



**International
Co-operative
Alliance**
Asia and Pacific

**Study on By-laws of
Primary Co-operatives
in the
Asia-Pacific Region**

Presented at the 1st Asia-Pacific Co-operative Registrars' Conference,
Kuala Lumpur, Malaysia, December 10-12, 2013

RANGAN DUTTA, I.A.S (Retd.)
Principal Consultant, ICA Asia and Pacific

P. SANTOSH KUMAR
Programme Officer, ICA Asia and Pacific

ICA Library
334:340(54) DUT-S
ICA 00031

ICA Asia and Pacific

Study on By-laws of Primary Co-operatives

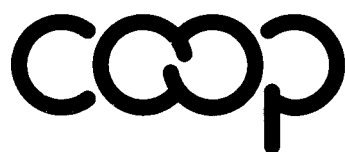
in the Asia-Pacific Region

PRESENTED AT THE
1st ASIA-PACIFIC CO-OPERATIVE REGISTRARS' CONFERENCE,
KUALA LUMPUR, MALAYSIA - 2013

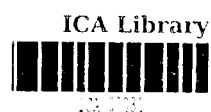
Rangan Dutta, I.A.S (Retd.)
Principal Consultant, ICA Asia and Pacific

P. Santosh Kumar
Programme Officer, ICA Asia and Pacific

384:340(S)
Dut-I.



**International
Co-operative
Alliance**
Asia and Pacific



**ICA Asia and Pacific
Study on By-laws of Primary Co-operatives
in the Asia-Pacific Region**

[Presented at the 1st Asia-Pacific Co-operative Registrars' Conference]

10-11, December 2013
Kuala Lumpur, Malaysia

**INTERNATIONAL CO-OPERATIVE ALLIANCE
ASIA AND PACIFIC**

9 Aradhana Enclave, R.K. Puram, Sector 13, Ring Road,
New Delhi 110 066, India

Phone : [91-11] 26888250

Fax : [91-11] 26888067

Global Office

Alliance Co-opérative Internationale - AISBL

Avenue Milcamps 105, 1030 Brussels, Belgium

© ICA-Asia and Pacific

March 2014

ISBN : 81-89550-10-1

Printed at Diamond Press, HS-14, Kailash Colony Market, New Delhi-110048.
Phone : +91-9811172786, +91-11-29232837 Email: amin_zaidi@yahoo.com

Contents

Basis of the Study	5
Preface	7
Acknowledgements	9
Research Methodology	11
Executive Summary	13
Abbreviations	18
Chapter-I Preamble and Comparative Analysis of Countries’ By-Laws in Asia-Pacific Region	19
1. Basic nature of Co-operatives	20
2. Comparative Views	21
Co-operative By-laws or Corporate By-laws	
A Common Model By-law or Sector Specific By-laws	
An Elaborate set of By-law or Simple By-laws	
Provision of Model By-laws or Autonomous By-laws	
3. Categorization of By-laws of the countries in the Asia-Pacific Region	25
4. Country Specific By-laws	26
Chapter-II By-Law Making and Power of Registrars	34
Chapter-III Transforming Self-help Groups into Co-operatives	38
Chapter-IV Framing a set of By-laws For Primary Co-operatives	42
Annexures	59

Basis of Study

The Strategic Objectives (S.O.) emerging from the decisions of the ICA-AP Regional Assembly held on 29 November 2012 at Kobe, Japan included a study on Bye laws of the Primary Co-operative Societies as reproduced below:-

S.O. (08) To study on countries' Bye-laws of primary cooperatives, and to draw a model Bye-laws with a view to ensure the *financial* sustainability of cooperatives and *participatory* governance and decision-making of members, especially for *women and youth* to have certain seats in their Board structure.

This exercise is in tune with the perception on the role of Co-operatives contained in the message from the UN Secretary General, Mr. Ban Ki Moon on the occasion of the 91st ICA International day of Co-operatives – 6 July 2013 on the theme “*Co-operative enterprise remains strong in time of crisis*” as stated in the following page:

UN SECRETARY-GENERAL MESSAGE

COOPERATIVES CAN HELP BUILD RESILIENCE IN ALL REGIONS, ALL ECONOMIC SECTORS

Following is UN Secretary-General, Ban Ki-Moon's message for the International Day of Cooperatives, 6 July, 2013:

“We live in a time of global uncertainty. Multiple crises and natural disasters are testing even the most robust economies and communities. The International Day of Cooperatives is an annual opportunity to highlight how cooperatives can contribute to building resilience in all regions and all economic sectors. Over the course of the ongoing global financial and economic crises, financial cooperatives have proven their strength and resilience, benefitting members, employees and customers. They have maintained high credit ratings, increased assets and turnover, and expanded their membership and customer base. After disasters, such as earthquakes, tsunamis and floods, cooperatives have shown their ability to mobilize solidarity for reconstruction. Agricultural cooperatives improve the productivity of farmers by facilitating access to markets, credit, insurance and technology. Social cooperatives can provide an



important safety net in the face of declining or minimal public welfare. They also show considerable potential for empowering youth and alleviating the growing global youth jobs crisis. On this International Day of Cooperatives, I call on Governments to encourage policies to support and strengthen cooperatives so they can contribute fully to inclusive and sustainable development”.

Given by His Excellency Mr. Ban Ki Moon, Secretary General of the United Nations Organisation on the Sixth Day of July 2013 marking the International Day of Co-operatives.

¹ The 87th UN Day of Co-operatives and 117th ICA Day of Co-operatives

Preface

The paper is a continuation of the 4th Critical Study on Co-operative Laws and Policy Reforms presented at the 9th Asia Pacific Co-operative Ministers' Conference held in Bangkok on 27 February 2012. In following, it is a study on the current status of By-Laws adopted by primary co-operative societies across the Asia Pacific Region under the respective country co-operative laws. This task has been taken up in pursuance of the ICA Asia-Pacific Strategic Objectives (SO) adopted by the Regional Assembly held in Kobe on 29th November 2012, which is the UN International Year of Co-operatives.

From the 4th Critical Study on Co-operative Laws and Policy Reforms, it was found that in most countries of the region, the original intent of laws and cooperative development policies are not fully reflected in the administrative laws. Therefore, it was felt that reforms in co-operative policies and laws will be meaningful only if among the three elements of cooperative legal provisions - countries' cooperative law, governments' policy on cooperative and rules and By-Laws of primary co-operative societies are 'sound tuned' as a whole, based on the ICA Cooperative Principle stated in the 'International Co-operative Alliance Statement on Co-operative Identity (ICASCI, Manchester 1995). The ICA Asia-Pacific therefore attaches high importance to this exercise.

In this study on primary cooperative by-laws, it was found that the positions are altogether different; and by-laws making procedures prescribed by the authorities who continue to play the role of a controlling body, undermining in the process the *autonomy* and members' ownership and management of co-operatives. It is not always the lack of a political will that has created this situation, but rather the lack of an administrative will as well as effective lobbying by the apex co-operative bodies that has caused perpetuation of this anomaly in the co-operative sector.

Therefore a good beginning to remove this anomaly seems to be to give a hard look at the process of bye-law making based on a comparative study of the ongoing system with a view to making it truly *participatory* thereby reducing the scope of undue interference from the authorities. With this objective, an indicative set of By-Laws [Chapter Four] for the primary co-operative societies has been prepared and included in the paper not as a model bye-law for mechanical adoption as it goes against the concept of participatory bye law making, but to suggest what should ideally be the contents of a bye law and how making of a bye law could be a 'member-led' initiative in the true spirit of being 'member owned' societies.

The findings of this study will however be scrutinized in the course of limited field studies to test its conclusions. In the meantime, it is presented as a draft agenda paper for discussion to sensitize the members and participants of the forthcoming Conference of Registrars of co-operative societies. I therefore request all ICA Members in the region and participants to give their valuable suggestions for inclusion as matters for the conference. We hope that based on your considered views, an agreed approach to this vital matter will be evolved for the ICA Asia Pacific for further action.

December 10, 2013



Chan Ho Choi, Ph.D.
Regional Director,
ICA-AP

Acknowledgements

The study on By laws of primary co-operative societies in the Asia Pacific region has been taken up in pursuance of the decision of the ICA-AP Regional Assembly in its meeting on 29 November 2012 Kobe, Japan when the Assembly recognized the subject as one of its strategic objectives.

This was indeed a remarkable initiative as in the past ICAAP had periodically carried out 'critical studies on co-operative laws and policies' at the macro-level (Asia Pacific region) but it did not address the micro level issues such as making of By laws which is the first step to form a co-operative. It is therefore more crucial in ensuring truly participatory governance of a co-operative, financial sustainability and participation of women and youth – the concerns expressed in the ICAAP strategic objectives mentioned above.

As the terms of the study were not limited to only some features of the By laws, it helped us to look at co-operatives from the broad perspective of the voluntary sector because the very first co-operative principle is that it is a voluntary organisation of persons willing to work together in a socio economic enterprise to achieve their common business and social objectives for their well being. This enabled us to look at the growth of self help group movements across the region, relate it to the co-operatives and examine how the SHGs and co-operatives could complement each other's roles and the co-operatives could adopt some of the flexible and good practices of SHGs in their functioning and integration of SHGs with the co-operatives.

The complexity of the study was evident from the fact that the By laws are essentially based on basic co-operative law of a country. In the Asia Pacific region, legal traditions, and practices related to co-operatives vary widely for historical and other reasons. We have therefore carried out a quick review of co-operative By laws being followed in the region and brought out their special features and commonalities in order to suggest a common approach to By laws in tune with ICA Statement on Co-operative Identity and ILO Resolutions on basics of co-operative functioning. Based on this in house study at New Delhi office as the field visits could not be undertaken as yet, what is presented here is really a set of 'indicative By laws' and the process of making the same which should be taken more as guidelines than as a model for mechanical adoption. We would rather consider the suggested process and guidelines as designed for adaption which must be carried out through participation of members with active professional support and guidance of the concerned apex co-operative federations. We have argued that

there is a critical role for apex co-operative federations in capacity building of primary co-operatives in all sectors.

We are thankful to Dr. Chan Ho Choi, Regional Director ICAAP for assigning this task, support and guidance. We are grateful to Mr. Charles Gould, Director General, ICA for taking deep interest in the study and the encouragement that we received when he visited New Delhi in July 2013.

We are especially indebted to Mr. Harnath Jagawat, Director, NM Sadguru Foundation, Gujarat, India for sharing with us his organisation's experience in achieving co-operative – SHG integration and allowing us to use its annual report - 2013 in the study. Our thanks are also due to Mr. T.T. Adhikari, Managing Director, Delhi State Consumer Co-operative Federation and an acknowledged international expert on co-operatives for his valuable support in the preparation of draft By laws and the visits to some primary co-operatives in New Delhi that he facilitated. We owe a lot to Ms. Neela Sharma, Ms. Sabitha Venkatasan and Mr. K. Sethu Madhavan for their untiring support to help us to organise the material and reference. Any short comings in the study however, are entirely to be our responsibility.

This study was presented at the Asia Pacific Registrars' Conference held in December, 2013 in Kuala Lumpur, convened by the ICAAP on this very subject and was well received by the distinguished participants. We do hope the study will be widely read and discussed in the co-operative community leading to much needed reforms in not only By laws but also co-operative laws and policies in the region and strengthening the primary co-operative societies.

Rangan Dutta, I.A.S. (Retd.)

P. Santosh Kumar, L.L.B.

Research Methodology

The term 'By-Laws' in this text is same as By-Laws or any other name that is synonymous with that laid out within the meaning of the definition of 'instrument' in the Black's Law Dictionary¹. According to Craig² Bye laws is a form of 'delegated legislation' as 'orders' in council, rules, regulations, By-Laws and directions all jostle one another upon the statute book." Administrative law recognizes special problems concerning By-Laws as these are commonly promulgated by the local authorities but can also be made by agencies in the 'common law' countries³. Under section (1) of the statutory instruments Act 1946 of UK, the power to make rules or regulations conferred on any Minister (meaning a Government Ministry or Department) under a statute is a form of subordinate legislation and is exercisable by statutory instrument. This has been defined flexibly to allow any 'Board' or a Registrar of co-operative societies for instance to exercise the powers conferred under the Rules on behalf of the Government within the framework and provisions of the primary statute.

Essentially a doctrinal research, the study has been carried out in the following stages.

1. Collection and scrutiny of Bye laws of primary co-operative societies of selected member countries engaged in diverse activities primarily in rural areas to compare the contents and the management structure to ascertain the degree of autonomy, members' participation in management, and the financial sustainability of the primary co-operatives. Copies of these selected Bye laws are placed in the Annexure - I with a hyperlink.
2. To examine the provisions governing the formulation of Bye laws in co-operative laws and the Rules made there under of countries in the Asia Pacific region to obtain a broad legal and constitutional position to ascertain the extent of autonomy allowed or devolved to primary co-operatives in the matter of making bye laws.

¹ The Black's Law Dictionary, 9th Edition, Bryan A. Garner, Thompson Reuters Instrument. (15c) 1. A written legal document that defines rights, duties, entitlements, or liabilities, such as a contract, will, promissory note, or share certificate. - Also termed legal instrument. "An 'instrument' seems to embrace contracts, deeds, statutes, wills, Orders in Council, orders, warrants, schemes, letters patent, rules, regulations, By-Laws, whether in writing or in print, or partly in both; in fact, any written or printed document that may have to be interpreted by the Courts." Edward Seal, Cardinal Rules of Legal Interpretation 55 (A.E. Randall ed., 3d ed. 1924).

² Paul Craig – Administrative Law – Page 719, London, Sweet and Maxwell 2011, South Asia Edition

³ J. Garner – Administrative law, 8th Edition, B. Jones and K. Thompson, Butterworth 1996.

3. On this basis, a tabular-statement indicating the systems and procedures of making bye laws currently being followed in member countries representing the broad sub regions has been attempted, and is placed in the study summing up the assessment of comparative legal positions in the light of the International Co-operative Alliance Statement on Cooperative Identity (1995). In preparing this statement, the views of the Honorable Ministers from Member countries and officials in charge of co-operatives expressed at the 9th Asia Pacific Co-operative Ministers' Conference held in Bangkok in 2012 on reforms of co-operative laws and policies were duly noted. Further a questionnaire was prepared for firming up the issues during this study which is placed at Annexure VI.
4. Preparation of an indicative 'Common Set' of Bye laws of primary co-operative societies likely to be engaged in usual activities at this level; such as thrift and credit and in particular provisions for crop-loan, supply of agricultural inputs, storage and marketing facilities, consumer goods and some essential social services has been attempted in chapter Four of this study. It may be mentioned that this is not to be read/taken as '*model*' bye laws as it amounts to pre judging the needs of the co-operators, but as 'Indicative Bye laws'.

However, care has been taken to provide for due representation of women and youth, a system for monitoring and ongoing evaluation of the activities from the business as well as social development angles, and for ensuring 1) actual and effective participation of members in the activities of the co-operative and in availing services and facilities as pre-conditions for retaining active memberships, 2) that the business plan is drawn up by the members keeping in view the need to achieve financial sustainability of the co-operative and to optimize the services extended to the members.

The aforesaid methodology for the study may even be called an attempt to conduct a 'merit review' of the process of bye law making by Primary co-operative societies as opposed to a legal review, as its primary objective is normative as it suggests an 'indicative' bye law and not a 'model' based on the ICIS 1995 statement and the Recommendations and decisions of the ICAAP in this regard to make the process of bye law making participatory in nature.

Short field studies outside India are proposed to be carried to test the above hypothesis / premises in the light of the ground-situation being faced by the primary co-operative societies. It may be mentioned that the functioning of primary co-operative consumer societies in Delhi region (India) has been studied and discussions held with the office bearers to see how the bye laws are actually made and followed in the light of the financial sustainability and members' participation in management.

Executive Summary

This study on 'Bye-laws of Primary Cooperative Societies (PCS) in the Asia-Pacific has been taken up in pursuance of the decision of ICAAP Regional Assembly in its meeting held on 29 November, 2013 in Kobe, Japan when it recognized it as a strategic issue along with financial sustainability of PCS, participatory governance and decision making by the members, and active participation of women and youth in the board structure. The zeroing on Bye-laws is both timely and appropriate because bye laws are the 'bed rock' of a cooperative and its importance is not adequately recognized because of greater emphasis on cooperative laws and policies.

In fact the way Bye-laws are made by co-operators while forming a primary cooperative a society might as well reflect the real effectiveness of cooperative laws and policies and the degree of compliance with the basic principles of cooperative movement as embodied in International Co-operative Alliance Statement on Co-operative Identity (ICASCI, 1995).

The study contains four chapters with five Annexure and logically, Chapter-I covers the current status of 'Bye-laws' in the countries of Asia Pacific region characterised by diverse political systems; law making processes and roles assigned to cooperatives by the governments. The methodology adopted for the study is 'doctrinal research' meaning examination of laws, rules, procedures and actual practices followed in making of bye laws. This may be followed up by some study visits to few countries to check the conclusions.

The Registrar or the authorities responsible for administering the cooperatives by whatever name called, occupy a unique position in bye-law making as the approval of the Registrar is mandatory for adoption of Bye-laws in 'common law' countries and in countries which follow a similar or even different set of cooperative laws because of the role state plays in shaping the cooperatives. Besides, the Registrars' functions under the cooperative laws summed by legal terms such as 'superintendence and control' or regulator with the added duty of promoting and guiding the cooperatives have placed the Registrars to act as the 'foundation' of the cooperatives.

The reason for inviting the Registrars to the conference is that they are in the best position, as regulators to share experiences regarding Bye-laws and suggest 'measures' for making transparent and participatory cooperative governance especially bye laws and its administration. Chapter I therefore examines the role and functions of the Registrar and special features of

cooperative laws of 20 countries in regard to Bye-laws. The task is complex as roughly five legal systems operate in the Asia-Pacific region –

- 1) Type 1: Common Law Countries of South Asia
- 2) Type 2: The Japanese and Korean model of specialized cooperatives under separate laws
- 3) Type 3: State supported cooperatives in countries which view cooperatives as means of involving farmers and others in economic decision making and attaining economic efficiency in a growing market economy
- 4) Systems prevalent in Iran and Middle East blending cooperatives with traditional modes of community or group self help; and
- 5) Cooperatives designed to function as equal to corporates in terms of efficiency, scale and market access as in Australia and New Zealand.

Together, the first two chapters cover the main issues and concerns regarding the formulation and approval of Bye-laws which are summarized below:

1) In 'Common Law Countries' and most other systems barring Australia and New Zealand, the Bye-laws are part of the delegated legislation and its contents especially the governance structure, functioning of various committees etc are either laid down in the Rules made under the basic cooperative law in the form of a Model Bye Law or the Registrar empowered to lay down the same whose approval to the bye laws' submitted by a cooperative society for registration in the form prescribed is mandatory.

This process is 'top down' as the 'founding members' would find it convenient to secure the consent of the members willing to form a cooperative to a 'model bye law' rather than framing a set of Bye-laws through a consultative process. Prescription of separate 'model bye laws' for functioning different Primary Cooperatives further restricts the element of prospective member participation in bye law making as under the Delhi State Cooperative Societies Act and the Rules in India.

2) Though approval of the Bye-laws by the competent authority, the Registrar in most countries is mandatory, Bangladesh law requires the Registrar to approve within 60 days failing which, it is 'deemed' to have been approved. This is an improvement over arrangements which impose no such provision or time limit for approval.

3) **The issue of financial sustainability is more complex.** Unlike Europe where cooperatives were conceived as a formal instrument recognised by law to cope with difficult socio-economic situations by way of organised mutual assistance, in most countries of Asia-Pacific region, cooperatives were formed with State sponsorship and financial support as part of development strategy.

