

Some useful amendments for share issues

Simplified voting strengths

Some people have commented that the present wording of 2.7 d, which specifies the voting strengths of different classes, can be complex and confusing, especially when there are more than a couple of classes. This arises from the proportions specified being of user members alone, with non-user members having to be introduced as an additional step.

We've drafted this alternative wording, which specified voting strength for all the classes – users and non-users - in one table. It does not change the actual functioning of the co-op (though instead of dropping voting in classes whenever there are fewer than three members in a class, it is maintained as long as no one person would wield more than 25% of votes).

2.7 (d) Normally, votes will be weighted to ensure that the proportions of votes cast by each class of membership are fixed as follows:

Class number	% voting strength (totalling 100%)
1
2
....
....

The following exception applies to this rule: if the effect of this rule would be to give one person more than 25% of the total voting strength, then all user members will have equal voting strength irrespective of class, and the non-user members will have voting strength equal to the proportion of the membership that they comprise or the proportion specified above, whichever is lower. No amendment may be made to these rules that would allow non-user members to have more than 25% of total voting strength at any general meeting.

Enterprise Investment Scheme

Enterprise Investment Scheme is a useful tax relief that is intended to encourage investment in relatively risky unquoted enterprises. It is only available to people investing in ordinary, full risk shares in small enterprises in qualifying trades (not property development or finance) for at least three years.

Industrial and Provident Societies have only recently started claiming this relief for their investors, and HMRC have objected that the references in many rules to 'rights of withdrawal' imply diminished risk and redeemable shares – something explicitly ruled out in the EIS regulations.

So an amendment is needed for co-operatives that hope to secure EIS for their members to remove all reference to 'withdrawable shares' while preserving the possibility that shares may be bought back at the discretion of the co-operative.

1.7 Share transactions

a) Shares carry no rights of redemption. If a member wishes to withdraw their share capital, they should notify the co-operative in writing that they would like it to purchase its shares from them, enclosing the appropriate share certificates. The committee can at its sole discretion redeem these shares, or make no such purchases for a fixed period of time or indefinitely. No withdrawal will take place if a prior request relating to shares in class(es) has not been fulfilled (subject to any period of notice included in the terms and conditions of the shares). The value of shares purchased in this way can be reduced by the committee in the event that independent accountants certify that the co-operative's liabilities, plus issued withdrawable share capital, have become more than the value of its assets; otherwise, shares will be purchased for their nominal value.

1.8 c) If a former member holds share capital but is no longer eligible for any class of membership with the same possibility of withdrawal or transfer, then the shares will be cancelled and they will be issued loanstock with a closing date no more than two years from the date of cancellation equivalent in value to the nominal value of the shares.

Dissolution and transferable shares

The present dissolution clause could be problematic if both withdrawable and transferable shares are issued, giving in effect a greater than par value to withdrawable shares. The following amendment is needed:

In 3.4 (d) replace "and non-user members... 3.3 (c) above" with "non-user members holding withdrawable shares may receive a final payment of interest at a level set by the committee, and those holding transferable shares will receive the remaining assets"

In 3.4 (e) add at end "or as described in 3.4 (c)"

/continued overleaf

Approved nominees

The limit on individual shares holdings is presently £20,000, but sometimes an investment fund wishes to invest more than this in a single transaction. Because they represent multiple persons, each investing less than £20,000, this can be permitted, but it requires a rules change to enable such funds to be treated as 'approved nominees'. This forms a new section:

4.8 Approved nominees

- a) The committee can designate an individual or incorporated organisation as an 'Approved Nominee' who can apply for membership on behalf of others as well as on their own behalf. When applying on behalf of others, the approved nominee must fully identify those persons and the value of the shares that they are applying for.
- b) The committee can at any time withdraw the status of approved nominee if it is satisfied that the nominee is not behaving in an honest, transparent and responsible manner towards either the members they nominate or the co-operative. The nominee must inform prospective members that they intend to represent of any circumstances under which they might not act on the members' instructions; and how, if at all, they can end representation by the approved nominee.
- c) The register of members will record the name of the approved nominee alongside the details of any member they nominate, and in general all communication, including communications required by these rules, will be conducted through the nominee.
- d) The first time that the committee appoints an approved nominee, they must adopt standing orders for proxy votes at general meetings that allow the approved nominee to vote on behalf of the members they represent by default. However, members represented by an approved nominee can participate in person instead if they so choose. No approved nominee can control more than 5% of user member voting strength in a general meeting, nor can all approved nominees together control more than 25% of user member voting strength.
- e) Any payments that are due from the co-operative relating to shares associated with an approved nominee will be made to the approved nominee. Any communication from an approved nominee will be treated as if it were made by the holder of the shares to which it relates.



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