

# Cooperative Laws in Asia and the Pacific



**G.K. SHARMA**

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**By G.K. Sharma**

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New Delhi, India

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**DEDICATED**

with profound reverence  
to the memory of my father,  
**Late Pundit Ram Kishore Vyas.**

## Preface

My more than four decades of close association with cooperatives from grassroots to national and international levels has convinced me about the important role the cooperative legislation plays in the working and growth of cooperatives. No doubt, a good law alone cannot solve the problems of cooperatives in any developing country; it much depends upon the authorities responsible for its execution. However, a properly drafted and positive law can definitely help in creating a conducive atmosphere and helps considerably the growth of cooperatives in a country.

After completing my assignment for about a decade with the ICA as its Regional Director for Asia and the Pacific in October, 1996, I was keen to have some free time and had planned my own programme which I had postponed for a long time. However, when Mr. W.A. Khan of FAO, RAPA, Bangkok, asked me to undertake a study on cooperative laws in Asia for a meeting of NEDEC in Manila - April, 1996 - and cooperative law and cooperative trade being close to my heart, I could not say no to his offer.

During the study I found a great scarcity of published material on cooperative laws in Asia and the Pacific. A study was undertaken by Mr. V.P. Singh and Mr. B.D. Sharma on behalf of ICA and published in 1991. This study covered six countries, namely; Bangladesh, India, Indonesia, Philippines, Sri Lanka and Thailand. In these countries also, since then many changes have come in their laws. While in countries where there is one law based on old British India model, the framework is quite similar, the contents and size differ considerably, the shortest being Myanmar - 39 articles and Nepal 49,

Australia - NSW having the largest number of 446 articles. Along with others, the size of the law also indicates the stage of development and complexities of cooperative development in a country, though to a certain extent, each type of law has its own merits and demerits.

The credit for publication of this book goes to a great extent to Dr. R.C. Dwivedi, a close friend and author of many books on cooperatives, who persuaded me to write and publish this book. He not only motivated me to work on this book, but also went through the draft and made many useful suggestions. I express my sincere appreciation and gratefulness for all his help and goodwill, as also to Mr. Robby Tulus, my successor as Regional Director, ICA, for his encouragement and support. For typing and correcting of the material many times, I thank Ms. Neela Sharma and Mr. Prem Kumar, for their help, as also to Mr. P. Nair, who gladly offered to do the layout and typesetting and Mr. R.K. Shankar for proof reading of the book.

The first part of the book consists of earlier cooperative attempts and socio-economic situation in Asia at that time. The second part consists of an analysis of cooperative laws in 21 countries in Asia and the Pacific. In this review chapters and articles which are common in co-operative laws in the region and not considered of specific significance have not been included. The third part contains suggestions on important provisions of cooperative laws. I hope this book will be of interest to all those who have interest and are concerned with the cooperative laws, particularly in developing countries.

Delhi,  
July 7, 1997

**G.K. Sharma**

# Foreword

During recent years, there has been a growing awareness of the importance of good cooperative legislation and the negative consequences of poor legislation for the successful operation of co-operatives. This has coincided with a general agreement that the control of the state over cooperatives should be considerably reduced in developing countries if cooperatives are to function as efficient, member-controlled business enterprises.

This collection and analysis of the major pieces of cooperative legislation in Asia and the Pacific is not only a useful reference tool, but also demonstrates the considerable progress which has been made in the legislative environment of the region during the last decade. The author himself deserves considerable credit for this positive development, since it was during his tenure as ICA Regional Director that the Alliance and its members focussed on legislation as a high priority. The regular meetings of Cooperative Ministers and officials, which have been held under ICA auspices since 1989, and the extensive preparatory work involved in these meetings, have undoubtedly contributed to this improvement.

One can hope that, when the time comes for an update to this book in a few years, the new cooperative legislation which is now under active consideration in China, India, and Sri Lanka will also have seen the light of day. Mr. Sharma's task of collection and analysis, begun so well in this volume, is far from over.

Geneva  
July 21, 1997

**Bruce Thordarson**  
Director General-ICA

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# PART I

## HISTORICAL BACKGROUND

### Cooperatives in UK

The Asian Cooperative Movement was greatly influenced by Cooperative Development in Europe. While there were considerable similarities in socio-economic situations between Asia and Europe during the 18th and 19th century; to certain extent agricultural and rural economy in many parts of Asia was better than many countries of Europe. The cooperative movement in Europe was an attempt to fight poverty and exploitation, by the working classes, farmers, artisans etc. supported by many social thinkers and reformers particularly due to the deteriorating socio-economic conditions of workers as a result of industrial revolution.

Economically, the condition of workers under the factory system, a product of industrial revolution and old domestic system was not much different. Under domestic system as cottage industries they worked at their homes but still depended for raw material and sale of products on others. "Although under the domestic system the workers were poor, oppressed, insecure and obliged to labour long and hard for a pittance, they had a measure of freedom to decide their

hour and pace of work". The loss of this freedom, long working hours and unsympathetic attitude of masters created a lot of resentment in the working class particularly around Manchester, the industrial belt.

The factory system made the workers, labourers in the factories, where human beings were treated as machines and exploited with no human touch. This over exploitation created a serious concern in the workers to improve their economic and working conditions. They increasingly realised the need to unite in the form of unions or to find other methods to improve their living conditions. It was the result of this thinking that as early as year 1760 workers organised their own two corn mills in Chatham and Woolwick. This was the time when government discouraged the workers to unite. The Combination Act of 1824 allowed workers to combine together only to improve wages and for nothing else. In 1834 a group of farmers in Dorset organised a union and were tried for administering illegal oaths. They had adopted their oath directly from the one based in Rochdale Weavers to organise their union. The farm workers were found guilty and transported to Australia and became known as "Talpuddle Martyrs". Their case and the severe sentences served on them dampened the spirit of farmers and workers to organise themselves openly for many years. It was only in 1868 that trade union congress dared to have their first national meeting in Manchester.

### **Robert Owen and Coops**

However, in spite of repressive laws, some of the workers continued their efforts to organise themselves.

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\* *P.7 Weavers of Dreams - O.J. Thompson*

John Fildon, a mill owner and an MP, wrote in November 1833 "I am persuaded to believe that we are in the era of important changes, the working people who will not long submit to the chains with which they are enthralled. Cooperative societies, trade unions etc., exist in almost every manufacturing town and village". One person who did pioneering work to promote the cooperative idea was Robert Owen (1771-1858). Robert Owen was an outstanding person during his time in 18th century as a writer, speaker, philanthropist, educator, social reformer, trade unionist and a factory reformer. Many people believed and call him the founder of the Cooperative Movement. He was married to the daughter of a mill owner where he introduced many reforms. This mill near Lanark became not only the largest cotton spinning mill in Europe during his time but also a model for workers reforms with high profitability and became so popular that about 20,000 visitors visited the factory every year during 1814-1824. Even today, it is a tourist attraction in Scotland with thousands visiting every year.

It is said that it was Robert Owen who first coined the word "cooperative society" in 1821 in his magazine 'Economist' where he talked of "Each for one and one for all". However, Owen was an utopian who preached and applied the concept of community where every one's need would be taken care of. These communities were also at times called utopian colonies. After introducing this concept in Europe, Owen visited America and tried to promote such communities in Texas and in Mexico, due to favourable quasi-judicial

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\* P.9, *Weavers of Dreams* - O.J. Thompson

\*\* P.11, *Weavers of Dreams* - O.J. Thompson

system there. Even Karl Marx was impressed by Owen's ideas. After hearing Robert Owen in a public meeting to celebrate his 80th birthday in 1851 in London he wrote to Engels, the author of the "Conditions of Working Class in England" (1845) and close associate of Karl Marx "in spite of fixed ideas the old man was ironical and lovable".

Another important contributor to cooperatives at the same time (1786-1865) was Dr. William King. However, they differed in some aspects. Owen did not believe in family and religion. He opposed and condemned all organised religions. King openly and firmly based his cooperatives as christian doctrine. He believed that ethics and spirit of Gospels were the spirit and ethics of cooperatives. However, in spite of their differences they both worked and contributed for cooperatives and by the end of 1830 there were reported to be around 300 cooperatives.

These early cooperatives did not last long and failed for a variety of reasons. Even in Rochdale, the first Rochdale cooperative established in 1830 did not long even for a decade. Though the earlier attempt on cooperatives failed the cooperators did not lose their faith and spirit. They analyzed the reasons of failure and attempts were made for a stronger movement starting from Rochdale Society of Equitable Pioneers in 1844 which became a model of successful cooperatives not only in UK but for many countries in Europe and then the whole world.

### **Cooperatives in Europe**

While the UK movement was largely the product of industrial workers, similar attempts were made in

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\* P.18 *Weavers of Dreams* - O.J. Thompson

other parts of Europe. In France, Francis Buchez promoted cooperative associations for cabinet-makers and goldsmiths between 1832 and 1834. During the same period Hermann Schulze and Friedrich Wilhelm Raiffeisen (1818-1888) promoted credit cooperatives in Germany. Although Raiffeisen adopted Schulze-Delitzsch's principles of self-help there were fundamental differences between the two types of these societies. Raiffeisen insisted like Dr. King in UK brotherly love and christian principles for motivating the credit unions, while Schulze was mainly concerned with promoting economic self-sufficiency. Moreover, Schulze concentrated on urban workers and shopkeepers, while Raiffeisen devoted himself to helping farmers. Schulze also believed that membership should come from a large and economically varied area, but Raiffeisen preferred to restrict membership to small district, preferably a parish.

The Raiffeisen Cooperative Societies enjoyed much larger growth than the Schulze. The Rochdale movement of UK and Raiffeisen of Germany particularly influenced the Asian cooperative movement. Cooperatives and cooperative type institutions were organised in many Asia-Pacific countries.

### **Model Cooperative Rules in 1832**

The first attempt for the systematic self-regulation of cooperatives could be found in the model rules or bye-laws adopted by the third cooperative congress held in London from April 23 to 30, 1832. The Rev. Mr. Dunn brought up the report of the committee appointed to draw up the rules and regulations of cooperative societies. It was as follows:

- i. Let it be universally understood that the grand ultimate object of all cooperative societies whether engaged in trading, manufacturing or agricultural pursuits, is community on land.
- ii. To effect this important purpose, a weekly subscription, either in money, goods or labour from a penny to any other amount agreed upon, is indispensably necessary to be continued from year to year, until a capital sufficient to accomplish the object of the society be accumulated.
- iii. The next preliminary step to be pursued as auxiliary to the former will be for the society to purchase at wholesale price, articles of ordinary consumption of the most genuine description, in order to be retailed at the market prices for the purchase of further accumulation. The adoption of these instructions will, of course, be regulated by the circumstances and inclinations of particular societies.
- iv. We would observe that the immediate benefit derivable from these societies in their successful approximation of community, are the mutual employment of members, the establishment of schools for education of children, and of libraries and reading rooms for adults.
- v. In order to ensure without any possibility of failure the successful consummation of these desirable objects, it is the unanimous decision of the delegates here assembled, that the capital accumulated by such associations should be rendered indivisible, and any trading societies formed for the accumulation of profits, with a view to making a dividend thereof at some future period, cannot be

recognised by this congress as identified with the cooperative world, nor adopted into that great social family which is now rapidly advancing to a state of independent and equalised community.

- vi. It is deemed more especially essential in all the trading transactions of cooperative societies that credit shall be neither taken nor given as deviation from this important principle has been the sole cause of the destruction of so many previous societies, and this banefully operated to retard the general progress of cooperation. In order to carry this important measure into successful operation, the congress recommend that in case of want of employment among the members, means should be taken by the society, if possible, to provide them some employment as local circumstances may admit. In cases of sickness, should there be no other sources of relief, pecuniary assistance may be given from the funds belonging to the society, or from individual subscription amongst the members.
- vii. The congress is of the opinion that it is extremely inimical to the principles of cooperation and productive of the most serious consequences, to permit an individual who is already a member of one society to become a member of another. This report was unanimously adopted.

It could be seen that these model rules were greatly influenced by Owen's vision of "Community on Land" when Rule 1 states "Let it be universally understood that the grand ultimate object of all cooperative societies whether engaged in trading, manufacturing or agricultural pursuits is community on land".

The other important features of these rules were:



- i. Every member had to give weekly subscription in money, labour or goods till the society collected the required capital. This was an important rule (Rule 2) which in course of time many cooperatives lost sight and just buying one or two shares was considered the only obligation of members to avail of the same benefits as of others who might have subscribed much larger capital to the society. This rule finds place in the new rules adopted by the Manchester Congress in 1995 in the 3rd Principle "members economic participation".
- ii. The model rules provided that a cooperative should not make profits for the sake of giving dividends and the capital accumulated should be indivisible. (Rule 5)
- iii. Rule 6 debars taking or giving anything on credit. This rule was relevant more at that time than today as the banking and lending facilities were not developed at that time and was deleted from cooperative principles by the ICA later on.
- iv. These rules were for all types of cooperatives and under its objectives along with providing employments, taking care of member needs in difficult times was also encouraged.

### **Rochdale Rules 1844**

The model rules were based more on ideals than practical experience. These rules were modified and expanded based on the experience of the past and analysis of causes of the failures of cooperatives, in the laws and objects of the Rochdale Society of Equitable Pioneers in 1844. These Rules contained 34 articles against 7 in the model rules and were based more with practical needs than on future dreams. (Appendix-A).

The important feature of this law and objects were: The objective of "Community on Land" was replaced by "the objects and plans of this society are to form arrangements for the pecuniary benefits, and the improvement of the social and domestic conditions of the members by raising a sufficient amount of capital..." The law also deals with various activities and facilities which the cooperative would undertake to achieve its objective which included, trading, manufacturing, running a store, buy and rent land and even open a temperance hotel to encourage prohibition.

The law provided for governance body which included President, Treasurer, Secretary, three trustees and five directors and they had to meet every Tuesday at eight in the evening in the committee room. The general meeting was to be held on the first Monday of the month of January, March, July and October again at 8 O'Clock to consider quarterly financial reports, position of funds and stocks held. The law also provided that AGM would be held on "First Market Tuesday" on which occasion a dinner shall be provided at a charge of one shilling each person, and one week's notice. The board based on quarterly result, paid 3 1/2 % interest on shares which was later on raised to 5% as also, the remaining profit to be paid to each member as patronage rebate.

The importance of this law lies in the clarity and demarcation of responsibility and accountability of office-bearers, employees, and members as also transparency in operations. It is a combination of objectives, governance and a code of conduct for all concerned. These regulations were self-made, self-imposed and were not enforced by government or any

external agency. Even today if these strict rules are adopted and followed by any cooperative its chances of success would be much higher.

### **Early Cooperative Laws**

The first separate law for cooperatives in Europe was in UK called "The Provident and Industrial Societies Act" and in Austria, "Law on Cooperative Credit Societies" in 1852. The U.K. law was enacted due to various constraints in the Friendly Societies Act, 1793 under which cooperatives were registered in UK. The cooperatives, their leaders and Christian Socials were actively involved in the framing of this law. The next country to have cooperative law was Prussia/Germany. (1867).

When the first cooperatives were formed in Germany in the middle of the 19th century there was no appropriate legal framework for such type of organisations. In order to be registered and to obtain the status of a body corporate, they had to seek the approval of government, which could be withdrawn at any time. The initiative to create a special law for cooperatives was basically taken by Hermann Schulze-Delitzsch. A draft cooperative society bill elaborated by Schulze-Delitzsch and approved in 1860 at the annual general meeting of the Federation of Credit and Savings Societies at Gotha served as a basis for the Prussian Act governing the legal conditions of cooperatives under private law promulgated in 1867. The application of this Cooperative Societies Act was extended to other German states in 1868 and in 1871 the Cooperative Societies Act in force became the law for entire German Reich. The German Cooperative Societies Act is one of the oldest enactments of cooperative legislation in the

world. Despite far reaching changes that have occurred in the social, economic and political situation in Germany during the past one hundred years, the essential provisions of this Act have remained in force without major amendments.\*

Along with UK and Germany, the third important country which had influence on Asian Laws was Netherlands. In Netherlands a special law for cooperative was enacted in November 1876 which later on provided framework for first Indonesian Cooperative Law in 1915. However, not all cooperatives got themselves registered under this law and many of them continued under the old Act of Companies and Societies (1855) in Netherlands.

Presently cooperatives in Europe are governed by four types of laws:

- i. Specific laws enacted for cooperatives;
- ii. Commercial laws with specific cooperative provisions
- iii. Commercial laws and
- iv. Bye-laws alone

Margaret Digby in her "Digest of Cooperative Law" has distinguished cooperative laws into six different kinds:

- i. BRITISH (industrial and provident type): This form applies to Industrial Consumers' Societies.
- ii. GERMANY and AUSTRIA (Central European type): Here the legislation has been designed to meet the needs partially of consumers and of credit societies.

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\* *Cooperative Law in Federal Republic of Germany, H. Munkner*

- iii. FRANCE (Latin Type: The cooperatives are primarily placed under the commercial code. But the law is supplemented by decrees applying to special branches of cooperation.
- iv. DENMARK and SCANDINAVIAN COUNTRIES: Total absence of cooperative law as in Denmark and its presence in a primitive stage in other Scandinavian countries is a peculiar feature of the flourishing movement in these countries.
- v. USA: Here the typical form is based on large scale agricultural marketing organisations, single cultivation and compulsory marketing contract, and ultimately introducing compulsory cooperative marketing.
- vi. Here the combination of various types of legislation is prevalent e.g. in Japan, Latin and Central European countries, these characteristics are combined.

A. The countries which had enacted specific cooperative laws in the last century were:

- 1. United Kingdom Industrial and Provident Societies Act, 1852
- 2. Austria Law on Cooperative Credit Societies, 1852 Law on Productive and Economic Cooperative Societies, 1873
- 3. Netherlands Act on Cooperative Societies, 1876 Act on Societies and Companies, 1855
- 4. Prussia/Germany 1867/1871/1889
- 5. Ireland 1893
- 6. Switzerland Act of Legalised Cooperative Societies, 1881.

- |               |   |
|---------------|---|
| 7. Sweden     | Registration of Economic Societies, 1895  |
| 8. Luxembourg | Law for Associations for Mutual Benefit, 1891 Law on Agricultural Associations, 1900. |

B. Commercial Laws applicable to cooperatives were:

- |                |  |
|----------------|--|
| 1. Belgium     | Code of Commerce 1873 (Law distinguishes seven types of commercial Societies', cooperatives being one of them) |
| 2. Switzerland | Code of obligations 1881   |
| 3. Italy       | General Commercial Code 1823   |
| 4. Netherlands | Act of companies and societies 1855  |
| 5. Portugal    | Law of commercial societies 1867 and code of societies 1888  |
| 6. France      | Law of Societies 1867, Code of Commerce 1807 and Civil Code of 1804  |
| 7. Turkey      | Law of Commerce 1926   |
| 8. Norway      | Commercial law 1935  |

C. No Cooperative Law - Denmark

### **Asian Situation**

Cooperative Movement in Europe was the product of Industrial revolution to a large extent. In Asia, it could be linked to a great extent to affect of land revenue system enforced by colonial powers as a source of revenue without any consideration to the paying capacity of farmers, resulting in the large scale landless labour and rural indebtedness. Introduction of cash crops for export at the cost of food grains needed for

local consumption further added to the rural misery. The rural poverty also affected the economy of artisans and cottage industry. These developments took up mostly in the second half of the 19th century particularly with the development of steam engine and faster transport system. The rural indebtedness, a product of colonial land revenue policy and tax collection also created large scale resentment within the masses against the governments. The Government seeing this growing unrest in rural areas, the British in India, the Dutch in Indonesia and the Japanese in Korea introduced rural cooperatives half heartedly as they were also concerned that democratic content of cooperative might encourage national independence movements. However, people had their own reservations about these Government initiatives. Thus in Asia, even though many early initiatives came the cooperatives picked up only in the second half of the present century when they got their freedom, the exception being Japan and Australia.

As mentioned earlier there were many reasons for this slow growth of cooperatives in Asia when cooperatives were fast expanding in Europe. First of all the economy of Asia was not affected by the industrial revolution as in Europe except Japan creating large scale unemployment, under employment and hard condition for farmers and rural workers. In fact in most part of Asia the socio-economic conditions of farmers and artisans was better than in Europe till the middle of the 19th century.

For example, India and China were the largest countries having great influence not only on each other but also on most Asian countries for centuries. There economic prosperity attracted people from many parts

of the world. Christianity came to South India as early as second century and so was Islam. People at that time did not come to India necessarily to rule but to trade or learn or preach and at times to take shelter in distress. Even Jesus Christ is reported to have spent many years in North India (Himalayas) and Tibet to study the Hinduism and Buddhism'. Within Asia there was constant flow of traders and Hindu, Buddhist and later on Muslim missionaries. The economic situation in India which included present Bangladesh, Pakistan and Burma also as late as middle of 19th century was not only at a comparable stage to other countries in Europe but in fact was better placed for modern growth in agriculture as also in manufacturing.

### **Early Indian Economy**

India was predominantly an agricultural country. According to 1871 census, 56.2% of adult male population was engaged in agriculture. In addition another 12.3% population was classified as general labour which basically constituted agriculture labours. Indian agriculture had attained a high degree of development and was flourishing. Dr. Voeleker in his Report on the improvement of Indian Agriculture (1889) mentioned that Indians grew wheat centuries before the English and so was cotton and many other major crops. The industrious peasantry was highly skilled from many generations. These included like land husbandry keeping land free of weeds; proper training of sowing and reaping operations, rotating the cultivation of mixed crops, keeping some land fallow for recuperation. Irrigation techniques were equally advanced."

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\* *Jesus Lived in India - Holger Kersten*

\*\* *P.30 Indian Economy: A Historical Perspective: A.N. Agarwal*



In the industrial field also India had attained a high degree of development. There were many industries, some of them of national importance. The variety of crafts and goods produced was large. To mention a few there were for example, spinning, weaving, dyeing, manufacture of gold and silver thread and cloth, building brick-laying and lime manufacture, leather work, pottery, carpentry, copper, tin and iron works, ship building, sugar and salt manufacture, stone-cutting, paper manufacture, perfumery, etc. The country was also reputed for high manufacturing skills. Rich tributes in this regard have been paid by such celebrated historians like Weber, Lecky, Romesh Dutt, Wilson, Ranade and others. Mummies in Egyptian tombs, dating 2000 BC have been found wrapped in Indian muslin of the finest quality. The quality (and cheapness) of Indian textile was such that it threatened the woollen and silk manufacturers of England. To meet it England resorted to political weapon of legislation in 1700 and 1721 to ban the use of Indian printed or dyed calicos ... and goods made of cotton.\*

As far the level of India's industrial development is concerned, it was fairly high. The degree of technical skill of the Indians was unsurpassed in many lines. This is amply obvious from the Report of the Indian Industrial Commission. It says: "At a time when the West Europe, the birthplace of the modern industrial system, was inhabited by uncivilised tribes, India was famous for the wealth of her rulers and for the high artistic skill of craftsmen. And even at much later period, when merchant adventurers from the west made their first appearance in India, the industrial development

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\* P.31, *Indian Economy : A Historical Perspective*, A.N. Agarwal

of this country was at any rate not inferior to that of the more advanced European nations”.

### **Rural Life**

Most of the people, around 90 percent, lived in villages. Their way of living characterised the Indian economy. The Indian economy was almost entirely a rural economy. The villages, however, were mostly self-sufficient units, isolated from outside. All the material needs of the village people were satisfied locally. An important feature of rural life was the fact that the majority of artisans was servants of the village. The artisans possessed lands which were given to them by the village free or at reduced rent. The artisans performed various services for which they were given a share of the produce of land cultivated by other villagers. This non-dependence on outside gave to the village strength to survive and resist any external attack. Another predominant aspect of the village life was the extremely simple division of labour. This made the skill hereditary and at the same time enabled a village to ensure the supply of artisans and their services even during turbulent times. Thus the plight of artisans and workers was much better than in Europe at that time.

### **Stagnation in Indian Economy**

Stagnation of Indian economy started with the British getting involved in Indian affairs particularly from 1857 after the “Sepoy Mutiny” or the “Great Uprising” which was crushed by British led forces and the Indian British Government came into existence. From around 1870 they started formulating policies for the Indian economy.

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\* *Government of India - Report of the Industrial Commission 1916-18*  
(P.31- A.N. Agarwál)

The Government of India, manned at the top by British Nationals and the British Government in London saw their role in making India useful to the British economy. Two clear policy directions emerged from the commitment. First was to encourage in agriculture the growth of cash crops on the best lands, and second since agriculture was the main activity, to obtain funds for Government expenditure through land revenue. Certain international events too influenced the British need for cash crops. The American Civil War in 1864-65 led to the cessation of cotton supply to Britain, and hence Lancashire was in urgent need of cotton. India provided the alternative source.

