

Cooperative Legislation in Asia — A Study

PART : TWO

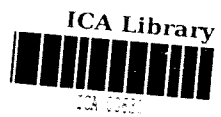
**Analysis made by National Consultants from India,
Indonesia, Philippines, Sri Lanka
and Thailand**



International Cooperative Alliance
Regional office for Asia & the Pacific
New Delhi

ICA Library
334:340(5) ICA-C
ICA 00630

JCA 00630



Cooperative Legislation in Asia – A Study

PART : TWO

**Analysis made by National Consultants from India,
Indonesia, Philippines, Sri Lanka
and Thailand**

334:340(1)
ICA-C



International Cooperative Alliance
Regional Office for Asia & the Pacific
New Delhi

Coop Legislation in Asia
— A Study

Part Two :

Analysis made by National Consultants from India,
Indonesia, Philippines, Sri Lanka and Thailand

World Headquarters :
International Cooperative Alliance
15 route des Morillons
Grand-Saconnex. CH-1218 Geneva. Switzerland

International Cooperative Alliance
Regional Office for Asia and the Pacific
43 Friends Colony, Bonow House
New Delhi 110065. India
Telex : (81) 31-75025 DICA IN. Fax : (91) 11-6835568
Telephone : 683-5123

May 1991 (250)

Typeset and printed at Document Press, H.S. 14, Kailash Colony Market,
New Delhi 110048. Phone : 643 2836

CONTENTS

Foreword v

Study on Facilitation of Cooperative Legislation

INDIA

1. Constitutional & Administrative Status of Cooperatives	1
2. National Policy on Cooperative Development	5
National Policy Resolution on Cooperatives (Annexe)	6
3. Evolution of Cooperative Law	8
4. Cooperative Law and Principles of Cooperation	12
5. Registration and Membership of a Cooperative Society	12
6. (A) Bye-Laws	14
(B) Rules	15
7. Cooperative Law & Decision-making Process in Cooperatives	16
8. Cooperative Law & Self-Reliance	27
9. Cooperative Law and Government	30
10. Others	33

INDONESIA

1. Constitutional & Administrative Status of Cooperatives	35
2. National Policy on Cooperative Development	41
3. Evolution of Cooperative Law	45
4. Cooperative Law and Principles of Cooperation	48
5. Registration and Membership of a Cooperative Society	52
6. (A) Bye-Laws	58
(B) Rules	62
7. Cooperative Law & Decision-making Process in Cooperatives	64
8. Cooperative Law & Self-Reliance	84
9. Cooperative Law and Government	94
10. Others	98
Annexe	102

PHILIPPINES

1. Constitutional & Administrative Status of Cooperatives	107
2. National Policy on Cooperative Development	110
3. Evolution of Cooperative Law	112
4. Cooperative Law and Principles of Cooperation	114

5. Registration and Membership of a Cooperative Society	115
6. (A) Bye-Laws	117
(B) Rules	119
7. Cooperative Law & Decision-making Process in Cooperatives	120
8. Cooperative Law & Self-Reliance	128
9. Cooperative Law and Government	130
10. Others	133
Annexures	135

SRI LANKA

1. Constitutional & Administrative Status of Cooperatives	147
2. National Policy on Cooperative Development	153
3. Evolution of Cooperative Law	157
4. Cooperative Law and Principles of Cooperation	162
5. Registration and Membership of a Cooperative Society	163
6. (A) Bye-Laws	166
(B) Rules	169
7. Cooperative Law & Decision-making Process in Cooperatives	172
8. Cooperative Law & Self-Reliance	187
9. Cooperative Law and Government	193
10. Others	198
Annexures	200

THAILAND

1. Constitutional & Administrative Status of Cooperatives	207
2. National Policy on Cooperative Development	210
3. Evolution of Cooperative Law	212
4. Cooperative Law and Principles of Cooperation	215
5. Registration and Membership of a Cooperative Society	215
6. (A) Bye-Laws	217
(B) Rules	219
7. Cooperative Law & Decision-making Process in Cooperatives	220
8. Cooperative Law & Self-Reliance	228
9. Cooperative Law and Government	231
10. Others	234

FOREWORD

Cooperative legislation in most countries of Asia was initiated by the colonial rulers who had found in cooperatives a useful agency to provide relief to farmers and workers. Somehow they did not want cooperatives to become a ground of peoples aspirations and possible development of political leadership. They developed the cooperative system in such a way that the cooperative office-bearers remained politically loyal to the government. This was achieved through the agency of the Registrar of Cooperative Societies who was usually a senior, efficient bureaucrat and known as friend, philosopher and guide. The government also ensured that the cooperative movement remained dependent on the government for all the needs of credit and distribution of essential items.

In the last four decades, all Asian countries have become free from colonial rule and along with that there have been many changes in the cooperative laws, policies towards cooperatives and application of the cooperative laws. While there has been increased commitment and support for the cooperatives by the governments, there has also been, in some cases, not only more control over the affairs of the cooperatives, but they have often been treated as government corporations or agencies, changing the basic nature of the cooperative institutions. Instead of making the cooperative legislation friendly towards the cooperative members, the trend has been to concentrate more powers in the hands of the Cooperative Registrar. In some cases the cooperative legislation denuded the cooperative institutions of their freedom of decision making and action. Such trends are not in the spirit of democratic control and freedom of action and decision-making. These and several other such points demanded an indepth study of existing cooperative laws in some selected countries of the Region.

It was also recommended by the ICA Regional Consultation on "Role of Governments in Promoting Cooperative Development in Asia" held in June, 1988 in Singapore. The Consultation had recommended that the ICA ROAP undertakes a study of cooperative laws in the region in order to delete the restrictive provisions and suggest additions of new provisions for facilitation of cooperative development.

With the generous support made available by the Canadian Cooperative Association, the International Cooperative Alliance, Regional Office for Asia and the Pacific, undertook a project "Facilitation of Cooperative Legislation in Asia" during 1989.

Accordingly this study was undertaken with the following objectives:

- i. to identify constraints to cooperative development;
- ii. to identify features which are not in accordance with Cooperative Principles; and
- iii. to suggest additional provisions needed for facilitation of cooperative development.

The study was carried out in Bangladesh, India, Indonesia, the Philippines, and Sri Lanka. With the help of national consultants from these countries and a regional consultant, national questionnaires were produced and the existing Cooperative Acts were collected. All this material was further analyzed and discussed at a Regional Consultation Meeting held in Thailand in October, 1989. A study report on the subject was published earlier by the ICA ROAP in January, 1990.

With a view to provide the scholars of cooperative legislation in these countries of the Region, we have now collected all the relevant material and published the same in two parts : Part I containing the Cooperative Acts currently in force in these countries, and Part-II containing the replies received to the questionnaire which was earlier prepared and used at the Regional Consultation Meeting at Bangkok in October, 1989.

While extending our sincere thanks to the Canadian Cooperative Association for the most valuable support extended in terms of funds, I place on record our appreciation of the work done by the Regional Consultant, Mr. V.P. Singh and his National Consultants viz. Mr. Chern Bamrungwong (Thailand), Judge Manuel F. Verzosa (the Philippines), Mr. B.D. Sharma (India), Mr. Asnawi Hassan (Indonesia), and Mr. R.P.P. Rajapakse (Sri Lanka).

We hope that the documentation will be found useful and of some reference value to the scholars interested in the development of cooperative legislation in this part of the world.

G.K. Sharma
ICA Regional Director

Bonow House,
New Delhi.
May 14, 1991

PART : TWO

**Analysis made by National Consultants from India,
Indonesia, Philippines, Sri Lanka
and Thailand**

INDIA

Study on Facilitation of Cooperative Legislation

QUESTIONNAIRE

I. Constitutional and Administrative Status of Cooperatives

1.1 What is the status of cooperation in country's constitution ?
In case of Federal constitution, is cooperation a national/state/provincial/concurrent subject ?

Ans. Cooperation is provincial subject. The provincial governments are responsible to enact cooperative law and administer and supervise the working of cooperatives. The national Parliament is empowered to enact law for those cooperatives whose area of operation is more than one province.

1.2 Does country's constitution specifically make provision/incorporation of article defining constitutional status of cooperation ? If so, mention specific provision.

Ans. Article 46 in the Directive Principles of State Policy of Indian Constitution specifies that State shall take necessary steps to promote cottage and village industries on individual or cooperative lines.

1.3 Is there any separate coordinating Ministry for all types of cooperatives both at the level of national as well as state/provincial Government ? If not, which Ministry coordinates ?

Ans. At national level there is no separate coordinating Ministry for cooperatives. Ministry of Agriculture, (Department of Agriculture and Cooperation) coordinates and supervise general functioning of cooperatives. However, specified functional cooperatives e.g. consumer cooperatives, industrial cooperatives; handloom cooperatives; handi-craft cooperatives, etc., functional Ministries are responsible for their administration.

In almost all the provinces, there is separate Ministry of Cooperation.

1.4 What is the extent of representation of cooperative sector in national parliament and state legislatures ?

Ans. National Parliament and State legislatures have sizeable numbers of cooperators as their members. However, it is not possible to quantify the exact numbers.

1.5 Is there any provision in the constitution for nominating outstanding cooperators in national Parliament and State legislatures ?

Ans. No.

1.6 What is the administrative set up for cooperative sector ? Please describe organisations/functional chart of Department of Cooperation in the Government both at centre and the states.

Ans. I. Set up at Central Government Level

(A) Set up for General Administration of Cooperatives

Ministry of Agriculture (Department of Agriculture and cooperation)

Ministry of Agriculture

|
Secretary, Department of
Agriculture & Cooperation

|
Additional Secretary,
Department of Agriculture
& Cooperation

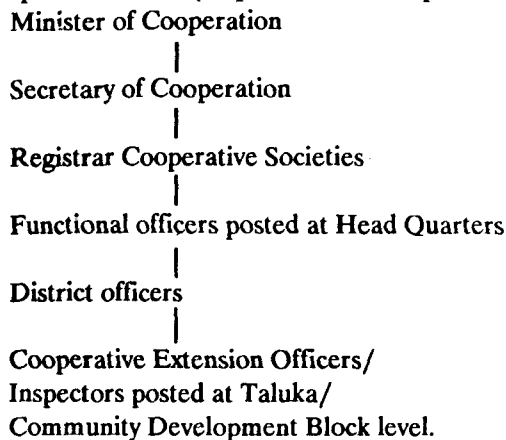
|
Joint Secretary-cum-Central
Registrar of Cooperative Societies

|
Various functional Divisions
dealing with various activities
relating to cooperatives.

(B) For functional cooperatives, concerned functional Ministries are responsible e.g.

- i) Consumer Cooperatives : Ministry of Civil Supplies
- ii) Industrial Cooperatives : Ministry of Industrial Development
- iii) Handloom and Handicraft Cooperatives : Ministry of Commerce.

II. Set up at State level (Department of Cooperation)



1.7 Please give a brief description of (i) powers, (ii) functions, and (iii) duties and responsibilities of Department of Cooperation.

Ans. (i) *Powers* : The Department of Cooperation has powers mainly in regard to the following :--

- a) Registration of Cooperative Societies;
- b) Inspection and supervision from time to time;
- c) Inquiry into the affairs of cooperatives;
- d) Supersession of Board of Directors in case of delinquency;
- e) Winding up and liquidation;
- f) Audit of cooperatives;
- g) Conduct of elections of cooperatives;
- h) Representation on the Board of Directors of cooperatives;
- i) Nomination of first Board of Directors;
- j) Settlement of disputes and arbitration;
- k) Issue of directives for cooperative development;
- l) Reorganisation and amalgamation of cooperatives;
- m) Hearing appeals in the matters specified under cooperative law.

(ii) *Functions* : Important functions of Department of Cooperation are:--

- a) Implementation of cooperative law;
- b) Administration and supervision of cooperative societies;
- c) Providing Directions;
- d) Policy making and implementation of policies;
- e) Providing managerial guidance and support;
- f) Channelisation of government assistance for cooperative development;

- g) Ensuring the functioning of cooperatives in accordance with cooperative law and principles;
 - h) Correcting the delinquent management;
 - i) Collection, review and analysis of reports on functioning of various cooperatives and taking necessary follow up action;
 - j) Providing required information on cooperatives to State Legislature from time to time;
 - k) Maintaining cooperative information and statistics.
- (iii) Duties and Responsibilities
- a) Preparation and implementation of cooperative development plan;
 - b) Administrative control on all types of cooperatives;
 - c) Building up genuine cooperative movement;
 - d) Ensuring efficient functioning of cooperatives;
 - e) Ensuring democratisation of management of cooperatives through timely elections.

1.8 Do the federal organisations of cooperatives enjoy some powers in regard to management and administration of their constituent units ? If so, please mention them briefly.

Ans. No.

1.9 Is there any system or legal provision under which certain powers and functions of Department of Cooperation in the Government could be delegated to and devolved on the federal organisation of cooperatives? If so, please describe such powers and functions.

Ans. No.

1.10 Are there any parastatal organisations set up by the Government for the development of cooperatives ? If so, please name them.

Ans. Yes. Important of these are :

- a) National Cooperative Development Corporation;
- b) National Dairy Development Board;
- c) National Bank for Agriculture and Rural Development Board.

1.11 Do the parastatal organisations set up by the Government for development of cooperatives have powers in regard to administration of cooperatives aided by them ? If so, please describe such powers.

Ans. Parastatal organisations do not have powers in regard to administration of cooperative as such. However, they have defined terms and conditions for the schemes/ projects promoted and financed by them in regard to administration of beneficiary cooperatives e.g.

- i) Pattern of bye-laws;
- ii) Appointment of Managing Director;

iii) Duties and responsibilities of Board of Directors of beneficiary cooperatives.

1.12 Are cooperatives represented in local bodies and vice-versa? If so, please specify.

Ans. Yes. In some states there is representation to cooperatives on village Panchayats and vice-versa. Corresponding legal provisions exist both in cooperative law as well as Panchayati Raj Law.

II. National Policy on Cooperative Development

2.1 Please describe broad objectives of national economic development.

Ans. Broad objectives of national economic development are as follows :

- a) Reduction of poverty;
- b) Creation of employment opportunities;
- c) Raising productivity level of economy;
- d) Improving quality of life of the people.

2.2 Is there any national policy on cooperatives ?

Ans. Yes.

2.3 Has national Government issued any national policy statement. If so, please enclose a copy of the statement.

Ans. Yes. Copy is enclosed.

2.4 Is cooperative sector involved in formulating national policy on cooperative development ? If so, what is the mechanism/institutional frame work ?

Ans. National Government associates national level cooperative federations at the following policy making for--

- a) Central Council on Cooperation;
- b) State Ministers Conference.

2.5 Do Government actively involve cooperatives in effective implementation of economic development programmes ?

Ans. Yes, but in only prescribed/defined economic activities. Broadly Government adopts multi-agency approach for cooperative development.

2.6 Are there any specific development programmes which are specifically allocated to cooperatives for implementation? Please mention briefly.

Ans. At present there are following specific development programmes specifically allocated to cooperatives for implementation --

- a) Dairy Development;
- b) Oilseed Development.

6

2.7 Do National Plan Documents provide specific place to cooperative sector ? If so, please explain.

Ans. In national plan cooperation is recognised as important institutional mechanism for economic development particularly that for agriculture, fishery, artisans, craftsmen.

ANNEXURE

NATIONAL POLICY RESOLUTION ON COOPERATION -- DECEMBER 1977

- i) Cooperatives to be built up as one of the major instruments of decentralised labour intensive and rural oriented economic development;
- ii) Close association of cooperatives with the process of planning and social change;
- iii) Cooperatives to be developed as a "shield for the weak".
- iv) Promotion of cooperative development on a national basis and removal of regional imbalances in the cooperative growth;
- v) Development of cooperation as an autonomous and self-reliant movement free from undue outside interference and excessive control as also from politics;
- vi) Removal of corruption and mal-practices from the cooperative movement;
- vii) Development of a strong and viable integrated cooperative system for total and comprehensive rural development;
- viii) Development of cooperatives based on enlightened participation of broad based membership, free from domination of vested interests;
- ix) Development of a net work of agro-processing and industrial units;
- x) Development of consumer cooperative movement to strengthen public distribution system;
- xi) Formulation of stream-lined organisation system, simple and rationalised procedures for cooperatives;
- xii) Development of professional management for cooperatives.

2.8 What is the place of cooperative sector vis-a-vis private and public sectors ?

Ans. Cooperatives have to compete with them.

2.9 Does cooperative sector formulate its own plan of development independent of the plan formulated by the Government ? If so, what is the mechanism ?

Ans. Every cooperative institutions formulates its own plan of development. But the Government schemes are also kept in view. The plan is formulated by the Board of Directors and approved by the General

Body. However, plan for development of cooperative sector as a whole is generally formulated by the Government.

- 2.10 Does cooperative sector formulate its own plan of development, keeping in view the following:
- a) National priorities;
 - b) Government directive;
 - c) Members expectation.

Please indicate order of preference.

- Ans. Order of preference for formulation of plan of development of cooperative sector is --
- a) National priorities;
 - b) Government directives;
 - c) Members' expectations.

- 2.11 Do the national Parliament and State legislature discuss the plan of cooperative development regularly? If so, on what occasion and in what context? Give some instances.

Ans. Cooperative development is discussed generally at the time of budgetary debates.

- 2.12 Does the concerned Consultative Committee of national Parliament and State Legislative Assemblies discuss issues concerning Cooperative Development? If so, how often.

Ans. Yes, but only occasionally.

- 2.13 Is cooperative sector regularly associated/involved in plan discussions? If so, how many times in a year?

Ans. No. However, it is associated with occasional discussions.

- 2.14 Has national Government created any specific body institution at its level to deliberate upon issues concerning cooperative development from time to time? If so, please give its name and terms of reference.

Ans. Government has set up Central Council on Cooperation. Its terms of reference are :-

- i) To advise the Central Government on broad policy matters relating to cooperative development in the country;
- ii) To consider the role of national cooperative organisations in the implementation of policies relating to cooperative development and bring uniformity of approach in their functions and activities; and
- iii) To review the progress and performance of Multi-State Cooperative Societies.

- 2.15 Organisational structure of cooperatives, being federal, please enumerate briefly the role of federal organisations of secondary/state/national level, particularly, with reference to policy formulation for

cooperative development.

Ans. Policy formulation being in the hands of the Government, role of federations is in the following directions:--

- a) Coordination;
- b) Business support;
- c) Formulation of operational norms;
- d) Managerial support;
- e) In house training.

III. Evolution of Cooperative Law

3.1 When the first Cooperative Law in the country was enacted ?

Ans. The first Cooperative Law in the country was enacted in 1904.

3.2 What were the reasons/background of the first Cooperative Law?

Please identify them in following heads :--

- a) Political;
- b) Economic;
- c) Social;
- d) Others.

Ans. Since agriculturists had suffered series of draughts and signs of unrest against colonial Government were seen amongst them, cooperation was brought by the then British Government to create an institutional set up, which will act as link between the agriculturists and the Government.

Political Factors

- i) Unrest among farmers;
- ii) Land tenure system subjugating the farmers to land lords/zamndars.

Economic Factors

- i) Money Lenders' exploitation;
- ii) Droughts;
- iii) Low productivity.

Social Factors

- i) Motivation of Farmers;
- ii) Developing a sense of involvement in the farmers.

3.3 Whether the first cooperative law was enacted for one particular activity or for cooperatives in totality ? Please specify.

Ans. Yes. To provide credit to farmers.

3.4 With the growing expansion and diversification of cooperative sector, has Cooperative Law been evolved to suit the changing needs of the

cooperatives ? If so, please mention various stages of historical evolution of cooperative law.

Ans. The first Cooperative Legislation was enacted in 1904, which was based on English Friendly Society Act. Since the Act was limited in its goal, the same was repealed by the Act of 1912, which attempted to overcome the limitations of earlier Act of 1904. In 1919, the cooperative became a provincial subject and the provincial Government were given constitutional powers to legislate on the subject under their purview. With the result, various State Governments enacted their own Acts.

After independence, as per the recommendations of the All-India Credit Survey Committee, the various cooperative societies Acts were re-enacted, which incorporated the provisions, which enabled it to function as an instrument of regulation of cooperatives and as agency of economic planning. Subsequent expert committees/working groups that have influenced the course of cooperative legislation are Committee on Cooperative Administration (1963), Mirdha Committee on Cooperative (1965), Working Group on Cooperation of Administrative Reforms Commission (1967).

The recommendations of these Committees gave a new orientation to Cooperative Law in regard to Principles of Cooperation, registration of the society, elections, democratic management and supersession.

3.5 Is there a separate legislation for cooperatives as a whole or for different groups of cooperatives ? Please enclose a copy.

Ans. Cooperative is a State subject in India and every State has its own State Cooperative Societies Act, which governs the cooperatives as a whole. However, some of the State Cooperative Societies Acts incorporated a specific chapter on agricultural cooperative and rural development banks and Cooperative Housing.

3.6 Have Government appointed expert Committees to modify cooperative law from time to time ? If so, please mention them alongwith their important recommendations.

Ans. Government appointed various Expert Committees on Cooperative Law :

i) *All-India Rural Credit Survey Committee (1954):*

It recommended an integrated scheme of rural credit. The Committee also recognised the importance of training for the discharge of their functions very efficiently.

ii) *The National Development Council (1958):*

It adopted a legislation on Cooperative Policy. The Council recommended that the cooperatives should be organised on the basis of village community as a primary unit by working together

for the common objective of raising their standard of living. It also recommended that the official interference and red tapism should be minimised for the activities of cooperatives. For the growth of cooperative movement, the State governments were advised to introduce radical changes in the procedures of Cooperative Law.

iii) *Working Group on Cooperative Policy (1959):*

The working group recommended that the State Government should examine the possibility of simplifying from respective cooperative legislation and administrative process for ensuring popular character of the movement. For smooth de-officialisation of the movement, the powers of Registrar under Cooperative Societies Act should be decentralised.

iv) *Mirdha Committee on Cooperation (1965):*

It made very important recommendations in the Cooperative Legislation. To protect the small man from exploitation, the cooperatives were identified as a suitable instrument for promoting social justice. This was needed to be clearly recognised in cooperative legislation. The Committee also laid utmost emphasis on the programme of cooperative education.

v) *Committee on Cooperative Administration (1963):*

The Committee recommended that in order to make cooperative movement a people's movement, it is necessary that the role of Registrar should be of a friend, philosopher and guide to the cooperative movement. It was further recommended that the government should promote federal organisations to which the statutory powers of the Registrar should be transferred.

vi) *Working Group on Cooperation of the Administrative Reforms Commission (1967):*

This working group endorsed the recommendations of Committee on Cooperation and further recommended the powers relating to inspection, enquiry and settlement of disputes vested with Central and State Cooperative Banks. The Workshop also felt the need for larger cooperative support, which should encourage the all cooperative sector.

vii) *Review Committee of the National Cooperative Union of India (1969):*

The review committee recommended that the Cooperative Laws should be so oriented as will foster over a period of time, the growth of people's initiative healthy institutions, healthy leadership and also promote self-regulatory process.

viii) *Government of India Committee on Cooperative Law on Democratisation and Professionalisation of Management of cooperatives:*

The Committee recommended to activate the democratic process and to promote professional management in cooperatives. The provisions in the cooperative societies Acts, which militate against a democratic character and autonomy of cooperatives was recommended to be deleted so that the cooperatives are developed as genuine, efficient, autonomous and democratic people's movement.

ix) *Government of India Committee on Structure and Role of National Cooperative Societies (Venkatappaiah Committee)*

The Committee recommended for de-officialisation, de-politisation and professionalisation of the cooperatives.

3.7 Whether Government consults the cooperative sector before evolving cooperative law ? If so, what is the mechanism ?

Ans. Yes. For consulting the movement in formulation of cooperative law, the Government has adopted two types of mechanism--(a) Establishment of Central Cooperative Council with Government and cooperative representative; and (b) Appointment of subject-matter working groups/expert committees.

3.8 Have there been occasions when cooperative legislation was formulated by the Government without paying attention to the views of cooperative sector ? If so, please describe them briefly.

Ans. The Cooperative Legislation (Multi-State Cooperative Societies Act) was formulated by the Government without paying attention to the views of the cooperative sector. The National Cooperative Union of India submitted a Memorandum to the Joint Committee on Parliament of Multi-State Cooperative Societies Bill, 1977. The memorandum identified certain provisions, which were against the ideology of cooperation and usurped the autonomy of cooperatives in the Multi-State Cooperative Societies Bill. The Government did not pay any attention to the Memorandum and the Act was passed by the Parliament in 1984 without deleting the restrictive provisions from the Bill.

3.9 Are there allied laws which regulate the functioning of cooperatives ? If so, please describe briefly their salient features.

Ans. No. There is no allied law, which regulates functions of cooperatives.

IV. Cooperative Law and Principles of Cooperation

4.1 Does cooperative law have specific provisions for incorporation of principles of cooperation ? If so, reproduce concerned provisions.

Ans. Though there is no specific provision for incorporation of principles of cooperation, the Multi-State Cooperative Societies Act has incorporated the cooperative principles in its annexure.

4.2 Whether principles of cooperation incorporated in cooperative law are the following as laid down by the International Cooperative Alliance ?

- a) Open and voluntary membership;
- b) Democratic control;
- c) Limited interest on capital;
- d) Savings belong to members;
- e) Cooperation among cooperatives;
- f) Cooperative education.

Please explain briefly deviation, if any.

Ans. Besides the principles of Cooperation as accepted by International Cooperative Alliance, the Multi-State Cooperative Societies Act has incorporated two more principles i.e. the affairs of the society should be administered by the management in accordance with democratically expressed will of the members and the management of the society is accountable to its own members. The reason for incorporating these management based principles is that the Board of Directors, who are elected by the members to constitute the management should enjoy unrestricted authority in the administration of the society.

4.3 What is the definition of cooperative society in Cooperative Law ?

Ans. The definition of the cooperative society is :
 "Cooperative Society" means a society registered or deemed to be registered under any law relating to cooperative society for the time being in force.

V. Registration and Membership of a Cooperative Society

5.1 Are there any pre-conditions for registration of a cooperative society ? If so, please give details.

Ans. For registration, the cooperative society should have certain objects which should promote the economic and social betterment of its members through mutual aid in accordance with cooperative principles. The objects of the society should also facilitate the operations of other such societies. For applying for the registration of the cooperative society, the proposed bye-laws have also to be submitted

for registration. Different State Cooperative Societies Acts mention the requisite number as members for registration of the society.

5.2 Does the discretion for the registration of a Cooperative Society lie with the registering authority under law even if the promoters fulfil all the stipulated conditions ?

Ans. Under the law, the discretion for registering the cooperative society is with the registering authority i.e. Registrar, Cooperative Societies, but the Registrar is supposed to act according to the Cooperative Societies Act and rules and cannot exercise his authority arbitrarily. The promoters, if they fulfil all the stipulated conditions do not get registration certificate. They have right to appeal to the appellate authority in case of refusal of the registering authority.

5.3 Is the registering authority under cooperative law obliged to record reasons in writing in case of refusal for registration of a cooperative society ?

Ans. Yes.

5.4 Is there any time limit prescribed under law which registering authority is obliged to take decision in regard to registration of the society ?

Ans. Yes, the time limit is prescribed under the Cooperative Societies Act.

5.5 Does law provide for "society will be deemed to have been registered in case of decision by the registering authority is not taken within the prescribed time limit".

Ans. Some of the State Acts have provided for deemed registration under the Cooperative Societies Acts.

5.6 Is the order of the registering authority appealable ? If so, please mention appellate authority under law.

Ans. Yes, the Central Government/State Government is appellate authority under the law.

5.7 Does the registering authority consult concerned federal organisation before taking decision regarding registration.

Ans. Not necessary.

5.8 Does the law provide for provisional registration of cooperative society? If so, please quote the provision.

Ans. There is no provision for provisional registration.

5.9 Have the Government ever put restrictions on the registration of a particular type of a cooperative society? If so, please give some details with a copy of Government order/legislation.

Ans. No.

5.10 Does the law make specific provisions about the persons who may become the members of a cooperative society? If so, please quote the provision.

Ans. Yes, the law makes specific provisions about the persons who may become the members of a cooperative society.

5.11 Does the law put restriction on the admission of the persons as members of a cooperative society, whose interests are likely to conflict with the objects of the society? If so, please quote.

Ans. Yes, if the interest of any person or class of persons whose interest conflicts or likely to conflict with the objects of the society they will not become the members of the cooperative society.

5.12 What is the authority to take decision regarding admission or expulsion of members? Whether it is prescribed under law or bye-laws of a cooperative society? Please specify.

Ans. Power to admit the members is with the Board whereas power for expulsion is with the General Body.

5.13 Is the authority obliged under law and/or under bye-laws to take decision regarding admission of members within a prescribed time limit? In case of its failure to take decision within the prescribed time limit, whether the applicant person shall be deemed to have been admitted as member. Please specify.

Ans. Yes.

5.14 Is the order of the authority to take decision regarding admission of member is appealable? If so, please quote specific provision.

Ans. Yes. Decision regarding admission of member is appealable. Appeal lies with Registrar, Cooperative Societies.

5.15 Can Government under law issue directive for compulsory admission of certain class of the people as members of certain cooperative society? If so, please mention the provision.

Ans. Yes.

VI. (A) Bye-Laws

6.1 Does the law make it obligatory on every cooperative society to have written bye-laws for regulating its day-to-day functioning? If so, please quote provision.

Ans. Yes, the society is registered only when the application for registration is combined by the proposed bye-laws of the society.

6.2 Does the law specify the items/contents of the bye-laws? If so, please specify.

Ans. Yes, the law specifies the provisions for the bye-laws.

- 6.3 Who is the competent authority to frame and to adopt the bye-laws under law ?
 Ans. General Body is the competent authority to frame and adopt the bye-laws.
- 6.4 Does the law authorise the Government to frame the model bye-laws of every type of a cooperative society? If so, please quote the provision.
 Ans. No. However, in some States, Government have formulated model bye-laws.
- 6.5 Is it obligatory on the part of a cooperative society to adopt model bye-laws. If so, please specify the provision.
 Ans. No.
- 6.6 Is it necessary to get the bye-law registered for enforcement?
 Ans. Yes.
- 6.7 Is the registering authority competent to change/amend/delete any bye-laws without assigning any reasons ?
 Ans. No. The registering authority is only to accept or to refuse the proposed bye-laws. While refusing it has to assign the reasons.
- 6.8 Are parastatal organisations created for the promotion of certain types of cooperatives also competent to change/amend the bye-laws at their discretion and shall the members of those types of cooperative societies be obliged to adopt such bye-laws ? If so, please quote provision.
 Ans. No. But some parastatal organisations have prescribed model bye-laws.
- 6.9 Do you think that power of Government for compulsory amendment of bye-laws conflicts with cooperative ideology principles ? If so, please give a brief note about your opinion.
 Ans. The power of the Government for compulsory amendment of bye-laws is against the principles of cooperation and cooperative ideology. This provision provides unfettered power to the Registrar of Cooperative Societies. Ideologically speaking the bye-laws represent self imposed constitutional frame work by the members and any power to effect amendment therein should rest with the members and their General Body.
- (B) Rules**
- 6.10 Does the cooperative law make specific provision for defining rule making power ? Please specify.
 Ans. Yes, rule making power is defined in the Act.

6.11 What are the subjects/issues on which Rules can be framed under cooperative law ?

Ans. The subjects/issues on which rules can be framed are provided in the Cooperative Societies Act. Provisions differ from State to State.

6.12 Do you think that there are certain subjects as specified in your reply to question No. 6.11 could be included in the bye-laws of cooperative societies ? If so, please specify.

Ans. The power to frame bye-laws is derived from the rules. The bye-laws cannot over-ride the rules because it has the statutory binding.

6.13 Does the legislation empower the Government or some other authority to exempt societies from any of the provisions of the Act or the Rules ?

Ans. Yes, the Cooperative Law empower the Government to exempt any society from any of the provisions of the Act or Rules.

6.14 Are guidelines provided on the basis of which exemptions may be granted ? If so, please specify.

Ans. No.

VII. Cooperative Law and Decision Making Process in Cooperatives

7.1 There are following important management organs in a cooperative society :-

- a) General Body;
- b) Board of Directors;
- c) Functional Sub-Committees created by the Board of Directors; and
- d) Chief Executive.

Please describe their powers, functions, duties and responsibilities.

Ans. *General Body :*

- i) to consider the annual report, audit report and the balance sheet.
- ii) to improve the programme of work and budget estimates for the ensuing year;
- iii) to fix the maximum credit limit of the Society subject to the approval of the Central Registrar;
- iv) to amend the bye-laws and rules of business of the society whenever necessary;
- v) to consider, decide appeal against the decision of the Governing Council;
- vi) to consider the problems or questions of policy regarding cooperative development affecting any section of the movement or

group of member-societies referred to it by the Governing Council;

- vii) expulsion of the members;
- viii) To elect Board.

Board of Directors

- i) to admit members;
- ii) to interpret the organisational objectives and set-up specific goal to be achieved towards these objectives;
- iii) to make periodic appraisal of operations;
- iv) to appoint a Chief Executive and such other employees as may be prescribed;
- v) to make provisions for regulating the appointment of employees of the society and the scales of pay, allowance and other conditions of service of, including disciplinary action against such employees;
- vi) to approve annual and supplementary budget;
- vii) to acquire or dispose of immovable property;
- viii) to raise funds;
- ix) to take such other measures or to do such other acts as may be prescribed or required under the Act;
- x) to delegate powers to Executive Committee, President, Vice-President and Chief Executive; and
- xi) consider and accept the resignation of the President, Vice-President or any other member of the Governing Council, Executive Committee or other Committees.

Functional Committees

As delegated by the Board.

Chief Executive

- i) assisting the Board in the formulation of policies, objectives and planning;
- ii) furnishing to the Board periodical information necessary for appraising the operations and functions of the society;
- iii) to summon meetings of various committees including the General Body under the instructions of the President, Vice-President, as the case may be.
- iv) to manage the funds, cause proper accounts to be maintained and audited;
- v) to attend to all correspondence of the society;
- vi) to be responsible for collection and safety of the funds;
- vii) To execute the policies and programmes of the society and take such actions as is necessary to give effect to the resolutions of the

General Body, Board or any other committee constituted under bye-laws;

- viii) to sign all deposit receipts of the society with Banks in accordance with the resolution of the Executive Committee;
- ix) to endorse and transfer promissory notes and other securities and to endorse, sign, encash cheques and negotiate instruments on behalf of the society;
- x) to be the officer of the society to sue or to be sued on behalf of the society and sign all books and agreements in favour of the society;
- xi) to appoint such personnels in the society as may be prescribed by the Board;
- xii) to determine powers, functions and responsibilities of the employees;
- xiii) to maintain a list of members correct and up-to-date;
- xiv) to exercise administrative control in respect of all officers and staff, including granting of leave, granting of annual increments and other matters relating to the service conditions of the employees; and
- xv) to delegate powers to other officers.

7.2 Does cooperative law make specific provision vesting supreme authority in the general body of members ? If so, please specify.

Ans. Yes, the cooperative law makes specific provision that the supreme authority of the society is vested in the general body.

7.2.1 Are the decisions of the general body required to be submitted to an authority designated under the legislation for approval ?

Ans. The decisions of the general body are binding on all other authorities in the society and are not sent to any other authority for approval.

7.2.2 Are all decisions of the general body subject to approval of the authority designated by the legislation or are their decisions on specified matters subject to approval ?

Ans. Only in a few States provision to get approval of Registrar for General Body resolutions exists.

7.2.3. Does the authority designated under the Act have any power to call a general body meeting or to authorise any person to call a meeting of the members ?

Ans. The Chief Executive calls the meeting of the general body on the direction of the Board of Directors/President.

7.2.4 Does the authority designated under the Act have the power to declare a meeting of the general body invalid and if so on what grounds ?

Ans. If the meeting of the general body is convened according to the provision of the Act, rules and bye-laws, there is no authority under the Act to declare it invalid.

7.2.5 Is the society required to inform any authority designated under the Act about the date and agenda of the meeting of the general body ?

Ans. Yes, the society is required to inform the Registrar about the date and agenda of the meeting of the general body.

7.2.6 Is the authority designated under the legislation entitled to attend the general body meeting without being invited to do so ?

Ans. Yes, the Registrar is the authority entitled to attend the general body meeting without being invited to do so.

7.2.7 Are the minutes of the general body required to be sent to any authority designated by the legislation for approval ?

Ans. Yes, the minutes of the general body are required to be sent to the Registrar for information.

7.3 How various management organs of a cooperative society are created/constituted under cooperative law ? Please specify the procedure.

Ans. The members of the cooperative society send their delegates to the general body and through elections the Board of Directors are elected. Further the Board of Directors create the functional sub-committees for the working of the cooperative society. The Chief Executive of the cooperative society is appointed under the Act.

7.4 How are various management organs of a cooperative society linked with each other in the decision making process ? Please specify the provision under law, rules and bye-laws.

Ans. Though the supreme authority of a cooperative society vest with the general body, the Board is empowered under the Act to take decisions for the smooth functioning of the cooperative society. The powers and functions of the Board are defined in the Act, rules and bye-laws. The decision of the Board are carried on by the Chief Executive of the society.

7.5 Do you think that existing law provides adequate provisions to ensure functioning of various management organs in unison without any conflict ? If so, mention those provisions.

Ans. Yes, the existing law provides adequate provisions to ensure the smooth functioning of various management organs in a cooperative society and the powers and functions of the Board of Directors and Chief Executive are defined in the Act and Bye-laws.

- 7.6 If you think that existing law does leave scope for conflicts between various management organs of a cooperative society in their proper functioning what are your suggestions for amending cooperative law in this respect ?
- Ans. The powers and functions of the general body, Board of Directors, functional committees, President and the Chief Executive should be defined in the bye-laws of the cooperative society and not in the act. The growth of the cooperative movement is not even in all the States. The stages of development and the sizes of cooperative institutions differ from state to state and society to society. Therefore, the delegation of powers and functions and the relationship between Board of Directors and Chief Executive is a matter of internal governance of a society. Thus, it should be provided in the bye-laws.
- 7.7 What is the procedure for constitution of Board of Directors/Managing Committees according to cooperative societies Act and Rules ? Whether the procedure is also reflected in the bye-laws of the cooperative society ? If so, please mention specific provision.
- Ans. Broad guidelines for the constitution of Board of Directors is given in the cooperative societies act and rules. But the Board is constituted according to the provisions prescribed in the bye-laws.
- 7.8 Who is the competent authority to conduct elections in cooperatives under cooperative law ? Please mention specifically.
- Ans. The elections in the cooperative society is conducted by the returning officer, who is appointed by the Registrar, to superintendence, direction and control of the preparation of the electoral roles, conduct of election of the members of the Board is notified by the special or general order of the Registrar.
- 7.8.1 Is there any provision for creation of cooperative election authority in the cooperative law ? If so, please mention specifically.
- Ans. In some of the State Cooperative Societies Acts, there is a provision for the election authority responsible for the conduct of the elections in their state.
- 7.8.2 Who is the competent authority to settle the election disputes under cooperative law ? Please specify.
- Ans. Registrar is the competent authority under the cooperative law to settle the election disputes.
- 7.9 Does law define specific qualifications for a person to be elected/appointed as office bearers or members of Board of Directors ? Please quote.
- Ans. Yes, for example Multi-State Cooperative Societies Act prescribes following disqualifications for a member of a Board:--

“Disqualification for a member of a Board -- No member of any multi-state cooperative society or nominee of a member society on a national cooperative society shall be eligible for being chosen as, or for being, a member of the board of such multi-state cooperative society or national cooperative society to which the multi-state cooperative society is affiliated, if such member:

- a) has been adjudged by a competent court to be insolvent or of unsound mind;
- b) is concerned or participates in the profits of any contract with the society;
- c) has been convicted for an offence involving moral turpitude;
- d) holds any office or place of profit under the society;
Provided that the Chief Executive or such full time employee of the society as may be notified by the Central Government from time to time
- h) is a person against whom any amount due under a decree, decision or order is pending recovery under this Act;
- i) is retained or employed as a legal practitioner on behalf of or against the multi-state cooperative society, or on behalf of or against any other multi-state cooperative society which is a member of the former society”.

7.9.1 Does the law provide for representation of employees on the Board of Directors of a cooperative society? If so, please mention what is the percentage of representatives of employees of the total number of Board of Directors.

Ans. Acts have made provisions to this effect. For example, Multi-State Cooperative Societies Act made the following provision :

“Association of employees in the management decision making process -- every multi-state cooperative society shall devise such procedure, as may be specified in the bye-laws or in the administrative instructions for association of the representatives of employees of such multi-state cooperative societies at such level or bodies as may be specified in the bye-laws or the instructions issued in this regard, in the management decision making process”.

7.9.2 Does the law confer right on an employee representative to get elected as an office bearer/director in the federal organisations? If so, what is the proportion of such person on national level boards.

Ans. No.

- 7.10 What is the legal status of the Chief Executive/Managing Director in the Board of Directors/management committees in the cooperative laws? Is he a member of the board with right of voting?
- Ans. The Chief Executive is the member of the Board of Directors and other functional committees. He has the right of voting.
- 7.11 Does the law provide for full time/part time paid elected Chairman or president of cooperatives?
- Ans. The Chairman is honorary office-bearer of the cooperative society. He is elected by the General Body or Board as per the provisions of the Act. In some of the States, he is paid honorarium in respect of specified services rendered by him.
- 7.12 Does the law provide two officers viz. (i) Chairman, and (ii) President? If so, what are the respective powers and responsibilities of each?
- (Chairman to chair the meetings of the general body, board of directors and others. President to be full time paid officer of the society as in the USA).
- Ans. No, the cooperative societies Act do not provide for two officers viz. Chairman and President.
- 7.13 What responsibilities and powers does the law confer on national/regional bodies of cooperatives?
- Ans. The law does not specify any provision for responsibilities and powers of national bodies. Only definition of federal/national body is incorporated.
- 7.14 Does the Law provide for punishment to individual elected/appointed directors and paid employees in case of committing delinquency?
- Ans. In case of any delinquency committed by the Directors, the General Body has the power to expel a member for acts, which have detrimented to the proper working of the society. Paid employees are Governed by the service conditions of the cooperative societies. There is also a provision for surcharge to punish individuals in case of delinquency.
- 7.15 Does the Law lay down any code of conduct for the office bearers or directors of the board? if so, please quote.
- Ans. No.
- 7.16 Does the Law provide for accountability of individual paid officers, directors of the board and office-bearers of cooperatives? If so, how and to which extent.
- Ans. Yes.

- 7.17 Does law make following provisions empowering the Government:
- i) to effect compulsory amendment of bye-law.
 - ii) to effect compulsory amalgamation and division of cooperative society.
 - iii) to rescind/annul the resolutions/decisions of the Board of Directors and annual general body of a cooperative society.
 - iv) to supersede the elected management of a cooperative society.
 - v) to issue directive to a cooperative society.
 - vi) to restrict the term of office of office-bearers.
 - vii) to restrict the number of cooperative societies in which a person can hold office.

Ans. Yes.

7.17.1 Do you think that above provisions ensure efficient decision making process in a cooperative society? Please give critical note.

Ans. The Cooperative Law generally emphasizes a regulatory and restrictive relationship between the Government and cooperatives. Most of the powers are concentrated in the hands of either Registrar, Cooperative societies or State Government (for example powers regarding election, audit, inspection, enquiry, etc.). Besides, cooperative law also makes restrictive provisions such as:

- Compulsory amendment, amalgamation and Division of cooperatives;
- Power to Veto to Government nominee.
- Power to rescind/annul resolution of the Board.
- Supersession of Board of Management.
- Restrictions on holding office in cooperative societies. Such provisions not only run contrary to the cooperative ideology but also kills initiative of members and their participation in decision taking.

7.18 What is the competent authority under Law to lay down the policies, norms and regulations regarding personnel management in cooperative society?

Ans. Board of Directors. However in some states approval of Registrar is necessary.

7.19 Does law specify/demarcate the powers and responsibilities of the Board of Directors and Chief Executive? If yes, please specify the provision.

Ans. Yes, the powers and responsibilities of Board of Directors and the Chief Executive have been defined in the cooperative society Acts. For example Section 42 of the Multi-State Cooperative Societies Act pro-

vides powers and functions of the Board of Directors and Section 45 of the Act provides powers and functions of the Chief Executive of Multi-State Cooperative Societies.

7.19.1 What is your view as to whether the provision indicated under 7.19 should find place in the bye-laws of a cooperative society instead of law?

Ans. The powers and functions of the Board and the Chief Executive are matters of internal functioning of a cooperative society. There is no need to bind the Board or the Chief Executive on the pre-conceived notions. They should be defined in the Bye-laws of the society?

7.20 What is the functional/administrative relationship between the elected Chairman and Chief Executive of a cooperative society under:

- i) law
- ii) rules
- iii) bye-laws.

Ans. Already indicated under 7.1 and 7.19.

7.20.1 Please give your views on the following:

- a) should Chief Executive directly report to the Board?
- b) should Chief Executive report to Chairman, who should be responsible to the Board?

Ans. Chief Executive should function under overall control of the Chairman as the latter is elected by the Board. It is also necessary for harmonious relationship between the elected head and functional head.

7.21 Who is the competent authority to recruit and terminate the Chief Executive?

Ans. Under the Multi-State Cooperative Societies Act, Panel Authority is competent authority to recruit the Chief Executive.

7.21.1 Does law prescribe for creating a specific Selection Committee/Panel Authority for recruitment for selection of Chief Executive? If so, what is the constitution of such authority and what are its powers and responsibilities.

Ans. Yes, the Multi-State Cooperative Societies Act provides a National Cooperative Society Selection Committee for the recruitment and selection of the Chief Executive with the following composition:

- i) The Secretary to the Chairman
Government of India,
Department of Agriculture
& Cooperation
- ii) The Additional Secretary to Member
the Government of India,

Department of Agriculture
& Cooperation dealing
with Cooperation

- | | | |
|------|---|------------------|
| iii) | Chairman of two national cooperative societies to be nominated by the Central Govt. | Member |
| iv) | One expert in the management to be nominated by the Central Govt. | Member |
| v) | The Managing Director, National Cooperative Development Corporation: | Member |
| vi) | Central Registrar of Cooperative Societies: | Member-Secretary |

2. The Selection Committee shall prepare a list of persons eligible for appointment to the post of the Chief Executive and other managerial posts in the national cooperative societies, the maximum pay scale of which exceeds rupees four thousand per month in the manner hereinafter provided.

3. The Central Registrar shall, on the requisition received from the national cooperative society, convene the meeting of the selection Committee for the purpose of preparation of list for the appointments to the post or posts for which the requisition has been received.

4. The Selection Committee shall:--

- a) take appropriate steps to advertise, circulate or otherwise call for the names for the posts referred to in sub-rule (2);
- b) screen the names received and prepare list of persons, after interview is necessary, suitable for appointment for the said posts in order of merit and forward it to the Central Government for its onward transmission to the concerned national cooperative society;

Provided that in the case of the existing Chief Executive or persons employed in other managerial posts in the national cooperative society on the date of the coming into force of these rules, who are in regular employment of the society, no such reference to the Selection Committee will be necessary.

Provided further that in the case of the Chief Executives or persons employed in other managerial posts, who are on deputation with national cooperative society on the date of the enforcement of these rules, a reference to the Selection Committee shall be necessary on the expiry of the terms of deputation of such Chief Executives or persons.