Thus the members form cooperatives to take part in the development schemes primarily. Hence the 'mutual assistance' part was not evident there nor any assessment of 'financial sustainability' made or required to form a cooperative. As Hans-H. Munkner (1977) pointed out withdrawal of state support usually led to demise of state sponsored cooperatives.

In the Philippines, the provision of pre membership education might cover this aspect. Under the Bhutanese law only, there is direction to consider financial viability and sustainability of cooperatives. The study therefore suggests provision in the bye law for participatory conduct of economic feasibility and sustainability of business proposed to be taken up by the members as a part of the cooperative formation process.

4) The examination of the related **issue of participation of women and youth** in the cooperatives suggests that as there is no mandatory provision for the same in most countries, there has been no conscious effort to take these two vital segments of the society on board by the cooperative leadership. The study therefore recommends provisions in the bye laws for their mandatory inclusion in the Board and Monitoring Committees of cooperatives.

5) On scrutiny of **the legal basis of the overriding powers of the authorities**, the Study has viewed it as 'the outcome' of the Rules or Regulations made under the cooperative law. These are usually exhaustive and cover virtually all aspects of functioning of cooperatives and thus impinge upon the 'autonomy' of the cooperatives and reduce the members' ownership and management role which is the core of the cooperative philosophy.

In fact, these 'outcomes' are not envisaged in the cooperative law itself. However, this 'overuse' of rules takes place because the Rules are made by the Executive and though laid in the table of the Legislature, there is no real legislative scrutiny. The matter is in the realm of constitutional law and there is a strong and considered view of a High Powered Committee in India, headed by Shiva Rao G Patil in 2009 that the power of rule making by the executive should be either scrapped or restricted to matters of procedure, prescription of forms etc. and the important functional matters should find place in the main cooperative law itself. The Study recommends a reasoned debate on the subject.

6) Taking note of the fact that primary cooperatives in South Asia are competing for space with the **Self-help Group (SHG) movement** as the latter, backed up by the state, institutional finance and even corporate bodies, has been able to enter into the traditional area of cooperatives in financing agriculture, small trades and income generating value addition activities, the study carried out a review of bye laws and functioning of SHGs as compared to cooperatives. It looked into the pioneering work of NM Sadguru Foundation (SF) in Dahod District of Gujarat State in India in Chapter-III. Here, the SF, a diversified natural resource conservation and sustainable management oriented NGO had successfully experimented a model of organising SHG's first and after SHG's attain capacity federate the SHG's into cooperatives at the Taluka (sub district level) in a mutually supportive mode, taking up inter related activities in small

irrigation, dairy development land shaping and water conservation, multiple cropping etc leading to rural development and alleviation of poverty.

The study therefore argued for a policy to promote integration of SHG's into cooperatives to arrest the rapid erosion of primary cooperatives in rural credit and development activities in India and Bangladesh. It has suggested also adoption of certain flexibilities in the SHG bye laws by the cooperatives on comparison of some SHG bye laws of India and Bangladesh.

7) Chapter-IV contains an attempt to suggest not a 'model' but an 'indicative' set of bye laws for primary cooperative society. This is based on scrutiny of byelaws of cooperative societies in India engaged in thrift and credit as these are deficient in all the critical matters stressed in the ICA AP Strategic objectives. Since a cooperative becomes a legal person and business enterprise, the bye laws have to be elaborate containing the provisions of constitution, amalgamation and dissolution of co-operatives, its internal governance structure, decision making process, audit, maintenance of books of accounts and registers etc within the framework and provide for -

- (1) A participatory feasibility viability study of business activities proposed by intending members
- (2) The role of founding members in educating prospective members
- (3) Provision for women and youth participation in management and mechanism for monitoring and on-going evaluation by the Monitoring Council consisting of members on rotational basis with participation of women and youth.
- (4) Provision for social audit and
- (5) Ensuring that members actually become co-owners and the main customers or users of the services of the cooperatives.

8) This last provision is crucial to retain self-mutual help organisation character of a cooperative which if strictly followed, could exclude local politicians or such other persons from the cooperatives. Restrictions on share holding by individual members, strict adherence to the principle of 'one member one vote' and restriction on the volume of business with the non members or service provided have the object of retaining the 'member owned and user driven, managed' character of cooperatives in which the owners are the main customers of its services.

9) Though stable equity capital is required from the outset, the cooperatives should desist from accepting large share capital participation from the government or non members for preserving its aforesaid features. The rights and duties of members have been detailed here along with various 'Reserve Funds' to keep the cooperative on a sound footing as an 'inter-generational institution' and not a 'profit making body' and its basic aim is to build 'social capital'. The Study is based on the idea that cooperatives are not to be seen as 'business or

economic enterprise' for distribution of only dividends among the members but as 'social enterprise' based on mutual help for common good and therefore aiming at social cohesion with economic well being.

10) Cooperatives should avoid the temptation to 'approximate' the joint stock companies which are primarily for profits being investor or rather large investor driven and concentrate on assisting the members in improving their businesses on 'stable' footing by avoiding any speculative or risky ventures. In fact, success in preserving the 'Member Owned Institution' character and avoidance of risky investments has enabled the Credit Unions of Europe to protect its interest in the current 'great recession'.

The indicative By laws in this study are based on this philosophy and suggest a mechanism to achieve this objective. The study has noted that bye-law making is an evolving and dynamic process as the co-operatives though constituted and registered under laws made on principles of co-operation, self help and mutual benefit function under widely varying socio-economic and politico-administrative environment. Therefore flexibility in the bye law making process is essential and is not simply a procedural matter as the need for change of bye laws has to be substantiated. Here legal expertise and guidance matter.

The study therefore suggested a hand holding role for the concerned Apex Co-operative Federation in assessing this 'felt need' and assisting the co-operative in formulating the amendments. It is a moot point whether this requires a provision in the co-operative laws or the Rules defining the role of Apex Cooperative Federations and thus an amendment or if a provision in the bye laws would suffice. The other measure could be delegation of this hand holding responsibility by the Registrar or the Regulator which means sharing of power and responsibility. The matter warrants a detailed review. The Apex Co-operative Federations derive their strength from being a voluntary union of co-operatives and the subscription made by the Primary Co-operatives indicates this fact. The bye laws therefore may contain provisions for making voluntary contributions or subscriptions by the primary co-operatives.

The study has noted the issue of maintaining the member-owned and managed character of large co-operatives as in the Republic of Korea by allowing under bye laws, the election of representatives of members in a geographical segment of the area of the co-operative to represent their views in meetings of General body convened to decide on matters such as amendment of bye laws. The bye laws of such large co-operatives must therefore contain clear provisions including the process of election of representatives by individual members.

Rangan Dutta, I.A.S. (Retd.)
Principal Consultant
ICA -Asia and Pacific

ABBREVIATIONS

AMUL	Anand Milk United Limited
DSCS	Delhi State Co-operative Societies Act, 2003
F.M.	Founding Members
ICIS	International Co-operative Identity Statement
ILO	International Labour Organisation
MSCS	Multi State Co-operative Societies Act, 2002
NGO	Non Governmental Organisation
PC	Protem Committee
PCS	Primary Co-operative Society
PRC	People's Republic of China
RCS	Registrar of Co-operative Societies
SF	Sadguru Foundation
SHG	Self Help Group
UK	United Kingdom
USD	United States Dollar

CHAPTER - I

Preamble, Introduction and the Current Status of By-laws in the Asia Pacific region

*(With reference to the legal systems governing
co-operatives in the sub-regions)*

Preamble

Why study By-laws of Primary Co-operative Societies?

- I. Co-operative law includes the Rules made under the co-operative laws and the By-laws adopted by the co-operatives at all levels.
- II. Emphasis on financial sustainability, Participatory governance and stronger representation of Women and Youth are to be underscored in the By-laws.
- III. This Study cannot be carried out in isolation because it requires a study of relationship between By-laws, Cooperative Laws and the Rules made there under as the position varies from country to country. In some country laws, as in most common law countries' laws, By-laws are prescribed within the scope of Rules which have the force of law, and the co-operative laws indicate the subjects and content of the By-laws. Hence there is a need for a value judgement as to whether model By-laws should be prescribed or should be included only as indicative and suggestive.

Though there is variation amongst countries in the Asia Pacific in regard to the volume and scope of the Rules and such By-laws, it is important to note that Common law countries provide for detailed '*one size fits all*' Rules as compared to countries that follow sectoral legislation such as Republic of Korea, Japan and the old legislation on Agriculture in People's Republic of China that evidently recognize the sectoral distinction in the functioning of co-operatives.

Background

The Main Theme of the proposed Conference of the Registrars/Regulators of Co-operatives held on 09-11 December 2013 was *Bye-Laws of Primary Co-operative Societies* based on Para 8 of the New strategic Objectives of ICA AP (2013-2016) laid down at the 10th Meeting

of the ICA Regional Assembly in Asia Pacific held in Kobe, Japan on 29 November 2012 as reproduced below.

“To study on countries’ By-laws of primary co-operatives, and to draw ‘model’ By-laws with a view to ensure the financial sustainability of co-operatives and participatory governance and decision making of member, especially for women and youth to have certain seats in their Board structure”

The aforesaid objective has to be read with the Joint Declaration No. 9 of the 9th Asia Pacific Co-operative Ministers’ Conference held from 27-28 February, 2012 in Bangkok, Thailand urging upon

“... the Governments to formulate a new policy and legal framework, on the basis of ICA Principles, by initiating a comprehensive review of co-operative laws and policies, taking into account the recommendations made in the last Asia Pacific Co-operative Ministers’ Conference and the suggestion to enact a common co-operative code defining Government – Co-operative relationship and addressing the governance issues to enable the co-operatives to move to a high growth path”

While, the reforms in the co-operative laws and policies in the light of the Declaration are necessarily in the nature of a continuing exercise at the country level involving the concerned Ministry or Department of the Government and the Federations representing the Co-operative Movement, the focus in the Registrars’ Conference would be first on assessment of the co-operative Bye-laws – its formulation process, management and functional contents in **different countries** and the **degree of compliance** with the ICA Identity Statement and the Declarations made at various Forums of the ICA from time to time with a view to draw up a model Bye law and guidelines by securing a broad consensus in the Conference.

I. Basic nature of Co-operatives

The concept of co-operation as the basis of formation and management of economic enterprises with the object of achieving maximisation of welfare of the owner-members as distinct from types of enterprises, which underscore profit maximisation for the owners of capital and enterprises and as its corollary, minimization of costs particularly in the form of wages for the labour engaged is historically an idea developed in Europe based on the experience of the industrial revolution.

Hans-H. Munkner (2005)¹ argued that the movement to form co-operatives was the outcome of two ideas – the idea of Robert Owen that an enterprise run by workers as stakeholders/ shareholders capable of providing them with living wages and yet making profits is a socially beneficial alternative mode of production than the exploitative form of enterprises run solely

¹ A comparative perspective on legal frameworks for the social economy, Trento 22.24 September 2005

for profits for the owners of capital. Second, the ideas of liberal philosophers like Bentham and Mill emphasising ‘self-interest’ and ‘self help’ as constituents of ‘enlightened self-interest’ and a viable and sustainable basis of co-operative enterprises synthesising thereby individual interest and social and community welfare through the mechanism of a co-operative enterprise provides an answer to the ills of industrial capitalism of the day.

II. Comparative Views

Co-operative By-Law or Corporate By-Law?

This point requires emphasis as in some advanced countries, the co-operatives are now perceived mainly as “business enterprises”, of course with a difference, as these have to be member owned, and democratically managed, with no individual member or a group allowed to hold majority shares in a co-operative, nor are they allowed engagement in activities of speculative nature.

However, to underscore ‘the business or economic enterprise’ as the main stream aspect in co-operatives, exposes the concept of co-operatives ‘to approximate corporate(s)’ run by the few large investors and few professionals as their members are owners as well as main customers of services produced by the cooperatives which are structurally different from co-operatives. Given the present orientation of the market economy, this would inevitably plunge cooperatives into speculative ventures because of erosion of its ‘member-owned Institution’ character and co-operative values. Thus if a co-operative adopts this path of ‘approximation’, the core values and social character of the co-operatives embodied in ‘member-owned institution’ and members’ welfare and participation in management are certain, in the transition process, to get diluted irrevocably. Such an enterprise is likely to get converted into a corporate body by eventual demutualisation.

It is therefore stressed that the co-operatives are to be viewed as ‘social co-operatives’ as in Italy and Korea or ‘social consciousness driven enterprises’ – the definition given by the Nobel laureate Dr. Mohd. Yunus to ‘Women’s Self Help Groups’ of Bangladesh founded on the co-operative principles of Self Help, thrift and credit and economic and social well being of the members. In fact, the role of co-operative credit unions in European Union as providers of financial service to its Members, driven by members’ interests and capacities are widely considered as alternative to other forms of financial intermediation in the present environment of global economic slowdown or ‘great recession’, as brought out in a recent ILO Report².

It must however be noted that in Asian countries particularly in Japan, India, West and East Asia, there have been long traditions of co-operative endeavors of informal nature in agriculture

² Birchall, Johnston, Resilience in a downturn: the power of Financial Co-operatives – ILO, ISBN- 978-92-2-127030

related activities as well as in trade and commerce primarily based on mutual trust, thrift, self help and co-operation. This tradition provided a social capital base for formal co-operatives as and when introduced in the countries of Asia Pacific region and continues to be a strong factor in favour of adoption of co-operatives.

A Common Model By-Law Or Sector Specific By-Laws?

Within those parameters, co-operatives have spanned into a wide range of activities such as agriculture, horticulture, dairy, fisheries, forestry, health, housing and habitat development including environment conservation by organised tree plantation, water conservation and such other activities, education, thrift & credit, transport, insurance (personal/crop), food processing including running of sugar or rice mills and marketing of primary produce as well as value added products, workers & Labour co-operatives, etc.

In fact, it is difficult to prepare an exhaustive list of co-operatives functioning in the Asia Pacific region listing all the subjects taken up by them on co-operative basis. The point to note is that the co-operatives have achieved remarkable success in diversifying and integrating their manifold activities leading to establishment of brand equity in respect of certain products and services and even branched into value added activities in a corporate mode, such as AMUL in India in dairy products.

Since each of these activities or a combination of them vary under the co-operative set up, the By-laws of these co-operatives show divergences in contents as well as procedures. However, it is interesting to note that in the 'Framework Act on Co-operatives'³ in the Republic of Korea, a distinction has been made between a social co-operative that 'carries out business activities related to the enhancement of rights, interests and welfare of local residents or provides social services or jobs to the disadvantaged people but such a co-operative is *not* run for profit, unlike other co-operatives which are business organisations and primarily engaged in activities to enhance its members' rights and interests, and thereby contribute to well being of the communities by taking up activities in 'co-operative purchasing, production, sales and provisioning of goods and services.

This legal distinction does not seem to exist in other co-operative laws of the region. However, under the Indian companies Act, 1956, provisions exist for formation of 'producer-companies' which are actually co-operatives but enjoy the flexibility of operating as a company with special features of share holding, management accountability, designed to protect the member owned character and takeover by acquisition of majority shares by non members/outsideers. However, the state (provincial) and central co-operative laws in India do not make a separate classification

³ Passed by the South Korean Parliament vide Act 11211, Jan 26 2012 & Enforced by the Presidential Decree No. 24164, Nov. 12, 2012 along with the Ordinance No. 303 of the Ministry of Strategy and Finance on 27 Nov 2012 promulgating Rules.

of 'social co-operatives' as in Korea. In all 'common law' countries, there is one cooperative Law for the co-operatives as a whole.

In Japan and Korea, there is no single law, but separate laws for co-operatives engaged in distinct functions such as agriculture, forest and fisheries, consumer and health etc. Under the Philippines Code on co-operatives-2008, there are separate laws for twenty types of co-operatives - all included in the comprehensive code. In Iranian Co-operative Law, the co-operatives are viewed as a sector with some core objectives and functions, there being no generic distinction as in Korean law mentioned above.

From this statement, it would appear that even in 'common law' countries where the co-operatives were introduced by the erstwhile colonial administration, the law and the Rules contain not only the contents, procedures, details of management and working practices including the powers of the authorities in the Government, notably those of the Registrar of co-operative societies, but even Model Bye law - for adoption across the board by persons who wish to form a co-operative or function-specific separate By-laws. (*Model By-laws As Provided in the Delhi State Co-operative Act, 2003- Annexure V along with Section 11 & 137 of DSCS Act, 2003*).

In countries outside the common law by and large, the same practice of advising the 'prospective co-operators' to adopt a bye law, continues because the co-operatives in PDR Laos, Vietnam and such other Socialist systems are 'guided' by the Government and depend on Government support both administrative and financial with varying powers of supervision granted even to local administrative authorities in functioning of co-operatives.

An Elaborate By-Law or Simple By-Laws?

There is a trend in most country laws and practices towards adoption of elaborate By-laws and creating 'checks and balances' by multiplication of mechanisms to ensure better functioning of the primary co-operative societies. While this may be a necessity in large multipurpose primary co-operative societies, in typical single purpose and comparatively small primary societies engaged in primary sector lending or consumer service, this may introduce complex formal elements in functioning as it requires elaborate record keeping which small primary co-operative societies may not be in a position to organise from its limited resources/turnover and members capacities. This may compel the PCS to seek professional help complicating matters further.

This brings us to the issue of functioning of Self Help Groups which are set up on broad basis of co-operative principles of member participation, for instance; yet functioning in a more flexible, less formal and more effectively in providing service to its members as brought out in the preceding section because simplicity and participation matter most in By-Laws.

Section 11 of the Delhi State Co-operative Societies Act (DSCSA), 2003 (**India**) lays down a comprehensive list of 36 matters including the term of office of elected members of the committee, the constitution of various reserves and the maximum size of the committee meaning general body, the powers and functions of the paid executive, the procedure for the conduct of audit and even the educational and training programmes to be conducted by the co-operative society. The power of the government to make Rules under Section 137 of the aforesaid Act lists as many as 70 subjects covering almost every aspect of the functioning of the co-operatives. An extract of section 11 and section 137 of the DSCSA, 2003 is at Annexure V which may be taken as guidelines for groups willing to form a co-operative society.

The Rules are made under the aforesaid Act go further and classify the co-operatives into 'Resource' and 'Producers' co-operative society and makes it a duty for the Registrar to make *Model By-laws* for each class or sub class of a co-operative society and procedure for amending the By-laws. Together these instruments reduce the task of making By-laws to a routine or a mechanical activity. However the excessive importance given to observance of these formal requirements is not matched by any measure to lay down the viability norms or composition of members or weightage given to women, youth and disadvantaged sections either in the formation stage or later in the management of a co-operative society.

Provision of Model By-laws Or Autonomous By-laws?

Thus, the matter boils down to the following issues:

1. Whether it is appropriate within the spirit of the ICA Principles to provide for legal provisions which give the Government through its agency – the Registrar of co-operative Societies in most countries, to lay down a *model bye law* for compulsory/mechanical adoption by co-operators even when it leaves virtually no scope for members' application of mind to give By-laws to their own co-operative?
2. Whether the aforesaid power is valid in terms of *letter and spirit* of the co-operative law and the degree of deviation that might have followed in the process of making a piece of delegated legislation as reflected in the prescription by the authorities of the type of By-laws that the co-operatives should adopt?
3. Whether the aforesaid powers were derived from the power of the Government to make Rules under the co-operative law? And if so, whether there has been an **overuse** of this power under the Rules, not intended in the basic legislation which enabled the authorities to prescribe By-laws for adoption following a procedure that reflects very little of member – participation and to that extent, introduces an element of constraint in the functioning of co-operatives?
4. Since the By-laws for social co-operatives are necessarily different from other co-

operatives, whether any of its special features can be introduced in the respective By-laws of other cooperatives to strengthen their distinct cooperative features?'