But by far more important reason for the decline in grain yields was the colonial government's policy on land revenue. The amounts of collection as well as the machinery for realisation were such that it not only impoverished the self-sufficient village communities, but disrupted the interdependence of groups within the village. As Chaudhari states: "It was the revenue measure of the government that proved the greatest depressor in the rural economy. Even the pervasive disaster (famines) did not make the government relent in the matter of revenue collection." In collecting land revenue, the Government had, of necessity, to assign responsibility for its payment and settlement on some persons. The choice the colonial government made had a profound unsettling effect on the power structure within Indian society.

Prior to the advent of the British, rent collection was a collective responsibility of the panchayat, which was headed by a Patel who also lived in the same village.

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\* P.14 *Economic Growth in China and India* - Dr. Subramaniam Swamy

This made it necessary to evolve consensus and a willingness on the part of the Panchayat to share the economic setbacks of individual peasants of the village. The colonial land revenue system abolished this collective responsibility of the Panchayat. The new land tax was collected in money without reference to a cadastral survey or productivity paving the way for the rise of the money lender who would extend loans in his individual capacity to the cultivator to enable him to pay the fixed revenue. These assessments were excessive, and hence the indebtedness of the farmer especially in grain cultivation grew in an unprecedented way. The Famine Commission in its report in 1898 expressed the view:

“Although the agricultural classes of India have not at any known period of their history been generally free from debt... individuals and classes may have fallen into deeper embarrassment under the British Rule than was common under the Native dynasties which preceded it.”

The colonial administration also introduced the modern courts of law in urban towns to enforce the payment of loans and taxes. Thus the English system of courts wrested the judicial power of the panchayats. The money-lender rose even more in authority since he had a decided advantage in being able to process his court petitions with greater facility in urban towns against the peasant. Quick auctions of lands were arranged by the authorities, and soon, the money-lenders became non-cultivating owners of land, by first ruining the peasant who had borrowed from him and had been in

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\* *Report of the Famine Commission, Part II, Chapt.III, Sect.IV, Simla 1898.*

debt. In each village of India this basic pattern of change induced by the colonial land revenue system was common: the Patels and the principal cultivators who had formerly guided the affairs of the village were reduced to the status of tenants tilling the fields of the money-lenders and later quite dispossessed. A new class emerged in rural India dominated by the foreclosing creditor. Soon more than two-thirds of the land came under tenants-in-cultivation in India.

## China

The economy of China and India during the 18th and mid 19th century were by and large at the same level. However, in the second half of 19th and first half of 20th century the per capita grain production was faster in China than India.

In 1870 per capita grain production in China and India was about the same. By 1950, Chinese level rose 54 percent above India's not due to a faster per capita increase in China. (In fact per capita output was constant. The decline in grain yield per acre in India was mainly due to the sharp decline in rice and coarse grain yields. Rice crop declined even in total output at the rate of 0.09 percent per year. These declines were in fact accentuated after World War I. This led to the widening of the gap in the Chinese-Indian yield in foodgrain crops.

The central reason why the grain yield per acre declined in India and did not in China was due to the differing attitudes of the governments in the two countries.\* In China, the elite and the Ching were greatly

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\* *Economic Growth in China and India* - Dr. Subramaniam Swamy

sobered by the Taiping Rebellion and chose not to extract revenue through the land tax without regard to the economic position of the peasant. The "paochia" and "lichia" indigenous systems kept good records of the peasant conditions, and through a system of granaries helped the peasant in bad times. In India too the Patels and Patwaris had earlier maintained this socially conscious attitude, but the advent of British rule disrupted this indigenous system of checks and balances.

In China during the period of Ching Dynasty from 1753 to 1906, land tax grew at an average rate of 0.4 per cent per year which was lower than the growth rate of output from agriculture. Philip Kuhn has pointed out that the Ching dynasty, although weak in later periods nevertheless saw to it that the local elites did not come between the Central Government and the collection of land tax.

Further while India was always open to foreigners and never strongly and collectively resisted their activities, China chose to remain close to foreigners and strongly resisted their entry till lost to the Japanese.

## **Indonesia**

The economy of Indonesia was also doing well as was the case in India and China. According to Jan Pietersgoon Coen the Dutch Governor General appointed by United East India Company in 1618 had expressed "The Company would never make money by trading European commodities from Asia as the countries of Asia exceed those of Europe in population consumption of goods and industry." It was in other

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\* P41, *Indonesia* - Leslie Palmer

words, Europe which in relation to Asia was underdeveloped and produced little that Asia wanted. The Dutch adopted the same approach as the British did in India; ensure production of goods needed by them in their country and not for local needs and displaced the peasantry from their lands and centralised the power in the hands loyal to them.

For example the Dutch found coffee as an important commodity for trade to Europe. Coffee was thus first planted around 1700 in Java from South India. In 1710 100 pounds of coffee was delivered to the company. By 1720 the crop amounted 100,000 pounds and by 1731, 12 million pounds. But the Dutch wanted limited supply which could give them high return in Europe. They reduced the area of cultivation, reduced the price and short-paid the producers.\*

In 1810 Lord Minto Governor General of India was asked by the English East India Company to oust Dutch from Java. This was to counter Napoleon's design for the encircling of India though the British did not intend to oust occupied-Dutch Empire permanently. The Dutch lost Java and young Thomas Stamford Raffles a junior officer at Penang was appointed Lieutenant Governor of Java.

Raffles who was the founder of Singapore followed the same policy as the British followed in India on the land revenue. He declared that Government was the sole owner of land. The local inhabitants therefore became Government tenants paying rent for the land they cultivated\*\* (P-417 DGE Hall). Based on this concept, he satisfied his need for money by selling

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\* P.417, *Indonesia - Leslie Palmer*

\*\* *A History of South East Asia - D.G.E. Hall*

cultivated districts to European or Chinese financiers. The peasants therefore went into bondage. Four years later under an agreement concluded in 1814 Java was handed over back to Netherlands in 1816 while Raffles was called back in 1815.

The Dutch continued their policy for producing goods they needed for their trade. In number of districts of Java fields were used for export crops to the extent of resulting famine. The submissive Javanese population was ruthlessly exploited for the benefit of Netherlands. Consequently the economy deteriorated more or less of the same level as Indian economy under the colonial rule by the end of 19th century. The same is true about other parts of Asia occupied by either the Dutch or English or the French and even Japanese.

## **Korea**

Cooperation in the form of Dure, Pumas, Kye and Hyangyack had been a part of traditional Korean Society. However, emergence of capitalism and opening of ports like Pusan, Wonsan and Inchon the petty Korean tradesmen suffered heavy hardships and losses.

The factory system was first introduced in Korea around the end of 19th century. As a result, the traditional Korean manufacture collapsed, and farmers in traditionally agricultural society were deprived of the side jobs year after year. Slowly the Korean industries came to be entirely controlled by the Japanese. This phenomenon applied not only to agriculture but also to mining, fisheries, banking and financial business also.

The position of Korean farmers further deteriorated because of the Japanese initiated national land survey

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\* P.70, *Indonesia*, Leslie Palmer



scheme. The heavy burden of share rent imposed on tenancy and precarious share cropping contracts also played a role in prompting farmers to give up farming and made them.\*

During the First World War period influenced by the American President Woodrow Wilson's statement of principle of self-determination, the Koreans launched an independent movement in March 1919. This was met with brutal Japanese oppression. Koreans tried to resist Japanese rule by non-cooperation by not paying taxes, not to purchase land from Japanese, not to buy Japanese currency and to sell Korean currency to Japanese. This created long dispute between tenant and landlords and rural unrest. To provide some relief to the people, the Japanese Governor General began to establish financial, industrial, and farmers' associations. However, they did not get desired response.

On the other hand, some Koreans also promoted civilian-led cooperatives, including YMCA and Cheondoism (Korean native religion) but the real re-organisation and growth of cooperatives started only after Korea got liberation after the Second World War.

## Japan

Cooperative organisations as Shaso, Ko, Senzokabu association and Hotokusha of farmers, tradespeople, industrialists and low-ranking Samurai were established principally based on policies of the Shogunate government, feudal clans and landlords over about a century between the latter half of the 18th century and first half of the 19th century.

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\* P-63, *Agricultural Cooperatives in Korea-Kun Hwan Yun*

Economically the possession of land forming the foundation of feudal system became questionable. Being in possession of land the Shogunate and the feudal clans collected the land tax in kind (chiefly in rice) from the farmers and imposed labour upon them. However, notwithstanding the imposition of additional taxes and labour, the amount of production did not increase resulting more land tax in rice falling into arrears or unpaid. As the input of producers' goods such as fertilisers came to decrease, it became so frequent that farmers suffered from poor harvest, which depressed their will to produce remarkably. Therefore, farmers gave up their cultivation and left their native villages or rose in rebellion to make a protest.

When the natural economy of self-sufficiency of the farm village began to be destroyed by the imposition of too heavy land taxes and the encroachment of money economy under the waving feudal system local efforts appeared in the form of Tanomoshiko, Shaso, Hotokusha and the like.

In 1873 ( the 6th year of Meiji) the land tax system forming the basis of state taxes was revised, and the rate fixed at 3% of the value of land. Until the previous year the sale of land was prohibited, and land taxes were paid in kind. But this system was changed into the payment in money in that year. The amount of money to pay was converted from the quantity of rich equivalent to that which has so far been paid to the Shogunate or the feudal clan on a basis of the prices of land and rice at the time of inflation going on. So the land tax was very heavy. The land taxes in rice paid to the former Shogunate or feudal clan averaged about 50% of the production. Here came out the landlord system

in the open. The Shogunate, feudal clans and Meiji Government has been in possession of lands. Wealthy farmers who had purchased lands from poor ones in secret, collected farm rents more than land taxes. Therefore, the substantial landlords already came into existence in the latter period of the modern age.

Money economy and commodity production gave rise to cooperative business close of the modern age, on the basis of such as city and farm village. As forerunner of a city cooperative association, cooperative firms were built in Tokyo, Osaka and Kobe as early as in 1877. It was cooperative purchasing activities carried on by the educated class to plan the capitalistic rationalisation of consumers livelihood cooperative association. The cooperative firms had a considerable amount of funds and carried on independent activities; but they were dissolved after several years. Later on, cooperative purchasing organisations having the similar substance and pattern were formed in different cities, but their business did not continue long.

In small and medium local cities financing organisations similar to a cooperative came into existence one after another or they might as well be called cooperative firms similar to a financing organisation.

In farm villages 'Kyoso' and 'Hotokusha' had been resuscitated. Among cooperatives that came into existence in this period, most well known were cooperative financing company, the Shizuoka-Jusan reliance association, a raw silk marketing association and a tea marketing association.

As a result of victory in the Sino-Japanese war in 1894 Japan received repatriate of 300 million yen gold

which strengthened the Japanese economy. This followed with reforms and enactment of new legislations which included a draft law on cooperative. However, the first cooperative law called industrial cooperative law was passed only in 1900 which covered rural credit, marketing and other cooperatives also.

While the economic imperialism of Europe was spread over a period of around 400 years 1500-1900, in Asia, the real impact of this was felt only in the 19th century with the industrial revolution and advent of railways, steamship and other scientific advances. This facilitated the European traders to establish their first interest to use Asia as a ground for their own needs and growth. The attitude of the colonial rulers could be seen from the extract of the Budget speech of Sir John Starehy on March 28, 1877; "We are often told that it is the duty of the Government of India to think of Indian interest alone, and that if the interest of Manchester suffer, it is no affairs for us. For my part, I utterly repudiate such doctrines. I have not ceased to be an Englishman because I have passed the greater part of my life in India, and have become a member of Indian Government. The interests of Manchester at which foolish people sooner are the interest not only of the great and intelligent population engaged directly in the trade in cotton but of millions of English men."

Thus in the 18th and even in 19th century the economy in India, China and most Asian countries was not bad and the class conflict between entrepreneurs and labourers as a result of industrial revolution did not prevail in most Asian countries. With the deterioration of economy during the colonial rule which saturated by the end of the 19th century, while European

economy picked up, the Asian economy went backward and conditions prevailing in Europe in 18th century got created in many Asian countries.

The success stories of Rochdale Pioneers and Raiffeisen Credit movement did create keen interest in many of the Asian countries. There were initial attempts to organise cooperatives by the people and social reformers in many countries in Asia during the second half of the 19th century particularly in Japan, India, Indonesia, and Australia. The first International Congress in 1895 held in London was attended by Australian and Indian participants. The next one to join the ICA from Asia was Japan in 1910. However, the most Asian countries being under colonial rule the people's initiative to promote cooperatives was taken over by government officials and the people lost interest. Thus the growth of cooperatives became slow in most countries with the exception of Australia and Japan and picked up only when these countries got freedom and had their own national governments.

### **Cooperative Laws in Asia**

The first cooperative law was enacted in Japan in the year 1900 followed by India in 1904, Philippines in 1906 and Indonesia in 1915. The framework of these laws were based on cooperative laws in Germany, UK, and Netherlands. However, the cooperative laws in colonial Asian countries were drafted by the foreign bureaucrats and cooperatives or cooperators were not involved as in the case of UK, Germany and other European countries. Thus in the framing of cooperative laws main consideration had been, "what is good considered by the rulers and not by the members or the people". The cooperatives were made to look towards the

Department and not to their members for guidance and working. The post of Registrar was borrowed from the United Kingdom. The Registrar under the Friendly Societies Act and later on under Prudence and Industrial Society Act, was concerned with the registration and dissolution of cooperative societies, and collection of annual returns of their activities only. In Margaret Digby's "Agricultural Cooperative in Commonwealth" about the enactment of Cooperative Law in India it is stated "It soon became apparent, however that in a country like India, where rural leaders were few, and over 90 percent of population was illiterate, the Registrar would have to do more than record and correct. He and his staff would have to initiate, educate, organise and supervise and both their numbers and importance would be greater than had been anticipated from the study of European models". Thus the Registrar was called "the Friend, Philosopher and Guide" and no cooperative could afford to go against his wishes. Mr. Asnavi Hassan in 'Development of Cooperative Legislation in Indonesia' states, "the Netherlands Indies' Government suspected the cooperatives as an organisation which could be utilised as a political level and encourage the people to live independently in the economic field and not on the colonial government."

Thus in the first half of the 20th century colonial governments in most countries in Asia tried to control local cooperative leadership through legislation and people not having faith in state favoured leadership and in the Government, the growth of cooperatives remained rather slow. The situation changed considerably in the second half of the present century when most countries got freedom and national governments took over.

## PART II

### REVIEW OF COUNTRY LAWS

#### **Afghanistan**

No information is readily available whether there were any local initiatives to promote cooperatives in Afghanistan. It is a land-locked country with staunch tribal society - literacy rate is very poor. Being staunch Muslims they are not easily influenced by external factors. Even the British Raj in India could not influence much on the life of Afghans. The initiative with regard to cooperatives seems to have come from the Government only in the sixties. According to the ILO/TAP/Afghanistan/RS Report in 1965 we find a reference "some years back, the Government of Afghanistan had asked an expert to study and report on the possibility of organising cooperative credit societies in the country. The expert suggested that a cooperative law should be enacted.

Another expert in the following years prepared a draft law on cooperation. This draft was based on the existing laws prevailing in various Indian states, the basis of which had been the Indian Act of 1912."

The cooperative law was first time approved by the Cabinet on August 26, 1974 and by the King on October 30, 1974. It became operative from November 23, 1974 from the date of its publication in the official gazette. The law has 51 articles divided in 13 chapters. It is a

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*(Chapters and articles of routine nature and not considered of significance have been delted in the review)*

short, simple law which can be easily understood by any person and does not need the help of experts to interpret it. Some of the important provisions in this law chapterwise are as under:

**Chapter I** : It contains only two articles. Article two deals with definitions and defines a cooperative as under:

*“Cooperative”* an association of persons who have voluntarily joined together to achieve a common social and economic end through the formation of a democratically managed and controlled organisation.

*“Primary Cooperative”*: a cooperative formed by at least eleven individuals.

*“Secondary Cooperative”* : a cooperative formed by at least three cooperatives.

**Chapter II** : It has only one article and deals with responsibilities and functions of the Cooperative Department. These include, to register cooperatives, prepare model bye-laws, enforce law, regulations and bye-laws provide assistance, guidance and advise and audit the accounts of the cooperatives. The law also authorizes the cooperative department to represent the cooperatives till a national cooperative federation is organised.

**Chapter III** : This chapter has five articles and deals with registration of cooperatives as also amendment of bye-laws. Article 6 provides that in case the Registrar declines registration he must inform justification for non-registration within 60 days.



**Chapter IV** : It has only two articles dealing with membership which include “no member of a primary cooperative shall hold membership in another primary cooperative with the same objects and functions in the same area of operation”.

**Chapter V**: The chapter has four articles and deals with termination of membership as also voting rights. It provides six months notice for withdrawal and a member remains responsible for two years from the date of termination for liabilities during his membership. For voting rights while in case of primary cooperatives, there is one member one vote in case of secondary cooperative up to five votes are allowed to a member depending on the provisions of the bye-laws.

**Chapters VI & VII** : These deal with annual and extra-ordinary general meetings. Important feature is that a quorum for AGM is minimum of 51% and in case of extra-ordinary general meeting it is 75%. However, if the quorum is not present, next meeting will be called within one month when quorum will be only ten excluding managing committee members. In case of second extra-ordinary general meeting within one month, if there is no quorum of 75%, a third meeting will be called within three months. If the quorum is still not there the matters will be referred to Registrar to enquire the reasons under Article 4 and initiate appropriate action thereafter.

**Chapter VIII** : This chapter deals with managing committee. The important features are:

- i. The minimum number has to be five and the maximum tenure can be three years.

ii. A member can be elected for two terms only.

iii. It must meet at least once in a month.

**Chapter IX** : It deals with the capital and financial affairs and includes article 28 to 36. Some of the important features of these articles are:

i. the number of shares of a cooperative is to be unlimited but in case of a primary cooperative no member shall hold more than 10% of the paid up capital.

ii. Reserve has to be a minimum of 25% of surplus.

iii. Not more than 20% of surplus can be allotted for the interest on capital and rate of interest shall not be more than 5%.

iv. A minimum of 30% surplus has to be allotted for patronage rebate to members based on the business done.

v. Loan to non-member cooperative has to be decided by the General Meeting only and needs approval of the Registrar.

The cooperatives are also allowed tax exemptions under article 35 for 10 years from registration.

i. All fees and taxes in connection with registration, or with sale, purchase, rent and mortgage are exempted.

ii. 50% on income tax levies, exempted

iii. Fees and expenses of courts not charged

iv. Audit and supervision fee by department to be free

v. Other privileges may be decided by the government.

**Chapter X :** It deals with Accounts and Audit and provides about maintenance of accounts books, year and period of the accounting.

**Chapter XI :** It deals with settlement of disputes, inspection and enquiry. The important provisions are:

The Registrar is authorised under article 39 to arbitrate in all disputes between cooperatives and their members. An aggrieved party can go for appeal to any court having jurisdiction for judgement.

Article 41 prescribes the conditions for initiating enquiry by the registrar and under article 42 if the enquiry finds the managing committee culpable, he may dismiss the managing committee and appoint a new committee from the staff of the Department. If the new committee is not elected within 2 years he can order to dissolve the society. Further, in the enquiry if a person is found to be responsible of an offence or crime, he may be referred to the court.

**Chapter XII :** This chapter deals with amalgamation, merger and dissolution. An important feature is that members have no claims except their paid-up share capital on the surplus after liquidation. The surplus has to be used for development of the cooperative with the approval of the government.

**Chapter XIII :** This deals with miscellaneous items including appeals for refusal to registration.

## Australia

Australia is perhaps the first country in Asia and Pacific to have a cooperative as early as in 1849 in New South Wales by the name of Australian Mutual Provident Societies a Life Insurance Cooperative followed by an Industrial Consumer Cooperative namely Adelaide Cooperative Society in 1866. By 1889 there were two cooperative creameries exporting butter to UK along with another cooperative, namely Farmers Cooperative Society. These and many other cooperatives were registered under the Companies Act.

The first cooperative law was enacted in 1923-24 by New South Wales Government which enabled many cooperatives to re-register under the cooperative laws. But not all subsequently got re-registered. Thus, there are cooperatives, cooperative companies and some are friendly cooperative societies.

Australia has federal system of government like India and the cooperatives come under the authority of the states. Thus all the six states and two union territories have their own cooperative laws. There is no federal cooperative law in Australia like India but cooperatives can also be registered under the corporation law which is a federal law. Under the federal tax laws of Australia, cooperatives registered under cooperative law as also under the corporation law are entitled to tax benefits if 90% or more business is done with members only. Seventy percent of registered cooperatives in Australia are reported to be in the eastern states of New South Wales (NSW) Victoria and Queensland. The first cooperative law in Australia was in NSW passed in 1923 which became operative in 1924. This act was called

cooperation, community settlement and credit act 1923 and became operative on December 31, 1924.

There were many amendments to the provisions of this act which were consolidated in 1964 under a new title, 'Cooperation (Amendment) Act 1964' which remained operative with further amendment from time to time till it was replaced in 1992 by a new "Cooperatives Act 1992" which became operative in May 1993. While commissioning this NSW Report the Government according to C.J. Taylor, Department of Legal Studies and Taxation University of NSW sought to achieve the following objectives:

- a. The flexible and efficient business operation of cooperatives.
- b. The protection of the rights and interests of members of cooperatives.
- c. The accommodation of inter and intra-state mergers of cooperatives.
- d. The provisions for enhanced capital raising by cooperatives including identifying the desirability of the transferability and redemption of shares and securities.
- e. The provisions of appropriate accountability and reporting requirements for cooperatives.

In introducing the bill for this Act in the parliament of NSW on April 9, 1992 the Minister of Local Government and Minister for Cooperatives, stated the policy intentions of the Bill as :

- (a) provide that incorporation as a cooperative be a right available to any group wishing to have the benefits of cooperation and willing to abide by traditional cooperative principles;

- (b) enable cooperatives to have wider corporate powers, by providing them with the powers of a natural person, a situation equivalent to corporations. Such powers to be exercised within traditional cooperative principles;
- (c) maintain the principle of active member control of cooperatives including one member one vote as central to the operation and control of cooperatives;
- (d) provide for cooperatives to have similar general standards to those applying to corporations in regard to dealings with, or reporting on activities concerning, third parties this includes providing for similar general standards for directors of cooperatives as those applying to directors of similar size corporations;
- (e) provide cooperatives with a clearer range of alternatives in regard to determining the optimal capital structure to best service the needs of the members, so ensuring that cooperatives remain competitive with other forms of incorporation. Alternatives provided for include allowing, within carefully defined limits, a form of non-active member capital known as cooperative capital units;
- (f) enable cooperatives to be capable of merging or being wholly acquired, but only if the substantial majority of active members, when fully informed, desire such a course and regardless of whether the other party is local or interstate, another cooperative or a corporation;
- (g) provide for New South Wales cooperative legislation to specifically recognise the separate registration and operation of interstate cooperative organisations in this State; and

- (h) provide that the Registrar, the Cooperatives Council (formerly the Advisory Council) and the Minister have fewer general discretionary powers to intervene in the day-to-day running cooperative matters which are more properly left to the well-informed membership. However, the Registrar's powers to undertake investigations and enforcement are strengthened so as to ensure that the interests of cooperatives, their members and the public generally are protected.

This new law is a very comprehensive law and has 446 articles applicable to all types of cooperatives in New South Wales and is divided into 17 parts against 122 articles in the old law of 1924 in 8 parts.

The important contents of the law and the major changes from the earlier law are narrated henceforth.

### *Part I - Preliminary*

There are two important additions in this Act which were not in the earlier act. They are objects of act and division of functions. Under Article 3 the objects of this Act are as follows:

- a. to enable the formation, registration and operations of cooperatives;
- b. to promote cooperative philosophy, principles, practices and objectives;
- c. to protect the interests of cooperatives, their members and the public, in the operations and activities of the cooperatives and the cooperative sector;
- d. to encourage and facilitate self-management and self-regulation by cooperatives, at all levels; and

- e. to encourage the development and integration of the cooperative sector.

Division of functions are as under:

1. The Minister has the function of determining policies for the administration of this Act.
2. The Registrar is to exercise the functions of Registrar in accordance with the policies determined by the Minister for the administration of this Act.
3. The Council is in the exercise of its functions to have regard to the policies determined by the Minister for the administration of this Act and is to exercise its functions in a manner that is consistent with those policies.