5. The national cooperative society shall appoint the persons to the post of the Chief Executive and other managerial posts mentioned in sub-rule (2) from the list of persons recommended by the Selection Committee.
 6. The Selection Committee may coopt two experts at the time of selection of persons according to the requirements of posts or category of posts for which the list of persons is to be prepared.
- 7.21.2 Does law provide that final selection of the Chief Executive shall vest in the hands of the selection committee/panel authority created under law?
- Ans. Though the final selection of the Chief Executive vests in the hands of a selection committee/panel authority, the power to appoint the Chief Executive vest with the Board of the Cooperative Society.
- 7.22 Who decides for preparation of Agenda items for the Board or other functional Committees?
- Ans. Chief Executive decides for preparation of Agenda Items for the Board and other committees?
- 7.22.1 Does law/bye-law makes it obligatory on the part of the Chief Executive to take decision about Agenda Items even without the approval of the Chairman? If so, please specify the provision.
- Ans. Generally bye-laws make provision for identification of agenda items and finalisation with the approval of the Chairman.
- 7.22.2 Is Chief Executive empowered to convene the meetings of the General Body, Board of Directors and other functional Committees without obtaining approval of the President? If so, please specify the provision.
- Ans. Chief Executive is empowered to convene the meetings of General Body, Board of Directors and other functional Committees.
- 7.22.3 Is Chief Executive empowered for recruitment and selection of subordinate officers and other functionaries? If so, please specify the provisions.
- Ans. Chief Executive is empowered for recruitment and selection of those subordinate officers and functionaries as have been defined in the service rules and the bye-laws of a Cooperative Society. However, for Multi-State Cooperative Societies, Chief Executive has been given authority for recruitment and selection of subordinate officers and functionaries, which are not recruited by the Panel Authority.
- 7.22.4 If Chief Executive is not empowered to recruit and select his subordinate officers and other staff members, would it be appropriate to vest such power in him ? Please give your views along with reasons.
- Ans. It will not be appropriate to vest powers for selection and recruitment of subordinate officers and other functionaries absolutely in Chief

Executive otherwise this may lead to bureaucratisation of management of cooperatives. However, the most desirable course would be that Board should lay down specific norm for recruitment and selection policies and procedures and President and Chief Executive may exercise their powers within those prescribed norms.

7.22.5 Should Chief Executive be empowered to take disciplinary action against his subordinate officers and staff members? Please give your views.

Ans. Yes. Since Chief Executive has to maintain discipline in the office, he should be empowered to take disciplinary action against his subordinate officers and staff members for which specific parameters should be laid down in the service rules.

VIII. Cooperative Law and Self-reliance

8.1 There are three aspects of self-reliance in cooperative: (a) self-reliance in terms of self-regulation, (b) self-reliance in terms of resources, and (c) self-reliance in terms of leadership. Does cooperative law make provision to motivate cooperatives to develop self-reliance. If so, please specify the provisions.

Ans. The cooperative law does not make specific provision to motivate cooperatives to become self-reliant. However, provisions have been made for creation of specified funds and reserves for specific purposes.

8.2 If cooperative law, rules and bye-laws do not make any provision in regard to self-reliance, what are your view on this subject? Please give detailed note.

Ans. Self-reliance is the crux of operating principles of cooperative business. Therefore, there should be provisions in law, rules and bye-laws for making such provisions. Some of the suggested provisions may be as under:--

- (a) Provision for redemption of Government share capital within a stipulated time.
- (b) Provision for entitling the cooperative society for creating its own funds and resources.
- (c) Provision for providing autonomy to cooperative society to make its own service regulations without the approval of Registrar, Cooperative Societies.
- (d) Provision for making it obligatory on the part of every cooperative society to frame its own development plan, which should incorporate for generation of income resources and business transactions.

8.3 Does Cooperative law and rules make provision for appropriation of net profits? If so, please specify.

Ans. Yes. Every State cooperative law makes provision for appropriation of net profit. Claims on net profits are defined as under:--

- (a) Reserve Fund.
- (b) Cooperative Education Fund.
- (c) Development Fund.
- (d) Distribution of dividend to the shareholders.
- (e) Creation of any other funds such as building fund with the approval of General Body and the Registrar, Cooperative Societies.

8.4 What types of funds a cooperative society can create under cooperative law, rules and bye-laws? Please specify.

- Ans.
- (a) Reserve Fund.
 - (b) Cooperative Education Fund.
 - (c) Building Fund.
 - (d) Share Capital Redemption fund.
 - (e) Dividend-Equalisation Fund.
 - (f) Business Development Fund.

8.4.1 Who is the competent authority to take decision about the creation of the funds?

Ans. The funds are defined in the bye-laws. The General Body is the competent authority to take decision about the creation of fund as recommended by the Board of Directors. Approval of Registrar is also to be taken for creation of such funds.

8.4.2 Whether the competent authority has been defined in the law and rules or bye-laws? Please specify.

Ans. Yes.

8.4.3 Who is the competent authority to take decision regarding investment of funds?

Ans. Board of Directors.

8.4.4 Does cooperative law define various institutions and modes in which funds of a cooperative society can be invested? If so, please specify.

Ans. Yes. The following are the institutions:-

- (a) Government Securities.
- (b) Nationalised Commercial Banks.
- (c) Cooperative Banks.
- (d) Share of any other Cooperative Society.
- (e) Any other Government approved Securities.

- 8.4.5 Does cooperative law prescribe any restrictions regarding investment of funds? If so, please specify.
 Ans. A Cooperative Society cannot invest its funds except in the institutions and activities as defined in the Cooperative Societies Acts and Rules.
- 8.4.6 Does cooperative law prescribed to make any provision restricting the cooperative society for obtaining loans/borrowings for mobilizing its resources?
 Ans. Cooperative Law makes provision for maximum borrowing power of a cooperative society. Generally it is 10/12 times of the paid up share capital of a cooperative Society.
- 8.5 Does cooperative law make any provision to obtain permission of Registrar of Cooperative societies/Government regarding investment of its fund ?
 Ans. Yes. Some of the cooperative laws make provision.
- 8.6 Can cooperative society give donations to any non-cooperative organisation? If so, what is the maximum limit?
 Ans. Donations can be given for charitable and educational purposes subject to the rules and regulations framed by the Board of Directors duly approved by the Registrar, Cooperative Societies.
- 8.7 Does law/bye-law specifically provide for members obligations to build up the resources of their society? If so, please specify.
 Ans. No.
- 8.8 Does Law make provision empowering the Government to issue directions for building up the resources of cooperative society? If so, please specify.
 Ans. Cooperative law gives general power to the Government to issue directives in the public and cooperative interest. Under this power, Government can issue directions for building up resources.
- 8.9 Does cooperative society enjoy total authority to deploy its surplus resources for its own development? If so, please specify the provision.
 Ans. Yes. But for construction of buildings, approval of Registrar is to be taken in many of the States.
- 8.10 What is the maximum limit of payment of dividend to the share holders in a cooperative society?
 Ans. 9%.
- 8.11 Can cooperative society undertake transactions with non-members for building up its resources? If so, what are the prescribed norms under cooperative law/bye-law?
 Ans. Yes. In certain cooperative societies such as consumers, marketing, etc., transactions with non-members can be undertaken by a coopera-

tive society. The provision in the bye-laws is that such non-members with whom transactions take place are treated as nominal members without having any voting right.

IX. Cooperative Law and Government

9.1 Do you think that provisions in cooperative law enable the Government in playing its positive role for cooperative development in accordance with the principles of cooperation? Please give an analytical note.

Ans. Although there are no specific provisions to enable the government in playing its positive role for cooperative development in accordance with principles of cooperation, specific legal provisions exist to allow Government a dominant role in the management of cooperative organisations. Some of the important provisions relating to role of Government vis-a-vis cooperative organisations are as under:--

- (a) Power of registration of cooperative societies keeping in view their viability and principles of cooperation.
- (b) Power to hear appeal against the delinquent management of cooperatives.
- (c) Enabling provision for Government to invest in of cooperative organisations.
- (d) Power to issue directive in the cooperative and public interest--generally these directives are issued with a view to ensuring effective implementation of various developmental programmes enunciated by Government to cooperatives.
- (e) Power to conduct elections so as to ensure democratic management of cooperatives.

9.2 Does cooperative law make specific provision about government support to cooperatives? If so, please specify.

Ans. Yes. However, these provisions are with regard to participation of Government in the share capital and management of cooperative societies.

9.3 What types of Government assistance to cooperative institutions is visualized in cooperative law? Please specify.

Ans. The Cooperative Law visualizes generally three types of assistance to cooperatives from the Government:--

- (i) Investment in the share capital.
- (ii) Creation of managerial resources.
- (iii) Organisational assistance.

9.4 Does cooperative law provide for representation of the government on the board of management of cooperative societies in relation to its assistance to cooperatives? If so, please specify.

Ans. Yes. The following types of provisions exist in different State cooperative laws and Multi-State Cooperative Societies:--

- (a) Representation in proportion to the contribution of the Government to the share capital of cooperative organisation.
- (b) Empowering the Government to nominate the Board of Directors in case share capital exceeds beyond a certain limit, i.e. more than 60%.
- (c) Limited representation, say three government nominees on the board irrespective of share capital contribution of the Government.

9.5 Does Government enjoy power to issue directive for implementing certain development policies through cooperatives even if they are not accepted by the members of cooperative society? If so, please identify the situations in which such directions by the Government can be issued.

Ans. Yes. However, law does not define and identify the situations in which directives can be issued by the Government. It makes a general provision that the Government can issue directives for cooperatives in public and cooperative interest.

9.5.1 Does the Government or any of its authorities have power under law to suspend a decision/resolution passed by a cooperative society? If so, under what circumstances.

Ans. Yes. But this provision exists only in two States. Suspension of decision/resolution of a cooperative society can be effected only if:--

- (a) It is against the interest of the Government;
- (b) It is against cooperative law, rules and bye-laws;
- (c) It is against the interest of the cooperative society.

9.5.2 Does the Government have power to wind up a cooperative society by its own decision?

Ans. Yes.

9.5.3 Does the Government have powers to supersede the management of a society? If so, please give details.

Ans. Yes. This power is exercised by the Government under following circumstances:--

- (a) If during the course of audit, enquiry and inspection, it is found that the management of cooperative society has acted against the law, rules and bye-laws, interest of the cooperative society causing the loss, which otherwise could have been avoided.

(b) If the management has been acting against the government policies and programmes.

(c) If a situation has arisen, which has led to stalemate in the functioning of the society.

9.6 What is the positive impact of government aid to the cooperatives?

Ans. The positive impact of the government aid is the diversification of cooperative business in various spheres of economic life of the people.

9.7 Has the Government aid to cooperatives resulted into erosion of cooperative ideologies/values? If so, please give a detailed note with specific instances.

Ans. Since Government has provided assistance to cooperative, it has also taken upon itself the responsibility of directing and administering the cooperative organisations, with the result the autonomy of cooperative institution has been eroded. Most of the state cooperative laws empower the Government to appoint the Managing Director and the Managers of cooperative organisations and thus usurping the jurisdiction of the cooperative society. The Government aid in a way has acted a double edged weapon. On the one hand it has made cooperative organisations dependent on Government support and thereby adversely affecting their self-reliance and on the other hand it has given unlimited powers to the Government to interfere in the management and functioning of cooperatives.

9.8 Does cooperative law make it obligatory for the government to consult cooperative organisations before introducing a policy for cooperative development?

Ans. No. However, tradition has been built up that the cooperative organisations are consulted before introducing a policy for cooperative development.

9.9 What should be the actual role of the Government in regard to (a) cooperative development, (b) preservation and protection of cooperative values, and (c) building up professional management of cooperatives? Please give an analytical note.

Ans. (a) The role of Government should be that of motivator for cooperative development. It should not introduce any compulsory policy direction for cooperative development. However, it may identify certain activities in which cooperatives may be actively involved and adequate support be provided to them.

(b) *Preservation and Promotion of cooperative values:*

Here, the role of Government should be that of a watch-dog. If it finds that a cooperative society is not functioning according to cooperative ideology, it should step in and introduce corrective measures.

(c) *Building of professional management of cooperatives:*

In this context, the role of the Government should be to define norms for professional management for every type of cooperative society, and thereafter full autonomy should be given to cooperative institutions to operate within those prescribed norms.

X. Others

10.1 Does Cooperative law make any specific provision for the role of federations of cooperative societies? If so, please specify.

Ans. No.

10.2 Does cooperative law make any specific provision for the development of cooperative leadership through education and training? If so, please specify.

Ans. No.

10.3 Does cooperative law prohibit politicalisation of cooperative institutions? Please specify the provision.

Ans. Very recently, in one of the states, cooperative law has prohibited the election of M.P.s, M.L.A.s, Corporators, etc. on the management of a cooperative society.

10.4 What is the machinery in cooperative law to conduct free and fair elections of cooperatives without any external influence? Please specify.

Ans. For conduct of election, the Government (Department of Cooperation) has been given full powers.

10.5 Is there any specific provision for enabling the representative/spokesman organisation of cooperatives e.g. National Cooperative Union/Provincial Cooperative Unions to play their effective role for the growth of cooperative movement in accordance with principle of cooperation? If so, please specify.

Ans. No.

INDONESIA

Study on Facilitation of Cooperative Legislation

QUESTIONNAIRE

I. Constitutional and administrative status of cooperatives

1.1 What is the status of cooperation in country's Constitution? In case of Federal Constitution, is cooperation a national/state/provincial/concurrent subject ?

Ans. 1) The status of cooperation in the Indonesian Constitution (known as 1945 Constitution) is as "the main pillar" of the national economy.

2) *Note :*

The form of the state of Indonesia is a unitary, not a federal state, and a republic.

The state is divided into 27 provinces or first level regions and each province is divided into several districts or second level regions. Totally there are 289 districts in Indonesia.

1.2 Does country's constitution specifically make provision/incorporation of articles defining constitutional status of cooperation ? If so, mention specific provision.

Ans. 1) Article 33 of the 1945 Constitution states that :

(1) The economy shall be organized as a joint endeavour based upon the principle of brotherhood.

(2) Branches of production which are important for the state and which affect the life of most people shall be controlled by the state.

(3) Land and water and the natural riches contained therein shall be controlled by the state and shall be made use of for the maximum prosperity of the people.

2) The elucidation of article 33 in Constitution is the following :
"In article 33 is stated the basic of *economic democracy* production is carried out by all, for all under the leadership or control of the members of society. What is given priority is the prosperity of the society, not the prosperity of the individuals.

Therefore, the economy shall be organized as a joint endeavor based upon the principle of brotherhood. *The form of enterprise in conformity with that is the cooperative.* The economy shall be based upon economic democracy, prosperity is for all the people. Therefore, branches of production which are important for the state and which affect the life of most people must be controlled by the state. If not, the leadership of production will fall into the hands of individuals who are in power and many people will be oppressed by them.

Only those enterprises which do not affect the life most people may be in the hands of individuals.

The land and the water and the water and the natural riches contained therein are the basics of the prosperity of the people. Therefore they must be controlled by the state and utilized for the maximum prosperity of the people”.

1.3 Is there any separate coordinating Ministry for all types of cooperatives both at the level of national as well as state/provincial Government ? If not, which Ministry coordinates ?

Ans. Ministry (Department) of Cooperatives is for all types of cooperatives at the national, provincial as well as district levels.

1.4 What is the extent of representation of cooperative sector in national parliament and state legislatures ?

Ans. 1) There are two kind of important bodies representing the people in their political life, namely People’s Consultative Assembly at the national level and People’s Representative Council at the national, provincial and district levels.

2) There is no representation of cooperative sector in the People’s Representative Councils. While in the People’s Consultative Assembly there is a representation of cooperative sector based on the provision stated in Article 2 paragraph (1) of the 1945 Constitution.

3) Article 2 paragraph (1) states that :

“The People’s Consultative Assembly shall be composed of members of the People’s Representative Council, supplemented with the delegates from the regions and the groups, in accordance with the regulations stipulated by the law”.

The elucidation of the above mentioned paragraph is the following:

It is meant that the whole people, all groups, all regions will have their representatives in the Assembly, so that the Assembly can really be considered as a bodily manifestation of the people.

What is meant by the “groups” are bodies such as the cooperatives, labor unions, and other collective bodies. Such as a regulation is indeed in accordance with the trend of times. In connection with the motion to establish a cooperative system in the economy, this paragraph reminds the existence of groups in the economic institutions.

- 4). Although there is no representation of cooperative sector in the People’s Representative Councils, it does not mean that there is no cooperators becoming members of those councils. There are many cooperators, mainly the members of the leadership of the Golongan Karya (a coalition of functional groups uniting labor, youth, cooperatives, and other organizations which are not affiliated with the traditional political parties), who were elected as the members of the councils.

1.5 Is there any provision in the constitution for nominating outstanding cooperators in national parliament and state legislatures ?

Ans. See Answer 1.4.

1.6 What is the administrative set up for cooperative sector ? Please describe organizational functional chart of Department of Cooperation in the Government both at centre and the states.

Ans. See figure 1 of the Organigram of the Department of Cooperatives and figure 2 of the Provincial Office of the Department of Cooperatives.

1.7 Please give a brief description of (i) powers, (ii) functions, and (iii) duties and responsibilities of Department of Cooperation.

Ans. 1) The role of Government pertaining to cooperative development are mentioned in Article 37, 38, 39 and 40 of the Law No. 12 of the Year 1967 concerning Basic Regulations for Cooperatives. The statements of those articles along with their memorandum of elucidation are as under :

a) Article 37 :

“The Government is obliged to render guidance, supervision, protection and facilities to the cooperative societies and enable them to implement the article 33 of the 1945 Constitution along with its elucidation”.

Its elucidation :

“In doing the duties mentioned in Article 37, the Government shall always be active as mentioned in the following Sanskrit words :

“ing nagarsa sung tulodo
ing madya mbangun karsa
tut wuri handayani ”

The meaning is :

1. ing ngarsa sung tulodo (= in front providing them with examples), which means that : As leaders or promoters we should always give good examples.
2. ing madya mbangun Karsa (= in their midst arousing their will) which means that: If we are in the midst of the people, we should not be passive, but we have to arouse people's spirit to generate good initiatives.
3. tut wuri handayani (= following while motivating from behind), which means that : Although we are on the back we have to give strength/power and give guidance which is wrong or right.

This means that the Government really gives proper per to the cooperative societies to manage their own life in the framework to realize their ideological foundation, and to implement their core re-values and principles.

However, if necessary, any time the Government will meddle in the cooperative affairs to safeguard the implementation of the cooperative core values and principles and the Government policies for the interests of the Cooperative Movement itself as well as for the need of the society. Based upon that consideration and without curtailing the authority of the Minister to formulate his basic policy further in the cooperative field, this article obligates the Government to provide the Cooperative Movement with :

- a. Guidance with the intention to create general climate and condition that enable the Cooperative Movement to grow and develop among others through education and extension.
- b. Supervision with the intension to secure and save the interest of the cooperative societies as well as of the other parties.
- c. Facilities that can be manifested in the form of :
 1. Providing something in the of money (subsidy), goods or services;
 2. privileges, in the form of alleviations of benefits in legal traffics such as :
 - stamp, alleviation of stamp duty for certain cooperative societies, such as agricultural cooperative societies;
 - equivalent value of the book-keeping of the cooperative societies with the Trade Books as decided in the Book of Commercial Law;
 3. Seperate policy concerning credit, including easy and soft credit requirement to promote cooperative business, facilities in the fields of production and distribution and distri-

bution, etc.

In general these assistance are intended to generate energy and capability of the cooperative societies themselves so that henceforth, they can help themselves. Therefore, if it is necessary, such kind of assistance can only be given with certain requirements, for instance : only once, temporary and gradually reduced in accordance with the growth of the capability of the cooperative society, the amount of which to only what is really needed, while the utilization of the assistance should be supervised as to bring about real growth of "self-help and mutual aid". Certainly these types of assistance cannot be decided in this Law but has to be decided in separate regulations when and until what level it is felt to be needed.

- d. Protection, directed to secure and save the cooperative interests, such as protection to the cooperative societies decided in article 48 to avoid misuse of the special provisions in the field of trade and distribution with the intention to give the cooperative societies the opportunities to develop.

b) Article 38 :

- (1) "To carry out the duties mentioned in article 37, without curtailing the rights and duties of the cooperative societies to manage themselves, the Government shall stipulate policies and regulate the efforts in carrying out development and rendering guidance, facilities, protection and supervision to the whole cooperative activities.
- (2) The Minister shall appoint Officials and stipulated the limits of their authority in the fields of development, guidance and supervision.
- (3) The Official shall have a right to attend and talk in the Board of Directors' meeting and members' meeting at any time. In an extraordinary case, the Official shall have the authority to organize members' meeting, decide its agenda and par-take in the deliberation".

Its elucidation :

"The Official can attend and talk in the members' meeting and in the meeting of the Board of Directors. In an extraordinary situation, the Official can also organize a members' meeting, decide an agenda and conduct a deliberation.

What is meant by extraordinary situation is for instance :

1. A situation in which the Board of Directors are not

able or are unwilling to organize a members' meeting.

2. There is no Board of Directors anymore
3. An emergency situation"

c) **Article 39:**

"The inspection to the cooperative society can be carried out by the Official himself or by other person or Agency appointed by him. The Official and or Inspector is obliged to keep the results of inspection a secret "

Its elucidation :

"Periodic or occasional inspection shall be regulated by the Minister. The cost of inspection done as requested by the Government shall be paid by the Government. The cost of inspection done as requested by the cooperative society shall be paid by the cooperative society itself"

d) **Article 40:**

"Credits from the Government and tax policy for the cooperative societies shall be stipulated in special legislation, by considering the functions of a cooperative society and its specific characteristics"

Its elucidation :

Since the members of the Indonesian Cooperative in general consists of people who are economically weak, there need to be a separate law regulating the credit and tax for the cooperative societies. This is intended to facilitate the obtaining of credit needed and to get alleviation of tax.

- 2) The most important Government agency pertaining to cooperative development is the Department of Cooperatives. The main task of the Department of Cooperatives is to carry-out a part of the general governmental and developmental task in the field of cooperatives.

While its functions are the following :

- a) Formulating implementory and technical policies;
- b) Providing guidance, management assistance and business license in accordance with the general policy decided by the President and based on the regulations which are still valid;
- c) Managing Government Properties under its responsibility;
- d) Executing and controlling of the implementation of its main task.

1.8. Do the federal organizations of cooperatives enjoy some powers in regard to management and administration of their constituent units ? If so, please mention them briefly.

Ans. 1) Yes they do.

The provision concerning the obligation of the federal organizations of cooperatives in regard to management and administration of their members can be found in Article 15 paragraph (3) of the Law Number 12 of the Year 1967 concerning Basic Regulation for Cooperatives, which states that :

“A higher level cooperative society is obliged to and has the authority to provide guidance and supervision to the lower level cooperative societies.

1.9 Is there any system or legal provision under which certain powers and functions of Department of Cooperation in the Government could be delegated to and develop on the federal organization of cooperatives? If so, please describe such powers and functions.

Ans. Such kind of system or legal provision does not exist.

1.10 Are there any parastatal organizations set up by the Government for the development of cooperatives ? If so, please name them.

Ans. Parastatal organization set up by the Government especially for the development of cooperatives does not exist in Indonesia.

1.11 Do the parastatal organizations set up by the Government for development of cooperatives have powers in regard to administration of cooperatives aided by them ? If so, please describe such powers.

Ans. See answer 1.10.

1.12 Are cooperatives represented in local bodies and vice-versa ?

Ans. No.

II. National Policy on Cooperative Development

2.1 Please describe broad objectives of national economic development.

Ans. Broad objectives of national development in the Fifth Five Year Development Plan (1989/1990-1993/1994) as stated in the 1988 Broad Outlines of State Policy is as follows:

“Giving priority to the agricultural sector to stabilize the self-supporting in food while enhancing the production of other agricultural produces, and industrial sector especially the industry that can produce export commodities, industry that can absorb manpower, processing industry for agricultural produces, and industry that can produce industrial machineries, in the framework of realizing balanced economic structure between industry and agriculture, from a value-added as well as from manpower absorption point of view.”

2.2. Is there any national policy on cooperatives ?

Ans. 1) The national policy on cooperative development for the period of 1989/1990-1990/1994 can be found in the following

documents :

- a) Broad Outlines of State Policy;
- b) Fifth Five Year Development Plan;
- c) Basic Pattern of the Cooperative Cultivation and Development in the Fifth Five Year Development Plan.

- 2) The first document was stipulated by the People's Consultative Assembly, the second one was decreed by President of the Republic of Indonesia, and the third one was decreed by the Minister of Cooperatives.

2.3 Has national Government issued any national policy statement. If so, please enclose a copy of the statement.

- Ans. 1) The National Government, c.q. the Department of Cooperatives, issued a national policy statement regarding cooperative development. The policies are contained in the document entitled "Basic Pattern of Cooperative Cultivation and Development in the Fifth Five Year Development Plan.
- 2) The summary of the national policy statement is enclosed.

2.4 Is cooperative sector involved in formulating national policy on cooperative development. If so, what is the mechanism/institutional framework.

- Ans. The Indonesian Cooperative Council, National Federations of Cooperative Societies and cooperative experts/scholars were involved in formulating national policy on cooperative development.

2.5 Do Government actively involve cooperatives in effective implementation of economic development programmes ?

- Ans. Yes, the Government do.

2.6 Are there any specific development programmes which are specifically allocated to cooperatives for implementation ? Please mention briefly.

- Ans. 1) Many development programmes are specifically allocated to cooperatives for implementation, especially Village Unit Cooperatives, such as :
- a) Distribution of fertilizer, insecticide, selected seeds, equipments/machineries, etc.
 - b) Procurement of foods, cattle breeding, animal husbandry, fisheries, plantations, forestry, etc.
 - c) Extending rural credits, credits for small traders, etc.
 - d) Agricultural extension.
 - e) Small industries and handicrafts.
 - f) Transportation.

g) Rural electricity.

2.7 Do National Plan Documents provide specific place to cooperative sector ? If so, please explain.

- Ans. 1) The National Development Plan Documents (see Answer 2.2) do provide specific place to cooperative sector.
- 2) The cooperative development policy in the National Plan Documents is not merely “the policy” of the Government but also “the policy” of the Cooperative Movement.

2.8. What is the place of cooperative sector vis-a-vis private and public sector ?

Ans. “The explanation of the 1945 Constitutions stated that the three economic sectors need to be based on the principle of brotherhood in their operations.

The essence is that these three sectors need to be arranged in such a way so that the functional relationship becomes more concrete. Nowadays the state and private sectors have developed more advanced than the cooperatives.

This is caused by the incentives and special treatments of the two sectors mentioned above. The state sectors is promoted by the Government with the supply of capital, certain business fields, personnel with modern managerial requirements, sophisticated technology and various other facilities. Thus the state sector can take the role of a leader or pioneer of a big enterprise, supplying goods and services needed by the society. Also the private sector, through foreign capital investment and domestic capital investment regulations are given facilities and even protection, will make it possible for this sector to develop fastly since the New Order. The cooperative sector, although promoted by the Government it can be said that only small business units are the area where the cooperative have to develop and have no facilities as given to the private and state sectors. To be able to catch up with the private sector, the Government has to provide facilities to the cooperatives so that the business units can develop significantly.

2.9. Does cooperative sector formulate its own plan of development independent of the plan formulated by the Government ?

If so, what is the mechanism.

- Ans. 1) The Indonesian Cooperative Council formulates its own plan of cooperative development independent of the plan formulated by the Government.
- 2) The plan is framed by the leadership of the Council at the national level, discussed and approved by the annual meeting

of the leadership of national and provincial cooperative councils.

2.10 Does cooperative sector formulate its own plan of development, keeping in view the following :

- (a) National priorities
- (b) Government directive
- (c) Members expectation

Please indicate order of preference.

Ans. Generally, the order of preference are:

- 1) National priorities
- 2) Members expectation
- 3) Government directive

2.11 Do the National Parliament and State Legislature discuss the plan of cooperative development regularly ? If so, on what occasion and in what context ? Give some instances.

- Ans. 1) The People's Representative Councils at the National and Provincial levels discuss the plan of cooperatives development regularly.
- 2) The discussion is conducted in the framework of formulating the annual budget of revenues and expenditure, in which the budget for cooperative development is allocated.

2.12 Does the concerned Consultative Committee of National Parliament and State Legislative Assemblies discuss issues concerning Cooperative Development ? If so, how often.

Ans. The discussion on issues concerning cooperative development is conducted frequently.

2.13 Is cooperative sector regularly associated/involved in plan discussions ? If so, how many times in an year ?

Ans. At least twice a year, comprises of discussions with the Committee on Budget of Revenues and Expenditure of the People's Representative Council regarding cooperative development policy and budget allocation and with the Committee on Finance and Economy of the same Council regarding monitoring and evaluation of the implementation of cooperative development policy.

2.14 Has National Government created any specific body/institution at its level to deliberate upon issues concerning cooperative development from time to time ? If so, please give its name and term of reference.

Ans. The Agency for Cooperative Research and Development of the Department of Cooperatives has the responsibility to formulate cooperative development policy.

2.15 Organizational structure of cooperatives, being federal, please enumerate briefly the role of federal organizations at secondary/state/national level, particularly, with reference to policy formulation for cooperative development.

- Ans. 1) The Indonesian Cooperative Council is most responsible body of the Cooperative Movement to formulate policy for cooperative development.
- 2) Nevertheless, such kind of role cannot be found its by-law.

III. Evolution of Cooperative Law

3.1 When the first Cooperative Law in the country was enacted ?

Ans. In 1915.

3.2 What were the reasons/background of the first Cooperative Law ? Please identify them in following heads :

- (a) Political
- (b) Economic
- (c) Social
- (d) Others

Ans. In 1915 the Dutch Government stipulated the Law of Cooperative Societies (Royal Decree of April 7, 1915 and contained in the Government Gazette No. 431).

The Law was directed to be instrument for people's economic improvement. On the contrary it was also used as instrument to deter the politico-economic movement of the people since cooperatives were developed mainly by national independence organizations in the framework of realizing just and prosperous community based on cooperative way of life.

3.3 Whether the first cooperative law was enacted for one particular activity or for cooperatives in totally ? Please specify.

Ans. It was enacted for cooperative in totality.

3.4 With the growing expansion and diversification of cooperative sector, has Cooperative Law been evolved to suit the changing needs of the cooperatives ? If so, please mention various stages of historical evolution of cooperative law.

Ans. 1) With the growing expansion and diversification of cooperative sectors, the Cooperative Law had been evolved to suit the changing needs of the cooperatives.

2) Various stages of historical evolution of cooperative law.

a) *Period of Dutch colonialization*

(1) Law of Cooperative Societies (Royal Decree of April

- 7, 1915; Government Gazette No. 431). This law was a copy of the Netherlands' Cooperative Law of the Year 1916, and did not give positive impact for the development of cooperatives in Indonesia.
- (2) Regulation of Native Cooperative Societies (Government Gazette of the Year 1927 No. 91). The draft of this regulation was the output of the works of a Cooperative Committee established by the Government in 1920. It gave a very positive impact on the development of cooperatives in Indonesia.
 - (3) General Regulations of the Cooperative Societies (Government Decree of March 11, 1933 No. 21; Government Gazette No. 108). The provision in this regulation is quite similar with the provisions prescribed in the Cooperative Law of the year 1915. It was valid for the population who complied with the Western Law. The issuance of this law had created dualism in cooperative legislation and confusion among the people.
 - (4) Regulation of Cooperative Societies (decreed in the Ordinance of April 7, 1949 and contained in the Government Gazette No. 179). The provisions in this Regulation is quite similar with the Cooperative Regulation of the year 1927 and was not valid for the part of Indonesia which was still occupied of the Dutch Government. It did not give positive impact for the development of cooperatives.
- b) *Period of Japanese Occupation (1942-1945)*
 Japanese Military Government did not issue new Cooperative Law. The cooperatives were dominated and exploited by the Japanese as instrument for achieving their war objectives. Many cooperative societies broke-up.
- c) *Period of national independence (since 1945)*
- (1) Law Number 79 of the year 1958 concerning Cooperative Societies (contained in the Additional Government Gazette No. 1669), enacted at October 27, 1958. It was the Cooperative Law stipulated in the period of national independence. The contents is better and more comprehensive compared with the previous cooperative laws.
 - (2) Law Number 14 of the year 1965 concerning cooperatives (published in the Government Gazette of the Year 1965 No. 75 and enacted at August 2, 1965).

The provisions in this Law is very different compared with the Cooperative Law of the year 1958. The Government dominated the cooperatives and the cooperatives were treated as servants of politics.

- (3) Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives (published in the Government Gazette of the Year 1967 No. 23). The provisions in this Law are base on the Indonesian state philosophy the 1945 Constitution and cooperative core values and principles. In its implementation up to now, the Law Number 12 of the year 1967 has given positive impact to the development of cooperatives in Indonesia.

3.5 Is there a separate legislation for cooperatives as a whole or for different groups of cooperatives ? Please enclose a copy.

- Ans. 1) The Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives is the only cooperative law in Indonesia and valid for cooperatives as a whole.
2) The copy is enclosed.

3.6 Have the government appointed expert committees to modify cooperative law from time to time ? If so, please mention them along with their important recommendations.

- Ans. The Government had appointed expert committees to modify law from time to time, except the laws fully copied from the Dutch legislation.

3.7. Whether Government consults the cooperative sector before evolving Cooperative Law ? If so, what is the mechanism ?

- Ans. 1) Before evolving Cooperative Law, the Government of the Republic of Indonesia consulted the Cooperative sector intensively.
2) The Government established a Committee by involving the functionaries of the Cooperative Sector as members.
3) *Example* : The formulation and ratification of the Law Number 12 of the Year 1967 concerning Basic Regulations for Cooperatives.
a) Based on the Decree of the Minister of Trade and Cooperatives Number 070/Sk/III/1966 a Committee was established with the tasks of reviewing the Law Number 14 of the year 1965 on Cooperatives (which contravened the cooperative spirit, core values and principles as well as the spirit of the 1945 Constitution) and formulating a draft of a new cooperative law. The membership of the Committee

was composed of officials of the Ministry of Trade and Cooperatives, c.q. the Directorate General of Cooperatives, *leading cooperative figures*, scholars, representative from the Ministry of Agriculture, Ministry of Textile Industry and People's Handicraft.

- b) The committee succeeded framing a new Cooperative Bill. The bill was submitted to the Government and by the Committee and afterwards it was discussed in the People's Representative Council (the members of the Committee participated actively in the discussions). The Council ratified it in November 17, 1967, as Cooperative Law and in December 18, 1967, it was stipulated as the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

3.8 Have there been occasions when cooperative legislation was formulated by the Government without paying attention to the views of cooperative sector? If so, please describe them briefly.

Ans. The Government of the Republic of Indonesia always involves and consults cooperative sector in formulating any cooperative legislation.

3.9 Are there allied laws which regulate the functioning of cooperatives? If so, please describe briefly their salient feature.

- Ans. 1) There are many allied laws which regulate the functioning of cooperatives, but the most important one is the Code of Commercial Laws.
- 2) The Code comprises two books. The first book contains provisions regarding trading in general, while the second one contains provisions regarding the rights and responsibilities in the shipping business.

IV. Cooperative Law and Principles of Cooperation

4.1 Does Cooperative Law have specific provisions for incorporation of principles of cooperations? If so, reproduce concerned provisions.

Ans. 1) Article 6 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives contains provisions on cooperative principles, namely:

“The Principles of the Indonesian Cooperative are :

1. the feature of its membership shall be voluntary and open to every Indonesia citizen;
2. the members' meeting shall hold the supreme power as a reflection of democracy in the cooperative societies;

3. the distribution of net surplus is arranged based on the proportion of the services given by each of the members;
 4. there shall be a limitation to the interest earned on capital;
 5. to improve the welfare of the members in particular and the society in general;
 6. its business and management shall be open;
 7. self-help, self-activity and self-sufficiently as a reflection of the basic principle of self-reliance”.
- 2) In the Memorandum of Elucidation of the Law Number 12 of the Year 1967, those cooperative principles are described further as the following :
- “The Indonesian Cooperative Principles constitute the essence of the operational basis of the cooperative society as an economic organization with social character.
- Those operational basis form special characteristics of the cooperative society and therefore distinguish and make it different from the other economic institutions.
- (1) The voluntary characteristics in the cooperative membership has a meaning that each person that enters the cooperative society to become a member must base his action on the consciousness and conviction to participate actively in the cooperative and be determined to improve his life and the life of the society.
- (2) The members’ meeting is the holder of the supreme power in the cooperative organization which has people as its members that do not represent any ideology, group and political view of the individuals and the same voting right of one man one vote in the primary cooperative society forms the basic principle of the cooperative life.
- (3) This principle is non-capitalistic in character and since the cooperative society is not an association of capital, the distribution of the net surplus to the members is not based on the individual ownership of capital in it but based on the proportion of his service/business and activity in the life of the cooperative society.
- It is clear that the net surplus which originates from non-members is not distributed to the members (article 34 paragraph (4).
- (4) The capital in the cooperative, although forms an important element which cannot be neglected as a production factor, shall be used for the happiness of the members and not only for seeking monetary profit (profit motive), and therefore it is not

decisive in the distribution of net surplus as is common in the form of dividend.

For that reason the interest earned on capital in the cooperative society is limited in accordance with the decision of the members' meeting itself.

(5) The social character of the cooperative is proven among others from this principle, so that the cooperative although basically forms an economic organization cultivated by and for the members, it has to participate in the development of the society in general as well, so that the devotion of the cooperative society becomes more actual.

(6) The cooperative society as an association of people moving in the economic field has to be open especially for the members and therefore the business of the cooperative shall be developed by the members and the management shall be controlled also openly by them. This does not mean that the society cannot evaluate the performance of the cooperative society.

(7) This principle forms a motive factor for any thought, will and work of the cooperative.

Without the capital of trust/conviction in the ability and strength of one-self there will be no activity in the cooperative society. Each activity should be based on the principle of swadaya (self-help), swakerta (self-activity) and swasembada (self-sufficiency), in the meaning of :

Swadaya = individual strength or effort, from the word swa meaning own property and daya meaning something that has to be carried out.

Swakerta = self-made; kerta=something that has been carried-out, kerta (Sanskrit) = to work or to make.

Swasembada = the ability of one-self; sembada = friend in one union.

4.2 Whether principles of cooperation incorporated in Cooperative Law are the following as laid down by the International Cooperative Alliance ?

- (a) Open and voluntary membership
- (b) Democratic control
- (c) Limited interest on capital
- (d) Savings belong to members
- (e) Cooperation among cooperatives
- (f) Cooperative education

Please explain briefly deviation, if any.

Ans. Compared with the cooperative principles laid down by the Interna-

tional Cooperative Alliance, we can make conclusions as the following:

- 1) The concepts of the first three ICA cooperative principles can be found in Article 6 of the Cooperative Law Number 12 of the year 1967 (vide : Article 6, paragraphs 1, 2 and 4).
While the second three ICA cooperative principles are not stipulated as cooperative principles in Article 6.
- 2) On the other hand, Cooperative Law Number 12 of the year 1967 stipulated other four principles, as stated in Article 6 paragraphs 3, 5, 6, and 7, which are not found in the ICA cooperative principles.

4.3 What is the definition of cooperative society in Cooperative Law ?

Ans. 1) Article 3 of the Law Number 12 of the Year 1967 concerning Basic Regulations for Cooperatives defines cooperative society as the following:

“The Indonesian Cooperative is a people’s economic organization with a social character, having person or legal cooperative societies as members, forming an economic system as a joint endeavour based upon the principle of brotherhood”.

- 2) In the Memorandum of Elucidation of the Law Number 12 of the year 1967, the concept of Indonesian Cooperatives is described as under.

“The Indonesian Cooperative is an association of people who as human beings jointly cooperate based on equality and work for improving their economic interest and the interests of the society.

From the general meaning mentioned above, the following characteristics should be always visible :

- a. that the Indonesian Cooperative is an association of people and not association of capital. The influence and utilization of capital in the Indonesian Cooperative may not decrease the significance and may not blur the meaning of the Indonesian Cooperative as an association of people and not as an association of capital.

This means that the Indonesian Cooperative must really devote itself to humanity and not to worldly things.

- b. that the Indonesian Cooperative works together and cooperates based on equality of level, right and duties, which means that the Indonesian Cooperative is and should be an institution of economic and social democracy. Due to this democratic basis, it has really to be guaranteed that the cooperative is the property of the members themselves and

- basically has to be arranged and managed in accordance with the wish of the members, which means that the highest right in the cooperative lies with the members' meeting.
- c. that all the activities of the Indonesian Cooperative have to be based on the consciousness of the members. In the cooperative it is not allowed to exert force, threat, intimidation and interference of other parties who have no relationship whatever with the internal affairs of the cooperative.
 - d. that the objective of the Indonesian Cooperative must really be the common interest of the members and this objective shall be achieved based on the work and service contributed by the respective members. The participation of the members in accordance with their amount of work and service contributed to the cooperative must be reflected in the distribution of the cooperative net surplus".

V. Registration and Membership of a Cooperative Society

5.1 Are there any pre-conditions for registration of a cooperative society?
If so, please give details.

Ans. 1) The provision pertaining to the registration of a cooperative society, or in the Cooperative Law stated as recognition as a legal body, is contained in Article 41 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

2) Article 41 stated that :

"A cooperative society, which its articles of incorporation has been legalized based upon the provisions stated in this Law, shall be recognised as a legal body".

Its elucidation is as follow:

"This article confirms that the cooperative society shall acquire the right as a legal body due to the provisions of this Law, which is further regulated in article 42 and the following.

The legal body mentioned above shall make it possible for the cooperative society to carry out all legal actions in accordance with Indonesian law including the right of ownership of land and buildings as regulated in the law concerning agrarian affairs, and to carry out business activities in the economic field without getting special permit in advance for those purpose".

5.2 Does the discretion for the registration of cooperative society lie with the registering authority under law even if the promoters fulfil all the stipulated conditions ?

- Ans. 1) The authority to give a legal body status to a cooperative society is the hand of the Minister of Cooperatives. The Minister can delegate the authority to the Official, i.e. the functionary who is appointed by and gains special authority from the Minister on several cooperative issues, such as the Head of the Provincial Cooperative Office and the Head of the District Cooperative Office of the Department of Cooperatives.
- 2) Concerning the authority of giving a legal body status to a cooperative society, Article 42 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives states as follows :
- (1) The Minister has the authority to give a legal body status to a cooperative society.
 - (2) The Minister can delegate the authority to the Official in giving legal body status to a cooperative society mentioned in paragraph (1) above.
- 3) Indonesia is a state based on law; it is not based on pure power. Consequently, the Government is obliged to uphold the law without any exemption.
- Based on this principle, the registering authority is obliged to give a legal body status to a cooperative society if the promoters of the concerned institution have fulfil all the stipulate conditions in accordance with the Cooperative Law.

5.3 Is the registering authority under cooperative law obliged to record reasons in writing in case of refusal for registration of a cooperative society ?

- Ans. 1) Article 46 paragraph (2) of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives contains such kind of provision.
- 2) To clarify the above mentioned statement, the Article 46 along-with its elucidation is presented as under.
- Article 46:
- (1) The Official shall have to legalize a cooperative society within 6 (six) months since the receipt of application of legalization mentioned in article 44.
 - (2) In case of the Official has objections on the contents of the articles of incorporation submitted by the incorporators, with the consideration that its contents is not accordance with this Law and its implementary provisions, so within 3

(three) months prior to the expiration of the period mentioned in paragraph (1) of this article, the Official shall have to submit a written refusal to the incorporators, which shall contain the reasons of his decision, sent by registered mail or by any other justifiable means, two copies of which shall be submitted to the higher level Official and to the Minister.

- (3) The incorporators have the right to appeal to the Minister toward the refusal mentioned in paragraph (2) of this article, in 3(three) months at the latest as of the day following the day of receipt of the refusal.
- (4) The Minister shall make a decision in 3 (three) months at the latest as of the day following the day of receipt of the letter of appeal.
- (5) The decision made by the Minister shall be final and conclusive.

Its memorandum of elucidation :

“The Official has the right to refuse the request of a cooperative society to become a legal body if he is of the opinion that the content of its By-law does not reflect the cooperative core values and principles or if according to his objective evaluation the establishment of the cooperative society will not benefit the members.

To this refusal, the incorporators of the cooperative society have the right to appeal to the Minister. If at the latest six months there is no response of the Official, then the incorporators can submit their problem to a higher Official or to the Minister. While waiting for the legalization as a legal body the incorporators can carry out business on behalf of the cooperative society.

5.4 Is there any time limit prescribed under law which registering authority is obliged to take decision in regard to registration of the society ?

Ans. The time limit six months.

(vide : Article 46 paragraph (1) cited in Answer 5.3)

5.5 Does law provide for “society will be deemed to have been registered in case of decision by the registering authority is not taken within the prescribed time limit”.

Ans. 1) Concerning this issues, the memorandum of elucidation of Article 46 states that :

“if at the latest six months there is no response of the Official, then the incorporators can submit their problem to a higher Official or to the Minister”.

- 2) If the problem has some relation with the contents of the articles of incorporation which contain: the by-law (the contents of which may be in contravention with the Cooperative Law), the relevant provisions are stated in Article 46 paragraph (2), (3) and (5).

(Vide: Answer 5.3)

5.6 Is the order of the registering authority appealable ? If so, please mention appellate authority under law.

- Ans. 1) The order or decision of the registering authority is appealable.
- 2) They are the Head of the District Cooperative Office and the Head of the Provincial Cooperative Office of the Department of Cooperatives and the Minister of Cooperatives. The order or decision of the Minister of Cooperatives shall be final and conclusive (not appealable).

5.7 Does the registering authority consult concerned federal organization before taking decision regarding registration ?

Ans. It is not necessary, because there is no legal requirement about this in the Cooperative Law.

5.8 Does the law provide for provisional registration of cooperative society ? If so, please quote the provision.

Ans. The Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives does not provide for provisional registration or legal body status of cooperative society.

5.9 Have the Government ever put restrictions on the registration of a particular type of a cooperative society ? If so, please give some details with a copy of Government order/legislation.

Ans. There is a certain restriction pertaining to the establishment of cooperative societies in the rural areas.

Article 2 paragraph (1) and (3) of the Decree of the Minister of Cooperatives Number 84/KPTS/VI/1984 concerning the Implementation of the Cultivation and Development of the Village Unit Cooperatives (KUDs) states as follows :

- (1) Basically there is only one form and one type of the Village Unit Cooperatives in the rural areas;
- (2) The establishment of other cooperative societies outside the village unit cooperatives in the rural areas can only be implemented with the approval of the Minister of Cooperatives.

5.10 Do the law make specific provisions about the persons who may become the members of a cooperative society ? If so, please quote the provision.

Ans. Specific provisions about the persons who may become the members of a cooperative society can be found in the Article 10 of the Law Number 12 of the Year 1967 concerning Basic Regulations for Cooperatives.

It states as follows :

“Any Indonesia citizen who :

1. is capable to perform legal action;
2. accepts the cooperative ideological foundation, core values and principles;
3. is capable and ready to do the obligations and rights as a member, as mentioned in this law, the By-law, the Working Rules and other Cooperative Regulations shall be eligible for membership of a cooperative society”.

5.11 Does the law put restriction on the admission of the persons as members of a cooperative society whose interests are likely to conflict with the objects of the society ?

If so, please quote.

Ans. Such explicit statement or provision does not exist in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives. Nevertheless, based on the memorandum of elucidation of Article 10 of the Cooperative Law (vide : Answer 5.10), in order to maintain its survival the cooperative society needs to make requirements for the acceptance of the members. The elucidation of Article 10 is as follows:

“Although the membership of the cooperative society is open for everybody, however, to maintain its survival the cooperative society needs to make requirements for the acceptance of the members”.

5.12 What is the authority to take decision regarding admission or expulsion of members ? Whether it is prescribed under law or by-laws of a cooperative society ?

Please specify.

Ans. 1) The authority to take decision regarding admission or expulsion of members is in the hand of the Board of Directors.
2) It is not prescribed in the cooperative Law but in the by-law of cooperative society.

Article 11 paragraph (2) of the Law Number 12 of the Year 1967 concerning Basic Regulations for Cooperatives states only the following :

“The membership of the cooperative society can be obtained or terminated upon fulfilling the requirements as stipulated in the By-law”.

While Article 5 paragraph (3), (4) and (6) of the model by-law issued by the Department of Cooperatives contains the following statements :

1. Someone who want to become a cooperative member has to send in request to the Board of Directors. In a *prescribed time limit* the Board of Directors has to answer whether the request of the applicant person is admitted or refused.
2. In case the Board of Directors refuses the request of the applicant person to become a cooperative members, he/she can ask the next members’ meeting to consider his/her problem and take necessary decision.
3. A request to terminate membership of a cooperative society must be sent in to the Board of Directors in written form.
4. Someone who is discharged or dismissed as a cooperative member by the Board of Directors can ask the next members’ meeting to consider his/her problems and take necessary decision.

5.13 Is the authority obliged under law and/or under by-laws to take decision regarding admission of members within a prescribed time limit ? In case of its failure to take decision within the prescribed time limit, whether the applicant person shall be deemed to have been admitted as member. Please specify.

