, a professor and economic advisor to the World Bank, and Peter Pitegoff, current dean of the University of Maine School Law, were on staff at the ICA Group in Boston at the time the statute was created. ICA Group provides technical assistance and consulting services enabling employee ownership opportunities to secure job retention nationally. As the first worker co-operative statute of its kind in the US, the Massachusetts model enabled workers a means to become more involved in the businesses they worked for through ownership.

As Ellerman and Pitegoff point out, there are four primary attributes of the Massachusetts statute. First, it allows for the conversion of a traditional business corporation into a membership organisation controlled in a democratic manner. Second, it authorises the distribution of net earnings and losses by the amount of labour contributed and not capital invested. Third, it provides for a capital structure permitting internal capital accounts, akin to the Mondragon model, which help keep sustainable democratic control of the organisation. Lastly, it provides for favourable federal income tax treatment permitted to co-operatives under Subchapter T of the US Internal Revenue Code.

Prior to enacting the Massachusetts Worker Cooperative Statute, it had been possible for members interested in creating a worker co-operative to do so using the existing business corporation laws and drafting their own internal documents to reflect co-operative principles, but with several restrictions. Ellerman and Pitegoff comment that the previous method for creating a worker co-operative in Massachusetts lacked precision and credibility. In particular, the issuance of membership shares that could not be sold to non workers and a system of internal capital accounts that reflected corporate net worth was confusing to many lawyers familiar with US corporate law. Moreover, a worker co-operative formed as a business corporation was prohibited from using the word "cooperative" in its legal name, and was not able to enjoy the legitimacy of an explicit statute.

Subsequent to its ratification in Massachusetts, similar worker co-operative statutes have been enacted in other US states, including those elsewhere in New England and New York. Unfortunately there is no hard data available indicating whether ratification of a new worker co-operative statute resulted in a rise in the number of worker co-operatives. Part of the difficulty is that worker co-operatives need not register under the worker co-operative law. Today, another entity form called the Limited Liability Company, or LLC, has become popular among entrepreneurs in the US, and affords added flexibility in terms of operations and taxation that make it an appealing entity option even for worker co-operative members. Those worker co-operatives forming LLCs, however, are still prohibited from using the word "cooperative" in their legal names.

In a recent email to Peter Pitegoff, I asked him specifically about whether he noticed any research indicating a rise in worker co-operatives following to introduction of the worker co-operative law in Massachusetts, and in subsequent states, such as New York. While Dean Pitegoff did not observe that the worker co-operative statutes had more than a modest increase in the number of worker co-operative enterprises, he did express a belief that the statutes had a more subjective impact regarding guiding co-operatives in structuring and operating, and in making the worker co-operative a more legitimate business form. Beyond the issue of law reform, he also mentioned that it would be interesting to examine the "impact of tax and other government incentives," as well as the impact of "advocacy organisations, community development finance institutions, technical assistance providers, and foundations with policies to assist or promote worker-owned businesses" on the number and use of co-operative enterprises.

While the contribution of a worker co-operative statute could provide much in the way of promoting the co-operative movement, especially among employees and workers, as Pitegoff points out, "the more meaningful inquiry would be to look into a wider range of worker-centered enterprises operating on a cooperative basis, regardless of statutory form, rather than simply at a single category of statutory entities."

Nevertheless, it is important to consider the inclusion of a worker co-operative statute in the reformed Irish co-operative law because of the subjective impact it can have on developing employee ownership of enterprise in Ireland. A worker co-operative law will provide an alternative structure for accountants, solicitors and other business advisors to point to when advising new entrepreneurs. It will also provide

an opportunity for employees at factories facing closure to purchase the businesses themselves.

Just this past January, over 200 workers at the Waterford Crystal plant in Killbarry, Waterford, staged a sit-in following news that the factory would be closing, and the over 700 workers would be losing their jobs. Had a worker co-operative statute been in place to allow an alternative to receivership perhaps the management would have had another option in presenting the news to the workers, which could have included employee purchasing of the business. The closure of the Waterford plant exposes the need not just for a new law to allow for worker co-operatives, but also for the type of support organisations that Pitegoff mentions, including advocacy groups, technical assistance providers, charities and foundations, and community development financial institutions (CDFIs).[1]

CDFIs, such as those in the US and UK, in particular, can play a vital role in funding employee acquisition of factories or other businesses facing closure. Of course there are practical concerns in the employee acquisition of an existing business, such as how to finance the purchase, and on what terms. Following the Massachusetts example, lenders in general are more likely to provide the capital for such an acquisition when a worker co-operative statute exists that allows for these sorts of takeovers.