Article 5 deals with definitions. Two important definitions included are regarding a foreign cooperative and "Holding Cooperative". Also under Article 6 are included Cooperative Principles as adopted by ICA before Manchester ICA Congress in 1995. Another important addition under Article 7 relates to formation and functioning of subsidiaries by cooperatives as also position of the main cooperative vis-a-vis subsidiaries.

### ***Part 2 - Formation of Cooperatives***

This part deals with registration of primary, secondary as also foreign cooperatives. One important provision in registration is that Registrar himself cannot refuse registration of a cooperative. Under Article 12 either he may register a cooperative or in case he is not satisfied, refer the application to the council whose advice is binding on the Registrar.

Another important addition in the law is the provisions for registration of foreign cooperatives under Article 22. A foreign cooperative has been defined as a



cooperative registered outside the state or outside Australia.

Another important provision under articles 26-28 provides detailed procedure for conversion of a company into a cooperative.

### ***Part 3- Legal Capacity, Powers, etc.***

Part 3 of the law is classified under 7 divisions covering articles 29-61.

One significant provision in this division under article 30 is that a cooperative can form a body corporate (company), unit trust, joint venture, partnership etc.

Division 2 of this part provides that the doctrine of '*ultra-vires*' does not apply to cooperatives and articles 32-35 deal in detail about its implications particularly with regard to property dealings by cooperatives. The chapter also includes procedures of civil law relating to property matters and civil contracts and cooperatives.

### ***Part 4 - Membership***

This part of the Act is classified under 5 divisions and covers articles 62-105. The first division under heading '*General*' deals with the membership qualifications which could be individual and, unless the rules of the cooperatives provide otherwise, may be joint (Art 63).

Article 64 (1) also states that a person is not qualified to be admitted unless there are reasonable grounds for believing that the person will be an active member of the cooperative. The minimum membership for a primary cooperative is five and secondary two. Carrying business with less than prescribed minimum is an offence for the members of managing committee.

The division also deals with representation from one cooperative to another.

Division 2 deals with Right and Liability of members. It includes imposition of fines on a member for any infringement of the rules and bye-laws of a cooperative (Article 79).

Division 3 deals with transfer of shares in case of death of a member.

Division 4 provides for arbitration by the Registrar for disputes between the members or past members of a cooperative and procedure with regard to arbitration.

Division 5 deals with oppressive conduct of affairs. This is another new significant provision by which members have been given right to represent to RCs/ Court in case of omission/commission by any cooperative against the interest of members or oppressive, unfairly, prejudicial, or discriminatory acts against a member or members. But action for active membership requirement does not come as an offence. The RCs/Court can order winding up the cooperative for these offences under certain conditions.

### ***Part 5 - Rules***

This part provides guidelines and directions with regard to Rules of the Cooperatives (Bye-Laws) including the contents, procedure and other requirement as also provisions of fines on members in case of certain offences.

### ***Part 6 - Active Membership Requirement***

This part is most important and has unique provisions which is not provided so explicitly in other Asia-Pacific cooperative laws and perhaps even beyond. This part is included in 29 articles starting from article

115 to 143. Under Articles 116 and 117 active membership provisions have been explained as under:

For the purpose of this Act under article 116 (a), a member of a cooperatives is an active member, if he / she:

- (a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the cooperative in connection with the carrying on a primary activity of the cooperative, in the manner and to the extent which the rules of the cooperative provide is sufficient to establish active membership;  
or
- (b) maintains such other relationship or arrangement with the cooperative in connection with the carrying on of a primary activity of the cooperative as the regulations provide is sufficient.

Active membership provisions and resolutions - explanation:

1. Active membership provision in the rules of a cooperative are provisions in the rules which specify:
  - a. which of the activities of the cooperative are the primary activities of the cooperative; and
  - b. the manner in which and the extent to which a member of the cooperative is required to utilise or support an activity of or maintain a relationship or an arrangement with, the cooperative in connection with the carrying on of a primary activity of the cooperative in order to establish active membership of the cooperative.

The law provides detailed provisions on this subject and failure to cancel membership of a not active member

is an offence for board and directors who could be fined for the offence. This part of the act also deals with the implication and follow up of financial matters relating to expelled members including share, deposits and other claims of either side.

### ***Part 7 - Shares***

This part of the law deals comprehensively with the matters relating to shares particularly keeping in view the challenges the cooperatives have to face in a free market economy. The issues dealt are:

- Article 145 :       Restriction on conversion to a cooperative capital base without share capital;
- Article 146 :       Nature of shares in a cooperative;
- Article 147 :       Issue of shares and shares at premium;
- Article 152 :       Joint ownership of shares. Shares in a cooperative can be held by two or more persons, except in case rules provide otherwise;
- Article 153 :       Payment of dividend with conditions prescribed by the Minister;
- Article 154 :       Issue of shares to active members in exchange of property;
- Articles 155 & 156: Members required to take additional shares and issue of Bonus shares;
- Article 157:       Beneficial and non-beneficial interest in shares;
- Article 164:       Registration of trustee etc. on death of owner of shares;

Articles 170-174 Sale, repurchase and cancellation of shares.

### ***Part 8 - Voting***

This part is divided in 2 divisions. The first division deals with voting right, including proxy which could be authorised to only active members (Art. 179) vote in case of joint shares (178) and restrictions on voting entitlements under power of attorney (183);

Article 180 debars voting right to defaulter and article 181 to inactive members;

Article 193 also allows postal ballots. In case the rules of a cooperative allow otherwise the law provides only one member one vote only.

Articles 196 and 197 allow resolution by circulation.

Articles 198-202 deal with AGMs quorum, and convening of General Meetings on requisition by either at least 50 members or 50% of total members of the Board.

### ***Part 9 - Management and Administration of Cooperatives***

This part is divided in 7 divisions and covers from articles 204-261.

#### ***Division -1 Board***

Under Article 203 (1) the business and operations of a cooperative are to be managed and controlled by the Board and is to exercise such powers as expressed by the general meeting subject to Act and rules of the society.

The Article 205 (2) provides that a cooperative must have at least 3 directors but no maximum limit is

prescribed. The procedure of election has to be provided in the rules of the society.

Article 206 provides qualifications for directors. Along with other qualifications the law states that "for each director who is not an active member of the cooperative, there must be at least 3 directors who are active directors.

Article 208 provides disqualifications for being a director.

Under article 209, the board must meet at least once a quarter and quorum has to be minimum of half the members. Article 210 allows transaction of business outside meeting by circulation of papers, by telephone, closed-circuit television or other means but only if any member who speaks can be heard by other members and for this purpose papers may be circulated by facsimile or other transmission. The act also provides appointment of Dy. Director in the absence of director and under article 212 vacancy in the Board could be filled even by postal ballot.

Under article 215 the minister is authorised to appoint a director in a cooperative who is indebted to the crown in respect of loan or grant. Such a director will have the same powers and functions as of an elected director, and the cooperative has to pay his fees and allowances if so decided by the minister.

In addition under article 216 one employee can also be elected as director even he or she is not a member of the society. However, such an employee for election in general body has to be nominated by the Directors of the cooperatives and as such he does not really represent the employees but is selected by the Board.

Article 218 provides conditions under which a director can be removed.

Division 3 deals with duties and liabilities of directors, officers and employees.

#### *Director's Remuneration*

Article 230 provides that a director cannot be paid remuneration more than approved by general meeting and cannot exceed the maximum amount fixed by the council.

Further under article 232 advancing any loan or extend guarantee to a director or his near relative is an offence if done with the intention to deceive or defraud the cooperative with a penalty of 200 units and/or imprisonment of 5 years. The division also prescribes transparency norms in the financial affair between cooperatives and directors.

Division 5 under heading accounts and audit detailed accounting requirements have been prescribed and any default in this regard has a penalty of 20 units.

Article 247 provides protection to auditors against defamation case for certain oral and written statements made during the course of audit.

The division also prescribes under article 251 certain information to be provided to the registrar, which include:

- i. Information about appointment and cessation of any director, principal, executive officer and secretary within 14 days of such a change
- ii. Similarly a cooperative must send information including accounts and audit report to Registrar at

least 14 days before the date of AGM

- iii. Registrar may ask for list of members and a special return in a prescribed manner (253-254).

Non-compliance of the above attracts a penalty of 20 penalty units for each offence.

### ***Part 10 - Funds, Property etc.***

Some of the important provisions in this division include:

1. Power of registrar to give directions concerning fund raising (article 264).
2. Application of corporation law (Company Law) to the cooperative (article 266):
  - a. issue of securities and prescribed interests
  - b. re-issue of redeemed debentures
3. Compulsory loan by members to cooperatives .

An important and unique provision in the law is provision of cooperative capital units. (CCUs) in detail (articles 269-277). The CCU has been defined in the law as "A cooperative capital unit" is an interest issued by a cooperative confirming an interest on the capital (but not the share capital) of the cooperative. The CCUs can be issued to non-members also. The terms of CCUs have to be with the approval of registrar.

*Division 3* defines surplus, provides for distribution of surplus which include dividend, patronage, rebate, bonus to employees, bonus to non-members who can be potential members for business done by them, donation for charitable purpose, promotion of cooperative principles and community development.



*Division 5* provides that rules may be made in certain matters to prescribe prudential standards.

### ***Part 11 - Restrictions on the Acquisition of Interest of Cooperatives***

As the law has provided various options to raise capital, this part provides provisions for safeguarding the interest of cooperatives and investors in articles 286 to 308 divided into two divisions. *Division 1* deals with restrictions on shares and voting rights, maximum permissible level of shares, forfeiting of shares, to remedy contravention, powers of board in response to suspected contravention, powers of court with respect to contravention, unlisted companies to provide list of shareholders etc. to the cooperative, excess share interest not to effect loan liability etc.

*Division 2* deals with offering of shares, requisitioning of special postal ballot, expenses involved in special ballot etc for registration under corporation law or convert a cooperative into a company.

### ***Part 12***

It deals with amalgamation, transfer of engagement, winding up etc. The act allows amalgamation of local and foreign cooperatives (Article 310) as also change of a cooperative into:

- a. company under corporation law;
- b. association incorporations act 1984;
- c. a society under permanent building societies act 1967;
- d. a credit union under credit union act;
- e. a friendly societies under friendly societies act 1989;  
and
- f. any other body corporate.

*Division 4* deals with winding up. It is interesting to note that there is no procedure provided for liquidation and it provides that the provisions of part 5.4—5.7 of the corporation law in respect of the winding up or dissolution of a company under that law apply to the winding up or dissolution of a cooperative (Article 325). However article 325 (3) does provide some modification when applying corporation law in winding up a cooperative.

The Registrar is also empowered to appoint an administrator with the approval of the council in certain circumstances under articles 333-343 if grounds exist for winding up, amalgamation, conversion etc.

### ***Part 13 - Arrangement and Reconstructions***

This part deals in detail the procedure for compromise with the creditors with the approval of court order where required/possible.

### ***Part 14 - Supervision and Protection of Cooperatives***

This part first defines a cooperative venture which means :

- a. any body corporate or unit trust formed by a cooperative or in the formation of which a cooperative participated and
- b. any partnership, joint venture or association of persons or bodies formed or entered into by a cooperative.

In addition under this part cooperative also includes a foreign cooperative, a subsidiary of cooperative or a foreign cooperative, a cooperative venture including any of them under liquidation. The law under this part gives to the registrar power to appoint inspectors and carry

out inspection under division 1 and hold enquiry through investigations on affairs of a cooperative (articles 385-396) and based on the investigations may order winding up and/or institute legal action against concerned persons.

Division 3 (articles 397-401) deals with prevention of frauds or misappropriation and punishment for such acts. Division 4 provides special general meeting to be convened by the Registrar on request of majority of Board Members or not less than one-third of the members of the cooperative.

### ***Part 15 - Administration of the Act***

One important feature of the act is the provision of the "cooperative council" consisting of a person to be nominated by the minister. Details about the method of constitution and functions of the council have also been included in the law (article 414- 419). Division 3 deals with evidence regarding records of the cooperatives etc.

### ***Part 16 - Offences and Proceedings***

This last part deals with the proceeding for action with regard to offences under this act and available civil remedies.

### ***Part 17 - General***

An important provision in this part relates to interpretation of applied provisions of corporation law (article 436) along with other legal provisions.

# **Bangladesh**

Since the partition of India in 1947 Bangladesh remained part of Pakistan till 1972 when it became an independent country.

As cooperative was a provincial subject in India the state of Bengal enacted the cooperative societies act of 1940 replacing the Cooperative Societies Act of 1912 followed by Cooperative Societies Rules in 1942. This act and rules under it continued to be operative in Bangladesh with some amendments from time to time till 1984 when the Cooperative Societies Ordinance 1984 was issued on December 31, 1984 and new rules under it framed on January 20, 1987 which are operative presently.

The 1940 act had 140 articles divided in 15 chapters. The new ordinance also have the same numbers of 140 articles and 15 chapters. The salient features of the ordinance are summarised below:

## ***Chapter I: Preliminary***

This chapter deals with the applicability of the act and definitions of various terms in the law. One definition worth noticing is of central societies in which the maximum number of members has been stated as ten.

## ***Chapter II : Registration***

This chapter runs from articles 6 to 13. Article 8 defines societies which could be registered as "a society which has its object the promotion of the common interest of its members in accordance with cooperative principles or a society established with the object of facilitating the operation of such a society". But the

cooperative principles are nowhere defined or mentioned in the law or rules under it.

Article 10 (3) provides that application must be disposed of within 90 days and in case of refusal to register the Registrar must inform the reasons in writing for not registering within 30 days of the decision.

Article 13 gives powers to the Registrar and financing bank to give direction for amendments which are binding on the cooperatives.

### *Chapter III: State and Management of Cooperative Societies*

While article 15 states that the final authority of a cooperative is in General Body certain limitations have been imposed on the General Body under article 17 as under : A general meeting or a special general meeting of a cooperative society, the managing committee of which has been dissolved under section 22 and a managing committee has been appointed under section 23, shall not be competent :

- a. to elect, subject to the provision of section 23 (2) members of the managing committee or any other officer for managing the affairs of the society;
- b. to disapprove or modify the budget as prepared by the managing committee and approved by the Registrar; or
- c. to do anything which, in the opinion of the Registrar, is likely to create any impediment in the way of smooth functioning of the appointed managing committee in any manner whatsoever.

Further under article 18 (4) if the election is not held in time, the managing committee shall cease to operate

and the functions are to be taken over by the Registrar till he arranges to have fresh election. The tenure of the elected managing committee is 2 years under article 18(3).

Under article 19 a member who has been continuously elected for 3 terms (six years) will not be entitled to stand for election till a period of two years has expired.

Under article 21 government has been authorised under certain circumstances to depute government servants to manage affairs of a cooperative.

Further under article 22 Registrar can convene a special General Meeting to elect new managing committee if it is found that the committee is not functioning properly during the course of audit, or inspection or enquiry. Further if the society has 50% or more government shares, loans or investment he can dissolve the committee after giving an opportunity to explain. Similarly he can also disqualify all or any of the members for re-election for 3 years after giving the reasons and seeking explanations.

Under article 28 Government/Registrar is authorised to nominate one third members of the managing committee where government holds 50% or more of shares or advanced loan or funds or guarantee.

#### ***Chapter IV : Duties and Obligations of Cooperative Societies***

The chapter deals with securing borrowings, deposits, lending terms of issue of debentures against government guarantee and appointment of trustee for the purpose.

## ***Chapter V : Privileges of Cooperative Societies***

This chapter deals with liabilities of the cooperatives and certain exemptions from Registration fee and other obligations / duties.

## ***Chapter VI : Property and Funds of Cooperatives***

The chapter deals with funds of a cooperative which provides along with:

Article 55 (2) creation of reserve fund - minimum 15% of net profit

Article 57 (a) education fund not less than 5%

Article 57 (b) Charitable purpose not more than 10% of the balance after creating other funds under the Act.

## ***Chapter VII***

The chapter deals with privileges, liabilities and obligation of members for unlimited as also for limited liability cooperatives as also transfer and disposal of shares.

## ***Chapter VIII***

This chapter deals with Audit, Inspection and enquiry by the Registrar. One interesting feature under this chapter is article 81 which authorises the government to appoint an authority to supervise a cooperative in which three-fourths members shall be elected and one fourth to be nominated. Cooperative is liable to pay such fees to the authority as may be prescribed.

## ***Chapter IX***

This chapter deals arbitration procedure for disputes between the cooperative and its members and between cooperatives in articles 86-89.

## ***Chapter X : Winding up and Dissolution***

This chapter deals in articles 90 to 95 the procedure for bringing cooperative under liquidation and liquidation procedure.

## ***Chapter XI***

This chapter in articles 96-121 provides special provisions for cooperative land mortgage banks, central societies and national societies. The chapter basically covers financing and recovery of loans on mortgage property and procedure to be followed with regard to disposal of the mortgage property.

## ***Chapter XII : Enforcement of Obligations and Recovery of Sums Due***

This chapter deals with regard to enforcement of the orders of Registrar for actions arising under the ordinance as also powers to impose penalties for certain defaults and offences under the provisions of the ordinance.

## ***Chapter XIII : Jurisdiction and Appeals***

Article 132 provides indemnity to the Registrar and his subordinate for any action taken in good faith. Further article 133 bars the jurisdiction of civil courts in certain matters between the Registrar and cooperatives. Third schedule provides provisions of appeals against orders under various articles.

## ***Chapters XIV and XV***

These chapters deal with penalties and offences provided in the fourth schedule under article 135 and empowers to the government to make rules to carry out purposes of the ordinance.



# China

China had its first enactment of cooperative law on March 1, 1934 which became operative from September 1, 1935. After the revolution in mainland China, cooperatives became part of centrally planned economy and their regulations were approved by concerned authorities and they became practically state agencies. However, since last few years cooperatives are progressively being separated from the government and party and drafting a new cooperative law is under serious consideration.

In Taiwan the old law is still operative which has 77 articles in 9 chapters. Some of the important features of this law are narrated onwards.

## *Chapter I : General Provisions*

Article 1 states the term cooperative as used in this law "as an organisation founded on the principles of equality, mutual assistance and joint management for the economic benefit and improvement of livelihood of its members".

Article 2 deals with the types of business a cooperative can undertake.

Articles 4-6 deal with the liabilities of a cooperative.

## *Chapter II : Establishment*

Article 8 provides a minimum membership of 7 and article 9 prescribes procedure of establishing a cooperative. Under article 10 Registrar should within 15 days take decision on the application for registration.

## *Chapter III : Membership, Stocks and Profit*

Articles 11-14 deal with membership qualifications. Along with others, an addict of opium or its substitutes is disqualified to be a member [Article 13 (3)].

Articles 16-25 deal with shares and profit distribution. Under article 16 value of each share has to be not less than two silver dollars and not more than 50 silver dollars.

#### ***Chapter IV : Directors, Supervisors and Employees***

Under article 32, a cooperative shall have no less than 3 directors and 3 supervisors to be elected from members in the General Meeting. The supervisors are responsible for audit of the accounts of the cooperative, supervise and check finance and property and represent the cooperative when concluding an agreement or taking legal action against directors. Supervisors are not entitled to bonus while directors and employees are entitled to bonus from surplus.

#### ***Chapter V : Meetings***

Four types of meetings have been provided under article 45. A unique feature is the quarterly business meeting which is held jointly by board members and supervisors and is different from the board meeting (Art 52).

#### ***Chapter VI : Dissolution and Liquidation***

One important feature in this chapter is the provision that the liquidator shall be either appointed by the General Body or by the board itself and can undertake liquidation. The Registrar is not involved in the winding up of a cooperative (Article 60).

#### ***Chapter VII : Cooperative Unions***

Another important feature here is representation quota in union which is not based on principle of one man one vote but could be on either membership shares or contribution made in expenses for formation of the union.

### ***Chapter VIII : Penalties and Supplements***

The chapter provides fine of more than 30 yuans for each offence.

# Fiji

The Fijian Cooperative Act 1947 has 64 articles divided into 10 parts. Some significant provisions under this act are stated henceforth.

## *Part I : Preliminary*

Under article 2 giving interpretation have two important explanations:

“Bonus” means a share of profits of a registered society divided among its members in proportion to the volume of business done.

“Dividend” means a share of profits of a registered society divided among members in proportion to the share capital held by them.

## *Part II : Registration*

This part from articles 3 to 10 deal with appointment of Registrar and his officers and registration procedure. Significant provisions are:

Under Article 3 only Public Service Commission is authorised to appoint Registrar and such other persons as Assistant Registrars.

Under Article 4 a society which has its objects the promotion of economic interests of its members in accordance with cooperative principles, or a society established with the object of facilitating the operations of such a society or association, may be registered. But cooperative principles have not been explained in the act .

An important and unique provision in this law relates to probationary societies. Under Article 7 if the registrar does not see fit to register a society he may

defer to register it subject to compliance of certain terms and conditions for a maximum period of 2 years. During this period it functions as a cooperative and before the expiry of the probation period the registrar if satisfied may register the society or cancel its probationary entitlement.

### ***Part III : Duties and Privileges of Societies***

Article 14 binds members to dispose of their products through the cooperatives, in all types of cooperatives, and in case of failure members can be asked to pay liquidated damages as provided in the bye-laws.

This part also deals with amendments, amalgamation division and transfer of shares etc. of the societies.

### ***Part IV : Rights and Liabilities of Members***

This part deals with membership qualifications and voting. While for primary cooperatives there is principle of one member one vote, flexibility is provided for secondary cooperatives [Article 27 (e)].

### ***Part V : Property and Funds of Registered Societies***

This part deals with loans, deposits and distribution of profits which is quite flexible. However under rule 31 under the act a minimum 25% of net profit has to be provided for reserve fund.

### ***Part VI : Audit, Inspection and Enquiry***

Audit is the responsibility of the Registrar under the act. However, one important feature is that under the act Registrar has not been given powers to dissolve the managing committee as a result of enquiry or inspection or nominate any director as provided in many laws in Asia based on British Indian Model.

## ***Part VII : Dissolution***

One very important feature under Fijian law is that if a society has to wind up, the Registrar cancels the registration first under article 42 and the winding process/liquidation follows thereafter. Further disputes during liquidation can be decided by arbitration and does not give unilateral powers in this regard to the liquidator (Art 46 ch).

## ***Part VIII : Surcharge and Attachment***

Article 52 deals with provision of arbitration in regard to disputes between cooperatives and their members.

Article 50 authorises the Registrar to surcharge any member or official if found guilty during the course of winding up for loss or damages to the society during its working.

This part also deals with appeals under the act.

## ***Part IX : Regulation***

This details a list of subjects on which the minister is authorised to make regulations under the Act.

## ***Part X : Miscellaneous***

This part provides offences, penalties, powers to exempt from the provisions under the act etc. which are similar to other cooperative acts.

## ***New Act of 1996***

The above act of 1947 and amended many times has recently been replaced by a new act on October 21, 1996. The new law contains 122 articles divided in XIV parts against 64 articles in the earlier law. The important changes in the new law are: Some new definitions have been added under article 2 ; they are:

i. Cooperative means an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organisation, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate, which are provisionally or fully registered under this Act as a primary or secondary cooperative, apex organisation or the National Cooperative Federation registered according to the provisions of this Act.

Provided that:

1. in the case of service cooperatives, at least 51 percent of a cooperative trade is done with its members; and
2. in the case of workers' cooperatives, at least 80 percent of the permanent full time employees, as defined in the Employment Act, shall be members of a cooperative.

ii. Honorarium means a portion of the net surplus of a cooperative divided among some or all of the members of the Board of a cooperative in consideration of their services which not otherwise be remunerated, and

iii. Net surplus means the pre-tax surplus after provisions have been made for the statutory reserve fund as stipulated in Section 100 of this Act.

Articles 4 (1) and (2) state objects of cooperative as under:

1. A cooperative aims at promoting the economic and social interests of its members by providing effective services which the members need and can make use of.

2. The main purpose of a cooperative is not maximisation of profits but service to members and a cooperative shall operate according to sound business principles.

Under article 5 cooperative principles declared by ICA before Manchester Congress (1995) have been included.

In article 7 under membership of primaries, associations have also been included (under definition association excludes companies).

In the old law there is no time limit for Registrar to dispose of the registration application but now under section 12 (2) two months limit has been included.

Further under article 26 (1) a cooperative has been authorised to include in its bye-laws imposition of fines on its members for any infringement of bye-laws.

A new part IV has been added to deal with secondary, apex and National Cooperative. Under article 45 two or more primary cooperatives can form a secondary and two or more primary or secondary cooperatives can form an apex organisation. However, a cooperative having at least 75% of all cooperatives of that type as its members only shall be deemed to be an apex organisation. There is another new article 47 dealing with the functions of National Cooperative Federation. Another addition, Part VII provides for establishment of a Cooperative Advisory Board.