- Ans. 1) In most by-laws of the cooperative societies there is no firm time limit pertaining to the obligation of the Board of Directors to take decision regarding admission of members.
- 2) In case the Board of Directors fails to take decision within the prescribed time limit as promised, the applicant person can wait or ask the next members’ meeting to consider his/her request and take necessary decision. Before being decided by Board of Directors or members’ meeting, the applicant person cannot be admitted as members.

5.14 Is the order of the authority to take decision regarding admission of members is appealable ? If so, please quote specific provision.

- Ans. The order of the authority to take decision regarding admission of member is appealable through the members’ meeting. (Vide : quotation in Answer 5.10 and 5.12).

5.15 Can Government under law issue directive for compulsory admission of certain class of the people as members of certain cooperative society ? If so, please mention the provision.

Ans. 1) Basically, the Government cannot issue any directive for compulsory admission of certain class of the people as members of certain cooperative society.

Nevertheless, if the Board of Directors of the cooperative society creates artificial limitations regarding admission of new members which is in contravention with the Cooperative Law, the Government is obliged to reprimand the Board of Directors and ask them to remove such limitations.

2) The statements in point (1) is in accordance with the provision put in the memorandum of elucidation of Article of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives, which states:

“that the Government really gives proper freedom to the cooperative societies to manage their own life in the framework to realize their ideological foundation and to implement their core values and principles. However, if necessary, any time the Government will meddle in the cooperative affairs to safeguard the implementation of the cooperative core values and principles and the Government policies, for the interest of the Cooperative Movement itself as well as for the need of the society. Based upon that consideration and without curtailing the authority of the Minister to formulate his basic policy further in the cooperative field”.

VI (A) Bye-Laws

6.1 Does the law make it obligatory on every cooperative society to have written bye-laws for regulating its day-to-day functioning ? If so, please quote provision.

Ans. Every cooperative society must have written bye-laws. This can be implied from the following provisions in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

a) *Article 41*

“A cooperative society, which its articles of incorporation has been legalized based upon the provisions stated in this Law, shall be recognized as a legal body”

Its memorandum of elucidation

“This article confirms that the cooperative society shall acquire the right as a legal body due to the provisions of this Law, which is further regulated in article 42 and the following.

The legal body mentioned above shall make it possible for the cooperative society to carry out all legal action in accordance

with Indonesian Law including the right of ownership of land and buildings as regulated in the law concerning agrarian affairs, and to carry out business activities in the economic field without getting special permit in advance for those purposes”.

b) *Article 43 paragraph (1)*

“The legal body status of a cooperative society mentioned in article 41 shall be stated in the articles of incorporation which contains the Bye-law, the contents of which may not be in contravention with this Law”.

6.2 Does the law specify the items/contents of the bye-laws ? If so, please specify.

Ans. 1) The provision regarding the model bye-law and the specification of its items/contents is stated in Article 43 paragraph (2) of the Number 12 of the year 1967 concerning Basic Regulations for Cooperatives along with its memorandum of elucidation.

2) The provision is the following :

Article 43 paragraph (2) :

The Minister shall describe the guidance concerning the contents of the Bye-law and the way it shall be formulated.

Its memorandum of elucidation

Basically the cooperative society has to make its own Bye-law. To avoid error in the making of it, the Minister regulates the way to formulate the Bye-law which contains the provisions, amongs other are the following:

1. Name, occupation and residence of the incorporators of the cooperative society.
2. Complete and abbreviated names of the cooperative society.
3. Location and operational area of the cooperative society.
4. Purpose and objective.
5. Confirmation of business.
6. Membership requirements.
7. Provisions concerning capital.
8. Regulations concerning the liability of the members.
9. Regulations concerning the cooperative leadership and the authority of members.
10. Provision concerning the quorum of members' meeting.
11. Stipulation of the fiscal year.
12. Provisions concerning net surplus at the end of the fiscal year.
13. Provisions concerning the rest of the society's assets if the cooperative society is dissolved.

6.3 Who is the competent authority to frame and to adopts the bye-laws under law ?

- Ans. 1) The first bye-law must be contained in the articles of incorporations which is framed by the incorporators of the cooperative society.
- 2) The adoption of bye-law must be done by the members' meeting. This is based on Article 21 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives. The provision in the Article 21 is as follows:

Article 21:

The members' meeting of the Indonesia Cooperative shall stipulate :

1. The Bye-law.
2. The general policy and the implementation of the decisions of the higher level cooperative society.
3. The election/dismissal of the Board of Directors, the Board of Supervisors and the Board of Advisors.
4. The workplan, budget, ratification of the balance sheet and policy of the Board of Directors in the organizational and business fields.

6.4 Does the law authorize the Government to frame the model bye-laws of every type of a cooperative society ?

If so, please quote the provision.

Ans. Vide Answer 6.2 (i.e. quotation of Article 43 paragraph (2))

6.5 Is it obligatory on the part of a cooperative society to adopt model bye-laws. If so, please specify the provision.

Ans. Model bye-law issued by the Department of Cooperatives is merely a guidance.

(Vide quotation of Article 43 paragraph (2) in Answer 6.2)

6.6 Is it necessary to get the bye-laws registered for enforcement ?

- Ans. 1) It is necessary to get the bye-laws registered for enforcement. This is related the legalization of a cooperative society as a legal body.
- 2) To clarify the above statements, it is necessary to quote the provisions relating to the procedures to get legal body status for a cooperative society as stated in article 44 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

Article 44 :

- (1) To get legal body status, the incorporators of a cooperative society shall submit the articles of incorporation to the

Official. Two copies of the articles of incorporation, one of them sealed, along with the minutes of the incorporation meeting which shall contain the number of the members and the names of those authorized to sign the articles, shall be submitted to the Official.

- (2) On receipt of the articles of incorporation, the Official shall issue a dated receipt and give it to the incorporators of the cooperative society.
- (3) If the Official is of the opinion that the content of the articles of incorporation is not against this Law, so the articles of incorporation shall be listed with its serial number in the General Registration Book provided specially for that purpose in the office of the Official.
- (4) The registration date of the articles of incorporation shall be imposed as the official date of the establishment of the cooperative society.
- (5) Based on the authority delegated by the Minister, the Official shall affix the date, the registration number and the authorized signature to both documents of the articles of incorporation mentioned in paragraph (1) of this article. The sealed articles of incorporation shall be submitted to the incorporators of the cooperative society, and the other one shall be kept in the office of the Official.
- (6) If there is a difference in contents between both legalized documents of articles of incorporation mentioned in paragraph (5) of this article, the articles of incorporation kept in the office of the Official shall be considered as the correct one.
- (7) The Official shall notify each and every legalization of cooperative society in the Government Gazette.
- (8) The General Registration Book along with the documents of the articles incorporation kept in the office of the Official can be seen free of charge by the public; copies or excerpts of the articles of incorporation can be acquired by paying the cost of production.
- (9) The Minister can make an exemption to the stamp duty on the articles of incorporation in the paragraph (1) of this article.

6.7 Is the registering authority competent to change/amend/delete any bye-laws without assigning any reason ?

Ans. They are not competent to do so.

6.8 Are parastatal organisations created for the promotion of certain types of cooperatives also competent to change/amend the bye-laws at their discretion and shall the members of those types of cooperative societies be obliged to adopt such bye-laws ? If so, please quote provision.

Ans. Such parastatal organization does not exist in Indonesia.

6.9 Do you think that power of Government for compulsory amendment of bye-laws conflicts with cooperative ideology/principles ? If so, please give a brief note about your opinion.

- Ans. 1) If the contents of the bye-law is not illegitimate, the use of such power by the Government will conflict with Cooperative Law, which contains Cooperative Foundations, Cooperative Core Values and Cooperative Principles.
- 2) However, if there is any illegitimate provision in the bye-law, which can hamper, hinder or thwart the implementation of the cooperative core values and principles and Government policies, at any time the Government can middle in the affairs of the cooperative society, including the use of power to compel the cooperative society to amend its bye-law. It must be done by the Government for the interests of the Cooperative Movement itself as well as for the need of the society, and obviously will not conflict with the cooperative ideology/principles.

(B) Rules

6.10 Does the cooperative law make specific provision for defining rule making power ? Please specify.

Ans. 1) The "Working Rules" can be found in three places in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives, namely in Articles 10, 12 and 33.

Quotation of those articles are as follows :

a) *Article 10 (relate to membership):*

Vide Article 10 paragraph (3) quoted in Answer 5.10.

b) *Article 12 (relates to obligations and responsibilities of every cooperative member)*

"Every member of the cooperative society shall have equal obligations and responsibilities :

1. in implementing :

- a. The Cooperative foundation, core values and principles;
- b. The Cooperative Law and its implementary regulations, By-law, and *Working Rules*;
- c. The decisions of members' meeting.

2. To attend and participate actively in the members'

meetings”.

- c) *Article 33 paragraph (2) (relates to obligatory savings).*
 “Obligatory savings may be withdrawn in accordance with the procedures further regulated in the Bye-law *Working Rules* and decisions of the members’ meeting, by putting a premium on the interest of cooperative society.
- 2) The existence of the concept of “Working Rules” in the Cooperative Law indicates the Working Rules in an important document in the cooperatives. Nevertheless, the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives does not contain specific and explicit provision for defining rule making power.
- 3) Concerning the power of framing and adoption of Working Rules, there are two important organs in cooperative society, namely Board of Directors and members’ meeting.
- 4) The Board of Directors has authority to frame the Working Rules based on the provision in Article 23 paragraph (1) and Article 24 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives. The following are quotations of those articles.
- a) *Article 23 paragraph (1) :*
 “The duties of the Board of Directors shall be to lead the organization and business of the cooperative society and represent the society in and out of court of law in accordance with the decisions of the members’ meeting”.
- b) *Article 24:*
 “The Board of Directors shall have the authority to carry out actions and efforts to the interest and benefits of cooperative society in accordance with their responsibilities and the decisions of the members’ meeting”.
- 5) While the members’ meeting has authority or power to make decision and adopt the Working Rules based on the provisions in Article 20 paragraph (1) and Article 21 paragraph (1) and (2) of the Cooperative Law. The following are the quotations of those provisions.
- a) *Article 20 paragraph (1):*
 “The members’ meeting shall hold the supreme power in the cooperative life”
- b) *Article 21 paragraph (1) and (2):*
 The members’ meeting of the Indonesian Cooperatives shall stipulate :
1. the by-law.

2. the general policy and the implementation of the higher level cooperative society.

6) Besides, Article 44 of the Model Bye-Law issued by the Department of Cooperatives states as the following :

Article 44:

The members' meeting stipulates Working Rules and/or specific regulations, containing implementary regulations of the provisions stated in this Bye-Law which may not in contravention with it.

6.11 What are the subjects/issues on which Rules can be frame under cooperative law ?

Ans. There is no provision in the Cooperative Law pertaining to the subjects issues which should be included in the Working Rules.

6.12 Do you think that there are certain subjects as specified in your reply to question No. 6.11 could be included in the bye-laws of cooperative societies ? If so, please specify.

Ans. There is no answer
(Vide : Answer 6.11.)

6.13 Does the legislation empower the Government or some other authority to exempt societies from any of the provisions of the Act or the Rules ?

Ans. None, whatsoever

6.14 Are guidelines provided on the basis of which exemptions may be granted ? If so, please specify.

Ans. There is no answer.
(Vide : Answer 6.13)

VII. Cooperative Law and Decision Making Process in Cooperatives

7.1 There are following important management organs in a cooperative society :

- (a) General body,
- (b) Board of directors,
- (c) Functional sub-committees created by the Board of Directors, and
- (d) Chief Executive.

Please describe their powers, functions, duties and responsibilities.

Ans. 1) There are three standard organizational organs of a cooperative society stated in the Law Number 12 of the Year 1967 con-

cerning Basic Regulations for Cooperatives, namely :

- a) Members' meeting
 - b) Boards of Directors, and
 - c) Board of Supervisors.
- 2) Besides, cooperative society can establish a Board of Advisors and the Board of Directors is entitle to appoints one or more persons to do daily jobs. Those persons can be appointed as Manager/General Manager, unit Managers, Bookkeeper, etc.
 - 3) The powers, functions, duties, responsibilities and other related matters of the members' meeting are stipulated in Articles 20 and 21 of the Year 1967 concerning Basic Regulations for Cooperatives. The quotation of those articles is as under.

Article 20:

- (1) "The members' meeting shall hold the supreme power in the cooperative life.
- (2) The decisions taken in the members' meeting should be based upon wise prudence in deliberation. In case the decision cannot be achieved by acclamation it shall be taken by a majority vote.
- (3) In case of voting, each member is entitle to have only one vote in the members' meeting.
- (4) In the cooperative society whose members are legal cooperative societies of higher level, the provisions in paragraph (3) of this article shall be carried out in proportion to have the amount of their members, and its regulation shall be stipulated further in the Bye-law.
- (5) To attend a members' meeting any member cannot appoint somebody to represent and act for him in it".

Its memorandum of elucidation :

"This article regulates the supreme power in the cooperative life, in accordance with the paragraph (2) article 6 which is in the hands of the unanimous decision is always being tried, nevertheless this principle does not exclude the possibility for the cooperative society to make a decision by voting. Voting is carried out in case it cannot be prevented. The quorum of the members' meeting and the majority of vote shall be stipulated in the Bye-law.

Paragraph (4) of this article regulates the balance of votes in the members' meeting of the higher level cooperatives, which formally has the cooperative legal bodies as members. In this case balance of votes is arranged according to the number of human individual members associated in

each cooperative society in accordance with the provision in the Bye-law”.

Article 21:

“The members’ meeting of the Indonesian Cooperative shall stipulate :

1. The By-law.
 2. The general policy and the implementation of the decisions of the higher level cooperative society.
 3. The election/dismissal of the Board of Directors, the Board of Supervisors and the Board of Advisors.
 4. The workplan, budget, ratification of the balance sheet and policy of the Board of Directors in the organizational and business fields.”
- 4) The powers, functions, duties, responsibilities and other related matters of the Board of Directors are stipulated in Articles 22, 23, 24, 25 and 26 of the Cooperative Law. The quotation of those articles is as under:

Article 22 :

- (1) The Cooperative Board of Directors shall be elected out of and by the members in a members’ meeting whereas in the cooperative society, whose members are legal cooperative societies, the Board of Directors shall be elected out of its members.
- (2) The requirements for being eligible to be elected or appointed as member of the Board of Directors are the following:
 - a. honest and skillful;
 - b. other requirements stipulated in the By-law.
- (3) In case the members’ meeting fails to elect the whole members of the Board of Directors out of the members of cooperative society in accordance with the provisions in paragraph (1), the members’ meeting has the authority to elect and appoint one or more non-members by paying attention to the requirements stated in paragraph (2) and their number is not permitted to exceed one third of the total number of the members of the Board of Directors.
- (4) The term of the Board of Directors shall be stipulated in the By-law with the provision that is not permitted to be more than five years.
- (5) Before holding their position, the members of the Board of Directors shall take an oath of pledge.

Its memorandum of elucidation

“Although the Board of Directors shall be elected by and out of the members themselves as a democratic principle in the cooperative society, there is possibility that the cooperative members who have the right to be elected, do not have the ability or expertise needed to lead the cooperative society; therefore for this reason there is a possibility to appoint someone to become a member of the Board of Directors who is not a member of the above mentioned cooperative society with the provision that the chairmanship should be held by a member of the cooperative society. Obviously, such a situation is only temporary. And it is a responsibility of the cooperative society to educate its members so that in the shortest possible time the members of the Board of Directors are members of the cooperative society itself. It is necessary for the members of the Board of Directors to take an oath or pledge of allegiance as regulated in paragraph (5) as to convince the concerned that the task of the Board of Directors is pure and full of responsibility. The oath or pledge of allegiance can be taken in front of the members’ meeting or according to provision decided by the members’ meeting.

Article 23:

- (1) The duties of the Board of Directors shall lead the organization and business of the cooperative society and represent the society in and out of court of law in accordance with the decisions of the members’ meeting.
- (2) The Board of Directors shall be entitled to appoint one or more persons to do daily jobs.
- (3) The Board of Directors shall be responsible to the members’ meeting and obliged to report to it regarding:
 - a. all matters relating to the life of the cooperative society;
 - b. all inspection reports concerning the life of the cooperative society; besides the Board of Directors shall submit the copy of written reports made by the Board of Supervisors to the Official.
- (4) Each member of the Board of Directors shall render help to the Official in carrying out his duties; for that purpose he shall be obliged to give every information requested by the Official and to show the books of account, financial condition, inventory and equipments owned by the cooperative society.
- (5) The Board of Directors is obliged to organize annual members’ meeting in accordance with the provisions stated

in the By-law.

- (6) The Board of Directors obliged to furnish register of its members, with a special format and method of filling it in accordance with the provisions stipulated by the Official.
- (7) The Board of Directors shall have to take good care of the harmony of the members and to render services to them in accordance with article 13 paragraph (4) and (6).

Its memorandum of elucidation:

The Board of Directors is obliged to give all inspection reports concerning the life of the cooperative society to the members' meeting. Especially concerning the written reports from the Board of Supervisors, the Board of Directors shall submit a copy to the Official. This provision is made to guarantee that each member knows the situation of his cooperative society from the report made by the Board of Directors and Board of Supervisors. The Board of Directors is jointly responsible to the members' meeting.

Article 24:

"The Board of Directors shall have the authority to carry out actions and efforts to the interest and benefit of the cooperative society in accordance with the responsibilities and the decisions of the members' meetings."

Article 25 :

- (1) "The members of Board of Directors, both individually and collectively, shall assume liability for the loss suffered by the cooperative society caused by the negligence or actions done on purpose by them.
- (2) If the negligent action is in the scope of works of several members of the Board of Directors, then they shall assume liability for the loss collectively.
- (3) Any member of the Board of Directors shall be acquitted of his liability, if he can prove that the loss is not caused by his negligence, and he had taken necessary actions to prevent the consequences of the negligence immediately and appropriately.
- (4) Besides the amends that shall be paid by the member/ members of the Board of Directors as a consequence of their actions done on purpose, there is a possibility for the public prosecutor to summon them to appear in the Court of Law.
- (5) Concerning the validity of the provisions stated in paragraph (1) of this article, each member of the Board of

Directors is supposed to know on everything that he ought to know appropriately.”

Its memorandum of elucidation

“All efforts in the economic field is always facing the possibility of suffering loss. If this happens then there are two possibilities to burden the loss, i.e. the Board of Directors (including the members individually) or to the cooperative society as a legal body. If the cooperative society as a legal body cannot cover the loss, then the members can be burdened with the liability and this is further regulated in article 36.”

Article 26:

“If a member of the Board of Directors, which is demanded to meet his liability, can prove that the loss suffered by the cooperative society is insignificantly caused by his negligence, then by considering those factors and deviating from the provisions stated in article 25 paragraph (2), the judge of the District Court can decide otherwise.”

- 5) The powers, functions, duties, responsibilities and other related matters of the Board of Supervisors are stipulated in Article 27, 28, 29 and 30 of the Cooperative Law. The quotation of those articles is as under.

Article 27:

- (1) The members of the Board of Directors shall be elected out of and by the members in a members' meeting.
- (2) The position as a member of the Board of Supervisors cannot be served concurrently with the position as a member of the Board of Directors.
- (3) The provisions concerning the Board of Directors mentioned in article 22, except paragraph (3), are valid for the Board of Supervisors as well.

Its memorandum of elucidation:

The position as a member of the Board of Supervisors cannot be served concurrently with the position as a member of the Board of Directors. This provision is made to separate clearly the task of control and the task of implementation.

For the sake of member education and to keep the task of control fresh, the term of office of the Board of Supervisors is arranged to be shorter than the term of office of the Board of Directors.

Article 28:

“The Board of Supervisors shall have the following duties :

1. to inspect all the aspects of cooperative life, including the

organization, business and implementation of the policies made by the Board of Directors;

2. to make written reports on the outputs of inspection.

Article 29:

“At any time, the Board of Supervisors shall have the authority:

1. to investigate all the assets of the cooperative society along with their documents, and the correctness of the book-keeping entries;
2. to collect all necessary information from any body.”

Article 30:

- (1) “The Board of Supervisors shall be obliged to keep all the result of their inspection a secret towards third parties.
- (2) The Board of Supervisors shall be responsible to the members’ meeting.”

- 6) Pertaining to Board of Advisors.

Article 19 paragraph (2) stipulates that:

“If its deemed necessary a cooperative society can establish a Board of Advisors”.

It memorandum of elucidation:

“Besides the organizational organs of the cooperative society as mentioned in this article (Members’ Meeting, Board of Directors and Board of Supervisors), other bodies can also be establish such as the Board of Advisors of which the members consist of experts needed and do not form organizational organs of the cooperative society.

These bodies cannot reduce the rights and authorities of three previous organs.”

Board of advisors shall be elected/dismissed by the members’ meeting and responsible to it. The Board has authority to give advices to the members’ meeting, Board of Directors and Board of advisors.

- 7) Pertaining to manager.

The provision on Manager and other cooperative employees is stipulated in Article 23 paragraph (2) of the Cooperative Law. The quotation is as under :

Article 23 paragraph (2):

“The Board of Directors shall be entitled to appoint one or more persons to do daily job.”

Therefore, manager shall be appointed by the Board of Directors and responsible to it.

The powers, functions, duties and responsibilities of a manager are in the fields of planning, personnel management, business,

financial and inventory management, controlling and reporting.

7.2 Does cooperative law make specific provision vesting supreme authority in the general body of members ?

If so, please specify.

Ans. Article 20 paragraph (1) of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives states that :
 “The members’ meeting shall hold the supreme power in the cooperative life”.

7.2.1 Are the decisions of the general body required to be submitted to an authority designated under the legislation for approval ?

Ans. Such kind of requirement do not exist. It means that the submission of the decisions of the members’ meeting to the Official for approval is not necessary.

7.2.2 Are all decisions of the general body subject to approval of the authority designated by the legislation or are their decisions on specified matters subject to approval ?

Ans. Such approval is not necessary.

7.2.3 Does the authority designated under the Act have any power to call a general body meeting or to authorize any person to call a meeting of the members ?

Ans. Only in a very special case.

Article 38 paragraph (3) of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives prescribes the following provisions :

“The Official shall have a right to attend and talk in the Board of Directors’ meeting and members’ meeting at any time. In an extraordinary case, the Official shall have the authority to organize members’ meeting, decide its agenda and partake in the deliberation.”

Its memorandum of elucidation :

“The Official can attend and talk in the members’ meeting and in the meeting of Board of Directors. In an extraordinary situation, the Official can also organize a members’ meeting, decide an agenda and conduct a deliberation.

What is meant by extraordinary situation is for instance:

1. A situation in which the Board of Directors are not able or are unwilling to organize a members’ meeting.
2. There is no Board of Directors any more.
3. An emergency situation.”

7.2.4 Does the authority designated under the Act have the power to declare a meeting of the general body invalid and if so on what grounds ?

Ans. The Official does not have such kind of power.

7.2.5 Is the society required to inform any authority designated under the Act about the date and agenda of the meeting of the general body ?

Ans. Yes, the cooperative society is required to do merely for annual members' meeting.

7.2.6 Is the authority designated under the legislation entitled to attend the general body meeting without being invited to do so?

Ans. Yes, they are entitle to do so.
Vide quotations in Answer 7.2.3.

7.2.7 Are the minutes of the general body required to be sent to any authority designated by the legislation for approval ?

Ans. There is no requirement to send the minutes of the members' meeting to the Official for approval.

7.3 How various management organs of a cooperative society are created/constituted under cooperative law ? Please specify the procedure.

- Ans.
- 1) *For Board of Directors*
Vide : Answer 7.7 along with the quotation of Article 22.
 - 2) *For Board of Supervisors*
Similar with the procedure for constitution of Board of Directors. The provisions concerning Board of Directors mentioned in Article 22, except paragraph (3) are valid for the Board of Supervisors as well.
 - 3) *For Board of Advisors*
The election/dismissal of the Board of advisors is done by the members' meeting (vide : Article 21 point 30).
 - 4) *For Manager*
The Manager is appointed by the Board of Directors and is responsible to them. The appointment of the manager is carried out after they fulfil the decided requirements which are among others having the ability, skill, honesty, etc, and appoint by the Board of Directors by making a work agreement in written form.

7.4 How are various management organs of a cooperative society linked with each other in the decision making process ? Please specify the provisions under law, rules and bye laws.

Ans. This no clear provision under law, rules and bye-laws pertaining to this respect.

7.5 Do you think that existing law provides adequate provisions to ensure functioning of various management organs in unison without any conflict ?

If so, mention those provisions.

Ans. Such kind of provision does not exist in the Cooperative Law.

7.6 If you think that existing law does leave scope for conflicts between various management organs of a cooperative society in their proper functioning what are your suggestions for amending cooperative law in this respect ?

Ans. 1) We do not need to amend cooperative law. Amending a law is very difficult and time consuming.

2) Suggestion :

Such kind of provision can be stipulated through the Decree of Minister of Cooperatives or the Decree of the Director General of Cooperative Institutional Development of the Department of Cooperatives.

7.7 What is the procedure for constitution of Board of Directors/Managing Committees according to Cooperative Societies Act and Rules ? Whether the procedure is misc reflected in the bye-laws of the cooperative society ? If so please mention specific provision.

Article 7.7:

1) The procedure for constitution of Board of Directors and related matters is stipulated in Article 22 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives. The quotation of that article is as under :

Article 22 :

(1) "The Cooperative Board of Directors shall be elected out of and by members in a members' meeting, whereas in the cooperative society whose members are legal cooperative societies, the Board of Directors shall be elected out of its members.

(2) The requirements for being eligible to be elected or appointed as member of the Board of Directors are the following :

a. honest and skillful ;

b. other requirements stipulated in the By-law.

(3) In case of the members' meeting fails to elect the whole members of the Board of Directors out of the members of cooperative society in accordance with the provisions in paragraph (1), the members' meeting has the authority to elect and appoint one or more non-members by paying

attention to the requirements stated in paragraph (2) and their number is not permitted to exceed one third of the total number of the members of the Board of Directors.

- (4) The term of the Board of Directors shall be stipulated in the By-law with the provision that it is not permitted to be more than five years.
 - (5) Before holding their position, the members of the Board of Directors shall take an oath of pledge.
- 2) The procedure is also reflected in the By-Law of the cooperative society. In the model by-law issued by the Department of Cooperatives, it is put in the Chapter VI Articles 9, 10 and 11.

7.8 Who is the competent authority to conduct elections in cooperative under Cooperative Law ? Please mention specifically.

Ans. Article 21 of the Law Number 12 of the year 1967 concerning Basic Regulation : for Cooperatives prescribes several things, among other that the members' meeting is the competent authority to elect/dismiss the Board of Directors, the Board of Supervisors and the Board of Advisors.

7.8.1 Is there any provision for creation of cooperative election authority in the cooperative law ? If so, please mention specifically.

Ans. Such provision does not exist in the Cooperative Law.

7.8.2 Who is competent authority to settle the election disputes under cooperative law ?

Please specify.

Ans. The competent authorities to settle the election disputes are :

- a) Minister of Cooperatives
- b) Head of the Provincial Office of the Department of Cooperatives
- c) Head of the District Office of the Department of Cooperatives.

7.9 Does the law define specific qualifications for a person to be elected/ appointed as office bearers or members of Board of Directors ? Please quote.

Ans. Article 22 paragraph (2) of the Law Number 12 of the Year 1967 states the following :

“The requirements for being eligible to be elected or appointed as member of the Board of Directors are the following :

- a. honest and skillful;
- b. other requirements stipulated in the By-law.”

7.9.1 Does the law provide for representation of employees on the Board of Directors of a cooperative society ? If so please mention what is the percentage of representatives of employees to the total number of Board of Directors.

Ans. Such provision does not exist in the Cooperative Law.

7.9.2 Does the law confer right on an employee representative to get elected as an office bearer/director in the federal organizations ? If so, what is the proportion of such persons on national level boards.

Ans. Such provision does not exist in the Cooperative Law.

7.10 What is the legal status of the Chief Executive/Managing Director in the board of directors/management committees in the cooperative laws ? Is he a member of the board with right voting ?

Ans. Manager (Chief Executive) is not a member of the Board of Directors.

7.11 Does the law provide for full time/part time paid elected Chairman or President of cooperatives ?

Ans. There no provision in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives regarding that matter.

7.12 Does the Law provide two officers viz. (i) Chairman, and (ii) President ? If so, what are the respective powers and responsibilities of each ?

(Chairman to chair the meetings of general body, board of directors and others. President to be full time paid officer of the society as in the USA).

Ans. Vide : Answer 7.1.

7.13 What responsibilities and powers does the law confer on national/regional bodies of cooperatives.

Ans. The responsibilities and powers of the secondary and tertiary cooperative societies (including what so called here "national/regional bodies of cooperatives") is stipulated in Article 15 paragraph (3) of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives. The quotation of the provision is as follows :

Article 15 paragraph (3) :

"A higher level cooperative society is obliged to and has the authority to provide guidance and supervision to the lower level cooperative societies".

Its memorandum of elucidation :

"Without decreasing the right of the lower level cooperative societies to control the higher level cooperative society, the higher level cooperative society is obliged and has the authority to give guidance and to

carry out inspection to the lower level cooperative societies; this provision is made to secure and maintain the healthy growth of the lower level cooperative societies through giving guidance by the higher level cooperative society. This obligation and authority shall be stated in the By-law of the higher level cooperative society.

The responsibility on the development of the lower level cooperative societies is still within the lower level cooperative societies themselves.”

7.14 Does the Law provide for punishment to individual elected/appointed directors and paid employees in case of committing delinquency ?

Ans. The provisions regarding to the liability and punishment of Board of Directors is stipulated in Articles 25 and 26 of the law Number 12 of the Year 1967 concerning Basic Regulations for Cooperatives. While the provisions for paid employees does not exist in it. The quotations of those articles are as under.

Article 25 :

- (1) “The members of Board of Directors, both individually and collectively, shall assume liability for the loss suffered by the cooperative society caused by the negligence or actions done on purpose by them.
- (2) If the negligent action is in the scope of works of several members of the Board of Directors, then they shall assume liability for the loss collectively.
- (3) Any member of the Board of Directors shall be acquitted of his liability, if he can prove that the loss is not caused by his negligence, and he had taken necessary actions to prevent the consequences of the negligence immediately and appropriately.
- (4) Besides the amends that shall be paid by the member/members of the Board of Directors as a consequence of their actions done on purpose, there is a possibility for the public prosecutor to summon them to appear in the Court of Law.
- (5) Concerning the validity of the provisions stated in paragraph (1) of this article, each member of the Board of Directors is supposed to know on everything that he ought to know appropriately.”

Its memorandum of elucidation :

“All effort in the economic field is always facing the possibility of suffering loss. If this happens then there are two possibilities to burden the loss, i.e. to the Board of Directors (including the members individually) or to the cooperative society as a legal body. If the cooperative society as a legal body cannot cover the loss, then the members can be burdened with the liability and this is further regulated in article 36.”

Article 26:

“If a member of the Board of Directors, which is demanded to meet his liability, can prove that the loss suffered by the cooperative society is significantly caused by this negligence, then by considering these factors and deviating from the provisions stated in article 25 paragraph (2), the judge of the District Court can decide otherwise.”

7.15 Does the Law lay down any code of conduct for the office bearers or directors of the board? If so, please quote.

Ans. The Law number 12 of the year 1967 concerning Basic Regulations for Cooperatives does not allocate specific articles for accommodating code of conduct of the Board of Directors. Nevertheless, in Article 22 paragraph (2) and (5) and Article 23 paragraph (7) we can find values and provisions which are relevant as elements of code of conduct. The quotation of those paragraphs are as under.

Article 22 :**Paragraph (2):**

“The requirements for being eligible to be elected or appointed as member of the Board of Directors are the following :

- a. honest and skillful;
- b. other requirements stipulated in the By-law.”

Paragraph (5) :

“Before holding their position, the members of the Board of Directors shall take an oath of pledge.”

Article 23 paragraph (7):

“The Board of Directors shall have to take good care of the harmony of the members and to render services to them in accordance with article 15 paragraph (4) and (6).”

7.16 Does the Law provide for a countability of individual paid officers, directors of the board and office-bearers of cooperatives ? If so, how and to which extent ?

Ans. See Answer 7.14.

7.17 Does law make following provisions empowering the Government :

- i. to effect compulsory amendment of the bye-law.
- ii. to effect compulsory amalgamation and division of cooperative society.
- iii. to rescind/annual the resolutions/decisions of the Board of Directors and annual general body of a cooperative society.
- iv. to supersede the elected management of a cooperative society.
- v. to issue directive to a cooperative society.
- vi. to restrict the term of office bearers.

vii. to restrict the number of cooperative societies in which a person can hold office.

Ans. 1) There are no provisions in the Law Number 12 of the year 1967 concerning basic Regulations for Cooperatives pertaining to the questions no. (i), (ii), (iii), (iv) and (vii).

2) *Regarding the issuance of directives (Question no. (v)):*

The Government has authority to issue directives to the cooperative societies based on the provision stated in Article 37 and Article 38 paragraph (1) of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives. The quotation of those Articles are as under :

Answer 37 :

“The Government is obliged to render guidance, supervision, protection and facilities to the cooperative societies and enable them to implement the article 33 of the 1945 Constitution along with its elucidation.”

Its memorandum of elucidation

In doing the duties mentioned in article 37, the Government shall always be active as mentioned in the following Sanscrit words :

“ing ngarsa sung tulodo
ing madya mbangun karsa
tut wuri handayani”

The meaning is :

1. in ngarsa sung tulodo (= in front providing them with examples), which means that : As leaders or promoters we should always give good examples.
2. ing madya mbangun karsa (= in their midst arousing their will) which means that : If we are in the midst of the people, we should not passive, but we have to arouse people’s spirit to generate good initiatives.
3. tut wuri handayani (= following while motivating from behind), which means that : Although we are on the back we have to give strength/power and give guidance which is wrong or right.

This means that the Government really gives proper freedom to the cooperative societies to manage their own life in the framework to realize their ideological foundation, and to implement their core values and principles.

However, if necessary, any time the Government will meddle in the cooperative affairs to safeguard the implementation of the cooperative core values and principles and the Government policies for the interests of the Cooperative Movement itself as well as for the need of

the society. Based upon that consideration and without curtailing the authority of the Minister to formulate his basic policy further in the cooperative field this article obligates the Government to provide the Cooperative Movement with :

- a. Guidance with the intention to create general climate and condition that enable the Cooperative Movement to grow and develop among others through education and extension.
- b. Supervision with the intention to secure and save the interest of the cooperative societies as well as the other parties.
- c. Facilities that can be manifested in the form of :
 1. Providing something in the form of money (subsidy), goods or services;
 2. privileges, in the form of alleviations of benefits in legal traffic such as :
 - stamp, alleviation of stamp duty for certain cooperative societies, such as agricultural cooperative societies;
 - equivalent value of the book-keeping of the cooperative societies with the Tra-Books as decided in the Book of Commercial Law;
 - preference right to the guaranteed harvest for loan obtained from the agricultural cooperative societies, etc.
 3. Separate policy concerning credit, including easy and soft credit, requirements to promote cooperative business, facilities in the fields of production and distribution, etc.

In general this assistance intended to generate energy and capability of the cooperative societies themselves so that henceforth, they can help themselves. Therefore, if it is necessary, such kind of assistance can only be given with certain requirements, for instance only once, temporary and gradually reduced in accordance with the growth of the capability of the cooperative society, the amount of which to only what is really needed, while the utilization of the assistance should be supervised as to bring about real growth of "self-help and mutual aid". Certainly these types of assistance cannot be decided in this Law but has to be decided in separate regulations when and until what level it is felt to be needed.
- d. Protection, directed to secure and save the cooperative interests, such as protection to the cooperative societies decided in article 48 to avoid misuse of the special provisions in the field of trade and distribution with the intention to give the cooperative societies the opportunities to develop.

Article 38 paragraph (1):

“To carry out the duties mentioned in article 37, without curtailing the rights and duties of the cooperative societies to manage themselves, the Government shall stipulate policies and regulate the efforts in carrying out development and rendering guidance, facilities, protection and supervision to the whole cooperative activities.”

3) *Reading to the restriction of the term of office of office bearers.*

The Government has authority to restrict the term of office of office bearers based on the provisions in Article 22 paragraph (4) and Article 27 paragraph (3) of the Law number 12 of the Year 1967 concerning Basic Regulations for Cooperatives. The quotations of those articles are as under:

Article 22 paragraph (4) :

“The term of the Board of Directors shall be stipulated in the By-law with the provision that it is not permitted to be more than five years.”

While Article 27 paragraph (3) states among other that the above provision is also valid for the Board of Supervisors.

7.17.1 Do you think that the above provisions ensure efficient decision making process in a cooperative society ? Please give a critical note.

Ans. I think that points (i), (ii), (iii), (iv) and (vii) of Question 7.17 will not ensure efficient decision making process in cooperative society, instead it can curtail the rights and duties of the cooperative societies to manage themselves. Regarding to the amendment of bye-laws, amalgamation and division of cooperative society, etc., Government can give advices and encouragement to the concerned cooperative society based on rational judgement and for the benefit of their members.

7.18 What is competent authority under Law to lay down the policies, norms and regulations regarding personnel management in cooperative society ?

Ans. 1) The members' meeting
2) The following provisions quoted from the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives will clarify the answer.

Article 21 (especially paragraphs 2 and 4):

The members' meeting of the Indonesian Cooperative shall stipulate :

1. The By-law.
2. The general policy and the implementation of the decisions of the higher level cooperative society.

3. The election/dismissal of the Board of Directors, the Board of Supervisors and the Board of Advisors.
4. The workplan, budget, ratification of the balance sheet and policy of the Board of Directors in the organizational and business field.

7.19 Does law specify/demarcate the power and responsibilities of the Board of Directors and Chief Executive ? If yes, please specify the provision.

Ans. Such kind of provision does not exist in the Cooperative Law.

7.19.1 What is your view as to whether the provision indicated under 7.19 Should find place in the bye-laws of a cooperative society instead of law ?

Ans. Such kind of provision should be placed in the bye-law.

7.20 What is the functional/administrative relationship between the elected Chairman and Chief Executive of a cooperative society under :

- i. law
- ii. rules
- iii. bye-laws

Ans. 1) There is no provision in the law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives and bye-Laws and Working Rules of most cooperative societies regarding to the functional/administrative relationship between the directed Chairman of the Board of Directors and the manager (Chief Executive) of a cooperative society.

2) Nevertheless, we can find such provisions in the Decree of the Minister of Cooperatives Number 84/KPTS/VI/1984 concerning the Implementation of the Cultivation and Development of the Village Unit Cooperatives (KUDs), namely in Article 8 paragraph (3) and Article 9 paragraph (2) and (3). The quotations of those paragraphs are the following:

Article 8 paragraph (3) :

“The management in the field of business covers several fields among others are production management, marketing management, financial/accountancy management, inventory management, transportation management, etc., which are carried out by the manager and the staff. The manager is appointed by the Board of Directors and is responsible to them.”

Article 9 paragraph (2) and (3):

“The procedure of appointing a manager and the executor of the business unit and the Cooperative Service Shop including the work rules have to be written in the regulation : made by

the concerned Village Unit Cooperative.”

“The appointment of the manager and the official mentioned in paragraph (2) above is carried out after they fulfil the decided requirements which are among others having an ability, skill, honesty, etc. and appointed by the Board of Directors by making a work agreement in written form.”

- 7.20.1 Please give your view on the following :
- (a) Should Chief Executive directly report to the Board ?
 - (b) Should Chief Executive report to Chairman who should be responsible to the Board ?
- Ans. 1) Manager (Chief Executive) should directly report to the Board of Directors. In fact, this is the practice in the cooperative societies in Indonesia.
- 2) Such practice is quite appropriate with the following reasons :
- a) Manager must take the responsibility for his/her actions to the whole team of members of the Board of Directors. So he/she will be more careful in executing the jobs.
 - b) To avoid the possibility of collusion between the manager with the general chairman of the Board of Directors.
- 7.21 Who is the competent authority to recruit and terminate the Chief Executive ?
- Ans. The Board of Directors is the competent authority to recruit and terminate manager (chief executive).
- 7.21.1 Does law prescribe for creating a specific Selection Committee/panel authority for recruitment and selection of Chief Executive ? If so, what is the constitution of such authority and what are its powers and responsibilities.
- Ans. Such provision does not exist in the Cooperative Law.
- 7.21.2 Does law provide that final selection of the Chief Executive shall vest in the hands of the selection committee/panel authority created under law ?
- Ans. Such kind of provision does not exist in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.
- 7.22 Who decides for preparation of Agenda Items for the Board or other function committees ?
- Ans. Each of organisational organs.
- 7.22.1 Does law/bye-law makes it obligatory on the part of the Chief Executive to take decision about Agenda Items even without the approval of the Chairman ? If so, please specify the provision.
- Ans. Such kind of provision does not exist in the law/bye-law of the cooperative societies.

7.22.2 Is Chief Executive empowered to convene the meeting of the General Body, Board of Directors and other functional Committees without obtaining approval of the President ? If so, please specify the provision.

- Ans. 1) The Manager (Chief Executive) does not have authority to convene the meetings of General body, Board of Directors and other functional committees which are under the leadership of the Board of Directors. The authority for convening such meetings is in the hand of Board of Directors.
- 2) Without obtaining approval of the General Chairman of the Board of Directors, the manager may convene meetings pertaining to business management of the cooperative society.

7.22.3 Is Chief Executive empowered for recruitment and selection of subordinate officers and other functionaries ? If so, please specify the provisions.

- Ans. 1) The Board of Directors, not the manager (chief executive) is empowered for recruitment and selection of subordinate officers and other functionaries.
- 2) It is stated in article 23 paragraph (2) of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives (vide quotation as under).
Article 23 paragraph (2) :
 "The Board of Directors shall be entitled to appoint one or more persons to do daily jobs."

7.22.4 If Chief Executive is not empowered to recruit and select his subordinate officers and other staff members, would it be appropriate to vest such powers in him ? Please give your views along with reasons.

- Ans. The provisions in the Cooperative Law is appropriate, because :
- a) The duties of the Board of Directors shall be to lead the organization and business of the cooperative society.
- b) The Board of Directors shall be responsible to members' meeting and obliged to report to it regarding all matters relating to the life of the cooperative society.
- c) The Manager (Chief Executive) is functioning as the assistant to the Board of Directors.

7.22.5 Should Chief Executive be empowered to take disciplinary action against his subordinate officers and staff members ? Please give your views.

- Ans. A Manager (Chief Executive) must have authority to take disciplinary action against his subordinate officers and staff members. The authority and its limits for such kind of actions should be put in the manager's job descriptions.

VIII. Cooperative Law and Self-reliance

8.1 There are three aspects of self-reliance in cooperative : (a) self reliance in terms of self-regulation, (b) self reliance in terms of resources, and (c) self-reliance in terms of leadership. Does cooperative law make provision to motivate cooperatives to develop self reliance. If so, please specify the provisions.

- Ans. 1) The Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives treats cooperatives as democratic and autonomous, organizations and motivates cooperatives to develop self-reliance.
- 2) The provisions in several articles in the cooperative law reflect such prescription.

The following quotations clarify their statement.

The memorandum of elucidation of Article 3 paragraph (b), (c) and (d)

Paragraph (b):

“that the Indonesian Cooperative works together and cooperatives based on equality of level, rights, and duties, which means that the Indonesian Cooperative is and should be an institution of economic and social democracy. Due to this democratic basis, it has really to be guaranteed that the cooperative is the property of the members themselves and basically has to be arranged and managed in accordance with the wish of the members, which means that the highest right in the cooperative lies with the members’ meeting.”

Paragraph (c):

“that all the activities of the Indonesian Cooperative have to be based on the consciousness of the members. In the cooperative it is not allowed to exert force, threat, intimidation and interference of other parties who have no relationship whatever with the internal affairs of the cooperative”

Paragraph (d) :

“that the objective of the Indonesian Cooperative must really be the common interest of the members and this objective shall be achieved based on the work and service contributed by the respective members. The participation of the members in accordance with their amount of work and service contributed to the cooperative must be reflected in the distribution of the cooperative net surplus.”

Article 21:

“The members’ meeting of the Indonesian Cooperative shall

stipulate :

1. The By-law.
2. The general policy and the implementation of the decisions of the higher level cooperative society.
3. The election/dismissal of the Board of Directors, the Board of Supervisors and the Board of Advisors.
4. The workplan, budget, ratification of the balance sheet and policy of the Board of Directors in the organizational and business fields.”

Article 22 :

“The Cooperative Board of Directors shall be elected out of an by the members in a members’ meeting, whereas in the cooperative society, whose members are legal cooperative societies, the Board of Directors shall be elected out of its members.”

Article 23:

- (1) “The duties of the Board of Directors shall be to lead the organization and business of the cooperative society and represent the society in and out of court of law in accordance with the decisions of the members’ meeting.
- (2) The Board of Directors shall be entitled of appoint one or more persons to do daily job.
- (3) The Board of Directors shall be responsible to the members’ meeting and obliged to report to it regarding:
 - a. all matters relating to the life of the cooperative society;
 - b. all inspection reports concerning the life of the cooperative society; besides the Board of Directors shall submit the copy of the written reports.
- (4) Each member of the Board of Director render help help to the official in carrying out his duties; for that purpose he shall be obliged to give every information requested by the official and to show the books of account, financial conditions, inventory and equipments owned by the cooperative society.
- (5) The Board of Directors is obliged to organize annual members’ meeting in accordance with the provisions stated in the By-law.
- (6) The Board of Directors obliged to furnish a register of its members, with a special format and method of filling it in accordance with the provisions stipulated by the official.
- (7) The Board of Directors shall have to take good care of the harmony of the members and to render services to them in accordance with article 13 paragraph (4) and (6).”

Article 24 :

“The Board of Directors shall have the authority to carry out actions and efforts to the interest and benefits of the cooperative society in accordance with their responsibilities and the decisions of the members’ meeting.”

Article 27 paragraph (1) :

“The members of the Board of Supervisors shall be elected out of and by the members in a members’ meeting.”

Article 4 paragraph (4) :

“The instrument of human development to strengthen the economic position of the Indonesian nation and to join them together in managing the people’s economy.”

Article 6 paragraph (7) :

“The principles of the Indonesian Cooperative are :

1. the feature of its membership shall be voluntary and open to every Indonesian citizen;
2. the members meeting shall hold the supreme power as a reflection of democracy in the cooperative societies;
3. there shall be a limitation to the interest earned on capital;
4. to improve the welfare of the members in particular and the society in general;
5. its business and management shall be open;
6. self-help, self-activity and self-sufficiency as a reflection of the basic principle of self-reliance.”

Article 12 :

“Every member of the cooperative society shall have equal obligations and responsibilities :

1. in implementing :
 - a. The Cooperative Foundation, core values and principles;
 - b. The Cooperative Law and its implementary regulations, By-law, and Working Rules;
 - c. The decisions of members’ meeting.
2. The attend and participate actively in the members’ meeting.”

Article 13 :

“Every member of the cooperative society shall enjoy equal rights :

1. to attend the members’ meeting and to express his opinions and to vote in its;
2. to elect and/or to be elected as a member of the Board of Directors/Board of Supervisors;

3. to call upon a members' meeting in accordance with the provisions in his By-law;
4. to express his opinion or to make a suggestion to the Board of Directors outside the members' meeting, whether requested or not;
5. to receive equal services among the fellow members;
6. to control the organizational and business activities of the cooperative society in accordance with the provisions stipulated in the By-law."

Article 20 :

- (1) "The members' meeting shall hold the supreme power in the cooperative life.
- (2) The decisions taken in the members' meeting should be based upon wise prudence in deliberation. In case the decision cannot be achieved by acclamation it shall be taken by a majority vote.
- (3) In case of voting, each member is entitled to have only one vote in the members' meeting.
- (4) In the cooperative society whose member are legal cooperative societies and other cooperative societies of higher level, the provisions in paragraph (3) of this article shall be carried out in proportion to the amount of their members, and its regulation shall be stipulated further in the By-law.
- (5) To attend a members' meeting any member cannot appoint somebody to represent and act for him."

Article 27 paragraph (1) :

"The members of the Board of Supervisors shall be elected out of and by the members in a members' meeting."