III. Categorization of By-laws of the Countries in the Asia-Pacific Region

As of now the co-operatives in the Asia Pacific region broadly follow laws, By-Laws and methods of functioning of the following major systems:

1. The countries that follow the 'common-law', meaning the British laws and procedures introduced by the erstwhile colonial administrations to promote growth of co-operatives. initially as a measure to relieve the distress of the farming communities arising out of the burden of credit, seasonal crop failures and exploitation of village money lenders which reduce them to perpetual misery. The countries that come under this category are **India, Sri Lanka, Bangladesh, Pakistan.**
2. Countries like **Japan and Korea** which took to co-operatives blending the tradition of co-operation in economic sense of the Japanese society as a part of the 'modernisation' process and developed systems, procedures and methods of co-operative governance and in the process evolved a distinct pattern of co-operative development. This has been followed in some measures in the **Philippines.**
3. **Australia and New Zealand** seemed to have adopted co-operatives which approximate to the Joint stock companies adopting many of the legal and institutional features of companies to achieve economies of scale and higher benefits of the co-operators.
4. **In West Asia, especially in Iran,** the Islamic tradition of helping the poor and shunning the financial exploitation of fellow Muslims, backed up by strong state support has enabled co-operatives to emerge as important actors in agriculture and processing of agricultural produce especially edible oil making, small enterprises such as carpet weaving and in mines and minerals apart from urban and rural housing , credit and consumer services. The laws adopted are indicative of the local preferences and ideas of institutional and social strength.
5. In countries which are defined as 'transitional' economies – moving from complete state control to market economy gradually, the co-operatives are formed with state support and participation as a means to involve the masses in management of the economy at the micro level and are therefore seen as a democratising move. However, the 'state sponsorship' and the role of the state as the promoter as well as the regulator is pronounced which is also interestingly a feature of co-operative law and policies of even 'common law' countries mentioned above. The countries of central Asia and west Asia, **Mongolia, China, Vietnam, Laos and Myanmar** seem to belong to this group.
6. There are countries that do not fall under the above categories because of the nascent stage of their development though they broadly follow the pattern left behind by the erstwhile

colonial administrations. **Fiji islands and other Pacific islands** fall in this category.

The study begins with a scrutiny of the provisions under the co-operative law to laying down what By-laws should contain and the procedure of making the By-laws. Thus, a comparative statement of different country laws and the processes followed therein in regard to formulation of By-laws is placed in a tabular form at Annexure-III.

IV. Country Specific By-laws

A summary of the special features of By-laws of co-operatives of 14 countries of Asia-Pacific Region is attempted below:

India

The present arrangement of Co-operative By-Laws being adopted by individual co-operative societies on the approval of the concerned/Competent Authority - Registrar of Co-operative Societies in each State or Union Territory is that it is accorded on examination of provisions of the proposed By-Laws. Of these, the first is the particular co-operative law under which Registration is sought as there are several co-operative laws under which coop societies are registered in India.

In India the subject of co-operation is in 'the state list' of the constitution of India though Multistate cooperative societies meaning societies which operate in more than one state fall under the Multi State Co-operative Societies Act which is a Central legislation and under the Administrative control of the Central Registrar of Co-operative Societies, Government of India.

Further complications arise from the fact that the co-operatives are currently undergoing a phase of reform which meant operation of parallel co-operative laws – 1) old co-operative laws which provide for a strict regulatory regime and vast supervisory powers exercisable by the Registrar of Co-operative societies who is to function as the 'foundation' of the co-operative sector and also its mentor and supervisor, and 2) a new co-operative law introduced in pursuance of the Recommendations of the ICA providing for a greater degree of autonomy, members' management control and flexibility in functions freed to a great extent from the control of the RCS as stipulated in the old laws.

To cite a case, co-operatives in Andhra Pradesh state in India operate under the Andhra Pradesh Co-operative Societies Act, 1964 which is the Old law and a new co-operative law Mutually Aided Co-operative Societies Act was enacted in the year 1995. Thus co-operative By-Laws in India are being framed at least under three existing laws in most states namely Multi State Co-operative Societies Act and the State Co-operative Acts, old and new.

The 97th Constitutional Amendment Act (India, 2011) has made the right to form co-operatives a Fundamental Right under Article 19 of the Constitution of India. Further in exercise of its power as the Supreme law making body, the Indian central legislature has issued constitutional directives to the states to create an enabling environment for the growth of co-operatives and such other development activities and laid down elaborate norms and guidelines for governance of co-operatives including periodic holding of elections, reservation of seats for women and those belonging to Scheduled Castes and Scheduled Tribes in the Board of Directors of co-operatives etc. Following these directives, several states have incorporated these provisions in the state laws or enacted fresh co-operative laws.

It may be mentioned that the aforesaid constitutional amendment stands by the core ICA Statement on Co-operative Identity. The process of passing of state laws in conformity with the 97th Constitutional Amendment is continuing. As stated above some states have a new co-operative law providing for democratic governance and member driven management and at the same time there are older laws which have not been repealed.

Thus the co-operative societies under a new law function in a different manner than those formed under the old law. This may appear to be somewhat anomalous but should be taken as a positive development in the co-operative reforms process as the new law is the outcome of a policy change favouring adoption of broad ICA Principles.

The By-laws adopted by primary co-operative societies registered under these two laws however do not reflect any major change in the approach to making of By-laws as the societies are legally bound under both these laws either to adopt the Model By-laws circulated by the Registrar of co-operative societies or where it is not provided in the statute, the power of the Registrar to provide Model By-laws or to adopt By-laws strictly according to the norms laid down in the statute results in a similar process and outcome. A comparative statement of provisions regarding the preparation of By-laws by the primary co-operative societies under the Andhra Pradesh Co-operative Societies Act (1964), an old Act by the definition above, and the Karnataka State Co-operative Act, 1998 a new Act is at Annexure-II.

It may be mentioned that under the Indian co-operative laws, old as well as new, the Registrar enjoys broad powers of 'superintendence and control' over the functioning of co-operatives and functions in practice as the Director of co-operative development. The power of the Registrar is derived from the Rules made under the co-operative Acts by the Government which is exhaustive and covers all aspects of functioning of co-operatives.

The respective provisions relating to By-laws as under Section 11 of the Delhi Co-operative Societies Act, 2003 read with Section 12 and Rule 137 laying down the power of the Government to make rules have given overriding powers to the Registrar to supervise and control especially the power of Registrar to give direction to co-operative banks and to cause an enquiry suo motu or audit of accounts of co-operative societies confirm the power to

direct, guide the co-operatives. It may be also seen that even the new Karnataka State Co-operative Act, 1997 (India) follows this line broadly and restricts the scope of the primary co-operative societies to give to themselves a Bye law to achieve its objectives as all primary co-operatives are required to follow a set pattern laid down by the RCS.

Scanning these provisions, it seems that the powers of the Registrars are substantive and the scope of its reduction is limited unless the governments decide by suitable amendments to allow prospective members of the co-operative society and its Founders or a Protem Committee recognised in the law itself, a larger degree of participation in formulating the By-laws which will necessarily entail narrowing down the compulsory contents of the By-laws to permit the founder members and willing members to apply their minds and make By-laws. This will mean reducing the framework of By-laws to absolute minimum and a more flexible approach to accord approval of By-laws by the Registrar of co-operative societies.

In Conclusion, the purpose of this exercise is to see to what extent the existing co-operative laws have constrained the formulation of By-Laws in a transparent and participatory manner. There is also a need to give a relook at the basic co-operative philosophy and to shift from the usual approach of treating co-operatives as business enterprises to an enterprise for building social capital through the mechanism of co-operative business enterprise which will mean relegating the profit earning aspect of business to lesser importance.

This will mean that profits are to be seen as a mechanism to attain efficiency and sustain its activity to promote the welfare of its members. The object is to make co-operatives a sector of strategic importance for the economy, balancing the market and the state by expanding and deepening the role of co-operatives and consolidating the Social capital. The By-laws of the Primary Co-operative societies should reflect this approach.

Bangladesh

A typical primary co-operative society engaged in production and marketing of agriculture produce in *India* will have as many as *fifty five* sections containing the name of the society and its area of operation, objects, membership especially, the eligibility criteria and the requirements for admission and conditions for cessation of membership, capital structure and its sources including the authorised share capital and the maximum number of shares that a member can hold which is usually 1/10th of the total authorised share capital.

However, under *the Bangladesh co-operative law*, it is 1/20th of the authorised share capital. There are provisions regarding holding of General Meetings, Annual and special General Meetings, constitution of Management committees, its powers and duties and also the conditions for the cessation of the membership of the Management Committee and for holding the meeting of the Management Committee.

The duties of the President, the Secretary and the Treasurer are stated in the By-laws. One notices elaborate requirements of maintaining books of accounts, Registers, conduct of Audit and Principles of distribution of profits as well as mechanism for redressing of grievances or disputes. A list of promoter or founder members is required to be appended with the By-laws at the time of Registration.

The By-laws may also include a) General clause about the requirement to abide by the co-operative Act and the Rules made there under, b) powers exercisable by the Registrar of co-operative societies in the matter of according approval to By-laws and directing the society to make amendments after giving the society an opportunity to express its views on the proposed amendments and c) the power of the Registrar in allowing amalgamation or liquidation of co-operative societies and conduct of audit by the chartered Accountant approved by the Registrar and d) broad powers of supervision exercisable by the Registrar of Co-operatives societies under the Co-operative Act.

The By-laws also lay down how and in what manner the surplus after meeting the statutory requirements of contributing to various reserves or funds could be invested with the approval of the Registrar. The standard By-laws of primary co-operative societies in Bangladesh are about the same as followed in primary co-operative societies as mentioned above though there are some minor variations such as the provision of constituting an interim management committee in case the election to the Management committee were not completed on the expiry of its term, or restrictions on disclosure of movable and immovable properties of the primary co-operative society.

While the objects of forming the co-operative society are fairly detailed and include about ten matters in the aforesaid laws, there is no reference to *financial sustainability* as highlighted in the resolution of the 10th ICAAP Regional Assembly.

Bhutan

Chapter V of the *Cooperative Act of Bhutan 2001*, lays down the legal basis for constitution of By-laws and its contents which are about the same as found in other south Asian countries except that the By-laws provide for a Finance and Audit committee and an election committee with three members each who are directly elected by the General Assembly and also provide for a Credit Committee, an Education and Training committee which are to be read with the substantive provision mentioned above stressing financial sustainability. The Article 22 of the Co-operative Amendment Act of Bhutan, 2009 which puts the onus on the General Assembly of the Primary Co-operative Society to authorise its Board of Directors to pursue the activities and policies 'that would increase or include' the capacity of the co-operative on financial sustainability.

This leaves a scope for the primary co-operative society to develop a commercial and an economic feasibility plan of its activities at the very outset of its formation and introduce clauses to achieve the objective of sustainability.

Korea

In Korean By-laws, emphasis is on the conduct of business and the participation of members in management, while the responsibilities of the Chairman and office bearers namely, directors are clearly stated which means that between the Board of directors and the General Assembly, there is a direct functional relationship and a mechanism for accountability of the board to the General Assembly is provided in the By-Laws.

This suggests that once the By-laws are approved by the competent authority, the management is autonomous in conduct of its business and the powers of the authority to direct or advise in functioning of the co-operatives are limited being in the nature of examination of the reports/returns submitted by the co-operatives in the ordinary course. This is in contrast with the position in South Asia where the Registrars enjoy, wide ranging powers of overseeing the functioning of the co-operatives.

The standard By-law of a primary co-operative society in Korea is more elaborate in regard to the duties and rights of the members and classifies members into *producer members* and *consumer members* who make use of combination of goods and services, as well as voluntary members, staff members and also lay down the qualification of each category of members.

Philippines

Co-operative Code, 2008 of the Philippines, recognises 20 types of co-operatives based on distinct functions but also states that this list is not exhaustive, and that each type requires a different functional framework. As co-operatives have diversified their activities, the scope of By-Laws has altered or expanded and this would be a common theme for co-operatives engaged in multifarious activities in the near future in most countries of the region.

This will render mechanical adoption of standard By-Laws for all co-operatives as usually laid down by the Registrars unpractical despite common elements such as the role and functions of the General body and the Board of Directors and the statutory supervisory Authorities. The Bye-law making exercise will have to be necessarily participatory beginning with a *brainstorming-session* organised by the Founders/Protem Committee with participation of the representatives of the Registrar's office to clarify the issues in their proper perspectives.

This exercise will result in *draft-By Laws* which should adequately state the functional and management needs reflecting the consensus of persons willing to form the co-operatives for approval of the Registrar. Implicit in this scheme is a suggestion that the authorities will be

required to only apply their judicial mind to see that the By-Laws are in conformity with the letter and spirit of the cooperative law. This will be a departure from the present system of mechanical adoption of By-Laws on the primary co-operatives.

Mongolia

Under Law of Mongolia on co-operatives, January 8, 1998, every co-operative is established under a charter in accordance with Article 9 as its founding document. This may be considered as the By-laws of a primary co-operative society as laid down under Articles 9 – 39. The Charter provides for the usual provisions regarding Membership, Share capital, rights and duties of members, and the conditions of Membership including admission, exclusion, withdrawal or expulsion of membership.

As regards management, the primary responsibility rests with the Management Board and a Director is to preside over the General Meeting and sign the decisions taken at the General meeting and the Management Board, there being no post designated as Managing Director. The Management Board comprises of a Chairperson and two or more members of the Board.

An interesting provision in the Charter is the establishment of the monitoring council of the General Meeting comprising of not less than three members to supervise the activities of the management board and the members of the monitoring council are to participate in the meetings of the management board with the right to advise.

This Mechanism does not exist in other South Asian countries such as **India, Bangladesh, Sri Lanka** and **Pakistan** as the monitoring council enjoys apart from general powers of supervision, specific powers to decide matters such as convening the general meeting or providing loans to the management board in compliance with the Registration and the charter or monitoring loan disbursement, repayment and other operations of the loan committee.

China

The study of the Law of the People's Republic of China on Specialized Farmers' Cooperatives, 2007 shows that it provides a charter for the co-operative society and lays down the functions, capital and organisational structure under more than 57 sections.

Vietnam

The Bye law of 'Yen Son Livestock Co-operatives Union- Bac Ninh Province' from Socialist Republic of Vietnam contains only 23 Articles and gives a detailed analysis of the character of the society as 'a collective economy' organisation with a clear statement of the nine business fields, not mentioned in the Indian laws usually with greater emphasis and the form of the organisation but not its contents and the capital in the form of an authorised capital.

Three subsequent chapters detail the rights and duties of members and conditions for admission and termination of membership as well as organisation and management. The interesting feature is that the subjects of the general meeting are also stated even though in theory, the general body can take up any subject being the supreme decision making body.

Australia

Under the Australian Cooperatives Act 1992, persons willing to form a co-operative are required under Section 8(1) to hold a 'formation meeting' in which suitably qualified persons must be inducted to transact the following businesses. 1.) To consider and approve the proposed rules - By-laws in the other country law , 2.) To consider and approve a statement of the proposed primary activity or activities and objects of the co-operative society , 3.) to consider a disclosure statement already approved by the Registrar under section 9(1) indicating that the prospective members are adequately aware of their financial involvement or liabilities as members and 4.) to elect persons to constitute the first directors of the co-operative upon finalization of complete applications for membership.

Though the Registrar enjoys the power to approve the application which must be submitted in the form prescribed by the Registrar and also to ensure that the rules are in conformity with the Act , there is no provision laying down any model By-laws for adoption by the co-operatives as in most countries of the Asia Pacific region which suggest that the co-operatives enjoy autonomy in the making of their By-laws.

New Zealand

In New Zealand, the Companies Act 1993 encompasses co-operatives though a company may function without a 'constitution' because its functions are covered within the framework of the Companies Act, 1993. There is a separate law – co-operative companies Act , 1996 to register a co-operative company defined as a company under Section 2(a) (1993 Act) as one, the principal activity of which is in its constitution as being a co-operative activity and in which not less than 60% of the voting rights are held by transacting share holders. This suggests that a co-operative company must have a constitution unlike companies laying down rules and objects of its activities which approximate By-laws in some ways.

The power of registration of co-operative companies rests with the Registrar of companies and subject to his/her satisfaction that the application was submitted in the prescribed form duly signed by the authorized persons and accompanied by a statutory declaration made by each director stating that in his or her opinion the company is a co-operative company with statutory shareholding by transacting members and grounds for that opinion. Section 7 of the 1996 Act provides for simultaneous registration of a cooperative company under the companies Act 1993 as well as the co-operative companies Act, 1996.

In its actual functioning, the cooperative company has to abide by the provisions of the companies Act as it is essentially a company. The need for a separate By-laws does not seem to arise as cooperatives are not registered under a separate cooperative societies Act as in other countries of the Asia Pacific region. This system allows harmonious growth of companies and co-operatives which enables the co-operative to have flexibility in management and thereby meeting the special needs of co-operatives in New Zealand. This experience deserves study by other countries of the region.

Malaysia

In **Malaysia**, the Co-operative Societies Act, 1993 empowers the Registrar to approve the By-laws of the co-operative society and its amendments thereafter. The approval of By-laws is essential condition of registration. The Act does not provide any model bye law for adoption by the primary co-operatives or its contents. It is therefore not within the power of the Registrar to direct co-operatives to adopt By-laws as in some other common law countries save and except that the By-laws are to be made in conformity with the co-operative law. The Rules do not grant such powers to the Registrar either.

It may thus be concluded that by and large, common law countries follow elaborate laws and Rules and procedures which provide enormous powers to the Registrar which in the present context and also the ground experience suggest the need to curtail these powers and reduce the guidelines to absolute minimum to provide scope for the prospective co-operators to give to themselves the By-Laws they require. The following Chapter therefore attempts a synthesis of these two diverse approaches to By-law making without impairing the efficiency or viability of the co-operative society and on the basis a set of indicative By-laws for a Primary Co-operative Society has been attempted in Chapter-IV.

CHAPTER - II

Bye Law adoption procedure and the Rule Making power within Administrative Law

With special mention to the bye law making procedure of Self-Help Groups

1.0.0 The tabular statement at Annexure III is to be seen in the context of divergent co-operative legal systems and procedures prevalent in the region as explained in Chapter 1. In this background, it is now proposed to deal with the four leading issues raised in the first chapter.

1.0.1 *The ICA Principles* placed with the ICA Statement on Co-operative identity (Annexure IV) highlight members' participation and members' control as its two core principles. The laying down of a model Bye law for compulsory adoption by the co-operatives as in a number of countries' basic co-operative laws, therefore vitiates the operation of the two principles, as it leaves no incentive to co-operators for application of their minds to formulate bye laws when the easier option is available. Thus bye laws are not what the co-operators give to themselves but rather by laws given to them by the concerned authorities. Thus the provision laying down the model bye law in a co-operative for mandatory adoption is violative of the core ICA Principles and, an amendment that allows creative members' participation in making of bye laws deserves serious consideration. One way to do it is to restrict the legal provisions to matters of procedure including the forms and contents/subjects to be included in Bye laws and indicative guidelines of constitution of a General body, the Managing Committee/ Board of Directors etc. leaving scope to the co-operators to make provisions to suit their specific needs. This may even extend to provide indicative guidelines for Bye laws for different sectors such as co-operatives in housing, health and education activities but not to the extent of a model bye law or a legal provision that ensures obligatory adoption of the model bye laws.