The function of the board is to advise the minister on matters provided in article 49. The board shall consist of five persons recommended by the Registrar and the tenure shall not be more than 3 years.



Article 58 deals with Quorum of General Meeting which is rather liberal (25%) and in case of adjourned second meeting no quorum is needed. In the old law, there was no reference to the board but in the new, formation, functions and working of board has been dealt with in detail under articles 63 to 70.

An important provision under article 64 (3) is that the term of the board shall be 3 years and one-third members will retire every year. The new law also provided for functions and powers of General Manager (article 72) Chairperson (Article 73) Secretary (article 74) Treasurer (article 75) and supervisory committee (article 76).

Another change relating to audit under article 81 is that instead of Registrar himself arranging audit, the audit shall be done now by an Auditor approved by the Registrar.

Another change relates to enquiry. Under article 85 in addition to registrar, supervisory committee has also been authorised to conduct an enquiry and for this purpose appoint a commission of enquiry of not less than two members who could be non-members also.

With regard to reserve fund under article 100 30% of surplus from members and 100% surplus from non-members has to go to Reserve Fund. This percentage can be reduced when reserve fund reaches 50% of the assets of the cooperative.

Further at least 25% of the reserve fund has to be transferred to National Reserve Fund to be administrated by the National Cooperative Federation.

In addition under article 101 every cooperative has to contribute to "Central Cooperative Fund" to be kept

by the Registrar and to be transferred to National Cooperative Federation within 7 years of enactment of this act. The amount of this annual contribution shall be fixed by the Registrar and shall not be less than \$40.

Article 107 also allows cooperatives for conversion to another legal form with the consent of at least two-thirds members. However even under the new law power of appointment of liquidator remains only within the Registrar.

A new provision under article 116 has been added for establishment of a cooperative tribunal to hear disputes and settle other matters, consisting of 3 persons nominated by Registrar, National Cooperative Federation and office of Attorney General one each.

## India

In India the beginning of cooperative could be linked to "NIDHIS" in Madras province in the second half of the 19th century which were quite similar to Raiffeisen credit cooperatives. Other type of cooperatives like consumer cooperatives were also organised on Rochdale Model in the last decades of the century. In the first ICA Congress from August 19-23, 1895 held in London, one Mr. Krishna Menon from the College of Agriculture, Madras stated, "I am glad to know more of the principles you are advocating as Indian labour, especially agricultural labour, is not fairly remunerated. In earlier days there was a system of profit sharing between the landowner, the farmer and the labourer in Southern India, but the administration of the early English officials led to an alteration, whereby, the position of the agricultural labour has been reduced to one of day labour, in which, he has no claim to the profits he makes. The old system had several redeeming features, specially in times of scarcity, when the labourers were protected by a contribution from the community. He suggested that the congress should impress upon the necessity of distributing the deliberations of the congress throughout the great dependency so as to create a sympathetic response from the Government of India".

Another Indian delegate, Mr. Ambika Charan Ukul, in the 4th ICA Congress in 1900 held in Paris, reported the efforts made by him in promoting various types of cooperatives. In 5th Congress in Manchester in 1902, he stated that about 150 village banks had been formed and including them about 200 cooperatives had been established. However, it is difficult to believe he had

information about the whole country, and the number could be much larger.

According to M. Digby, "The idea of introducing cooperation as it had been developed in Europe seems to have occurred to Lord Wenlock, Governor of Madras, who was familiar with the work of Horace Plunkett in Ireland and with the writings of Henry Wolff, the founder of International Cooperative Alliance: Wenlock sent Mr. Nicholson (afterwards Sir Frederic) to Europe, to study the agricultural cooperative movement there, more specially in Germany and to report on the possibility of introducing land and agricultural banks to Madras. His report, issued in 1893, was the starting point of cooperatives in India, though its first fruits did not mature for another 12 years."

In 1919 cooperation became a state subject under Montague Chelmsford reforms and provinces were authorised to make their own cooperative laws. Since then, every state has its own cooperative law. To cover the cooperatives having membership from more than one state the multi-state cooperative societies Act was enacted by the Government of India in 1942 which was replaced by a new multi-state cooperative law in 1972 which continues till date with amendments made from time to time.

After India became independent in 1947, the first Prime Minister of India Pt. Jawaharlal Nehru was a firm believer in cooperatives and considered cooperative as one of the three pillars of democracy. Consequently, the Government of India got actively involved in promoting and supporting cooperatives and recognised them as an important agency for economic development. An important change in this regard came with the

recommendation of Indian Rural Credit Survey (1954) which proposed "State Participation" in share capital of cooperatives. This further strengthened the belief in the Government to treat cooperatives as state agency than fully autonomous bodies. In the process, the main objective of state partnership in cooperatives was lost and more and more stringent provisions in the cooperative laws were added, giving powers to the state to involve in the management of cooperatives.

The concept of agreeing the Government participation in cooperative could be best explained in the statement of Dr. D.G. Karve a great cooperative thinker and Chairman of ICA Commission on Cooperative Principles; "In view of the acknowledged shortcomings of both, extreme individualism and extreme statism, there is some justification for the view that it would be better to have a system in which while attracting all the support that comes from the community as a whole, and while leaving as much scope to individual action as possible, all associated in collective action should be put on a cooperative basis, ensuring freedom as well as equality. For instance, it was in this spirit that later on when we first become to talk of the Rural Credit Survey Committee the idea of state partnered cooperative institutions appeared both necessary and natural."

The post independence changes in the Cooperative Laws could be best summarised in the extract from the foreword of the Report of the Committee on model cooperative act by its chairman Ch. Brahm Perakash another renowned and committed cooperator: "In the

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\* P.78, Prof.D.G. Karve, Commemoration Volume

post-Nehruvian period, however, cooperatives witnessed a sharp reversal of the entire process of democratisation thereof on the plea of Government participation in the share capital of cooperatives and providing other financial assistance as also that of removal of vested interest from cooperatives, making the cooperative laws more stringent, undemocratic and restrictive in nature and approach. Cooperatives as they stand today lost their genuine character completely”.

Considering this situation, the Planning Commission, Government of India in March 1990 appointed an expert committee to:

- i. make a broad rapid review of the status of the cooperative movement and suggest about future directions; and
- ii. finalise the bill and submit the same to the Planning Commission

Some of the restrictive provisions indicated by the Committee in its Report are:

1. Compulsory Amendment of bye-law by the Registrar.
2. The power of the Government to nominate Directors on the committee of the Management.
3. Powers of the Government to veto annual resolutions.
4. Powers to Registrar/State Government to give directions.
5. Supersession/suspension of committee of management.
6. Automatic suspension of the Managing Committee of credit societies

7. Restriction on terms of office of office-bearers.
8. Restriction on holding office in a number of cooperatives simultaneously.
9. Compulsory amalgamation and division of cooperative by Registrar.

The Committee suggested a model cooperatives Bill for consideration by the Government keeping the above aberration and distortions in view. The object of the model law is "to give a genuine character to cooperatives to facilitate building of integrated cooperative structure so as to involve a cooperative system, make the federal organisations at various levels more responsive and responsible towards their members, to minimise government control and interference, to enable cooperators and cooperatives develop self-reliance and self-confident with power of decision making and eliminate politicalisation. The draft law, thus, removes the colonial approach and character of existing laws and truly meets the norms of governance of a democratic, autonomous enterprise in the country so deeply committed to democratic values".

However, in spite of more than five years of the report, it has not been implemented in spite of many assurances by the concerned ministers in the public as also in the parliament. Further, to what extent the model law will keep its original content only time will show.

Another important development in this regard has been the step of a state government in South India, Andhra Pradesh (AP). AP has enacted an another cooperative law with the title Andhra Pradesh Mutually Aided Cooperative Societies Act in 1995. This law is largely based on the model law and keeps cooperatives

practically free from Government's interference in their management and is applicable to only such cooperatives which do not take government share capital or loans or have returned the same back to government. Some other state governments have also initiated similar attempts but only half heartedly.

There has also been a demand recently to allow cooperatives to be registered under the Companies Act, which is a central government law and not a state government law. The opinion of cooperative leaders is divided to the proposal and government view is also not clear.

In all, India today has more than 20 state cooperative laws and federal cooperative law.

The multi-state cooperative law is a federal law of 1984 covering cooperatives not confined to one state and has 110 articles. The important features of this law are:  
*Registration:* Applications for registration and amendments have to be disposed of within six months (Article 9).

*Membership:* Under Article 19 Central Government, State Governments, National Cooperative Development Corporation and any other corporation owned or controlled by government and any Government Company can also become member of a cooperative.

*Management:* Under article 29 (3) only Chairman or Chief Executive can represent a cooperative in any other cooperative. Article 33 suggests association of employees representative in the management. Under article 34 for election to the Board one should have been a member of the cooperative at least for one year. Further, under article 35 (4) non-member of General



Body cannot contest election. Under article 35 conducting of elections in a multi-state cooperative is the responsibility of an election officer to be appointed by the Central Government.

Under article 36, no person can be Chairman of more than one multi-state cooperative, as also not more than two terms (one term, maximum 3 years). Under article 44 in a multi-state cooperative, where government holds more than one-half of shares, the Chief Executive has to be appointed with the approval of the Government. Article 45 also details the functions of the Chief Executive who is also an ex-officio member of the Board.

Under article 47, Central Government can give directions in public interest or for securing proper implementation of cooperative production and of the development programmes. Under article 48 Registrar can supersede the Board and nominate an administrator or Board under specific circumstances indicated in the article for a period of 2 years.

Article 74 provides settlements of disputes by arbitration.

Under Article 77, power of winding up and appointment of liquidator lies only with the Government/Central Registrar.

Article 109 provides power to make rules under the act.

## Indonesia

The beginning of cooperative movement in Indonesia can be traced with the formation of first cooperative bank "Hulp en Spaarbank" of savings and assistance in the year 1895, the first consumer cooperative in 1910 by "budi Utomo" an organisation by Javanese Medical School in Jakarta. Later on, since 1913 Sarekat Islam, a political organisation based on cooperative ideals played an active role in promoting cooperatives and reported to have created hundred of consumer cooperatives. The cooperatives became legal entity with the issue of Regulation concerning cooperatives by the Dutch Government on April 7, 1915 quite similar to their own cooperative law of 1876 in Netherlands.

However, enactment of this cooperative law by Dutch did not help development of cooperatives for a variety of reasons. First as in India by the British, the Netherlands Government also suspected the cooperatives as an organisation which could be utilised as a political tool and encourage the people to live independently in the economic field and not dependent on the colonial government. The law was also not based on local customs and needs. The other constraints were:

- i. The bye-laws had to be in Dutch and could be made with the help of notary which was expensive.
- ii. For registration, permit had to be obtained from the Governor-General and the permit and articles of incorporation had to be announced both in Dutch and Malay newspapers.
- iii. The procedure took a long time and the cost could at times be as high as F150, price of approximately 10 tons of rice at that time.

- iv. The right for the possession of land had to follow European regulations. The cooperative law of 1915 was revised in the year 1927, based on Indian cooperative law of the year 1912 and the Rural Credit Law of Philippines which was, to certain extent, better suited to Indonesian conditions.

In 1933 the Dutch Government issued another Cooperative Law applicable to those obeying western law. Thus these two cooperative laws created further confusion. Next changes in the law were made in 1949.

After Indonesia became independent, a new law was made in 1958 replacing the earlier laws. Under this law, the role of Government became not only to register and supervise but also to promote, encourage and guide the cooperatives. The law was further improved in 1959 to facilitate the formation and growth of cooperatives based on the temporary constitution of Indonesia. This was replaced by another law in 1965 known as "The Law on the basic Regulations for Cooperatives".

The Paras 1,2 and 3 of Foreword of the Law on the Basic Regulations for Cooperatives state:

1. The National Cooperative Congress convened early 1966 by the National Cooperative Union of Indonesia in one of its resolutions had urged the Government to repeal the then existing Law on Cooperatives (Law No. 14/1965 on Cooperatives) as this Law was in contravention to the Constitution (1945) and prejudicial to a sound development of the Cooperatives in Indonesia.
2. The Minister of Commerce and Cooperatives had accordingly appointed on July 11, 1996 a Commission to review Law No.14 on Cooperatives

and to submit a written draft to the Minister concerned.

The above mentioned Commission was presided over by Jr. Ibnoe Soedjono, the then Assistant to the Minister and later on Director General for Cooperatives had the following members: 14 representatives of the National Union of Indonesia, 3 representatives of the Universities in Indonesia (Faculty of Economics, and of Agriculture), 6 Cooperative Experts and 4 representatives of the Ministries of Home Affairs, Commerce, Agriculture, Industry with a total number of 30 persons.

3. On November, 18, 1966, the Chairman of the Commission, Jr. Ibnoe Soedjono, submitted the draft of the new Law on Cooperatives to the Minister of Home Affairs, (the Minister since ultimo 1966 in charge with cooperatives).
4. The acting President, General Soeharto after receiving the draft through the Minister of Home Affairs, proceeded the draft as being a draft of the Government, to the Parliament of Indonesia, on April 14, 1967 for approval.

This law became effective from December 18, 1967 called "The Law on the Basic Regulations for Cooperatives". This has been replaced in 1992 by an another law on cooperatives.

The Law of 1967 had 58 articles divided into XVI chapters, while the Law of 1992 has 65 articles divided into XIII chapters.

The reasons for introducing new law are stated in the beginning as under:

- a. that the cooperative societies as people's economic movement as well as business enterprises participate to realise an advanced, just and prosperous society based on Panchsila and the 1945 Constitution in a national economic system organised as a joint endeavour based on the principle of brotherhood and economic democracy;
- b. that the cooperative societies need to further develop themselves and to be developed to become strong and self-reliant, based on cooperative principles so that they are able to play the role as the pillar of national economy;
- c. that cooperative development is the task and responsibility of the Government and all the people;
- d. that to realise the things mentioned above and to adapt to the development of the situation, it is necessary to rearrange the provisions concerning cooperative in a law as a substitute of the Law Number 12 of the Year 1967 concerning Basic Regulations for Cooperatives.

### *Chapter 1 : General Provisions*

There are two important provisions in article 1. It defines:

1. A cooperative society is a business enterprise having individuals or registered cooperative societies as members of which, activities are based on cooperative principles and simultaneously as a people's economic movement based on the principle of brotherhood.
2. Cooperative Movement is the totality of the cooperative organisations and concerted organised

cooperative activities working toward the achievement of cooperative common goals.

## ***Chapter II : Foundation, Basis and Objectives***

Article 2 states " The cooperative society is founded on Panchsila and the 1945 Constitution and based on the principle of brotherhood".

The objectives of cooperatives under Article 3 are stated as "The cooperative society has the objectives to improve the members welfare in particular and that of the society in general, to participate in developing the national economic system in the framework of realising an advanced, just and prosperous society based on Panchsila and the 1945 Constitution".

## ***Chapter III : Cooperative Functions, Roles and Principles***

Under article 4 the functions and role of the coops are:

- a. to build and develop the economic potential and capability of the members in particular and that of the society in general so as to improve their economic and social welfare;
- b. to participate actively in the effort to raise the quality of human life and that of the society;
- c. to strengthen the people's economy as a basis of the national economic strength and resilience with the cooperatives as its pillar; and
- d. to strive for realising and developing national economy which is a joint endeavour based on the principle of brotherhood and economic democracy.

Article 5 explains Cooperative Principles which are similar to ICA Principles before Manchester Congress

with the addition of one more principle "self-reliance".

#### ***Chapter IV : Establishment***

Under this chapter a minimum of 20 individuals for a primary and three co-operatives for a secondary cooperative under article 6 has been prescribed.

Under article 10, legalisation of the articles of incorporation has to be given within 3 months. In case of refusal appeal can be made within one month from the date of refusal. The procedure for appeal is to be stated in the Government regulation.

#### ***Chapter V : Membership***

Under article 18 (i) only Indonesians can become members of a cooperative. Under article 18 (2) "A cooperative can have associate members of which the requirements, rights and obligations are stipulated in the bye-laws".

Under article 19 (i) membership of a cooperative is based on the similarity of economic interest in the cooperative business and under article 20 (b) a member has obligation to participate in the business activities carried by the cooperative and under 20(c) he has to develop and maintain togetherness based on the principle of brotherhood.

#### ***Chapter VI : Organisational Organs***

Article 24 provides that decision in the members meeting is to be taken based on deliberations to reach consensus and only when decision cannot be arrived by deliberations majority vote will decide.

Further under article 25, secondary cooperatives can provide voting in the bye-laws based on number of members and business transaction of the member in

cooperative proportionally. Under article 29(4) the maximum tenure of the managing committee is 5 years.

Under article 34 the members of the committee both collectively and individually are responsible for the loss suffered by the cooperative due to acts of negligence or carried out purposefully. The public prosecutor can also sue the committee.

Under article 35 the managing committee can appoint a manager but the plan for his appointment shall be submitted to the members meeting for approval. Further the assignment to manage the business to the manager does not diminish the responsibility of the managing committee.

Under article 36 (1) all the members of the committee have to sign the annual report and in case of a member not signing the report, he has to explain the reasons in writing.

Article 38 provides for the election of a supervising committee and the functions under article 39 are defined as:

- (1) The Committee of Supervision has the duties;
  - a. to supervise the implementation of policy and management of the cooperative,
  - b. to make a written report concerning the result of its supervision.
- (2) The Committee of Supervision has the authority;
  - a. to examine carefully the records at the cooperative society;
  - b. to get all information needed.
- (3) The Committee of Supervision has to keep secret the result of its supervision from the third party.



## ***Chapter VII : Capital***

Under Article 41 the capital of cooperative society consists of equity capital and borrowed capital. The Equity capital can come from:

- a. basic savings
- b. compulsory savings
- c. reserve fund
- d. grants

The borrowed capital can come from:

- a. the members
- b. Other cooperative societies and /or their members;
- c. banks and other financial institutions
- d. the issuance of bonds and other securities
- e. other legal sources.

## ***Chapter VIII : Business Field***

Under Article 43 the business of a cooperative society is directly related to the interest of the members for improving their business and welfare.

## ***Chapter IX : Net Surplus***

Under Article 45 net surplus after providing the reserve fund as decided by the members meeting is to be distributed to the members in proportion to the business transaction carried out by each member and also for education purposes and for the purpose of the society as decided by the members meeting.

## ***Chapter X : Dissolution***

A society can be dissolved by the decision of the members or by the government under conditions prescribed in the law under Article 52. If the decision to dissolve is of the members they can appoint the

liquidator and if of the government, the government has to appoint the liquidator.

Under Article 55 the members responsibility during the liquidation for losses is confined to the limit of basic savings, compulsory savings and share capital they own.

***Chapter XI : Role of Government***

Article 60 states the role of government as under:

1. The government creates and develops climate and condition that stimulates cooperative growth and socialisation.
2. The government provides guidance, facilities, and protection to the cooperative societies.

Articles 61, 62, 63 and 64 explain in details the measures that government would take to achieve the above directions.

## Iran

The first cooperative law in Iran is reported to be enacted in 1925 which was amended in 1948, in 1952 and then June 1971.

After the revolution in Iran the earlier cooperative society law of June 1971 was replaced by the "Law of the Cooperative Sector" on September 4, 1991. The new law has 71 articles divided into 12 chapters against 149 articles in 25 chapters.

The important features of the law of 1991 are:

### *Chapter I:*

The first article provides cooperative "Sector" targets which is a unique provision in the law. It states:

The Cooperative targets concern:

1. Formation and Provision of conditions and work possibilities for the whole people to reach full employment.
2. Means to work availability to those who are able to work but lack means of production.
3. Prevention of wealth accumulation and circulation in the hands of exclusive individuals and groups, with the aim of fulfilling the social justice.
4. Prevention of Government becoming as an absolute employer.
5. Accessibility of management, asset and the resulted revenues to the labour power and the persuasion to get the benefits directly.
6. Prevention from monopolisation, goods accumulation, inflation, and exploitation.
7. Developing and strengthening the general collaboration and cooperation among the whole people.

Concerning the needs governing on the general economic planning of the country in any growth period, the above mentioned objectives of this article have to be materialised.

Article 3 requires government to collaborate with cooperatives without interfering in the management or becoming an absolute omnipotent.

Further Article 4 states "To execute their programs and projects, the government and all the sub-organisations are to give priority to cooperative sector in equal terms".

Article 6 provides "The minimum and maximum number of the cooperative members in proportion to the asset, employment opportunity, kind of activity and the consideration of the principle of absence of the centralised wealth circulation, will be determined through a procedure approved by the Cooperative Ministry. However, the number must not be less than seven members.

### ***Chapter II : Member***

In this chapter from articles 8-15 membership qualification, termination, and procedure for membership has been provided.

### ***Chapter III : Asset***

An important provision under article 17 is, "Cooperative Societies are those that the whole or at least 51% of the assets are put at their disposal by the members.

Under Article 18 government can consign industrial, agricultural, or service units and public properties at the disposal with certain conditions which

include payment of compensation as also power to government to give suitable directions with regard to management of such a project by the cooperatives.

The chapter also provides share allotment and valuation of shares in case of share contributions in funds.

The chapter also provides to the government extending financial assistance directly or through banks with certain conditions.

#### ***Chapter 4 : Income and Loss Account, Dividend and Other Financial Regulations***

The article 25 provides profit distribution as under:

1. At least 5% as legal deposit fund (LDF) as Cooperative Deposit Fund (CDF) till it reaches at least one fourth of the average last 3 years turnover. Cooperative can use not more than 50% of the fund to increase its assets.
2. 5% Precautionary Reserve Fund (PRF)
3. 4% in the Cooperative Bank as Education Fund
4. Bonus to the workers - officers, members employees.
5. Balance to be shared as per bye-laws and agreements if any.

#### ***Chapter 5 : Production and Distribution Cooperative***

This chapter gives priority to the Production Cooperatives as explained in this article in privileges and support in comparison to other type of cooperatives.

#### ***Chapter 6 : The Cooperative Organs***

This chapter deals with functioning and powers of General Assembly including election of Board of Directors and Inspector for 2 years.

Article 36 provides the strength of Board as minimum of 3 and maximum of 7 and one-third substitute members. The strength can be increased for each extra 400 members. The chapter details the functions and responsibilities of the Board under article 37. Article 40 deals with election of inspectors by the Annual General Meeting and article 41 deals with the functions which include audit and continued supervision on the working of the cooperatives.

### ***Chapter 7 : Cooperative Union***

This chapter deals with the formation and working of unions and secondary cooperatives to provide education, research and guidance to the cooperatives and to arrange their commercial needs. They are also authorised to arrange arbitration in case of disputes between cooperatives as also supervise the working of cooperatives. One union each can be formed for different types of cooperatives.

### ***Chapter 8 : Establishment and Registration***

The chapter details the procedure for registration of the cooperatives which are to be submitted to the Registrar of Companies for registration.

### ***Chapter 9 : Merger, Dissolution and Liquidation***

The chapter deals with the conditions under which a society can be wound up and the procedure for it. It provides under article 55 that extraordinary General Assembly or Ministry of Cooperative may nominate 3 individuals to liquidate the society within 3 months.

### ***Chapter 10 : Cooperative Chamber***

This chapter deals with the formation of a Central Cooperative Chamber with the following objectives:

1. Performing the duties and authorities of the Industry, Trade, Mines, and Chamber (ITMC) relevant to the Cooperative Sector.
2. Executing the affairs delegated to the Chamber according to the procedure.
3. Resolving the discrepancy and judgement within the limits of affairs related to the Cooperatives by arbitration and reconciliation between the members and unions, as well as, between the Cooperatives and the Unions.

Each Cooperative Chamber has an independent, legal character and is not dependent on government financially and administratively.

### ***Chapter 11 : Institution of Cooperative Movement***

Articles 57 and 58 provide for the formation of a single association as the spokesperson of the cooperatives and its functions.

### ***Chapter 12 : Role of Government***

The Ministry of Cooperatives not only acts as a supervising agency on behalf of the Government but also acts as a representative body of the cooperatives [Art 66 (8)]. It also takes over functions of all other organisations in different ministries relating to cooperatives.

## Japan

The transformation of Japan into a modern society started during the middle of 19th century when the Meiji Restoration took place and Japan changed from a feudal society into modern state. During the Meiji period, industrial development was of primary importance in the Government Economic Policy and agricultural sector was imposed with heavy responsibility not only in food supply but also in tax assessments. Consequently many farmers were forced to ruin, leading to the spread of social unrest. To face this situation the Government decided to extend positive assistance to promote establishment of cooperative societies and during 1880s many marketing societies in primitive form were established on voluntary basis for major export commodities, such as silk and tea.