Article 28 :

"The Board of Supervisors shall have the following duties :

1. to inspect all the aspects of cooperative life, including the organization, business and implementation of the policies made by the Board of Directors;
2. to make written reports on the outputs of inspection.

Article 29 :

"At any time, the Board of Supervisors shall have the authority:

1. to investigate all the assets of the cooperative society along with their documents, and the correctness of the book-keeping entries;
2. to collect all necessary information from any body."

Article 30 :

- (1) "The Board of Supervisors shall be obliged to keep all the result of their inspection a secret towards third parties;

(2) The Board of supervisors shall be responsible to the members' meeting."

8.2 If cooperative law, rules and bye-laws do not make any provision in regard to self-reliance, what are your views on this subject ? Please give detailed note.

Ans. See Answer 8.1.

8.3 Does cooperative law and rules make provision for appropriation of net profits ? If so, please specify.

Ans. 1) The provision for appropriation of net profits is contained in Article 34 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives. The quotation is the following.

2) In the cooperative society, the provision for appropriation of net profits usually is put in article 36 and 37 Chapter XVI concerning Net Surplus/Profit of its By-law.

8.4 What types of funds a cooperative society can create under cooperative law, rules and bye-laws ? Please specify.

Ans. 1) The provisions pertaining to the types of funds that can be created by a cooperated society are contained in Articles 32 and 33 concerning "Capital of a Cooperative Society". The quotation of those articles is as follows.

Article 32 :

(1) "The capital of a cooperative society shall consist of the accumulated from the savings, loans, retention of surplus including reserves and other sources.

(2) The members' savings in the cooperative consist of :

- a. basic savings;
- b. obligatory savings;
- c. voluntary savings.

(3) Voluntary savings may be collected from non-members by cooperative society.

Its memorandum of elucidation :

(1) "Concerning the capital, it is confirmed in order that the people like to collect capital regularly in the cooperative organization so that it will become a strong national capital, without altering the essence of the cooperative principles that the cooperative society is an association of people and not an association of money.

(2) Basic savings is certain amount of money, of similar amount as obliged to the members to be submitted to the cooperative society at the time to become a member.

- (3) Obligatory savings is a certain sum of savings which makes the members obliged to pay in a certain time and occasion and the savings can only be withdrawn according to the procedure and time decided by the cooperative society.
- (4) Voluntary savings is a certain amount of money submitted by the members/non-members to the co-operative society by their own will as savings.
- (5) Further provisions concerning this and other savings shall be provided for in the By-law, Working Rules and other provision : of the cooperative society.
Thus also concerning capital accumulation in the cooperative society.

Article 33

- (1) "Basic savings cannot be withdrawn as long as the holder remains a member of the cooperative society.
- (2) Obligatory savings may be withdrawn in accordance with the procedures further regulated in the By-law, Working Rules and decisions of the members' meeting, by putting a premium on the interests of the cooperative society.

Article 34 :

- (1) "Net surplus of a cooperative society is the surplus remaining from the revenue earned by the society in a fiscal year after the deduction of related costs and depreciation provisions of the concerned fiscal year.
- (2) Net surplus originates in the business activities carried out both for the members and non-members.
- (3) Net surplus originating in the business activities carried out for the members shall be distributed for the following purposes:
 - a. Cooperative reserves;
 - b. Patronage refund to the members in proportion to the services rendered by them;
 - c. Fund for the Board of Directors;
 - d. Fund for employees;
 - e. Fund for cooperative education;
 - f. Fund for social purposes;
 - g. Fund for community development in the operational area.
- (4) Net surplus originating in the business activities carried out for non-members shall be distributed for the following purpose :
 - a. Cooperative reserves;
 - b. Fund for the Board of Directors;
 - c. Fund for employees;
 - d. Fund for the cooperative education;

- e. Fund for social process;
 - f. Fund for community development in the operational area.
- (5) The procedure of distribution and the amount of funds mentioned in paragraph (3) and (4) shall be regulated in the By-law.
- (6) The utilization of the distributes net surplus mentioned in paragraph (3) and (4), except the cooperative reserve, shall be regulated in the By-law by putting a premium on the interests of the cooperative society.

Its memorandum of elucidation :

“Basically there must be a separation between the use of income obtained from the services to the members and from services to third parties including non-members.

Part of the net surplus obtained from services to the third parties including non-members, may not be distributed to the members, since this part of income is not obtained from members’ services.

The use of fund for social purposes shall be arranged by the members’ meeting and can be given among others to the poor, the orphans or other social activities.

Concerning zakat, it can be arranged by the concerned cooperative society in its By-law as well as in its other provisions.

The use of the fund for community development in the operational area should be done after consultation with the legal Government.

For the capital deposited in the cooperative society is given capital service of limited amount at an interest decided by the members’ meeting.”

- 2) Besides, the By-law the cooperative societies also mention other types of funds, namely :
- a) reserves set aside from the net surplus/profit;
 - b) loans/credits;
 - c) other legitimate income.

8.4.1 Who is the competent authority to take decision about the creation of the funds?

- Ans. 1) Pertaining to basic savings, obligatory savings voluntary savings, reserves set aside from the net surplus/profit, and loans or credits from the Bank greater than the assets of the cooperative society, the members’ meeting is the competent authority to take decision.

- 2) Pertaining other types of funds, the Board of Directors is the competent authority to take decision.

8.4.2 Whether the competent authority has been defined in the law and rules or bye-laws ? Please specify.

Ans. See Answer 8.4.1.

8.4.3 Who is the competent authority to take decisions regarding investment of funds?

- Ans. 1) In general, the Board of Directors is the competent authority to take decision regarding investment of funds.
- 2) If the value of investment is greater than the value of assets of the cooperative society and the fund needed for that investment originates from the credit extended by bank, the Board of Directors must get approval from the members' meeting, accept if the Board of Directors is willing to take the responsibility for the loss resulted by the investment.

8.4.4 Does cooperatives law define various institutions and modes in which funds of a cooperative society can be invested ? If so, please specify.

Ans. Article 31 of the Law Number 12 of the year 1967 concerning Basic Regulations for cooperatives states a very general provision regarding the business field of cooperative societies. The quotation of the article is as under.

Article 31 :

“The business field of the cooperative society shall be in the field of production and other economic fields based upon article 33 of the 1945 Constitution along with this elucidation.”

Its memorandum of elucidation

“The Indonesian economy is divided into the State sector, cooperative sector and private sector. In the cooperative sector, the cooperative societies can carry out all kind of economic activities, but it does not mean that a cooperative society can carry out the economic activities which entirely separated from the interests of its members, and the cooperative core values and principles so that the members of the cooperative societies will be able to gain benefits from the business of which they do not contribute their works/services to obtain those benefits. The determination of the types of the cooperative society basically has a decisive role in regulating their main business, so that joint benefits can be really obtained based on the work/service contribution of the members. Basically the business field of the cooperative societies may cover all fields of the economy, including banking and insurance.

In implementing the roles and tasks as mentioned in article 7 of this Law, the cooperative society as an economic institution can establish

and own an enterprise or production unit directly under the responsibility and supervision of the Board of Directors of the concerned cooperative societies.

The enterprise and production unit mentioned above forms a unity with and therefore cannot be separated from the management of all cooperative business activities, and does not need separate legalization as a legal body (or is not a separate legal body).

All enterprises which are part of the concerned co-operative society cannot run business which is in conflict with this Law.

8.4.5 Does cooperative law prescribe any restrictions regarding investment of funds ? If so, please specify.

Ans. The Law Number 12 of the year 1967 concerning basic Regulations for Cooperatives prescribes certain restriction regarding investment of funds, namely that a cooperative society cannot carry out economic activities, including investment of funds, which entirely separated from the interest of its members and the cooperative core values and principles (vide : Memorandum of elucidation of Article 31 quoted in the Answer 8.4.4.).

8.4.6 Does cooperative law prescribe to make any provision restricting the cooperative society for obtaining loans/borrowings for mobilizing its resources ?

Ans. Such prescription does not exist in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

8.5 Does cooperative law make any provision to obtain permission of Registrar of Cooperative Societies/Government regarding investment of its fund?

Ans. Such provision does not exist in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

8.6 Can cooperative society give donations to any non-cooperative organization ? If so, what is the maximum limit?

Ans. 1) A cooperative society can give donations to any non-cooperative organization. Usually the donation : are taken from the funds for social purposes and for community development in the operational area of the cooperative net surplus/profit.

2) Article 2 of the Decree of the Minister of Cooperatives Number 266/KPTS/M/V/1987 concerning the Guidelines for the Distribution and Utilization of Cooperative Net surplus prescribes that the maximum limit of the fund for social purpose is 2.5% and the fund for community development of the operational area is also 2.5% of the net surplus.

8.7 Does law/bye-law specifically provide for members' obligations to build up the resources of their society ? If so, please specify.

Ans. There are basic and obligatory savings in the cooperative society. Paying those savings are obligatory for members. (See Article 32 along with its elucidation in Answer 8.4)

8.8 Does law make provision empowering the Government to issue direction : for building up the resources of cooperative society? If so, please specify.

Ans. The Government has authority to issue directions for building up the resources of cooperative society. It is based on the provision stated in Article 38 paragraph (1) of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

Article 38 paragraph (1) :

“To carry out the duties mentioned in Article 37, without curtailing the rights and duties of the cooperative societies to manage themselves, the Government shall stipulate policies and regulate the efforts in carrying out development and rendering guidance, facilities, protection and supervision to the whole cooperative societies.”

8.9 Does cooperative society enjoy total authority to deploy its surplus resources for its own development ? If so, please specify the provision.

Ans. Cooperative society does not enjoy authority to deploy its surplus resources for its own development. It is guided by the provisions in the Decree of Minister of Cooperatives Number 266/KPTS/M/V/1987 concerning the Guidelines for the Distribution and Utilization of Cooperative Net Surplus.

8.10 What is the maximum limit of payment of dividend to the share holders in a cooperative society.

Ans. Article 2 paragraph 3a) of the Decree of the Minister of Cooperatives Number 266/KPTS/M/V/1987 concerning the Guidelines for the Distribution and Utilization of Cooperative Net Surplus prescribes that the maximum limit of payment of dividend to the members of the cooperative society is 40% out of the net surplus originates from business transactions with the members. The net surplus originates from the business transactions with non-members may not be distributed to the members.

8.11 Can cooperative society undertake transactions with non-members for building up its resources ? If so, what are the prescribed norms under cooperative law/bye-law ?

Ans. 1) A cooperative society can undertake transaction with non-members for building up its resources.
2) The prescribed norms under cooperative law is the following:

“the cooperation (transactions with non-members) shall be arranged without sacrificing the core values and principles of the Indonesian Cooperatives”.

IX. Cooperative Law and Government

9.1 Do you think that provisions in cooperative law enable the Government in playing its positive role for cooperative development in accordance with the principles of cooperation ? Please give an analytical note.

- Ans. 1) The provisions in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives are in accordance with the ideology, principles and spirit of cooperation and are appropriate as instruments for developing genuine and modern cooperative societies.
- 2) The law enable the Government in playing its positive role for cooperative development as far as the Government upholds the law and implements it consistently, consequently and purely.
- 3) The most important thing to be mentioned here is the spirit of the Government Officials; the spirit which is accordance with the spirit of the Cooperative Law.

9.2 Does cooperative law make specific provision about government support to cooperatives ? If so, please specify.

- Ans. Article 37 of the Law Number 12 of the year 1967 states that :
“The Government is obliged to render guidance, supervisions protection and facilities to the cooperative societies and enable them to implement the article 33 of the 1945 Constitution along with its elucidation.

9.3 What types of government assistance to cooperative institutions is visualized in cooperative law ? Please specify.

- Ans. Several Government assistance to cooperative institutions visualized in Cooperative Law, among others :
- 1) To render guidance, supervision, protection and facilities to the cooperative societies.
 - 2) To extend credits or subsidy to the cooperative societies.
 - 3) To give alleviation of tax.

9.4 Does cooperative law provide for representation of the government on the board of management of cooperative societies in relation to its assistance to cooperative ? If so, please specify.

- Ans. Such provision does not exist in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

9.5 Does Government enjoy power to issue directive for implementing certain developmental policies through cooperatives even if they are not accepted by the members of cooperative society ? If so, please identify the situations in which such directions by the Government can be issued.

Ans. No, the Government does not have such power, because it will be in contravention with Cooperative Law.

9.5.1 Does the Government or any its authorities have power under law to suspend a decision/resolution passed by a cooperative society ? If so, under what circumstances.

Ans. 1) Such provision does not exist in the Cooperative Law.
2) In practice, the Government or any of its authorities will suspend a decision/resolution passed by a cooperative society; if the decision/resolution is in contravention with the law.

9.5.2 Does the Government have power to wind up a cooperative society by its own decision ?

Ans. The Government has power to wind a cooperative society by its own decision. The provision relating to this is stated in Article 49 paragraph (2) and (3). The quotation of those paragraph is as under :
Article 49 paragraph (2) and (3) :

Paragraph (2) :

“Dissolution of a cooperative society can be done by the official as well, if :

- a. There is a strong evidence that cooperative society does not conform with the provisions stipulated in this Law any more.
- b. The activities of the cooperative society are in contrary to the social order and/or ethics.
- c. The survival of the cooperative society cannot be preserved.”

Paragraph (3) :

“Objections toward the reasons used by the official in dissolving the cooperative society based on the provisions in paragraph (2) of this article, can be submitted to the Minister.”

9.5.3 Does the Government have powers to supersede the management of a society. If so, please give details.

Ans. 1) Basically the Government does not have any power to supersede the management of a society.
2) Nevertheless, the Government can urge the Board of Directors to supersede the management of a society if :
a) there is strong evidence that the activities of the management are detrimental to the co-operative society.

- b) the activities of the management are in contrary to the social orders, ethics, cooperative core value and/or cooperative principles.

9.6 What is the positive impact of government aid to the cooperatives ?

Ans. There are several positive impacts of Government aid to the cooperatives, *inter alia* :

1. The creation of a better climate supporting cooperative development if compared to the previous development;
2. A more extensive and intensive scope of the cooperative services with better quality to members and a stronger survival ability and cooperative growth;
3. Increasing organizational development as well as management in the framework of increasing the ability and business dynamic of the cooperatives;
4. The increase of business volume and values of the cooperatives;
5. More extensive business fields of the cooperatives;
6. Increase of cooperative ability in the aspects of capital and management, including the distribution of production inputs, processing and marketing of results as well as credit activities;
7. The creation of several forms of credit, among others mass/programs credit, common credit and credit for small traders, with soft requirements and easy procedures;
8. A greater ability of the cooperative to absorb credit and to pay debt in time;
9. The increase of cooperative capital from compulsory savings;
10. To start establishing Cooperative Finance Institutions owned by the cooperative itself, such as the cooperative bank and insurance cooperative;
11. Increasing the number of the cooperative as well as their members developed by the society, based on their own initiative and self-help, especially in the rural areas.

9.7 Has the Government aid to cooperatives resulted into erosion of cooperative ideologies/values ? If so, please give a detailed note with specific instances.

Ans. The main negative impact of government aid to cooperatives relating to cooperative values is the grow of dependency of cooperatives, especially the Village Unit Cooperatives, upon government. Realizing the seriousness of this problem, starting from the budget year 1988/1989, the Government is serious and concerted efforts to develop strong and self-reliant Village Unit Cooperatives.

9.8 Does cooperative law make it obligatory for the government to consult cooperative organizations before introducing any policy for cooperative development.

- Ans. 1) Such provision does not exist in the Cooperative Law
 2) In practice, before introducing strategic cooperative development policies, the Government always consults cooperative organizations.

9.9 What should be the role of the government in regard to (a) cooperative development; (b) preservation and protection of cooperative values and (c) building up a professional management of cooperatives? Please give an analytical note.

Ans. There are several roles can and should be played by the Government in promoting cooperative development.

1) *In the field of legislation*

The matters pertaining to the cooperative legislation stipulated by the Government :

- a) It must conform to the cooperative principles.
- b) The Government Officials and public will take the law to be correct and understand the content and character of the movement from the legislation relating to it.
- c) It should protect cooperatives being exploited by "hostile" groups and organizations.
- d) It should not be complicated which might lead to inefficiency and stagnation.
- e) It should not be misused for political purposes.
- f) To review the existing legislation and carry-out necessary improvements/simplifications, etc.

2) *In the field of Education and Training*

- a) To support and organize cooperative education and training.
- b) To avail cooperative education and training material.
- c) To specify the direction of development of the cooperative education and training programmes.

3) *In the field of aid to cooperatives*

- a) To encourage people's participation for their socio-economic development and thus sharing the efforts of the Government.
- b) To execute some specific objectives on behalf of the Government which are not contradictory to the objectives of the cooperatives.
- c) To help in building cooperative resources to enable it to fulfil its own objectives.

- d) To enable the cooperatives to implement specific objectives/projects entrusted by the Government which are in conformity with its own objectives.
 - e) Financial aid from the Government should be designed to encourage rather than replace the initiatives and efforts of the members of cooperatives.
 - f) The competent authority should ensure that the use of financial aid and, in case of loan, its repayment, are adequately supervised.
 - g) To give guidance and advice which respect the autonomy of cooperative societies and the responsibilities of their members, their organizational organs and their staff, on matters relating to management and administration, as well as on technical matters.
- 4) *In the field of supervision*
 To give supervision not intervention to the cooperative societies based on accepted norms and procedures. The supervision shall be well designated to ensure that the cooperative societies can carry on their activities in conformity with the objectives for which they were established and in accordance with the law.

X. Others

10.1 Does cooperative law make any specific provision for the role of federations of cooperative societies ? If so, please specify.

Ans. The role of federations of cooperative societies is to provide guidance and supervision to their members. Such provision is contained in Article 15 paragraph (3) of the Law Number 12 of the Year 1967 concerning Basic Regulations for Cooperatives. The quotation of that paragraph is as under :

Article 15 paragraph (3) :

“A higher level cooperative society is obliged to and has the authority to provide guidance and supervision to the lower level cooperative societies.”

Its memorandum of elucidation :

“..... the higher level cooperative society is obliged and has the authority to give guidance and to carry out inspection to the lower level cooperative societies; this provision is made to secure and maintain the healthy growth of the lower level cooperative societies through giving guidance by the higher level cooperative society. This obligation and authority shall be stated in the By-law of the higher level cooperative society.”

10.2 Does cooperative law make any specific provision for development of cooperative leadership through education and training ?

If so, please specify.

- Ans. 1) There is not specific and explicit provision pertaining to the development of cooperative leadership through education and training in the Law Number 12 of the year 1967 concerning basic Regulations for cooperatives.
- 2) Nevertheless, provisions in Article 4 (on Functions of the Indonesian Cooperative) paragraph (4) and Article 7 (on Roles and Tasks of the Indonesian Cooperatives) paragraph (1) and (2) indicate the importance of cooperative education and training. The quotation of those articles is as under.

Article 4 paragraph (4) :

“The function of Indonesian Cooperative are as :

1. the instrument of economic struggle to improve the people’s welfare;
2. the instrument to democratise the national economy;
3. one of the life bloods of the economy of the Indonesian nation;
4. *The instrument of human development* to strengthen the economic position of the Indonesian nation and to join them together in managing the people’s economy.”

Article 7 paragraph (1) and (2) :

“In the framework of developing the economy and enhancing the welfare of the members in particular and the society in general, the Indonesian Cooperative shall have the following role and tasks.

1. *to unite, mobilize, cultivate, and develop the potential, creativity and enterprising ability of the people* in order to increase the production and to realize the achievement of equitable income and fair distribution of welfare;
2. *to increase the living standard and level of intelligence of the people;*
3. *to develop the economic democracy and maintain its survival.”*

10.3 Does cooperative law prohibit politicalisation of cooperative institutions ? Please specify the provision.

- Ans. 1) Basically the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives prohibit politicalisation of cooperative institutions, or more specifically that the Law prohibit :
- a. “to put the functions and roles of the cooperatives *as direct servants of politics* as to neglect the cooperative as an institution for the people’s economic struggle;
 - b. to deflect the foundation, core values and principles of the cooperatives from its genuineness.”

- 2) Statements (a) and (b) are quoted from the Cooperative Law and constitute the main considerations in revoking the Law Number 1 of the year 1965 concerning the Cooperatives and stipulating the law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives.

10.4 What is the machinery in cooperative law to conduct free and fair elections of cooperatives without any external influence ? Please specify.

- Ans. 1) The democratic process in the cooperatives is ensured in the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives, including free and fair elections of cooperatives without any external influence;
- 2) The following quotations pertaining to members' meeting ensure realization of such process.

Article 20 :

- (1) The members' meeting shall hold the supreme power in the cooperative life.
- (2) The decisions taken in the members' meeting should be based upon wise prudence in deliberation. In case the decision cannot be achieved by acclamation it shall be taken by a majority vote.
- (3) In case of voting, each members is entitled to have only one vote in the members' meeting.
- (4) In the cooperative society whose member are legal cooperative societies and other cooperative societies of higher level, the provisions in paragraph (3) of this article shall be carried out in proportion to the amount of their members, and its regulation shall be stipulated further in the By-laws.
- (5) To attend a members' meeting any member cannot appoint somebody to represent and act for him in it.

Its memorandum of elucidation :

This article regulates the supreme power in the co-operative life, in accordance with the paragraph (2) article 6 which is in the hands of the unanimous decision in always being tried, nevertheless this principle does not exclude the possibility for the cooperative society to make a decision by voting. Voting is carried out in case it cannot be prevented. The quorum of the members' meeting and the majority of vote shall be stipulated in the By-law.

Paragraph (4) of this article regulates the balance of votes in the members' meeting of the higher level cooperatives, which formally has the cooperative legal bodies as members. In this case the balance of votes is arranged according to the number of human individual members associated in each cooperative society in accordance with

the provision in the By-law.

10.5 Is there any specific provision for enabling the representative/spokesman organisation of cooperatives e.g. National Cooperative Union/ Provincial Cooperative Unions to play their effective role for the growth of cooperative movement in accordance with principle of cooperation ? If so, please specify.

Ans. 1) Article 18 of the Law Number 12 of the year 1967 concerning Basic Regulations for Cooperatives contains such provisions. The quotation of that article is as under.

Article 18 :

- (1) "For the sake of accomplishing economic objectives, several cooperative societies of various types can establish a cooperative society with different type.
- (2) To strive for the accomplishment of the ideals, objectives and interest of the whole Indonesian Cooperatives, a single cooperative Body shall be established by the Cooperative Movement.
- (3) The Minister shall legalize the body mentioned in paragraph (2) above as a legal entity.
- (4) The Body mentioned in paragraph (3) may not carry out economic activities directly."

Its memorandum of elucidation:

"What is meant by meant here with the other type of cooperative organization is a cooperative society needed by several cooperative societies that established it to fulfil their economic needs including welfare, such as to establish a Cooperative Bank, or an Insurance Cooperative Society and soon.

- 2) The name of the Body in the existing system of Cooperative Movement is Indonesian Cooperative Council (DEKOPIN, the acronym of Dewan Koperasi Indonesia).

There are three levels, namely Indonesian Cooperative Council at the national, provincial and district levels.

Jakarta, June 20, 1989

Respondent :

Asnawi Hassan,
 Director of the National Centre
 for Cooperative Training and Development,
 Department of Cooperatives,
 Jakarta, Indonesia.

**SUMMARY OF THE NATIONAL POLICY STATEMENT
REGARDING COOPERATIVE DEVELOPMENT**

- 1.1 The Government, especially the Department of Cooperatives, and the Cooperative Movement, especially Dekopin, shall create closer cooperation and carry out a planned, integrated and joint endeavor in developing strong and self-reliant cooperatives, particularly the Village Unit Cooperatives targetted in the Fifth Five Year Development Plan. The building of a strong cooperative network should be given a high priority. Besides, the reallocation of the national budget should be in favour of cooperatives. In this context, the efforts of developing the necessary commitments of all in the Government bureaucracy and Cooperative Movement should be stressed.
- 1.2 In general, in developing the cooperatives, the Government and the Cooperative Movement shall adopt the following five line of efforts;
- 1.2.1 The Department of Cooperatives line.
The Department of Cooperatives shall concentrate its efforts on the development of 2000 - 4000 strong and self-reliant Village Unit Cooperatives. Those efforts is being implemented under cross-sectoral supports by utilizing and integrating the existing sectoral programs.
- 1.2.2 The sectoral line.
The Departments other than Department of Cooperatives and other Government institutions which have sectoral programs relating to cooperatives shall participate in developing self-reliant cooperatives, especially the Village Unit Cooperatives.
- 1.2.3 The state corporation line.
Some state corporations are assigned to participate in developing cooperatives by establishing institutional and business linkages with the cooperatives such as in the nucleus estate system, guardian program for small scale business development and some pilot projects.
- 1.2.4 The private sector line.
The private enterprises are encouraged to establish cooperation and business linkages with the cooperatives such as in the nucleus estate system, guardian program, and sub-contracting system in certain business activities that are not covered yet by the cooperative development program of the Department of Cooperatives.
- 1.2.5 The NGO (non-government organisation) line.
The Government, particularly the Department of Cooperatives, shall invite the participation of the NGOs in developing cooperatives, especially in the rural areas by establishing community development pro-

grams, small business development program, pre-cooperative organisations, and other pilot projects which can be linked up to formal cooperative under the umbrella of the Village Unit Cooperatives, in accordance with the level of development and economic potentials of the area concern.

1.3 The Government and the Cooperative Movement shall encourage, develop and give necessary supports to the workers cooperatives in the state and private corporations. Besides, the cooperative spirit has to be introduced and imparted into the state and private corporations. The relationship between the workers/employees and the employers should be based on the principle of brotherhood or family relationship. It means that the relationship should be based on the Pancasila Industrial Relation, where workers/employees are considered as partners in the production process, i.e. partnership in decision making, production, profit making, and responsibility. In this context; the Government policy to launch an employee/workers cooperative stock ownership program in the private corporations should get appropriate response from the Cooperative Movement.

1.4 Besides, in developing 2000 - 4000 self-reliant Village Unit Cooperatives, the following cooperative institutional and business development policies shall be emphasized. A set of policies in the cooperative; institutional development are the following :

1.4.1 *In the organisational aspects*

- (i) To restructure the Village Unit Cooperative organisation, the primary as well as the secondary, in order to realise a more rational and flexible organisation directed to enhance the capability of the Village Unit Cooperatives in doing business and rendering services to the members in accordance with their business needs.
- (ii) To enhance the effectiveness and efficiency of the organisational organs and the management of the Village Unit Cooperatives, namely the members meeting, board of directors, and board of supervisors. Their job descriptions must be clear and implemented accordingly.
- (iii) To integrate the farmer groups, fishermen groups, and others into the Village Unit Cooperatives as members and utilize them as media for cooperative extension activities and rendering business services to the members.
- (iv) To give necessary knowledge and guidance to the Board for Guidance and Protection of the Village Unit Cooperatives in order to enable them in implementing their functions and roles.

1.4.2 *In the Management Aspects*

- (i) To develop the managerial capability of the managers and employees of the Village Unit Cooperatives.
- (ii) To develop business systems and procedures especially in the aspects of planning and financial management.
- (iii) To enhance the effectiveness and efficiency of the management of the Village Unit Cooperatives. Their job descriptions must be clear and implemented accordingly. The cooperation between the management and the board of directors and board of supervisors should be developed and cultivated continuously.
- (iv) To develop business cooperation among the Village Unit Cooperatives, horizontally as well as vertically, and between the Village Unit Cooperatives and state and private corporations.
- (v) To develop and make use of the cooperative management consultancy (CMC) approaches in giving guidance and supervision to the Village Unit Cooperatives.

1.4.3 *In the control aspects*

- (i) To develop internal control system by activating the functions and roles of the members and the board of supervisors.
- (ii) To develop external control system by encouraging the Village Unit Cooperatives to use the services of Audit Service Cooperatives, activating the functions and roles of secondary cooperatives in rendering supervisory services to their members, and developing the capability of the Government officials in the field of auditing, especially financial audit.

1.4.4 *In the cooperative extension aspects*

Planned and integrated cooperative extension activities should be conducted by the Department of Cooperatives, Department of Agriculture, etc., in close collaboration with Dekopth, primary and secondary cooperative societies and other non-governmental organisations. The capabilities of those institutions in organising cooperative extension should be enhanced continuously.

1.5 A set of policies in the cooperative business development are the following :

- 1.5.1 To develop a more suitable volume of business and efficient activities in order to enable the Village Unit Cooperatives in enhancing their competitive capability and in rendering services to their members.
- 1.5.2 To develop the capability of the Village Unit Cooperatives in increasing their market share and creating price security of their commodities.
- 1.5.3 To develop a healthier capital formation program from within the village Unit Cooperatives themselves.

- 1.5.4 To enhance the capability of the Village Unit Cooperatives in technology transfer and in utilizing their assets efficiently and effectively.
- 1.5.5 To develop harmonious cooperation among the Village Unit Cooperatives, and between those cooperatives with the private and state corporations.
By adopting the above-mentioned policies it is expected that the Village Unit Cooperatives can function well in crediting, distribution, and marketing activities.
- 1.6 In order to ear-mark the most appropriate candidates for “self-reliant Village Unit Cooperatives”, the Department of Cooperatives in collaboration with Dekopin should formulate a well-designed selection system and implement it accordingly. The development process toward the realization of 2000 - 4000 self-reliant Village Unit Cooperatives shall be monitored and evaluated based on a sound monitoring and evaluation system. Such kind of system should be developed as soon as possible based on the stipulated system of objectives.
- 1.7 In the Operational Guidance of the Director General for Cooperative Institutional Development No. 1309/BLK/VIII/1988 dated August 25, 1988 concerning the Cultivation and Development of the Self-Reliant Village Unit Cooperatives, there is a set of criteria for self-reliance of the Village Unit Cooperatives. Totally there are 13 criteria, namely :
- 7.1 The members (i.e. full members) of the Village Unit Cooperative are at least 25% of the total number of adult population in its operational area who meet the requirements for the membership of the cooperative mentioned above.
- 1.7.2 To increase the productivity of the members’ business, the services to them are at least 60% of the total business volume of their Village Unit Cooperative.
- 1.7.3 The annual members’ meetings are conducted in time in accordance with the guidance issued by the Department of Cooperatives at least for the last three fiscal years.
- 1.7.4 The members of the Board of Directors and the Board of Supervisors shall be elected out of and by the members of the Village Unit Cooperative in a members’ meeting. The maximum numbers of the member of the Board of Directors and the Board of Supervisors are 5 and 3 persons respectively.
- 1.7.5 The capital owned by the Village Unit Cooperatives amounts to at least Rs. 25,000,000.
- 1.7.6 The audit result on the financial report is in the category of unqualified opinion.
- 1.7.7 Tolerance limit of the deviation between the business realization and the business plan is 20% at the most.

- 1.7.8 **Financial ratios:**
- liquidity : 150% - 200%
 - solvability : at least 100%
- 1.7.9 **Total business volume of the Village Unit Cooperative must be proportional to the amount of its members; at least Rs. 250,000 - per member per year.**
- 1.7.10 **The Gross income of the Village Unit Cooperative can cover the cost based upon the principle of efficiency.**
- 1.7.11 **The Village Unit Cooperative has appropriate equipments for doing business and operated by its own employees.**
- 1.7.12 **There is no irregularity and manipulation in the conduct of the business done by the management which can inflict a loss on the Village Unit Cooperative.**
- 1.7.13 **The Village Unit Cooperative doesn't have any bad debt.**
- After being implemented for a certain period of time (one year is quite reasonable the applicability and feasibility of those criteria should be assessed systematically and critically. The assessment should be directed for the improvement of the system, and it would be advisable to give more emphasis on the utilization of management ratios which enable management to analyse business situations, to monitor and control performance, to make comparison with the other societies, and to help plan forward. In the Village Unit Cooperatives, the set of management ratios being used should be able to describe the growth/decline of the cooperatives (e.g. sales development rate; net surplus development rate; capital development rate), their activities (e.g. sales to capital plus reserves sales to fixed assets sales to current assets; sales to inventory), their profitability and productivity (e.g. total income in % of sales; total expenditure in % of sales; net surplus plus provision in % of sales; gross surplus/profit in % of sales; salaries in % of sales; net surplus to capital plus reserves; sales per employees), their member activities and benefits (e.g. member purchase in % of sales; average purchase per member; patronage refund to the members in % of member purchases; average patronage refund per member), and their stability (e.g. current assets to current liabilities; liquid assets to current liabilities; capital employed to fixed assets). Besides those ratios, the formulation of performance standards is also very important.

PHILIPPINES

Study on Facilitation of Cooperative Legislation

QUESTIONNAIRE

I. Constitutional and administrative status of cooperatives

1.1 What is the status of cooperation in country's Constitution? In case of Federal constitution, is cooperation a national, state, provincial, concurrent subject?

Ans. The Constitution of the Philippines is unitary with provisions for two autonomous regions. Cooperation is a subject therein.

1.2 Does country's constitution specifically make provision/incorporation of articles defining constitutional status of cooperation? If so, mention specific provision.

Ans. The Philippine Constitution treats of cooperation in various provisions thereof. Please see Annex "A" hereof.

1.3 Is there any separate coordinating Ministry for all types of cooperatives both at the level of national as well as state/provincial Government? If not, which Ministry coordinates?

Ans. There is none.

The agencies now in charge of cooperatives are:

1. Department of Agriculture and Food
2. Office of Transport Cooperatives, Dept. of Transportation and Communications
3. National Electrification Administration, Dept. of Environment and Natural Resources.

1.4 What is the extent of representation of cooperative sector in national parliament and state legislatures?

Ans. There is no representation of cooperatives in the national legislature or local government legislative bodies.

1.5 Is there any provision in the constitution for nominating outstanding cooperators in national Parliament and state legislatures?

Ans. There is none.

1.6 What is the administrative set up for cooperative sector? Please describe organizational/functional chart of department of Cooperation in the Government both at centre and the states.

Ans. Legally there is no such thing as a "Cooperative Sector" in the Philippines. There exists only the following sectors.

1. Public Sector - This sector embraces the national and local governments; government owned and/or controlled corporations; United Nations and its agencies; and other international treaty organizations.

The government departments and agencies mentioned in paragraph 1.3 above belong to this group.

2. Private Sector - This sector covers private businesses; cooperatives and their federations and unions; and non-government organizations (NGOs); both at the local and international levels.

There is no Department of Cooperation.

1.7 Please give a brief description of (i) powers, (ii) functions, and (iii) duties and responsibilities of Department of Cooperation.

Ans. The closest equivalent of a Department of Cooperation in the Philippines is the Department of Agriculture and Food. It is vested with the power and responsibility of promotion, organization, registration and supervision and liquidation and dissolution of cooperatives under, it through various bureaus and regional offices. It is also vested with the power and function of providing management and training assistance as well as providing loans to cooperatives. However, the very nature of the department itself shows that its attention is mainly directed toward agricultural cooperatives. Other types of cooperatives such as credit, consumer, industrial and service are also attended to as additional responsibility.

Specialized agencies for special types of cooperatives also exist and there are :

1. Office of Transport Cooperatives, Dept. of Transportation and Communications. This organizes registers and supervises transport cooperatives.
2. National Electrification Administration, Dept. of Environment and Natural Resources. This agency promotes, organizes, registers, supervises, finances, and dissolves electric cooperatives.

3. Sugar Regulatory Administration, Dept. of Agriculture and Food. This organizes, registers and supervises sugar cooperatives.
4. National Food Authority, Dept. of Agriculture and Food. This provides technical and financial assistance to grains and food cooperatives.

1.8 Do the federal organisations of cooperatives enjoy some powers in regard to management and administration of their constituent units? If so, please mention them briefly.

Ans. Federal organizations of cooperatives do not have any management or administrative powers over their members/constituents. Such powers are granted only through mutual agreements or contracts.

1.9 Is there any system or legal provision under which certain powers and functions of Department of Cooperation in the Government could be delegated to and devolved on the federal organisation of cooperatives? If so, please describe such powers and functions.

Ans. Certain powers and functions of the government may be delegated to federal organizations. These are non- governmental in nature :

1. Technical Assistance;
2. Education and Training;
3. Audit (except audits in pursuance of the State's inherent visitorial powers);
4. Arbitration of Disputes; and
5. Such other purely non-governmental functions.

Under Philippines law, the foregoing functions are not exclusively vested in the government cooperative agencies although it is part of their functions under the Cooperative laws. Any cooperatives of federation with adequate funding and technical competence may, *motu proprio*, may exercise the said functions without any prior clearance from any government agency.

As an approach to cooperative development, however, the government cooperative agencies have been delegating the above functions and their federations and unions, in appropriate cases.

1.10 Are there any parastatal organisations set up by the Government for the development of cooperatives? If so, please name them.

- Ans.
1. The National Electrification Administration, Dept. of Environment and Natural Resources. This promotes, organizes, registers, supervises, finances, and dissolves electric cooperatives.
 2. The National Food Authority, Dept. of Agriculture and Food.

This agency provides technical and financial assistance to cooperatives dealing in grains and other food products.

1.11 Do the parastatal organisations set up by the Government for development of cooperatives have powers in regards to administration of cooperatives aided by them? If so, please describe such powers.

Ans. Yes. Through contractual arrangements such as loan agreements/contracts; assistance agreements, etc. These may cover the entire range of management.

1.12 Are cooperatives represented in local bodies and vice-versa? If so, please specify.

Ans. No.

II. National policy on Cooperative Development

2.1 Please describe broad objectives of national economic development.

Ans. Please see Annex "B"

2.2 Is there any national policy on cooperatives?

Ans. Yes. Please see sec. 15, Article XII Philippine Constitution reflected in Annex "A" hereof.

2.3 Has national Government issued any national policy statement. If so, please enclose a copy of the statement.

Ans. Yes. Please see Annex "C" hereof.

2.4 Is cooperative sector involved in formulating national policy on cooperative development. If so, what is the mechanism/institutional framework.

Ans. No. It is not involved formally.

2.5 Do Government actively involve cooperatives in effective implementation of economic development programmes?

Ans. Yes. But government retains control of the program and even directs the participation of cooperative therein.

2.6 Are there any specific development programmes which are specifically allocated to cooperatives for implementation?

1. National rural electrification
2. Agricultural Credit for small farmers on a selective basis.
3. Rationalization of the transport system for the public.
4. Development of the sugar industry.

2.7 Do National Plan Documents provide specific place to cooperatives

sector? If so, please explain.

Ans. Cooperatives are specifically assigned a role in rural electrification. However, in agriculture and transport, they are given roles on a selective basis. In general, they are given equal opportunity with other private enterprises in participating in national development programs.

2.8 What is the place of cooperative sector vis-a-vis private and public sectors?

Ans. Cooperatives are part of the private sector. They are considered as a sub-sector of the private sector.

2.9 Does cooperative sector formulate its own plan of development independent of the plan formulated by the Government? If so, what is the mechanism?

Ans. Yes it does. This is done through a broad program of action by the national cooperative organizations concerned.

1. Cooperative Union of the Phil. Inc. (CUP) under P.D.No. 175. It has an annual Corporate Plan and Budget.
2. Federation of Electric Cooperatives of the Phil. (FECOPHIL) under P.D. No. 269. It has its own national program of action.
3. National Confederation of Cooperatives (NATCCO), under P.D. 175. It also has its own plan of cooperative development for its affiliates.

Please see Annex "D" for CUP mechanism. Others' mechanism are similar.

2.10 Does cooperative sector formulate its own plan of development, keeping in view the following:

- (a) National priorities.
- (b) Government directive.
- (c) Members expectation.

Please indicate order of preference.

Ans. Yes, the order of preference is (c), (b), (a)

2.11 Do the national Parliament and state Legislature discuss the plan of cooperative development regularly? If so, on what occasion and in what context? Give some instances.

Ans. The departments and agencies dealing with cooperatives submit annual reports of their activities and proposed budgets to Congress. Their respective development programs are discussed in justification of their proposed annual budget.

The regular procedure is for them to prepare their plans and program and budgets for the ensuing year. They submit these to the Congress through the President. The Congress conducts committee hearings on their budgets and include them in the annual general appropriations act of the Government .

2.12 Does the concerned Consultative Committee of national Parliament and State Legislative Assemblies discuss issues concerning Cooperative Development? If so, how often.

Ans. Yes, only whenever specific proposals are brought before Congress such as proposed legislature measures.

2.13 Is cooperative sector regularly associated/involved in plan discussions? If so, how many times in an year?

Ans. No.

2.14 Has national Government created any specific body/ institution at its level to deliberate upon issues concerning cooperative development from time to time? If so, please give its name and terms of reference.

Ans. 1. Department of Agriculture and Food. Under P.D. No.175, the department is responsible for development of cooperatives covered by said law (all types except electric and transport cooperatives). It handles issues directly or through the Bureau of Agricultural Cooperatives, Management and Training Assistance Program, and Agricultural Credit Policy Council.

2. National Electrification Administration. Under F.D. No. 269, the Administration handles issues on electric cooperatives.

3. Office of Transport Cooperatives. Under E.O. No. 898, the Office handles issues on transport cooperatives.

4. Sugar Regulatory Administration. Under P.D. No. 775, the Administration handles issues relating to sugar cooperatives.

2.15 Organizational structure of cooperatives, being federal, please enumerate briefly the role of federal organizations at secondary/state / national level, particularly, with reference to policy formulation for cooperative development.

Ans. In government policy formulation, national/local cooperative organizations, union and federations are no consulted as a matter of legal requirement. However, they are consulted whenever the government deems it necessary.

III. Evolution of Cooperative Law

3.1 When the first Cooperative law in the country was enacted?

Ans. February 5, 1915.

3.2 What were the reasons/background of the first Cooperative Law? Please identify them in following heads :

- a) Political
- b) Economic
- c) Social
- d) Others

Ans. Economic Reason. The first cooperative law was Public Act No. 2508, entitled "Agricultural Credit Associations Act". The objectives were the mobilization of rural savings, and the development of the habit of thrift and wise use of money.

3.3 Whether the first cooperative law was enacted for one particular activity or for cooperatives in totality? Please specify.

Ans. The first cooperative law was particularly for agricultural credit.

3.4 With the growing expansion and diversification of cooperative sector, has Cooperative Law been evolved to suit the changing needs of the cooperatives? If so, please mention various stages of historical evolution of cooperative Law.

Ans. Yes, please see Annex "E".

3.5 Is there a separate legislation for cooperatives as a whole or for different groups of cooperatives? Please enclose a copy.

Ans. Yes, there is one - Presidential Decree No. 175 (General Basic Cooperative Law). Due to the exigencies of the national development plans under the Martial Law Regime, the following laws were decreed by the President:

P.D. No. 27 - To hasten agrarian reform;

P.D. No. 269 - To hasten rural electrification through cooperatives;

P.D. No. 775 - To develop the sugar industry;

P.D. No. 898 - To rationalize and integrate public service companies.

See in Annex "F". Copies of the Laws listed are now with ICA RO.

3.6 Have Government appointed expert committees to modify cooperative law from time to time? If so, please mention them along with their important recommendations.

Ans. No.

3.7 Whether Government consults the cooperative sector before evolving Cooperative Law? If so, what is the mechanism.

Ans. Whenever a proposed law on cooperatives is before Congress, the

proposed measure is referred to the committee having jurisdiction thereon. The Committee conducts a public hearing wherein cooperatives and the general public are invited to submit their views thereon. Thereafter, the Committee files a report containing its recommendations. The Congress deliberates on the proposed law and enacts the same with or without amendments. It is then sent to the President for signing into law.

- 3.8 Have there been occasions when cooperative legislation was formulated by the Government without paying attention to the views of cooperative sector? If so, please describe them briefly.

Ans. None.

- 3.9 Are there allied laws which regulate the functioning of cooperatives? If so, please describe briefly their salient features.

Ans. Generally, all laws of the Philippines are applicable to cooperatives of all types. However, there are specific laws, which specifically affect cooperatives as such.

IV. Cooperative Law and Principles of Cooperation

- 4.1 Does Cooperative Law have specific provisions for incorporation of principles of cooperation? If so, reproduce concerned provisions.

Ans. Yes, Presidential Decree No. 175 (General Cooperative Law) has formally adopted four of the principles of cooperation.

- 4.2 Whether principles of cooperation incorporated in Cooperative law are the following as laid down by the International Cooperative Alliance?

(a) Open and voluntary membership.

(b) Democratic control.

(c) Limited interest on Capital.

(d) Savings belong to members.

(e) Cooperation among cooperatives.

(f) Cooperative education.

Please explain briefly deviation, if any.

Ans. P.D. No. 175 is the only cooperative law that formally adopts the four basic principles of cooperation. This is the only deviation from the foregoing enumeration. Please see Annex "G".

- 4.3 What is the definition of cooperative society in cooperative Law?

Ans. P.D. No. 175 defines the term "Cooperative" in Section 2 thereof as

follows :

“Cooperative shall mean only organizations composed primarily of small producers and of consumers who voluntarily join together to form business enterprises which they themselves own, control and patronize.

“A small producer shall mean a self-employed individual who by himself or with his family provides the primary labor requirements of his business enterprise or one who earns at least fifty percent of his gross income from the payment proceeds or income of the labor he provides.”

V. Registration and Membership of a Cooperative Society

5.1 Are there any pre-conditions for registration of a cooperative society? If so, please give details.

Ans. Under the general cooperative law (P.D. No. 175, as amended) the preconditions are the following :

1. At least 25 members ;
2. Minimum capitalization of P 5,000.00; and
3. Feasibility study,

Under the special laws, the foregoing minimum requirements on membership, capital, and feasibility study are also imposed but the actual member, amount, and specifications depend upon the circumstances.

5.2 Does the discretion for the registration of a cooperative society lie with the registering authority under law even if the promoters fulfil all the stipulated conditions?

Ans. Yes, The registering authority is normally a quasi-judicial body which is given such a discretion based on sound judgment, in the light of the objectives of the cooperative law.

5.3 Is the registering authority under cooperative law obliged to record reasons in writing in case of refusal for registration of a cooperative society?

Ans. Yes, the authority is required to do so.

5.4 Is there any time limit prescribed under law which registering authority is obliged to take decision in regard to registration of the society?

Ans. No time limit or deadline to decide whether or not to register a cooperative.

5.5 Does law provide for “society will be deemed to have been registered

in case of decision by the registering authority is not taken within the prescribed time limit”.

- Ans. There is no such provision in the cooperative laws.
- 5.6 Is the order of the registering authority appealable? If so, please mention appellate authority under law.
- Ans. Yes, under P.D. No. 175, the decisions of the Bureau of Agricultural cooperatives and the Regional offices of the department are appealable to the Secretary of Agriculture and Food. Under E.O. No. 898, the decisions of the Office of Transport Cooperatives are appealable to the Secretary of Transportation and Communications. Under P.D. No. 269, the decisions of the National Electrification Administration are reviewable by the Supreme Court of Philippines. Decisions made by department secretaries under P.Ds Nos. 175 and E.O. 898 are reviewable by the Courts.
- 5.7 Does the registering authority consult concerned federal organization before taking decision regarding registration?
- Ans. No.
- 5.8 Does the law provide for provisional registration of cooperative society? If so, please quote the provision.
- Ans. No.
- 5.9 Have the Government ever put restrictions on the registration of a particular type of a cooperative society? If so, please give some details with a copy of government order/legislation.
- Ans. No, restriction on the registration of any particular type of cooperative.
- 5.10 Does the law make specific provisions about the persons who may become the members of a cooperative society? If so, please quote the provision.
- Ans. No, the law allows any cooperative to define its own field of membership. However, those normally not qualified are minors, convicts of crimes involving moral turpitude, insane persons, or those who are incompetent. But such lack of qualification is by provision of the civil and penal laws of the country.
- 5.11 Does the law put restriction on the admission of the persons as members of a cooperative society whose interests are likely to conflict with the objects of the society? If so, please quote.
- Ans. No.
- 5.12 What is the authority to take decision regarding admission or expul-

sion of members? Whether it is prescribed under laws or bye-laws of a cooperative society? Please specify.

Ans. It is generally prescribed in the bylaws, specifically under the article dealing with the terms of reference for membership. Admission to membership is decided upon by the Board subject to appeal to the general membership whose decision is final. Suspension or expulsion from membership are generally decided upon by the general membership.

5.13 Is the authority obliged under law and/or under bye-laws to take decision regarding admission of members within a prescribed time limit? In case of its failure to take decision with the prescribed time limit, whether the applicant person shall be deemed to have been admitted as member. Please specify.

