IPS Consultation
Banking and Credit Team,
HM Treasury,
1 Horse Guards Road,
London, SW1A 2HQ

Dear Banking and Credit Team

Industrial & Provident Societies – Growth through Co-operation

We appreciate the opportunity to respond to this consultation. The Association of British Credit Unions Limited (ABCUL) is the main trade association for credit unions in England, Scotland and Wales. Out of the 393 credit unions which choose to be a member of a trade association, 72% choose to be a member of ABCUL.

Credit unions are not-for-profit, financial co-operatives owned and controlled by their members. They provide safe savings and affordable loans. Some credit unions offer more sophisticated products such as current accounts, ISAs and mortgages.

At 31 March 2013, credit unions in Great Britain were providing financial services to 1,072,202 people and held more than £1.02 billion in assets with more than £620 million out on loan to members and £843 million in deposits. 125,581 young people were saving with credit unions.[1]

Credit unions work to provide inclusive financial services has been valued by successive Governments. Credit unions' participation in the Growth Fund from 2006 – 2011 saw over 400,000 affordable loans made with funding from the Financial Inclusion Fund. The DWP has recently announced that ABCUL will lead a consortium of credit unions under the Credit Union Expansion Project, which will invest up to £38 million in the sector and aims to double the sector's membership by 2019.

Summary of response

While we make detailed comments on the various proposed measures below, we would like to underline in this summary our strong support for the general thrust of the proposals as laid out. We appreciate the Government's continued commitment to creating a level playing field in terms of the legislative framework under which IPSs and credit unions operate relative to that for companies. It is very welcome that the Co-operative and Community Benefit Societies and Credit Unions Act is to be commenced following its passage through Parliament some years ago.

[1] Figures from unaudited quarterly returns provided to the Prudential Regulation Authority

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This package of measures, while unlikely to cause headlines, represent a significant step forward in ensuring that where an IPS finds itself in difficulty, it can be resolved in a manner which is efficient and effective, protects the legitimate interests of both creditors and members and limits undue reputational damage to the sector.

Similarly, we are greatly encouraged by the measures proposed in that they open up opportunities for credit unions or IPSs to continue providing services should one find itself in financial difficulty but where there is the possibility that it might be saved as a going concern. The fact that to date the only option in such circumstances has been winding up of societies demonstrates the gulf that has been allowed to develop between the legislative arrangements for IPSs as opposed to companies.

Finally, we would like to express our strong support for the proposal to extend the powers of resolution under Part 2 of the Banking Act 2009 to credit unions. We hope that these powers will enable failing credit unions to be, in future, resolved in such a way that their members can retain access to a credit unions services. This should allow for a much-improved situation as regards credit union failure and resolution in support of the expansion and rationalisation process which is currently taking place and is supported by the Government's £38 million Credit Union Expansion Project.

Consultation questions

Measure (1) Withdrawable share capital

Box 3A: Withdrawable Share Capital limit: what the limit should be

The Government welcomes views on whether the limit for the WSC should be raised, and if so, views on the appropriate level for the WSC limit. It would also welcome supporting evidence and rationale for raising the limit to a particular level, and evidence on the benefits and risks of doing so.

This proposal does not apply to credit unions and, therefore, we make no comment.

Measure (2) Application of provisions of the Insolvency Act 1986 for company voluntary arrangements and administration to IPSs

Box 3B: General approach to drafting s255 order: Do you agree that legislation which applies Parts 1 and 2 of IA 1986 to IPS should be broadly in line with what has been done with respect to building societies? Can you draw attention to differences between building societies and IPS which would require different provision for IPSs?

We agree that the approach should be broadly in line with that adopted for building societies. In the case of credit unions, which we represent, the parallels between the two sectors are strong and therefore the approach would appear appropriate.