Considering capital requirements of new co-operatives for a moment, it is important to think creatively about ways to include outside investment in co-operative enterprise, while still maintaining democratic member control. While some developing countries have gone the route of dictatorial government ownership of co-operatives, a more sensible, market-based approach is to allow for the inclusion of investor members with limited or no voting rights in the co-operative.

Authorise inclusion of investor members to raise capital

The current law governing co-operative societies in Ireland creates several problems related to how co-operatives raise money. The IPS Acts now limit individual member shareholding to a maximum of €150,000, set in 2005 (DETE, 2009). While the limitations on maximum member shareholding has been raised over the years, the reason why the limitation was enacted in the first place is unclear. If it is designed to regulate co-operative societies, it does so by stifling their viability in a competitive market economy.

In addition, industrial and provident societies were not exempted from the *Bills of Sale (Ireland) Act (1879) Amendment Act*, preventing them from raising funds through issuing debt securitised by floating charges. This problem was solved when a registry of charges was created for agricultural co-operatives in the Department of Agriculture by section 4(3)(a) of the *Agricultural Co-operative Societies (Debentures) Act 1934*. This ability to issue debt on both floating and fixed charges, however, is not available to non-agricultural co-operative societies. This is a significant limitation for capital intensive co-operative enterprise.

Law reform in Ireland can address the limitation on shareholder capital in several ways. One option is to eliminate the limitation entirely. While this makes sense, it will not solve the problem of how to finance co-operative's need for capital. Including investor members with limited voting rights both allows co-operative businesses to function more like traditional businesses for the purposes of raising money, and retains co-operative principles by distributing earnings on the basis of patronage, and maintains democratic control by voting on the basis of membership and not on amount of capital invested in the society.

For instance, Massachusetts provides guidance on how investor members may be included in co-operative structures. The Massachusetts Worker Cooperative Statute created a compromise to allow for flexibility in financing, and to ensure support from lawyers, such that worker co-operatives may issue classes of stock to members or non-members if authorised in the organising documents of the co-operative (Ellerman & Pitegoff 1983). The ability to issue different classes of stock to both members and non-members affords the co-operative the ability to raise capital through issuing additional stock. Voting rights, however, only extend to non-membership shares with two exceptions: (1) if members amend the bylaws and organising documents to allow for the issuance of voting stock other than membership shares; and (2) when holders of nonvoting stock have a right to vote as a class on an amendment to the bylaws or organising documents that would affect their rights in an adverse way (Ellerman & Pitegoff 1983).

This creative drafting provides several achievements. Principally, it allows for flexibility in financing, and speaks in a language that

lawyers unfamiliar with co-operatives can understand. The drafters of a new co-operative law in Ireland should take note of this particular provision for these reasons since it achieves some important goals currently lacking in the IPS Acts.

Other laws governing co-operatives also grant the authority for societies to issue different classes of stock with limited voting rights. Article 14 of the SCE Statute allows SCEs to admit investor, non-user members into the SCE subject to an approval process such as a general membership meeting. This provision allows individuals, or corporate entities, who do not trade with, or use the services provided by the SCE, to provide capital should they agree to finance the SCE. Yet, voting rights may extend to investor, non-user members depending on the state in which the co-operative is operating. A maximum limit, however, is set in article 59(3) of the SCE Statute that limits total voting of investor members to a maximum of 25% of the total shares. That means that unlike a traditional company where voting is determined by amount of capital invested, co-operative principles are maintained so that investors as a class can never be a majority over members voting with actual membership shares.

Guadaño (2005) criticises the SCE Statute because of the flexibility it affords investor members by granting them limited voting rights and by not limiting the earnings investors may receive from the SCE. Guadaño worries that not limiting the amount of capital investors may contribute in the SCE creates a risk that the SCE may not adhere to co-operative principles. She notes that the introduction of investor members is a recognition of the power of capital in co-operatives. But this is only a problem for Guadaño and others who do not consider co-operatives dependent on traditional forms of capital, or as competing for capital in a market environment. Including investor members in an Irish co-operative law will provide a viable future for the co-operative movement because of the flexibility in financing it affords, and in the familiar language it provides lawyers unfamiliar with the co-operative form.