Ans. There is no time limit within which a person's application for membership shall be acted upon. It is the prerogative of every cooperative to accept or reject an applicant for membership in its own time.

5.14 Is the order of the authority to take decision regarding admission of member is appealable? If so, please quote specific provision.

Ans. Normally, it is the board that acts on applications for membership. Its decisions are appealable to the General Assembly whose decision is final.

5.15 Can Government under law issue directive for compulsory admission of certain class of the people as members of certain cooperative society? If so, please mention the provision.

Ans. No such authority.

VI. (A) Bye-Laws

6.1 Does the law make it obligatory on every cooperative society to have written bye-laws for regulating its day-to-day functioning? If so, please quote provision.

Ans. Yes, every cooperative designs its own bylaws for the purpose. Normally, the regulations on day-to-day operation are left to the board's discretion.

6.2 Does the law specify the items/contents of the bye-laws? If so, please specify.

Ans. Yes, Normally, the bylaws specify the terms of reference of membership; installation of the Board of directors, committees and executives/managers; Systems on decision making, program evaluation and re-

view and re-programming of activities; financial management; and all other data which are normally required to be in the bylaws, under current business practice.

6.3 Who is the competent authority to frame and to adopt the bye-laws under law?

Ans. The Cooperative. However, the registering authority has the power to determine whether or not it complies with the laws.

6.4 Does the law authorize the Government to frame the model bye-laws of every type of a cooperative society? if so, please quote the provision.

Ans. No specific authority. however, as a matter of practical convenience, the government cooperative agency comes up with model which may or may not be adopted by cooperatives.

6.5 Is it obligatory on the part of a cooperative society to adopt model bye-laws. If so, please specify the provision.

Ans. No, the cooperative may have its own bylaws provided it conforms to the requirements of the law; and substantially conforms to the model.

6.6 Is it necessary to get the bye-laws registered for enforcement?

Ans. Yes.

6.7 Is the registering authority competent to change/amend/delete any bye-laws without assigning any reason?

Ans. No, the registering authority has no competence to change/amend/delete any by-law provision unless the same is illegal or contrary to law.

6.8 Are parastatal organizations created for the promotion of certain types of cooperatives also competent to change/amend the bye-laws at their discretion and shall the members of those types of cooperatives societies be obliged to adopt such bye-laws? If so, please quote provision.

Ans. No, however, such changed may be required if it is in pursuance of an agreement or contract such as Loan Agreements or Contracts.

6.9 Do you think that power of Government for compulsory amendment of bye-laws conflicts with cooperative ideology/principles? If so, please give a brief note about your opinion.

Ans. Yes it violates the cooperative principle of democratic control. It also destroys the autonomy and independence of cooperatives. Under Philippine Constitutional and statutory laws, such power is not allowable as it violates the Constitutional guarantee against non-impairment of the obligation of contract.

(B) Rules

6.10 Does the cooperative law make specific provision for defining rule making power? Please specify.

Ans. Section 8, P.D. No. 175, authorizes the Dept. of Agriculture and Food to promulgate rules and regulations on the promotion, organization, registration and supervision of cooperatives. Exec. Order No. 898 grants similar powers to the Office of Transport Cooperatives. Also under P.L. No. 269 and P.D. No.501, the same authority is granted to the National Electrification Administration. Under P.D. No. 775, the Sugar Regulatory Adm. (SRA) also has rule making powers over sugar cooperatives.

6.11 What are the subjects/issues on which Rules can be framed under cooperative law?

Ans. These are :

1. Organization;
2. Registration;
3. Supervision;
 - (a) Inspection and audit;
 - (b) Submission of Annual Reports and Financial Statements;
 - (c) Investigation of violations of laws and regulations;
4. Liquidation and Dissolution.

6.12 Do you think that there are certain subjects as specified in your reply to question No. 6.11 could be included in the bye-laws of cooperative societies? If so, please specify.

Ans. All of them, provide that their inclusion will be gone in such a manner as not to affect the organizational integrity and stability of the cooperative,, or the autonomy and independence thereof. However matters pertaining exclusively to the government such as registration, supervision and dissolution of cooperatives.

6.13 Does the legislation empower the Government or some other authority to exempt societies, from any of the provisions of the Act or the Rules?

Ans. No, such exemption powers are considered unconstitutional or violative of the Constitution as class legislation or undue delegation of legislative powers.

6.14 Are guidelines provided on the basis of which exemptions may be granted? If so, please specify.

Ans. None.

VII. Cooperative Law and Decision Making Process in Cooperatives

7.1 There are following important management organs in a cooperative society :

- (a) General body,
- (b) Board of directors,
- (c) Functional sub-committees created by the Board of Directors, and
- (d) Chief Executive.

Please describe their powers, functions, duties and responsibilities.

Ans. (a) General Assembly. It exercises the powers of ownership over the cooperative and this includes setting of goals and objectives; approval of annual reports and duly audited financial statements; and arbitrates controversies with finality.

(b) Board of Directors. It manages the affairs of the cooperatives subject to the authority of the General Assembly policies and decisions; elects the President (who is the Chairman and Chief Executive), Vice-President, Secretary, Treasurer, and appoints the General Manager; It prepares and submit\$ its reports annually to the General Assembly together with the duly audited financial statements of the Cooperative.

(c) Chief Executive - This is the Chairman/President. He is Chairman of the Board and General Assembly; and is the chief executive of the Cooperative. As such, he is the official or legal representative of the cooperative, and is the supervisor of all other offices (Vice President Secretary Tracer, General Manager) seeing to it that they perform their functions; directs and supervises the implementation of the Board and General Assembly policies and decisions, and reports to the Board on the results of the operations of the Cooperative.

(d) General Manager - He is the Chief Operating Officer and he manages the day-to-day operations of the Cooperative.

7.2 Does cooperative law make specific provision vesting supreme authority in the general body of members? If so, please specify.

Ans. No specific provision expect the provision providing the submission of bye laws which normally contain a provision vesting final authority to general membership.

7.2.1 Are the decisions of the general body required to be united to an

authority designated under the legislation for approval?

Ans. No however, articles of incorporation and bylaws of cooperative as well as amendments thereof approved by the General Assembly do not take effect until the registration thereof by the government agency concerned.

7.2.2 Are all decisions of the general body subject to approval of the authority designated by the legislation or are their decisions on specified matters subject to approval.

Ans. All decisions of the general body are not subject to government approval. Exceptions are when the same are specifically required by contractual agreement with the government (e.g. loan contracts, etc.)

7.2.3 Does the authority designated under the Act have any power to call a general body meeting or to authorize any person to call a meeting of the members?

Ans. No. Exceptions : same as in 7.2.2 above.

7.2.4 Does the authority designated under the Act have the power to declare a meeting of the general body invalid and if so on what grounds?

Ans. Yes only when it violates the law, the regulations, the bylaws of contracts. But the cooperative may challenge such action in court.

7.2.5 Is the society required to inform any authority designated under the Act about the date and agenda of the meeting of the general body?

Ans. No. Membership meetings in cooperatives are purely the private internal affair of the cooperatives, similar to the stockholders' meetings of private corporations.

7.2.6 Is the authority designated under the legislation entitled to attend the general body meeting without being invited to do so?

Ans. No, but as a matter of official courtesy, they are invited as guests only.

7.2.7 Are the minutes of the general body required to be sent to any authority designated by the legislation for approval?

Ans. No.

7.3 How various management organs of a cooperative society are created/constituted under cooperative law? Please specify the procedure.

Ans. The management organs of cooperatives are of two types namely elective and appointive.

1. Elective : The elective organs are the Board of Directors and the Audit Committee. The Board members are elected for 2 year terms while the audit Committee members for 1 year term. The

Board elects the executive officers (President, Vice-President, Treasurer, and Secretary) from among themselves for 1-year term.

2. Appointive: The appointive organs are those created by the bylaws or the Board as appointive committees. The Board is authorized to appoint the Treasurer and the Secretary. The Board appoints the Manager and key staff of the Cooperative.

7.4 How are various management organs of a cooperative society linked with each other in the decision making process? Please specify the provision under law, rules and bye-laws.

Ans. The bylaws specify such relationships as follows :

1. General Assembly. It is, the final authority within the cooperative. It approves the reports of the Board and the annual financial statements; the plans, and budget for the next year; and elects the directors and committee members.
2. Board of Directors. It manages the affairs of the Cooperative in accordance with the plan and budget approved by the General Assembly elects the President and Vice-President; elects/appoints the, Treasurer and the Secretary; and appoints the Manager and his Staff.
 - (a) President - Represents the Cooperative; directs - and supervises the entire operations through the Manager and his staff; and the Treasurer and Secretary. Reports to the Board.
 - (b) Vice-President - Acts as President in the latter's absence or incapacity.
 - (c) Treasurer - Has custody of all funds and valuables.
 - (d) Secretary - Has custody of minutes of all meetings of the Board and General Assembly and manages meetings.
 - (e) Manager - Manages the day-to-day operations of the Cooperative and reports to the Board through the President.

The Board and executive officers inter-act and cooperate in the performance of their jobs.

3. Audit Committee. This committee conducts periodic audit of the accounts of the cooperative and reports on the results thereof to the General Assembly.

7.5 Do you think that existing law provides adequate provisions to ensure functioning of various management organs in unison without any conflict? If so, mention those provisions.

- Ans.** Yes. Section 19-21, P.D. No. 175. In respect of electric cooperatives, Sections 19-20 P.D. No.269. In the case of transport cooperatives Section 2 of E.O. No. 898 in relation of Sections 19-21, P.D. No. 175. In all of the foregoing, cooperatives are given maximum leeway in determining their internal organizational systems.
- 7.6** If you think that existing law does leave scope for conflicts between various management organs of a cooperative society in their proper functioning what are your suggestions for amending cooperative law in this respect?
- Ans.** There is need to enact the Cooperative Code now pending before the Senate in Congress. This Code provides for the organic act for cooperatives.
- 7.7** What is the procedure for constitution of Board of Directors/Managing Committees according to cooperative Societies Act and Rules? Whether the procedure is also reflected in the bye-laws of the cooperative society? If so, please mention specific provision.
- Ans.** The cooperative laws do not specify the procedure for the constitution of the Board of Directors and Committees. These are details that I reserved for the bylaws. The procedure normally contained in the article in the bylaws designated "Government". (i.e. system of internal governance of the cooperative's affairs).
- 7.8** Who is the competent authority to conduct elections in cooperatives under Cooperative Law? Please mention specifically.
- Ans.** The committee on Elections created under the bylaws and appointed by the General Assembly. This Committee conducts the elections in the subsequent general assembly. Every year, the General Assembly elects the members of this committee.
- 7.8.1** Is there any provision for creation of cooperative election authority in the cooperative law? If so, please mention specifically.
- Ans.** None.
- 7.8.2** Who is the competent authority to settle the election disputes under cooperative law? Please specify.
- Ans.** The committee on Elections (COMELEC)
- 7.9** Does law define specific qualifications for a person to be elected/appointed as office bearers or members of Board of Directors? Please quote.
- Ans.** No, this is reserved for the bylaws.
- 7.9.1** Does the law provide for representation of employees on the Board of

directors of a cooperative society? If so please mention what is the percentage of representatives of employees to the total number of Board of Directors.

Ans. No.

7.9.2 Does the law confer right of an employee representative to get elected as an office bearer/director in the federal organizations? If so, what is the proportion of such person on national level boards.

Ans. No.

7.10 What is the legal status of the Chief Executive/Managing Director in the board of directors/management committees in the cooperative laws? Is he a member of the board with right of voting?

Ans. The chief Executive/Managing Director is always required to be a member of the Board. He is elected from among the members thereof. The Chief Executive under Philippine laws is the President who must come from among the directors. He is both Chairman and "Chief Executive". As such the President, merely votes in case of a tie. Where there is a Chairman and a Managing Director, the Chairman votes only in case of a tie; but the Managing Director may or may not vote depending on the actual terms of reference for the office.

7.11 Does the Law provide for full time/part time paid elected Chairman or President of cooperatives?

Ans. No.

7.12 Does the Law provide two officers viz. (i) Chairman, and (ii) President? If so what are the respective powers and responsibilities of each? (Chairman to chair the meetings of the general body, board of directors and others. President to be full time paid officer of the society as in the USA).

Ans. P.D. No. 175 and E.O. No. 898 do not provide for chairman or President. However, the bylaws of the cooperatives provide for either of the two depending on what the members like. Under P.D. No. 269, the law specifies President only. The powers of Chairman and President are defined in the By-laws.

Essentially, the Chairman is supposed to preside over Board and Assembly meetings only. In such a situation, there is no President provided in the bylaws. The chief executive function is assigned to the General Manager. This is the case in many agricultural cooperatives. However, in non-agricultural cooperatives and some agricultural cooperatives, the bylaws provide for a President who is also chairman of the Board and Assemblies.

7.13 What responsibilities and powers does the law confer on national/regional bodies of cooperatives.

Ans. None, the responsibilities and powers of such bodies are conferred by their constituencies.

7.14 Does the Law provide for punishment to individual elected/appointed directors and paid employees in case of committing delinquency?

Ans. If the delinquency is criminal, yes. If civil, it depends upon the terms of the bylaws and the contract from which the delinquency arose.

7.15 Does the Law lay down any code of conduct for the office bearers or directors of the board? If so, please quote.

Ans. None, it is the concern of the cooperative themselves.

7.16 Does the Law provide for accountability of individual paid officers, directors of the board and office-bearers of cooperatives? If so, how and to which extent?

Ans. Yes, under Philippines law, they are liable for any damages suffered by the cooperative due to crimes committed by them; and fault or negligence in the performance of the functions and responsibilities.

7.17 Does law make following provisions empowering the Government:

- i. to effect compulsory amendment of bye-laws.
- ii. to effect compulsory amalgamation and division of cooperative society.
- iii. to rescind/annul the resolutions/decisions of the Board of Directors and annual general body of a cooperative society.
- iv. to supersede the elected management of a cooperative society.
- v. to issue directive to a cooperative society.
- vi. to restrict the term of office of office bearers.
- vii. to restrict the number of cooperative societies in which a person can hold office.

Ans. No unless by virtue of an agreement or contract.

7.17.1 Do you think that above provisions ensure efficient decision making process in a cooperative society? Please give a critical note.

Ans. No, the above will destroy the initiative and sense of ownership of the members over the cooperative. It also destroys their autonomy and independence with disastrous consequences on their viability, organizational integrity, stability, and productivity.

7.18 What is the competent authority under Law to lay down the policies, norms and regulations regarding personnel management in cooperative society?

Ans. None, this is purely an internal management function of cooperatives, and are legally so regarded.

7.19 Does law specify/demarcate the powers and responsibilities of the Board of Directors and Chief Executive? If yes, please specify the provision.

Ans. No, the matter is reserved for the bylaws.

7.19.1 What is your view as to whether the provision indicated under 7.19 should find place in the bye-laws of a cooperative society instead of law?

Ans. It should be in the bylaws. The allocation and distribution of corporate powers, whether collegial or executive is the exclusive concern of the owners of the organization. Hence such matters are appropriately reserved for the bylaws only.

7.20 What is the functional/administrative relationship between the elected chairman and Chief Executive of a cooperative society under :

- i. law,
- ii. rules,
- iii. bye-laws.

Ans. The laws and the regulations do not make provisions on the matter. The bylaws of cooperatives however, do not have a standardized approach on the matter. The following alternative situations are found to exist:

1. First situation. There is a Chairman vested only with the power to preside over Board and Assembly meetings. The chief executive functions are assigned to a General Manager or Managing Director.
2. Second Situation. There is a President who presides over Board and General Assembly meetings and is assigned the function of Chief Executive. There is a General Manager who is in charge of the day-to-day operations of the cooperative.

The latter alternative is more popular in the Philippines.

7.20.1 Please give your view on the following :

- (a) Should Chief Executive directly report to the Board?
- (b) Should Chief Executive report to Chairman who should be responsible to the Board?

Ans. The chief Executive should report to the Chairman of the Board who should be responsible to said Board. This will serve as a means by which the Chief Executive may be appropriately supervised to see to

it that the Board's policies and decisions are complied with; and timely adequate actions are made to remedy any problems before it is too late.

The situation under (a) above is dangerous for no one monitors the Chief Executive in-between Boards Meetings. Any wrong doings during that period will be unchecked until the next Board meeting which may then be too late to stop.

7.21 Who is the competent authority to recruit and terminate the Chief Executive?

Ans. The Board of Directors.

7.21.1 Does law prescribe for creating a specific Selection Committee/panel authority for recruitment and selection of Chief Executive? If so, what is the constitution of such authority and what are its powers and responsibilities.

Ans. No.

7.21.2 Does law provide that final selection of the Chief Executive shall vest in the hands of the selection committee/panel authority created under law?

Ans. No.

7.22 Who decides for preparation of Agenda Items for the Board or other function committees?

Ans. Normally, the Secretary prepares the agenda on the basis of reports and communications to the Board. The agenda is approved by the Chairman.

7.22.1 Does law/bye-law makes it obligatory on the part of the Chief Executive to take decision about Agenda Item even without the approval of the Chairman? If so, please specify the provision.

Ans. No, the Chief Executive has no such powers unless he is also assigned the function of Chairman.

7.22.2 Is Chief Executive empowered to convene the meetings of the General Body, Board of Directors and other functional Committees without obtaining approval of the President? If so, please specify the provision.

Ans. No.

7.22.3 Is Chief Executive empowered for recruitment and selection of subordinate officers and other functionaries? If so, please specify the provisions.

Ans. Yes, in accordance with the guidelines approved by the Board. Such power is, under Philippines law, a routine power of the Board.

7.22.4 If Chief Executive is not empowered to recruit and select his subordinate officers and other staff members, would it be appropriate to vest such powers in him? Please give your views along with reasons.

Ans. Officer-level, or key management positions should be reserved for the Board. All others may be given to the Chief Executive.

7.22.5 Should Chief Executive be empowered to take disciplinary action against his subordinate officers and staff members? Please give your views.

Ans. Yes. However, the Board should see to it that a standard procedure be adopted for such purpose, and strictly followed.

VIII. Cooperative Law and Self-Reliance

8.1 There are three aspects of self-reliance in cooperative : (a) self-reliance in terms of self-regulation, (b) self-reliance in terms of resources, and (c) self-reliance in terms of leadership. Does cooperative law make provision to motivate cooperatives to develop self-reliance. If so, please specify the provisions.

Ans. No, these are matters within the internal affairs of cooperatives. However the government through education and training programs encourage and motivate cooperatives to be self-reliant in those three areas.

8.2 If cooperative law, rules and bye-laws do not make any provision in regard to self-reliance, what are your views on this subject? Please give detailed note.

Ans. Development of self-reliance can be achieved only through proper education and training of members. This should encompass knowledge and skills with heavy emphasis on attitudes.

The Cooperative concerned, no matter what size or type should be required to establish such an education and training program as a major component of its business operations.

8.3 Does cooperative law and rules make provision for appropriation of net profits? If so, please specify.

Ans. Yes, under P.D. No 175 the regulations specify that the Net saving be allocated and distributed as follows.

10% - Reserve fund

10% - Education and Training Fund.

80% - For Patronage Refunds and Interest on capital as determined by the board.

The same rule is adopted under E.O. 898 for transport coop. P.D. No. 269 does not make any provisions on the matter in respect of electric cooperatives. Hence it is up to them.

8.4 What types of funds a cooperative society can create under cooperative law, rules and bye-laws? Please specify.

Ans. In addition to those mentioned in 8.3 above a cooperative can create any fund and set the terms of reference for the use thereof.

8.4.1 Who is the competent authority to take decision about the creation of the funds?

Ans. The General Assembly or the Board.

8.4.2 Whether the competent authority has been defined in the law and rules or bye-laws? Please specify.

Ans. Yes, the bylaws create the General Assembly and the Board of Directors and invest them powers which include the creation of funds.

8.4.3 Who is the competent authority to take decision regarding investment of funds?

Ans. The Board of Directors or the General Assembly.

8.4.4 Does cooperative law define various institutions and modes in which funds of a cooperative society can be invested? If so, please specify.

Ans. No.

8.4.5 Does cooperative law prescribe any restrictions regarding investment of funds? If so, please specify.

Ans. No.

8.4.6 Does cooperative law prescribe to make any provision restriction the cooperative society for obtaining loans/borrowings for mobilizing its resources?

Ans. No.

8.5 Does cooperative law make any provision to obtain permission of Registrar of Cooperative Societies/Government regarding investment of its fund?

Ans. No, except when it is the recipient of government aid under which terms such permission is required.

8.6 Can cooperative society give donations to any non-cooperative organization? If so, what is the maximum limit?

Ans. Yes. No limit.

8.7 Does Law/bye-law specifically provide for members obligations to

build up the resources of their society? If so, please specify.

Ans. Yes, the matter of continuous capital build-up is written into the bylaws.

8.8 Does law make provision empowering the Government to issue directions for building up the resources of cooperative society? If so, please specify.

Ans. No, but this is a normal development approach which is routinely adopted.

8.9 Does cooperative society enjoy total authority to deploy its surplus resources for its own development? If so, please specify the provision.

Ans. Yes, cooperatives are given total autonomy and independence except where the cooperative enters into contracts (loans or aid) with the government and agrees to seek prior approval of its investment programs.

8.10 What is the maximum limit of payment of dividend to the share holders in a cooperative society?

Ans. Not more than 10% per annum.

8.11 Can cooperative society undertake transactions with non- members for building up its resources/ If so, what are the prescribed norms under cooperative law/bye-laws?

Ans. Yes, there are no prescribed rules thereon.

IX. Cooperative Law and Government

9.1 Do you think that provisions in cooperative law enable the Government in playing its positive role for cooperative development in accordance with the principles of cooperation? Please give an analytical note.

Ans. Yes, the basic law (P.D. No. 175) provides for the terms of reference for the organization and registration of cooperatives; their supervision and dissolution; their system of administration and management; disposition of funds, properties, and net savings; penalties for offences; exemptions and privileges; and government technical and financial assistance to cooperatives are well defined. Such statutory provisions serve in guiding cooperatives in their business and affairs.

Since those provisions are generally in accord with the principles of cooperation, the Government's role becomes clear; and its official actions in developing cooperatives must perforce conform with said law which in turn conform with the cooperative principles. From, this viewpoint it may be said that the provisions of the cooperative law

enable the government to positively perform its role in developing cooperatives in accordance with the principles of cooperation.

The same thing can be said of E.O. No. 898 which adopts the provisions of P.D. No. 175 by reference.

In the case of P.D. No. 269, however, the provisions thereof contain certain elements which grant strong powers of the government over electric cooperatives financed by it. Such a situation is ambivalent in the sense that unless those powers are judiciously exercised, government's role would become negative especially so when the decisions made no longer reflect the will of the members.

9.2 Does cooperative law make specific provision about government support to cooperatives? If so, please specify.

Ans. Yes, these are the following :

1. P.D. No. 175 - Sections 5,6 and 7 which provide for privileges of cooperatives, financial assistance, and management and training assistance to cooperatives.
2. P.D. No. 269. - Chapter II & III which provides technical financial assistance; preferential treatment in the grant of franchises; and exclusion from power rates regulation.
3. E.O. No. 898 - Section 2 which provides the same support as in P.D. No. 175; and provision of tax and other exemption privileges.

9.3 What types of government assistance to cooperative institutions is visualized in cooperative law? Please specify.

- Ans.
1. Technical and Technological assistance;
 2. Education and Training assistance;
 3. Audit and Legal assistance;
 4. Facilities assistance;
 5. Management assistance;
 6. Financial assistance;
 7. Preferential treatment;

9.4 Does cooperative law provide for representation of the government on the board of management of cooperative societies in relation to its assistance to cooperatives? If so, please specify.

Ans. No, except where the cooperative is a recipient of financial assistance wherein such representation is mutually agreed upon under a contract.

In the case of transport cooperatives, however E.O. No. 898 the Chairman of the Federation of Transport cooperative of the Philip-

pires, Inc. is a member *ex-officio* of the Office of Transport Cooperatives.

9.5 Does Government enjoys power to issue directive for implementing certain development policies through cooperatives even if they are not accepted by the members of cooperative society? If so, please identify the situations in which such directions by the Government can be issued.

Ans. No.

9.5.1 Does the Government or any of its authorities have power under law to suspend a decision/resolution passed by a cooperative society? If so, under what circumstances.

Ans. No, except when the resolution or decision is illegal or violative of the regulations, bylaws, or contracts.

9.5.2 Does the Government have power to wind up a cooperative society by its own decision?

Ans. Yes, when such cooperative has lost its cooperative character, is inoperable, or its continued operation is harmful to the public.

9.5.3 Does the Government have powers to supersede the management of a society. If so, please give details.

Ans. No, except by contractual arrangement.

9.6 What is the positive impact of government aid to the cooperatives?

Ans. It is a sign of government support to cooperatives and it encourages the people to organize and support their operations.

9.7 Has the Government aid to cooperatives resulted into erosion of cooperative ideologies/values? If so, please give a detailed note with specific instances.

Ans. Yes, when cooperatives are used a tools to achieve government targets on productivity and incomes; or as conduits of government aid and services. In such cases, the activities of cooperatives determined by the government with or without the consent of the members. This destroys their sense of ownership and alienates them, resulting in the loss of interest and support for such cooperatives.

9.8 Does cooperative law make it obligatory for the government to consult cooperative organizations before introducing any policy for cooperative development?

Ans. No, it is just a matter of practice on the part of government to consult cooperatives.

9.9 What should be the actual role of the Government in regard to (a) co-

operative development, (b) preservation and protection of cooperative values, and (c) building up professional management of cooperatives? Please give an analytic note.

- (a) **Cooperative Development.** The role of the government should be registration and regulation only. Promotion education and training, audit services, and technical and financial assistance should be made available, only upon, request by the cooperatives. This will preserve and encourage their initiative, autonomy, and independence.
- (b) **Cooperative values.** The government should strictly avoid any form of intervention in the internal affairs of cooperatives while at the same time providing education and training and technical assistance and guidance whenever requested. Financial assistance should be made available only as a last resort and only for a limited scope and period.
- (c) **Professional Management.** The government through the University of the Philippines system and state colleges and universities should offer scholarships to qualified personnel of cooperatives for academic and training courses on cooperative management. A system of follow-ups should be established to monitor evaluate and improve upon the skills and capabilities of the graduates of academic and training courses with a view to promoting a career system for professional cooperative managers.

X. Others

10.1 Does cooperative law makes any specific provision for the role of federations of cooperative societies? If so, please specify.

Ans. No, it only authorizes the organization and registration of federations to meet members needs.

10.2 Does cooperative law make any specification provision for development of cooperative leadership thorough education and training? If so, please specify.

Ans. No, however it merely creates an education and training fund (10 percent of Net Savings) in each cooperative. Half of this is remitted to a national Cooperative Education and Training Fund administered by the Cooperative Union of the Philippines Inc. The other half is used by the cooperative to defray education and training expenses.

10.3 Does cooperative law prohibit politicalisation of cooperative institutions? Please specify the provision.

Ans. No, however the cooperatives themselves observe strict neutrality as

to politics, creed, race or sex, as a matter of traditional practice.

10.4 What is the machinery in cooperative law to conduct free and fair election of cooperatives without any external influence? Please specify.

Ans. The bylaws of every cooperative creates a Committee on Electronic which is charged with the conduct of elections. The members are elected by the General Assembly, annually. They conduct the elections in the next annual General Assembly. Generally it is empowered to promulgate the rules on the following :

1. Nomination and screening of candidates;
2. Printing of Ballots;
3. Procedure for registration of voters, issuance of ballots and casting of ballots;
4. Procedure for canvassing of votes; and appreciation of ballots cast;
5. Proclamation of winners;
6. Protests and resolution of protests;
7. Other matters;

The COMELEC conducts the elections in accordance with the foregoing rules.

10.5 Is there any specific provision for enabling the representative/spokesman organization of cooperatives e.g. national Cooperative Union/Provincial Cooperative Unions to play their effective role for the growth of cooperative movement in accordance with principle of cooperation? If so, please specify.

Ans. Under P.D. No. 175, the regulations thereunder provide for the organization of a apex national cooperative organization (Cooperative Union) at the national, regional, provincial and city level. Cooperative unions are charged with fuunction of being the spokesman of the Cooperative Movement locally and abroad; conduct studies, research, and information dissemination activities; promote the cooperative Idea; develop the cooperative movement within the framework of the government's national economic plans; make available audit services; plan and implement a program of cooperative education and training; advice the government authorities on cooperatives; and administer the Cooperative Education and Training Fund.

Under E.O. No. 898 a similar arrangement is provided for by said law. In the case of P.D. No. 269, however, no similar arrangement exists.

Constitutional Provisions on Cooperatives

Article XII - National Economy and Patriorony

Section 1. The goals of the national economy are a more equitable distribution of opportunities, income and wealth, a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the under-privileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizen's. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural re-

sources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.

Section 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

Section 15. The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

Article XIII - Social Justice and Human Rights Agrarian and Natural Resources Reform

Section 5. The State shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the programme, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

Article XIV - Education, Science and Technology, Arts, Culture and Sports

Section 4. (3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment.

Article XVI - General Provisions

Section 11. (1) The ownership and management of mass media shall be limited to citizens of the Philippines or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

Medium Term Philippine Development Plan 1987 - 1992

National Development Goals (Excerpts)

Philippine efforts in 1987-92 shall be principally directed towards the following goals: (a) alleviation of poverty, (b) generation of more productive employment, (c) promotion of equity and social justice, and (d) the attainment of economic growth.

The need to alleviate poverty stems from the principles of upholding the right to life and respecting human rights. The goal of uplifting the lot of the poor also emanates from the recognition that human resources are the most important assets of any society. The effective harnessing of the country's tremendous human potential is therefore expected to steer the economy back to the path of recovery and sustainable growth. Women, who constitute half of the nation's population, shall be effectively mobilized.

The creation of productive employment opportunities is the key factor in poverty reduction and the principal springboard in the social transformation of the poor. The pursuit of this objective will ensure the provision of productive jobs not only to those presently unemployed and underemployed but also to the large and ever-increasing number of yearly entrants to the labor force.

The promotion of equity and social justice is another goal that the government is determined to pursue. Political and economic arrangements shall shift from a system which provides incentives on the basis of accessibility to power to one which gives importance to efficiency and equity considerations.

These objectives can only be readied if economic growth is sustained along with the reduction in population growth. In turn, a more sustained growth path can only be achieved if economic recovery efforts succeed.

National Policy Statements of the Government on Cooperatives

I. Presidential Decree No. 175. All types of cooperatives under it.

Section 1. *Declaration of Policy* - It is declared the policy of the State to foster the creation and growth of cooperatives as a means of increasing income and purchasing power of the low-income sector of the population in order to attain a more equitable distribution of income and wealth.

Note: The foregoing policy is also adopted by E.O. No. 898 for transport cooperatives; and by P.D. No. 775 for sugar cooperatives.

II. Presidential Decree No. 269. Electric cooperatives.

Section 2. *Declaration of National Policy* - The total electrification of the Philippines on an area coverage basis being vital to the welfare of its people and the sound development of the Nation, it is hereby declared to be the policy of the State to pursue and foster, in an orderly and vigorous manner, the attainment of this objective. For this purpose, the State shall promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives, which are willing to pursue diligently this objective.

Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives, particularly, shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; and, being by their nature substantially self-regulating and Congress having, by the enactment of this Decree, substantially covered all phases of their organization and operative requiring or justifying regulation, and in order to further encourage and promote their development, they should be subject minimal regulation by other administrative agencies.

Area coverage electrification cannot be achieved unless service to the more thinly settled areas and therefore less costly to electrify. Every public service entity should thereafter co-operate in a national program of electrification on an area coverage basis, or else surrender its franchise in favour of those public service entities. It is hereby found that the total electrification of the Nation requires that the laws and administrative practices relating to franchise electric service areas be revised and made more effective, as herein provided. It is therefore hereby declared to be the policy of the State that franchises for electric service areas shall be thereafter be so issued, conditioned, altered or repealed, and shall be subject to such continuing regulatory surveillance, that the same shall conduce to the most expeditious electrification of the entire Nation on an area coverage basis.

Mechanics in the Formulation of Cooperative Development Plan by National Cooperative Organizations (General Outline)

I. Preparation

1. The Management conducts the following:
 - (a) Review of the results of operations (achievements versus goals) for the past year in comparison with the previous year's Development Plan;
 - (b) Review of the performance of the budget for the previous year (adequacy of financial support to the development plan of previous year);
 - (c) Consolidation of the data gathered into one single Report (observations, conclusions and recommendations);
 - (d) Preparation of the development plan for the following year based on paragraph (c) above, and on projections on the national economy, the Movement's and the organization's resources and demands;
 - (e) Preparation of the necessary budget for paragraph (d) above, identifying the sources and application of funds;

II. Approval

1. The Board refers the Plan and Budget to a Committee which deliberates thereon and submits its report to the Board, which, in turn, recommends the same with or without amendments to the Annual General Assembly. The Board presents the Plan and budget in terms of broad objectives and programs; and the Budget in aggregates and percentages, as a matter of convenience in keeping with policies on confidentiality.
2. The Board then schedules the annual General Assembly to present the following:
 - (a) The Development Plan and Budget for the previous year;
 - (b) The Annual Report of the Board and the Duly Audited Financial statements for the year;
 - (c) The proposed Development Plan and Budget for the ensuing year.
3. The General Assembly refers to the matter to a Committee appointed by it to evaluate the Plan and Budget and to report its findings and recommendations to the assembly, which approves the same with or with-

out amendments. The General assembly deals with the Development Plan and Budget in terms of broad policies, aggregates and percentages only.

4. The General Assembly, upon receipt of the Committee Report approved the proposed Development Plan and Budget, and returns it to the Board for implementation.

III. Implementation

1. The Corporate Secretary of the national cooperative organization certifies the approved Plan and Budget to the Board of Directors, furnishing a copy thereof to the Audit Committee and to each member of the Organization.
2. The Board of Directors issues the necessary policy guideline for the implementation of the approved Development Plan and budget, and instructs the Chief Executive to take action.
3. The Chief Executive draws up and implements the following:
 - (a) Implementation Program;
 - (b) Financial Program; and
 - (c) Monitoring Program. (PERT/CPM).

Evolution of Philippine Cooperative Law (A Short Essay)

The government sponsored the Movement as a means of helping deliver government services and assistance to the people while, at the same time, enabling them to improve their welfare through their own initiatives and resources. Thus, the government enacted two (2) special laws which ushered in a strong government sponsorship of the Movement in the fields of agricultural credit and agricultural marketing. These are:

(1) Agricultural Credit Association Act (Act No. 2508). This law enabled the creation of agricultural credit associations and provided for their regulation. It required these associations to register under the Corporation Law. These Associations had for their purposes the accumulation of funds by means of cooperation in order to extend credit on reasonable terms for exclusively agricultural operations, and the encouragement of thrift, activity and punctuality among the members. The law tasked the Director of Commerce at the time in charge of its implementation. The said law took effect on February 5, 1915 and remained effective until repealed in 1957 by the Philippine Non-Agricultural Cooperative Act (R.A. No. 2023, as amended).

(2) Cooperative Marketing Law (Act No. 3425). This law provided for the organization of farmers' cooperative marketing associations (FACOMAS) and their registration under the Corporation Law. It set forth the terms of reference for the organization, management, and operation of such associations, and tasked the Director of Commerce and Industry with the implementation of the law. Said law took effect on December 9, 1927 and remained effective until repealed on April 14, 1973 by P.D. No. 175, as amended.

By virtue of the basic laws mentioned above, the main reasons for the government sponsorship of the Movement may be identified as follows:

- Corporation Law : General economic and social development,
- Agricultural Credit Associations Act : Extension of agricultural credit;
- Cooperative Marketing Law : Marketing of agricultural products and farm supply distribution.

2. Growth and Expansion. Originally, under the Corporation Law, there was no government sponsorship of the Movement. Cooperatives were, for lack of any other law specially dealing with them, registered under the Corporation Law to enable the people to organize themselves for economic and social objectives. Only the interested private civic and religious groups sponsored cooperatives and the few early cooperatives were of the credit type organized both in the rural and urban settings.

Government sponsorship of the Movement was initiated in the agricultural credit and marketing sectors of the economy. The expanding activities of cooperatives which were then growing in number and resources rendered the Corporation Law inadequate to meet the increasing special demands of Cooperatives. Thus, on June 7, 1940, the government enacted Commonwealth Act No. 565 (General Basic Cooperative Law) as the organic law for all types of cooperatives. During the last war (1941-45) the Japanese Military Administration organized an estimated 5,000 cooperatives to serve as distribution outlets for consumer goods and as means of promoting neighborhood food production, but all of these cooperatives were destroyed during the war of liberation. During the postwar period (1945-1950), the government organized 1,500 cooperatives to distribute relief goods but they all collapsed when the government relief program ended.

As part of its reconstruction and rehabilitation program, the government enacted on August 14, 1952 Republic Act No. 821 (Agricultural credit to farmers and their marketing cooperatives (FACOMS). Complementarily, the government enacted R.A. No. 2023 (Philippine Non-Agricultural Cooperative Act) to help the people develop their enterprises on a cooperative basis authorizing the organization of a cooperative banking system and a cooperative wholesale system. Various other laws were later on enacted to involve cooperatives in government programs and the significant ones are as follows:

1. R.A. No. 3844 (Land Reform Code) - Land Reform Program;
2. R.A. No. 6038 (National Electrification Administration Act) - Rural Electrification Program;
3. R.A. No. 3470 (National Cottage Industry Development Program).

The advent of Martial Law brought many changes on the cooperative laws and the foregoing ones. In addition, new ones were enacted as the government looked upon cooperatives as instruments to increase incomes and purchasing power of the low-income sector and promote a more equitable distribution of wealth.

Today, the cooperatives in the Philippines have diversified into the following fields:

- (1) Credit;
- (2) Cooperative rural banking;
- (3) Marketing and Supply (agricultural and industrial);
- (4) Consumer;
- (5) Producer (agricultural and industrial);
- (6) Service;
 - (a) Life and non-life insurance;
 - (b) Electrification;
 - (c) Transportation (public utilities);

- (d) Technical Services (management, education, training, and research, audit, legal, and technology transfer;
 - (e) Housing;
 - (f) Waterworks Systems;
 - (g) Other services; and,
- (7) Multipurpose Cooperatives.

The laws governing the foregoing types of cooperatives are listed in Annex "F".

Judge Manuel F. Verzosa

List of Laws Affecting Cooperatives

SUBJECT	LAW NO.	AFFECTIVITY
1. Constitutional Law		
The 1987 Constitution of the Republic of the Philippines adopted by the people in a National plebiscite.	Proc. No. 58 (dated Feb. 11, 1987)	Feb. 2, 1987
2. Statutory Laws -		
<i>A. Organic Laws</i>		
1) Strengthening the Co-operative Movement (General Law)	P.D.No.175, as amended	April 14, 1973
2) Electric Cooperatives Law	P.D. No. 269	August 6, 1973
3) Electric Cooperatives Law	P.D. No. 501	June 28, 1984
4) Sugar Cooperatives Law	P.D. No. 775	Aug. 24, 1975
5) Transport Cooperatives	E.O. No. 898	May 28, 1983
<i>B. Government Agencies</i>		
1) Department of Local Government and Community Development (DLGCD)	P.D. NO. 175 as amended	April 14, 1973
2) National Electrification Administration	P.D. No. 175,	April 6, 1973
3) Philippine Sugar Commission	P.D. No. 775	Aug. 24, 1975
4) Transfer of Cooperatives from DLGCD to the Ministry of Agriculture	E.O. No. 595	May 22, 1980
5) Regional Cooperative Development Assistance Offices (RCDAO) Regions IX and XII	E.O. No. 364	Dec. 4, 1980
6) Office of Transport Cooperatives	E.O. No. 898	May 28, 1983

- | | | | |
|--|--|------------------------------|----------------|
| 7) | Reorganization of the
Ministry of Agriculture | E.O. No. 116 | Jan. 30, 1987 |
| 8) | National Food Authority | P.D. No. 4 | May 12, 1975 |
| <i>C. Ancillary laws and
Government Agencies</i> | | | |
| 1) | AGRICULTURE - | | |
| a) | Comprehensive Agricultural
Loan Fund (CALF) | E.O. No. 113 | Dec. 4, 1987 |
| 2) | AGRARIAN REFORM - | | |
| a) | Code of Agrarian Reforms | R.A. No. 3844,
as amended | August 8, 1963 |
| b) | Emancipation of
Tenant Farmers | P.D. No 27,
as amended | Oct. 21, 1972 |
| c) | Comprehensive Agrarian
Reform Program (CARP) | Proc. No. 131 | July 22, 1987 |
| d) | Comprehensive Agrarian
Reform Law (CARL) | E.O. No. 229 | July 22, 1987 |

Cooperative Principles Adopted Under Section 3, P.D. No. 175

(a) *Open Membership* : Membership in a cooperative should be voluntary and available without artificial restriction or any social, political, racial or religious discrimination, to all persons who can make use of its services and are willing to accept the responsibilities of membership.

(b) *Democratic Control* : In primary cooperatives irrespective of the number of shares owned, each member can only cast one vote in deciding upon the affairs of the cooperative. The affairs of the cooperative shall be administered by persons elected or appointed in a manner agreed by the members and accountable to them. In other than primary cooperatives, administration shall be conducted in a suitable democratic form.

(c) *Limited Interest to Capital* : Share capital shall earn only limited interests, the maximum rate of interest to be established by the Department of Local Government and Community Development from time to time.

(d) *Patronage Refund* : Net income after the interest on capital has been paid shall be redistributed among the members in proportion to their patronage.

SRI LANKA

Study of Facilitation of Cooperative Legislation

QUESTIONNAIRE

I. Constitutional and administrative status of cooperatives

1.1 What is the status of cooperation in country's Constitution? In case of Federal constitution, is cooperation a national/state/provincial/concurrent subject?

Ans. Under the recent 13th amendment to the constitution, cooperation devolves on the Provincial Governments, except cooperative banks'. However, the Provisions are not yet fully implemented and it is likely that the Central Govt. will retain atleast coordinating authority.

1.2 Does country's constitution specifically make provision/incorporation of articles defining constitutional status of cooperation? If so, mention specific provision.

Ans. No.

1.3 Is there any separate coordinating Ministry for all types of cooperatives both at the level of national as well as state/provincial Government? If not, which Ministry coordinates?

Ans. At national level the Ministry of Agriculture, Food and Cooperatives is responsible for cooperatives. At Provincial level too there are Ministries whose designation includes 'cooperatives', although their precise functions are not yet clear.

1.4 What is the extent of representation of cooperative sector in national parliament and state legislatures?

Ans. The Cooperative Sector is not separately represented in the national parliament or in the Provincial Councils. There are however, a few eminent cooperators in Parliament.

1.5 Is there any provision in the constitution for nominating outstanding cooperators in national Parliament and state legislatures?

Ans. No.

1.6 What is the administrative set up for cooperative sector? Please

describe organizational/functional chart of Department of Cooperation in the Government both at centre and the states.

Ans. The Cooperative Department comes under the Ministry of Agriculture, Food and Cooperatives and is headed by the Commissioner of Cooperative Development and Registrar of Cooperative Sector, a post in Class I of the S.L.A.S. He is assisted by a number of Deputies and Senior Assts. and Asst. Commissioners at Head Office. The 27 cooperative Districts have two or three Asst. Commissioners each, in charge of Development and Audit. District Officers' Head Quarter Inspectors, Senior Auditors and Inspectors are deployed in the field under the Asst. Commissioner. The Audit staff is separate and functions under on A.C. (Audit) in each District. There is also a separate Deputy Commissioner, (Audit) but this function is allied with other duties such as legislative, Legal matters, Arbitrations etc.

At present the Department is being decentralised whereby staff is deployed under Provincial Commissioners who come under Provincial Cooperative Ministers. The process however is not complete and legislation was to be enacted to devolve the power to these Ministers.

The Dept. cadre consists of 1 Commissioner, 7 Deputies, 6 Senior Assts, and 67 Asst. commissioners. 26 of these are attached to the Head Office. The Inspectorate has about 2000 officers in two grades.

Since the note opposite was written the Department has announced its new set-up under the devolution whereby functions are decentralised and Provincial Commissioners and staff are appointed. The organization chart at Head Office now was one commissioner, 3 Deputies, a Chief Accountant, 3 Senior Assistant commissioners and 7 Asst. Commissioners (See Organization Chart).

The Provincial commissioners have one Deputy 3 S.A.cc and 3 Acc. Commissioner view apart to the Provincial Commissioners.

The space division of authority and functions between the Cabinet Minister and the Provincial Ministries is not yet clear on the law has to be amended to devolve legal authority.

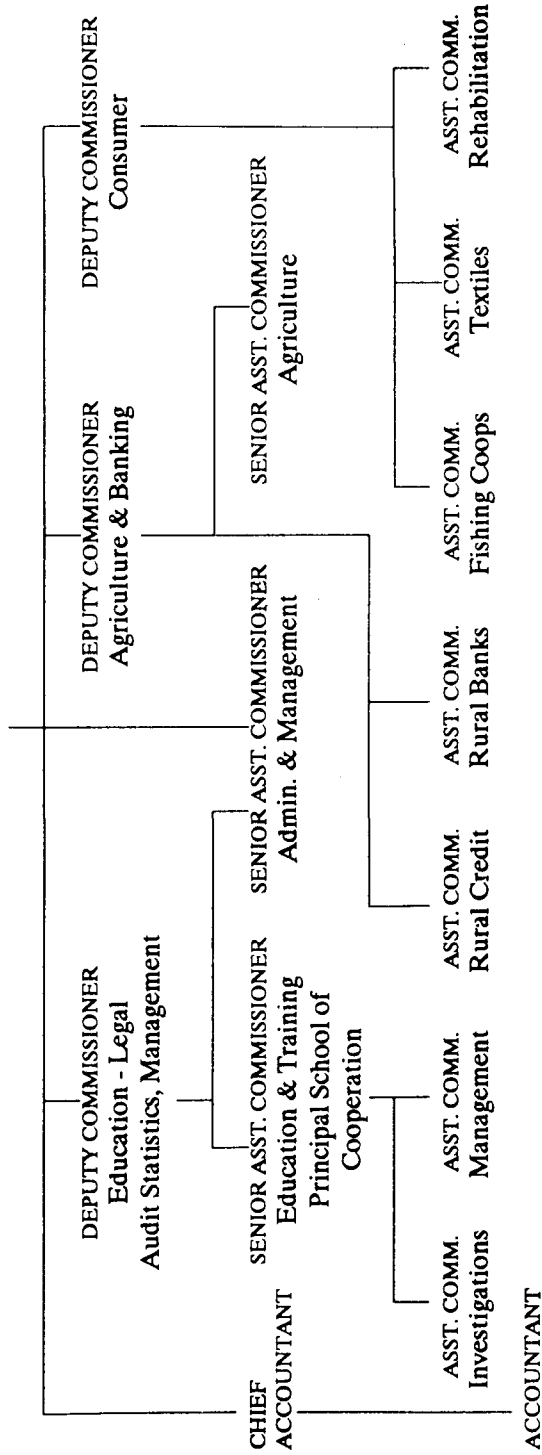
Under the 13th amendment only 'Cooperative Daily' are mentioned as a concurrent subject, all other matters being devolved.

1.7 Please give a brief description of (i) powers, (ii) functions, and (iii) duties and responsibilities of Department of Cooperation.