Box 3C: References to registrar of companies and the role of the PRA and the scheme manager: For the purposes of Part 2 (administration) is it appropriate that the PRA should generally cease to be entitled to do anything or have anything done in relation to it under a provision of that Part if it has revoked its authorisation of a society? If yes, are there exceptions?

We believe that, in the case of an IPS which is (or has been / ordinarily would be) a PRA-authorised person – such as a credit union – there is an obvious case to say that the PRA should retain an entitlement to have powers of direction even where the IPS ceases to be a PRA-authorised person.

For example, as the consultation notes, the PRA has the power to petition for the winding up of a firm where it ceases to be authorised. Likewise, it would appear appropriate for a firm which has been de-authorised by PRA due to financial concerns but which may have the possibility of being rescued and having its authorisation restored, for the PRA to have some powers of direction in this.

In the case of a credit union, the legislative reality is that if it is to remain in operation as a credit union – either as a free-standing entity or through acquisition – it will be required to regain authorisation by PRA and therefore it seems entirely appropriate that PRA should remain in a position to oversee administration as the FCA will otherwise.

Box 3D: Applying Part 1 of IA 1986: Do you agree that enabling IPSs to conclude binding and effective arrangements with creditors would be beneficial, particularly for societies which are in financial difficulty but are not actually insolvent or which are insolvent but have prospects for recovery?

Yes. This will open up the opportunities for the rescue of societies which are not open to them at present and this is extremely welcome. It cannot be right that an IPS should be prevented from being recovered or rescued where a company in the same position would not be.

Box 3E: Prosecution of delinquent officers: Do you agree that this is an appropriate modification of section 7A?

This would appear appropriate in general terms. However, we wonder whether, in the case of a very large IPS, it might still be appropriate for this function to be performed by the Secretary of State. We do not have very strong views in this, however. For credit unions, it would seem entirely appropriate for the DPP or FCA to make such decisions.

Box 3F: Schedule A1 to the 1986 Act (the moratorium): Do you agree that smaller IPSs ought to be able to obtain a moratorium? Do you agree with these proposals on qualifying limits?

We support the proposal to provide for moratoria for smaller societies. However, we would suggest that a "2 of 3" test similar to that applying in the Companies Act be used in order to determine whether a society is considered small. We make this suggestion because, for credit unions, as financial, deposit-taking businesses, the relationship between assets and turnover is inverted relative to non-financial businesses so that balance sheets are unusually larger than turnover. Were a test which included a measure of number of employees, turnover and assets used on a "2 of 3" basis, the financial quirks of a credit union would not preclude this option where the proposed test would.

Box 3G: Applying Part 2 of IA 1986: Do you agree that enabling IPSs to go into administration upon the appointment of an administrator or the making of an administration order would be beneficial, particularly for societies which are in financial difficulty but are not actually insolvent or which are insolvent but have prospects for recovery?

Yes. We agree that this would be beneficial in enabling an IPS to be recovered where currently the only available option is to wind it up. There are many examples of successful resolution of companies through administration and this should be an option for IPSs too.

We would, however, caution that the interests of IPS members should be paramount at all times in this process and, particularly, the retention of the firm's status as an IPS should be a first objective in any administration proceedings.

Box 3H: Appointment of administrator by holder of floating charge: Do you agree that the holder of a floating charge given by an IPS should be entitled to appoint an administrator?

If yes:

(i) should the holder of the charge be prohibited from appointing a receiver;

(ii) are any of the exceptions made for companies in sections 72B to 72GA of IA 1986 relevant (so that a qualifying charge holder should be able to appoint a receiver under any equivalent provision)

(iii) should "administrative receiver" have the same meaning in substance as it does for England and Wales and for Scotland in Part 3 of IA 1986?

We do not have any objection to these measures. It would appear appropriate to us that the same principles apply to IPSs in this respect as apply to companies.

Box 3I: Floating charges and the prescribed part (section 176A of IA 1986): Do you agree that the administrator of an IPS should be required to comply with section 176A?