With the efforts particularly of Mr. Tosuka Hirata who was a member of Iwakura mission to USA and Europe in 1871 to study international law and who was President of Cooperative Union of Japan from 1905 to 1922 the first cooperative law was enacted in 1900 which gave statutory approval for establishment of four kinds of primary cooperative societies, such as credit, marketing, purchasing and processing. The first revision of the law in 1906 enabled credit cooperative societies to operate marketing, purchasing and processing businesses concurrently. This established the groundwork for the development of present type of multi-purpose cooperative societies. The second revision of the Law in 1909 opened the way for establishment of federations and national union.

Towards the end of 1930s, along with the shift to a wartime economic control, the business activities of



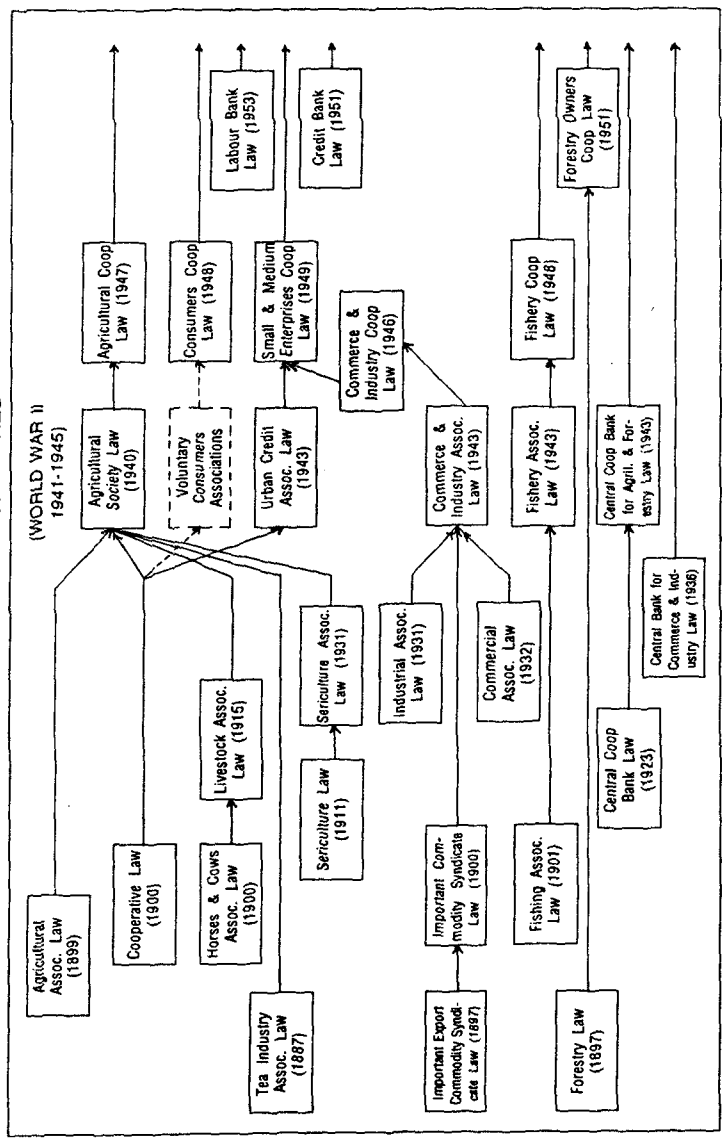
cooperatives were brought within the confines of overhead control. In 1943, the Agricultural Society Law was promulgated and the cooperative societies were merged into agricultural society together with other agricultural organisations. All the farmers were forced to become members of Agricultural Society. Thus the cooperative movement started in 1900 ceased to exist until 1947 when the new Agricultural Cooperative Law was enacted.

In pre-war days, cooperatives in rural areas experienced a lot of difficulties since they included landlords and non-farmer residents also as members. But their interests often conflicted with those of farmers. In post war period the government, therefore, enacted separate Agricultural Cooperative Law to enable Agricultural Cooperative Societies to serve farmers in voluntary and democratic manner to the maximum extent by making farmers as their regular members with a view to eliminating any possible interference of the Government and non-farmers interests.

Thus after World War II, cooperative societies were re-established under the new cooperative laws. In pre-war period it was only one cooperative law, under which various types of cooperatives were registered. After World War II, however, cooperative laws were enacted separately for each type of cooperatives, such as agriculture, consumers, fisheries, small and medium enterprisers and forestry owners. The development of cooperative law can be seen in the attached statement at the early 1976. (see next page).

Japan at present has 6 cooperative laws, which are as under:

# CHANGES OF LAWS CONCERNED



By Courtesy of Mr. Shiro Futagami, Former M.D., IDACA

1. Agricultural Cooperative Law, 1947
2. Consumers Livelihood Cooperative Society Law, 1948
3. Labour Bank Law, 1953
4. Credit Bank Law, 1951
5. Fisheries Cooperative Association Law, 1948
6. Forestry Owners Cooperative Law, 1951
7. Central Cooperative Bank for Agricultural and Forestry Law, 1943.

The Agricultural cooperative society law was the first sectoral law in Japan which gives the broad framework for other cooperative laws.

It has 102 articles divided into 6 Chapters and has been amended 27 times from 1943-1993.

### *Chapter I - General Provisions*

This chapter deals with objects of the law and definition of farmer, agricultural and firewood. The object of the law under article 1 defines as "This law has for its objective the promotion of the sound development of the farmers cooperative system, thereby improving agricultural productivity and the socio-economic states of farmers as well as ensuring the development of national economy."

The consumer cooperative law includes "society shall not be utilised for any political purposes." Similarly, in case of Labour Bank Law, it also include "a credit cooperative shall maintain a political neutrality in conduct". It is interesting to note that there is no such provision in case of Agriculture Cooperative Law and Fisheries Cooperative Law .

## *Chapter II : Agricultural Cooperatives and their Federation*

This section contains 6 sections as under:

### *Section 1 : General Rules*

The important provision in this section is article 6 which states "The amount equivalent to the surplus dividends which are paid by a cooperative in proportion to the rate at which its business is utilised shall, in accordance with the provision of the corporate tax law, be counted as the amount of loss on the income of the said cooperative for each business year".

This provision is provided in the Fisheries Cooperative Law also but not provided in consumer cooperative law and labour bank law.

Further article 8 provides "a cooperative has for its objective the performance of business in order to serve its members and member cooperatives to the maximum degree, and shall not be allowed to do business for profit making purpose".

### *Section 2 : Business*

This section deals very exhaustively the scope of business which a cooperative could do for its members which include along with others credit, savings, installation of joint use facilities, management of land, rural industries, mutual relief insurance, medical facilities, welfare of elderly people, educational facilities, discounting of bills, exchange transactions, lending of securities, underwriting Government bonds, Trust Business, Protective Custody of securities, precious metals and other items as also loans to local public organisations or non-profit juridical persons and

creating of subsidiaries of a federation of agricultural coop and holding shares of Securities Company etc.:

- i. In case of consumer cooperative it shall not make its facilities available to other than members except when permitted by administrative authorities.
- ii. It shall also not affect and hurt the interest of the businessmen of the medium and small retail traders as a result of supplying commodities.

*Section 3 : Membership*

<i>Agri. Coops</i>	<i>Consumer Coops</i>	<i>Labour Credit Coops</i>
Article 12	Article 14	Article 11
1. Farmers	1. As provided in the bye-laws but have to be juridical persons	1. A trade union having office in area of coop. not allowed
2. A Farmers Group Corpn engaged in farm management	2. Who lives in the area in the case of fixed area coops.	2. Consumer coops having office in area of cooperatives
3. An individual living in area and qualified to make use of services	3. Those who are engaged in same occupation in case of cooperatives of specific occupation	3. An organisation of national public employees, health insurance and its federation and a mutual aid association having office in area of labour credit coops.

4. Any other Agri.  
Cooperatives
5. Farmers Group which  
has object of common  
interest of farmers  
through coop system

### *Revolving Fund*

In addition to capital stock contribution (share capital) under article 13.2 "a capital stock cooperative may, in accordance with the provision of the articles of incorporation, ask its members to contribute the whole or part of the surplus funds to be paid to its members as dividends in proportion to the rate of their utilisation of its business, but such capital contribution shall be limited to a period not exceeding five years".

In agricultural coop law, article 16.5 and also fisheries law "No proxy may stand proxy for five or more members. In case of consumer cooperative law article 17.4 allows, proxy of 10 persons. There is no such provision in Labour Bank Law.

All the laws provide that a member who does not use services of the cooperative for a reasonable long time will stand disqualified.

### *Section 4 : Administration*

Article 28 provides subjects to be included in the Articles of incorporations including the procedure of election of officers. In addition article 29 provides items to be included in the bye-laws namely:

- i. General Meetings
- ii. Conduct of business operations and accounting
- iii. Officers

- iv. Members
- v. Other matters

Article 31 deals with conduct of elections. It also states that two-thirds of the officers to be elected have to be from regular members and the term of office shall not be more than 3 years.

Under article 32 "the board of directors shall decide on the execution of cooperative business and supervise the execution of duties of directors".

Under article 43 "A member (excluding an associate member) may, with consent of one tenth or more of the members, request the directors to dismiss a general manager or a chief accountant ."

Article 49 provides for reduction in face value of share as under "In case where a capital stock cooperative makes a decision on the reduction in the face value of each share, a new inventory and balance sheet shall be prepared within two weeks after the day on which the decision was made."

#### *Section 5 : Establishment*

The section deals with registration procedure and under article 60 application may be refused on the following grounds:

The administrative authorities shall, upon application for approval under Paragraph 1 of the foregoing Article, grant the approval except in the following cases:

1. In case where the procedures for the establishment, or the contents of the articles of incorporation, or the business plan are in violation of the laws, orders or actions taken by

the administrative authorities based upon the laws or orders;

2. In case where the business is deemed unwholesome and contrary to public interest;
3. In case where the establishment of a federation of agricultural cooperatives is deemed detrimental to the sound development of a central union of agricultural cooperatives, on ground that the proposed federation of agricultural cooperatives plans to carry on the same business in whole or in part of the business carried on by a central union of agricultural cooperatives.

Under article 61 if approval or disapproval is not conveyed within two months, the society shall be deemed to be approved for registration.

The section also deals with the procedure of promoters meeting and how the society will be operative.

#### *Section 6 : Dissolution and Liquidation*

Under article 64 a cooperative shall be dissolved for the following reasons:

1. Resolution adopted by general meeting
2. Amalgamation
3. Bankruptcy
4. Expiration of duration

Under article 71, in case where a cooperative has been dissolved, its directors shall act as the liquidators, except in the case of dissolution due to the amalgamation or bankruptcy. This rule however, shall



not apply to the case where the persons other than the directors have been nominated at a general meeting.

In case where a cooperative carrying on the business under Item 8, Paragraph 1, Article 10, has dissolved in accordance with the provision of Paragraph 6, Article 64, the administrative authorities shall nominate liquidators irrespective of the Commercial Law that applies correspondingly under the preceding paragraph and Article 72-2.

### ***Chapter II - Farmers Group Corporation***

The object of a farmer group cooperative under article 72.3 states "a farmer group corporation shall aim to increase the interests common to the members through facilitating cooperation in agricultural production by the members".

Under article 72.5 they are entitled to have tax exemption as to cooperative and provides other provisions similar to those applicable to agricultural cooperatives.

### ***Chapter III - Central and Prefectural Unions of Agricultural Cooperatives***

The chapter deals in detail about the establishment and working of central and prefectural unions. Under article 73, "The Government may subsidise part of the expenditure of the unions required for carrying on their business, within budgetary limitations of each financial year".

Under Article 73-9 each union shall perform the following businesses in order to attain its objective:

1. Guidance for member cooperatives in their organisation, business operation and management;

2. Auditing of the accounts of member cooperatives;
3. Offering of education and information to member cooperatives;
4. Liaison among member cooperatives and mediating in disputes involving member cooperatives; and
5. Investigation and study regarding cooperatives.

Article 73 -10 - the Central Union, in order to secure the extension of its business to the fullest extent, or in order to coordinate the business of the respective prefectural unions, may give them guidance and instructions.

In case where the Central Union deems it necessary to do so in order to give guidance and instructions to prefectural unions, the Central Union may, in accordance with the provision of its articles of incorporation, give directives to prefectural unions on matters relating to the establishment of business plans or to changes in business plans on important matters relating to other business or accounting; or the Central Union may encourage prefectural unions to consult with the Central Union or may request them to present their business reports or required papers or accounting books.

In Central Union, the President is responsible for supervising the business under article 73-19. The President shall represent the central union and shall have prime supervision over its business.

The Vice-President shall, in accordance with the provision of its articles of incorporation, represent the central union, assist the President, take charge of the business of the central union, act on behalf of the President in case of an accident involving the President,

and shall perform the duties of the President in case the presidency is vacant.

#### ***Chapter IV - Registration***

This chapter deals with registration of the establishment of branches, offices, auxiliary office, dissolution, amalgamation of cooperatives, farmer group and unions which is post operative after the articles of memorandum are approved.

#### ***Chapter V - Supervision***

Article 93 authorises administrative authorities to call information and reports from cooperatives to find out whether they are working according to the law.

Under article 94 administrative authorities may inspect a cooperative at the request of 10% of the members as also at their own initiative to examine the working. Under article 94 (4) the administrative authorities shall inspect every cooperative once a year.

The article also gives powers to administrative authorities to give directions with regard to their business, amendments of bye-laws in a reasonable time and in case of non-compliance ask for re-election or even cancellation of the registration. However, before giving such order an advance notice has to be given to the concerned higher union and hear their views. However, the law does not provide to take over management of a cooperative by the administrative authorities as in some other laws.

#### ***Chapter VI - Panel Provisions***

The chapter provides for 20 types of offences which in some cases include imprisonment upto 3 years and fine and in other non-criminal offences fine not exceeding 1000,000 Yen.

## Republic of Korea (South)

With the advent of capitalism in Korea during the late 19th and early 20th century particularly during the colonial rule of Japan, absentee land-lordism developed and most farmers became agricultural labourers. After the Kanghwa Island Agreement in February, 1876, Korea was forced to open the ports of Pusan, Wonsan and Inchon and the local Korean economy was severely destroyed. Farmers left their land and moved towards ports particularly due to heavy burden of share rent. Thus the Japanese Governor-General to reduce resentment in the people, began to establish the Financial Associations, Industrial Associations and Farmers Associations.

The first Kwangju local financial association was set up in 1907. In 1914 the local Financial Associations Regulations was abolished and local Financial Association ordinance was enacted and was revised in 1918. Similarly the first Chosum Industrial Association ordinance was enacted in January 1926. While enacting this law the Japanese Governor General had observed "In Korea, from time immemorial, there has been the Kye system handed down with the purpose of meeting the individual needs through cooperative work and the people have a precious heritage of tending to improve individual moralism and to promote public morals. However, the efforts of the colonial government did not bear much fruits. Along with government efforts civilian people's effort to organise cooperative also continued side by side. These efforts included cooperative movement led by Christianity since 1923 and cooperative movement led by Cheondoism (Korean Native Religion) in 1925.

After liberation efforts were made to re-organise agricultural cooperatives and in October 1948, the Ministry of Agriculture and Forestries prepared a draft law followed by many other drafts till on February 1, 1957 it was approved by the Congress. This was replaced on July 29, 1961 by a new Agricultural Cooperative Law which is operative presently and has been amended several times.

Korean cooperative laws have been influenced by Japanese and have sectoral laws like Japan. At present, the following laws are in operation:

1. The Agricultural Cooperative Law 1961.
2. Forestry Cooperative Law
3. Credit Union Law 1972
4. Community Credit Cooperative Law
5. Live Stock Cooperative Law
6. Fisheries Cooperative Law

The agricultural cooperative law is not only the first cooperative law in the present era of cooperative legislation but also provides broad framework for most other cooperatives and National Agricultural Cooperative Marketing Federation which commands the agricultural cooperative movement in South Korea. This law which was first enacted in July 1961 has been amended number of times has 8 chapters and 176 articles.

### ***Chapter I - General Provisions***

Article 1 states "the purpose of this law shall be to secure the balanced development of the national economy by increasing agricultural productivity and enhancing the economic and social status of farmers through the independent cooperative organisations of farmers".

Article 5 states “the objective of the Cooperative and the Federation, in their business operations, shall be to provide non-discriminatory and maximum service to their component members and they shall refrain from operating their business to benefit only a part of their members”.

No cooperative or federation shall be allowed to engage in profit making or speculative activities.

Article 6, prohibits cooperatives to perform any act connected with politics.

Under article 7, no officer or personnel of a cooperative shall hold the concurrent posts of Government officials (with the exception of posts of elected Government officials).

Under article 8 the business and the property of the cooperatives and the federation shall be exempted from taxes and other public assessment of the State or local autonomous entities except in case of custom duties and commodity tax.

Article 11 states policy of the government towards cooperatives as:

1. All the Ministers of Government shall actively support the business of the Cooperatives and the Federations, and shall provide preferential facilities of the Government or public organisations for their use.
2. The government may grant subsidies necessary for the business operation of the cooperatives and the federation within the scope of its annual budget.
3. The President of the federation may present to the Government his recommendations regarding development of the cooperatives and the federation.

## ***Chapter II - Primary Agricultural Cooperatives***

### *Section 1: Purpose and Operational Area*

Under article 15 (2) not more than one cooperative can be established within the same operational area

### *Section 2 : Establishment*

It deals with the procedure and requirements for establishing a cooperative.

### *Section 3 : Membership*

Article 22 states that only a farmer can be a member of cooperative under article 22(2). Any person or juridical person within the area of operation can make use of the services of a cooperative and be a non-shareholder associate member of a cooperative.

In addition to subscribe shares under article 24 members can be asked to invest their patronage rebate as a revolving investment.

Under article 29 proxy is allowed through another member or member of the family but no member can represent more than one proxy.

Article 33 deals with expulsion which include "when a member has failed to utilise the cooperative for a period of more than one year".

### *Section 4 : Organisation*

Under article 41 quorum for General Meeting is majority membership and in case of a cooperative where membership is more than 200 representative General Body is provided. The tenure of representatives is 2 years (Article 44).

Under article 46 "The officers of a cooperative shall include the President, six to ten Directors and two

Auditors, as provided in the Articles of Incorporation. The President shall be elected by and from among members of a cooperative.

The position of the officers of a cooperative shall be honorary; provided that they may receive compensation for their actual expenses in accordance with the provisions of the Articles of Incorporation.

Article 47 "The President of a Cooperative shall represent the Cooperative and execute the operations thereof in accordance with the provisions of the Articles of Incorporation.

Under Article 50 "The term of the President and Directors shall be 4 years and of auditors 3 years. Article 50.11 and 12 provides specific qualification for election of President as under :

1. Person who has not consecutively held the membership of a cooperative concerned for more than two years at the time of the election announcement, or who has not consecutively possessed for more than the shares as an investment (hereinafter called as "standard investment") of which number is no less than average number of shares invested by each member as of the day of election announcement for the cooperative concerned.
2. Person who has in arrears for the debt payable to the Cooperative in question exceeding the amount and the period determined by the Articles of Incorporation during one year prior to the announcement of election.

Article 51 provides restrictions on election campaign as under:



- i. No one shall be permitted to furnish money, goods, entertainment or other benefits concerning property, or to offer, solicit or promise public or private positions to voters in order to make success or defeat in the election of a specific person or persons to the post of officers of a cooperative.
- ii. Candidates for the office shall not make a door to door visit to the members of a cooperative, or invite them to a particular place for the election campaign during the period commencing from election announcement until election day.

Under article 56 Board members can be removed by the General Meeting by two-thirds members' voting.

Article 57 (2) provides appointment of executive staff (General Manager and Managers) by the President with the approval of Board persons who have passed an aptitude examination provided by the order of the President of the Federation.

### *Section 5 : Business*

Article 58 gives a comprehensive list of business which a primary cooperative can undertake which include lending, marketing, processing etc. also insurance and business by proxy for the state, public organisations or banking institutions on consignment basis. A cooperative under article 58 (6) "may invest in other companies within the limit of the authorised capital to achieve its business purposes".

For undertaking insurance business approval of the Minister is required under article 58 (2). Under article 59 limit of business with non-members has to be included in the Articles of Association. However,

business with members of another cooperative or family of a member cooperative is to be treated as members business [article 59 (2)].

#### *Section 6 : Accounting*

This section prescribes that accounts are to be kept for credit and non-credit business separately. It also provides for various types of funds, fulfilment of certain conditions in case of loss as also reduction of per value of shares.

Audit is the responsibility of the auditors elected by the General Body.

#### *Section 7 : Amalgamation, Division, and Dissolution*

Article 74-78 deal with procedure and requirement for amalgamation and division. Article 79 provides reasons for dissolution and under article 81 the President has to act as a liquidator except when the General Body decides to appoint someone else as a liquidator. However, where liquidation of a cooperative is to be done under article 172 on the recommendation of the president of the federation, the minister is to appoint the liquidator.

The surplus after liquidation has to be disposed of according to the articles of incorporation.

#### *Section 8 : Registration*

Under article 87 registration has to be done within two weeks. The section provides procedure for registration of amendment and other changes as also registration of dissolution and liquidation.

### ***Chapter IV - Special Agricultural Cooperatives***

Article 118 defines "The purpose of a specialised cooperative shall be to promote the common interest of

its members engaged in the specialised field of agriculture." The other provisions are by and large similar to primary cooperatives in Chapter II.

### ***Chapter V - National Agricultural Cooperative Federation***

Article 128 states that "the purpose of the federation shall be to promote the common interest of its member cooperatives and their sound development."

Under Article 134, 15 or more cooperatives can promote the Federation.

Under Article 136 (2):

- i. In case the Federation has membership of more than 500, it shall have a representative meeting to substitute for General Meeting.
- ii. The number of representatives shall be 100 to 200, and they shall be elected from among the Presidents of member primaries and special cooperatives.

Article 148 provides that:

1. The Federation shall have as its officers one President, two senior executives, vice-presidents, more than 19 directors and two auditors.
  2. Eight directors among directors and one auditor shall be of standing position.
  3. The President shall represent the federation administrator and direct the business operations.
- Further article 149 provides election and term of office:

- i. President and the standing auditor shall be elected at the General Meeting
- ii.. Senior Executives, vice-presidents and standing directors shall be appointed by the President subject to the concurrence of the General

Meeting. Non-standing Directors and Auditor shall be elected from among the presidents of member cooperatives at the General Meeting.

- iii. The term of office of the President, the Senior Executive Vice-Presidents and the Directors shall be four years and that of Auditors shall be for three years.
- iv. In case a President of a member cooperatives is elected as the President of the Federation he shall resign from the post of the president of the concerned cooperative prior to his inauguration.

Under article 150 (1) the personnel shall be appointed or dismissed by the President of the Federation.

Under article 153 (2) the federation may allow non-member cooperative to utilise its business within the limits that it does not interfere with the utilisation by the members. According to Articles of Incorporation the federation can be authorised to issue Agricultural Finance Bonds and under article 157 full payment of both principal and interest shall be guaranteed by the government.

While the federation is free to have its own business plan approved by the General Meeting in case of business undertaken with the funds of the government Minister's approval is needed a month before the commencement of such business.

Under article 161 the annual accounts within two months of the closing of the accounts have to be submitted to the Minister and also to be given public notice.

Article 162 regulates the use of unemployed funds.

### *Chapter VI - Supervision*

Article 164 authorises the Minister to supervise the cooperative and issue orders in this regard and can also ask Director-General of Board of Bank supervision and examination to do so.

Under article 164 (3) the Minister can delegate in part or in whole his supervisory authority over the cooperatives to the President of the Federation.

Under article 165 "In case a cooperative or federation has received subsidies from the government, it shall be subject to audit, in so far as the subsidised business are concerned by the board of audit and inspection".

Under article 166, "The President of the Federation may guide its member cooperatives in accordance with the provisions of this law and may issue necessary regulations and instructions for the purpose." Further he can also have his subordinate personnel examine its member cooperatives.

Article 169 gives powers to Minister to order for suspension of the whole or part of its business within a certain period of time, the reshuffle of officers concerned, or supervision of their directors in case of violation of law and/or bye-laws by the cooperative.

Under article 170, the President of the Federation can request for necessary action against a member cooperative for change in the articles or suspension of business or disposal of assets and deposits.

Under article 171, the federation is to submit its balance sheet and annual report outlining the important

agricultural policies of the Government and analysing the business operations of the federation.

Article 172 details the conditions under which the Minister may order the dissolution of a cooperative on the advice of the President of the Federation.

### ***Chapter VII - Penalties***

Severe penalties have been provided for certain officers under the chapter as under:

Under article 173 "In case of any officer of a cooperative or the federation made such actions spending or lending funds for purposes other than the authorised business purpose of the cooperative or the federation as disposing or utilising any property of the cooperative or the federation for the sake of speculation, or as incurring damages to a cooperative or the Federation in violation of the provisions of this law or the Articles of Incorporation, he shall be punished either by imprisonment with hard labour for a term not more than ten years or by a fine not more than 10,000,000 Won, or both."