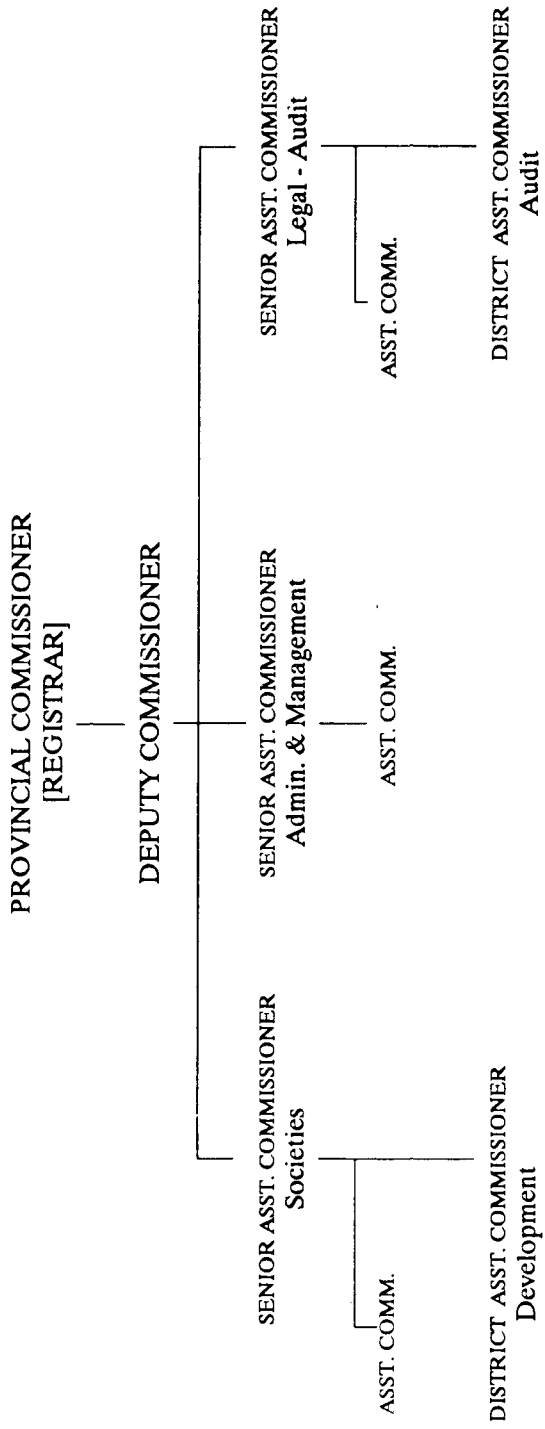
Ans. Powers : The Cooperative Department has the responsibility of administering the Cooperative Law and as such has the power to (1) Register, (2) Audit, (3) Inquire into the constitution, working and Financial coordination, (4) Inspect (5) Investigate the affairs of Cooperative Societies. The Registrar also has the power to dissolve

**CO-OPERATIVE DEPARTMENT ORGANISATION CHART
[HEAD OFFICE]**

**COMMISSIONER CO-OP. DEVELOPMENT
REGISTRAR CO-OP. SOCIETIES**



ORGANISATION CHART - PROVINCIAL COMMISSIONER



committees and appoint custodians and liquidators, control liquidators, close liquidations, appoint arbitrators - (the Registrar, may decide the dispute himself) enforce the decisions, if necessary through the law courts decide appeals on membership and validity of general meetings and elections to office, order repayment or restoration of money or other property due to a society, and approve decisions to purchase (or sell etc.) of properties register amendments of By-laws, approve transactions with non-members and deposits in banks other than the people's Banks. The Registrar also has power to summon and attend casual or committee meetings, nominate persons to committees, prescribe the accounts and other documents to be maintained by societies, collect levies to the cooperative fund and administer it, maintain the surplus fund (rule 44).

Under the 1983 amendment Act no 3, the Registrar also has the power to suspend and remove the committee employees and officers of societies during and/or after inspection, inquiry or investigation.

Duties : The primary duty cast on the registrar is that of audit under Sec. 44. He is however not obliged to send his Audit-Report to the society (though this is done invariably) but he may bring the defects disclosed in the audit, to the notice of the society. Other duties relate to the exercise or the powers enumerated above.

Functions : Although the preamble to the C.S. Law No. 5 says 'A Law to provide for the development of Cooperative Societies...' if is nowhere stated that the Registrar or the Department should undertake the organization or promotion of cooperatives or do anything expressly for their 'development'.

However, it has been the custom all along for the Department and its predecessors - to take the initiative to organize, promote and foster various types cooperatives which it considers appropriate to meet the needs of various sector of the community and in some cases, the nation as a whole.

The significant feature is that the initiative to form any type of societies has until very recently always come from the Department. Apart from the legal functions mentioned above the Department has, over the years endeavoured to fulfill the traditional role of 'guide, philosopher and friend' of the movement, though perhaps not always successfully. Since World War II societies have been organized at the behest of other Ministries such as Agriculture, Fisheries, Industries, Food distribution etc. ignoring the norms set her the Cooperative Department which also was not strengthened to correspond with its unseated commitments for audit and supervision.

Another development is the Department's trying to perform the

operational functions of the societies far beyond its own competence. The Department came to be held responsible for the operational competence of these 'network' societies and field officers began to be deployed to manage the societies as Presidents, managers etc.

'Supervision' was a concept inherited from the credit society days and the department has not succeeded in this ambiguous and thankless task in the case of lesser societies.

Cooperative Education and Training has been an important function of the Department. In recent years the national apex has undertaken a major step of education and training but the Department continues to play a significant role both in providing instructions and financial support. The District Asst. Commissioner chairs the District Education Committee which coordinated education and training activities at district level the Coordinating Committee for Cooperative Education and Training is headed by a Senior Ministry official and include the Commissioner, a Deputy as well as the President of National Cooperative Council. This committee coordinates and monitors education and training programme at national level.

The Department also performs a very important role in having between societies and other state agencies such as the CWE, the Peoples Branch. The Fertiliser Cooperation, the MILCO, the Mahaweli Agencies, the Paddy Marketing Board etc. A most cogent need is for the sectoral apex as well as the national apex to acquire the competence and stature to perform this task.

The youngest of the Federations, the T.C.C.S.F.* has already achieved this status within a remarkably short period and there is no legal barrier for others to follow suit.

* Thrift and Credit Cooperative Societies Federation.

1.8 Do the federal organisations of cooperatives enjoy some powers in regard to management and administration of their constituent units? If so, please mention them briefly.

Ans. The federal and all-island organizations have no such powers. Their functions are to facilitate the operations of their member societies and in the case of the national apex (the N.C.C.) to provide cooperative education and training, and advisory services to cooperatives.

Other national Unions are established for the purpose of planning, coordinating, and facilitating the activities of cooperatives engaged in marketing, industry, agriculture and fisheries. In practice however, the effectiveness of these Unions have so far been only marginal. The T.C.C.S. Federation is an exception.

1.9 Is there any system or legal provision under which certain powers and

functions of Department of Cooperation in the Government could be delegated to and developed on the federal organisation of cooperatives? If so, please describe such powers and functions.

Ans. There is no such specific legal provision. However, under the Law, such functions as Audit, Inspection or investigation could be delegated to a cooperative organization. The law empowers the Registrar to authorize or direct any person to do these functions.

Certain functions such as education, training and publicity which were earlier performed by the Department have now been entrusted to the national apex. The Dept. however, continues to play an active partnership role in these activities.

1.10 Are there any parastatal organisations set up by the Government for the development of cooperatives? If so, please name them.

Ans. 1. The Sri Lanka Institute of Cooperative Management (established by Act No. 37 of 1983).
2. The Cooperative Employees Commission.
(established by Act 12 of 1972).

1.11 Do the parastatal organisations set up by the Government for development of cooperatives have powers in regard to administration of cooperatives aided by them? If so, please describe such powers.

Ans. The S.L.I.C.M. has no such powers.

The C.E.C. has wide powers with regard to recruitment, qualifications, salary and disciplinary procedure of cooperative employees. The CEC however, does not provide any financial assistance to cooperatives. It also functions as a tribunal of appeal for cooperative employees. Under this Law the Commissioner (Registrar) is empowered to fix the cadre of any society.

1.12 Are cooperatives represented in local bodies and vice-versa? If so, please specify.

Ans. No.

II. National policy on cooperative development

2.1 Please describe broad objectives of national economic development.

Ans. 1. To improve the living standards of the people.
2. To achieve self sufficiency in such items of agricultural and industrial produce which can be produced within the country.

3. Optimum utilization of the country's human and natural resources for the benefit of the total population.

2.2 Is there any national policy on cooperatives?

Ans. No such enunciated policy. However, Govt. respects the various types of cooperatives eg. Credit, M.P.C.'s fisheries etc. - to plan their part in implementing its programmes. Housings, Janasurya etc.

2.3 Has national Government issued any national policy statement. if so, please enclose a copy of the statement.

Ans. No. But quite recently the Minister has announced that legislation will be introduced to free the coops which do not receive state assistance from government control. He also respects the MPCs to play a prominent role in the 'Jana Saviya' programme by distributing supplies and mobilising savings.

2.4 Is cooperative sector involved in formulating national policy on cooperative development. If so, what is the mechanism/institutional frame work.

Ans. Not so far. The national apex is hopeful of creating such a mechanism. Attempts by the Steering Committee for Implementing the Recommendations of the 1987 National Workshop on Cooperative Policy, Planning and Structure have not succeeded so far.

2.5 Do Government actively involve cooperatives in effective implementation of economic development programmes?

Ans. After a long period of ignoring the cooperative sector, the Govt. has recently started involving the Credit Societies in granting Housing Loans in a big way.

The M.P.C.S.s are also respected to plan a major role in implementing the 'Jana Saviya' programme whereby the low-income families are to be given assistance to achieve economic viability in two years. MPCs are to supply food and other items under this scheme.

2.6 Are there any specific development programmes which are specifically allocated to cooperatives for implementation? Please mention briefly.

Ans. 1. The Housing Development Programme - Credit Societies.
2. The 'Janasaviya' Programme - Multi-Purpose Cooperatives.

2.7 Do National Plan Documents provide specific place to cooperative sector? If so, please explain.

Ans. A document called **Public Investment 1988-92** has been published by the National Planning Division of the Ministry of Finance and Planning. This has been prepared on a rolling Plan basis and is the tenth in the series.

The Cooperative Sector or cooperatives are not mentioned in this document.

2.8 What is the place of cooperative sector vis-a-vis private and public sectors?

Ans. The cooperative Sector is much in evidence in the retail distribution of food and essential commodities through the MPCSS network of 7000 shops. To a lesser extent in purchase of paddy and other crops and the supply of fertiliser and agrochemicals. Pawn-broking through MPCSS. Rural Banks and granting of Housing loans through the Thrift and Credit Societies. Govt. is keen to maintain the MPCSS network but is even more interested in the Private Sector. The State Sector too is still very strong, transport, fuel supply, power, parts and some key industries all run by the state.

The MPCSS retail network of over 7000 shops spread all over the island including very remote villages is instrumental in keeping down the price of essential food items such as rice, flour, sugar, chilies etc. These shops however are nearly all run at loss as the margins of essential commodities they mostly deal in are very small.

Purchase of paddy under the Guaranteed Price Scheme was a Coop. monopoly in 1978. Now the paddy trade has been liberalised and the G.P. is only a floor price offered by the Paddy Marketing Board and Coops handle only a small proportion of measurable surplus of paddy.

Until the entire coop. agricultural credit-system broke down a few years ago due to massive loan defaults, the coops granted cultivation loans to farmers each season. However, due to the unwise policies of Govt. in writing off loans, giving unwarranted extensions and giving loans to all and subsidy through political pressure and to some extent due to crop failure and ethnic pressure, the entire system has now collapsed and farmers have no access to a source of institutional credit.

Milk cooperatives of which there about 150 assist milk producers to inspect their produce and a few have started processing milk. But the bulk of the production is delivered to Nestles & MILCO.

2.9 Does cooperative sector formulate its own plan of development independent of the plan formulated by the Government? If so, what is the mechanism?

Ans. The Cooperative Sector has been very backward in this respect. Even the national apexes have not prepared any corporate or sectoral plans. They expect the government to give the initiative. The required dynamism and commitment is absent.

2.10 Does cooperative sector formulate its own plan of development,

keeping in view the following:

- (a) National priorities.
- (b) Government directive.
- (c) Members' expectation.

Not by the sector as a whole.

Please indicate order of preference.

Ans. The T.C.C.S. Federation prepares plans for supervision, credit, deposit mobilization, education and loan schemes.

2.11 Do the national Parliament and state Legislature discuss the plan of cooperative development regularly? If so, on what occasion and in what context. Give some instance.

Ans. There is no plan of cooperative development. The new Ministry appears to be thinking of a plan of cooperative development.

2.12 Does the concerned Consultative Committee of national Parliament and State Legislative Assemblies discuss issues concerning Cooperative Development? If so, how often.

Ans. Discussion at this level is mostly on parochial or individual issues concerned with particular societies or individuals. Frauds and shortcomings of particular societies are topics mostly under discussion.

2.13 Is cooperative sector regularly associated/involved in plan discussions? If so, how many times in an year?

Ans. Not until recently. During the past few months the Minister has started having conferences of cooperators to explain and discuss various programmes and issues involving cooperatives.

2.14 Has national Government created any specific body/institution at its level to deliberate upon issues concerning cooperative development from time to time? If so, please give its name and terms of reference.

Ans. There is an Advisory Committee to the Ministry but only minor issues are referred to it. It meets very infrequently and attendance is generally poor.

The Consultative Committee of the Ministry meets the officials regularly but as already mentioned only matters of the movement are generally discussed.

2.15 Organizational structure of cooperatives, being federal, please enumerate briefly the role of federal organisations at secondary/state/national level, particularly, with reference to policy formulation for cooperative development.

Ans. The Thrift and Credit Cooperative Societies Federation (TCCSF) is

the only genuine national Federation. It is the apex of the Credit Societies which have formed 26 Unions of District level and these have joined to establish the Federation.

Development Plans relating to expansion, deposit mobilisation, credit plan, loan schemes and education are formulated at district level and these are incorporated in the national plan at Federation level.

Other types of cooperatives have no such active national Federation. Those which exist perform isolated marginal business activities and do not engage in policy formulation.

The national apex, the N.C.C. is in the process of being resturctured, with societies forming District Unions which become constituent members of the NCC which hitherto had primary and apex societies as members.

The N.C.C. has started a Planning Unit with a foreign expert as adviser and attempts are being made to participate in policy formulations of Ministry level.

The new Minister has shown an interest in involving the NCC and the cooperators in formulating policy and has invited views on the proposed new law for "free" cooperatives. The draft has not yet been made public. As mentioned earlier, the Minister has attended several conferences of cooperators and discussed his plans while inviting comment on the proposals.

III. Evolution of Cooperative Law

3.1 When was the first Cooperative Law in the country enacted?

Ans. The Cooperative Societies Ordinance No. 7 of 1911.

3.2 What were the reasons/background of the first Cooperative Law? Please identify them in following heads:

- a) Political
- b) Economic
- c) Social
- d) Others

Ans. This law was enacted on the recommendations of the Agricultural Banks Committee appointed by the governor to "consider the whole question of Agricultural Banks' whether they are required in Ceylon, and how far banks on the models introduced in India and other countries, are suited to the conditions now suiting in Ceylon". The committee after hearing evidence from a large number of persons, recommended that coop credit Societies "would be of great value and

benefit to the villager, enabling him to borrow at a reasonable rate of interest for his agricultural needs...". It also concluded: "The difficulties in introducing coop credit societies are considerable. Left to themselves it is extremely unlikely that the villagers would establish societies; the cooperative principle is not understood among the ag. population". The committee recommended the introduction of an ordinance on the lines of the Coop. Credit Societies Act No. 10 of 1904 of India.

The main economic impetus was the plight of the peasant farmer whose yields were low and who was eternally indebted to the money lender or the paddy land owner. It was hoped that the availability of loans at reasonable rates of interest would encourage them to use fertiliser and improved cultural practices.

Social concern or any significant change in economic or political system were not considerations which motivated British Administrators who introduced credit societies to Ceylon. There was certainly no intention of creating an independent cooperative movement. The proposal was merely a half-hearted palliative to a widespread problem of endemic rural poverty and indebtedness, to be administered by a benevolent bureaucracy, assisted (and in some cases obstructed) by the local aristocracy responsible for village level administration.

Cooperatives were first registered by the Registrar-General and later by the Director of Agricultural. It was in 1930 that the cooperative Department was established.

3.3 Whether the first cooperative law was enacted for one particular activity or for cooperatives in totality? Please specify.

Ans. The 1911 Law was for the establishment of Cooperative credit societies. It was only in 1921 that another law was passed to enable the formation of other types and secondary societies.

3.4 With the growing expansion and diversification of cooperative sector, has Cooperative Law been evolved to suit the changing needs of the cooperatives? If so, please mention various stages of historical evolution of cooperative law.

Ans. 1911 Ordinance No. 7 - enabled the registration of Credit Societies.
 1921 Ordinance No. 34 - enabled the registration of other types of cooperatives as well as Secondary Societies.
 1936 Ordinance No. 16 - Secured the contracts of a society with its members who are minors and along with its Rules Provided that Societies would conform to general cooperative principles. The Governor could exempt any society from any of the provisions of the ordinance. Also made provision for settlements of disputes through arbitration.

Amendment Act of 1949 - Provided for the supersession of Committees by the Registrar after Inspection or Inquiry.

The Coop. Societies Law No. 5 of 1972. Consolidates several amendments to the 1936 ordinance. Provided for voluntary amalgamation of societies. Remedied several omissions which hindered enforcement of Registrar's orders through law courts. Provided for Registrar to make surcharges on officials after an audit of a society.

Cooperative Societies (Special Provisions)

Act No. 35 of 1970 - Provided for the Compulsory amalgamation of societies by the Registrar by gazette order and for the dissolution of societies without an inspection or inquiry - as required in the main law - for the purpose of "organizing the cooperative movement".

This Act also enabled the Minister to requisition property "for the purposes of any business of such societies" registered under this law.

Cooperative Societies (Amendment) Act No. 32 of 1983 amends general sections of C.S. Law No. 5 of 1972.

- 1) Stipulates that proper accounts should be kept and societies should prepare annual statements of accounts and submit them to the Registrar.
- 2) Enables the taking into custody of books of account by the authorized person where a fraud is revealed during investigation.
- 3) Enables the Registrar to suspend or interdict or remove officers of a society after inspections, inquiry of investigation.

Cooperative Employees Commission Act No. 12 of 1972.

This Act established a Commission with powers to determine methods of recruitment procedure, salary scales and disciplinary procedure of cooperative employees.

Cooperative legislation has not evolved to suit the changing needs of cooperatives. Rather, the secular trend has been to seek legal remedies to the ills of spurious cooperatives set up on their hundreds to meet the needs of successive governments and their development schemes. Consequently we see the powers of the Registrar regarding Inspection, Inquiry, Supersession of Committees, Surcharge etc. being progressively increased. The attempt has always been to correct the malpractices of cooperatives through legal and administrative process rather than through the operation of democratic control with members exercising control and imposing discipline by way of general meeting and social pressure.

- 3.5 Is there a separate legislation for cooperatives as a whole or for different groups of cooperatives? Please enclose a copy.

Ans. The Coop. Societies Law No. 5 of 1972 and the other Acts mentioned above apply to all types of cooperatives. The Ministry is now considering proposals to enact a law which will apply to "independent" cooperatives, that is, societies which do not seek assistance from the state. Presumably, a more stringent law will apply to state-aided cooperatives.

3.6 Have Government appointed expert committees to modify cooperative law from time to time? If so, please mention them along with their important recommendations.

Ans. The Sri Lanka government has appointed a Royal Commission in 1968 with very wide terms of reference among which was to inquire and report whether changes are necessary "in respect of legal framework, including the rules, regulations and by-laws under which cooperative societies operate". The Commission's recommendations on this are given in paras 10.15 to 10.27 (pp. 158-163) of its (vide annexe I).

As will be seen it drew attention to the draft bill prepared by the committee appointed by the Government of India on Cooperative Law. The Commission also recommended that the Law should make provision for voluntary amalgamation and division of societies. It also mentioned the need for provisions governing state aid to coops. Other recommendations included the provision of a right to appeal against refusal of membership, provisions for associate membership, to enable cooperatives to hold shares in public corporations or companies, representative delegates for general meetings and power of the custodian of a society whose registration is cancelled, to manage its business. Under "Elaboration and Refinement of Existing Provisions" the Commission recommended that the condition of economic viability be expressly incorporated into the law, as also a provision defining secondary cooperatives apex unions. Other recommendations are :-

i) Amend Sec 60 to make it Criminal Breach of Trust, the failure to pay a sum of money when called upon by the Registrar under this Section.

ii) Certain provisions in the rules, e.g. duties of the general body, should more appropriately be incorporated on the main law.

iii) Constituting a cooperative tribunal for hearing appeals from decisions of arbitrators and the Registrar.

iv) Revision of by-laws of various non-credit societies. Many of these recommendations have been implemented.

1978 the Sri Lanka Govt. appointed a Committee chaired by the then Minister for Justice Hon. K.W.Dewanayagaun to report on various aspects of the Cooperative Movement of Sri Lanka. Its recommendations on "Cooperative Law" are given in annexe II. Briefly, it recom-

mended :

- 1) Repeal of Act No. 35 of 1972 and Act No. 5 of 1978 (which was to be valid for a period of 18 months, and was enacted to correct certain anomalies created by acts done under the Emergency Law prior to Feb. 1977)
- 2) Cooperative principles be included in the Law
- 3) Delete provision for making rules.

The committee did not submit a draft law as stated in the Report but the advisory Committee which was set up on its recommendations and which contained all the committee members, drafted a set of model by-laws for MPCSSs. These, with some amendments at Minister and Department level have been approved and have been adopted by some of the Societies.

3.7 Whether government consults the cooperative sector before evolving Cooperative Law? If so, what is the mechanism?

Ans. The Ministry is now in the process of getting the views of Cooperators on its proposed new legislation for cooperatives. This is the first occasion on which cooperators are being given an opportunity to express their views on proposed legislation affecting cooperatives. There is however as yet no institutional mechanism for this purpose.

3.8 Have there been occasions when cooperative legislation was formulated by the Government without paying attention to the views of cooperative sector? If so, please describe them briefly.

Ans. Yes.

- 1) The Act No. 35 of 1970 which enabled the Registrar to 'reorganize" the cooperative movement by compulsory amalgamation (and cancellation) of a large number of societies, was passed without any discussion with cooperators.
- 2) The Cooperative Employees commission Act No. 12 of 1972.
- 3) The People's Bank Amendment Act 1983 whereby the Cooperatives which held 57% share holding of the people's bank were deprived of their shares which were reduced to 7%.
- 4) The Cooperative Societies (Amendment) Act No. 32 of 1983. In fact all cooperative legislation, (much of which admittedly were designed to promote cooperatives and facilitate their operations) was promulgated without giving any opportunity for meaningful discussion or for airing the views of cooperators.

3.9 Are there allied laws which regulate the functioning of cooperatives? If so, please describe briefly their salient features.

- Ans. 1. The Peoples Bank Act No. 29 of 1961 empowers its General Manager or his authorised officer to examine the books and accounts of a cooperative to which the bank has granted a loan or overdraft etc. The Board of Directors of the Bank may also recommend the dissolution of a society after such inquiry, to the commissioner of Coop. Development. In practice however, these powers have seldom been invoked as the department takes appropriate action when the bank makes representations without doing formal inspection under this Act. Bank's officers however examine books of cooperatives as the promoter of the Rural Banking and Pawn brooking business of Cooperatives (MPCS).
2. The Cooperative employees Commission Act No. 12 of 1972. This empowers the Commission to determine all matters relating to methods of recruitment, conditioning of employment, qualifications necessary for appointment salary scales to be attached to the various posts disciplinary procedure, payment of gratuity, conduct inquiries into appeals and decide on these etc.

IV. Cooperative Law and Principles of Cooperation

4.1 Does Cooperative Law have specific provisions for incorporation of principles of cooperation? If so, reproduce concerned provisions.

Ans. No.

4.2 Whether principles of cooperation incorporated in Cooperative Law are the following as laid down by the International Cooperative Alliance?

- a) Open and voluntary membership.
- b) Democratic Control.
- c) Limited interest on capital.
- d) Savings belong to members.
- e) Cooperation among cooperatives.
- f) Cooperative education.

Please explain deviation if any.

Ans. Does not apply

The registrar recognises these as the principles of Cooperation for purpose of registration as required in the Law - Sec. 3 (1) and Rule 53 requiring transactions with non-members.

4.3 What is the definition of cooperative society in Cooperative Law?

Ans. Vide Section 3 (1) (a) - (d) reproduced here:

3(1) Subject to the provisions hereinafter contained,

- a) a society which has as its object the promotion of the economic, social or cultural interests of its members in accordance with co-operative principles, or
- b) a society established with the object of facilitating the operations of a society referred to in paragraph (a), or
- c) a society consisting of registered societies as members established for the purpose of providing cooperative education and training, advisory services to the promotion of the cooperative movement in Sri Lanka, or
- d) a society consisting of registered societies as members established for the purpose of planning, co-ordination, and facilitating the activities of such cooperative societies in Sri Lanka or any part thereof as are engaged in marketing, industry, agriculture, fisheries or in such other activity as may be approved by the Registrar.

may be registered under this Law with or without limited liability:

Provided that the liability of a society of which a member is a registered society shall be limited.

V. Registration and Membership of a Cooperative Society

5.1 Are there any pre-conditions for registration of a cooperative society? If so, please give details.

Ans. *Conditions of Registration.*

4.(1) No society, other than a society of which a member is a registered society, shall be registered under this Law, if it does not consist of at least ten persons each of whom is above the age of eighteen years and resides or is employed or owns immovable property within the proposed area of operations of the society seeking registration.

Registration

6. If the Registrar is satisfied that a society has complied with the provisions of this Law and the rules, that the activity in which the society proposes to engage is economically feasible, and that its proposed by-laws are not contrary to this Law or to the rules, he may, if he thinks fit, register the society and its by-laws. An appeal in accordance with such rules as may be made in that behalf shall lie to the Minister against the refusal of the Registrar to register any society.

5.2 Does the discretion for the registration of a cooperative society lie with the registering authority under law even if the promoters fulfil all the stipulated conditions?

Ans. Yes. An appeal lies to the Minister against the refusal of the Registrar to register any society.

5.3 Is the registering authority under cooperative law obliged to record reasons in writing in case of refusal for registration of a cooperative society?

Ans. There is no legal requirement to give reasons.

Rule 3 says that "...appeal shall be made within 30 days of the date on which such refusal was communicated by the Registrar."

5.4 Is there any time limit prescribed under law which registering authority is obliged to take decision in regard to registration of the society?

Ans. No.

5.5 Does law provide for "society will be deemed to have been registered in case of decision by the registering authority is not taken within the prescribed time limit"?

Ans. No.

5.6 Is the order of the registering authority appealable? If so, please mention appellate authority under law.

Ans. Yes.

Under Sec 6 the Minister is the appellate authority; Appeal should be lodged within 30 days of Registrar's refusal being communicated by them.

5.7 Does the registering authority consult concerned federal organisation before taking decision regarding registration?

Ans. No. The T.C.C.S. Federation now sponsors the registration of Credit Societies.

5.8 Does the law provide for provisional registration of cooperative society? If so, please quote the provision.

Ans. No.

5.9 Have the Government ever put restriction on the registration of a particular type of a cooperative society? If so, please give some details with a copy of Government order/legislation.

Ans. No. In practice nearly every application for registration is sponsored by the Department staff and in the case of credit societies by the TCCSF. There has been no specific restriction on any particular type of society. However, the emphasis on promotion of various types of society varies depending on the importance the government of the day attaches to any type of types of society. Single purpose consumer

societies were not encouraged after the MPCCs were introduced in 1957 but not by circular.

5.10 Does the law make specific provisions about the persons who may become the members of a cooperative society? If so, please quote the provision.

Ans. As stated in Sec 4(1) the only specifications laid down are age and residence, employment or ownership of immovable property in the area of operation of the society.

5.11 Does the law put restriction on the admission of the persons as members of a cooperative society whose interests are likely to conflict with the objects of the society? If so, please quote.

Ans. This matter is dealt within the by-laws which usually stipulate that any person over the age of 18 with the residential, employment or property qualifications, who is in a position to benefit from the services provided by the society or who needs its services or who is prepared to accept the responsibilities of membership is eligible for membership. The "good character" qualification is now omitted from limited liability society by-laws.

5.12 What is the authority to take decision regarding admission or expulsion of members? Whether it is prescribed under law or by-laws of a cooperative society? Please specify.

Ans. The general meeting decides on any refusal by the committee or board of directors. The Registrar has the power to decide on qualifications for membership if this is in dispute, and an appeal is made to him. Sec 60(1) page 29.

5.13 Is the authority obliged under law and/or under by-laws to take decision regarding admission of members within a prescribed time limit? In case of its failure to take decision within the prescribed time limit, whether the applicant person shall be deemed to have been admitted as member. Please specify.

Ans. In case of MPCS membership applications must be dealt with of 'next' meeting of the branch committee. Appeals against refusal lie to the Board and to the General Meeting.

No provision in case of failure of Board or General Meeting to make a decision, but failure could perhaps be construed or refusal in which case Sec. 60 applies.

5.14 Is the order of the authority to take decision regarding admission of member is appealable? If so, please quote specific provision.

Ans. Appeal lies to the Board (in MPCS) and to the General Meeting and

Registrar under Sec 60.

5.15 Can Government under law issue directive for compulsory admission of certain class of the people as members of certain cooperative society? If so, please mention the provision.

Ans. No.

VI. (A) Bye-Laws

6.1 Does the law make it obligatory on every cooperative society to have written bye-laws for regulating its day-to-day functioning? If so please quote provision.

Ans. Yes. Rule 29.

Sec 5(3) also states that "The application (for registration) shall be accompanied by two copies of the proposed by-laws of the society..."

6.2 Does the law specify the items/contents of the bye-laws? If so, please specify.

Ans. Yes.

Compulsory By-Law.

Rule 29 A registered society shall make by-laws in respect of the following matters:-

- i) name of society;
- ii) registered address of the society;
- iii) objects for which the society was established;
- iv) purposes to which the funds of the society may be applied;
- v) qualification for membership in the society, the conditions of admissions of members and the mode of their admission.
- vi) the nature and the extent of the liability of the members of the society.
- vii) the withdrawal and expulsion of the members of the society and the payments, if any, to be made to them;
- viii) the transfer of the share or their interests of the members of the society;
- ix) the manner of raising funds, including the maximum rate of interest on deposits;
- x) the general meetings of the society and the procedure at the powers to be exercised by such meetings;
- xi) the appointment, suspension and removal of the members of the committee and other officers of the society, and the powers and duties of the committee and other officers;
- xii) the authorisation of an officer of the society to sign documents on behalf of the society;

Where the objects of any registered society include the creation of funds to be lent to its members that society shall make by laws in respect of the following additional matters -

- xiii) the occupation and residence of the members;
- xiv) the conditions on which loans may be made to members, including:-
 - a) the rate of interest,
 - b) the maximum amount which may be lent to a member,
 - c) extension of the term, and renewal of loans,
 - d) the purpose of loans,
 - e) security for repayment.
- xv) the consequences if any of default in payment of any sum due on account of shares or loans;
- xvi) the disposal of the profits.

6.3 Who is the competent authority to frame and to adopt the bye-laws under law?

Ans. The General Meeting as a rule 'adopts' the by-laws before registration. The law does not require this. The application for registration only is to be signed by all the 'original' members. These are not defined in law.

6.4 Does the law authorize the Government to frame the model bye-laws of every type of a cooperative society? If so, please quote the provision.

Ans. The law does not authorize the Government to frame model by-laws. But it has always been the practice for the cooperative department to draft and even print model by-laws for adoption by societies. It is only recently that the National Apex, the NCC has started drafting model by-laws, e.g. for its Constituent District Unions.

For the proposed All Island Consumer Services Union. The TCCSF also prepares model by-laws for credit societies.

6.5 Is it obligatory on the part of a cooperative society to adopt model bye-laws. If so, please specify the provision.

Ans. There is no such legal requirement. But in 1970 the Government registered societies with a bare minimum of ten (acquiring) member with by-laws providing for a majority of nominated directors. This was done as part of the "Reorganization programme and was instrumental in alienating members from the movement.

The model by-laws prepared by the Department and by the NCC to the TCCSF are approved by the registrar. This expedites registration as a 'model' does not have to be scrutinized minutely.

6.6 Is it necessary to get the bye-laws registered for enforcement?

Ans. Yes, under Sec 6 the Registrar registers the society and its by-laws. Sec

8 (2) States no amendment of the by-laws shall be valid until it is registered under this Law.'

Sec 8. Amendment of By-Laws

- (2) No amendment of the by-laws of a registered society shall be valid until that amendment has been registered under this Law for which purpose two copies of the amendment shall be forwarded to the registrar.
- (3) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Law or to the rules, he may, if he thinks fit, register to amendment. An appeal in accordance with such rules as may be made in that behalf shall lie to the Minister against the refusal of the Registrar to register any amendment of any by-law.
- (4) An amendment which changes the name of a society shall not affect any right or obligations of the society or of any of its members or past members, and any legal proceedings pending may be continued by or against the society under its name.
- (5) Where the Registrar register an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.
- (6) In this section 'amendment' includes the making of a new by-law and the variation or recession of a by-law.

6.7 Is the registering authority competent to change/amend/delete any bye-laws without assigning any reason?

Ans. No.

6.8 Are parastatal organisations created for the promotion of certain types of cooperatives also competent to change/amend the bye-laws at their discretion and shall the members of those types of cooperative societies be obliged to adopt such bye-laws? If so, please quote provision.

Ans. No.

6.9 Do you think that power of Government for compulsory amendment of bye-laws conflicts with cooperative ideology/principles? If so, please give a brief note about your opinion.

Ans. Yes. If Government is of the view that a particular by-law needs amendment in the interests of a society's members, of good management or to meet a specific situation created by any other law etc. it should be able to convince the membership, through its Departmental machinery of the necessity and desirability for such amendment. Where government considers this inconvenient or impossible it fol-

laws that the proposed amendments are controversial and not desired by the majority.

Even where such state sponsored amendments are in the long-term interests of a society such power to amend by-law would erode the very democratic basis of a cooperative and governments dependent on party support may often be tempted to introduce provisions advantages to particular groups of persons.

The Multi-purpose by-laws foisted on members through the provisions of the Coop. Societies (SP Provisions) Act No. 35 of 1970 show what could happen if this becomes the rule. These by-laws have not been amended eliminating the above obnoxious provisions but Act No. 35 of 1970 still remains in force.

See note on Act 35 of 1970 annexed.

(B) Rules

6.10 Does the cooperative law make specific provision for defining rule making power? Please specify.

Ans. Yes. Vide Sec. 61.

Coop. Societies law No. 5 of 1972 (Rules)

61. (1) The Minister may make all such rules as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Law.
- (2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), such rules may-
- (a) Prescribe the conditions to be complied with in applying for the registration of a society and the procedure in the matter of such applications;
 - (b) Prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members from time to time and the payment to be made and interest to be acquired before exercising rights of membership;
 - (c) Provide for the withdrawal and expulsion of members and for the payments to be made to members who withdraw or are expelled, and for the liabilities of past members;
 - (d) Prescribe the extent to which the registered society may limit the number of its members;
 - (e) Provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred;
 - (f) Subject to the provisions of section 3, prescribe the maximum

- number of shares or portion of the capital of a registered society which may be held by a member;
- (g) Prescribe the payments to be made, the conditions to be complied with, and the forms of the bonds, instruments or other documents to be executed, by members applying for loans or cash credits, the period for which loans may be made or credits granted, and the maximum amount which may be lent and the maximum credit which may be allowed to individual members;
 - (h) Prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability, and the maximum rate of dividend which may be paid by societies;
 - (i) Regulate the manner in which funds may be raised by means of shares or debentures or otherwise and the rate of interest which may be paid on deposits;
 - (j) Provide for general meetings of members, and for the procedure at such meetings and the powers to be exercised by such meetings;
 - (k) provide for the appointment, suspension, and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers;
 - (l) Prescribe the matters in respect of which a society may or shall make by-laws, and for the procedure to be followed in making, altering, and rescinding by-laws, and the conditions to be satisfied prior to such making, alteration, or rescission;
 - (m) Prescribe the accounts and books to be kept by a registered society, and for the periodical publication of a balance sheet showing the assets and liabilities of a registered society;
 - (n) Provide for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit and provide for the levy of contributions from all or any registered societies to a fund to be known as the Co-operative Fund, to be used for the audit and supervision of and assistance to existing societies and co-operative propaganda, for co-operative education and training, and provide for the administration of that Fund;
 - (o) Prescribe the returns to be submitted by registered societies to the Registrar, and the persons by whom and the form in which the same are to be made;
 - (p) Provide for the persons by whom, and the form in which, copies of entries in books of registered societies may be certified.
 - (q) Provide for the formation and maintenance of a register of members, and, where the liability of the members is limited by shares, of a register of shares;
 - (r) Provide for the formation and the maintenance of reserve funds,

and the objects to which such funds may be applied, and for the investment of any funds under the control of any registered society;

- (s) Prescribe the manner in which any question, as to the breach of any by-law or contract relating to the disposal of produce to or the manner in which the liquidated damages for any such breach may be ascertained or assessed;
 - (t) *Prescribe the mode of appointing an arbitrator or arbitrators, and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and the enforcement of the decisions of the Registrar or the awards of arbitrators;*
 - (u) Prescribe the conditions to be observed by a registered society applying for the financial assistance of Government;
 - (v) Determine the cases, not expressly provided for in this Law, in which an appeal shall lie to the Minister against orders made by the Registrar;
 - (w) Prescribe the procedure to be followed by a liquidator appointed under section 52, and the cases in which appeals shall lie from the orders of such liquidator;
 - (x) Provide for the establishment and maintenance of the Surplus Fund referred to in section 57 and prescribe the manner and purposes for which the moneys of such Fund may be disbursed;
 - (y) Prescribe the forms to be used; the fees to be paid, the procedure to be observed, and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this Law or the rules made thereunder.
- (3) No rule shall have effect unless it has been approved by the National State Assembly. Notification of such approval shall be published in the Gazette.
- (4) Every rule shall, upon the publication in the Gazette of the Notification referred to in subsection (3), be as valid and effectual as though it were herein enacted.

6.11 What are the subjects/issues on which Rules can be framed under cooperative law?

Ans. See Sec. 61.

6.12 Do you think that there are certain subjects as specified in your reply to question No. 6.11 could be included in the bye-laws of cooperative societies? If so, please specify.

Ans. Yes. Section 61 (2)

- (f) Prescribing maximum no. of shares.
- (h) distribution of profits and rate of dividend.

- (j) general meetings, procedure eg.
- (k) appointment etc. of committee members, procedure for com. meeting, powers and duties of the committee and other officers.
- (r) formation of reserve funds etc
- (s) breaches of by-laws or contracts by members.

The principle should generally be that all matters that affects members as members should best be dealt within the by-laws.

6.13 Does the legislation empower the Government or some other authority to exempt societies from any of the provisions of the Act or the Rules?

Ans. Yes. Sections 63 and 64.

C.S.Law No. 5 of 1972 (Miscellaneous)

Special power of Minister to exempt any society from requirements as to registration.

63. Notwithstanding anything contained in this Law, the Minister may by special order in each case, and subject to such conditions as he may impose, exempt any society from any of the requirements of this Law as to registration.

Special power of Minister to exempt societies from provisions of this Law.

64. The Minister may by general or special order exempt any registered society or class of societies from any of the provisions of this Law, or may direct that such provisions shall apply to any society or class of societies with effect from such date or with such modifications as may be specified in the order.

6.14 Are the guidelines provided on the basis of which exemptions may be granted? If so, please specify.

Ans. No. Such exemptions are extremely rare.

VII. Cooperative law and Decision making process in cooperatives

7.1 There are following important management organs in a cooperative society :

- a) General body,
- b) Board of directors,
- c) Functional sub-committees created by the Board of Directors, and
- d) Chief Executive.

Please describe their powers, functions, duties and responsibilities.

Ans. In the case of M.P.C.S.s B/L 32 enumerates the powers and functions

of the General Body assembled in General Meeting. They include:

1. Election of the Board of Directors and their dismissal
2. Decide appeals on admission of membership and temporary suspension of membership and expulsion of a member.
3. Decide the ratio between a members share and his individual Maximum Credit-Limit.
4. Empower the Board to acquire purchase, mortgage, rent, lease property and to put up buildings, demolish, repair or alter them or take other action regarding buildings.
5. Determine the maximum Credit limit of the society.
6. Amend the By-laws.
7. Consider the audited statement of accounts and balance Sheet and the Auditor's report.
8. Waive any debts which are irrecoverable.
9. Decide on the disposal of surplus.
10. Approve rules regarding funds created by the society.
11. Appoint sub-committees.
12. Approve regulations governing Housing Groups, Commodity Groups and other such groups.
13. Consider proposals put up by the Board or Branch Committees concerning the business of the society.
14. Approve rules regarding payment of incentive bonus to branch committee staff and members, empowering branch committees to make such payments.
15. Take any other decision for the achievement of objects of the society. The General Body may not however, usurp the powers conferred on the Board of Directors under the B/L. The Annual General Meeting shall perform the following duties:
 - 1) Consider Audited Statement of Accounts, Balance Sheet and Auditor's Report.
 - 2) Elect a Board of Director's once every three years or elect a Board where the Board has been removed (by negotiation) or has resigned before its term has expired.
 - 3) Decide on the disposal of profits. Consider regulations from delegates to the General meeting or from branch Committees as tabled by the Board.

27 (A) The Board of Directors has the following powers and duties.

By-Law 35(b)

1. Elect a President and Vice-President from among themselves.
2. Decide on appeals i.e. admission of members.
3. Convene annual and special general meetings.
4. Inquire into reports of Branch General Meetings regarding expul-

- sion of members and make recommendations to the General meeting.
5. Appoint a General manager, Secretary Branch Managers and other employees required by the society.
 6. Personnel management functions.
 7. Decide on policy matters concerning each collection and banking security of cash and other property, insurance policy on commercial, financial, administrative matters and frame working rules subject to approval of General Meeting and be responsible for their enforcement.
 8. Make rules regarding granting of loans to members and advances to employees.
 9. Establish new branches (Br. Com. Areas) subject to limits laid down by the General Meeting and close down Branches and Br. Com. Areas.
 10. Prepare the annual budget and development plan and present it to the General Meeting at least 2 months before the commencement of the financial year.
 11. Prepare and or approve schemes for promoting thrift among members.
 12. Submit a report on the working and financial position of the society during the year within 3 months of the end of the financial year to the General meeting and send copies of it to Branch committees.
 13. Examine Monthly accounts of the society; approve or disallow expenditure and ensure that all proper accounting and other records are maintained.
 14. Take steps to promote member education and welfare and encourage member participation.
 15. Purchase, construct or acquire buildings, plant and machinery with the approval of the General Meeting.
 16. Sell or mortgage immovable property with the approval of the General Meetings.
 17. Acquire shares in other cooperatives with General meetings approval and appoint delegates to their meetings.
 18. Conduct prosecutions on behalf of the society or defend the society in law suits.
 19. Waive debts not succeeding Rs 100.
 20. Appoint panel of consultants to obtain advice to the society when necessary.
 21. Determine the period of repayment of loans or extend such period.
 22. Coop. persons to fill vacancies in the Board.
 23. Obtain loans within the MCL and other limits imposed by the

General Management for various purposes.

24. Authorize the President, General manager and the Secretary to sign agreements on behalf of the society.
25. Decide on conditions governing deposits.
26. Submit disputes for arbitration in terms of the law.
27. Appoint sub-committees.
28. Ensure the observance of the provisions of the Law and the bill and the smooth functioning of the society.
29. Frame regulations pertaining to Women Committees and Commodity Groups.
30. Do everything required to achieve the objectives of the society subject to the approval of the General Meeting.

Functional Sub-Committees powers and duties will be determined by the board regulation which creates them.

The Chief Executives as such is not mentioned in the Law or the By-laws. The General Manager is responsible to the Board. His duties are enumerated in By-law 38 and are as follows:-

By-Law 38

The General Manager is appointed by the Board of Directors and is responsible to the Board for efficient management of the society's affairs. He should perform his duties so as to achieve the objectives of the society and in conformity with the policy laid down by the Board and the law, the rules and the By-laws. He is specially responsible for the following matters:

- 1) Attend to all business matters efficiently and in terms of the Law
- 2) Ensure that the Annual Statement of Accounts and the Balance Sheet is submitted to the auditor within three months of the end of the financial year.
- 3) Ensure the safe custody of the Books, documents and other movable property by entrusting their custody to the respective employees and obtain their acknowledgements of such property.
- 4) Advise the board on Policy and Planning.
- 5) Ensure that policy and plans are efficiently implemented.
- 6) Secure the required funds for implementing the programmes and ensure that funds are utilised properly.
- 7) Furnish the Board with necessary information to enable them to compare performance with approved targets.
- 8) Furnish the Board with feasibility reports and estimates and utilise funds as approved by the Board.
- 9) Prepare the Budget and submit it three months before the beginning of the financial year and take steps to present it to the General Meeting.
- 10) Plan, organize, supervise, coordinate and control the various

departments of the society and provide the staff with the relevant information.

- 11) Ensure that the respective branch managers are given the necessary authority and responsibility.
- 12) Develop and maintain good relations with the apex unions, delegates and members of the society.
- 13) Approve loans in accordance with the regulations framed under by-law 40.
- 14) Ensure that the reports are submitted to the Commissioner as required under the law and the by-laws.

7.2 Does cooperative law make specific provision vesting supreme authority in the general body of members? If so, please specify.

Ans. Yes.

By-law 32 (of the MPCSSs) says that the "Supreme authority of the society lies with the General Meeting of the Society. The General Meeting comprises of delegates of Branch Committees and the Board of Directors elected under the by-laws.

7.2.1 Are the decisions of the general body required to be submitted to an authority designated under the legislation for approval?

Ans. No.

7.2.2 Are all the decisions of the general body subject to approval of the authority designated by the legislation or are their decisions on specified matters subject to approval?

Ans. No. Only specified matters such as purchase and sale of property and amendment of by-laws are subject to registrar's approval.

7.2.3 Does the authority designated under the Act have any power to call a general body meeting or to authorise any person to call a meeting of the members?

Ans. Yes. Rule 18. (Power of registrar to summon general meetings or Committee meetings and to attend meetings.)

18. (i) The Registrar, or any person authorised in that behalf by general or special order of the Registrar, may at any time summon a special general meeting of any registered society in such manner at such time and place as the registrar or such person may direct. The number of members present in person shall form the quorum (unless such number is less than three) and such meeting shall have all the powers, including the power to amend the by-laws, of a duly convened meeting of the society.
- (ii) The Registrar or any person authorised by him in writing in that behalf may at time summon a meeting of the committee of any

registered society in such manner and at such time and place as the Registrar or such person may direct. The number of persons present at such meeting shall form a quorum (unless such number is less than three) and such meeting shall have all the powers of a committee meeting duly convened in accordance with the by-laws of the society.

- (iii) Where a special general meeting under Rule 18(i) or a committee meeting under Rule 18(ii) is summoned by the Registrar or a person authorised by the Registrar, the registrar or such authorised person shall have the power to order the production of such books and documents of the society as he may consider necessary. It shall be the duty of the secretary of the society to comply with every such order.

The registrar or any person authorised by him, may preside at any meeting summoned under Rule 18(i) or 18(ii) but shall have no vote; in the event of an equality of votes the chairman shall have a casting vote.

- (iv) The Registrar or any person authorised by him, may preside at any meeting summoned under Rule 18(i) or 18(ii) but shall have no vote; in the event of an equality to be present and to speak at any general meeting or committee meeting of any registered society. Provided, however, that the Registrar or any person so authorised by him shall not have the right to vote at any such meeting.

7.2.4 Does the authority designated under the Act have the power to declare a meeting of the general body invalid and if so on what grounds?

Ans. Yes. Under Sec 60 of the law, Registrar decides any question as to whether any general meeting had been validly held.

Registrar to decide certain other matters.

60. (1) Where the application for membership of a registered society made by any person is refused by the society, such person may appeal to the Registrar against the refusal and the decision of the Registrar on such appeal shall be final and binding on the society.

(2) Where any question arises as to whether a member of a registered society has been duly elected to any office in the society or whether a member has ceased to be a member or officer of the society, or whether any general meeting of the society had been validly held, that question shall be decided by the Registrar whose decision shall be final.

7.2.5 Is the society required to inform any authority designated under the Act about the date and agenda of the meeting of the general body?

Ans. By-Law 32 (5) of the MPCSS requires the society to invite the auditor

to a general meeting at which his Audit-Report is to be considered. The auditor can state his views at such meeting.

7.2.6 Is the authority designated under the legislation entitled to attend the general body meeting without being invited to do so?

Ans. Yes. See Rule 18(iv).

7.2.7 Are the minutes of the general body required to be sent to any authority designated by the legislation for approval?