1.0.2 The aforesaid points cover the first two questions which lead to the basic issue, namely the source of the powers to lay down the Bye laws for adoption of the co-operatives and even to give guidelines to co-operatives to frame bye laws. This matter falls in the realm of administrative and procedural law which in common law countries is sometimes more exhaustive and voluminous than the statutes increasingly restricting the autonomous character of the co-operatives. This is mainly derived from the Government's power to frame Rules under a clear

provision in the Act without usually any restriction about the scope of Rule making. Such a general provision allowing the department to make Rules as in Indian Co-operative Laws has enabled the Government to lay down either Model Bye laws in the Rules or a Rule that permits the Registrar to lay down a Model Bye law and to approve Bye laws. Once the Rules are drafted, these are to be laid on the table of the House and generally there is no discussion in the legislature on this matter which gives the stamp of approval to the Rules as no questions are asked about the scope of the Rules and if any provision in the Rule has transgressed the letter and spirit of the co-operative statute. Only when a provision is challenged in the courts the matter might come up for a judicial review but not otherwise. This leads us to the question – is it constitutionally proper to allow the power of Rule making to the Government? The answer is that it is up to the legislature and it is free to limit the scope of Rule making in the statute itself without which the power is taken to be unfettered and this probably explains the size of the Rules as in the case of the Delhi State Co-operative Rules, 2007 made under the Delhi State Co-operative Act, 2003 in India containing 170 provisions virtually covering every aspect of functioning of a co-operative registered under it. This matter has been gone into by the task force of the co-operatives appointed by the Government of India under Mr. Shivajirao G. Patil (Chairman) in 2009 [Report of the High Powered Committee (2009) on Co-operatives]¹, which recommended that this power to make Rules be scrapped or be taken away by suitable amendments restricting the Rules only to procedural matters. In fact, the model co-operative Act which has been circulated among the states (provinces) in India for adoption gives no Rule making power to the government. This is essential to create an environment conducive to the formulation of Bye laws in accordance with the ICA Principles and instead of a Model Bye Law, each country co-operative administration may evolve a participatory method of making bye laws at the stage of formation of co-operatives. A consultative process involving co-operative Federations and Regulatory agencies could be the first step in this direction to develop a proper working practice.

The aforesaid position implies that a view is to be taken on whether Rule making power which has vast scope should continue with the Government or the existing co-operative laws should be comprehensive to reduce the necessity of Rules to the minimum covering procedural matters so that making of Bye laws becomes more participatory. We may conclude by stating that a participatory bye law making requires a legal framework allowing for delegation of powers to the cooperatives restricting the role of the Registrar to ‘registering function’ mainly, and the power of what may be called ‘supportive superintendence’ but not full control. Purely from a functional point of view co-operatives deserve more participatory bye law making than the companies – Private and Public, being member owned enterprises/institutions with social objectives. To make this happen, the handholding role of Apex co-operative federations must

¹ Patil Shivaji Rao : Report of the High Powered Committee on Cooperatives May 2009, Ministry of Agriculture, Government of India

be institutionalised with creation of legal expertise within the federation to enable them to assist the Founders or Protem Committee. This could be best done by incorporating a provision in the co-operative law or if this is not feasible soon enough, a provision in the bye laws specifying this role of the federation would do which the Regulator should have no objection as their common goal is growth of vibrant and sustainable co-operatives. This point merits consideration. This would also make the financial contributions or the payment of annual subscription of the primary cooperatives to the federations beneficial to them and facilitate ‘dynamic bonding, interaction, education and experience sharing from the very outset to an enduring professional relationship based on mutual benefit. Law of Agency determines the legal status of the ‘protem’ committee or the founding group as an agent and the group intending to form a co-operative, the principal.

1.0.3 The fourth conceptual issue relates to the contents of Bye laws for social co-operatives. The concept of social co-operatives is a recent phenomenon and has been in existence in Italy from the 1980s, and under Korean co-operative law, social co-operatives have been accorded recognition as a distinct form of co-operatives. On examination of the activities of social co-operatives in Korea and Italy, it is seen that they are not what might be called ‘mainstream co-operatives’ engaged in economic enterprises providing services of varied nature but aiming at economic well being of its members. The social co-operatives on the other hand are engaged in providing its members with various forms of ‘social assistance’ enabling them to lead a better and secure life and in some cases raising their productivity and skill levels to make them employable. The main difference is that ‘main stream’ co-operatives cannot survive unless they generate a surplus by earning in excess of their expenditure to sustain their activities. The threshold level of financial performance gets higher for multipurpose co-operatives engaged in consumer, financial services, agriculture and value added activities connected with agriculture or industry. In case of social co-operatives, the threshold will vary according to local situations as the main objective is not generation of profit or surplus for distribution among members but providing services that the members critically need such as health care or care for the aged and physically challenged or differently abled people. The Bye laws of social co-operatives therefore will have contents different from other co-operatives thereby approximating them to social enterprises as such co-operatives discharge a social function that contributes to distinguishing them from companies².

1.0.4 A large unaddressed issue in the co-operatives of the Asia Pacific region is the rapid spread of SHG movement across the region especially in South Asia. The core principles of the SHG are about the same as those of the co-operatives as these are essentially small thrift and credit societies organised on ‘informal basis’ to mobilise capital to take up ‘income generation activities’ and in the process the SHGs have created enormous ‘social capital’ by bringing the

² Fici, A. (2012), *Cooperative identity and the law*, Euricse Working Paper, N.023 | 12

women in the development process and an innovative financial intermediation by linking the SHGs to banks. It is also seen that the SHGs have not emerged on their own but promoted by an agency – usually an NGO or as in case of Bangladesh’s ‘Grameen’ movement by a dedicated economics professor who provided the professional leadership and arranged bank linkage and a host of development support services to raise the members income and productivity³. Unlike the co-operatives, the SHGs adopt their own simple bye laws which are conceptually the same as those ‘adopted’ by the co-operatives though the bye laws of cooperatives are necessarily more detailed. The SHGs, because of their size of 10-20 members and activities are aptly described as pre-co-operatives and there is a strong case for eventual formation of a number of SHGs into co-operatives but this requires a catalyst – NGOs in most situations. This model of NGO led SHG-co-operative movement, which is coming up in India, therefore merits a close scrutiny because of its relevance to similar SHG movement elsewhere in the region, especially the key provisions of SHG Bye laws, framed by the SHG members themselves, seem to be relevant for selective adoption to make bye laws for Primary co-operatives more participatory and functionally effective. With this objective, an analysis of the work of NM Sadguru Foundation, an NGO in the Indian state of Gujarat which has successfully promoted SHGs and transformed SHGs into co-operatives has been made in next Chapter.

³ M. Yunus – Banker to the Poor : Micro-Lending and the Battle Against World Poverty - 2006

CHAPTER - III

Transforming of Self-help Groups into Co-operatives

Role of Non-Governmental Organisations in promoting integration of Self help Groups and such other organised efforts into co-operatives to sustain and broaden the base of co-operatives

1.0.0 N.M. Sadguru water and development foundation is one of India's leading Rural Development NGOs specialising in broad areas of natural resource management with focus on water resource development through low lift shallow Tube Wells and watershed development programmes with full involvement of communities as stake holders and resource managers. Sadguru Foundation acts as the catalyst and is responsible for organising the communities into a) user-groups b) Associations c) Self help Groups d) Irrigation Co-operatives. e) Horticulture Co-operatives and f) SHG Federations registered as co-operatives at the Taluka (Sub District) Level. The concept of Co-operatives is viewed by the Sadguru Foundation leadership as an integrative mechanism of eventually facilitating formation of the above groups engaged in various activities in to co-operatives, retaining however, their grass roots character of Self Help groups' formed to pursue a common skill or a resource/saving based activity. This is most pronounced in case of an irrigation Co-operative formed around a Lift irrigation facility, which binds members to a common land - water use programme and to adopt a common cropping pattern for ensuring proper distribution and use of water through field channels constructed with every one's family labour. Since financial inter mediation in the form of capital flow to production is the basis of financial sustainability, NM Sadguru Foundation (hereinafter referred to as 'SF') has put high emphasis on formation of 'women's Self Help Groups' and 'Thrift and Credit Societies' for mobilisation of savings and use it for income generation activities, the main objective being generation of surplus, enhancement of income and well being of the members. SF's interventions have covered hard core production activities as well as capacity building at the house hold level with women as agents of change mainly because women contribute over 80% of labour needed in wide ranging crop related activities – cultivation of seasonal crops of spices, vegetables, horticulture and floriculture, Vermicomposting, micro watershed management etc.

1.0.1 The Annual report of SF for the period of ending 31st March, 2013 indicates that it has developed 2407 village institutions in the form of 357 irrigation co-operatives, 7 women

horticulture co-operatives, 28 women's milk producer's co-operatives and 33 dairy co-operatives which include both men and women as members, 1466 informal women's groups as 'Self help groups', 20 watershed associations, 91 drinking water communities, 249 informal check dam users groups and lastly 141 youth clubs and farmers groups to take up different activities. The reason for stating such a detailed account of the work of Sadguru Foundation in social mobilisation here is its innovative approach of adopting diverse organisational structures to meet the objectives. Thus, lift irrigation cooperatives are registered as individual co-operatives but federated at the Taluka Level, also as a co-operative for effective resource use. in the same manner, women's horticulture co-operatives are federated as a Taluka level co-operative federation. However, the milk producer's co-operatives – also mainly women led, function as individual co-operatives because of strong existing market linkages. At the same time Women's Self Help Groups are mushrooming with thrift and Credit activities along with other users groups mentioned above providing diversity in approaches to resource use and development. The interesting point is the linkages between user's groups, SHG's, Co-operatives and the role of SF in facilitating the growth of informal groups into *first semi formal, and then formal co-operatives*. From the Annual report this transformation process becomes evident when a formal system becomes essential to take up activities after a certain stage of development. Thus, a study of informal bylaws adopted by SHG's under the leadership of SF therefore holds lessons for formation of co-operatives because SHG bye laws indicate that these SHGs could be termed as 'pre co-operatives'. For this, a comparison between the SHG Bye Laws in Dahod district in Gujarat now being followed and model co-operative bye laws adopted by primary co-operative societies in Bangladesh is attempted here.

1.0.2 The first notable feature of these two SHG bye laws is its size- SHGs organised by SF only contain *only 15* sections covering objectives, membership, management specially mobilization of savings and grant of loans, functions and duties of chairperson, secretary and treasurer followed by procedures of holding meetings, maintaining accounts and in particular the bank account. There are usual provisions for withdrawal of membership, disqualification of membership and dissolution of the group and for change in bye laws. The chief merit of these bye laws is a compact management group, minimum of record keeping/ registers and a straight forward procedure for savings and grant of loan and the method of recovering the same. Since, the bye laws are not as yet made under an existing law, the provisions are flexible. However, the bank linkage is not detailed save and except that the bank account is to be operated by any two members of the management supported by a resolution of the group. As regards collateral, there is no clear provision - presumably to ensure flexibility and decision on circumstances of each case though the concept of joint liability is provided in the bye laws. It seems that the bank linkage part could have been spelt out in details in the bye laws for ensuring that transactions were transparent indicating also the supporting role of the banks in the SHGs.

The model bye law of a primary co-operative society in Bangladesh contains as many as 32 provisions based on co-operative society Act 2001 laying down the conditions for formation of the co-operatives, acquisition of membership, formation of capital and its use and recovery of loans in addition to the usual provisions regarding the functions of the general body, management committee, treasurer and procedure for settlement of disputes and dissolution of the co-operatives. The Bye laws containing the exact list of 18 items and restricts an individual member's acquisition of share capital to not more than 1/20th of the total authorised share capital. The bye laws do not contain any requirement to conduct economic or the financial sustainability of the business activities the society may decide to take up, nor is any duty assigned to an individual member in this regard except that poverty alleviation is included as one its major objectives. Since the model bye laws have been prepared and circulated under the co-operative Societies Act 2001, it has acquired a legal sanctity and therefore all prospective co-operatives have to adopt these bye laws without making any change and these bye laws are to be approved by the Registrar upon receipt of an application for registration duly signed by the co-operators. Though it is open to the co-operators willing to form a society to suggest any change, in practice, most co-operators would like to follow the model bye laws *in toto* to facilitate registration without difficulty and later suggest amendments which will require also Registrar's approval. *This process leaves little scope for application of mind and is an example of a 'top-down approach' to bye-law making and therefore contrary to ICA identity principles 1995 which underscore members' autonomy and member owned institution character.* There is therefore merit in the point that bye laws need not be standardised except in its broad outlines and matters of internal governance i.e. capital foundation, the size of the management committee etc. should depend on the membership size and activities of the co-operators and to ensure the participation of women and youth, a Monitoring Committee could be formed by the general body with members serving a term on rotational basis to ensure optimum participation of the members specially women and youth in the management. A more straight forward system of extension of services to members including loans, credit inputs, extension services, marketing and processing support could also be provided in the cooperative bye laws by incorporating some flexible features of SHG bye laws into cooperative bye laws .

To conclude SHGs and Co-operatives at the Grass-root level have the same objective of financial intermediation and promotion of socio economic well being of the members. However, there are elements of *convergence* with co-operatives as well as *divergence* from co-operatives and in reality the SHG movement runs parallel to the co-operatives with bank linkages and thus competes for the same space. Where micro finance institutions (MFIs) are promoted by corporate and NGOs there is a change in the character of the SHG movement, in as much as it brings the profit motive of the investors of the corporate promoting the MFIs or even the banks and the NGOs, because their interests are to maintain the *divergence*.

In a situation where Government shareholding in the co-operatives is either withdrawn/limited

to low level under the co-operative statute operation of a financial intermediary agency like the SHGs as a part of the Micro-finance activities of a corporation/finance company/bank provides an uneven level playing field for the co-operatives, which may in the long run hurt the SHGs as well as co-operatives. There is thus a need to encourage convergence and not multiplication of financial intermediation agencies especially in rural areas. This paper argues that in the interest of the SHG movement, convergence of the SHG's into co-operatives is a desirable strategic objective to promote healthy growth of SHGs and to avoid its takeover by investor class in the interest of social justice and equity. This is also in the spirit of the Micro-finance Regulations now being considered in India and in this situation the SHG-based co-operative development activities of Sadguru Foudnation provide a workable model to synergise and integrate the two streams.

CHAPTER - IV

Framing a set of By-laws For Primary Co-operatives

*Framework and Content of a general bye-law for a primary co-operative enterprise
Including an indicative-model of Bye laws for discussion only*

Introduction

In the cooperative law framework of countries in the Asia Pacific region, bye laws hold two distinct positions. First, it provides Rules and procedures to form a co-operative and obtain registration, the provisions regarding capital structure, mode of acquisition of membership as well as withdrawal/cessation of membership, amalgamation and dissolution of co-operatives, and second by providing the functional framework covering matters such as audit, management and supervision, role of general body and the procedure of convening meetings of the general body etc. The other system includes the essential contents of an ideal bye law for a primary cooperative essentially within the legislation, and Rules only to the extent of smooth implementation of the legislation as in, Republic of Korea, Japan, Mongolia for instance.

In suggesting the draft guidelines and a model bye law for primary co-operative societies, in the next chapter, these diverse experiences have been taken into account with a view to making a comprehensive yet concise bye laws leaving as wide a scope as possible to the prospective co-operators to make bye laws keeping in view their special situation and the objects of the co-operative society they wish to form. At the most the indicative Bye laws suggested below may be considered for *adaptation* and *not adoption*.

What is outlined below is therefore not a draft or a Model Bye law but a set of indicative framework for the drafting of bye laws. A group approach to bye law making is advocated to ensure participation of members willing to form a co-operative. In this there has to be a role of the Apex co-operative Federation because usually the 'founders group' may not have people who could match those from the Government in a drafting legal document. This is essential as the Registrars may insist upon additional information regarding educational and advisory work in respect of co-operative principles, and the organisation and work already carried out. It may be mentioned that signing of bye laws by members is a condition of membership as it binds the members legally to the contract. Further, economic/feasibility survey is an unwritten

requirement before registration as the Registrar is within his powers to ask for it even if it is not in the law.

1.0.0 Framework

The Definition and Interpretations of terms stated hereunder that have been used in the process of preparation and adoption of these Bye-laws in order to ascertain their meaning are consistent with the appropriate country legislations governing co-operatives.

1. Cooperative Society
2. Cooperative Identity Statement (Principles, ethics and values of Co-operation)
3. Financial Year and Calendar Year
4. General Assembly, its composition, powers, responsibilities including the manner of electing the President or Vice President and conduct of its meetings
5. Annual General Meeting
6. Appropriate legislation and Registrar
7. Rules and Regulations
8. Member, Founding Member and Director
9. Election
10. Board of Directors/Management Committee and other Committees such as Audit Committee etc.
11. Monitoring Committee and other committees
12. Registrar
13. Amendment

1.0.1 Suggested Contents of a Bye law

1. Name, Address and Geographical Area of operation.
2. Objects.
3. Business and Social Fields of its activities – clarify if the society considers itself as a *Social Cooperative* or primarily a Business/economic enterprise to serve its members.
4. State the kind of member-participation envisaged in the economic or other activities and the kind of service that the society will provide to its members. And the quantum of minimum service that a member must avail as a condition of membership.
5. Details of the specific business fields such as organising production of seasonal crops or purchasing / selling of livestock or poultry animals, processing of agricultural produce or providing consumer, social educational or health services etc to be taken up by the co-operative.

6. The Charter of capital indicating the authorised share capital and the maximum number of shares that a member can hold without enjoying any additional voting right OR the provision for local bodies and other co-operatives to contribute to the share capital with or without voting rights and other methods of mobilisation of capital by way of loans, debentures etc. and deposits from non-Members; if allowed.
7. Membership qualifications including qualifications for nominal associate, institutional as well as non-members for inclusion.
8. Admission of new members, expulsion and readmission of members.
9. Rights and Duties of Members including voting rights and participation in management by rotation in committees other than the management committee and the special position to be granted to women and the youth for ensuring that the co-operative develops an orientation to not only involve women and youth in its work but also make a positive discrimination by taking up pro-women and youth programmes.
10. Conditions for withdrawal, termination or resignation of membership.
11. The provision for social audit and methods of conduct of social audit.
12. Role and functions of the general body and conditions for convening its meetings and specially an extraordinary general meeting and the power to create various committees including a monitoring committee the size of which shall be determined by the General Assembly and the membership of this committee shall be on rotational basis as 1/3rd of members will retire each year making it possible for larger participation of members in overseeing the activities of the society.
13. Constitution of Board of directors and committees for financial, social audit, education and training.
14. The Board of Directors, its powers and duties and also the Roles and functions of its president and the procedure for holding the meetings of Board of directors, and the powers and functions of the audit committees.
15. Procedure for the amendment of bye laws.
16. Procedure for amalgamation and dissolution of co-operatives.
17. Procedure for settlement of disputes.
18. Role of the concerned Apex co-operative federation.

The indicative set of Bye laws for a Primary Co-operative society

A. Name and location of the Cooperative intended to be organised.

1. *This enterprise shall be called the Co-operative Society (Limited).* *Co-operative*

- 1.1 The registered address of the co-operative shall be [*Place where the coop shall operate from*]
- 1.2 The area of operation of the co-operative shall cover the following village/villages/any such topographically limited and recognized area:

B. *Scope of socio-economic-cultural activities to be undertaken.*

2. The Cooperative shall strive to satisfy the needs of its Members through collective action and transparent governance by a democratically elected Board of Directors and the General assembly will be the supreme body responsible for governance of the activities of this co-operative especially all Policy matters and initiatives.

2.1 The co-operative shall engage itself in activities of thrift, education, environment-protection and improvement, by involving women and youth in its programme for ensuring their all round development apart from its core economic activity.