Under article 174, in case the President, Senior Executive, Vice-president, directors, auditors, general manager, or liquidator of a cooperative or the federation has committed any of the following he shall be sentenced to penal servitude for not more than three years, or be fined not more than 5,000,000 Won:

1. In case a permission or an approval has not been obtained concerning matters requiring such permission or approval from the supervisory agency.
2. In case a record has been neglected or false registration has been made.

3. In case false statements have been made to, or facts have been concealed before the competent institutions, the General Meeting, Representatives Meeting, or Board of Directors.
4. In case matters requiring the resolution of the General Meeting, Representatives Meeting or Board of Directors have been implemented without such resolution.
5. In case the provisions of articles 65 including *mutatis mutandis* application of the provisions of Article 127 through 71, 77 and 162 have been violated.
6. In case the provisions of Articles 82, 84 and 85 have been violated.
7. In case the public notice has been neglected, or unjust public notice has been made.
8. In case the inspection of the competent institutions has been refused, obstructed or evaded, or false statements have been made to the questions of competent inspectors.

Under 174-2 regarding Penalty:

1. Any violation of the provision of Paragraph 1 of Article 51 shall be punishable with prison term of not more than two years, or with a fine of less than 1,000,000 Won.
2. Any violation of the provision of Paragraph 2 of the Article 51 shall be punishable with a prison of not more than one year, or with a fine of less than 500,000 Won.

## Kuwait

The beginning of cooperatives in Kuwait could be linked with the first school of cooperatives in 1941 in Moubarkiya School followed by number of other school cooperatives.

In 1958 consumer cooperatives were established first one for the staff of Social Affairs Department and another one for Information Department. All these cooperatives were subjected to social institute and club law. In 1962 the first cooperative law was enacted followed by an another law in 1979 which is in operation presently. This law has 48 articles in 7 chapters.

Article 1 defines "A Cooperative Society shall mean any society established by natural or juristic person, pursuant to the provisions of this law, whether for a limited or unlimited term, with a view to raising the socio-economic standard of its members through the adoption of the cooperative principles outlined in the rules for implementation of this law."

Under article 8 registration period is one month and in case of refusal appeal can be made within two weeks to a committee appointed for the purpose which will include representative of cooperative federation also. The Committee must dispose of the appeal within two weeks.

Under article 10 persons over the age of 21 shall be active members and below 21 years shall be affiliated members without rights to participate in the management.

Under article 11 the Board shall have not less than six and not more than nine members and one third of them shall retire every year. The tenure will be 3 years.



The article also authorises government to nominate one or more directors but not more than one third of the total board members.

Under article 14 General Body is to appoint a qualified person as an auditor. The audit report has to go to the Ministry of Social Affairs, Law and Labour also.

Under article 18 board members can be paid remuneration but not more than 10% of net profit and maximum limit fixed by the government.

Article 31 details the conditions under which government can order winding up of a cooperative. However, rules do provide voluntary dissolution also.

Under article 35 government can issue a grounded decision dissolving the board and appoint a manager or nominate a board of any cooperative. Articles 36-38 provide penalties. Under Article 39 Government may exempt some or all cooperatives from all or any custom duties and other fees.

## Malaysia

Earlier attempts to promote cooperatives in Federal Malay states which included Singapore did not find much response by the British Officialdom or the plantation community even though some studies were made about the Indian and Burmese cooperatives and their relevance to Malaya. The Federal legislative council passed the first cooperative societies act in 1922 based on the Indian Cooperative Societies Act of 1912. The Cooperative Act of 1922 was replaced by the cooperative societies ordinance of 1948 regulating all types of cooperatives which has been amended / replaced many times. The last being in 1993 which has again been amended in 1995.

However, since the enactment of Farmers Organisation Authority Act 1973 the Director General under this act has been made registrar and assumed legal authority over all agro-based cooperative societies along with farmers associations. The Cooperative Societies Act (AKTA KOPERASI) 1993 has in all 96 articles divided into 10 parts.

### *Part I : Preliminary*

This part deals with definitions and Registrar General and his functions.

The definitions include ICA cooperative principles, definition of dividend and patronage rebate. It also defines a "Subsidiary" as subsidiary of a registered society means a company, as defined in the companies act 1965, in which such registered society controls the composition of the Board of Directors of more than half of the voting power or holds more than half of the issued

share capital and include a subsidiary, as defined in that act, of such a company.

The Registrar General along with being a registering and revoking authority for cooperatives is also to encourage the establishment and development of cooperatives in all sectors of economy and help cooperatives to increase the economy. An important provision in the act under article 3 (5) is that the Registrar General shall be a body corporate who can sue or be sued and enter into contracts.

### ***Part II : Registration***

Under article 6 minimum membership for a primary cooperative is 100 individuals and for secondary cooperative minimum of 2 cooperatives. While no time limit has been prescribed for registration, an appeal against refusal to registrar can be made within 60 days.

### ***Part III : Duties and Privileges of Registered Societies***

Under article 19 "no registered society shall form, own, acquire or hold a subsidiary without the prior approval of the Registrar-General."

Article 20 provides compulsory sale of produce through society by members as provided in the bye-laws and in case of default can be asked to pay liquidated damages.

Under an amendment in 1995 in article 18, the Registrar-General has been authorised to issue directions for compulsory amendment in bye-laws in case of ambiguity in bye-laws or in his opinion an amendment is necessary or desirable in the interest of the society.

## ***Part IV : Rights and Liabilities of Members***

Article 30 allows one member one vote in case of primaries, and as per the bye-laws in case of secondary cooperative. In case of primary, proxy vote is not allowed but in case of secondary cooperatives under article 31 proxy is allowed.

## ***Part V : Organisation and Management***

Under Article 42 the Board shall consist of not less than six and not more than 15 members and the internal audit committees shall consist of not less than three and not more than six members.

For election to the Board, the person should have been a member of the society for a minimum period of two years. This does not apply to a society of less than 100 members and a school cooperative. Under article 46 remuneration of Board and audit committee members have to be within the limit fixed by the General Meeting. The members of the board of subsidiary shall not accept remuneration without the approval of the cooperative he represents.

Under article 63 the auditor has to inform the society as also to the Registrar General in case of any irregularity disclosed during the audit inspection.

## ***Part VIII : Inspection, Enquiry, Dissolution and Disputes***

Under article 60 the Registrar-General may consequent upon an inspection under article 64 or audit under section 60 hold an enquiry and inform the findings to the society as also suggest any action called for to remedy the defects within a time limit.

Further under article 69 (i) the Registrar-General may, after considering the facts disclosed in an inquiry under section 66 and if he deems it necessary in the interest of the registered society so to do, by order:

- a. suspend all or any of the activities of the registered society, for such period as he shall specify;
- b. suspend or dissolve the Board of the registered society; or
- c. freeze the bank accounts of the registered society to prevent losses or misuse of funds.

Notwithstanding the foregoing provisions of this section, the Registrar-General may by order remove any officer of the registered society if it is in the interest of the registered society for him so to do, but no person shall be so removed without giving him an opportunity to be heard; and any vacancy created by such removal shall be filled in the manner provided in the bye-laws of the society.

Under article 70, if an officer of a registered society has been removed by order of the Registrar-General under the provision of sub-section 69 (6), such officer shall thereafter not be eligible to be appointed as a member of the Board or any committee of the registered society or be re-employed by that or any other registered society, as the case may be, for a period of five years from the date of such removal.

While dealing with the dissolution of a cooperative the Registrar-General can revoke the registration of a cooperative under article 71 or 72 and the liquidation proceedings follow thereafter. Under article 75(8) surplus funds after liquidation have to be invested with

the Trustee Act 1949 and the net income has to be credited to the cooperative central fund to be administered by the Registrar-General in accordance with the regulations. A new provision as article 71 A has been added to the act in 1995 for dissolution of a cooperative which wants to convert itself into company under the Companies Act of 1965.

Article 80 gives powers to the Registrar-General to surcharge any official found guilty of breach of trust and similar offences.

Article 82 provides settlement of disputes by arbitration.

Article 83 also provides establishment of a tribunal to hear and decide disputes under article 82 (i), (ii).

In case any question of law is raised under article 84 it can be referred to the High Court for opinion.

### *Part IX : Miscellaneous*

This part provides for amalgamation, division and transfer of assets and liabilities under article 85.

Article 86 provides subjects/matters for making regulations by the Minister.

Under Article 93 Registrar-General is empowered to compound offences on payment of money which shall not exceed 50% of the maximum of the fine to which the person would have been liable where he deems it fit and proper to do so.

In 1973 a separate law in the name of Farmers Organisation Act 1973 has been passed. Section 32 of this act provides:

They shall not be registered after the commencement of this Act.

- a. Any Farmers Association under the Farmers Association Act of 1967
- b. Any cooperative society under the cooperative society ordinance 1948 of Malaya, the cooperative societies ordinance 1958 of Sabah and cooperative societies ordinance of Sarawak, one of whose principal objects or main functions is emerged with agricultural production, agricultural credit, marketing or processing or any such commercial and trading venture.

Further under article 34 (b) the Director-General of the Farmers Organisation Authority shall in respect of agro-based cooperative societies and farmers associations be deemed to be the Registrar of such cooperative societies and Farmers Association.”

Since the enactment of this act, agro-based associations/cooperatives are governed by this act and not by the cooperative societies act.

The contents and provisions of this act are not much different from cooperative act except that it does not talk of cooperative principles or definitions of cooperative or even of a farmers organisation.

It has only 35 articles compared to 96 in the cooperative act and is comparatively simpler.

# Myanmar

Indian Cooperative Act of 1904 and later an act of 1919 applied to cooperatives in Myanmar. The first agricultural credit society was registered in January 1905. Myanmar had an economic depression from 1929 onwards and many cooperatives had to be liquidated under a new cooperative act of 1927. This act continued for around 30 years when it was replaced by the act of 1956. When the Revolutionary Council came into power in 1962 it replaced the 1956 law by a cooperative law of 1970 in which cooperatives were formed on territorial basis and they lost their voluntary character and became part of the socialist economy. This law was again repealed in 1992 which is much more democratic and is in operation presently.

The law effective from December 22, 1992 has 39 articles divided into 10 Chapters and is the briefest cooperative law in the region.

## *Chapter 1 : Title and Definition*

The definitions are usual definitions found in other cooperative law except the definition of dividend which is as under : "Dividend" means money apportioned out of the net profits in accordance with the stipulation for members, member societies, executive committee and staff of the society.

## *Chapter II : Basic Principles of the Society*

There is only article 3 under this chapter which states various objectives and functions in paras (a) to (j) and are not related to the ICA cooperative principles though they do not necessarily conflict with the ICA cooperative principles.



### ***Chapter III : Bye-laws and Formation of the Society***

Under articles 4 and 5 the law authorises the promoters of the cooperative to adopt bye-laws according to the nature of business to be handled by the cooperative and approved by the General Meeting.

Under article 6 membership requirement for registration are as under:

- a. a primary cooperative society may be formed with at least 5 (five) persons in order to promote collectively the interests of its members;
- b. a cooperative syndicate may be formed with at least 3 (three) primary cooperative societies in order to amalgamate in an equity partnership according to the economic enterprise;
- c. a union of cooperative syndicated consisting of cooperative syndicates;
- d. the Central Cooperative Society may be formed consisting of cooperative syndicates and unions of cooperative syndicates which have already been formed; and
- e. if required by an economic enterprise, a cooperative society may be formed separately by splitting up a cooperative society which has already been formed or by amalgamating cooperative societies which have already been formed.

### ***Chapter IV : Membership, Duties and Rights of a Member and Cessation of Membership***

Article 9 provides that person having completed the age of 12 years may be admitted as associate member in a primary cooperative society.

The other provisions are usual provision found in most cooperative laws.

## ***Chapter V : Membership of a Member Society and Duties and Rights of a Member Society***

This chapter contains usual provisions applicable to members of a secondary cooperative.

## ***Chapter VI : Duties and Powers of a Society and Cessation of a Society***

The provisions under this chapter are also normal provisions and there is nothing worth highlighting or objectionable.

## ***Chapter VII : Finance of the Society***

The important provisions under the chapter are:

- \* Expenditures incurred for the work undertaken by the Central Cooperative Society in respect of dissemination of cooperative concept and technique, promotion of cooperative spirit and co-ordination among societies may be recovered proportionately from the societies.
- \* The society shall apportion the following funds by a resolution of its general meeting:
  - a. business expansion fund for the expansion of the economic enterprises of the society;
  - b. social and cultural fund for the promotion of the social and cultural activities;
  - c. general fund for unforeseen losses and expenditures in the business of the society.
- \* The society shall determine the following dividends according to the financial year:
  - a. dividend on the share;
  - b. dividend on the investment;
  - c. dividend for the executive committee members

- and staff of the society; and
- d. refund for purchase or sale of goods.

### ***Chapter VIII : Liquidation of the Society***

The liquidator has to be appointed by the Director-General. The conditions for liquidation are as usual. An appeal against the order of liquidation can be made to the Minister within 60 days.

### ***Chapter IX : Disputes***

The provisions are as under:

- \* The Director-General shall form a committee as may be necessary with suitable citizens in order to investigate and submit disputes between societies which are not member societies in a particular society. The Director-General shall give a decision on the investigations submitted by the Committee. The decision of the Director-General shall be final and conclusive.
- \* The general meeting shall give a decision in disputes between a society and a member or between a society and a member society in respect of the transactions of a society.
- \* The relevant Executive Committee shall give a decision in disputes between members or between member societies in respect of the transactions of a society.

### ***Chapter X : Miscellaneous***

Article 38 provides:

- a. the Ministry of Cooperatives and the Department may issue rules and procedures as may be necessary, with the approval of the Government; and

- b. the Ministry of Cooperative and the Department may issue orders and directives as may be necessary.

The law does have provision for further rules.

# Nepal

In Nepal, the Cooperative Department was established in 1956 followed by the first cooperative law in 1959. This law was replaced in 1986 and again in 1992 which is in operation presently. The law of 1992 has a total of 49 articles. Some of the important provisions of this Act are mentioned in the preceding paras.

The preamble of the law states “whereas it is expedient to provide for the formation and operation of various types of cooperative societies and unions for the social and economic development of the countries farmers, artisans, people possessing inadequate capital and low income groups, workers, landless and unemployed people or social workers or general consumers on the basis of mutual cooperation and cooperative principles.... this law is made”.

However, the act does not explain what is meant by Cooperative Principles.

*Chapter I* : deals with Preliminary and Definitions

*Chapter II* : *Formation of Societies*

Under section 3 the minimum membership for a primary cooperative is 25 individuals and for single-purpose union or district union at least 5 cooperatives. The minimum membership for central cooperative union is 25 cooperatives and for a National Cooperative Federation at least 15 unions.

*Chapter III* : Deals with membership qualification for all types of cooperatives and termination of membership.

*Chapter IV* : *Operational Procedures*

This chapter deals with General Body, Board of

Directors and Accounts Committee. The provisions are quite flexible and leave many things to be included in the bye-laws. In case an election is not held in time and a member informs about it the Registrar shall conduct the election within six months from the date of the expiry of the term of the Board [Section 16 (6)].

Under section 17 an accounts committee of three persons to be elected by the General Body to conduct internal audit has been provided. The committee's report has to go to the General Body only and not to the RCS.

Section 19 provides formation of sub-committee as provided in the bye-laws.

**Chapter V :** It deals with the appointment of Registrar.

#### ***Chapter VI : Financial Resources and Mobilisation***

One interesting provision is that not more than 20% shares can be subscribed by any foreign cooperative which is a member of the International Cooperative Alliance.

Section 24 authorises cooperatives to issue debentures and accept loan from any bank or other agencies with the approval of the Government. On request government may guarantee repayment of debentures ( Section 25).

Under Section 28 cooperatives are not allowed to provide donations or any other type of economic assistance to any political party or any other institution or association that works for a particular religion or sect.

#### ***Chapter VIII : Information, Records and Audit***

Under Section 34 every cooperative has to submit to the registrar an annual report of its transactions, audit

report, policy and plans of profit distribution, date of AGM, names and remaining term of Board Members and any other information sought by Registrar. Non-supply of information may result in fine of not more than Rs. 1500 (Section 43).

Under section 35 the registrar has been empowered to conduct an enquiry and under section 36 to arrange inspections. The findings of the enquiry are to be conveyed to the general body for needful or take action for cancellation of the registration of the society in case the society remains defunct for 2 years or performs against its objectives. [Section 41 (3) Chapter X].

Under section 37 audit has to be done either by the departmental auditor or by a registered auditor approved by the Registrar within 3 months of the closing of the accounts.

In case the General Assembly is not satisfied with the audit report, it can appoint another auditor and get the accounts reaudited.

### ***Chapter IX :***

Provided many facilities and tax exemptions to cooperatives including income tax, wealth tax, stamp duty, registration of transactions except immovable property and may also exempt fully or partly from excise and customs duties.

# **Pakistan**

After partition of India and creation of Pakistan in 1947 Pakistan continued to apply the Bombay/Sindh Cooperative Societies Act of 1925 and continues in operation till date with a number of amendments. In addition to this Act, Cooperative Farming Act of 1976 has also been enacted for farming cooperatives, along with other ordinances.

The law of 1925 has 73 articles divided in XI Chapters.

## ***Chapter I : Preliminary***

This chapter includes title, extent and definitions. The definitions include definition of Resource Society, Producers Society, Consumers Society, Housing Society and a General Society. Resource Society has been defined as society formed with the object of obtaining members credit, goods or service required by them.

## ***Chapter II : Registration***

This chapter deals with appointment of Registrar and his officers, registration of societies of limited and unlimited liability. The minimum membership for a primary cooperative under article 7 is 10. However, in case of Sindh province the minimum number has been raised to 30 by an amendment in 1977.

The Chapter also deals with General Meeting, Special General Meeting and amendment of bye-laws. There is no time limit prescribed in the law for registration or refusal.

## ***Chapter III : Rights and Liabilities of Members***

Under article 17A a member has to declare his immovable property for membership of agricultural



credit society which can be attached in case of default.

Under article 18 all types of cooperatives have to follow the principle of one member one vote. Defaulters cannot stand for election.

#### ***Chapter IV : Duties of Societies***

Under article 22 Annual Audit is to be arranged by the Registrar only.

#### ***Chapter V : Privileges of Societies***

Under article 24 claims of the society will have priority to other claims except dues of the Government as land revenue. Shares or interest of a cooperative is not liable to attachment.

Article 32 provides exemption from registration of instrument relating to shares.

Under article 33 Federal Government of Pakistan may exempt cooperatives from income-tax, stamp duty, registration and court fee by notification. Similarly provincial government may also exempt cooperatives from stamp duty, court fee and registration fee.

Under article 33 provincial governments may give loans or guarantee interest on debentures issued by cooperatives.

#### ***Chapter VI : Property and Funds of Societies***

Under article 34 from non-members loans and deposits can be obtained only according to conditions laid by Registrar.

Under article 36 consumers, producers and housing cooperatives can deal with non-members according to their bye-laws.

Under article 38 dividend cannot be more than 10%. Under article 39 in case of Resource and Producers

Society, Reserve Fund has to be minimum 25% of net surplus and in case of other society it has to be a minimum of 10%.

Article 40 also allows profit distribution to non-members in case of consumers and producers society. Under article 42, 20% can be set aside for charitable purpose.

### ***Chapter VII : Inspection of Affairs***

Under article 43 Registrar is authorised to conduct enquiry and inspection under article 44 and inform the findings to the society.

### ***Chapter VIII : Liquidation and Arbitration***

Under article 47 only Registrar can issue orders for liquidation and appoint a liquidator for winding up process under the circumstances detailed in article 47 which are the usual provisions available in other British Model Laws. Under article 50A Registrar is empowered to fix damages against any person or official who is found responsible for any loss or damage caused to the society either after an enquiry, inspection, audit or in the course of winding up regarding disposal of surplus assets. Article 52 provides after all the liabilities including the paid up share capital of a cancelled society have been met, the surplus assets shall not be divided amongst its members but they shall be devoted to any object or objects described in the bye-laws of the society and when no object is so described to any object of public utility determined by the general meeting of the society and approved by the Registrar or they may in consultation with them either be assigned by the Registrar in whole or in part to any or all of the following:

- a. an object of public utility of local or communal interest,
- b. charitable purpose as defined in Section 2 of the Charitable Endowments Act, 1890 (VI of 1890),
- c. may be placed as deposit with the Provincial Cooperative Institute as with the Provincial Cooperative Bank, until such time as a new society with similar conditions is registered, when with the consent of the Registrar such surplus may be credited to the reserve fund of such new society.

Article 54 provides the provision of arbitration by the Registrar in case of disputes and explains detailed procedure with regard to arbitration proceedings.

#### ***Chapter VIII- A : Distraint***

This chapter prescribes detailed procedure for recovery of debt outstanding by a cooperative including through attachment of property and even sale of crop.

#### ***Chapter IX : Offences***

The offences are usual provisions found in the British Model Cooperative Laws.

#### ***Chapter X : Appeals and Revisions***

Appeal can be made within 60 days from the date of the receipt of the order against it to provincial governments in the following cases:

- |                |   |                                   |
|----------------|---|-----------------------------------|
| Article 10     | - | Registration                      |
| Article 16     | - | Amendment of bye-laws             |
| Article 45     | - | Cost of Enquiry                   |
| Articles 47,50 | - | Winding up, powers of liquidation |

- Article 54 - Arbitration
- Article 70 - No suit or case against a cooperative can be filed in the courts without giving a 60 days notice to the Registrar in that regard.
- Article 71 - Empowers provincial governments to make rules.

The multi-unit cooperative societies act 1942 which covers cooperatives having objects in more than one province is also operative in Pakistan. The act has in all six articles and deals basically with the following:

- i. Article 4 empowers Federal Government to appoint a central registrar who is to exercise the powers under the Cooperative Act 1925 applicable to Pakistan in case of multi-state cooperatives;
- ii. Under article 5 cooperatives coming under the act have to furnish such information as called for and non-furnishing the information is an offence; and
- iii. Article 6 empowers federal government to make rules to carry the provisions of this act.

# Philippines

The cooperative movement in Philippines was sponsored by the civic and regional groups and were registered under the first corporation law enacted in April, 1906, followed by the Rural Credit Cooperatives Associations Act 1915. Cooperatives picked up particularly during the American occupation. They were registered under the cooperative law enacted in April, 1906, Agricultural Credit Associations Act, February 5, 1915 and Cooperative Marketing Law, on December 9, 1927 and repealed in April 1973. These laws continued to be available to cooperatives along with some other sectorial regulation till all of them were brought under one law "Cooperative code of Philippines" in 1989.

The New "Cooperative Code of Philippines" became operative on July 24, 1989 and has 130 articles divided into 17 chapters and is one of the most comprehensive and progressive laws.

## *Chapter I : General Concepts and Principles*

Article 2 declares the policy of the state as under:

It is the declared policy of the state to foster the creation and growth of cooperatives as a practical vehicle for promoting self-reliance and harnessing people power towards the attainment of economic development and social justice. The state shall encourage the private sector to undertake the actual formation and organisation of cooperatives and shall create an atmosphere that is conducive to the growth and development of these cooperatives.

Towards this end, the Government and all its branches, sub-divisions, instrumentalities and agencies

shall ensure the provision of technical guidance, financial assistance and other services to enable the said cooperatives to develop into viable and responsive economic enterprises and thereby bring about a strong cooperative movement that is free from any conditions that might fringe upon the autonomy or organisational integrity of cooperatives.

Further, the state recognises the principle of subsidiary under which the cooperative sector will initiate and regulate within its own ranks the promotion and organisation, training and research, audit and support services relating to cooperatives with government assistance where necessary.

Article 3 explains the General concepts as under:

“A cooperative is duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.”

Article 4 includes cooperative principles as adopted by the ICA at that time.

## ***Chapter II : Organisation and Registration***

Under Article 6 minimum number to form a cooperative is 15 and also includes the purpose for which a cooperative can be organised.

Article 7 again explains the objectives of the cooperatives.

Article 11 prescribes that an economic survey of the business scope, membership, area of operation etc. has

to be submitted to the Cooperative Development Authority along with application for incorporation.

Article 13 states the maximum life of cooperatives as 50 years which can be further extended for another maximum of 50 years.

Under the law Article 14 provides subjects to be included in the "Articles of Cooperation" and article 15 provides subject to be included in the bye-laws.