Ans. No.

7.3 How various management organs of a cooperative society are created/constituted under cooperative law? Please specify the procedure.

Ans. The general body of most primary societies comprises of all individual members. In the case of large societies such as the MPCSS Branch committees send delegates computed on the formula: No. of Members of the Branch x 100/Total No. of Members.

The Committee or the Board of Directors, usually of 7, 9 or 12 members is elected, by secret Ballot by the members at General Meeting. The President is usually elected by the Board, but some societies including the National Apex now elect the President at the General meeting.

The Chief Executive is appointed by the Committee or Board. In many small societies and even in some large MPCSS the President functions as the defacto Chief Executive although he has no legal status as such. Functional Committees or Sub-committees have no executive authority and only make recommendations or report findings to the Board or the General Meeting.

7.4 How are various management organs of a cooperative society linked with each other in the decision making process? Please specify the provision under law, rules and bye-laws.

Ans. The relationships are mentioned only in the By-Laws. The Board or the committee is elected by the General Body and is responsible to it. The General Meeting has to be convened at least once a year and the statement of Accounts has to be tabled. The Board is obliged to implement the resolutions of the General Body which can also authorize or empower the Board to do certain acts such as acquiring, selling or constructing property, opening new Branch Committee Areas etc. The Board appoints the General Manager and other employees and has disciplinary control over them subject to the provisions of the C.E.C. Act 12 of 1972.

Branch committees, elected by members of the Branch at its general meeting also exercise some functions such as admission of members, fixing their INCL and make recommendations to the Board. The

General Meeting is composed of Branch committee Members selected in terms of formula shown in 7.3. B/LL 28, 32, 35 and 38 are relevant.

7.5 Do you think that existing law provides adequate provisions to ensure functioning of various management organs in unison without any conflict? If so, mention those provisions.

Ans. No. The role of the Chief Executive should be enhanced. The Boards are entrusted with too much responsibility. Much of this and the authority should devolve on professional management.

7.6 If you think that existing law does leave scope for conflicts between various management organs of a cooperative society in their proper functioning what are your suggestions for amending cooperative law in this respect?

Ans. The By-laws should confine the role of the Board to policy formulation, monitoring progress and general guidance on long term strategy to promote the interests of various categories or groups of members - viz women, youth, commodity groups, the very poor etc.

The Chief Executive should be entrusted with full responsibility of managing the society's business and given the necessary authority. These matters should be provided for in the By-Laws.

7.7 What is the procedure for constitution of Board of Directors/Managing Committees according to Cooperative societies Act and Rules? Whether the procedure is also reflected in the bye-laws of the cooperative society? If so, please mention specific provision.

Ans. The procedure for election of the Board of Directors is stated in the By-laws. By-Law 35 of the MPCSSs states that there shall be a Board of Directors consisting of 9 members of whom two shall be from among the women branch committee members. Election is by secret ballot and those who secure the highest number of votes are elected. The Amendment Act No. 32 of 1983 - Sec 15. amends Sec 66 of the main law to enable the Registrar to nominate less than half the total number of members of a committee.

By-laws of societies do not now provide for nominations to committee/Board by the Registrar.

7.8 Who is the competent authority to conduct elections in cooperatives under Cooperative Law? Please mention specifically.

Ans. The committee or the Board of Directors.

7.8.1 Is there any provision for creation of cooperative election authority in the cooperative law? If so, please mention specifically.

Ans. No.

7.8.2 Who is the competent authority to settle the election disputes under cooperative law? Please specify.

Ans. The Registrar, see Sec. 60.

7.9 Does law define specific qualifications for a person to be elected/appointed as office bearers or members of Board of Directors? Please quote.

Ans. Yes. Rule 21 lays down disqualifications for committee membership - See Rule 21.

7.9.1 Does the law provide for representation of employees on the Board of Directors of a cooperative society? If so please mention what is the percentage of representatives of employees to the total number of Board of Directors.

Ans. No. An employee is disqualified to be elected as a Branch Committee Member or a Director of the Board - B/L 28 (3) (J).

7.9.2 Does the law confer right on an employee representative to get elected as an office bearer/director in the federal organisations? If so, what is the proportion of such persons on national level boards.

Ans. No.

7.10 What is the legal status of the Chief Executive/Managing Director in the board of directors/management committees in the cooperative laws? Is he a member of the board with right of voting?

Ans. The Chief Executive is not mentioned in most B/L. The General Manager is often appointed Secretary and attends Board meetings as such. He has no vote and no legal right to be present at Board Meetings.

7.11 Does the law provide for full time/part time paid elected Chairman or President or cooperatives?

Ans. The Law have no such provision. Most large Societies and Apex Unions now pay an allowance to the President/Chairman with the general approval of the Registrar.

7.12 Does the law provide two officers viz. (i) Chairman, and (ii) President? If so, what are the respective powers and responsibilities of each? (Chairman to chair the meetings of the general body, board of directors and others. President to be full time paid officer of the society as in the USA).

Ans. No. Both offices are held by one person. The term used is President who also chairs both General and Board Meetings President has no specific powers other than those of Chairman. However, in most societies he functions as *de facto* Chief Executive - payment of an

allowance has given official sanction for this practice.

7.13 What responsibilities and powers does the law confer on national/regional bodies of cooperatives.

Ans. None.

7.14 Does the Law provide for punishment to individual elected/appointed directors and paid employees in case of committing delinquency?

Ans. Yes. Sec 67 of the main law makes a person guilty of Criminal Breach of Trust (an offence under the Penal Code) if he fails to pay over or produce or duly account for any amount as ordered by Registrar after Audit, Inspection or Inquiry. Courts however, have not accepted this provision and have insisted on CB Trust being proved or under ordinary law.

7.15 Does the law lay down any code of conduct for the office bearers or directors of the board? If so, please quote.

Ans. No.

7.16 Does the Law provide for accountability of individual paid officers, directors of the board and office-bearers of cooperatives? If so, how and to which extent?

Ans. Under the provisions of amended Sec 43 (A) - Act 32 of 1983 every committee member of a society which fails to prepare an annual statement of accounts and statics as may be required by the Registrar shall be guilty of an offence.

Sections 66 & 67 deal with civil and criminal liability of person or persons who have taken part in the organization or management of a society or of any past or present employee or officer of the societies. These provisions have not been very effective as courts have generally frowned upon these powers conferred on the Registrar.

7.17 Does law make following provisions empowering the Government:

i) to effect compulsory amendment of the bye-laws.

Ans. No.

ii) to effect compulsory amalgamation and division of cooperative society.

Ans. Yes - Act 35 of 1970.

iii) to rescind/annual the resolutions/decisions of the Board of Directors and annual general body of a cooperative society.

Ans. No.

iv) to supersede the elected management of a cooperative society.

Ans. Yes. Sec 48 of C.S. Law no. 5 Amended by Act 32 of 1983.

v) to issue directive to a cooperative society.

Ans. Yes 45(2).

vi) to restrict the term of office bearers.

Ans. Sec. 45(2)

vii) to restrict the number of cooperative societies in which a person can hold office.

Ans. No.

7.17.1 Do you think that above provisions ensure efficient decision making process in a cooperative society? Please give a critical note.

Ans. Provisions i, ii, iii, iv above will hinder the healthy growth of cooperatives and a vigorous movement. These provisions have become necessary where Government wishes to maintain spurious cooperatives to get certain services performed cheaply and conveniently.

(v) May be necessary at a certain stage of development in societies but much depends on the spirit and competence of officials who issue such directives. In Sri Lanka such directives emanate from the findings of an Audit, Inspection or Inquiry and may act as timely warnings prior to more drastic action under Sec. 48 or 49 (super-session of Committee or Dissolution).

(vi) Restriction of term of office was intended to prevent entrenched groups monopolising power in societies. It also resulted in keeping out dedicated and proficient cooperators. Opinion is now against this provision.

(vii) This is also similar to vi. Such matters should be left to members. Exposure of malpractice and adequate member-education should be the remedy.

7.18 What is the competent authority under Law to lay down the policies, norms and regulations regarding personnel management in cooperative society?

Ans. Since 1972 the Cooperative employees commission, which has wide powers to determine recruitment, procedure qualifications, salaries, and disciplinary procedure. The commission could be said to have remedied a somewhat chaotic situation in MPCSS which employs the largest numbers. Recruitment was haphazard, salaries very low and security of tenure almost non-existent. However, it would be much more desirable to service such voluntary functions through a representative body comprising of cooperators and employees.

Coop. Employees Commission Act 12 of 1977. (Powers of the Commission.

11. (1) The Commission shall have the following powers:

- (a) to determine all matters relating to methods of recruitment to, and conditions of employment of employees of, cooperative societies, and the principles to be followed by such societies in making appointments and in making promotions from one post in a co-operative society to another post in the same society;
- (b) to conduct examinations for recruitment as employees of cooperative societies or to appoint boards of examiners for the purpose of conducting such examinations and to charge fees from candidates presenting themselves for examinations;
- (c) to determine the qualifications necessary for appointment to any such post, to fix the scales of salaries to be attached to any such posts in any class or grade, to revise or adjust such scales of salaries from time to time, in consultation with the Commissioner and to establish such consultative machinery as the Commission may deem necessary to assist it in determining the remuneration and conditions of service of cooperative employees;
- (d) to require cooperative societies to pay salaries in accordance with the salary scales fixed by the Commission for any post or posts in any class or grade;
- (e) to determine the procedure or procedures to be followed by any cooperative society in exercising its rights of disciplinary action against its employees, to call upon any cooperative society to complete disciplinary inquiries against its employees within a time stipulated by the Commission, and to hear appeals arising out of any disciplinary orders made by any cooperative society;
- (f) to call upon any cooperative society to keep the prescribed records relating to employees of that society;
- (g) to call upon any cooperative society to furnish before a specified date such files, other documents or information as the Commission may require in respect of any employee of that society;
- (h) to nominate a panel or panels of officers to make such inquiries as are necessary on appeals that are referred by the Commission to such panel or panels and to report thereon to the Commission.
- (i) to require any cooperative society to carry out such instructions, including instructions relating to reinstatement, as may be given by the Commission in regard to any employees of such society, where the conduct of the employee has been the subject of an inquiry and the employee had appealed to the Commission against the decision of the society;
- (j) to determine the general principles in accordance with which gratuity or other benefits may be granted to employees on the termination of their services;

- (k) to advise the Minister, in consultation with the Commissioner, in regard to the exemption of any cooperative society or class of cooperative societies from the operation of this Act;
- (l) to exercise such other powers in relation to cooperative societies and their employees as may be vested in the Commission by Order made by the Minister and published in the Gazette.
- (2) In the exercise of the powers vested in the Commission by subsection (1), the Commission may modify, vary or revise or set aside any decision or determinations made by the Commission.

Cooperative societies and their employees to be subject to directions of the Commission.

14. Any cooperative society, and any employee of such society, shall be subject to such directions as may be given by the Commission Under this Act, and all decisions of the Commission in the discharge and exercise of its functions and powers under this Act, subject to the provisions of section 11(2), shall be final, and shall be binding on all such cooperative societies as are not exempted from the operation of this Act by order made under section 2 by the Minister and on the employees of such societies.

Directions of Commission to be binding upon employees of cooperative societies.

15. All directions given by the Commission in regard to any employee of any cooperative society, subject to the provisions of section 11(2), shall be final and binding upon such employee as if such directions were given by such society.

Examination of serving officers ad restriction on application of new terms and conditions of service.

- 17(1) The Commission may in its absolute discretion, require any employee to satisfy the commission, by examination or otherwise, of his proficiency and fitness to hold that office:

Provided that the preceding provisions of this subsection shall apply only to such category or categories of employees as may be prescribed.

In Sri Lanka compulsory amalgamation were regarded to in pursuance of an Island-wide programme of so-called "Reorganization which created 372 large primary M.P.C. societies through a process of amalgamating an dissolving about 5000 small societies. It was of course true that nearly half of them were defunct or badly managed. In the process 125 very active and prosperous local unions were also dissolved and their assets distributed among the new societies. These arbitrary activities of Government alienated a large number of Coop-

erative members who regarded these exercise as nothing less than nationalisation or state takeover of cooperatives.

Supersession of committees began in a big way from about 1960s when the Department found it convenient to appoint Boards of management rather than getting the general bodies to elect law committees. These were many instances where this was done under political pressure too; although some officers did their best to prevent wholesale dissolution of committees not sympathetic to the party in power. As mentioned earlier these and other similar provisions become necessary where governments wish to maintain whole network of societies of various types - e.g. stores, (convener) CAP & SS M.P.C.S. - through which they expect to get certain development schemes implemented, but whose members are either unable or unwilling support them. This practice effectively hinders genuine cooperative development in the country.

7.19 Does law specify/demarcate the powers and responsibilities of the Board of Directors and Chief Executive? If yes, please specify the provision.

Ans. Yes. By-laws 35 and 38. A 'Chief Executive' is not mentioned in the By-laws or in any other coop. law. The General Manager enjoys only delegated authority from the Board of Directors. He has very little latitude to exercise management functions on his own initiative.

7.19.1 What is your view as to whether the provision indicated under 7.19 should find place in the bye-laws of a cooperative society instead of law?

Ans. I agree that this provision should be in the by-laws. There should be provision for the appointment of a chief executive in large societies. This post should carry the necessary authority consonant with his management responsibilities. This should be the first step towards professionalising cooperative management which has suffered much through amateurish management by committees inherited from credit societies which pioneered the movement in Sri Lanka.

7.20 What is the functional/administrative relationship between the elected Chairmam and Chief Executive of a cooperative society under:

- i. law,
- ii. rules,
- iii. bye-laws,

Ans. See comments on 7.19 and 7.11.1. The Chairman or President as he is known here has no legal authority to control the General Manager. However, the practice has grown in MPCs and other large societies and Unions where the President functions as the defector Chief

Executive and Virtually supervises the General Manager and takes day to day management decisions. Government is responsible for this state of affairs as M.P.P. and Ministers are in the habit of holding the President and the Boards directly responsible for distribution of consumer goods, frauds by employees, break-down of supplies, pricing policy etc.

7.20.1 Please give your views on the following:

- (a) Should Chief Executive directly report to the Board?
- (b) Should Chief Executive report to Chairman who would be responsible to the Board?

Ans. The Chief Executive should report to the board.

7.21 Who is the competent authority to recruit and terminate the Chief Executive?

Ans. The Board of Directors.

7.21.1 Does law prescribe for creating a specific Selection committee/panel authority for recruitment and selection of Chief Executive? If so, what is the constitution of such authority and what are its powers and responsibilities.

Ans. No.

7.21.2 Does law provide that final selection of the Chief Executive shall vest in the hands of the selection committee/panel authority created under law?

Ans. ---

7.22 Who decides for preparation of Agenda items for the Board or other function committees?

Ans. The Secretary in consultation with the President and Board of Directors. In many societies the General Manager is appointed secretary.

7.22.1 Does law/bye-law makes it obligatory on the part of the Chief Executive to take decision about Agenda Items even without the approval of the Chairman? If so, please specify the provision.

Ans. Yes. B/L 38.

7.22.2 Is Chief Executive empowered to convene the meetings of the General Body, Board of Directors and other functional Committees without obtaining approval of the President? If so, please specify the provision.

Ans. No.

7.22.3 Is chief Executive empowered for recruitment and selection of subordinate officers and other functionaries? If so, please specify the provisions.

Ans. No.

7.22.4 If Chief Executive is not empowered to recruit and select his subordinate officers and other staff members, would it be appropriate to vest such powers in him? Please give your views along with reasons.

Ans. This depends on the stage of development of the society and the integrity and prestige acquired by the Chief Executive. In a highly charged political atmosphere recruitment is best left to the Board except in the case of lower grades and temporary staff. In the present context it is best for the Board to appoint a selection Board including some Board Members and the General manager which will recommend suitable candidates to the Board. This should apply to senior and middle grades.

7.22.5 Should Chief Executive be empowered to take disciplinary action against his subordinate officers and staff members? Please give your views along with reasons.

Ans. Yes. The C.E.'s authority and stature will be enhanced if his power is recognised by all parties. An appeal should lie to the Board but it should be a convention that the Board will generally support the C.E. unless in cases of blatant misuse of powers. The C.E.C. is a tribunal of appeal in place of Labour Tribunals for Cooperative employees.

VIII. Cooperative Law and Self-Reliance

8.1 There are three aspects of self-reliance in cooperative: (a) self-reliance in terms of self-regulation, (b) self-reliance in terms of resources, and (c) self-reliance in terms of leadership. Does cooperative law make provision to motivate cooperatives to develop self-reliance. If so, please specify the provisions.

Ans. (a) The by-laws provide that the governing body of a society is freely elected by members on a one man one vote basis having and by secret ballot. Members in general meeting can also dismiss the committee. B/L 32 (1) and (2). Members are bound to observe the by-laws and can be expelled by resolution of the general meeting if he/she acts contrary to the interests of the society B/L 13. He has a right to speak and vote on such a resolution.

(b) Members have to own at least one share. B/L 7(1) Most societies have deposit schemes for members. Surpluses can be retained in the society by way of reserves according to wishes of member B/L 43.

(c) Members are free to elect their own leaders. Registrar usually intervenes in case of gross mismanagement.

The provision of Sec 48 2 rule 18 initiate against development of self-reliance, when applied for maintaining a weak society under state control.

8.2 If cooperative law, rules and bye-laws do not make any provision in regard to self-reliance, what are your views on this subject? Please give detailed note.

Ans. This is a dilemma that many cooperative administrators face in developing countries. Left to themselves, people may not form cooperatives at all. N.G.O.O. may not be interested in launching a movement. Once governments starts establishing cooperatives, they do not know where to stop, or more likely they do not wish to make them independent. The dynamics of a large government department tend to perpetuate itself and enhance its powers vis-a-vis its cliental, in this case the cooperatives.

Provisions in the law alone will not develop self-reliance, although negetive provisions such as Sec. 48 may impede it. Much depends on the spirit and sagacity in which the law is applied. In Sri Lanka many societies, credit, Industrial and even MPCs have developed almost into models of their type within the framework of the existing law. During certain periods, particularly when so called 'societies' governments assume power, independence of write societies are threatened and sometimes destroyed.

There are many societies with compulsory savings schemes for members, but their achievements are often very much below those with voluntary schemes functioning under imaginative and dedicated leadership.

The nurturing of self reliance within a given group is mostly a function of efficient leadership. State intervention, in the guise of fairplay or equitable treatment or of mere dogmatic democracy is fatal to a group such as a cooperative society developing self-reliance and social coherence. Morale is built up by leaders not so much by laws and regulations. Circulations, traditions and self-reliance grew up over time under conditions of trial and stress. Cooperatives, under state guidance are often not allowed to learn through their mistakes. Enthusiastic and vigorous leadership is often discouraged, sometimes through intervention of politicians who see such leaders, as rivals to their only entrenched positions. Govt. officials too do not like courageous leaders.

To keep politicians per se out of cooperatives, as is advocated in some quarters here, is no remedy. There is no harm in having politicians within the movements. If they genuinely believe in cooperation they will be an asset. It is only when they attempt to use cooperatives to achieve or retain power that genuine leadership and initiative is throttled and self-reliance destroyed.

8.3 Does cooperative law and rules make provision for appropriation of

net profits? If so, please specify.

Ans. Yes. Sec. 43 stipulates that 25% of the surplus shall be transferred to a reserve. Rule 43 requires every society to contribute not exceeding ten percent to the Cooperative Fund. By-Law 43 says at least 10% should be allocated to Education Welfare Fund. The Law also provides for payment of dividend (not to exceed 10%) on shares and capitals.

1973 Rules under C.S. Law No. 5 of 1972

Division of Profits:

- 15(i) In the case of a registered society with no share capital, no part of the funds of the society shall be divided amongst its members as dividend or otherwise.
Provided however, that this paragraph shall not apply to a thrift society.
- (ii) The funds or any part thereof of a registered society shall not be divided as dividend, rebate or bonus amongst its members or officers unless:
- (a) The entire expenditure incurred by the society during the year has been debited to the profit and loss account before the calculation of the net profit; and
 - (b) The registrar's prior approval has been obtained.
- (iii) No dividend or rebate shall be paid by any registered society while any claim due the society to a depositor or lender remains unsatisfied.
- (iv) No registered society shall pay a dividend exceeding ten per centum on share capital actually paid up.
- (v) The Registrar may by general or special order direct that any registered society shall so long as it receives loans, deposits or other credit facilities from any non-member other than a Bank.
- (a) not pay any dividend, or
 - (b) pay dividends at such reduced rates as the registrar may determine.

8.4 What types of funds a cooperative society can create under cooperative law, rules and bye-laws? Please specify.

Ans. Statutory Reserve - Sec. 43
Cooperative Fund - Rule 43
Share Transfer Fund - B/L 43
Common Good Fund - B/L 43
Education and Welfare Fund - B/L 43.

Property and funds of registered societies. (Loans made by registered societies)

39. (1) A registered society shall not make any loan to any person other than a member:

Provided that, with the consent of the Registrar, a registered society may make loans to another registered society.

- (2) Except with the permission of the Registrar, a registered society shall not lend money on the security of any movable property other than agricultural produce.

- 8.4.1 Who is the competent authority to take decision about the creation of the funds?

Ans. The General Meeting.

- 8.4.2 Whether the competent authority has been defined in the law and rules or bye-laws? Please specify.

Ans. B/L 43 (2) which says: "The General Meeting is empowered to authorize the Board of Directors to utilize the balance profits for one or more of the following purposes."

- 8.4.3 Who is the competent authority to take decision regarding investment of funds?

Ans. The Board of Directors with the approval of the Registrar. Investment in immovable property requires General Meeting approval as well.

Investment of society's funds

42. (1) A registered society may deposit or invest its funds in any of the securities other than a first mortgage of immovable property specified in section 20 of the Trusts Ordinance, or with any banker or person acting as a banker approved for this purpose by the Registrar, or in the shares or on the security of any other registered society, approved for this purpose by the Registrar, or in any other mode permitted by the rules.

- (2) Any deposits or investment made before the commencement of this Law which would have been valid if this Law had been in force is hereby ratified and confirmed.

- 8.4.4 Does cooperative law define various institutions and modes in which funds of a cooperative society can be invested? If so, please specify.

Ans. Yes, Sec 42. Sec 25 of the Peoples Bank Act also says. "No Cooperative society shall unless exempted in writing by the Commissioner deposit its funds in, or maintain any current or deposit account with any commercial bank other than the Bank (Peoples Bank).

- 8.4.5 Does cooperative law prescribe any restrictions regarding investment

of funds? If so, please specify.

Ans. Registrar's approval is required to purchase movable property over the value of Rs 5,000/- (Rule 48). (This provision is virtually a dead letter now as it has been decided to amend this Rule.)

8.4.6 Does cooperative law prescribe to make any provision restricting the cooperative society for obtaining loans/borrowings for mobilizing its resources?

Ans. Yes. General Meeting fixes the Maximum Credit Limit Rule 16(2) B/L 32(2) (H). The Peoples' Bank requires Department's recommendation for granting loans.

Deposits and loans received by registered societies.

40 (1) A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws.

(2) Where a loan is granted to a registered society by a bank on the mortgage of any immovable or movable property, such property shall, from and after the date of the registration of such mortgage under the Registration of Documents Ordinance, be charged with the payment of the moneys due under such mortgage in priority to every other debt of such registered society whatsoever and to every mortgage of charge affecting such property, except a mortgage or charge affecting such property which is secured by a mortgage duly registered under the Registration of Documents Ordinance prior to such date.

8.5 Does cooperative law make any provision to obtain permission of Registrar of Cooperative Societies/Government regarding investment of its fund?

Ans. Yes, for investing in a Bank other than the People's Bank.

8.6 Can cooperative society give donations to any non-cooperative organisation? If so, what is the maximum limit?

Ans. Only from the Common Good Fund if its rules so permit. Some societies disregard this provision and make contributions for ceremonial purposes or relief of distress during floods, and other natural disasters.

8.7 Does law/by-law specifically provide for members' obligations to build up the resources of their society? If so, please specify.

Ans. By-laws of MPCs stipulate that a member can borrow only upto the multiple of his share holding as determined by the general meeting. Currently this is 20 times.

B/L 40 (b) This compels members to purchase more shares.

Credit societies have compulsory services schemes stipulated in their by-laws.

8.8 Does law make provision empowering the Government to issue directions for building up the resources of cooperative society? If so, please specify.

Ans. Sec. 43 (1) (a) stipulates that 25% of the net profits should be allocated as statutory reserve.

No other directions can be issued by government.

C.S. Law No. 5 of 1972 (*Disposal of Profits*)

43 (1) Every registered society shall out of its net profits in any financial year as ascertained by the audit under section 44,

- (a) transfer an amount not being less than twenty-five per centum of the net profits to the reserve fund of the society; and
- (b) contribute such portion of the net profits as may be prescribed by rules to the Co-operative Fund established under the rules.

(2) The balance of the net profits may be utilized for all or any of the following purposes:

- (a) Payment of dividends to members on their paid up share capital at a rate not exceeding the rate prescribed in the rules;
- (b) Payment of rebates to members on the value of the business done by them with the society to the extent and in the manner specified in the by-laws;
- (c) Contributions to such funds as may be prescribed in the by-laws;
- (d) Payment of bonus to employees of the society;
- (e) Payment on such other account as may be specified in the by-laws;
- (f) Contributions of an amount not exceeding ten per centum of the net profits to a Common Good Fund for expenditure on any social, cultural or recreational purpose, or the advancement of any other object of local or public utility.

(3) In the case of a society with unlimited liability, no distribution of profits shall be made without the general or special order of the Registrar.

8.9 Does cooperative society enjoy total authority to deploy its surplus resources for its own development? If so, please specify the provision.

Ans. Within the provisions of Sec. 43 and Rule 43.

8.10 What is the maximum limit of payment of dividend to the share holders in a cooperative society?

Ans. Rule 15(iv) limits the payment of dividend to 10%.

8.11 Can cooperative society undertake transactions with non-member for building up its resources? If so, what are the prescribed norms under cooperative law/bye-law?

Ans. Yes. Rule 53 empowers Registrar to prohibit transactions with non-members if he is of the opinion that they are opposed to cooperative principles or involve abuse of any of the privileges accorded to societies or involve an evasion of income tax or breach of any rule or orders of government.

Credit societies and MPCs regularly accept deposits from non-members. These deposits carry the same rates of interest as member's deposits.

The Rural banks of MPCs in particular have attracted very large sums as non-member deposits, both savings or fixed.

These Rural Banks also undertake pawn-broking as agents of the Peoples' Bank and both members and non-members transact pawn-broking business which is a very flourishing and lucrative activity of these societies.

By-law 43 (5) states that profits from business with non-members should either go to them as shares if they wish to enrol as members or be credited to the Common Good Fund.

IX. Cooperative Law and Government

9.1 Do you think that provisions in cooperative law enable the Government in playing its positive role for cooperative development in accordance with the principles of cooperation? Please give an analytical note.

Ans. The provisions of the law does not prevent the Government in playing a positive role in cooperative development. It could refrain from involving the obnoxious provisions of the law (Sec 48, Rule 18) and follow a policy of enlightened guidance and assistance to enable a more sophisticated and competent generation of leaders to run the cooperatives.

Political mentality is essential for this purpose, but notwithstanding the recent pronouncements of the Minister emphasizing the need for de-politization it is doubtful whether politicians will give up such a handy tool as the local MPCs to help them in mobilizing support.

The Law is silent on the role of government but any specific provision for state involvement in cooperative development will only succeed if the Minister in charge accepts cooperation as an ideology. The pur-

poses of the People's Bank in the PB Act No. 29 of 1961 is stated in Sec 4 as "to develop the cooperative movement of Ceylon" etc. But in the event the bank has grown into a powerful commercial bank in no way concerned with cooperative development. In 1983 it succeeded in dispossessing the cooperatives of its shares worth several hundred millions of rupees. Legal provisions alone may not make a government adopt positive, desirable policies. On the other hand there is nothing in the law to restrain the Government from formulating and giving publicity to a policy of active encouragement to the cooperative movement. The main problem appears to be the reluctance of Government and its supporters to allow weak societies to restructure the rules so that uneconomic units can be closed and a meaningful programme of rationalization could be carried out. Nearly all the 7,000 retail units now run at a loss but societies are not allowed - as a matter of policy to close down uneconomic branches.

Government has been giving financial support to the weaker societies but such temporary remedies only postpone the final collapse. Uncooperative practices such as whole-sale sales to private traders are also encouraged to maintain viability. Cooperatives have not been able to meet the challenges of the open market economy through their being forced to maintain a large uneconomic branch network and an army of employees mostly engaged in clerical and allied activities. The remedy for these ills does not lie in legal reform. Govt. should declare its aims and policy towards cooperatives and act accordingly.

9.2 Does cooperative law make specific provision about government support to cooperatives? If so, please specify.

Ans. No.

9.3 What types of government assistance to cooperative institutions is visualized in cooperative law? Please specify.

Ans. None.

9.4 Does cooperative law provide for representation of the government on the board of management of cooperative societies in relation to its assistance to cooperatives? If so, please specify.

Ans. Sec 66 A as amended by Act No 32 of 1983 empowers registrar to nominate persons to the committee of a society "for the purpose of safe-guarding any investments or advances in money or goods made to a society by Government or a State Bank or State Corporation."

There is no provision to provide other assistance to societies in the Law. But cabinet has decided to grant Rs 100 cr in each year by way of a subsidy to MPCSS. Rs 70 cr of this is earmarked to offset the Business Turnover Tax payable by these societies - Balance is now given as a

soft-loan to the weak MPCSSs.

9.5 Does Government enjoy power to issue directive for implementing certain developmental policies through cooperatives even if they are not accepted by the members of cooperative society? If so, please identify the situations in which such directions by the Government can be issued.

Ans. No such power is envisaged in the Law. By tradition and usage however, the Registrar issues various circulars and directives regarding loan schemes, extension of loans etc. in the case of funds provided by the Peoples' Bank. Where necessary these proposals are submitted to the general meetings, particularly when they involve amendment of by-laws. Societies are free to ignore such directives but in practice as these involve bank loans and other concessions societies generally abide by these instructions.

9.5.1 Does the Government or any of its authorities have power under law to suspend a decision/resolution passed by a cooperative society? If so, under what circumstances.

Ans. No. Registrar may refuse to register an amendment of a By-law if it is contrary to the Law or to the rules.

9.5.2 Does the Government have power to wind up a cooperative society by its own decision?

Ans. Yes Sec 49.

9.5.3 Does the Government have powers to supersede the management of a society. If so, please give details.

Ans. Yes. Sec 48.

Dissolution of the Committee of a Registered Society

48 (1) If the Registrar is of the opinion after an inquiry under section 46 or an inspection made on an application of a creditor under section 47, that the committee of any registered society is not performing its duties properly, he may, after giving an opportunity to the committee to state its objections, if any, to its dissolution, and after considering such objections at a general meeting of the society summoned by him, by order in writing -

- (a) dissolve the committee; and
- (b) direct that affairs of the society shall be managed and administered by a suitable person or persons appointed as hereinafter provided.

(2) Every direction under paragraph (b) of sub-section (1) shall have effect for such period not exceeding two years as may be specified in the order containing such direction:

Provided, however, that the Registrar may in his discretion from time to time amend the order for the purpose of extending the period during which the direction shall have effect, so however that the aggregate period during which the direction shall so have effect shall not exceed four years.

- (3) Where any order is made under subsection (1), the Registrar shall by the same or a subsequent order appoint a fit and proper person or two or more such persons to manage and administer the affairs of the society, and may from time to time remove or replace any person so appointed or appoint additional persons.
- (4) Subject to the general direction and control of the Registrar, any person or persons appointed under this section to manage the affairs of a registered society-
 - (a) shall have the power to recover the assets and discharge the liabilities of the society and take such other steps as may be necessary in its interests, and
 - (b) May exercise all the powers, rights and privileges of a duly constituted committee of the society.
- (5) Persons appointed under this section to manage the affairs of a registered society shall be jointly and severally responsible for any loss sustained through any such acts committed by them as are contrary to the law or the by-laws of the society.
- (6) The Registrar may fix the remuneration payable to any person or persons appointed by him under this section to manage the affairs of a registered society. The amount of such remuneration and other expenses, if any, incurred in the management of the society shall be payable from its funds.
- (7) It shall be the duty of the person or persons appointed under this section to manage the affairs of a registered society and holding office immediately prior to the date on which the direction under paragraph (b) of subsection (1) ceases to have effect, to arrange, prior to the date aforesaid, for the appointment of a new committee in accordance with the by-laws of the society.
- (8) No order under subsection (1) shall be made by the Registrar in respect of any registered society -
 - (a) If the society is indebted to any bank, except after prior consultation with the bank in regard to the dissolution of the committee and to the persons by whom and the manner in which the affairs of the society are to be managed and administered; and
 - (b) If the society is a co-operative bank, except with the prior approval of the People's Bank.

(9) Nothing in this section shall be deemed to affect the power of the Registrar to cancel the registration of the society under section 49.

9.6 What is the positive impact of government aid to the cooperatives?

Ans. Govt. assistance from Coop. Development Fund (Treasurer) of Rs 100cr per year has enabled many societies which would otherwise have collapsed to survive in a somewhat precarious manner. One cannot say that this helps cooperatives as the basic viability problems are untouched. Revision of the B.T.T. is a definite help.

9.7 Has the Government aid to cooperatives resulted into erosion of cooperative ideologies/values? If so, please give a detailed note with specific instances.

Ans. This is not apparent. Financial aid is granted only to very weak MPCSS where member-involvement and adherence to cooperative ideologies is in any case minimal.

9.8 Does cooperative law make it obligatory for the government to consult cooperative organisations before introducing any policy for cooperative development?

Ans. No.

9.9 What should be the actual role of the government in regard to (a) cooperative development, (b) preservation and protection of cooperative values, and (c) building up professional management of cooperatives? Please give an analytical note.

Ans. (a) 'Cooperative Development' could be said to exist when (i) there is a sector of the economy where business is guided by cooperative principles as against the private and public sectors. (ii) in the organization and management of individual societies cooperative principles prevail (iii) societies confer on members the benefits they set out to obtain.

If the government facilitates conditions, legal, economic and administrative to achieve the above or attempts to create the socio-political environment which makes these conditions possible, it could be said to play a desirable role.

(b) The cooperative value most in danger of damage by government involvement is democratic control. If government is too impatient to allow the democratic process to evolve properly and attempts to sum societies through its nominees or fails to recognise the limitations of cooperatives at a given stage of development in society much damage is done. Minimal intervention on the part of government will create the best environment for the healthy and steady growth of the cooperative movement. Eagerness to quick or even instant results through peoples' organizations results in

moribund institutions dependent on government support and alienated from the members who are supposed to control them.

- (c) Here again government should refrain from suppression and too much interference in management of cooperatives. Professional management refuses an atmosphere of self-respect and independence so that managers may develop skills and confidence with experience in a milieu which permits innovation and experiment which are not normally under close government (departmental) supervision. The situation is worse when the supervisors are themselves amateurs without experience wisdom or even our faith in the cooperative method.

X. Others

10.1 Does cooperative law make any specific provision for the role of federations of cooperative societies? If so, please specify.

Ans. No.

10.2 Does cooperative law make any specific provision for development of cooperative leadership through education and training? If so, please specify.

Ans. No.

10.3 Does cooperative law prohibit politicalisation of cooperative institutions? Please specify the provision.

Ans. No. Banning of members of parliament from holding office, through ministerial directive has been tried out in Sri Lanka. This does not prevent unscrupulous politician from exercising influence by proxy through henchmen. The most effective remedy is for government to ignore complaints regarding cooperatives by MPP and discourage use of political power at society level in recruitment, disciplinary procedure and management. MPP should of course be free to comment on general problems and state policy pertaining to cooperatives.

10.4 What is the machinery in cooperative law to conduct free and fair elections of cooperatives without any external influence? Please specify.

Ans. The law specifies that a member of a primary society shall have only one vote - Sec 15, Rule 17 enjoins every society to hold general meetings from time to time as provided in its by-laws for the disposal of the necessary business including the election of members to the committee. Only members have a vote at general meetings. By-laws provide for secret ballot elections. These provisions however, have not interfered with certain politicians actively engaging in intimidation and influencing of delegate of MPCSS before the meetings.

General Meetings.

- 17 (i) Every registered society shall from time to time hold general meetings as provided in its by-laws for the disposal of the necessary business including:-
- (a) Fixing of the maximum amount of credit which the society may receive as loans, deposits or otherwise from non-members;
 - (b) Where the society provides credit facilities to members, the fixing of the maximum credit which may be allowed to each member;
 - (c) The election of the members of the committee;
 - (d) The consideration of the reports of the Registrar if any, and the audited statement of accounts and the report of the auditor appointed by the Registrar.
- (ii) Questions before a general meeting of any registered society shall be decided, unless otherwise specifically provided in its by-laws, by a majority of those present and voting.

A member of a society registered under section 3(1) (a) of the Co-operative Societies Law present at a general meeting of such society shall have one vote and no more. Delegates present at a general meeting of any other registered society shall exercise the vote in accordance with the by-laws of such registered society.

In the case of an equality of votes, chairman shall have a casting vote.

- (iii) A registered society which is a member of any other registered society shall not appoint any person from among its members to represent it at any general meeting of such other society if such person:-
- (a) is, in respect of any loan or loans taken by him, in default to that society or to any other registered society, or to the liquidator of any society the registration of which has been cancelled, for such period as is prescribed by the by-laws of each such society or where no period is prescribed, for any period exceeding three months; or
 - (b) is in default in any other respect to that society or to any other society or to any liquidator.

- 10.5 Is there any specific provision for enabling the representative/spokesman organisation of cooperatives e.g. National Cooperative Union/ Provincial Cooperative Unions to play their effective role for the growth of cooperative movement in accordance with principle of cooperation? If so, please specify.

Ans. No such provision.

Report of the Royal Commission on the Cooperative Movement in Ceylon

6. Revision of Co-operative Law to fill Gaps

- 10.15 Before we proceed to identify the main aspects in respect of which the existing Co-operative Law appears to have gaps, we would point out that we do not purpose to attempt in detail the drafting of new provisions that are required. We consider that this technical task can best be performed by a small expert group on which legal draftsmen from the Ministry of Justice should also be represented. We may mention that, sometime back, the Government of India appointed a committee on co-operative law. The report of the committee contains the draft of a model bill and, in several cases, this draft may be found to be helpful in framing new provisions that are required in Ceylon.
- 10.16 Elsewhere we have made certain recommendations regarding structural reorganization, particularly of the multipurpose co-operative societies. The core of such reorganization consists of amalgamation of weak primary societies to form viable units. However, the existing co-operative law does not contain an explicit provision for such amalgamation. The result is that, under the present law, an amalgamating society has to be liquidated and its members have to seek fresh membership of the other society. This is neither administratively convenient and expeditious nor psychologically desirable. Hence we recommend that the co-operative legislation should contain an express provisions which will not only be simple but also facilitate amalgamation as quickly as possible. The procedure may provide for resolution of general bodies of the concerned societies and a limited period of notice to the creditors. Thereafter, the assets and liabilities of the amalgamating societies should vest in the new society.
- 10.17 It has been suggested to us that the Co-operative Societies Act may provide for compulsory amalgamations so as to enable the Registrar to expedite the process of amalgamation. We consider that, while the law should provide for a quick and simple procedure for voluntary amalgamation, it would not be desirable to force amalgamation. Generally speaking, such 'bulldozing' leaves many adverse repercussions and is best avoided in a programme of co-operative development. We hope that a suitable legal provision, coupled with an effective programme of co-operative education, should be sufficient to facilitate the required programme of integration'.

- 10.18 While providing for voluntary amalgamation the co-operative law should also, for the sake of completeness, provide for division of co-operative societies and also for their conversion. The latter provision would be particularly useful if a primary credit society seeks to change from unlimited liability to limited liability.
- 10.19 In another chapter on state aid to co-operatives, we have examined the various forms of existing state aid. We have also made certain recommendations regarding the forms of state aid which should be admissible to co-operatives in the coming years. These forms, among other things, include government standing guarantee, in suitable cases, for loans contracted by co-operatives. We have also envisaged government participation in the share capital of co-operatives in certain situations. It appears to us that it would be an advantage if enabling provisions governing state aid to co-operatives are embodied in the Co-operative Societies Ordinance. These provisions would be without prejudice to the extent to which the government, in a given fiscal year, is actually able to provide financial assistance.
- 10.20 With regard to membership of co-operatives, it appears to us that there are gaps in the law in two vital aspects. Firstly, while the by-laws of some of the co-operatives envisage an open membership, no legal remedies are available in case a co-operative society, without sufficient cause, refuses to admit a person as member even when such applicant is ostensibly qualified for membership. We suggest that a provision to appeal against such refusal should be provided for in the law. The authority to whom the appeal may be made, to begin with should be the Registrar of Co-operative Societies. At a later stage of co-operative development, the authority to hear such appeals may be transferred to a suitable federal co-operative organisation to which the concerned society is affiliated. Another aspect of membership concerns what may be called nominal or associate membership. In certain situations a co-operative has to have business transactions with persons who should not be admitted as full members but who should remain liable to arbitration in case of a dispute. Such members may be required to pay only a small entrance fee but should not hold any shares or be entitled to participate either in management or profits of the co-operative society. Such nominal or associate members will, however, be liable to be proceeded against under the relevant section in the co-operative law concerning settlement of disputes.
- 10.21 The following are the other important aspects in respect of which the existing co-operative law is silent:-
- (i) It is sometimes difficult for a new committee, liquidator or a board of management to secure possession or take charge of

- records, properties, etc. of a co-operative society from the outgoing committee. A specific provision needs to be included in the law to facilitate taking charge of such records and properties.
- (ii) The existing law does not provide for co-operatives to invest in the shares of any institutions other than co-operative societies. The holding of shares in the People's Bank by Co-operative organizations had to be explicitly sanctioned by virtue of the People's Bank Act. We suggest that the law should enable co-operatives to hold shares in public corporations or companies which are concerned with the working of co-operatives directly or indirectly if the operations of societies will be facilitated by doing so.
 - (iii) Elsewhere we have recommended re-organisation of co-operative societies so as to form relatively large societies. A few large societies already exist. For instance, there is a thrift and savings society formed by the employees of the Education Department with membership, running into thousands, drawn from all over the Island. It is apparently not practical for all members to personally attend general body meetings. In such cases, the by-laws of some of the societies provide for what may be called a representative general meeting, composed of delegates elected by the members from different parts of the area of operation. We suggest that it would be more appropriate if a provision for a representative general meeting is inserted in the Co-operative Ordinance itself.
 - (iv) On cancelling the registration of a society, a custodian has to be appointed to protect the assets, but he cannot take over until the order of cancellation of registration takes effect either on the expiry of two months from the date of cancellation in the event there is no appeal, or if there is an appeal until the Honorable Minister decided or if there is an appeal to courts till the Court decides. It is desirable that the law should be amended empowering the custodian to manage the business of the society until a liquidator is appointed. The custodian in this instance will function like a one-man board until the cancellation takes effect, or in the event of an appeal to the Honorable Minister or to Courts, a decision is made that the registration be restored.

7. Elaboration and Refinement of Existing Provision

- 10.22 One of the important aspects in respect of which the existing co-operative law appears to be inadequate concerns conditions for registration of a co-operative society. Sections 3 to 6 of the Ordinance

prescribe such conditions as also the procedure for registration. It is observed that these sections do not explicitly enjoin that every co-operative society to be registered must have reasonable prospects of economic success. We recommended that the condition of economic viability be expressly incorporated into the law so as to enable the Registrar to refuse registration where, in his opinion, the proposed institution has no potentiality of economic success.

- 10.23 Under Section 3 of the Ordinance, the co-operative societies to be registered are envisaged to be of two types, i.e. a society whose object is to promote the economic interests of its members in accordance with co-operative principles as distinguished from a society whose object is to facilitate the operations of the former. The latter type is usually referred to in the Registrar's Administration Report as a secondary society and the former is described as the primary society. While the existing law thus makes a clear distinction between the two types, this is apt to be lost sight of in actual practice. The existing law envisages that a secondary co-operative need not observe co-operative principles and the principal justification of such a co-operative lies in its ability and competence to facilitate the operations of the affiliated primary societies. This aspect needs to be highlighted and we suggest that the law should contain express provision defining secondary co-operatives separately. It is also necessary to provide for the apex co-operatives which may be tertiary organisations with membership composed of secondary or secondary and primary societies. At present it is assumed that the legal provisions (such as Section 13 of the Ordinance dealing with proxy voting) concerning secondary co-operatives also take care of apex societies. It is, however, much better to place this matter beyond legal doubt by making express provision for apex co-operative organisations.
- 10.24 Courts are of the view that Section 60 does not create a new offence, but only provides for prima facie evidence for a charge of criminal breach of trust under Section 388 of the Penal Code. Hence it appears that Section 60 is not adequate to the requirement. Unless failure to pay or duly account for such amount of money when called upon to do so under the section by itself makes a person liable for criminal breach of trust the section is not likely to prove effective. It is suggested that the section be suitably amended to achieve such a purpose.
- 10.25 It is observed that, at present, a number of substantive and important aspects of co-operative working is regulated by the provisions contained in statutory rules. For instance, the powers and duties of the general body are defined in the rules while the main Ordinance has no express provision. It appears to us that it would be more appropriate if the provisions contained in the rules pertaining to general body,

model amendment of bylaws and similar important aspects are incorporated in the main Ordinance.

8. Simplification of Co-operative Law

- 10.26 There are primarily two aspects of the existing co-operative law which have been found in practice to be either cumbersome or somewhat legally problematic in operation. These relate to liquidation procedure and the mode of settlement of disputes. On some of these aspects, in recent years, there have been several judicial pronouncements by the Supreme Court. It appears to us that these provisions require expert re-examination with a view to replacing them by provisions which are more effective. In this context we would suggest consideration of a proposal for constituting a co-operative tribunal for hearing of appeals or adjudication of disputes.

9. Revision of By-laws

- 10.27 In some ways, from the point of view of an ordinary member, the co-operative bylaws are of much greater significance than the Co-operative Societies Ordinance or the rules made under the Ordinance. More often than not, the member has occasion to peruse only the bylaws of his co-operative society and his knowledge of his duties and powers and his relationship with the co-operative are essentially derived from them. Thus the framing of proper co-operative bylaws is in this respect of much greater importance than the framing of the Co-operative Act and the rules. In this context, it is disappointing that co-operative bylaws do not reflect proper attitudes to management and the allocation of functions as between committees and managers as indicated in Chapters XII and XIII. In these respects the present bylaws of most of the societies have often the appearance of being a mechanical repetition of the broad framework of bylaws initially designed for co-operative credit societies. The bylaws invariably refer to the president as the chief executive officer - a designation more suited to the general manager of the co-operative. It appears to us that there is a case for a careful revision of the bylaws of various non-credit societies. Such revision may be undertaken as a part of the overall programme of updating the co-operative law of the Island.

Report of the Committee on the Reorganization of the Cooperative Movement in Sri Lanka

- (ii) **Co-operative Law** - The Co-operative Movement cannot develop in genuine co-operative lines if the laws and the by-laws pertaining to it are not in accordance with the Co-operative Principles. The present Law, Rules and By-laws have much that is not in accord with these Principles. We shall therefore submit in due course a draft Co-operative Societies law with explanatory notes on the suggested deviations from the present law (No. 5 of 1972) Laws No. 35 of 1970 (which enabled the amalgamation of co-operatives by Gazette notification) and No. 5 of 1978 (which empowers the Minister to dissolve the Committee of any Co-operative Society) should be rescinded forthwith, as they are abhorrent to Co-operation.

We propose to submit in Part II of this Report model By-Laws for Multi-Purpose Co-operative Societies and other important types of Co-operatives drafted to be in conformity with Co-operative Principles.

We suggest that such Rules as are in conformity with the Co-operative Principles be included in the Law itself and the present Rules be rescinded by the New Act. The provision for making Rules should be deleted from the new Law because many subsidiary laws which are repugnant to the principles and spirit of the substantive law can be made and have been made through this provision. Unlike a substantive law, subsidiary legislation has only to be tabled in Parliament and it rarely receives more than cursory attention from its Members. The excuse given for having provision in the law to make Rules is the elasticity provided thereby for prescribing many procedural matters. This facility can be retained by having a provision in the substantive law empowering the Minister to make orders as may be necessary for implementing any provision of the Law.