We agree with this proposal.

Box 3J: Application by regulators for administration order and notification of appointment: Do you agree that this is an appropriate modification of paragraph 12 of Schedule B1 to IA 1986? Are there any circumstances under which a member of an IPS (as a contributory or otherwise) should be entitled to apply for an administration order?

We agree that the regulators should be permitted to apply for an administrative order and that this should be extended to both FCA and PRA for a PRA-authorised person.

It would seem appropriate, in line with the treatment of building societies detailed in the consultation paper, that credit union members be permitted to apply for an administrative order under the same terms as they are permitted to apply for a winding up order, i.e. a minimum of twenty-one members should apply as per section 6(1) of the Credit Unions Act 1979.

Box 3K: Process of administration (involvement of members): Do you agree that these are appropriate modifications for meetings and the participation of members in the process of administration? How should the expenses of a members" meeting under paragraph 52(2) or 56 (1) (as modified for an IPS) be met? Should they be payable out of the assets of the IPS as an expense of the administration?

We agree strongly with the proposals to ensure that members are required to be consulted and to approve the proposals of administrators alongside creditors. This is critical to maintaining the integrity of the co-operative model.

We believe that the costs of members' meetings and such like should be covered by the assets of the IPS as a cost of administration but that these should have to be publicised to all members and should be limited to an appropriate amount.

Box 3L: Powers of the administrator – general: Do you agree that the order should provide a safeguard for this purpose in the legislation? Do you agree that the order should provide a safeguard for this purpose and that the FCA should have a supervisory function?

We agree very strongly with these proposals and feel that it is vital that the integrity of the IPS as a co-operative, owned and controlled by its members is maintained as far as possible. The FCA's supervisory function here as registrar for IPSs would appear appropriate.

Box 3M: Powers of the administrator: Do you agree that the administrator of an IPS should have power to effect amalgamation, transfer of engagements and conversion into companies?

We agree in general terms but feel that to pass such proposals as part of the required majorities of members at a quorate meeting should be aligned with the IPSA 1965 provisions, i.e. two-thirds. It should not be permitted that such fundamental changes to an IPS structure be permitted with less than the majority than would otherwise be required.

Box 3N: Applying Part 26 of CA 2006: Do you agree that the application of Part 26 would be beneficial for IPSs?

This would appear to be appropriate in principle.

Box 3O: Provision to ensure that Part 26 measures are compatible with governing legislation and principles and rules for mutual status: Do you agree that the order should provide a safeguard for this purpose and that the FCA should have a supervisory function? Are any other modifications required?

We strongly agree that the Order should safeguard the co-operative model as enshrined in IPSA 1965.

Box 3P: Distributions to creditors: Do you agree that these are necessary modifications of rules relating to distributions?

We agree with these provisions which appear entirely appropriate for credit unions given the members' shares' status as protected deposits for the purposes of FSCS guarantees.

Measure (3) Application of Part 2 of the Banking Act 2009 (bank insolvency) to Credit Unions

Box 3Q: Applying Part 2 of the Banking Act 2009 to Credit Unions

(a) Do you agree that applying Part 2 of BA 2009 to credit unions would provide a more effective and flexible procedure for dealing with financial difficulties and insolvency?

(b) Do you agree with the benefits identified above?

(c) How far would this measure carry risks of prejudicing credit unions in the ordinary course of business?

We strongly support this proposal. Recent credit union failures resulting from the difficult economic trading conditions and public sector austerity have exposed the shortcomings of the current regime which, without a formal arrangement for credit union resolution and insolvency, has had to rely on good will and co-operation from various parties.

We agree also that the proposed approach would create a much more flexible procedure for dealing with credit union defaults which creates a number of options depending upon the specific circumstances, the availability of an acquirer and the viability of the credit union as a going concern.