Article 16 lays down a limit of 30 days for registration. In case of no reply the cooperatives will be deemed to be registered. In case of refusal appeal can be made within 90 days from the date of refusal and failure of the office of the President to act in 90 days shall deem to be approval of the said appeal.

Article 19 regulates the contract made by a cooperative before registration as legal contract.

Articles 23 and 24 deal with types of primary secondary cooperatives and their functions.

### *Chapter III : Membership*

Under article 26 any natural person who is a citizen of Philippines, a cooperative and a non-profit organisation with juridical personality is eligible for membership of a cooperative.

Under article 27 there is provision for regular voting members and non-voting associate members.

Under article 28 employees of CDA, Elected officials of government, except barangay officials and government officials are disqualified to be elected or appointed to any position in a cooperative.

Under article 31 along with other provisions non-patronising the services for an un-reasonable period as

may be fixed by the board of directors as also when a member has continuously failed to comply with his obligations is disqualification for membership.

#### ***Chapter IV : Administration***

Article 36 prescribes 25% of all the voting members as quorum for general meetings.

Under Article 37 for a secondary cooperative a maximum of five votes are allowed as also only in case of secondary cooperatives proxy is allowed.

Under Article 38 the board members shall be not less than 5 and not more than 15. The term of board shall not be more than 2 years and no director shall serve more than 3 consecutive terms.

Under article 42 interim vacancy can be filled by the board subject to the condition the Board has the necessary majority strength for the remaining period.

Under article 47 Board members can be paid only reasonable per diem. Any extra compensation can be paid only with the approval of the members meeting specifically called for this purpose.

The chapter also deals with accountability of Board Members.

#### ***Chapter V : Responsibilities, Rights, and Privileges of Coops***

Article 53 (4) relates the procedure for destroying the records of the cooperatives.

Under article 54 every cooperative has to prepare an annual report in the form prescribed by the Cooperative Development Authority and has to be sent to CDA as also to all the members.



Under article 57 every director, officer and employee handling funds, securities and property of the cooperative have to execute and deliver adequate bonds to the cooperatives as decided by its Board.

The law under article 62 provides a number of tax exemptions and under article 63 many privileges as under:

*Tax and other exemptions:* Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions to members. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with non-members shall enjoy the following tax exemptions:

- i. Cooperatives with accumulated reserves and undivided net savings shall be of not more than ten million Pesos (P10,000,000) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment, and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax free importations shall not be transferred to any person until five years, otherwise, the cooperative and the transferee or assignee shall be solitarily liable to pay twice the amount of the tax and/or duties thereon.
- ii. Cooperatives with accumulated reserves and undivided net savings of more than ten million Pesos (P10,000,000) shall pay the following taxes at the full rate:

- a. Income Tax - on the amount allocated for interest on capitals: Provided, that the same tax is not consequently imposed on interest individually received by the members.
- b. Sales Tax - on sales to non-members: Provides, however, that all cooperatives, regardless of classification, are exempt from the payment of income and sales taxes for a period of ten years. For cooperatives whose exemptions were removed by Executive Order 93, the ten year period shall be reckoned from the affectivity date of said executive order. Cooperatives created after the approval of this code shall be granted the same exemptions, the period of which shall be reckoned from the date of registration with the Authority: Provided, that at least twenty-five percent (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds:
  - c. All other taxes unless otherwise provided herein; and
  - d. Donations to charitable, research and educational institutions and reinvestment in socio-economic projects within the area of operation of the cooperative may be tax deductible.
- iii. All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes and taxes on transactions with banks and insurance companies: Provided that all sale or services rendered for non-members shall be subject to the applicable percentage taxes except sales made by

- producers, marketing, or service cooperatives: Provided, further, that nothing in this article shall preclude, the examination of the books of accounts or other accounting records of the cooperative by duly authorised internal revenue officers for internal revenue tax purposes only, after previous authorization by the authority.
- iv. Any judge in his capacity as notary public, ex-officio shall render service, free of charge, to any person or group of person requiring either the administration of oath or the acknowledgement of articles of cooperation of a cooperative applicant for registration and instruments of loan from cooperative not exceeding 50,000 Pesos.
  - v. Any register of deeds shall accept for registration, free of charge any instrument relative to a loan made under this code which does not exceed 50,000 Pesos or the deeds of title of any property acquired by the cooperative or any paper or document drawn in connection with any action brought by the cooperative or with any court judgement rendered in its favour or any instrument relative to a bond of any accountable officer of a cooperative for the faithful performance of his duties and obligation.
  - vi. Cooperatives shall be exempt from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this code, or where such action is brought by the Cooperative Development Authority before the court, to enforce the payment of obligations contracted in favour of the cooperative.

- vii. All cooperatives shall be exempt from putting up a bond for bringing an appeal against the decision of an inferior court or for seeking to set aside any third party claim; Provided that a certification of the Authority showing that the net assets of the cooperative are in excess of the amount of the bond required by the court in similar cases shall be accepted by the court as a sufficient bond.
- viii. Any security issued by cooperatives shall be exempt from the provisions of the Securities Act provided such security shall not be speculative.

*Article 63 : Privileges of Cooperatives*

Cooperative registered under this code shall, notwithstanding the provisions of any law to the contrary, be also accorded the following privileges:

- i. Cooperatives shall enjoy the privilege of depositing their sealed cash boxes or containers, documents or any valuable papers in the safes of the municipal or city treasures and other government offices free of charge, and custodian of such articles shall issue receipt acknowledging the articles received duly witnessed by another person;
- ii. Cooperatives organised among government employees, notwithstanding any law or regulation to the contrary, shall enjoy the free use of any available space in their agency, whether owned or rented by the Government;
- iii. Cooperatives rendering special types of services and facilities such as cold storage, ice plant, electricity, transportation and similar services and facilities shall secure a franchise therefor, and such cooperatives shall open their membership to all persons qualified in their areas of operation;

- iv. In areas where appropriate cooperatives exist, the preferential right to supply government institutions and agencies rice, corn and other grains, fish and other marine products, meat, eggs, milk, vegetables and tobacco and other agricultural commodities produced by their members shall be granted to the cooperatives concerned;
- v. Preferential treatment in the allocation of fertilizers and in rice distribution shall be granted to cooperatives by the appropriate government agencies;
- vi. Preferential and equitable treatment in the allocation or control of bottomries of commercial shipping vessels in connection with the shipment of goods and products of cooperatives;
- vii. Cooperatives and their federation, such as market vendor cooperatives, shall have preferential rights in management of public markets and/or lease of public market facilities, stall or spaces;
- viii. Credit cooperatives and/or federations shall be entitled to loans, credit lines, rediscounting of their loan notes, and other eligible papers with the Development Bank of the Philippines, the Philippine National Bank, the Land Bank of Philippines, and other financial institutions except the Central Bank of Philippines;
- ix. Cooperatives transacting business with the government of the Philippines or any of its political sub-divisions or any of its agencies or instrumentalities, including government-owned and controlled corporation shall be exempt from pre-qualification bidding requirements; and

- x. Cooperatives shall enjoy the privilege of being represented by the provincial or city fiscal or the Office of the Solicitor General, free of charge, except when the adverse party is the Republic of the Philippine.

### ***Chapter VI : Insolvency of Cooperatives***

In case a cooperative cannot fulfil obligations to creditors it may apply and seek remedies under the insolvency law.

### ***Chapter VII : Dissolution***

The chapter deals with dissolution of a cooperative on voluntary basis as also under orders of CDA under certain circumstances.

Under articles 65 and 66 the notice of the General Meeting for voluntary dissolution has to be published in a newspaper for 3 consecutive weeks.

Another important provision under article 70 is that even after the liquidation the cooperative continues to be body corporate for three years for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close the affairs etc. After the period of 3 years any asset left after distributing to share holders and creditors shall be given to the federation, union association to which the cooperative is affiliated or to the movement.

***Chapter VIII:*** It deals with capital, property and funds of the cooperatives.

***Chapter IX : Audit, Inquiry and Member Right to Examine***

Audit has to be done by an auditor who is qualified and governed by articles 81 and 82.

## ***Chapter X: Allocation and Distribution of Net Surplus***

Under article 86 net surplus has to be determined according to its bye-laws and further "the net surplus shall not be construed as profit but as excess of payments made by the members for the loans borrowed, or the goods or services bought by them from the cooperative and which shall be deemed to have been returned to them if the same is distributed as prescribed herein."

Article 87 provides net surplus distribution as under:

1. Reserve Funds 10%;
2. Education and training fund not more than 10%. Half of it to be spent by the cooperative and half to be given to concerned apex organisation;
3. Operational Fund for land, building, community development and or other funds total not to be more than 10%;
4. Balance for interest on shares not exceeding normal rate of investment and patronage refund to members.

The chapter also details the conditions for regulations of these statutory funds.

## ***Chapter XI : Special Provision relating to Agrarian Reform Cooperatives***

### ***Article 88 : Coverage***

The provisions of this chapter shall primarily govern agrarian reform cooperatives; Provided, that the provisions of other chapters of this code shall apply supplementarily except insofar as this Chapter otherwise provides.

An agrarian reform cooperative within the meaning of this code is one where the majority of the members are agrarian reform beneficiaries and marginal farmers and organised for any or all of the following purposes:

- i. To develop an appropriate system of land tenure, land development, land consolidation or land management in areas covered by agrarian reform;
- ii. To coordinate and facilitate the dissemination of scientific methods of production, and provide assistance in the storage, transport, and marketing of farm products for agrarian reform beneficiaries and their immediate family, hereinafter referred to as "beneficiaries".
- iii. To provide financial facilities to beneficiaries for provident or productive purposes at reasonable costs;
- iv. To arrange and facilitate the expeditious transfer to appropriate and suitable technology to beneficiaries and marginal farmers at the lowest possible cost;
- v. To provide social security benefits, health, medical and social insurance benefits and other social and economic benefits that promote the general welfare of the agrarian reform beneficiaries and marginal farmers;
- vi. To provide non-formal education, vocational/technical training and livelihood programmes to beneficiaries and marginal farmers;
- vii. To act as channels for external assistance and services to the beneficiaries and marginal farmers;



- viii. To undertake a comprehensive and integrated development program in agrarian reform and resettlement areas with special concern for the development of agro-based, marine based and cottage based industries;
- ix. To represent the beneficiaries on any or all matters that affect their interest; and
- x. To undertake such other economic or social activities as may be necessary or incidental in the pursuit of the foregoing purposes.

*Article 90 : Cooperative Estates*

Landholding like plantation, estates or haciendas acquired by the State for the benefit of the workers in accordance with the comprehensive agrarian reform program shall be owned collectively by the workers beneficiaries who shall form a cooperative at their option.

*Article 91 : Infrastructure*

In agrarian reform and resettlement areas, the Government shall grant to agrarian reform cooperatives preferential treatment, if necessary, the authority to construct, maintain and manage with government funding roads, bridges, canals, wharves, ports, reservoirs, irrigation systems, waterworks systems and other infrastructures. For this purpose government technical assistance, facilities and equipment shall be made available to such agrarian reform cooperatives for their use.

*Article 92 : Lease of Public Lands*

The Government may lease public lands to any agrarian reform cooperative for a period not exceeding

twenty-five (25) years, subject to renewal for another twenty-five years only : Provided, that the application for renewal shall be made one (1) year before the expiration of the lease: Provided further, that such lease shall be for the exclusive use and benefit of the beneficiaries and marginal farmers subject to the provisions of the Comprehensive Agrarian Reform Program.

*Article 93 : Preferential Right*

In agrarian reform areas, an agrarian reform cooperative shall have the preferential right in the grant of franchise and certificate of public convenience and necessity for the operation of public utilities and services: Provided that it meets the requirements and conditions imposed by the appropriate government agency granting the franchise or certificate of public convenience and necessity.

Electric service agencies shall, upon request of agrarian reform cooperatives, immediately provide electric services to agrarian reform areas. If the electric service agencies concerned fail for any reason to provide the services requested within a period of one year from receipt thereof, the agrarian reform cooperative concerned may provide the electric services in the agrarian reform area directly through its own resources and shall continue to do so until such time that the electric service agency concerned purchases all the investments made by agrarian reform cooperative in the electrification of the agrarian reform areas.

*Article 94 : Privileges*

Subject to such reasonable terms and conditions as the Department of Agrarian Reform and the Authority

may impose, agrarian reform cooperatives may be given the exclusive right to do any or all of the following economic activities in agrarian reform and resettlement areas:

1. Supply and distribution of consumer, agricultural, aqua-cultural and industrial goods, production inputs and raw materials and supplies, machinery, equipment, facilities and other services and requirements of the beneficiaries and marginal farmers in the agrarian reform areas at reasonable prices;
2. Marketing of the products and services of the beneficiaries on the local and foreign markets;
3. Processing of the members' products into finished consumer or industrial goods for domestic consumption or of export;
4. Provision of essential public services at cost such as power, irrigation, potable water, passenger and / or cargo transportation by land, sea or air, communication services, and public health and medical care services;
5. Management, conservation, and commercial development of marine, forestry, mineral, water, and other natural resources subject to compliance with the laws and regulations on environmental and ecological controls; and
6. Provision of financial, technological, and other services and facilities required by the beneficiaries in their daily lives and livelihood.

The Government shall provide the necessary financial and technical assistance to agrarian reform cooperatives to enable them to discharge effectively their

purposes under this article. The Department of Agrarian Reform, the Cooperative Development Authority and the Central Bank of the Philippines shall draw up a joint program for the organisation and financing of the agrarian reform cooperatives subject to this Chapter. This joint program shall be geared towards the beneficiaries' gradual assumption of full ownership and management control of the agrarian reform cooperatives within ten years from the date of registration of said cooperatives.

*Article 95 : Organisation and Registration*

Agrarian reform cooperatives may be organised and registered under this code only upon prior written verification by the Department of Agrarian Reform to the effect that the same is needed and desired by the beneficiaries; results of a study that has been conducted fairly indicate the economic feasibility of organising the same and that it will be economically viable in its operations, and that the same may now be organised and registered in accordance with the requirements of the Code.

***Chapter XII : Special Provisions on Public Service Cooperatives***

*Article 96 : Definition and Coverage*

A public service cooperative, within the meaning of this Code, is one organised to render public services as authorised under a franchise or certificate of public convenience and necessity duly issued by the appropriate government agency. Such services may include the following:

- i. Power generation, transmission, and/or distribution;

- ii. Ice plants and cold storage services. Electric cooperatives created under Presidential Decree No. 269 shall be governed by this Chapter if they qualify as cooperatives under the provisions of this Code;
- iii. Communications services including telephone, telegraph, and telecommunications;
- iv. Land, sea and air transportation cooperatives for passenger and/or cargo. Transport cooperatives organised under the provisions of Executive Order No. 898, Series of 1983, shall be governed by this Chapter;
- v. Public markets, slaughterhouses and other similar services; and
- vi. Such other types of public service as may be engaged in by any cooperative. Such cooperative shall be primarily governed by this Chapter and the general provisions of this Code insofar as they may be applicable unless they are consistent herewith.

*Article 97 : Registration Requirement*

No public service cooperative shall be registered unless it satisfies the following requirements:

1. It has the favourable endorsement of the proper government agency authorised to issue the franchise or certificates of public convenience and necessity;
2. Its Articles of corporation and bye-laws provide for the membership of the users and/or producers of the service of such cooperatives; and
3. It satisfies such other requirements as may be imposed by the other pertinent government agencies concerned. In case there are two or more

applicants of the same public service franchise or certificate of public convenience and necessity, all things being equal, preference shall be given to a public service cooperative.

*Article 98 : Regulation of Public Service Cooperatives*

1. The internal affairs of public service cooperative such as the rights and privileges of members, the rule and procedures for meetings of the general assembly, board of directors and committees; for the election and qualifications of officers, directors and committee members; allocation and distribution of surpluses; and all other matters relating to their internal affairs shall be governed by this Code.
2. All matters relating to the franchise or certificate of public convenience and necessity of public services cooperatives such as capitalization and investment requirements, equipment and facilities, frequencies, rate-fixing, and such other matters affecting their public service shall be governed by the proper government agency concerned.
3. The Cooperative Development Authority and the proper government agency concerned shall jointly issue the necessary rules regulations to implement this chapter.

***Chapter XIII : Special Provisions Relating to Cooperative Banks***

*Article 99 : Governing Law*

1. The provisions of this chapter shall primarily govern cooperative banks registered under this Code and the other provisions of this Code shall

apply to them only insofar as they are not consistent with the provisions contained in this chapter.

2. Cooperatives duly established and registered under the provisions of this Code may organise among themselves a cooperative bank which shall likewise be considered a cooperative registerable under the provisions of this Code subject to the requirements of and requisite authorization from the Central Bank.

*Article 100 : Definition, Classification and Functions*

A cooperative bank is one organised by the majority shares of which is owned and controlled by cooperatives primarily to provide financial and credit services to cooperatives. The term "cooperative bank" shall include cooperative rural banks.

A cooperative bank may perform the following functions:

1. To carry on banking and credit services for the cooperatives;
2. To receive financial aid or loans from the Government and the Central Bank of the Philippines for and in behalf of the cooperative banks and primary cooperatives and their federations engaged in business and supervise the lending and collection of loans;
3. To mobilise savings of its members for the benefit of the cooperative movement;
4. To act as a balancing medium for the surplus funds of cooperatives and their federations;
5. To discount bills and promissory notes issued and drawn by cooperatives;

6. To issue negotiable instruments to facilitate the activities of cooperatives;
7. To issue debentures subject to the approval of and under conditions and guarantees to be prescribed by the Government;
8. To borrow money from banks and other financial institutions within the limit to be prescribed by the Central Bank; and
9. To carry out all other functions as may be prescribed by the Authority: Provided that the performance of any banking function shall be subject to prior approval by the Central Bank of the Philippines.

*Article 101 : Registration Requirements*

No entity shall be registered by the Cooperative Development Authority as a cooperative bank unless the articles of corporation and bye-laws thereof as well as its establishment and operation as a cooperative bank have been approved by the Central Bank of the Philippines and it satisfies all requirements for registration as a cooperative.

*Article 102 : Membership*

Membership of a cooperative bank shall include only cooperatives and federations of cooperatives.

*Article 103 : Board of Directors*

The number, composition, and voting rights of the board of directors shall be defined in the articles of corporation and bye-laws of the cooperative bank, notwithstanding provisions of this Code to the contrary.

*Article 104 : Loans*

Cooperatives may obtain loans from a cooperative bank. Loans granted by a cooperative bank shall be reported to the Central Bank of Philippines.



### *Article 105 : Supervision*

The cooperative banks registered under this Code shall be under the supervision of the Central Bank. The Central Bank upon consultation with the agency and the cooperative movement shall formulate guidelines regarding the operations and banking transactions of cooperative banks. These guidelines shall give due recognition to the unique cooperative nature and character of cooperative banks. To this end, the cooperative banks may be exempted from Central Bank rules and regulations, applicable to other types of banks, which would impede the cooperative rural bank from performing legitimate financial and banking services to its members.

### *Article 106 : Capitalization*

1. A national cooperative bank shall have a minimum authorised share capital of two hundred million pesos in relation to Article 14 (5). The authorised share capital shall be divided into such number of shares with a minimum par value of one thousand pesos per share. For the purpose primarily of determining the permanency of equity, the types of share a cooperative bank may issue, including the terms thereof and the rights appurtenant thereto, shall be subject to such rules and regulations as the Central Bank may prescribe.
2. A local cooperative bank shall have a minimum authorised share capital of twenty million pesos divided into such number of shares with a minimum per value of one hundred pesos per share.

### *Article 107 : Distribution of Net Surplus*

The provisions of this Code on the allocation and distribution of net surplus shall apply.

### *Article 108 : Privileges*

Cooperative banks shall have the following privileges subject to the approval of the Central Bank and compliance with applicable banking laws, rules and regulations:

1. The cooperative banks registered under this Code shall be given the same privilege granted to the rural banks, private development banks, commercial banks, and all other banks, private development banks, commercial banks, and all other banks to rediscount notes with the Central Bank, the Land Bank of the Philippines, and other government banks without affecting in any way the provisions of this code; and
2. To act as a depository of government funds. For this purpose, all government departments, agencies and units of the national and local governments, including government-owned and controlled corporations are hereby authorised to deposit their funds in any cooperative bank.

### *Article 109 : Assistance to Cooperative Bank*

Whenever a cooperative bank organised under this code is distressed or may need assistance in the rehabilitation of its financial condition or to avoid bankruptcy, the Monetary Board of the Central Bank of the Philippines shall designate an official of the Central Bank or a person of recognised competence in banking or finance as receiver or conservator of the said bank pursuant to the provisions of Section 29 of Republic Act No. 265 as amended.

## ***Chapter XIV : Special Provisions Relating to Credit Cooperatives***

### ***Article 110 : Coverage***

This chapter shall apply only to credit cooperatives and the rest of the provisions of this code shall apply to them insofar as the same are not inconsistent with the provisions of this Chapter.

### ***Article 111 : Definition and Objectives***

A credit cooperative is a financial organisation owned and operated by its members with the following objectives:

1. To encourage savings among its members;
2. To create a pool of such savings for which loans for productive or provident purposes may be granted to its members; and
3. To provide related services to enable its members to maximise the benefit from such loans.

### ***Article 112 : Organisation and Registration***

Credit Cooperatives shall be organised and registered in accordance with the general provisions of this Code.

### ***Article 113 : Organisational Linkages***

Credit cooperatives may organise chapters or subsidiaries, or join leagues and federations for the purpose of providing commonly needed essential services including but not limited to the following:

1. Interlending of surplus fund;
2. Mutual benefits;
3. Deposit guarantee;
4. Bonding;

5. Education and training;
6. Professional and technical assistance;
7. Research and Development;
8. Representation; and
9. Other services needed to improve their performance.

Existing support organisations such as federations of credit cooperatives at the provincial, regional and national levels may continue as such under this code.

#### *Article 114 : Prohibition*

The term credit cooperative shall be used exclusively by those who are duly registered under this Chapter, and no person or group of persons, or organisation shall use the said term unless duly registered herein.

### **Chapter XV : Insurance Cooperatives**

#### *Article 15 : Cooperative Insurance of Societies*

Existing cooperatives may organise themselves into a cooperative insurance entity for the purpose of covering the insurance requirements of the cooperative members including their properties and assets.

#### *Types of Insurance Provided*

Under the cooperative insurance program established and formed by virtue of the provisions of this Code, the cooperative insurance societies shall provide its constituting members different types of insurance coverage, loan protection, retirement plans, endowment with health and accident coverage, fire insurance, motor vehicle coverage, bonding, crop and livestock protection and equipment insurance.

## *Article 17 : Applicability of Insurance Laws*

The provisions of the Insurance Code and all other laws and regulations relative to the organisation and operation of an insurance company shall apply to cooperative insurance entities organised under this code. The requirements on capitalization, investments and reserves of insurance firms may be liberally modified upon consultation with the Cooperative Development Authority and the cooperative sector. But in no case may the requirements be reduced to less than half of those provided for under the insurance Code and other related laws.

## *Article 118 : Implementing Rules*

The Insurance Commission upon consultation with the Cooperative Development Authority and the cooperative sector, shall formulate the rules and regulations implementing these provisions.

## *Chapter XVI : Miscellaneous Provisions*

This chapter deals with compliance with other applicable laws and also settlement of disputes.

## *Chapter XVII : Final Provisions*

Article 122 deals with Electrical cooperatives, CDA and National Electric Administration which was the registration authority for electric cooperatives before enactment of this code.

1. Article 123 provides for issue of regulations under this code. Article 124 provides penalties. The use of word 'cooperative' by anyone is punishable by one year's imprisonment and fine of Pesos 1000/.

The other penalties are:

2. Direct or indirect interference or intervention by any public official or employee into internal affairs of cooperative of which he is not a member, such as, but not limited to, the following:
  - a. Influencing the election or appointment of officers, directors, committee members and employees through public or private endorsement or campaign for or against any person or group of persons;
  - b. Requiring prior clearance for any policy or decision within cooperative;
  - c. Requesting a demanding for the creation of positions or organisational units, or recommending any person for appointment, transfer or removal from his position; or
  - d. Any other acts inimical or adverse to the autonomy and independence of cooperatives. In case of violation of any provision of this subsection, the individual and in the case of organisations, its officers and directors shall, upon conviction by a court, each suffer a penalty of not less than one year but not more than 5 years imprisonment or a fine in the amount of not less than five thousand pesos or both at the discretion of the court:
3. A director, officer or committee member who violated the provisions of Article 47 (liability of directors, officers and committee members), Article 50 (disloyalty of a director) and Article 51 (illegal use of confidential information) shall upon conviction suffer a fine of not less than five thousand pesos not more than five hundred pesos

or imprisonment of not less than five years but not more than ten years or both at the court's discretion.