2.2 The co-operative shall carry out a Participatory Social Audit in a manner suitable to its resources and submit such report to the members and the Registrar of co-operatives annually after presenting the same before the General Assembly in a manner appropriate to the object of the co-operative.

C. *The objects of the co-operative shall be:*

3. The object and purpose of the co-operative shall be to promote the common interests of the members in production/processing/marketing/sale of and/or to provide services such as healthcare, education, transport etc. as may be required by the society, and/or to create a source of easy credit at fair and reasonable rate and to provide the opportunity for its members to democratically use and control the accrued socio-economic returns of the co-operative in a mutually beneficial manner.

3.1 To provide adequate input to members for production of goods and services on convenient and easy terms and to provide a common plan for marketing and sale of the marketable surplus as agreed upon by the latest General assembly in a financial year.

3.2 To enhance the methods of production by exchange of techniques and practices; and to arrange for storage, processing for value addition and provide such other services to its members by application of technology and informed practices.

3.3 To initiate, within the object of the co-operative, the sale of commodities and services including provision of credit at fair and reasonable rates, healthcare, education, processing of agriculture and other produce such as handicrafts, implements and machinery and any other economic activity.

3.4 To undertake such other activities as are conducive to attainment of the above objects.

3.5 To participate in all extension and technology transfer efforts and programmes taken up by the local authorities including agricultural research and university system in so far as they relate to the production function of the members to enable them to raise their productivity and incomes and thereby act as an agent of change and socio-economic well being of the members and their families especially women, youth and children.

3.6 To enhance productivity in the methods of production by exchange of improved techniques and practices and their adoption for the benefit of members.

3.7 To lay down a criteria for social audit in respect of the activities of the co-operative and to evaluate the outcome of social audit and to internalise the evaluation of social audit as a part of the ongoing monitoring and evaluation activity.

D. Role, Functions, Rights, Duties and Liabilities of Founding Members.

4. The Founding members [hereinafter referred to as F.M.] of a co-operative shall consist of the members who join to form a co-operative at the initial stage only till the first election to the Board of Directors of such co-operative and their Functions and Duties as Founding Members cease to exist upon the first – election.

4.1 The F.M. shall form a **Working committee** in situations of a sizeable number of persons willing to join the co-operative at the initial stage, and undertake activities towards mobilisation of funds and registration on behalf of the F.M.. with the support of the Apex federation and are responsible for conducting an ‘economic feasibility’ of the activities proposed in the bye laws and also impart pre-registration training emphasising - co-operative philosophy, its service orientation, its members being main customers of the service and commitment to promotion of common interest. The obligation to use the service of the co-operative by its members shall be underscored during training. The concept of active membership should be defined in the bye laws and adopted after due consideration qualifying the service that a member is required to avail.

4.2 The F.M. Shall undertake a socio-economic survey of the area of operation and the members prior to the preparation of Bye laws to educate members on the sustainability of the co-operative as an enterprise.

4.3 The F.M. shall participate in the Bye law making process and prepare the draft bye laws for submission to the Registrar and nominate a secretary to take minutes and organise pre-registration meetings and training.

4.3.1 Subject to further inclusion of items, the order of meetings including proceedings of the meetings of the F.M. shall continue to be kept by the secretary until Registration of the co-operative and shall include-

- a. Ascertainment of quorum.
- b. Reading, recording and approval of minutes of the last meeting.
- c. Report of the appropriate committees and the treasurer
- d. Any unfinished business
- e. New business
- f. Induction of Members
- g. Election
- h. Adjournment
- i. Amendment (if any)

4.4 The F.M. shall firmly discourage anti-cooperative spirit and train members in sustaining the co-operative as an autonomous organisation of members with a common objective.

E. REGISTERS and RECORDS TO BE MAINTAINED

5. The following books and papers shall be maintained by the co-operative:
 - a. A Register of Members
 - b. Cash Book, Ledger account for each member, (depositor and creditor in case of easy loan),
 - c. miscellaneous and contingent income and expenditure and purchase and sale of any goods etc.
 - d. Minutes Book to be signed by the Chairman and the Chief Executive
 - e. Share List or Register of Shares
 - f. A Stock Register & Cash memos with duplicate copies
 - g. Register of Social Audit
 - h. Visitors' Register and any other register prescribed by the Registrar or required by the co-operative.

The books of the co-operative shall be open to inspection to anyone interested in its funds except that no one shall be allowed to see the deposit accounts of any person without that person's consent in writing. Copies of byelaws and the Balance Sheet shall be supplied free on demand to any member.

F. Determination of the size and nature of membership(s).

6. Provided that the membership of the co-operative is voluntary in nature and based on homogeneity in terms of socio-economic conditions; area of operation and common interest, the co-operative may,

6.1 Invite qualified individuals irrespective of their caste, creed and sex to freely seek admission as members to the Co-operative and leave the Cooperative at free will upon serving a notice of three months. Any individual shall be eligible for admission as a member of the co-operative, if s/he has attained:

- [i] The age of majority under local laws and of sound mind; and is
- [ii] Ordinarily resident in the area of operation of the co-operative; and willing to avail the services of the co-operative and share the co-operative ideas and,
- [iii] Of good moral character.

6.1.1 Any person residing in the area of operation of the society may apply and obtain nominal or associate membership provided such a person is of limited means and shares the values of the society as well as the interest of the members.

6.1.2 The co-operative may accept deposits from such associate/nominal member under the terms and conditions as may be decided from time to time by the cooperative society and such a depositor will be entitled to apply for loans but shall not have the right to vote.

6.2 No individual shall be eligible for admission as a member of the co-operative, if:

- [i] S/he has applied for bankruptcy; OR
- [ii] S/he has been declared as an insolvent; OR
- [iii] S/he has been sentenced for any offence involving dishonesty or moral turpitude within 5 years preceding the date of his admission as a member; OR is following an avocation or occupation inconsistent with co-operative goals, philosophy and practices which will render such a person incapable of pursuing the common interest of members.
- [iv] S/he is already a member of similar primary cooperative society, excepting a land mortgage bank.

6.3 Notwithstanding the provision of any other byelaws, the State/provincial Registrar or the Central Registrar, in whose area of operation the co-operative is registered, may contribute on behalf of the Government to share capital of the cooperative to assist growth and sustainability. The share capital so contributed shall be retired in such period and manner as may be determined by the State or the Central Registrar in consultation with the Management Committee of the co-operative.

The Rights and Duties of members

6.4 Application for admission as members, other than those who join in the application for registration, shall be disposed of by the Management Committee. If the Management Committee

refuses to admit a person, it shall record its reasons for such refusal and communicate them to the person concerned. Any person, who has been refused admission, shall have the right of appeal to the Management Committee and further appeal to the Registrar of Cooperatives within three months of the date of communication of refusal. The decision of the Registrar, on such appeal subject to the ratification of the General Assembly by $\frac{1}{2}$ of its members, shall be final and binding on the co-operative.

6.5 No member shall be admitted during 30 days preceding the date fixed for any General Body Meeting of the Society at which office-bearers are to be elected.

6.6 Every member, on admission, shall sign his name and make his thumb mark in the Register of Members, and shall pay an admission fee of USD 1 (in equivalent currency) or an amount that may be fixed in the bye laws.

6.7 Every member shall nominate a person (or persons) to whom his share or interest or such sums out of share or interest, as may be specified by the member, shall, on the death of the member, be transferred or paid as laid down in these byelaws. Such nomination may, from time to time, be revoked or modified by the member and the number of persons who may be nominated by a member shall not exceed the number of shares held by the member.

6.8 The value of the share or interest transferred or paid to a nominee or nominees shall be determined on the basis of the sum actually paid by the member to acquire such share or interest. No share shall be withdrawn, but share may be transferred to a member or to a person duly qualified for membership and approved by the Management Committee.

6.8.1 Protecting the Member interest and providing service to members being the overriding objective of the co-operative, transactions with non-members shall not get precedence over the services given to the members and the transaction with non-members shall not exceed the percentage of the total business turnover of the co-operative if such provision exists in the co-operative statute and if not it shall be decided by the primary co-operative but shall not preferably exceed 25% of the business turnover .

6.8.3 The value of shares transferred shall, in no case, be more than the sum received by the Society in payment thereof.

6.9.1 A Member may be expelled for one or more of the following reasons by a resolution passed by the two third majority in a meeting of the general Assembly at which not less than half the members are present and voting.

- [i] Ceasing to reside in the area of operation of the co-operative;
- [ii] Failure to pay the share-money or amount due from him to the co-operative;
- [iii] Conviction of a criminal offence involving dishonesty or moral turpitude;
- [iv] Application for bankruptcy;

- [v] An action which may be held by the General Body as contradictory or contrary to the objectives of the co-operative, such as misapplying a loan and or proven involvement in professions such as money lending which are not in tune with co-operative principles.
- [vi] On obtaining Membership of a similar co-operative society.
- [vi] Failure to avail the minimum level of service from the co-operative for a considerable period as maybe prescribed.

Provided that the members so expelled shall have the right of appeal to the Registrar against the decision of the general Assembly within one month of the date of such decision and the order of the Registrar on the appeal shall be binding on the society.

6.9.2 Re-admission of expelled member

A member expelled under the provisions of this bye law may be readmitted by the General Assembly but not before one year from the date of expulsion, provided s/he satisfies the conditions of entry for members by a majority of 2/3rd votes in favour of such readmission. A member so expelled two times may not be eligible to apply for re-admission.

6.9.3 A person shall cease to be a member of the co-operative in one or more of the following circumstances:

- [i] Death;
- [ii] Ceasing to hold the minimum qualifying share;
- [iii] Withdrawal after three months' notice to the Secretary of the co-operative provided that the member withdrawing is not indebted to the Society and is not a surety for an unpaid debt; and provided further that the share/shares held by the member are disposed of in accordance with the byelaw.
- [iv] Permanent insanity;
- [v] Declaration of bankruptcy.

6.9.4 The member is required to furnish to the society with a full, authentic and accurate statement of his/her financial assets and liabilities or the annual income tax Return.

G. Formation of Committees

7. The following Committees may be formed with the approval of the General Assembly.

- 7.1
 - a. Management Committee or the Board of management by whatever name called
 - b. Audit and Finance Committee
 - c. Monitoring Committee

- d. Education and Social Audit Committee
- e. Emergency Credit Committee
- f. Cultural Committee

7.2 **The Management Committee** of the co-operative shall be constituted in the following manner:

[i] Nine [9] persons shall be elected for a term of Three years or as may be prescribed based on local situation from amongst the members by the General Body of the co-operative on the following basis: [a] One seat shall be reserved for women and one for youth¹; [b] The remaining seats shall be open and shall be filled up by election of any member of the co-operative;

7.2.1 Subject to the provisions in the co-operative laws in force regarding the size and the term of the M.C. so constituted by the General Assembly by election, at least 20% of members shall be drawn from the women and youth members of the co-operative on equal percentage basis.

No person shall be eligible for election as a member of the Management Committee of the co-operative if s/he:

- [i] is below 21 years of age; or
- [ii] is a paid employee of the co-operative; or
- [iii] holds any office of profit under the co-operative or receives any honorarium
- [vii] carries out any such activity contrary to the spirit of these bye laws or having a conflict of interest in any manner with the objects and functions of the co-operative.

7.2.2 The members of the Management Committee shall elect from amongst themselves the President and the Vice-President. The committee shall have the duties of dealing with policy matters, general management of the affairs, funds, and all records of the co-operative and to achieve this, it shall prepare an internal regulation in addition to the duties prescribed by these bye laws and by the General Assembly from time to time, the Management Committee shall:

- a) act upon Membership, declaration of profit, surplus and dividends and the promotion of representation of women and youth participation in the co-operative's management.
- b) create a Sub-Committee on Finance to disburse salaries and other monies and as well as determine the rate of interest of soft internal loans to be given to members only.

¹ ICA Youth network recognizes youth as any person under the age of 35 years. (ICA Global Conference – Cape Town, November 2013)

- c) authorise employment and managerial execution for the functioning of the co-operative.
- d) to accept or reject the resignation from a Committee member and in case of acceptance, to co-opt another member till the election of a Committee member by the General Body in his place.
- e) to invest the surplus funds of the co-operative in accordance with the Cooperative Societies Act and Rules framed there under;
- f) to purchase, sell, hire or otherwise acquire or dispose of property on behalf of the co-operative;
- g) on its own initiative and in consultation with the Monitoring Committee, constitute an Executive Committee headed by the Chief Executive and comprising of professional managers and delegate to it such powers and functions as it considers fit, and annul the committee with the approval of the General Assembly with not less than 2/3rd of the members present and voting to decide on the basis of a simple majority.
- h) conduct management and performance audit alongwith a social audit of the working of the co-operative covering an assessment of the member oriented efficiency of the co-operative enterprise and it shall be the duty of the Management Committee to report the findings of such audit to the members in the general body meeting.
- i) carry on the business of the co-operative and perform duties and authorise action consistent with law and these bye laws in the interest of the co-operative and its objects.
- j) ensure that business discussed or decided at the meetings of the General Assembly Management or Executive Committee are recorded in the proceedings books which shall be signed by the Chairperson, Chief Executive and all members present in the meeting.
- k) put in place a governance structure of the co-operative based on the principle of *one member one vote* regardless of the shareholding of members; under which nominal/associate members who are users of the services of the co-operatives as well as non users-investor-members, may participate in the governance if it is allowed in the statute, but shall not enjoy voting rights though they may attend the General body meeting.
- l) on being satisfied that there exists a need to borrow funds to carry out the activities of the co-operative to meet its objects stated in the bye laws have the power to transact a loan agreement either with a co-operative bank or any other co-operative

institution or banks and other financial institution approved by the Government and under such terms and conditions as may be approved by the Registrar.

Provided further that before seeking approval of the Registrar, the Management Committee shall consult the matter with the Monitoring Committee and place before the General Assembly in its next meeting for confirmation.

Proviso: A Management Committee member will cease to be so if s/he remains absent for three consecutive meetings or otherwise fails to perform the duties consistent with the letter and spirit of these bye laws, if s/he joins a committee of another co-operative and has a conflict of interest.

Further, that the committees other than the statutory committees may be dissolved on the grounds of failure to discharge duties, and after serving a notice of one month to the chairman of the committee concerned by the Management Committee (M.C.) for response and upon consideration of same, Management Committee shall place the matter before the General Assembly for a decision to reconstitute the Committee.

7.3 The Finance and Audit committee shall comprise of the Vice Chairperson of the Management Committee who will preside over its meetings and the empanelled auditors with the National federation, and cooperative experts nominated by the State federation. The Terms of Reference must be clear and the practice adopted by Self Help Groups involved in micro-credit in maintenance of accounts should be suitably adopted with co-operative method of management. Such terms and the Audit report must be signed and sent to the Registrar by the Vice Chairperson of the Management committee on an annual basis.

7.4 The Finance and Audit Committee shall be responsible for laying down the maximum amount of loan admissible to a member, conditionalities and procedure to be followed in granting the loan including re-payment schedules and also the terms under which it can grant loan to another society subject to the approval of the Management Committee and prior 'in principle' approval of the General Assembly on such financial matters.

The Monitoring Committee comprising of a maximum of 5% of total membership shall be formed by the General Assembly as a Standing Committee in which the members so nominated shall have a term of Six Months and on its expiry, shall retire so as to allow another group of members to take over and shall have due representation of women and the youth members of the co-operative society and elect a Chairman whose term shall be coterminous with that of the committee.

7.4.a The Monitoring Committee shall be responsible for overseeing the activities of the co-operative to ensure that these are so managed as to achieve the objects and serve the interest of the members by way of concurrent evaluation.

7.4.1 The Monitoring Committee shall nominate two secretaries for the tenure to write and submit its reports to the General Assembly and ensure that the By laws are complied with by the office bearers and the functional committees and all other members.

7.4.2 The Monitoring Committee shall review, monitor and evaluate the performance of the work of the co-operatives and bring such matters to the notice of the Management Committee which require urgent action.

7.5 All other committees as mentioned in 7.1 may be constituted by the Management Committee in conformity with the appropriate legislation for a term not exceeding 2 years.

A. Capital Structure

8. The **Maximum Credit Limit** of the Society shall be fixed by the General Body in accordance with the instructions laid down by the Registrar from time to time. The limit thus fixed shall be subject to the approval of the Registrar of co-operative societies, who may, at any time, reduce it or to raise it.

8.1 The financial **capital** and associated shareholding shall not reflect in the voting rights of members. The cooperative value of one member, one vote shall be maintained.

8.1.1 The Authorised share capital of the co-operative shall be _____

8.1.2 The minimum subscribed share capital of the co-operatives shall be _____

8.1.3 The Co-operative may avail Government Loans

8.1.4 The co-operative may invest in Government savings instruments and debentures, trusted securities, shares of other co-operatives and in such other instruments as may be approved by the Registrar of co-operatives

8.2 The Society may raise funds by:

- [i] Issuing of shares of the value in local currency as may be prescribed by the General Assembly and approved by the Registrar;
- [ii] Acceptance of savings deposits from members;
- [iii] Raising of deposits and sanction of loans to members;
- [iv] Accumulation of profits.

8.3 At the end of each financial year, not less than a quarter of the net surplus shall be saved as a Reserve fund, of which 10% is to constitute as an **indivisible fund**.

8.4 The Management Committee may from time to time create **special economic reserves** for realising the strategic objects of the Co-operative.

8.5 Treasurer shall be elected by the General Body to take charge of all moneys received by the co-operative from all sources and shall make disbursement in accordance with the directions of the Committee and shall sign the Cash Book in token of its correctness and produce the cash balance whenever called upon to do so by the Finance and Audit Committee or Auditor or any officer of the Cooperative Department.

8.6 The general Assembly during its Annual General meeting may declare a **dividend** from the net earnings remaining.

8.7 The co-operative may lend to other co-operative societies under the mutually accepted terms and conditions.

8.8 No transaction involving any receipt or payment for goods and services either received or rendered by the co-operative, shall be made by an office bearer alone, and signatures of at least two must be put on such instruments.

8.9 The co-operative management shall keep separate accounts for transaction with members and non-members and shall review the use of its services by the members periodically.

B. Human capital – the General body is free to decide on the nature of its membership within the spirit of the applicable law.

9.1 GENERAL ASSEMBLY OF THE SOCIETY

The General Assembly of the Society shall consist of the following:

- [a] Individual members of the Co-operative,
- [b] institutional members of the society vide nominations of a maximum of 1/20th of the total membership or 5 members, whichever is less.

9.1.1 The General Assembly of Members of the co-operative shall be convened at least once a year by Management Committee and the notice for the meeting shall be issued by the Secretary under the directions of the Management Committee.

9.1.2 A General Meeting shall also be convened by the Management Committee within 15 days of the receipt of a requisition for such a meeting signed by not less than 1/4th of the total members and upon receipt of the same, the Management Committee shall convene the meeting at the earliest.

Provided, at least a 15 days' notice, specifying the date, place and an agenda of the General Assembly Meeting shall be given to all members. The notice of the General Assembly Meeting may be given in one or more of the following modes:

- [i] Affixing a copy of the Notice at the co-operative's office or at some other prominent place in the area of its operation;

- [ii] By circulation of the Notice Book and the Notice will include the list of items to be discussed and facts thereon, and getting signatures of members on it;
- [iii] By post;
- [iv] By use of mass media and via email to members who are electronically connected.

Explanation for Quorum: The quorum for the General Assembly may be decided by the cooperative for itself depending upon its capacity of engaging membership. However it is ideal for the General Meeting to be represented by at least one-third of the total number of members or 30, whichever is less.