The introduction of Part 2 of the Banking Act will create a range of benefits and we entirely agree with those cited in the consultation paper, both in terms of mitigating the risks that exist from the current non-formalised arrangements and in terms of the benefits for credit unions and their members. One key extra benefit that is not cited is the reputational benefit that an orderly and effective resolution can have for a credit union – if, rather than have to be compensated directly, a member can have their account transferred painlessly into a new credit union, for instance, this will have huge benefits for the credit union sector and would underpin the efforts Government is making to support the expansion and rationalisation process which is taking place in the sector as supported by the Credit Union Expansion Project and made necessary by the prevailing economic conditions.

We urge the Government to continue with this proposal which is long overdue and is entirely appropriate as credit unions become much larger and more visible institutions.

We do not believe that the application of Part 2 of the Banking Act would carry risks of prejudicing credit unions in the ordinary course of business. We believe the changes would increase confidence in credit unions because there would be more tools available to ensure the continuation of service provision to credit union members.

Measure (4) Application of Parts 14 & 15 of the Companies Act 1985 (investigations) to IPSs

Box 3R: Investigations regulations

The Government welcomes views on the application of the powers of investigation from the Companies Act 1985 to IPSs. In particular do you agree:

(a) That the circumstances for appointment of inspectors set out in section 432(2) of the Companies Act 1985 are suitable for IPSs?

(b) With the proposal that the costs of the inspection should be recoverable from the IPS? (recognising that the FCA will first try to soak these costs up into their existing budget)

(c) That the FCA, inspectors and section 447 investigators should be given the proposed powers?

(d) That Schedules 15C and 15D (permitted disclosures of information) need to be adapted for IPSs, and if so, how?

(e) That the sanctions and penalties in the Companies Act 1985 are suitable for IPSs?

(f) That section 48 of the Industrial and Provident Societies Act 1965 could be repealed?

(g) With the proposal not to apply the sections of the Companies Act 1985 listed in 3.51?

We accept the case made for these changes and feel that they should serve to drive up standards in the IPS sector through making clear enforcement options available to FCA. In the case of credit unions, as fully-regulated financial institutions both the FCA and PRA already have extensive powers of investigation over credit unions and therefore we do not envisage that this will represent a radical change from the current situation.

Measure (5) Application of provisions in the Companies Act 2006 relating to inspection of register of members to IPSs

Box 3S: Inspection of the register provisions

The Government welcomes views on the application of Companies Act 2006 provisions about the inspection of the duplicate register of members to IPSs. In particular do you think that:

(a) IPSs should be given the right to apply to the court where they believe an application by a member to view the duplicate register is for an improper purpose?

(b) There should there be choice of applying to the High Court or county court as in the Companies Act 2006?

(c) IPSs should be able to charge a fee for inspections of the duplicate register by members and interested persons?

(d) The proposed penalties are appropriate?

We are satisfied that these proposals represent a positive step forward in aligning the provisions applying to companies and those applying the IPSs. The requirement for the court to approve a denial of the right to inspect the duplicate register should provide a sufficient safeguard against abuse by societies.

Measure (6) Amendment of section 2(1) of Industrial and Provident Societies Act (IPSA) 1965 to amend requirements for registration documents to be submitted electronically for new IPSs

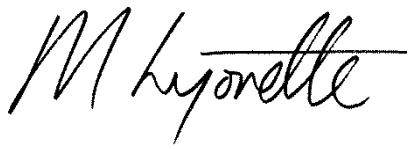
Box 3T: Electronic submission of registration documents

The Government welcomes views on the amendment of section 2(1) of the IPSA 1965 to allow IPSs to submit registration documents electronically.

We agree with this proposal so long as the option to operate in hard copies is retained as is proposed. Some small credit unions do not have the capacity to submit such documentation electronically and an option for these societies should be retained.

Once again, we are grateful for the opportunity to respond to this consultation. We would be more than happy to discuss any of the points raised above in more detail. Please feel free to contact us.

Yours sincerely,



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