Thus we see no necessity for any provision in the Law to make Rules whilst we see a great danger in leaving room for the making of rules which when they take effect have the force of law. What affects a people's movement should receive the same consideration of the people's legislature as an act relating to anything else in the usual stages of a Bill, "for the spirit of a people's movement has a greater chance of recognition by a legislature than by a government as such".

THAILAND

Study on Facilitation of Cooperative Legislation

QUESTIONNAIRE

I. Constitutional and administrative status of cooperatives

1.1 What is the status of cooperation in country's Constitution? In case of Federal constitution, is cooperation a national/state/provincial concurrent subject?

Ans. Thailand is a single state. Only farmers cooperative are clearly recognized and encouraged in the Constitution. Para 2 of Section 67 of the Constitution states that..." also, the State shall encourage farmers to organize themselves into cooperative or other forms of organization.

1.2 Does country's constitution specifically make provision incorporation of articles defining constitutional status of cooperation? If so, mention specific provision.

Ans. Yes, it makes a provision as mentioned in an answer to 1.1.

1.3 Is there any separate coordinating Ministry for all types of cooperatives both at the level of national as well as state/provincial Government? If not, which Ministry coordinates?

Ans. Yes, there is. The Ministry of Agriculture and Cooperatives coordinates all types of cooperatives at the national as well as provincial levels.

1.4 What is the extent of representation of cooperative sector in national parliament and state legislatures?

Ans. There is no direct representation of cooperative sector in National Parliament, although there are certain number of cooperative members who have been elected to the House of Representatives, or appointed to the Senate.

1.5 Is there any provision in the constitution for nominating outstanding cooperators in national Parliament and state legislatures?

Ans. No, there is none.

1.6 What is the administrative set up for cooperative sector? Please describe organizational/functional chart of Department of Cooperation in the Government both at center and the states.

Ans. The administrative set up for cooperative sector is under the jurisdiction of the Ministry of Agriculture and Cooperatives (MCA), of which one office and two departments are responsible for the promotion and supervision of cooperatives. They are as follows :

- 1) The Office of Registrar for Cooperatives is responsible for the registration of newly organized cooperatives and cancellation of the liquidated ones. It also keeps records of all cooperatives related to membership, finance and business operations.
- 2) The Cooperative Promotion Department is vested with promotional functions of helping organizing new cooperatives, and advising this operations if needed or necessary. It coordinates and collaborates with the Cooperative League of Thailand to undertake research, cooperative education and training, extension and publicity.
- 3) The Cooperative Audit Department is to make audit of cooperatives accounts annually or at interim period, if necessary. It undertakes to train cooperative officers and personnel in book keeping and accounting including advice on financial management.

1.7 Please give a brief description of (i) powers, (ii) functions, and (iii) duties and responsibilities of Department of Cooperation.

- Ans.
- 1) The Cooperative Promotion Department has powers to promote cooperatives of all categories in Thailand in accordance with the laws and regulations, whereas the Cooperative Audit department has powers to audit accounts of cooperatives in accordance with the laws, regulations and orders of the Registrar for Cooperatives.
 - 2) Functions, duties and responsibilities of the Cooperative Promotion Department are as follows:
 - a) To extend knowledge of cooperation and promote establishment of cooperatives.
 - b) To prepare potential members of cooperatives through education.
 - c) To give technical assistance and guidance on cooperative management.
 - d) To make economic and social study and survey for purpose of establishment of new cooperatives.

- e) To compile statistical data and make annual report on cooperation.
- f) To provide or assist cooperatives in matters of finance and infra-structure.

1.8 Do the federal organizations of cooperatives enjoy some powers in regard to management and administration of their constituent units? If so, please mention them briefly.

Ans. Yes, the federal organization of cooperatives enjoy some powers in regard to management and administration of their constituent units vis (1) board of directors of a cooperative federation, which comprises elected representatives of its affiliates, and (2) policy guidelines and training practices which are normally laid down by the board of directions of the federation.

1.9 Is there any system or legal provision under which certain powers and functions of Department of Cooperation in the powers and functions of Department of Cooperation in the Government could be delegated to and devolved on the federal organization of cooperatives? If so, please describe such powers and functions.

Ans. Yes, there is -

- (1) A system under which extension, education and training functions of the Government cooperative departments can be delegated to the federal organizations of cooperatives, especially the Cooperative League of Thailand.
- (2) It is implied in Section 44 and 45 of the Cooperative Societies Act of 1968 that the Registrar of Cooperatives can appoint the Cooperative League of Thailand or a specialized cooperative federation to be auditors or inspectors of cooperatives. But they have to follow the rules and regulations prescribed by the Registrar of Cooperatives.

1.10 Are there any parastatal organizations set up by the Government for the development of cooperatives? If so, please name them.

Ans. No, there is none.

1.11 Do the parastatal organizations set up by the Government for development of cooperatives have powers in regard to administration of cooperatives aided by them? If so, please describe such powers.

Ans. No, there is none.

1.12 Are cooperatives represented in local bodies and vice-versa? If so, please specify.

Ans. No, they are not represented.

II. National policy on cooperative development

2.1 Please describe broad objectives of national economic development.

Ans. (1) To maintain an average rate of growth at a level not below five per cent p.a. in order to absorb the minimum of 3.9 millions persons who will be entering the labour market. Growth should be accompanied with stability.

(2) To develop the quality of population so that social development can progress, peace and justice be attained, and development of the country as a whole support. The national identity, culture and system of values will be maintained; and the quality of life of the Thai people will be raised in both rural and urban areas.

2.2 Is there any national policy on cooperatives?

Ans. Yes, there is, in brief, a policy to increase support for farmers' institutions and to encourage the role of people's organizations to attain self-reliance.

2.3 Has national Government issued any national policy statement. If so, please enclose a copy of the statement.

Ans. No, it has not.

2.4 Is cooperative sector involved in formulating national policy on cooperative development. If so what is the mechanism/institutional frame work.

Ans. No, it is not.

2.5 Do Government actively involve cooperatives in affective implementation of economic development programmes?

Ans. Yes, they do by giving support for and assistance to cooperatives in e.g.

(1) Development of Prachinbari Valley through agricultural cooperatives, and a degraded mangrove through fisheries cooperatives;

(2) Provision of agricultural lands to young farmers participating in the Progressive Farmers Project in land settlement cooperatives;

(3) Mobilization of savings through thrift and credit cooperatives and farmer's cooperatives.

2.6 Are there any specific development programs which are specifically allocated to cooperatives for implementation? Please mention briefly.

Ans. Yes, there are specific development programmes, such as:

(1) development of agriculture in arid lands of Tung Kula Rong- Hai

in five provinces of the North-East, through farmers' cooperatives;

- (2) paddy price-stabilization programme through integrated credit and marketing and processing activities of farmers' cooperatives;
- (3) implementation of land reform programme through farmers' cooperatives.

2.7 Do National Plan Documents provide specific place to cooperative sector? If so, please explain.

Ans. No, they do not.

2.8 What is the place of cooperative sector vis-a-vis private and public sectors?

Ans. The cooperative sector in Thailand is still rather small in terms of volume and value of its business activities. Hence, its impact in the national economy is insignificant. It is therefore, grouped with the private sector vis-a-vis the public sector. This general feeling should be rectified, and the cooperative sector be recognized of its own standing.

2.9 Does cooperative sector formulate its own plan of development independent of the plan formulation by the Government? If so, what is the mechanism?

Ans. Yes, it develop its own plan of development independently; but in certain cases, it coordinates and collaborates with the Government, especially when technical and financial assistance from the Government; foreign or international organization are involved.

2.10 Does cooperative sector formulate its own plan of development, keeping in view the following:

- a) National priorities.
 - b) Government directive.
 - c) Members' expectation.
- Please indicate order of preference.

Ans. a) Government directive.
b) Members' expectation.
c) National priorities.

2.11 Do the national Parliament and state Legislature discuss the plan of cooperative development regularly? If so, on what occasion and in what context? Give some instances.

Ans. No, they do not discuss it regularly.

2.12 Does the concerned Consultative committee of national Parliament and State Legislative Assemblies discuss issues concerning Coopera-

tive Development? If so, how often.

Ans. No, it does not.

2.13 Is cooperative sector regularly associated/involved in plan discussions? If so, how many times in an year?

Ans. Yes, it is involved in plan discussions once in two years when the Cooperative Congress is held the initiative of the Cooperative League of Thailand.

2.14 Has national Government created any specific body/institution at its level to deliberate upon issues concerning cooperative development from time to time? If so, please give its name and terms of reference.

Ans. Yes, it has created a Committee on Agriculture and Cooperative Development in the Ministry of Agriculture and Cooperatives. Its terms of reference are as follows:

- (1) To deliberate and establish solutions to existing problems or shortcoming of agriculture and cooperatives,
- (2) To make recommendations to the cabinet of Ministers on issues of agriculture and cooperatives,
- (3) To monitor results of agriculture and cooperative development,
- (4) To approve action plans of agriculture and cooperative development proposed by the authorities concerned.

2.15 Organizational structure of cooperatives, being federal, please enumerate briefly the role of federal organizations at secondary/state/national level, particularly, with reference to policy formulation for cooperative development.

Ans. (a) The role of secondary cooperate federations in policy formulation for cooperative development is mainly to make proposal and provide data and supporting materials to the national federations.
 (b) It is more often than not that the national federations formulate policies in conjunction with the proposed requirements of their affiliates, and in consultation with the Government department concerned.

III. Evolution of cooperative law

3.1 When was the first Cooperative law in the country enacted?

Ans. The first Cooperative law in Thailand, called "The Amended Associations Act, B.E. 2459" (A.D. 1916), was enacted in 1916 and remained in force until 1928.

3.2 What were the reasons/background of the first Cooperative Law? Please identify them in following heads:

- (a) Political
- (b) Economic
- (c) Social
- (d) Others

Ans. The reasons for an enactment of the first Cooperative Law are of economic and social ones. At the close of the 19th century, social and economic changes from a self-sufficiency to a market economy in Thailand had unfavorably affected the farmers and rural poor especially in the Central Plain. Most farmers were paddy growers. Rice exports were becoming the most important exchange earners for Thailand. Farmers had to sell their crops to rice millers or merchants who were much stronger in bargaining power. The farmers' annual income from paddy crops fluctuated widely through their weak bargaining position and uncertainty of rainfall on which rice production essentially depended. Consequently they were falling into chronic indebtedness and poverty. Delinquency rates high and fore closures ensued. Landlessness among farmers of the Central Plain was becoming a disturbing phenomenon. Hence, the Government of Thailand then absolute monarchy sought a solution to the problem by introducing to Thailand a cooperative form of organization as had been in existence at that time in India and Burma. And the first Cooperative Law in the form of the Amended Association Act, B.E. 2459 was hurriedly enacted in order to register the first farmers' cooperative in 1916.

3.3 Whether the first cooperative law was enacted for one particular activity or for cooperatives in totality? Please specify.

Ans. The first cooperative Law was enacted for one particular activity of helping farmers to organize cooperatives to prompt their interest in rice production and marketing and to further their welfare on the basis of self help and mutual assistance.

3.4 With the growing expansion and diversification of cooperative sector, has Cooperative Law been evolved to suit the changing needs of the cooperatives? If so, please mention various stages of historical evolution of cooperative Law.

Ans. Yes, the Cooperative Law has been evolved to suit the changing needs of cooperatives, namely :

- (1) The Amended Association Act, B.E. 2459 was replaced by the Cooperative Societies Act, B.E. 2471 (AD, 1928), after which

cooperatives, of other types, eg., consumers' agricultural marketing, land hire-purchase cooperatives, etc. were being promoted.

- (2) In 1968, the Cooperative Societies Act, B.E. 2471 and the related amendment Acts were all abolished by an enactment of the Cooperative Societies Act, B.E. 2511 (1968) in order to have more comprehensive provisions for more various types of cooperatives both in urban and rural areas, and to suit the changing sizes and management complexity of cooperative as well.
- (3) The Cooperative Societies At, B.E. 2511 was amended three times. First, in 1972, a chapter on "Registered Farmers' Group" was annexed to the Act making ways for the registration of farmers' group to be cooperate body like farmers' cooperatives.

Secondly, also in 1972, Section 64 of the Cooperative Societies Act, B.E. 2511 was amended in order to broaden usages of a "Central Cooperative Fund". Thirdly, in 1981, the amendment of the Cooperative Law was made in regard to enabling a manager of a cooperative to act as an agent of its board of directors, and to increase the ceiling of dividend rate of not exceeding 13% p.a. on share capital.

3.5 Is there a separate legislation for cooperatives as a whole or for different groups of cooperatives? Please enclose a copy.

Ans. No, there is not a separate legislation for different groups of cooperatives. All types of cooperatives are governed by the same legislation.

3.6 Have Government appointed expert committees to modify cooperative law from time to time? If so, please mention them along with their important recommendations.

Ans. No, the Government has not appointed expert committees to modify the cooperative law.

3.7 Whether Government consults the cooperative sector before evolving Cooperative Law? If, so what is the mechanism?

Ans. Yes, the Government consults the Cooperative League of Thailand which is the Apex or national cooperative organization.

3.8 Have there been occasions when cooperative legislation was formulated by the Government without paying attention to the views of cooperative sector? If so, please describe them briefly.

Ans. Yes, there have been such occasions before an enactment of the Cooperative Societies Act, B.E. 2511 when the cooperative movement was not fairly strong. But, after the establishment in 1967 of the cooperative League of Thailand, the Government paid more attention to the view of cooperative sector.

3.9 Are there allied laws which regulate the functioning of cooperatives? If so please describe briefly their salient features.

Ans. No, there are not allied laws.

IV. Cooperative law and principles

4.1 Does Cooperative Law have specific provisions for incorporation of principles of cooperation? If so, reproduce conceded provisions.

Ans. No, it has no specific provisions for incorporation of principles of cooperation, except for two principles on a limited rate of interest paid on share capital, and an equitable distribution of not gains of the cooperatives (section 31).

4.2 Whether principles of cooperation incorporated in Cooperative Law are the following as laid down by the International Cooperative Alliance?

- (a) Open and voluntary membership.
- (b) Democratic control.
- (c) Limited interest on capital.
- (d) Savings belong to members.
- (e) Cooperation among cooperatives.
- (f) Cooperative education.

Please explain briefly deviation, if any.

Ans. The principles of cooperation are implied in Cooperative Law in accordance with those as laid down by the International Cooperative Alliance.

4.3 What is the definition of cooperative society in Cooperative Law?

Ans. "Cooperative Society" means a group of persons who jointly conduct affairs for mutual assistance, and is registered under this Act" (Section 4).

V. Registration and membership of a cooperative society

5.1 Are there any pre-conditions for registration of a cooperative society? If so, please give details.

Ans. No, there is none.

5.2 Does the discretion for the registration of a creative society lie with the restoring authority under law even if the promoters fulfill all the stipulated conditions?

Ans. No, the registering authority has not a discretion, except that the for-

mation of a cooperative society to be registered is considered detrimental to the system of cooperative societies. (Section 15).

5.3 Is the registering authority under cooperative law obliged to record reasons in writing in case of refusal for registration of a cooperative society?

Ans. Yes, the registering authority is obliged to notify without deadly reasons for his refusal to the applicant. (Section 15 para 1).

5.4 Is there any time limit prescribed under law which registering authority is obliged to take decision in regard to registration of the society?

Ans. No, there is not any time limit.

5.5 Does law provide for “society will be deemed to have been registered in case of decision by the registering authority is not taken within the prescribed time limit”.

Ans. No, the law does not provide such a clause.

5.6 Is the order of the registering authority appealable? If so, please mention appellate authority under law.

Ans. Yes, it is appealable. The Minister of Agriculture and Cooperatives is the appellate authority. (Section 15, para 3)

5.7 Does the registering authority consult concerned federal organization before taking decision regarding registration?

Ans. No, it does not.

5.8 Does the law provide for provisional registration of cooperative society? If so, quote the provision.

Ans. No, it does not.

5.9 Have the Government ever put restrictions on the registration of a particular type of a cooperative society? If so, please give some details with a copy of Government order/legislation.

Ans. No, the Government have never.

5.10 Does the law make specific provisions about the persons who may become the members of a cooperative society? If so, please quote the provision.

Ans. Yes, Section 8 lays down that only a person of prescribed occupations shall be member of a cooperative society of certain type.

5.11 Does the law put restriction on the admission of the persons as members of a cooperative society whose interests are likely to conflict with the objects of the society? If so, please quote.

Ans. No, the law does not.

5.12 What is the authority to take decision regarding admission or expulsion of members? Whether it is prescribed under law or bye-laws of a cooperative society? Please specify.

Ans. It is the board of directors of a cooperative, as prescribed in bye-laws, not under the law.

5.13 Is the authority obliged under law and/or under bye-laws to take decision regarding admission of members within a prescribed time limit? In case of its failure to take decision within the prescribed time limit, whether the applicant person shall be deemed to have been admitted as member. Please specify.

Ans. No, it is not obliged.

5.14 Is the order of the authority to take decision regarding admission of member is appealable? If so, please quote specific provision.

Ans. No, it is not under the Cooperative Law. It can be appealable under the Commercial and Civil Code (general law).

5.15 Can government under law issue directive for compulsory admission of certain class of the people as members of certain cooperative society? If so, please mention the provision.

Ans. No, they cannot.

VI. (A) Bye-Laws

6.1 Does the law make it obligatory on every cooperative society to have written bye-laws for regulating its day-to-day functioning? If so, please quote provision.

Ans. Yes, it does by making it one of four criteria for a group of persons to be registered as a cooperative society. (Section 11 para 4)

6.2 Does the law specify the items/contents of the bye-laws? If so, please specify.

Ans. Yes, it does in Section 14, prescribing that the bye-laws of a cooperative society must at least contain the following items:

- (1) name of cooperative;
- (2) type of cooperative;
- (3) objectives of cooperatives;
- (4) address of cooperatives;
- (5) share capital, value, payment and repayment, transfer;
- (6) operation procedures, accounting and finance;
- (7) membership, qualifications, admission and loss of membership;
- (8) general meeting;

(9) board of directors election, term, vacation

(10) manager, appointment, term, duty and responsibility.

6.3 Who is the competent authority to frame and to adopt the bye- laws under law?

Ans. (1) A founding committee is competent authority in the case of a co-operative to be registered. (Sect. 12)

(2) The general meeting of members in the case of amendment of bye-laws.

6.4 Does the law authorize the Government to frame the model by- laws of every type of a cooperative society? If so, please quote the provision.

Ans. It is practically so, but there is not legal provisions on this.

6.5 Is it obligatory on the part of a cooperative society to adopt model bye-laws. If so, please specify the provision.

Ans. It is, in practice for a cooperative to adopt model bye- laws. But there are no provisions as such in the Cooperative Law.

6.6 Is it necessary to get the bye-laws registered for enforcement?

Ans. Yes it is necessary.

6.7 Is the registering authority competent to change/amend/delete any bye-laws without assigning any reason?

Ans. No, it is not. But, in practice, it gives directives to such effects.

6.8 Are parastatal organizations created for the promotion of certain types of cooperatives also competent to change/amend the bye-laws at their discretion and shall the members of those types of cooperative societies be obliged to adopt such bye-laws? If so, please quote provision.

Ans. No, they are not. But, in practice, they more often than not urge the cooperatives to change/amend bye-laws in accordance with their requirement, otherwise they will not give services or be dealing with.

6.9 Do you think that power of Government for compulsory amendment of bye-laws conflicts with cooperative ideology/principles? If so, please give a brief note about your opinion.

Ans. Yes, it does conflict with cooperative ideology/principles for some reasons as follows:

(1) It violates the principle of self-government and self- determination which are salient characteristics of a cooperative society, a democratic and self-help organization of the people.

(2) It runs counter to the development of democratic process and self-

reliance of a cooperative society.

- (3) The cooperative members are deprived of basic freedom of expression and deliberation in modifying their bye-laws, so they cannot regard them as their own bye-laws, but the Government authorities?

(B) Rules

6.10 Does the cooperative law make specific provision for defining rule making power? Please specify.

Ans. No, it does not make specific provision. It comes under the general rule of laws.

6.11 What are the subjects/issues on which Rules can be framed under cooperative law?

Ans. They are as follows :

(1) The Ministerial Regulations issued under Section 5 and 8 of the Cooperative Society Act, B.E. 2511 prescribes the types of cooperative societies to be organized under the Act.

(2) The Ministerial Regulation issued under Section 5 and 31 of the Cooperative Societies Act, B.E. 2511 prescribes the rate of annual subscription cooperative societies have to pay from their annual net income to the Cooperative League of Thailand, and that of annual dividend rate they can distribute to their members.

6.12 Do you think that there are certain subjects as specified in your reply to question No.6.11 could be included in the bye-laws of cooperative societies? If so please specify.

Ans. No, I do not think so, because the two subjects are a framework within which all cooperative societies have to comply with.

6.13 Does the legislation empower the Government or some other authority to exempt societies from any of the provisions of the Act or the Rules?

Ans. No, it does not.

6.14 Are guidelines provided on the basis of which exemptions may be granted? If so, please specify.

Ans. No, they are not.

VII. Cooperative laws and decision making in Cooperatives

7.1 There are following important management organs in a cooperative society :

- (a) General body,
- (b) Board of directors,
- (c) Functional sub-committees created by the Board of Directors, and
- (d) Chief Executive.

Please describe their powers, functions, duties and responsibilities.

Ans. Powers, functions, duties and responsibilities of management organs are as follows ;

- (a) The General body has supreme powers of formulating policies or making decisions affecting the functioning of the cooperative in accordance with laws, regulations and its bye-laws, giving order to fulfil its objectives of promoting its members' interest.
- (b) Board of directions is an agent of the cooperative acting on its behalf in relation with the third party. It formulates policies, plans and programmes of cooperative enterprise in accordance with powers delegated to it by General Body, cooperative laws and other legislation, regulations and bye-laws of the cooperative. It is responsible to this General Body for administration and management of the cooperative.
- (c) Functional sub-committees derive their powers for specific purposes from Board of Directors. They have functions, and duties according to specific assignments given to them by Board of Directors to which they have responsibility.
- (d) Chief Executive is appointed as permanent head of cooperative personnel responsible for administration and day-to-day management of the cooperative. He is accountable to the Board of Directors.

7.2 Does cooperative law make specific provision vesting supreme authority in the general body of members? If so, please specify.

Ans. Yes, it does.

- (1) The amendment of bye-laws (Section 41, 42), the dissolution of a cooperative (Section 70);
- (2) Appropriation of not profit of cooperatives (Section 31);
- (3) Approval of audited annual balance - sheet, (Section 38);
- (4) Acknowledgment of annual report on business operations, (Section 39);

(5) Establishment of cooperative federations (Section 73); and (6) Amalgamation of cooperatives (Section 81);

7.2.1 Are the decisions of the general body required to be submitted to an authority designated under the legislation for approval?

Ans. Yes, the decisions on the following cases are required to get the Registrar's approval before they will be registered.

- (1) Amendment of bye-laws ;
- (2) Establishment of cooperative federation; and
- (3) Amalgamation of cooperative societies.

7.2.2 Are all decisions of the general body subject to approval of the authority designated by the legislation or are their decisions on specified matters subject to approval?

Ans. Only discussions on specific matters are subject to approval of designated authority. (See answer to 7.2.1)

7.2.3. Does the authority designated under the Act have any power to call a general body meeting or to authorize any person to call a meeting of the members?

Ans. Yes, it can be done only in one case, i.e., when members or representatives of members of a cooperative request for an extra-ordinary general meeting, and the board of directors does not call it within 30 days; the Registrar of Cooperatives or a person authorized by him has a power to call such extra ordinary general meeting within a period he thinks fit. (Section 28 para 3).

7.2.4 Does the authority designated under the Act have the power to declare a meeting of the general body invalid and if so on what grounds?

Ans. No, it has no power to declare a meeting of the general body invalid. The case shall be brought to the court of justice.

7.2.5 Is the society required to inform any authority designated under the act about the date and agenda of the meeting of the general body?

Ans. Yes it is required by its bye-laws, not by the Cooperative laws.

7.2.6 Is the authority designated under the legislation entitled to attend the general body meeting without being invited to do so?

Ans. No, he is not entitled to attend the general body meeting without being invited. But he can make an inspection of the cooperative office during its working hours (Section 36).

7.2.7 Are the minutes of the general body required to be sent to any authority designated by the legislation for approval?

Ans. No, they are not required to do so.

- 7.3 How various management organs of a cooperative society are created/constituted under cooperative law? Please specify the procedure.
- Ans. (1) The board of directors of which individual members are elected from among the cooperative members in the general body meeting. (Section 24)
- (2) The manager and/or other cooperative personnel are employed and appointed in accordance with the bye-laws and/or the regulations. (Section 14 para 10)
- 7.4 How are various management organs of a cooperative society linked with each other in the decision making process? Please specify the provision under the, rules and bye-laws.
- Ans. The general body meeting, the board of directors, and the manager and other personnel are linked with each other under the provisions of bye-laws and regulations prescribed by the cooperative.
- 7.5 Do you think that existing law provides adequate provisions to ensure functioning of various management organs in unison without any conflict? If so, mention those provisions.
- Ans. No, I do not think it provides adequate provisions in the existing law.
- 7.6 If you think that existing law does leave scope for conflicts between various management organs of a cooperative society in their proper functioning what are your suggestions for amending cooperative law in this respect?
- Ans. There should be a set of provisions dealing with cooperative administration and the power, functions and responsibilities of cooperative societies, preferably in one chapter of the cooperative law.
- 7.7 What is the procedure for constitution of Board of Directors/Managing Committees according to cooperative Societies Act and rules? Whether the procedure is also reflected in the bye-laws of the cooperative society? If so, please mention specific provision.
- Ans. Members of Board of directors have to be elected from among members of a cooperative in the general body meeting, (Section 24). Yes the procedure is also reflected with more details in the bye-laws of the cooperative society.
- 7.8 Who is the competent authority to conduct elections in cooperatives under Cooperative Law? Please mention specifically.
- Ans. The existing Board of directors is the competent authority to conduct elections with, in certain cooperative societies, the help of ad hoc committees responsible for elections.

7.8.1 Is there any provision for creation of cooperative election authority in the cooperative law? If so, please mention specifically.

Ans. No, there is no such provision.

7.8.2 Who is the competent authority to settle the election disputes under cooperative law? Please specify.

Ans. There is no specific provision concerning with the settlement of election disputes. But the Registrar of Cooperative societies is empowered to cancel the election procedure or results if they are against or in conflict with the law on bye- laws of the cooperative society. (Section 46)

7.9 Does law define specific qualifications for a person to be elected/ appointed as office bearers or members of Board of Directors? Please quote.

Ans. No, it does not define specific qualifications.

7.9.1 Does the law provide for representation of employees on the Board of directors of a cooperative society? If so please mention what is the percentage of representative of employees and the total number of Board of Directors.

Ans. No, it does not provide for representation of employees on the Board of Directors.

7.9.2 Does the law confer right on an employee representative to get elected as an office bearer/director in the federal organizations? If so, what is the proportion of such person on national level boards.

Ans. The law does not confer such right.

7.10 What is the legal status of the Chief Executive/Managing Director in the board of directors/management committees in the cooperative laws? Is he a member of the board with right of voting?

Ans. No, he is not a member of the Board, but merely the head of cooperative employees or personnel.

7.11 Does the Law provide for full time/part time paid elected Chairman or President of cooperatives?

Ans. No, it does not.

7.12 Does the Law provide two officers viz.

(i) Chairman, and

(ii) President? If so what are the respective powers and responsibilities of each?

(Chairman to chair the meetings of the general body, board of direc-

tors and others. President to be full time paid officer of the society as in the USA).

Ans. No, it does not provide two officers.

7.13 What responsibilities and powers does the law confer on national/regional bodies of cooperatives.

Ans. The law does not confer specific responsibilities and powers on the national or regional bodies of cooperative, except for the cooperative League of Thailand on which Section 106 of the Cooperative Societies Act, B.E. 2511 confers responsibilities and powers to promote cooperative societies of all types through its education and training programmes and other supportive activities which are not of profit-seeking motive.

7.14 Does the Law provide for punishment to individual elected/appointed directors and paid employees in case of committing delinquency?

Ans. Yes, it does in three cases :

- (1) When any of them fails to appear for inquiry or to send a document for consideration concerning the registration of a cooperative or federation (Section 116)
- (2) When any of them fails to appear for inquiry or to send a document concerning the operation or minutes of meeting of a cooperative or federation (Section 117).
- (3) When any of them obstruct or does not facilitate or assist the Registrar, etc, (Section 118).

7.15 Does the Law lay down any code of conduct for the office bearers or directors of the board? If so, please quote.

Ans. No, it does not.

7.16 Does the Law provide for accountability of individual paid offices, directors of the board and office-bearers of cooperatives/ If so, how and to which extent?

Ans. Yes, it does in two cases:

- (1) When the Board of Directors has caused undue performance of its duties to the extent that it becomes detrimental to the interest of the cooperative or its members; the Board or any of its members who has been involved therein, shall be dismissed (Section 47).
- (2) When a cooperative is dissolved, the Board and officials of the cooperative shall have the duty to take care of all properties of the cooperative, and shall deliver them to the liquidator, including account books, documents and others related, to the liquidator (Section 91).

- 7.17 Does law make following provisions empowering the Government:
- i) to effect compulsory amendment of bye-laws.
 - ii) to effect compulsory amalgamation and division of cooperative society.
 - iii) to rescind/annul the resolutions/decisions of the Board of Directors and annual general body of a cooperative society.
 - iv) to supersede the elected management of a cooperative society.
 - v) to issue directive to a cooperative society.
 - vi) to restrict the term of office of office bearers.
 - vii) to restrict the number of cooperative societies in which a person can hold office.

Ans. Yes, it does only in iii, iv and v.

- 7.17.1 Do you think that above provisions ensure efficient decision making process in a cooperative society? Please give a critical note.

Ans. Yes, I think they can ensure efficient decision making process, if they are used with prudence and good faith on the part of a Government authority. Particularly in iii, the Registrar can rescind the resolutions of the general body of a cooperative if they are in violation of the law or bye-laws of the cooperative. (Section n 46).

In iv, the Board or any number of the Board shall be superseded by the Registrar if its or his undue performance has caused a damage to the cooperative's or its members' interest (Section 47)

As regards (v), the case of Section 47, the Registrar of Cooperatives, auditor or inspectors of cooperatives, as the case may be, who have knowledge of or found the defects, shall issue directives to the Board to ratify the damage or defects in accordance with the method prescribed by the Registrar of Cooperatives within 30 days. If the rectification has not been made within the prescribed period, the Registrar may again issue a directive to the effect that :

- (1) the Board or any member of the Board shall be dismissed,
 - (2) certain acts that caused the damage or defects shall be suspended,
 - (3) the cooperative has to stop operation for a time being in order to
- All this measure serves will discouraging the Board, Board members and officials of cooperatives to make decisions which would cause damage or defects to the cooperatives or their members.

- 7.18 What is the competent authority under Law to lay down the policies, norms and regulations regarding personnel management in cooperative society?

Ans. It is the Board of Directors which is empowered by bye-laws of the cooperative. The general body meeting of the cooperative, is of course,

the ultimate, competent authority regarding personnel management, since it possesses the power of making amendment of or instituting new bye-laws with the approval of the Registrar of Cooperatives.

7.19 Does law specify/demarcate the powers and responsibilities of the Board of Directors and Chief Executive? If yes, please specify the provision.

Ans. No, it does not specify the powers and responsibilities of the Board of Directors and Chief Executive of the cooperative in general; but it does in the case of the Cooperative League of Thailand, which is regarded as the Apex on National Cooperative Organization. Section 109 specifies the powers and responsibilities of the Board of Directors of CLT, whereas Section 112 deals with those of the chief Executive of CLT.

7.19.1 What is your view as to whether the provision indicated under 7.19 should find place in the bye-laws of a cooperative society instead of law?

Ans. My opinion is to have general principles laid down in the law and the details in the bye-laws.

7.20 What is the functional/administrative relationship between the elected chairman and Chief Executive of a cooperative society under :

- i) law,
- ii) rules,
- iii) bye-laws.

Ans. There is no provision governing functional/administrative relationship between the elected Chairman and Chief Executive in the cooperative law or rules. But most cooperatives have bye-laws prescribing such relationship in board terms, such as:

- (1) Power to approve procurement of goods or services, or construction of building valued at certain amount of money belongs to the elected Chairman, while chief Executive carries out the procurement.
- (2) Chief Executive is accountable to the Board for the day-to-day administration of the cooperative.
- (3) Appointment or dismissal of certain high-ranking personnel has to be first approved by the Board.

7.20.1 Please give your view on the following :

- (a) Should Chief Executive directly report to the Board?
- (b) Should Chief Executive report to Chairman who should be responsible to the Board?

- Ans.** I prefer the practice that Chief Executive reports to the Board since he is responsible to the Board which includes chairman and other members. So personnel element can be avoided in functional relationship between Chairman and Chief Executive.
- 7.21** Who is the competent authority to recruit and terminate the Chief Executive?
- Ans.** The Board of Directors is the competent authority.
- 7.21.1** Does law prescribe for creating a specific Selection Committee/panel authority for recruitment and selection of Chief Executive? If so, what is the constitution of such authority and what are its powers and responsibilities.
- Ans.** No, it does not.
- 7.21.2** Does law provide that final selection of the Chief Executive shall vest in the hands of the selection committee/panel authority created under law?
- Ans.** No it does not.
- 7.22** Who decides for preparation of Agenda Items for the Board or other function committee?
- Ans.** The Chairman and/or the Secretary prepare items for the Board or other committees, in some cases, with consultation with Chief Executive.
- 7.22.1** Does law/bye-law makes it obligatory on the part of the Chief Executive to take decision about Agenda Item even without the approval of the Chairman? If so, please specify the provision.
- Ans.** No, neither law/bye-laws does it.
- 7.22.2** Is Chief Executive empowered to convene the meetings of the General Body, Board of Directors and other functional Committees without obtaining approval of the President? If so, please specify the provision.
- Ans.** No, he is not empowered.
- 7.22.3** Is Chief Executive empowered for recruitment and selection of subordinate officers and other functionaries? If so, please specify the provisions.
- Ans.** Yes, he is empowered for recruitment and selection of subordinate officers and other functionaries, but with, for high- ranking ones, approval of the Board or Chairman. This is prescribed in bye-laws of most cooperatives.
- 7.22.4** If Chief Executive is not empowered to recruit and select his subordinate officers and other staff members, would it be appropriate to vest

such powers in him? Please give your views along with reasons.

Ans. Yes, it is appropriate for reasons that Chief Executive is the head of ordinary staff members of a cooperative, and is responsible for the day-to-day operation of the cooperative, including personnel management.

7.22.5 Should Chief Executive be empowered to take disciplinary action against subordinate officers and staff members? Please give your views.

Ans. Yes, he should be empowered, since he is superior of all subordinate and staff members.

VIII. Cooperative Law and Self-Reliance

8.1 There are three aspects of self-reliance in cooperative :

- (a) self-reliance in terms of self-regulation,
- (b) self-reliance in terms of resources, and
- (c) self-reliance in terms of leadership. Does cooperative law make provision to motivate cooperatives to develop self-reliance. If so, please specify the provisions.

Ans. Yes, it makes provisions to motivate cooperatives to develop self-reliance as follows :

- (a) Section 12, 14 and 16 provide for the making of bye-laws of cooperatives
- (b) Section 31 provides for accumulation of reserves of cooperatives; and
- (c) Section 24 provides for election and formation of board of directors.

8.2 If cooperative law, rules and bye-laws do not make any provision in regard to self-reliance, what are your views on this subject? Please give detailed note.

Ans. There are only limited provisions or narrow scopes of provisions of law and bye-laws to motivate cooperatives to develop self-reliance of all three aspects.

The cooperative law should be modified or amended for the purpose.

8.3 Does cooperative law and rules make provision for appropriation of net profits? If so, please specify.

Ans. Yes, it does in Section 31 providing that net profits of cooperative shall be set aside as statutory reserve at a rate not less than 10%, and that 5% of net profit, but not more than the amount prescribed in the Ministerial Regulation, shall be contributed to the Cooperative League of

Thailand. The rest of net profit may be appropriated by the General Meeting as

- (1) divided on share capital,
- (2) patronage refund,
- (3) bonus to Board members and officers, and
- (4) accumulated funds for any purpose of the cooperative.

8.4 What types of funds a cooperative society can create under cooperative law, rules and bye-laws? Please specify.

Ans. A cooperative can create funds as follows:

- (1) Statutory reserve and other reserves,
- (2) Education fund,
- (3) Common-good fund,
- (4) Family-or community-welfare fund,
- (5) Special purpose fund.

8.4.1 Who is the competent authority to take decision about the creation of the funds?

Ans. The General Body meeting is the competent authority.

8.4.2 Whether the competent authority has been defined in the law and rules or bye-laws? Please specify.

Ans. No, it has not been defined.

8.4.3 Who is the competent authority to take decision regarding investment of funds?

Ans. The Board of Directors is the competent authority.

8.4.4 Does cooperative law define various institutions and modes in which funds of a cooperative society can be invested? If so, please specify.

Ans. Yes, it does in Section 33. A cooperative's fund can be invested in the following institutions :

- (1) as deposits in the bank whose object is to give financial assistance to the cooperatives, or in the Government saving Banks or a Cooperative Federation
- (2) as deposit in any other cooperative or any bank, with the approval of the Registrar of Cooperatives, and
- (3) as investments in Government securities.

8.4.5 Does cooperative law prescribe any restrictions regarding investment of funds? If so, please specify.

Ans. Yes, Section 33 para 2 makes it a condition that a cooperative can deposit its fund in any other cooperative or any bank only where there

is no bank, whose object is to give financial assistance to cooperatives in the locality.

8.4.6 Does cooperative law prescribe to make any provision restriction the cooperative society for obtaining loans/borrowings for mobilizing its resources?

Ans. No, it does not.

8.5 Does cooperative law make any provision to obtain permission of Registrar of Cooperative Societies/Government regarding investment of its fund?

Ans. Yes, it does in Section 33 para 2 when a cooperative wants to deposit its funds in any other cooperative or any bank.

8.6 Can cooperative society give donations to any non-cooperative organization? If so, what is the maximum limit?

Ans. Yes, it can without any limitation.

8.7 Does Law/bye-law specifically provide for members obligations to build up the resources of their society? If so, please specify.

Ans. Yes, the bye-law agricultural cooperatives provide for their members to increase their share holding at the rate of 5% of the loans granted to them every time.

8.8 Does law make provision empowering the Government to issue directions for building up the resources of cooperative society? If so, please specify.

Ans. No, it does not.

8.9 Does cooperative society enjoy total authority to deploy its surplus resources for its own development? If so, please specify the provision.

Ans. There is no provision of the law in regards to that respect.

8.10 What is the maximum limit of payment of dividend to the share holders in a cooperative society?

Ans. The maximum limit of dividend to be paid to shareholders is 13 per cent, per annum. (section 31 para 1).

8.11 Can cooperative society undertake transactions with non-members for building up its resources? If so, what are the prescribed norms under cooperative law/bye-laws?

Ans. Yes, a consumers, cooperative or agricultural cooperative can undertake transactions with non-members. But in the case of agricultural cooperatives whose object is to collect and sell agricultural produce for its members, the cooperatives can buy agricultural produce from

non-members after they have bought or collected such agricultural produce from their members. (Section 34)

IX. Cooperative Law and Government

9.1 Do you think that provisions in cooperative law enable the Government in playing its positive role for cooperative development in accordance with the principles of cooperation? Please give an analytical note.

Ans. I do not think that provisions in cooperative law, as it exists now, can enable the Government to play its positive role for cooperative development in accordance with the principles of cooperation for reasons as follows:

(1) There are not adequately essential provisions governing the role of Government to develop cooperatives in accordance with the principles of cooperation;

(2) There are many loopholes in the existing cooperative law and some provisions are outdated. It needs an overhaul. A new law should, at least, contain provisions on the principles of cooperation and functions of Government department concerned with cooperative development.

9.2 Does cooperative law make specific provision about government support to cooperatives? If so, please specify.

Ans. Yes, it does as follows:

(1) Exemption of fees on the acquisition, disposal or defence of ownership of immovable properties or real right which involves a cooperative. (Section 9)

(2) Government subsidy given to cooperatives and cooperative League of Thailand (Section 23 and 107 para 2).

(3) Public prosecutor acting as attorney in the case the Registrar brings law suit on behalf of a cooperative (Section 43).

(4) Audit services given to cooperatives without fees. (Section 44)

(5) Property left over from liquidation of cooperatives be given to other cooperatives or the Cooperative League of Thailand. (Section 99)

9.3 What types of government assistance to cooperative institutions is visualized in cooperative law? Please specify.

Ans. Government financial assistance is visualized as indicated in 9.2.

9.4 Does cooperative law provide for representation of the government on the board of management of cooperative societies in relation to its

assistance to cooperatives? If so, please specify.

Ans. Yes, it provides for representation of the government on the board of management of the Cooperative League of Thailand only, (Section 108), but not on the boards of other cooperatives.

9.5 Does Government enjoy power to issue directive for implementing certain development policies through cooperatives even if they are not accepted by the members of cooperative society? If so, please identify the situations in which such directions by the Government can be issued.

Ans. No, the Government does not enjoy such power explicitly, but in practice it can influence cooperatives to accept certain policies through directives of the Registrar for cooperatives, such as involuntary adoption of model bye-laws.

9.5.1 Does the Government or any of its authorities have power under law to suspend a decision/resolution passed by a cooperative society? If so, under what circumstances.

Ans. Yes, only the Registrar of Cooperatives has the power to revoke a decision/resolution passed by a general meeting of cooperatives in violation of law or bye-laws of the cooperatives. (Section 46).

29.5.2 Does the Government have power to wind up a cooperative society by its own decision?

Ans. Yes, only the Registrar of Cooperatives has the power to wind up a cooperative when it appears that :

- (1) more than one-half of its total members notify the Registrar to dissolve the cooperative, or
- (2) it has not commenced operation within one year, or has ceased its operation for a continuous period of two years, or
- (3) it is unable to operate successfully, or its operation will be prejudice to itself or common interest. (Section 51)

9.5.3 Does the Government have powers to supersede the management of a society. If so, please give details.

Ans. Yes, the Government has powers to supersede the management of a cooperative in the case where the board of directors has caused undue performance of its duty to the extent that it becomes prejudicial to the interest of the cooperative or its members, or a cooperative has any mistake concerning its finance or accounting, and the Registrar of Cooperatives has ordered the board to rectify the mistake in accordance with the methods prescribed by the Registrar within 30 days from the date of receipt of order. And if the rectification has not been

made within the prescribed period without justification, and the Registrar is of the opinion that it is not yet appropriate to order the dissolution of the cooperative under Section 51, the Registrar shall have the power to dismiss the entire board of directors or any member who is involved therein. And the registrar shall appoint an interim Board or a Board member, as the case may be, to replace the Board or a Board member for a period of not exceeding 180 days. (Section 47,48)

- 9.6 What is the positive impact of government aid to the cooperatives?
- Ans. The positive impact of government aid to cooperatives are as follows:
- (1) It helps strengthen the financial or general position of the cooperative
 - (2) Members may, directly or indirectly, benefit from the Govt. aid;
 - (3) It enhances moral of members of the cooperative in certain cases where government aid is made conditions for members' participation in the operation of the cooperatives.
- 9.7 Has the Government aid to cooperatives resulted into erosion of cooperative ideologies/values? If so, please give a detailed note with specific instances.
- Ans. Yes, in certain cases, the government aid to cooperatives has resulted in the awakening of self-help and mutual-help spirit on the part of cooperative members.
- 9.8 Does cooperative law make it obligatory for the government to consult cooperative organizations before introducing any policy for cooperative development?
- Ans. No, it does not make it obligatory.
- 9.9 What should be the actual role of the Government in regard to:
- (a) cooperative development,
 - (b) preservation and protection of cooperative values, and
 - (c) building up professional management of cooperatives? Please give an analytic note.
- Ans. (a) The actual role of Govt. is regard to cooperative Development should be of active assistance given to cooperatives to elevate them to full development in self-government and self-reliance. In this regard, it should provide needy cooperatives with technical and financial assistance on conditions that the recipients make use of such assistance in accordance with cooperative principles and practices. The government's role is to create a favorable climate under which the Cooperative Movement can grow and prosper healthily.

- (b) The role of the government in the preservation and protection of cooperations values is to assist and encourage the Cooperative Movement to carry out more efficiently and effectively its education and training, together with propagation and publicity programmes, so that cooperative members and potential members, and cooperative personnel are deeply imbed with the appreciate cooperative values. It should also encourage cooperatives to develop dedicated cooperative leadership within the movement.
- (c) As regards the role of building up professional management of cooperatives, the Government should help develop cooperative colleges or cooperative training institutions within the Cooperative Movement. It should also encourage and assist cooperatives to develop a cadre of management personnel comparable to the professional management of the private sector. Also, the government should promote a unified commission governing the whole structure of cooperative personnel in all aspect. e.g. recruitment, salary scales, promotion and disciplines.

X. Others

- 10.1 Does cooperative law makes any specific provision for the role of federations of cooperative societies? If so, please specify.
- Ans. Yes, it makes a specific provision for a cooperative federation to issue, if desired, debentures for the benefit of its affiliated members cooperatives. (Section 80 para 2)
- 10.2 Does cooperative law make any specific provision for development of cooperative leadership thorough education and training? If so, please specify.
- Ans. No, there is not specific precision as such in the cooperative law.
- 10.3 Does cooperative law prohibit politicalisation of cooperative institutions? Please specify the provision.
- Ans. No, the cooperative law does not prohibit politicalization of cooperative institutions.
- 10.4 What is the machinery in cooperative law to conduct free and fair election of cooperatives without any external influence? Please specify.
- Ans. The cooperative law does not provide the machinery to conduct free and fair elections of cooperatives. It leaves this matter to be regulated in the bye-laws of the cooperatives. (Section 14 para 9).
- 10.5 Is there any specific provision for enabling the representative/spokes-

man organization of cooperatives e.g. national Cooperative Union/ Provincial Cooperative Unions to play their effective role for the growth of cooperative movement in accordance with principle of cooperation? If so, please specify.

Ans. Yes, there is a specific provision in the cooperative law enabling the Cooperative League of Thailand to play effective roles for the growth of Cooperative Movement, i.e., CLT shall have the power and functions within the scope of its objects specified in Section 104, and such powers and functions shall include :

- (1) promoting and propagating activities of cooperatives, and conducting reasons
- (2) giving technical advice and assistance to cooperatives,
- (3) providing technical education and training on activities of cooperatives
- (4) promoting relationship between cooperatives, relationship with foreign Cooperative leagues or organizations. (Section 106)

The International Cooperative Alliance is one of the oldest non-governmental international organisations. It is a worldwide confederation of cooperative organisations of all types. Founded in London on 18th August 1895, the ICA has affiliates in 77 countries with 195 national and ten international level cooperative organisations as members serving over 648 million individual members at the primary level. The ICA is the only international organisation entirely and exclusively dedicated to the promotion of Cooperation in all parts of the world. The ICA holds Consultative Status of Category-I in the United Nations Economic and Social Council (UN/ECOSOC).

Besides the head office in Geneva, Switzerland, there are four regional offices viz. the Regional Office for Asia and the Pacific in New Delhi, India (established in 1960); the Regional Office for East, Central and Southern Africa at Moshi, Tanzania (established in 1979) and the Regional Office for Central America and the Caribbeans at San Jose, Costa Rica (established in 1989).

The ICA Regional Office for Asia and the Pacific (ICA ROAP) serves 54 national level organisations from 19 countries, representing nearly 440 million individual cooperators. These countries are : Afghanistan, Australia, Bangladesh, China, Fiji, India, Indonesia, Iran, Japan, Democratic Republic of Korea, Republic of Korea, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka, Thailand, USSR and Vietnam.

Main activities of the ROAP include coordination of cooperative development efforts within the region and promotion of exchanges and experiences; project identification, formulation and evaluation; promotion of establishment and development of national cooperative apex organisations; and organisation of seminars and conferences on specific subjects including support for programmes aiming at the involvement of women and youth in cooperative activities.

Finances are derived from member subscriptions, own funds and assistance from donors for various activities carried out by the ICA.