The quorum of the Monitoring Committee and the Management Committee shall be at least 3/4th of its total membership as laid down in 7.2 and 7.4 above)

If, at the hour fixed for a General Meeting, the quorum is not forthcoming, the Chairman of the meeting shall, if the meeting has been called on the requisition of the members, adjourn it, and no further General Meeting shall be convened on the strength of the requisition.

9.1.4 The President/Chairperson or, in his absence, the Vice-President shall preside over the meeting of the General Body. When both of them are absent, the members present shall elect a Chairman for the meeting.

Every member of the General Body shall have one vote [One Member-One Vote basis]. Voting by proxies shall not be allowed at the General Body. Unless otherwise provided in these byelaws, all questions shall be decided by a majority of votes of the members present. When the votes are equal, the Chairman of the General Body shall have a casting vote.

Without prejudice to the general provisions or the preceding byelaws, the General Body shall have the following powers and duties:

- a. The election, suspension and removal of the elected members of the Management Committee;
- b. Work Programme;
- c. Budget estimates for the next year;
- d. The consideration of the annual report, its Audited Balance Sheet, and Profit and Loss Account and the Inspection Notes;
- e. Disposal of Profits;
- f. Amendment of the byelaws;
- g. Transaction of any other business with the permission of the Chairperson of the General Body

- h. Each member present, at the General Meeting shall be entitled to exercise one vote only. The president shall have a casting vote.
- i. All business discussed or decided at the general meeting shall be recorded in a proceedings book which shall be signed by the Chairperson of the meeting. All decisions taken by the General Body in the Meetings shall be binding on all members and functional bodies and Committees of the co-operative.

C. Liability, Amalgamation, Disposal of surplus, Disputes.

10.1 The liability of a member for deficit in the assets of the co-operative, in the event of its being wound up, shall be limited to five-times the value of share capital subscribed.

10.2 The co-operative, if it deems fit through a resolution passed by 2/3rd members in a meeting of the General body meeting and the approval of the Management Committee, Audit Committee and the education Committee may amalgamate or take over co-operatives and co-operative assets that shall help in its development and growth.

10.3 The Management Committee shall reserve not less than 25% of the net surplus as the Reserve fund and all fees collected by the co-operative must be added to that fund, and is to be used save the 10% for the indivisible fund, to meet losses except those resulting from an excess of expense over income. The indivisible 10% of the 25% of the net surplus (Reserve Fund) may be divided only upon the approval of the Registrar and a resolution passed by 3/4th majority of a special General Meeting called specifically for the said purpose.

The accruing dividend may be declared by the Management Committee of not less than that prescribed under the local laws on the value of paid up share capital after reserving all funds and liabilities and be given to members accordingly.

10.4 The co-operative shall distribute from a maximum of 10% of the surplus, to its members in proportion to their transactions as 'patronage refund' with the co-operative in terms of interest paid on loans or received from 'savings' in case of co-operative banks and not linked to their contribution to the share capital.

10.5 All disputes are to be first settled by mediation through a maximum of 3 mediators appointed by the Chairperson - Management Committee in consultation with the persons aggrieved. An appeal to the decision of the mediators is to be settled through arbitration by an arbitral tribunal of which one member shall be selected by the person aggrieved and appointed by the Management Committee; and another by the Registrar, and the chairperson of the tribunal so constituted will be nominated by the two appointed arbitrators.

10.6 The Management Committee shall also create funds for purposes such as education, training, building, risks etc.

D. Amendment to the by-law shall be initiated only as a measure to improve internal governance or to comply with the requirements following the changes in public policy or law. No amendment to these by laws shall be carried out save in accordance with a resolution passed with 2/3rd majority at a General Assembly Meeting for which due notice of the intention to discuss the amendments has been given and resolutions proposing the amendment shall be referred to the Registrar within 7 days of its adoption for approval. Amendments shall be incorporated in the by-laws upon receipt of approval of the Registrar.

L. Miscellaneous

12.1 Active participation of **Women and Youth** in the management of the co-operative shall be encouraged and their role in the decision making to be revised periodically in consultation with the education Committee in the interest of equitable and wider participation.

12.2.1 The co-operative shall, besides its core economic activity, through its education committee, promote **activities related to cultural** exchange and development programmes to create general awareness and in particular awareness on environment protection and thrift and limits on consumerism, conservation of natural resources like water bodies, avoidance of wastage of water and power thereby promoting ethical entrepreneurship based on co-operative principles.

12.2.2 The co-operative shall manage its own public relations and affairs with the market and its customers through its communication channels and shall work towards having sound communication with other co-operatives for mutual benefit.

Annexures

- I. Reference By-laws from Asia and Pacific region**
- II. Provisions relating to the preparation of By-laws according to Indian State Laws**
- III. A Comparative Statement of Co-operative Laws regarding formulation of Bye Laws of primary co-operatives**
- IV. Principles of Co-operation**
- V. Excerpts from the Delhi State Co-operative Societies Act, 2003**
- VI. Questionnaire to be circulated along with the Draft Study on Bye laws of Primary co-operatives**
- VII. Questionnaire for the primary co-operative societies on the process of formulation of the co-operative bye laws and its contents**

I. Reference By-laws from Asia and Pacific region

A. Bangladesh

1. Model By-laws of a Central Co-operative Society made as per the Bangladesh Co-operative Societies Act, 2001 and the Rules made there under in 2004 and subsequent amendments.

B. Islamic Republic of Iran

1. Constitution of the Islamic Republic of Co-operative Economics

C. India

1. By-Laws of Primary Forestry Co-operative Society (Madhya Pradesh)
2. Dahod Taluka Women Horticulture Co-operative 1
3. Banswara (Rajasthan) Jalothan Sinchai Sahkari Sangh Limited
4. Objectives and byelaws of Jhalod Taluka Federation of Lift Irrigation Co-operatives
5. Model Byelaws for Primary Co-operative Agricultural Service Society Limited [PACS]

D. Japan

1. Articles of Association-2009 – Jigyodan
2. Model Rules-2011 – Jigyodan

E. Republic of Korea

1. Standard By law on General Co-operative
2. Standard By Law on federation of General Co-operative
3. Standard By Law on Social Co-operative
4. Standard By Law on Federation of Social Co-operative

F. New Zealand

1. Constitution of Electricity Ashburton Limited
2. Constitution of Farmers' Mutual Group
3. Constitution of Te Kaihanga Co-operative Limited
4. Constitution of Psis Limited
5. Constitution of Tui Bee Balme Co-operative Society

G. Nepal

1. Model Bye-laws of Saving & Credit Cooperative Society Ltd
2. Nepal Federation of Saving and Credit Co-operative Union.

H. Philippines

1. Sample Co-operative Annual Performance Report – Format from Philippines
2. STA. Cruz Savings and Development Cooperative (SACDECO)

I. Socialist Republic Sri Lanka

1. Sri Lanka Consumer Societies Union Ltd.

J. Socialist Republic of Vietnam

1. By-law of Yen Son Livestock Union
2. By-laws of Tien Phong Agricultural Union

Provisions relating to the Preparation of Bye-laws according to the Andhra Pradesh Co-operative Societies Rules-1964 & Karnataka Co-operative Societies (Amendment) Act, 2012 and the Karnataka Souhadra Act, 1997 as enacted in these two States (Provinces) in India

I. Andhra Pradesh Co-operative Societies Rules (1964),

Section 4. Model bye-laws:—

- (i) It shall be competent to the Registrar to frame model bye-laws for each class or classes of societies and to suggest modifications thereto, from time to time.
- (ii) Such model bye-laws shall be adopted by a society with such modifications, if any, as may be suggested by the society and agreed to by the Registrar.

[5. Subject-matter of bye-laws:— Added by G.O.Ms.No. 37, Agrl. & Coop. (Co-op.IV), dt. 28.1.2002.]

The bye-laws of a society shall not be contrary to the provisions of the Act and rules and may deal with all or any of the matters specified below and with such other matters incidental thereto as may be deemed necessary by this society:—

- (1) the name and address of the society;
- (2) the area of its operation;
- (3) the objects of the society;
- (4) the purpose for which its funds are applicable;
- (5) the payment, if any, to be made or the interest to be acquired as a condition for exercising the right of membership;
- (6) the nature and extent of the liability of the members for the debts contracted by the society;
- (7) the circumstances under which the withdrawal from membership shall be permitted;
- (8) the procedure to be followed in cases of withdrawal, ineligibility or death of members;
- (9) the privileges, rights and liabilities of a non-member;
- (10) the nature and amount of the share capital, if any, of the society and where there is a share capital, the maximum share capital which a single member can hold :

Provided that the value of the share in respect of Primary Agricultural Co-operative Societies and all other Agricultural Co-operative Credit Societies by whatever name they are registered, shall be Rupees Ten (G.O.Ms.No.355 (Agrl. & Coopn.) Department, dated 6.4. 1995).

- (11) the extent and conditions under which the society may receive deposits and raise loans and the procedure to be followed on such borrowings;

- (12) the entrance and other fees and fines, if any, to be collected from members;
- (13) the maximum loans admissible to a member and the conditionalities and procedure to be followed in granting loans repayment or renewals thereof and in recovering loans from members subject to the terms and conditions imposed by the financing bank for such loans;
- (14) the conditions under which loans and extensions of time for the repayment or renewal thereof may be granted to members;
- (15) the terms on which the society may grant loans to another society or the employees of the society;
- (16) the consequences of default in payment of any sum due by a member;
- (17) the method of appropriating payments made by members from whom moneys are due;
- (18) the interest and dividend payable on paid-up share capital to members;
- (19) the policy regarding interest payable by the society on its borrowings and by the members on the loans granted to them;
- (20) in the case of productive and distributive societies, the procedure to be followed in purchasing and selling stores, raw materials and finished products and in respect of stock-taking;
- (21) the constitution and powers of the representative general body and the restrictions and conditions subject to which the representative body may exercise its powers;
- (22) the manner of holding meetings, the right of voting at such meetings and the manner of making or amending of bye-laws;
- (23) the constitution if the Committee, the appointment and removal of the other officers, and the duties and powers of the Committee and such officers, and the term of office of the Committee and the manner of election of the members of the Committee;
- (24) the method of recruitment, the conditions of service and the authority competent to fix, revise or regulate the scales of pay and allowances to be paid to the officers and servants of the society and the procedure to be followed in the disposal of disciplinary cases against them;
- (25) the mode of custody and investment of funds and the manner of keeping accounts;
- (26) the authorisation of an officer or officers to sign documents and to institute and defend suits and other legal proceedings on behalf of the society;
- (27) services available to the members and the minimum value of business to be transacted or minimum value of services or facilities to be utilised in a cooperative year by a member;
- (28) the preparation and submission of the annual statements required by the Registrar and the publication of the same;
- (29) the affiliating of a society to any other society and the charges to be paid in respect of such affiliation;

- (30) the constitution and maintenance of various funds as required to be maintained under the provisions of the Act, rules or bye-laws;
- (31) constitution of supervisory council;
- (32) admission of Minors as members for purpose of providing services or benefits to them, specifying the nature and extend of such benefits as permissible under the laws applicable to such minors;
- (33) compulsory thrift to be collected from members specifying:
 - (a) Amount subject to Rule 18(2)(b)
 - (b) Periodicity of Collection
 - (c) Interest payable by society on such thrift
 - (d) Manner of linkage of thrift to eligibility of loans, terms & conditions of thrift including its refund to the member;
- (34) quantum, Nature, Manner and extent of business to be transacted with non members; and
- (35) manner of preparation and display of the list of members eligible to vote in General Body or in election.

II. THE KARNATAKA CO-OPERATIVE SOCIETIES (AMENDMENT) ACT, 2012

Section 5. Insertion of new section IIA. - After section 11 of the Principal Act, the following shall be inserted, namely:-

11A- Bye-laws. - (1) Every cooperative society shall make its bye-laws in accordance with the provisions of this Act, and the rules made there under.

(2) Except on such specific matters which the Act, or the rules have provided for and which the bye-laws may further regulate on but not contravene, the functioning of every cooperative society shall be regulated by its bye-laws”.

III. THE KARNATAKA SOUHARDA SAHAKARI ACT, 1997

Section 10. Bye-laws. -

(1) Subject to the provisions of this Act or rules, every Co-operative shall function in accordance with its bye-laws which as far as possible shall adhere to the Co-operative principles.

(2) The bye-laws of every Co-operative shall provide for the following matters, namely:-

- (i) the name, address and area of operation of the Co-operative;
- (ii) the objects of the Co-operative;
- (iii) conditions of eligibility, disqualifications for, and procedure for admission, withdrawal, removal or cessation of membership including that of the directors and office bearers;

- ["(iia) the rights, privileges, duties and liabilities of membership including those of nominal and associate members"] (Inserted by Act 21 of 2004 w.e.f. 31.3.2004.)
- (iv) recruitment and conditions of service of staff of the Co-operative;
 - (v) procedure to conduct the board meetings, rights of members including the right to vote and contest for elections;
 - (vi) the consequences of default in payment of any sum due by a member to the Co-operative;
 - (vii) the powers and functions of the general body and the manner of election of representative general body, if any, and matters which must be dealt with by the general body and by the representative general body, if any
 - (viii) the manner and frequency of convening general meetings and quorum required;
 - (ix) (Omitted by Act 16 of 2005 w.e.f. 1.6.2005.)
 - (x) the composition of the board and number of office bearers;
 - (xi) the extent and conditions for mobilisation of funds in the form of share capital, deposits, debentures, loans and other contributions from its members other than Government;
 - (xii) the powers, functions and duties of the President or Chairperson;
 - (xiii) the powers, functions and duties of Chief Executive;
 - (xiv) the terms and conditions on which the Co-operative may deal with non-members;
 - (xv) the manner of electing representatives to union Co-operatives and the Federal Co-operative;
 - (xvi) the nature and amount of authorised share capital of the Cooperative;
 - (xvii) the maximum shares which a member can hold;
 - (xviii) the maximum dividend payable to members on paid up share capital;
 - (xix) the purpose for which the funds may be applied;
 - (xx) contribution towards Federal Co-operative Fund and the constitution of various funds and their purposes;
 - (xxi) appropriation of amount out of the net profit specifically for the following:-
 - (a) twenty five percent towards reserve fund constituted by the Co-operative;
 - (b) three percent towards the Co-operative Education Fund, out of which one percent shall be towards the Co-operative Education Fund of the Federal Co-operative and the remaining to the Co-operative Education Fund of the Karnataka State Co-operative Federation Limited, Bangalore;
 - (c) Omitted by Act 21 of 2004 w.e.f. 31.3.2004.
 - (d) twenty percent towards the operational reserve to meet unforeseen losses or contingencies

Annexure III

A Comparative Statement of co-operative Laws regarding formulation of Bye Laws of primary co-operatives

S.No.	Country	Provisions in re Bye Laws ¹	Role of Registrar/Co-operative Development Authority	Adoption Procedure ²	Comments
1.	Australia	Section 8(1) under the Australian cooperatives Act provides for the holding of a formation meeting of persons intending to form a cooperative, which is to consider and approve the proposed Rules and by-laws for submission to Registrar for approval along with other necessary documents such as a disclosure statement already approved by the Registrar under section 9(1).	Registrar is the designated authority to approve the bylaws.	The formation meeting is to consider the draft by-laws and accord its approval for submission to the Registrar, there being no <i>model</i> bye laws prescribed in the Act itself for adoption.	For a developed country like Australia, the system suits the co-operatives.
1.	Bangladesh	The Bangladesh Co-operative Societies Act, 2001 includes the definition of 'bye laws' within the definition of co-operative law under section 2 but does not lay down any model bye law for primary co-operative societies or secondary societies such as the central co-operative society or the national co-operative union but there are several provisions in the statute that lay down matters that should be covered under the bye laws such as those under section 16 on the role of the general body and the matters to be considered in the	Section 13 lays down the procedure of amending bye laws subject to a condition that the Registrar is required to approve the proposed amendment within 60 days of the receipt of the same and if the Registrar does not accord such approval within this period then the proposed amendment will be deemed to have been approved.	This provision (section 13.) therefore should be seen as a departure from the practice of making the Registrar's power of approval absolute as grant of approval is a formality which enhances the autonomy of the primary co-operative society as it also enjoys the Right to formulate bye laws in keeping with the provisions of the Act and not be guided either by Model Bye law or a set of subjects laid down in the statute itself which will ensure a degree of member-participation in making bye laws not found in countries following a similar legal	Examination of the Model bye law of central co-operative society confirms the conclusion drawn as 35 provisions in the bye laws are essentially derived from the Main Act (2001).

¹ Provision in the national/provincial legislation pertaining to Bye Laws of Primary co-operatives

² Degree of Participatory adoption / Initiative of co-operators in making and adoption of Bye laws



2.	Bhutan	<p>Annual or special meeting of the general body and under section 17 the composition of the managing committee or the distribution of surplus to various reserve funds.</p>	<p>Article 8 of the Bhutanese co-operative Act 2001 lays down the provision for registration of a primary co-operative society that include the powers and functions of the co-operative as a legal entity.</p>	<p>Article 5 of the Co-operative Act, 2001 lays down the definition of Regulatory agency and its power in the Ministry of Home Affairs (MOHA). The chief duties are to register all co-operatives, collect annual reports including duly audited financial statements and Monitor and evaluate co-operatives to ensure that they abide by and sanction those that have violated this Act as well as their Constitution and Bye-laws and the policies and rules of the MOA. The registrar is also to provide legal services including training, information and advice to co-operatives and prescribe the implementation of rules of this Act after consultation with the cooperative sector including matters of Mediation and conciliation of cooperatives.</p>	<p>system (common law)</p>	<p>Art.13 defines the constitution as the document laying down the purpose, objectives, relations with government and other parties, and the overall framework of Decision-making and management and also defines the Bye laws of a co-operative as an 'amplification' of constitution that prescribe in detail the internal organization and management of the co-operative. They together lay down thirteen basic provisions to be included for registration.</p>
----	--------	--	---	--	----------------------------	---

	<p>Division, merger and consolidation of cooperatives; and dissolution and insolvency of cooperatives. This has been included in the definition clause of the Co-operative Act, 2001 under section 2. 12.</p> <p>At.28 provides that the MOHA shall prescribe rules for merger, consolidation, dissolution and insolvency of co-operatives after consultation with the co-operative Sector</p>	<p>The registering authority is the Administrative department for industry and commerce, Government of the People's Republic of China. No direct powers are laid down in the governing legislation. Provincial and National departments of Agriculture to provide guidance, support and help for the registration of such co-operatives under Art. 9. An elected Director General acts as the chief functionary of the Co-operative.</p>	<p>The Law on Specialised farmers' Co-operatives under Art.10 lays down the establishment and Registration requirements for a co-operative under the Act. Art.10.2 necessitates the co-operative having a Charter (Bye Law)</p>	<p>3.</p>
<p>Art.17 provides extra votes to members (not more than 20%) who have made large contribution to the capital.</p>	<p>Art. 11. 1 lays down the provision for the adoption of the charter unanimously by the members. And Art.12 lays down the matters that have to be included within the charter</p> <p>Art.22 gives the Membership Assembly (General body) powers to modify the charter within the scope of the Act.</p> <p>Art. 14 and 15 lay down the power and functions of the members</p>	<p>Membership to a co-operative is defined under Art.9</p> <p>Art.32 lays down the duties of</p>	<p>There is an overriding role of the Ministry of Co-operatives and the ICC in organisation</p>	<p>5.</p>