Other US states with large co-operative movements, such as Wisconsin, have recently reformed their laws to allow for a new co-operative entity that includes investor shares to facilitate flexible financing. Cognisant of the decline in public interest and professional expertise of lawyers and accountants in the co-operative form, and the increase in registration of co-operatives as Limited Liability Companies (LLCs) (another new form of unincorporated business vehicle with limited member liability), the Wisconsin Federation of Cooperatives drafted and lobbied for the implementation of a new co-operative law for "value-added" co-operatives. This led to the adoption of the Wisconsin Cooperative Law, Chapter 193, which combines elements of the existing co-operative law with LLC concepts, such as flexibility in member contributions and tax-advantaged structuring, to provide co-operatives with greater access to capital for value-added business ventures.

The first value-added co-operative law in the United States was adopted in Wyoming in 2001 when a group of lamb producers wanted to build a new plant. Since the farmers could not raise enough capital to build the plant on their own under the existing co-operative law, they asked the Wyoming Legislature to adopt a value-added co-operative law to allow for outside investment in exchange for limited voting rights. Minnesota, Iowa and Tennessee have since enacted their own versions of the value-added co-operative law while South Dakota, Idaho, Oregon, Washington and Texas are considering similar legislation.

After two years of drafting, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has published a Uniform Limited Cooperative Association (LCA) Act in August 2007. Thus far, the LCA Act has been ratified in Nebraska, Utah, and it has been introduced in Oklahoma. Section 513 of the LCA Act allows for limited voting by investor members so long as it is allowed in the organic rules of the LCA. Investor members have one vote unless stated otherwise in the organic rules. The LCA Act also allows for investor voting by class, different classes, or any combination of classes. These provisions of the LCA Act take into account that LCAs will likely distribute most of their earnings on the basis of investment, instead of patronage, at least initially, which reflects the reality of a competitive market. However, it allows co-operatives to exist and raise capital in industries in which they would otherwise be prevented.

The contribution of these US laws to the current debate of how to reform the IPS Acts in Ireland is significant for several reasons. First, with respect to the Forfás Report, many of the recommendations are already being

implemented. This is particularly true of the diversity of sectors that co-operatives operate in the United States, especially worker co-operatives and value-added co-operatives. Second, finance problems surrounding the problem of raising capital are also being solved through adding classes of investor members with limited voting rights as in the Massachusetts and LCA models. The LCA model also allows for a reduced number of members, down to two. This reduction in member numbers is a recommendation to consider further in a future paper.

In addition, alternate forms of business models such as the LLC in the US are in place as solutions to the problem of creating a successful co-operative ownership and management structure. Unlike the SCE model, which has only had minimal use and testing, those new models in place in the United States are in active use. Irish co-operative members and professionals supporting the co-operative movement can learn from the practice of these co-operatives and the drafting of laws authorising their creation.

Lastly, US law does not adversely affect co-operatives regarding ability to issue debt on floating or fixed charges. A new law permitting co-operative societies to register floating charges with the Companies Registration Office through the Form C1, similar to the way traditional companies do, would remedy this problem. Such authorisation to register charges would allow societies to issue debt in the form of debentures to investors or lenders secured by assets, such as equipment and receivables, that they still maintain control of for use in the co-operative business.

Conclusion

This paper has suggested three primary recommendations for consideration in the drafting of a new co-operative society law in Ireland. It reflects key deficiencies in the current Irish law, especially the IPS Acts, namely the need for: (1) protection of the use of the words "co-operative society" in the legal name of entities that adhere to basic principles, such as voting on a one member one basis, and distributing earnings on the basis of patronage; (2) provisions to allow for worker co-operatives, including authorisation to use Mondragon-style internal capital accounts; and (3) provisions providing for the inclusion of investor members with limited voting rights, and a limitation on the amount of capital members may contribute, which limits the amount of capital co-operatives can raise.

These recommendations are offered following close study of co-operative laws in place in other countries and within the EU. Each recommendation reflects a theme developed in one or more of the co-operative laws studied that protects co-operative principles while providing a great deal of flexibility to co-operatives. These recommendations reflect the need for co-operatives to innovate and compete in a market economy, while preserving core values and principles of co-operation.

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Notes

1 Examples of these types of support organisations in the US include the Ohio Center for Employee Ownership at Kent State University, and the National Center for Employee Ownership in Oakland, California. A similar organisation that incubates new co-operative enterprise is lacking in Ireland as the larger membership associations like ICOS, NABCO, and the Irish League of Credit Unions focus on serving their members rather than developing new co-operatives. Such an organisation has not existed since the FAS Co-operative Development Unit operated in 1998. There is a niche for such a development organisation, created as a private business, public charity, or supported by the government, that functions in conjunction with a new co-operative law.