

Co-operative Identity – Do You Need a Law About It?

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A long promised overhaul of legislation relating to co-operative societies in Ireland provides an opportunity to reflect on the role of public legislation in the world of co-operatives. Central to this is the question whether the co-operative form of organisation requires or needs express legislative recognition and provision. Should public legislation clearly demarcate co-operatives from other types of entity? Do we need a law to tell us what a co-operative is? Or should this be left to co-operatives themselves, their representative bodies and the international co-operative movement?

Background

In general, co-operatives in Ireland register as industrial and provident societies under the Industrial and Provident Societies Acts (IPS Acts). The principal statute is still the Industrial and Provident Societies Act 1893 enacted in Westminster some 30 years before Irish independence. That statute consolidated and amended earlier legislation going back to the first IPS Act of 1852.

Registration under the IPS Acts confers incorporated status and limited liability on the registered body in the same way that the Companies Acts confer these on registered companies. The industrial and provident society, however, is a quite separate legal entity or person from that of the company. A 'co-operative' could register under either legislative system and adopt the legal form provided by that system. Moreover, some larger Irish co-operatives in the agriculture/food sector now use both legal forms in their group structures.

Neither the IPS Acts nor the Companies Acts contain any provision defining the term co-operative. The 1893 Act does not even mention the word. This contrasts with the position in the UK which introduced the statutory concept of 'bona fide co-operative' as interpreted and applied by the Registrar of Friendly Societies (now Financial Services Authority).

Co-operatives in Ireland

Co-operative societies and organisations have been part of the economic and social scene in Ireland for over a century. They have been particularly prominent in the agriculture/food sector. Agri-food co-operatives (including associated companies) accounted for most of the €12.6 billion turnover attributable to the co-operative sector in 2007. Other sectors in which organisations using the co-operative model have made important contributions in

Ireland include housing, fishing, group water schemes and community development. This is in addition to the major contributions made by building societies and credit unions both of which have their own separate legislative frameworks and are not further considered here.

Review of IPS Acts

The Industrial and Provident Societies statutory framework, in facilitating statutory incorporation and in providing a public register service and other supports, has made a positive contribution to the development of co-operatives and the co-operative model in Ireland. That is notwithstanding the general absence in the legislation of provisions seeking either to define co-operatives or to regulate matters pertaining to co-operative principles.

Work is in progress, in consultation with the Irish co-operative movement, on a review of the IPS Acts and a public consultation paper was published in April 2009 (see contact details at the end of this article). Much of this work is focusing on technical aspects of the current legislation particularly those which may be causing practical difficulties for co-operatives. The review also provides an opportunity to address the more general, and possibly more difficult, question of co-operative identity.

The Co-operative Identity Question

Does the co-operative model of organisation and business operation require or need explicit recognition in any new public legislation? The question touches on a number of aspects including legal form, statutory definition, protection of the term 'co-operative' as well as the need for co-operative-specific provisions generally. There is also the general issue of the relationship between co-operative and company legislation. We need to think through the whole rationale for having separate legislative (and

administrative) arrangements for co-operatives relative to those for companies.

Some Considerations

What can we learn from the past century or so of co-operative legislative experience in Ireland? There is much work to be done on that but a few initial conclusions are possible at this stage.

First, the co-operative form of organisation, in and of itself, does not seem to require for its existence or effective operation, the making of public laws defining or prescribing what co-operatives are. Or in other words, having such laws does not seem to be a necessary condition for the existence of successful co-operatives.

Secondly, it would seem that whatever legal definition or prescription of co-operative identity is needed to have successful co-operatives can be provided by co-operatives themselves through the medium of their own rules and practices and with the support of co-operative representative organisations.

Thirdly, certain minimum legislative provisions of course will continue to be needed for co-operatives as business organisations in order to provide for incorporation and limited liability and for basic regulatory needs such as financial accountability and governance.

The rules of a co-operative registered under the IPS Acts are, like the provisions of a memorandum and articles of association of a registered company, a contract made between the members of the society and binding on them and on the society (1893 Act, section 22). As such, they are a kind of law, private law, made by the members themselves. The current IPS Acts say virtually nothing about the content of this 'law' other than to enumerate a list of matters which must be provided for in the rules. Thus it may be no exaggeration to say that insofar as there has been any 'co-operative legislation' in Ireland during the past century and a half, it has

been in the rules and practices which co-operatives voluntarily adopted for themselves.

Whatever view is taken about the co-operative identity question, there will continue to be some need for statutory alignment between company and co-operative legislation, if only for reasons of drafting efficiency. Some limited alignment already exists under current arrangements eg the winding-up provisions of the Companies Acts apply to industrial and provident societies.

What can we learn from co-operative legislative experience outside Ireland? That is a vast field since legislative arrangements vary considerably, from countries which are highly-prescriptive (of co-operative content) to countries which have hardly any such prescription. What is of particular interest to us in Ireland are examples of countries which use our "low-prescription" approach (Denmark may be one) and, by way of contrast, countries which adopt a 'high-prescription' approach (a recent example being Norway). Have these different approaches made any marked difference to co-operative outcomes? Here due allowance might have to be made for countries which, unlike Ireland, grant significant preferences to the co-operative form of organisation (hence making it more necessary for those countries to distinguish between different forms of organisation).

Conclusion

The 'co-operative identity' question may be pivotal to the shape and design of any significant new legislation for co-operatives in Ireland. It is a big question and we are only in the foothills of addressing it. It is also a very open question; nothing is pre-judged. As well as reflecting on our own experience, we want to learn from best practice elsewhere. What works well for co-operatives? What are the mistakes to be avoided? We look forward to interesting and fruitful conversations!

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The Co-operative Legislation Unit's consultation paper may be found at <http://www.entemp.ie/commerce/cooplw/consultationpaper.htm>. Comments on the consultation paper should be submitted by 30 June 2009 to cooplw@entemp.ie or to the unit at Earlsfort Centre, Lower Hatch St, Dublin 2, Ireland.