6.	Japan	<p>co-operative. A reference to Bye laws is made under Art.54(6) of the co-operative Sector economy law , 1370 (Persian Year) that also provides for the operational aspects of co-operatives such as duties of the Board of Directors and an inspection Board under Art.61 , Art.62 and Art.63 which are incorporated in the Bye laws</p>	<p>operatives in Iran and through their bye laws, executes functions of responsibility such as settlement of disputes and arbitration.</p>	<p>founding Members to meet as a General Assembly and adopt the constitution under the governing law.</p>	<p>and development of co-operatives in Iran.</p>
		<p>Japan has seven sectoral-activity specific laws which are seven at the moment covering all matters pertaining to the functioning of co-operatives in these sectors. Since the law provides the legal and functional framework, the scope for making by laws is limited to local situations that the members may like to incorporate and not the fundamentals.</p> <p>Article 26. (a) of the Consumers Livelihood Co-operative Society law, 1978 , Japan lays down the content of the by laws of a society and empowers the administrative authority to make a model by law for consideration and adoption by the co-operative society.</p>	<p>Article 74 of the Agriculture co-operative societies law of Japan lays down the procedure of registration specifying matters to be indicated by the farmers group willing to form the co-operative covering the membership, business, capital structure, etc.</p> <p>The co-operative society is to submit the application to the Registry office defined under Art.82 which is the regional legal affairs bureau or its branch exercising jurisdiction of over the place where the co-operatives are situated.</p> <p>The process of registration under Art. 74 of the Livelihood Societies Act is about the same as under the Agricultural Co-operative</p>	<p>The process is participatory and a handholding role has been assigned to the Founders Group to consider the businesses proposed to be taken up. Under Art. 55 of the consumers livelihood co-operative law, a 'charter' general meeting is to be convened to approve the bylaws and the adoption of business plan and all other details required for submission of application for approval by the concerned authority.</p> <p>Under Art. 59 (a), the authorities are required to notify within two months of receipt of the application its decision to approve the application or not.</p>	<p>A comprehensive co-operative law even if it is designed to cover a particular activity is a more efficient arrangement than a process that involves directed by law making.</p> <p>The provision of holding a charter general meeting and the role assigned to the promoters/leaders make the process of by law making participatory. This has been possible due to comprehensive nature of the sectoral co-operative law which precludes the need for elaborate Rules as in some common law countries.</p> <p>The Japanese system suggests that there is strength</p>

7.	Korea (Republic of)	<p>The Framework Act on co-operatives , 2012 under Art.2 defines "cooperatives" as a business organization that intends to enhance its partners' (members') rights and interests and so contribute to local communities by being engaged in the cooperative purchasing, production, sales, and provision of goods or services.</p> <p>Art. 16 lays down the provision for the preparation of the Articles of Association that provide 14 matters to be included within the bye laws and Art.17 define Bye laws and that, the matters excluded in the Articles of Associations must be incorporated in them.</p>	<p>Society Law, 1993.</p> <p>Art. 9 prohibits elected representatives of the government to play key roles in the co-operative management. Art.10 further cements the autonomous nature of co-operatives by directing the Government or Public officials to abstain from intervening in the co-operative's activities. The co-operative is registered under Art. 61 of the Act. Art.111 lays down the supervisory functions of the Ministry of Strategy wherein the powers to supervise the functioning of the co-operative is given to the Ministry while</p>	<p>Art. 15 lays down the procedure for the establishment of a co-operative and that the registration will take at the instance of the Mayor/Director in charge and the subsequent notification to the Ministry of Strategy.</p>	<p>in the argument for a comprehensive co-operative law that could incorporate provisions capable of meeting the needs of different sectors and thereby reduce the scope of Rule making to the minimum. This may enable the co-operatives to make their by laws exercising their own judgement under the guidance of the founders group.</p>
----	-------------------------	---	---	---	--

		<p>respecting the autonomy of the social co-operatives in as many as six key areas. Art. 112 provides for revocation of the registration and Art. 113 provides for a hearing before a decision is taken in this regards.</p>	<p>Under section 6 (2) application for Registration of a co-operative society must contain copies of the proposed by-laws signed by applicants for approval. Section 18 provides for amendment of by-laws. Under this, apart from the mandatory requirement of approval of the RG for any proposal of the society to amend its by-laws, the RG enjoyed the power to direct to amend its by-laws. On being satisfied that the existing by-laws where not consistent with the provisions of the law or amendments are required in the interest of the society.</p>	<p>The Internal Audit committee under section 49 of the Act is empowered to present expenditure reports as well as violation on by-laws.</p>
8.	Malaysia	<p>Section 2 of the Malaysian Cooperative Societies Act, 1992 (Amended in 2011) defines By-laws as by-laws registered by a 'society' under the provisions of the Act. Further, it defines an 'Inaugural General Meeting' meant for Promoters/Founding Members that is carried out in accordance with the By-laws.</p>	<p>There is no post of Registrar General in the 2011 Amended Act and under this the co-operative Commission set up by the Government shares the responsibility of administering the co-operatives. Section 86 gives powers to the Minister in charge to prescribe matters in respect of which a registered society may or shall make bye laws.</p>	<p>The registry takes note of the update and information provided to it by the management board and grants Registration to co-operatives under this Act.</p>
9.	Mongolia	<p>Art. 9 of the Law of Mongolia on co-operatives defines the Charter of a Co-operative (Byelaw) and its content. It is called the founding document</p>	<p>Registration to be carried out by the local registry within 30 days</p>	<p>Art.33 lays down the provision for a Monitoring council that has the power of supervision over the working of the management board.</p>

10.	Myanmar	<p>and lays down 19 basic provisions on the management and functioning of the co-operative.</p> <p>Section 10. lays down the provision for amendment to the bye laws only through a majority of members and the same is to be notified to the Registry within 10 days of such amendment.</p> <p>The co-operative Societies Law, 1992 includes the concept of a Primary Society under Section 2 that provides the definition of 'Society'. Section 3. lays down the basic principles of functioning of a society.</p> <p>Section 4 and 6 lay down the meaning and scope of bye laws of any society registered under the law.</p>	<p>Section 38 gives powers to the Ministry of Co-operatives and the Director General of the co-operative department to make Rules for the implementation of the co-operative law. And section 38 (b) lays down further powers to issue orders to implement the provisions of this Act.</p>	<p>The Registration of the society is valid when a draft bye-law is submitted by at least 5 founding members to the department of co-operatives subject to the approval of the Director General. Section 4 enables the society to give itself its bye laws and section 5 lays down the nature of share capital to be mobilised by the society.</p> <p>Section 5 lays down the principles of co-operation and the co-operatives and the unions formed thereof.</p>	
11.	Nepal	<p>Section 2.(f) of the Co-operative societies Act, 1992 defines Bye-Rules as the bye-rules of the concerned society or union under the Act. Section 5 lays down the provision for Registration where an</p>	<p>Section 21 provides the Appointment of the Registrar and Section 22 provides for delegated power of the Registrar to subordinate officers. Section 36 gives the power of inspection</p>	<p>Section 4 and Section 5 lay down that the members (founding) must provide the Registrar with an application to register a co-operative society along with two copies of the Bye rules to be</p>	

		<p>application needs to be made to the Registrar.</p> <p>Section 12 lays down the meaning and scope of the Bye Rules for primary as well as a union and that they can be amended with 2/3rd majority of the General Assembly.</p>	<p>and offer suggestions to the Registrar. Section 37 gives further power to the Registrar to examine the finance and accounting of the co-operatives.</p>	<p>adopted. The Certificate of registration is then granted to the society.</p>	
New Zealand	<p>The companies Act, 1993 encompasses co-operatives and to become a co-operative company not less than 60% of the voting rights are to be held by the transacting shareholders meaning those who use the services of the co-operatives.</p>	<p>The power of registration of co-operative companies is with the Registrar of companies and the companies Act contains provisions adequate for functioning of such entities. Hence, co-operative company specific by laws do not seem to be a functional requirement.</p>	<p>Similar to the registration Articles of Association of companies under the Act.</p>	<p>For a developed country like New Zealand, the system suits co-operative companies.</p>	

12.	Pakistan	<p>Section 3.a of the Co-operative Societies Act, 1925 defines Bye Laws and Section 7 lays down the conditions to be satisfied for registration</p> <p>Section 36 lays down restrictions to transact with non-members.</p>	<p>Section 4-A gives powers to the Registrar to issue a search warrant and to conduct inquiry in the working of the co-operative after serving a notice to the co-operative.</p> <p>Section 8 stipulates certain questions (disputed) that are to be answered by the Registrar.</p> <p>Section 16-A lays down Amendment to Bye laws by the Registrar's office itself.</p> <p>Section 71.2.c gives the Registrar the power to make Rules and prescribe matters and subjects to be included within the Byelaws of the co-operative</p> <p>Section 43-46 and Section 50-A gives wide powers to the Registrar to inspect, inquire and assess the damage against delinquent promoters.</p>	<p>Section 9 An Application along with the copies of Bye laws to be submitted to the Registrar by at least 10 persons who are ordinary residents of the area of operation of the co-operative and with common objectives.</p>	
-----	----------	--	---	---	--



13.	Philippines	<p>Article (Art.) 10. Of the Philippine Co-operative Code , 2008 lays down the provision for organising a primary co-operative subject to the successful completion of Pre-membership Education seminar.</p> <p>Art.13 The 'Term' of a co-operative is 50 years unless otherwise extended.</p>	<p>Art. 10 Compliance with the Minimum requirement set by the Co-operative Development Authority to grant registration to all multipurpose society.</p> <p>Art.11 An economic survey to be carried out by all prospective co-operative members and co-operatives indicating the size of membership, area of operation and other pertinent data as prescribed by the CDA.</p> <p>Art 16. Co-operatives are formed and registered under this provision.</p> <p>Art.139 lays down the implementing Rules and regulations and Art.140 lays down the penal provisions in case of misuse of the Co-operative code and the registration process thereunder.</p>	<p>Art. 14 The prospective co-operative and its members must file an 'Articles of Co-operation' with the CDA along with a general Statement under Article 11, copies of the Bye-laws including 15 matters to be included in the bye laws as per Art.15.</p>	
-----	-------------	--	--	---	--

14.	Sri Lanka	<p>Section 36. of the Co-operative Societies Act No.5, 1972 define and bind the members of a registered society by its bye-laws</p> <p>No provision for a Model Bye law is provided in the statute.</p>	<p>Section6. Registration upon satisfaction of the Registrar</p> <p>Section7. Certificate of Registration</p> <p>Section8. Amendment becomes valid subject to the Law and Rules made thereunder and registered with the Registrar.</p> <p>Appeal lies with the Minister in charge.</p> <p>Section 60. An appeal for rejection of Membership to a society can be taken up with the registrar.</p> <p>Section 61. The Minister in charge to make Rules on as many as twenty five matters for the purpose of carrying out the provisions of the law.</p>	<p>Section5. lays down the provision of 'Application to be made to Registrar' by at least ten persons who qualify as per the conditions of section4 [of 18 years and ordinary residents] and the society to be registered must satisfy the conditions laid down under section3 [in accordance with co-operative principles].</p>	
15.	Singapore	<p>The definition clause of the Law on Co-operatives in Singapore, 1962 defines "Bye-laws" as the registered Bye-laws made by a society in the exercise of any power conferred by the Act, and includes a registered amendment of the Bye-laws;</p> <p>Section 15 lays down the provision for amendment of the bye laws.</p>	<p>The Registrar of Co-operative Societies and the Assistant Registrars of Co-operative Societies are appointed under section 3, and include a person exercising such powers of the Registrar as may have been conferred upon him under that section and the Rules made under section 95;</p>	<p>Section 14 grants powers to the society to make bye laws subject to the approval of the Registrar and the matters (22 in number) to be included in the Bye laws are given under the schedule to the Act.</p> <p>Section 16 expressly binds the members of the co-operative with the provisions of the bye law.</p> <p>Section 20 provides for every society to keep a copy of the</p>	

	<p>Act, the Rules, its bye-laws and a list of its members open to inspection by its members free of charge, at all reasonable times at the registered address of the society.</p>			
	<p>The Founding Committee to deal with the Registrar's office (the Permanent Secretary of the Ministry of Agriculture and Co-operation)</p>	<p>Section 44. Amendment to bye-laws to be registered with the registrar Section 45. Dispute over Interpretation of Bye laws to be settled by the Registrar</p>	<p>Section 43. of the Co-operative Act, 2542 includes 10 sub-sections that list out the basic components of the bye laws.</p>	<p>Thailand</p>
<p>The co-operatives are subjected to a strong control regime which leaves little scope for making a society /location specific Bye laws through a participatory process. It is also observed that the Vietnam law defines co-operatives primarily as a 'collective economic organisation' without emphasising its social function through a dynamic member participation of the society in the management.</p>	<p>Articles 29 - Art.32 indicate the powers and the task of the General Meeting of the members, constitution of Board of directors and the post of the General Director.</p>		<p>Art. 2 of the Co-operative Law, 2012 lays down the content of a charter /Bye law of a co-operative society and Art.27 lays down the procedure of amending the same.</p>	<p>Vietnam</p>

Principles of Co-operation

1. Voluntary and Open Membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

3. Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4. Autonomy and Independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6. Co-operation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. Concern for Community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

Colour Index

- **Red** - Represents the courage to stand together.
- **Orange** - Represents hope and offers the vision of possibilities.
- **Yellow** - Represents warmth, friendship and concern for others. It also represents the challenge that green has kindled.
- **Green** - Indicates a challenge to strive for growth in co-operatives and individual members as we learn more about ourselves and others.
- **Sky Blue** - Represents unlimited horizons and possibilities and the need to provide education and help the less fortunate. It also represents unity with all peoples of the world.
- **Dark Blue** - Represents hard work and perseverance - the challenge of working together to achieve our goals of harmony, equality and economic efficiency. It also represents the less fortunate who can learn to help themselves through co-operation.
- **Violet** - Represents warmth, beauty, friendship and respect for others.

Excerpts from the Delhi State Co-operative Societies Act, 2003

Bye-laws of co-operative societies

Section 11. (1) Every co-operative society may make its bye-laws consistent with the provisions of this Act and the rules made thereunder.

(2) In particular and without prejudice to the generality of the foregoing power, such bye-laws may provide for all or any of the following matters, namely :-

- (a) The name, address and area of operation of the society;
- (b) the objects of the society;
- (c) the services to be provided to its members;
- (d) the eligibility for obtaining membership;
- (e) the procedure for obtaining membership;
- (f) the conditions for continuing as member;
- (g) the procedure for withdrawal of membership;
- (h) the transfer of membership;
- (i) the procedure for expulsion from membership;
- (j) the rights and duties of the members;
- (k) the nature and amount of capital of the society;
- (l) the manner in which the maximum capital to which a single member can subscribe;
- (m) the sources from which the funds may be raised by a co-operative society;
- (n) the purpose for which the funds may be applied;
- (o) the manner of allocation or disbursement of net profits of co-operative society;
- (p) the constitution of various reserves;
- (q) the manner of convening general meetings and quorum thereof other than those provided under this Act;
- (r) the procedure for notice and manner of voting in general and other meetings;
- (s) the procedure for amending the bye-laws;
- (t) the number of members of the committee not exceeding twenty one;
- (u) the term of office of elected members of a committee shall be three years;
- (v) the procedure for removal of members of the committee and for filling of vacancies;
- (w) the manner of convening committee meetings, its quorum, number of such meetings in a year and venue of such meetings;

- (x) the frequency of committee meetings;
- (y) the powers and functions of the paid executive;
- (z) the manner of imposing the penalty;
- (za) the appointment, rights and duties of auditors and procedure for conduct of audit;
- (zb) the authorisation of officers to sign documents, operate of bank accounts and to institute and defend suits and other legal proceedings on behalf of the society;
- (zc) the terms on which a co-operative society may deal with persons other than members;
- (zd) the terms on which a co-operative society may associate with other co-operative societies;
- (ze) the terms on which a co-operative society may deal with organisations other than co-operative societies;
- (zf) the procedure and manner for transfer of shares and interest in the name of a nominee in case of death of a member;
- (zg) the educational and training programmes to be conducted by the co-operative society;
- (zh) the principal place and other places of business of the co-operative society;
- (zi) the minimum level of services, to be used by its members;
- (zj) any other matter which may be prescribed.

RULES AND MISCELLANEOUS PROVISIONS

Power to delegate

Section 136. The Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act, except the power to make rules, may also be exercised by such officer as may be mentioned therein in such cases and subject to such conditions, if any, as may be specified therein.

Power to make rules

Section 137. (1) The Government may, by notification published in the official Gazette, make rules for carrying out all or any of the purposes of this Act and for any class of co-operative societies.

- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely -
 - (a) prescription of viability norms for registration of a co-operative society;
 - (b) the maximum number of shares or proportion of the capital of a co-operative society which may be held by a member;
 - (c) the form to be used and conditions to be complied with in making of application for the registration of a co-operative society and the procedure in the matter of such applications;

- (d) the procedure to be followed in making, altering and abrogating the bye-laws and the conditions to be specified prior to such making, alteration and abrogation and compulsory amendment of the bye-laws by the Registrar;
- (e) the procedure and conditions for change in the form and extent of liability of a co-operative society;
- (f) procedure for amalgamation, transfer of assets and division of co-operative society;
- (g) classifications of co-operative societies with reference to their objects, area of operation, membership or any other matter by the Registrar;
- (h) conditions to be complied with by a person applying for admission or admitted as member;
- (i) admission of any person as nominal, associate or joint member and the terms and conditions and the procedure to be followed therefor;
- (j) right of membership to be acquired only on payment made towards membership and interest to be acquired to exercise the right of membership and the manner in which vote can be exercised;
- (k) restriction on transfer of shares or interest;
- (l) transfer of interest on death of a member, procedure and liability of past member and estate of the deceased member;
- (m) the proportion of individual and co-operative society in the constitution of the committee and the general body of co-operative society of which other co-operative society is a member and the power exercisable by such committee or general body;
- (n) the procedure for holding of annual general body meeting, time to be given for finalising the accounts at the close of the co-operative year, consequence of failure of a committee to conduct the annual general body meeting in time and action by the Registrar to conduct the same and recovery of the expenses as arrears of land revenue from the defaulting persons;
- (o) details of the returns and their format to be filed relating to the constitution, business and allied matters by a co-operative society within thirty days of holding of the annual general body meeting;
- (p) the procedure for holding a special general body meeting and recovery of expenses from delinquent officers of the committee;
- (q) the constitution of the committee of a co-operative society for its management, procedure for nomination of members on the committees where the Government has contributed equity share capital and the Government guarantees have been given for loans or floating of bonds;
- (r) the procedure for holding of the elections and the steps to be initiated for such election before the expiry of the term, appointment of an administrator on failure to conduct elections and to conduct election within ninety days, recovery of expenses from the delinquent officers of the committee in cases of default;
- (s) prescribing reservation of seats for schedule castes, other backward classes and

woman on the committee, where share capital is subscribed by the government and reservation of two seats for woman in all types of co-operative societies;

- (t) rules and procedure for conducting the election of the committees;
- (u) the procedure for making a motion expressing lack of confidence in the committee or any of its officer in the special general body meeting convened for the purpose and setting up an ad-hoc committee to conduct fresh elections within the period of ninety days;
- (v) the modalities to be complied with before supersession of the committee of a co-operative society and constitution of the new committee by the administrator before the expiry of his term;
- (w) procedure for authorisation to Sub-divisional Magistrate for securing possession of records of a co-operative society;
- (x) the manner in which funds may be raised for running the business of a co-operative society,
- (y) the procedure to be followed for cessation of membership in a cooperative society.
- (z) procedure to be followed for expulsion of members other than members of co-operative housing societies;
- (za) the procedure for certifying any entries in the books of a co-operative society and charges to be levied for supply of copies thereof;
- (zb) the formation and maintenance of reserve fund and other funds, and the objects to which such funds may be applied and allocation and distribution of the net profit arrived thereafter;
- (zc) the amount and percentage of net profit to be contributed by a co-operative society for Co-operative Education Fund and its utilisation;
- (zd) manner in which a co-operative society may invest or deposit its funds;
- (ze) the limit up to which a co-operative society can receive deposits and loans, conditions for it;
- (zf) prohibitions and restrictions subject to which co-operative societies may transact business with the persons who are not members;
- (zg) the manner of getting the audit conducted by an auditor on the panel of the Registrar within the prescribed time limit, action by the Registrar on failure to comply with the time limit by a co-operative society and recovery of expenses for getting the audit conducted as arrears of land revenue from the officers of the committee;
- (zh) the manner in which a copy of audit report to be sent to the Registrar and rectification of defects by a co-operative society reported in the audit report by an auditor;
- (zi) the manner in which inspection, inquiry and inspection of books of indebted co-operative society is to be conducted, the security money to be deposited by a creditor for such inspection and the follow up action to be taken on the findings including the rectification thereof;

