

## **New Consultation on IPS Law**

On 26<sup>th</sup> July, HM Treasury launched a consultation on five changes to IPS Law:

- Increasing the holding limit for withdrawable share capital
- Insolvency rescue procedures for IPS's
- Banking Act rescue procedure for Credit Unions
- Company investigation powers for the FCA
- Companies Act limits on inspecting IPS Registers of members

Apart from the change for credit unions, which is UK wide, all apply only in England Scotland and Wales.

### **Increasing The Withdrawable Share Capital Limit**

The limit on holdings of withdrawable shares in an IPS (apart from holdings by other IPS's) is £20,000. It was £1000 in 1965 and was raised to: £5000 in 1975; £10,000 in 1991; and £20,000 in 1994. Since 2012 there has been no limit on holdings of non-withdrawable IPS shares.

The Government gives £31,000 as the amount that would reflect an increase of the 1994 figure in line with inflation but “accepts that there are arguments for raising the limit to a higher level....to facilitate greater investment in industries requiring higher capital input such as agriculture.” Changes to earnings and asset prices since 1975 and some estimates of the current annual loss to co-operatives due to the limit suggest a limit of £60,000 to £100,000 as more appropriate. Clearly, the Government is open to more than an increase in line with inflation since 1994 and a much higher limit is needed by agricultural co-ops and other businesses.

The traditional rationale for having a limit is to prevent one member or a few members having excessive influence by threatening to withdraw their shares. The consultation is only concerned with the *maximum* limit on holdings. Societies will remain free to have lower limits in their own rules – including one based on a proportion of total withdrawable share capital - as long as the maximum laid down by law is respected.

### **Applying insolvency rescue procedures to IPS's**

Since 1986 companies have been able to use the creditor voluntary arrangement and administration procedures to try to rescue all or part of the business if they face financial difficulties. Since 2002 that has been available without going to court. IPS's cannot use those procedures. Since 2002, thanks to an amendment successfully moved by Gareth Thomas MP to the Enterprise Act, power has existed for Government to apply those procedures. Now they intend to do so.

The questions in the consultation about applying those procedures to societies show Government acceptance that corporate rescue should apply to societies as it applies to companies. Only if a society operates in financial services should rescue procedures include a role for the PRA and the FCA as financial services regulators. For other societies the FCA will be involved only as mutuals registrar.

As well as saving jobs and businesses, making rescue procedures available to societies will ease their access to the Pension Protection Fund, into which they pay more than £2 million a year, and

will enable football clubs in the Premier League and Football League to use an IPS structure as those leagues require clubs to be able to go into administration.

### **Credit unions**

As part of this package, additional insolvency rescue procedures for Credit Unions are planned. This will help the Financial Service Compensation Scheme (FSCS) to gain a quicker payout for depositors if a credit union gets into difficulty as the responsibilities, powers and role of the administrator of a credit union will be similar to those applying to other banks. That will protect the services needed by current account holders.

This part of the package will apply directly to Northern Ireland as well as Great Britain and is a second stage after the general application of the administration to societies (including credit unions). This change will use powers under the Banking Act 2009.

### **Investigations, Inspections of the Register and Electronic Filing**

Applying Companies Act powers to IPS's will allow the FCA to act more effectively on evidence of misconduct at IPSs and so improve confidence in societies. Similarly, allowing societies, like companies, to apply to court to prevent the vexatious use of the register of members provides protection that companies already enjoy. Electronic rather than paper submission of IPS registration documents to the FCA will reduce cost and trouble for societies.

### **Other Measures to Come**

Alongside these measures, parts of the 2010 Co-operatives and Community Benefit Societies and Credit Unions Act will become effective and IPS's will be renamed as co-operative or community benefit societies. The Co-operatives Consolidation Bill will be introduced in late 2013, to bring all existing IPS legislation together so as to reduce complexity and make it easier to set up an IPS.

These plans are a welcome development. Comments on them should be sent to [IPSconsultation@hmtreasury.gsi.gov.uk](mailto:IPSconsultation@hmtreasury.gsi.gov.uk) by 20<sup>th</sup> September 2013.