- (zi) the accounts and books to be kept by a co-operative society during the course of its business and on failure to do so, to get them completed by the Registrar by engaging other persons as a charge on the committee recoverable as arrears of land revenue, the procedure and fee to be charged for it;
- (zk) the manner in which disputes to be referred for arbitration and fee for it;
- (zl) the procedure for selection and appointment of members of arbitration council, their terms and conditions of service and related matters;
- (zm) the procedure to be followed before the Registrar or arbitration council for settlement of disputes and guidelines and the format for announcing the award;
- (zn) the manner in which the affairs of a co-operative housing society shall be managed, rights and privileges of members on allotment of plot or flat, issue of certificate of allotment giving therein the details of plot or flat and the rights and privileges of member therein and member's obligations towards the co-operative society;
- (zo) the procedure for the allotment of plot or flat by draw of lots and for the verification of membership or change in the membership, with special reference to co-operative housing societies which have been allotted land on leasehold right basis by the lessor;
- (zp) the manner in which membership can be transferred in a co-operative housing society to heir or a nominee subject to the terms and conditions of the lease of land;
- (zq) the manner in which occupancy rights may be transferred in a co-operative housing society subject to right of the lesser in terms of lease deed of the land;
- (zr) the guidelines for the creation, maintenance and utilisation of the building maintenance fund and replacement fund in a co-operative housing society;
- (zs) the manner in which a mortgage in favour of a co-operative housing society or apex can be registered, its procedure and format;
- (zt) the procedure and manner of settling disputes in a co-operative housing society;
- (zu) the procedure for recovery of outgoing and arrears of dues of co-operative housing society or the apex by the Registrar as arrears of land revenue;
- (zv) the recovery of dues and foreclosure of properties in respect of dues of a co-operative housing society, apex and other approved housing finance institutions;
- (zw) the manner and procedure in which a member of a co-operative housing society may be expelled;
- (zx) the manner and procedure in which the membership of a member of co-operative housing society can be ceased;
- (zy) the guidelines for the management of co-operative housing societies;
- (zz) the guidelines for the maintenance of essential services in a co-operative housing society;
- (zza) the form of register of the properties to be maintained by co-operative housing society;

- (zzb) the manner of regularisation of membership of persons who have acquired property in a co-operative housing society as power of attorney holder or purchaser of property through agreement of sale and purchase subject to right of lessor and procedure for enforcement of time limit for conversion of property to freehold;
 - (zzc) the prescription of the guidelines for execution of co-operative housing projects and procedure for initiating action in case of default;
 - (zzd) the prescription of the guidelines for the management of co-operative housing complex by the co-operative housing societies;
 - (zze) the manner in which a house building co-operative society which has achieved its objects is to be wound up and the scheme therefor subject to the prior consent of the lessor;
 - (zzf) the procedure to be followed in respect of co-operative societies which have decided for the dissolution or where liquidator has been appointed for winding up proceedings by the Registrar and finalisation thereof;
 - (zzg) the manner of service of notice regarding the procedure for enforcement of charge;
 - (zzh) the manner of effecting execution of orders and attachment;
 - (zzi) attachment before award and authorisation of officers by the Registrar for taking custody, preservation and sale of property under attachment, recovery of debt as arrears of land revenue, specifying officers who can be delegated powers of the Registrar to attach property before announcement of the award;
 - (zzj) recovery of dues as arrears of land revenue procedure for it;
 - (zzk) the procedure to be followed in presenting and disposing of appeals;
 - (zzl) the procedure for selection of members of the Tribunal, laying down the qualifications and the terms of the Chairman and the members of the Tribunal, and framing of regulations for the working of Tribunal;
 - (zzm) the procedure for submission of application for review;
 - (zzn) the procedure for making submission for revision;
 - (zzo) issuing directions to the co-operative societies to frame service rules for employees;
 - (zzp) fee to be fixed for supply of documents and information to a member or a creditor;
 - (zzq) the method of communication or publishing any order, decree or award required to be communicated or published under this Act or the rules;
 - (zzr) any other matter which is required to be, or may be, prescribed under this Act.
- (2) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly of the National Capital Territory of Delhi while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification to the rule or the Legislative Assembly agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be,

so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of the Registrar to give directions to the co-operative banks

Section 138. The Registrar may generally or in any particular matter under this Act or for enforcement of directions of the Reserve Bank to protect the interest of members and depositors of the co-operative banks licensed by the Reserve Bank and registered under this Act or operating in Delhi under the Multi-State Co-operative Societies Act, 2002 (39 of 2002), issue such orders or directions as he may consider necessary to a co-operative bank or banks and thereupon such co-operative bank shall give effect to such orders or directions and shall report to him the compliance within the time specified in the order or direction.

Addendum

1. ILO recommendation 193 for the promotion of Co-operatives - 2002 [http://www.acdivocacoopex.org/acdivoca/CoopLib.nsf/dfafe3e324466c3785256d96004f15a8/de14ef6cd782f82c85256f02005379fd/\\$FILE/ILO%20Recommendation%20193.pdf](http://www.acdivocacoopex.org/acdivoca/CoopLib.nsf/dfafe3e324466c3785256d96004f15a8/de14ef6cd782f82c85256f02005379fd/$FILE/ILO%20Recommendation%20193.pdf)
2. UN Guideline for Cooperative Development 2001
<http://www.un.org/documents/ecosoc/docs/2001/e2001-68.pdf>

I. Questionnaire to be circulated along with the Draft Study on Bye laws of Primary co-operatives

6 September 2013

1. Is there a common co-operative law applicable to co-operatives in diverse sectors or separate laws for sector-specific co-operatives such as agricultural co-operatives?
A-
2. Does the co-operative law empower the government to frame 'Rules' made under the co-operative law covering all aspects of functioning of co-operatives, and indicating the powers exercisable by the Government Authorities especially the Registrar of cooperatives?
A-
3. Whether the co-operative law contains provisions for the formulation of bye laws for Primary, Secondary, Tertiary / Apex level? If so, please send extracts of these provisions, if not, Please Indicate if the co-operatives are entirely free to formulate bye-laws for themselves within the framework of the co-operative law.
A-
4. What are the statutory powers of the Registrar of Co-operatives to approve the Bye-laws and whether such powers are absolute or if there are provisions for granting a *deemed approval* if the approval was not granted within the time frame under the law?
A-
5. What are the matters covered under the Rules and whether the Rules contain provisions for making bye-laws such as subjects to be covered in the bye laws or 'A model Bye law' for compulsory adoption by co-operatives?
A-
6. Should the Government *ideally* have the power of Rule making that enables it to confer vast powers of 'superintendence, direction and control on the Registrar and officials of the co-operative department in the Rules reducing the autonomy and the basic 'Member owned and managed character of co-operatives'" and whether the aforesaid powers are in conformity with the letter and spirit of the co-operative law?
A-
7. What is the 'Degree of Participation' of members willing to form co-operative at the primary level in making of bye laws and if this is satisfactory in terms of the International Co-operative Identity Statement?
A-

8. What should be the appropriate **participatory method** or procedure of making bye laws at the primary co-operative society level?
- A-
9. Whether the existing process of making bye laws includes considerations of **financial sustainability** or economic feasibility of the enterprise of the proposed co-operative by the members at the stage of forming the co-operative society? If not, what should be the best way of achieving viability?
- A-
10. What should be the appropriate arrangement in the Bye laws for **distribution of surplus** in the form of various Reserve funds especially fund for education and training of co-operatives?
- A-
11. Whether according due representation to **women and youth** in management of primary co-operative society is embodied in the bye laws of the primary co-operative societies as a matter of practice? If not Should such provisions be included in the bye laws?
- A-
12. Whether provisions for concurrent **monitoring and evaluation of the activities** of primary co-operative societies exist in the bye laws. If not, should a mechanism in the shape of a committee be formed with adequate representation of women and youth to oversee the activities to ensure that its social development objectives are fulfilled through conduct of a social audit on regular basis?
- A-
13. What should be the contents of bye laws of a large **multipurpose co-operative society** as distinct from the bye laws of a single purpose primary co-operative? What should be the mechanism built into the bye laws for optimising members' participation in management?
- A-
14. Since members' participation as users of services of co-operatives to an extent specified in some country laws is an essential condition for **retaining membership of a primary co-operative society**, What should be the quantum of use of such services to become an active member and if that could be laid down in the bye laws to avoid undue presence of non-active members who are not too keen to become real stakeholders and might contribute to outside influence in the management of co-operatives detrimental to the pursuit of its objectives?
- A-

II. Questionnaire for the primary co-operative societies on the process of formulation of the co-operative bye laws and its contents

1. What or who motivated you to form a co-operative society? [Please mark]
 - A social leader OR a local elder OR a religious leader (e.g. a church functionary in a Christian society?)
 - A Government Officer who informed that as a matter of policy certain benefits are only admissible to those who agree to form a co-operative society?
 - A felt need to co-operate to overcome a local problem such as usurious terms of the local money lender, provision of irrigation, consumer goods at affordable prices or to develop a common facility centre like i) Processing of agricultural produce ii) Hospital, school?
2. How did you select your core business activity and social objectives?
 - By mutual or group consultation?
 - Advice of an expert that you might have engaged on your own?
 - By advice of a Government official?
 - According to a techno-economic survey carried out by independent experts?
 - Your own assessment of viability of the business?
3. What is the size of the Membership of this society and the proportion of women and Youth to the society, and what is their level of participation in the activities? Are women or youth adequately represented in the Board of Directors? If not, what are the reasons?
4. Are you making a special effort to attract women and youth to join the co-operative or take up women and youth specific programmes?
5. How was the bye laws prepared?
 - By the Founding Members?
 - Did you see the first draft?
 - Was the draft bye laws discussed in the meeting of prospective co-operators clause by clause or you agreed to the provisions in good faith and signed the draft bye laws at the instance of the founding members?
6. What according to you are the most important clauses of the bye law?
7. Do you feel that the bye laws contain too many clauses and should be reduced in size? If so, please state the clauses considered redundant.
8. Did you face any difficulty in persuading the members to the clauses on allocation of surplus or creation of reserve funds? Was there any consultation with prospective members to discuss the bye laws clause by clause before sending it to the Registrar for approval?

9. How frequently are the meetings of the Board of Management held?
10. How many members do usually attend the General Body Meetings and the usual duration of such meetings?
11. Is the society engaged in any technology transfer or agricultural extension activity as for instance efforts to spread use of HYV seeds or fertilizers or any improved method of cultivation and processing of agricultural produce for value added products locally?
12. Is your society multi-purpose? And if so, what are your major activities and which of your activity is most remunerative in terms of generation of surplus?
13. Did you adopt a 'Model bye law' provided by the Registrar? Or did you receive any guidelines for adoption? Did you find the Model bye law adequate or do you feel there is need to modify or add to the model bye laws to meet your local needs?
14. How many members of the society are considered active in terms of transacting business namely utilizing the services of the co-operatives? E.g. credit inputs etc. and participating in management related activities?
15. Do you feel there should be a definition of 'active' and 'inactive' members? and if an inactive member over a certain period of time should be asked to give up membership?
16. What steps do you propose to motivate them to become active? And whether such efforts should follow a timeline by which an inactive member should be able to give evidence of improvement to become active?
17. Should inactive members be allowed to take part in the election of office bearers in the General Body?
18. Should bye laws prescribe a minimum level of business that a member must transact to retain membership?
19. As co-operatives are meant to be member-owned, do you get a sense of ownership even when your society is large and multipurpose?
20. Should there be provisions in the bye laws for ensuring active participation in the management by members as the criteria for distribution of *patronage funds* and dividends?

Questionnaire for the primary co-operative societies on the process of formulation of the Co-operative Bye laws and its contents

Name of Primary Co-operative Society : _____

Area of Business Service : _____

National /Sectoral Apex Organisation Name _____

1. What or who motivated you to form a co-operative society? [Please mark]

- A social leader OR a local elder OR a religious leader (e.g. a church functionary in a Christian society).
- A Government Officer who informed that as a matter of policy certain benefits are only admissible to those who agree to form a co-operative society.
- A felt need to co-operate to overcome a local problem such as usurious terms of the local money lender, provision of irrigation, consumer goods at affordable prices or to develop a common facility centre like i) Processing of agricultural produce, ii) Hospital, school.

2. How did you select your core business activity and social objectives?

- By mutual or group consultation
- Advice of an expert that you might have engaged on your own.
- By advice of a Government official.
- According to a techno-economic survey carried out by independent experts.
- Your own assessment of viability of the business.

3. What is the size of the Membership of this society and the proportion of women and Youth to the society, and what is their level of participation in the activities?

- Less than 50.
- More than 50 less than 500
- Ratio of Women and Youth : Total number of members

4. Are women or youth adequately represented in the Board of Directors? If not, what are the reasons?

- Yes
- No (reason) _____

5. Are you making a special effort to attract women and youth to join the co-operative or take up women and youth specific programmes?

- Yes _____
- No _____

6. How was the bye laws prepared?

- By the Founding Members
- You were directly involved and saw the first draft
- The draft bye laws discussed in the meeting of prospective co-operators clause by clause.
- You agreed to the provisions in good faith and signed the draft bye laws at the instance of the founding members.

7. What according to you are the most important clauses of the bye law?

- Capital
- Reserve Fund
- Dividend and Patronage Fund
- Member welfare scheme
- Auditing and management
- Procedure and nature of election to Board
- _____

8. Do you feel that the bye laws contain too many clauses and should be reduced in size? If so, please state the clauses considered redundant.

- Yes. There should be _____ of sections (indicate number).
- No. There are _____ sections in the bye law.

Provisions considered redundant, difficult to implement etc.

9. Did you face any difficulty in persuading the members to the clauses on allocation of surplus or creation of reserve funds?

- Yes, _____ (Difficulties)
- No, _____ (Mention percentage of Reserve Fund)

10. Was there any consultation with prospective members to discuss the bye laws clause by clause before sending it to the Registrar for approval?

- Yes, provided inputs.
- No, only gave signature.

11. How frequently are the meetings of the Board of Management held?

- Once a week at least
- Once in 14 days
- Once in 30 days
- Once in 60 days
- Less frequently than above than the above

12. How many members do usually attend the General Body Meetings and the usual duration of such meetings?

_____ (Duration of the meeting)

- 30 % of Members
- Less than 50 %
- Less than 75 %
- 75-90%
- Above 90 % of Members

13. Is the society engaged in any technology transfer or agricultural extension activity as for instance efforts to spread use of HYV seeds or fertilizers or any improved method of cultivation and processing of agricultural produce for value added products locally?

- If yes, please list

- No.
- Not Applicable

14. Is your society multi-purpose? And if so, what are your major activities and which of your activity is most remunerative in terms of generation of surplus?

- Yes. i.) _____, ii.) _____, iii) _____,
iv) _____.

15. Did you adopt a 'Model bye law' provided by the Registrar? Or

- Yes
- No

16. Did you receive any guidelines for adoption?

- Yes
- No

17. **Did you find the Model bye law adequate or do you feel there is need to modify or add to the model bye laws to meet your local needs?**
- Model Law was adequate
 - Had to modify it according to our local needs
18. **How many members of the society are considered active in terms of transacting business namely utilizing the services of the co-operatives? E.g. credit inputs etc. and participating in management related activities?**
- All members
 - More than 80% Members
 - More than 60% but less than 80 % members
 - Less than 60% members
19. **Do you feel there should be a definition of 'active' and 'inactive' members? and an inactive member (over a certain period of time) should be asked to give up membership?**
- Yes
 - Yes , but no termination of membership
 - Not at all.
20. **What steps do you propose to motivate them to become active? And whether such efforts should follow a timeline by which an inactive member should be able to give evidence of improvement to become active?**
- Kindly indicate in brief
21. **Should inactive members be allowed to take part in the election of office bearers in the General Body?**
- Yes
 - No
22. **Should bye laws prescribe a minimum level of business that a member must transact to retain membership?**
- Yes
 - No
23. **As co-operatives are meant to be member-owned, do you get a sense of ownership even when your society is large and multipurpose?**
- Yes
 - No

24. Should there be provisions in the bye laws for ensuring active participation in the management by members as the criteria for distribution of *patronage funds* and dividends?

Yes

No

Rangan Dutta – Principal Consultant, ICAAsia and Pacific

Born in 1942 and educated at the universities of Calcutta and New England, NSW, Australia. Rangan Dutta joined the Assam cadre of the Indian Administrative Service in 1966 and held senior appointments under the state governments of Assam and Meghalaya which included Secretary, Agriculture etc and Revenue Departments in Assam and Principal Secretary Finance, Planning, Forests and Administrative Reforms in Meghalaya and in the Central Ministries of Home, Defence, Tribal Affairs and Rural Development at the level of Joint/Additional and Secretary to the Government of India and superannuated in 2002 from the post of Director General, Council for Advancement of Peoples Action and Rural Technology, Government of India. He had acquired rich expertise in Technology transfer and Rural Development and had served on several Appraisals Missions of the World Bank during 1976-79 as Agricultural Extension Specialist in Rajasthan, Madhya Pradesh, Andhra Pradesh in India and Afghanistan on Agricultural Research Extension and Afghan Wheat Projects.

On superannuation, he was appointed as Senior-Consultant in Planning Commission voluntary action, Bamboo and Bio Fuels Program and since December 2003, a Scientific Consultant in the office of the Principal Scientific Advisor to the Government of India under the Rural Technology Action Group initiative. He had reviewed for the Tata Consultancy Service in 2004 the performance of NGO sector in India, served as a Member of the Experts Group constituted by the Ministry of Tribal Affairs, Government of India to frame the Rules under the Forests (Rights) Act Academic Council, National Defence College, Ministry of Defence and is presently a member of the Experts Group on North East studies of Rajiv Gandhi Institute of Contemporary studies. He has authored a text book on the role of Voluntary Sector in Rural Development for M.Sc. Rural Development course of the Indira Gandhi National Open University, and is a regular contributor to articles in the Statesman and other papers/journals on strategic issues of development especially relating to North East region.

P. Santosh Kumar – Programme Officer, ICAAsia and Pacific

Working in the capacity of a Programme Officer, P. Santosh Kumar undertakes works related to the Regional Committees on Youth co-operation and University Campus Co-operatives at the ICAAsia and Pacific office since he joined the Regional Office in May, 2010. He had previously assisted Mr. Rangan Dutta in writing the 4th Critical Study on Co-operative Law and Policy Reforms in Asia Pacific in 2012.

He has a law degree from Delhi (Indraprastha University) with a Diploma in Cyber Law and International Law and diplomacy and has previously worked on WHO and UNDP projects along with being an active participant of The Youth Parliament Foundation, New Delhi. P. Santosh Kumar the elected National President for the Students for the promotion of International Law (SPIL), chapter member of ILSA (International Law Students Association) during 2007 - 2008.

ISBN : 81-89550-10-1

ICA Library



ICA 00031