4. Any violation of any provision of this code for which no penalty is imposed shall be punishable by imprisonment of not less than six months not more than one year and fine of not less than one thousand pesos or both at the discretion of the court.

# Singapore

After separation of Singapore from Malaysia it continued to use the old Malaysian Cooperative Law till a separate cooperative societies act was enacted and became operative from September 28, 1979 and has 102 articles.

## *Part I : Preliminary*

This part deals with definitions and appointment of Registrar and Assistant Registrar.

## *Part II : Formation and Registration of Cooperatives*

Under article 4 a society with only the following objectives can be registered:

- a. which has as its object the promotion of the economic interests of its members in accordance with cooperative principles;
- b. which, while having regard to the economic interests of its members in accordance with essential cooperative principles has, as its object, the promotion of the economic interest of the public generally, or any section of the public; or
- c. which is a society established with the object of facilitating the operations of a society referred to in paragraphs (a) and (b).

Under article 5 a primary cooperative can be formed with a minimum membership of 10 persons and a secondary society needs 2 or more societies or trade unions.

Under article 39 (1) Singapore citizens and residents in Singapore only can be member of a cooperative. However, under article 7 (i) (g) representatives of at least two societies have to sign the registration papers.



The registrar under article 8 can ask information for registration as he deems fit as under:

- a. the economic or other need for the formation of the proposed society;
- b. a statement as regards the viability of the activities of the proposed society;
- c. the availability of sufficient capital for the commencement of operations; and
- d. the availability of officers capable of directing and managing the affairs of the proposed society and of keeping such records and accounts of the society as the Registrar may require.

Under article 9 in case of refusal for registration appeal can be made within 2 months.

### ***Part III : Privileges and Duties of Societies***

Article 13 dealing with secondary cooperatives prescribes:

- i. Societies may form secondary societies and an apex organisation.
- ii. The apex organisation when formed and registered shall provide, organise and supervise effective centralised services for cooperative education and training, supplies, marketing, banking, transport, accounting, audit and such other services as may be necessary for the members.

An interesting provision under article 15 (4) (b) is the provision of referendum for amendment of bye-laws.

Under article 21 members have to sell their produce through the cooperatives as provided in the bye-laws and in case of default, they can be made to pay damages.

Article 22 provides imposition of fines on infringement of the bye-laws by a member but fine of more than S\$50 would need prior approval of Registrar. Under article 33 annual audit has to be done by the Registrar or a person authorised by him. Under article 34 a society has to submit within six months of the closing of the account, an annual report of the previous year activities and financial statement and audit report to the registrar.

#### ***Part IV : Rights and Liabilities of Members***

Under article 39 trade unions can be members of secondary cooperatives but cannot be members of primary or apex society.

Under article 42 principle of one member one vote is applicable in case of primary society but in secondary cooperatives voting right would be as per the bye-laws.

#### ***Part V : Organisation and Management of Societies***

Under article 51 a primary cooperative having more than 300 members can have representative delegates but the number of delegates shall not be less than 20.

Under article 56 quorum of General Meeting has been laid down as one fifth or 50 voting members which even is less. In case of no quorum an adjourned meeting shall be convened at not less than seven and not more than fifteen days at the same venue and time in which no quorum will be needed. Amendment to bye-laws cannot be considered in such a meeting.

Under article 59, a managing committee shall have not less than 5 and not more than 30 members. Under article 2 the managing committee has to meet at least once a quarter.

Article 64 provides payment of remuneration to the members of the managing committee as approved by General Body but shall not be more than the sum to be fixed by the registrar from time to time.

### ***Part VI : Property and Funds of the Society***

Under articles 67 and 68 advancing loan to non-members has to be with the approval of the Registrar.

Under article 70, reserve fund has to be at least 20% of surplus. Under article 72 every society has to contribute 5 % of surplus to Central Cooperative Fund which will be administrated as trust fund in such a manner as the minister may subscribe in the rules.

In addition to dividend, not more than a limit determined by the Minister, patronage rebate or any other funds as prescribed in the bye-laws, may also provide for a charitable purpose upto 10% under article 73. A society can distribute a part of its net surplus among its members as bonus shares or bonus certificates.

Bonus certificates can be encashed not before 5 years and shall bear no interest or dividend. In case of bonus shares the minimum period is 10 years after which they can be transferred or withdrawn.

### ***Part VII : Amalgamation and Transfer***

This part provides procedure for amalgamation of societies as also transfer of assets from one society to another society.

### ***Part VIII : Duties and Powers of Registrar***

This part deals with powers of the Registrar relating to audit, inspection, enquiry and winding up.

Article 81 provides:

- i. If an audit, inquiry or examination of books made under this Act discloses any defects in the working of a society, the Registrar may bring such defects to the notice of the society and if the society is affiliated to a secondary society or apex organisation, also to the notice of that other society.
- ii. The Registrar may make an order directing the society or its officer to take such action as may be specified in the order within the time mentioned therein to remedy the defects disclosed in the audit, inquiry or examination of books.

Failure of the removal of defect can result into registrar issuing orders for winding up the society.

Article 88 provides disposal of assets after liquidation which along with others include payment of dividend and patronage rebate for any period during which they were not paid according to the limit prescribed in the bye-laws.

Thereafter, any funds left will be transferred to liquidation fund with the registrar for a period of 2 years and then will be transferred to central cooperative fund.

Article 90 provides surcharge and attachment for damages caused to the society and article 91 provides settlement of disputes.

Under article 92 case of question of law that matters can be referred to Chief Justice for opinion by the Registrar or the Minister.

Article 94 provides to the Registrar to suspend the activities of the society or nominate a committee for a total period not exceeding two years.

***Part IX : Miscellaneous***

Article 95 provides for making rules under the law and article 100 provides penalty for non-compliance of the act.

The first cooperative law in Sri Lanka was enacted in 1911 which was meant only for credit cooperatives similar to Indian Cooperative Law of 1904. It was only in 1921 the law was amended to cover other type of cooperatives. The existing law was passed in 1972. Recently a committee was appointed to draft a new law under the Chairmanship of Mr. R. B. Rajaguru, former Regional Director of ICA ROAP, who gave his report but it is still under discussion.

The Cooperative Society Law has 75 articles divided into 14 chapters. After enactment in 1972 it was amended in August 1983 and in March 1992.

### *Chapter I : Registration*

Article 2 deals with appointment of Registrar and his officers. Under the amended article 3:

(a) Society which has its object to provision, in accordance with cooperative principles of specialised services contributing to the economic, social and educational and cultural welfare of its members.

(b) A society consisting of registered cooperative societies as its members established with the object of facilitating the operation of societies referred to in para (a) may be registered. Section 4 further states that minimum of 10 persons in case of primary cooperative and minimum of 3 cooperatives for a secondary cooperatives are needed for registration.

Section 5(3)(b) requires a feasibility report pertaining to economic activities along with other requirements with the registration papers. According to amended article 11(c), "No person who is a member

of parliament, Provincial Council, Municipal Council, Urban Council or Pradeshiya Sabha shall be eligible to be elected to or continue in office as a member of the committee of a registered coop society."

### ***Chapter II : Members Rights and Liabilities***

Under section 11(d), "a person shall be disqualified from being elected as a Chairman of a society, the membership of which consists of societies, if he is on date of his election, the Chairman of any other society, the objects of which are not similar to the objects of the first mentioned society the membership of which consists of registered cooperative societies".

Section 16(1) does not allow proxy in case of a primary cooperative.

### ***Chapter IV : Privileges of Societies***

Section 21 (1) makes obligatory to members to sell their produce through the cooperatives as per bye-laws and in case of default they can be asked to pay liquidated damages.

Section 22 authorises the Minister to issue orders directing producers to sell their produce through a cooperative whether they are members or not and such order has to be placed for approval by the Parliament. The non-compliance of this order is an offence and liable to fine not exceeding Rs. 1000 by summary trial before a magistrate (section 23). The chapter also deals in detail procedure for the recovery of dues of a cooperative and members responsibilities.

### ***Chapter V : Exemptions from Stamp Duty and Fee***

Section 35 provides exemption from payment of Stamp Duty and registration fee to a cooperative and its members.

## ***Chapter VI : Provisions Relating to Bye-laws***

The chapter provides that interpretation of the bye-law done by the Registrar will be final and cannot be questioned in a court.

## ***Chapter VII : Properties and Funds***

This chapter deals with deposits, loans and profit distribution in cooperatives from yearly surplus funds.

## ***Chapter VIII : Audit, Enquiry, Inspection and Investigation***

Under section 44 audit is the responsibility of the Registrar and provide detailed procedure.

Section 46 details the conditions for holding an enquiry or inspection by the Registrar and powers of the enquiry/inspection officer during the enquiry or inspection.

## ***Chapter IX :***

Amended section 48 authorises the registrar as a result of enquiry/inspection and after giving a notice of the society to :

- a. remove the offending committee member or members and fill the resulting vacancy in accordance with the bye-law; and
- b. dissolve the committee and elect a new committee or appoint a suitable person or body of persons to manage the affairs of the society.

Section 48 (2) specifies that the committee or elected persons so appointed shall hold office for the remainder of the period of the office of the dissolved committee.

## ***Chapter X : Dissolution***

The Registrar can dissolve/cancel registration of cooperative:



1. Under section 49 after an enquiry or inspection or on application made by three-fourths members, is satisfied that the cooperative should be dissolved after giving an opportunity to the cooperative to explain.
2. Section 50 (a) the membership is reduced to ten.
3. 50 (b) has not commenced working during a year from registration or has not been working for 2 years.

### ***Chapter XI : Disputes***

The chapter provides detailed procedure for settling disputes and claims by the Registrar through arbitration.

### ***Chapter XI-A : Special Provisions Relating to Cooperatives Operating with State Funds***

This is a new chapter added by amendment in 1992. In this chapter 60-A (1) where a registered society obtains a loan, advance or grant from the Government, every such loan, advance or grant shall be subject to the following conditions:

- a. that the approval, in writing of the Registrar, shall be obtained by the society prior to acquiring by way of purchase, lease, gift or otherwise any land, building or other movable or immovable property or alienating by way of sale, mortgage, lease exchange or in any other manner, and land, buildings and other movable or immovable property for any purpose connected with its objects.
- b. that the funds of the society shall be deposited or invested in any securities other than in a primary mortgage of immovable property in terms of section 20 of the Trust Ordinance or with any banker or a

person acting as banker approved for such purpose by the Registrar, or in the shares, or on the security of any other registered society, approved for the purpose by the Registrar, or in any other mode provided for, by the rules.

Section 60 (A) gives powers to Registrar to give direction to the General Body to remove the Board and elect a new one and in case of failure to nominate a suitable person or persons to manage the affairs.

Under section 60 (b) the Registrar can also remove an officer of a cooperative under certain condition and under section 60 (c) he can nominate members on the Board which shall be less than half of the total number of the members of the committee.

### ***Chapter XII : Rules***

Section 61 provides the subjects on which the Minister can make rules under this act.

### ***Chapter XIV : Miscellaneous***

Section 66-A provides an important provision:

1. The Chairman and every member of the committee of a registered society shall make, to the Commissioner of Cooperative Development in the prescribed form, an annual declaration of:
  - a. all his assets and liabilities;
  - b. all the assets and liabilities of his spouse; and
  - c. all the assets and liabilities of each of his children, as on the thirty first day of March of the year in respect of which such declaration is made.
2. The declaration referred to in sub-section (1) shall be made by the Chairman or member of the

committee of a registered society, to the Commissioner of Cooperative Development, within three months of his election or appointment, as the case may be, as such Chairman or member, and unless he ceases to be such Chairman or member before the first day of July of every year succeeding the year in which he made his first declaration.

Under Section 72 (3) not giving information or not complying with the orders of the Registrar is an offence which is punishable by imprisonment of not more than 2 years and/or fine of not more than Rs. 1200.

# Thailand

The first cooperative law in Thailand called the Amended Associations Act was enacted in 1916 to register farmers cooperatives to help particularly rice growers similar to cooperatives in India and Burma. This Act remained till 1928 when it was replaced by cooperative societies act of 1928 which allowed other types of cooperatives to be organised such as land settlement, consumer, marketing, service cooperatives etc.

This was amended many times and finally replaced in 1968 by a new law which has been amended many times and is in operation presently.

The Act has 119 sections and divided into various parts and chapters. The important provisions in the act are summarised below.

Section 4 defines "Cooperative Society" which means a group of persons who jointly conduct affairs for mutual assistance and are registered under this act.

Section 5 empowers Minister of Agriculture and Cooperative to make ministerial regulations. Section 8 states "the Minister has the powers to notify from time to time in the government gazette as to what type of cooperative society in which locality will be accepted for registration and the occupations of the prospective members thereof".

The type of cooperative society which will be accepted for registration shall be prescribed by Agricultural Regulations.

Section 9 exempts cooperatives from payment of registration fee.

## *Part I : Chapter 1 (Sections 11-18)*

It deals with registration of limited cooperative societies. Under section 15 one condition for registration is that "that the cooperative society to be registered will not be detrimental to the cooperative society system."

An appeal can be to the Minister within 30 days in case of refusal to register by the Registrar.

## *Chapter 2 : Operations of limited cooperatives*

There are some provisions under which the cooperative has to take approval of the Registrar such as :

21 (3) to lend money to any other cooperative with the approval of the Registrar.

21 (5) to receive saving or fixed deposits from members in accordance with the rules of the cooperative approved by the RCs.

21 (8) to purchase shares of any other cooperative society or institution whose business is to facilitate or promote the activities of cooperatives with the approval of the RCs.

21 (12) to apply for or accept technical assistance from the government, foreign agencies, or any other person provided it is in accordance with the policy or direction made or given by the RCs.

22. A loan or guarantee raised or given by a limited cooperative society shall be limited to the amount approved by RCS.

Section 31 deals with profit distribution. Along with others, it provides that at least 10% to reserve funds, 5% but not exceeding five thousand Baht to Cooperative

League of Thailand. Bonus to Board Members and Officials but not exceeding 10% of net profit and patronage rebate.

It also provides election of board members and inspectors to inspect the societies and report to AGM.

### ***Chapter 3 : Supervision***

The Registrar under this chapter has been given powers to arrange audit, inspection and conduct enquiry in the affairs of the cooperatives and take action against the persons found guilty, remove the board as its members, nominate another board for six months, suspend operations of cooperative or order for its liquidation.

### ***Part II : Chapter 1***

It deals with registration, operation of unlimited cooperatives which are largely the same as in the case of limited society. One main difference in case of unlimited society is the Reserve Fund which has to be not less than 85% of the project. The remaining 15% include 5% for Public Fund, 5% for Central Fund of unlimited society and 5% but not more than Baht 5000 to CLT.

The chapter also deals with the purpose and use of Public Fund, Central Fund and Reserve Fund.

### ***Chapter 2***

It deals with dissolution which is similar to as in the case of limited societies.

### ***Part III : Cooperative Federations***

Three or more cooperative societies wishing to operate jointly so as to accomplish their common object can establish a cooperative federation. The other

provisions in this case are also the same as applicable to other cooperatives.

#### ***Part IV : Amalgamation***

This part deals with the procedure of amalgamation of two or more societies subject to the approval of the Registrar under section 81.

#### ***Part V : Liquidation***

Under section 87 the liquidation of a bankrupt cooperative shall be made in accordance with the law of bankruptcy.

In other cases the general meeting is to elect a liquidator within 30 days from the date of dissolution or from the date of the order of dismissing the appeal by the Minister. The liquidator has to be approved by the Registrar. In case he does not approve the election of the liquidator he may himself appoint the liquidator.

Under section 93 the liquidator has to prepare a balance sheet which has to be submitted to the General Body for approval. He has to report the progress of liquidation to the registrar every six months. Surplus after meeting all the liabilities is to be transferred to another cooperative or to Cooperative League of Thailand with the approval of General Body or with the approval of the Registrar if General Body cannot be called within 3 months from the date of the completion of liquidation.

#### ***Part VI : Cooperative League of Thailand***

Under section 104 the Cooperative League of Thailand is to have the membership of all types of cooperatives, having the object of promoting the activities throughout the Kingdom, without sharing

profit or income. In addition to other usual functions of promotion and guidance under section 105 (6) "act in compliance with the objects of as entrusted by the government agencies".

Under section 108 "there shall be an executive board consisting of not less than 12 representatives of cooperative societies elected by the General Meeting and not more than five persons appointed by the minister as directors."

The term of the Board is two years (section 110) and under section 109 "the Board shall have the duty to administer the activities of the CLT".

### ***Part VII***

It deals with penalties for offences as also provision to cover societies registered under the old act to come under the new act.



## **Tonga**

The kingdom of Tonga located on the dateline in the Pacific had the beginning of cooperatives along with the act to provide for the formation of cooperative societies and to regulate their operations in November 1973. The same law continues to be in operation till date. The law has 67 articles divided into 9 parts. The important provisions are:

### ***Part I : Preliminary***

This chapter basically deals with definitions. In the definition "patronage rebate" has been defined as "Bonus and means a share of the profits of a registered society divided among its members in proportion to the volume of business done with the society by them from which the profits of the society were derived".

Dividend has been defined as "dividend means a share of profits of a registered society divided among its members in proportion to the share capital held by them.

### ***Part II : Registration***

About registration under article 5 "a society which has as its object the promotion of the economic interests of its members in accordance with the cooperative principles, or a society established with the object of facilitating the operations of such a society may be registered under this act with or without liability as the Registrar may decide."

However under article 7 (3) "no school society shall be registered with the consent of the Minister, acting after consultation with the Minister charged with the responsibility of Education".

Under article 8 while there is no time limit prescribed for the period of registration by the registrar in case of refusal an appeal can be made to Minister within 30 days of refusal.

### ***Part III : Duties and Privileges***

Article 14 makes obligatory on a member of the society whose object is the disposal of produce to dispose of whole or part of the produce through society either as provided in the bye-laws or as contracted and in case of default can be made to pay liquidated damages.

In this part provisions for amendments, amalgamation and division are provided. Another important provision under article 24 states procedure for allowing conversion of a company into a cooperative.

### ***Part IV : Rights and Liabilities of Members***

While dealing with membership in case of a school society the minimum age is 6 years (article 25) voting in case of primary is one member one vote and in case of secondary society it could be as per the bye-laws (article 28).

### ***Part V : Property and Funds***

Under article 34 loans can be advanced only to members. However to an another cooperative loan can be advanced with the approval of the Registrar.

Deposit and investment can be made only in the Treasury Saving Bank, banks approved by the Registrar, another cooperative or mode approved by Registrar (article 37).

Article 38 deals with disposal of profits in which 25% has to be in the Reserve Fund.

## ***Parts VI-VII : Audit, Inspection and Enquiry and Dissolution***

The responsibility of audit is of the Registrar under article 39. The registrar also has the power of inspection and conduct enquiry under article 41.

Based on the findings of inspection or enquiry the registrar is authorised to dissolve the managing committee and nominate a committee for a maximum period of 4 years after hearing objections by the managing committee/general body. The registrar can also dissolve the society under article 43.

However, an important provision is that the liquidation takes place after cancellation. Under article 46 cancellation is not done after finalisation of liquidation proceeding as in most countries. Under article 50(3) any surplus after liquidation proceeding are completed is not to be divided among the members and will be devoted to any object or objects described in the bye-laws of the society whose registration has been cancelled and where no object is so prescribed shall be deposited by the Registrar in a Bank or with a registered society under such time another society operating in the same area have been registered when such surplus shall be transferred to such new society for the purpose of forming a reserve fund under the rules.

However, in case no society is registered within 3 years, the surplus can be used by the Registrar for any cooperative purpose at his discretion.

### ***Part VIII : Surcharge and Attachment***

The Registrar under article 51 has been empowered to order repayment or restoration of money or any

property due to a society at his own motion or in the case of audit, inspection, enquiry or winding up it appears that it is due to the society.

### ***Part IX : Disputes***

Article 54 provides reference to Registrar for arbitration in case dispute arises between cooperative and its members or an officer of any other cooperative.

### ***Part X : Rules***

Article 56 (2) provides from A to Z (26) issues/ matters on which rules can be made under this act.

### ***Part XI : Miscellaneous***

Along with other usual provisions one important provision under article 63, registrar is empowered to fine up to forty pang with cost and imprisonment not more than three months in case of any fraud or misappropriation.

Under article 65 the Minister can nominate members in the managing committee of a national and secondary society not exceeding one third, if the society has received financial assistance as provided in this article or if he considers so in the interest of national economy.

The nominated member can ask for withholding any decision of the committee till it is referred to the minister and his approval has been obtained.

## Vietnam

In Vietnam during the centrally planned economy cooperatives were governed by their regulations or by-laws, approved by the concerned authorities. After the introduction of market reforms or Doi-Moi in 1985 they remained without any legal status till the law on cooperatives was passed by the Parliament in March 1996 which has become operative since January 1, 1997. This law has 56 articles divided into 10 chapters.

The preamble of the law states: "To promote the important role of the cooperative economy, to create legal basis for organisation and operation of cooperatives in a socialist oriented multi-sector commodity economy driven by the state regulated market mechanism" in accordance with articles 15, 20, and 84 of the 1992 constitution of the Socialist Republic of Vietnam.

This law sets forth the provisions concerning cooperatives:

Article 1 defines cooperatives as under:

"A cooperative shall mean self-control economic entity established by working persons who have common needs and interests, and contribute voluntarily capital or labour in accordance with the provisions of the law to promote strength of collectives and carry out manufacturing, business, service activities and in improving living standard, contributing to socio-economic development of the country."

Article 2 provides that "Cooperative groups under various names and forms of organisation shall be guided, aided and encouraged by the state to become cooperatives when they meet full requirements."

Article 5 provides policy of the state towards cooperatives as "The state shall protect legal rights and interests of cooperatives, ensure equality of cooperatives in manufacturing, business, service activities; promulgate legal acts and policies encouraging development of cooperatives; shall through cooperatives, exercise policies on aid, assistance to cooperative members to eliminate hunger and reduce poverty, to ensure equality, fairness and social progress. The state shall respect the right to self-control, self-responsibility in manufacturing, business, service activities of cooperatives, shall not intervene with legitimate management and operation of cooperatives."

Under article 7 cooperatives are expected to operate on the following principles:

1. Voluntary Joining and Withdrawing;
2. Democratic and Equal Management;
3. Self-responsibility and Mutual Benefit;
4. Combination of benefit of the cooperative members and development of cooperative in sharing of profits; and
5. Community Cooperation and Development.

Article 9 deals with duties of cooperative in detail which basically include functions, operations and objectives of cooperative in 11 clauses. It also includes under article 10(11) to create favourable conditions for social-political organisation recognised by the law to operate within the cooperative.

One typical article No. 11 deals with party and other organisation in cooperative as under:

"The communist party organisation of Vietnam in cooperatives shall operate under the constitution, laws

of the state of Socialist Republic of Vietnam and regulations of the Communist party of Vietnam.

Trade Union, Farmer association, other socio-political organisations and people's volunteer corps in the cooperatives shall operate under the Constitution, laws and their Regulations."

### ***Chapter II : Establishment and Business Registration***

The chapter provides the subjects to be included in the bye-laws, the procedure of registration and opening of branches etc. Under article 16 (2) the minimum membership of a cooperative shall be as provided in the model bye-laws of that type of cooperative.

### ***Chapter III : Members***

Under article 22 only Vietnamese citizens and a household can become member of a cooperative. The chapter also includes rights of members, their duties and termination of membership.

### ***Chapter IV : Management of Cooperatives***

Article 28 provides quorum of two-thirds members for a general meeting. In case of no quorum, the meeting can be re-convened by managing committee or audit and central committee.

Under article 30 the strength of the managing committee is to be provided in the bye-laws. The tenure shall not be less than 2 years and more than five years. The committee is expected to meet every month. The chairman also acts as a manager (article 30).

Under article 31 members qualification for managing committee include good moral, educational background and ability to administrate the cooperative.

Under article 30 where the membership of a cooperative is less than 15 they will elect only a chairman/manager who shall function as managing committee. Article 33 provides powers of Chairman/Manager which are like that of a chairman-cum-manager.

Article 34 deals with election of audit and control committee and article 35 deals with its functions. This committee has to supervise the proper functioning of the society including the managing committee, to hear complaints and settle them and responsible to the General Body.

### *Chapter V: Funds of a Cooperative*

Article 39 deals with the profit of a cooperative and provide as under:

1. Profits of the cooperative, as priority shall be used to set up a business expansion fund and reserve fund, other funds may be set up according to provisions of the bye-laws or decisions of the General Meeting of members depending on specific conditions of each cooperative.
2. The purpose, methods of administration and use of the funds of the cooperative shall be provided by the bye-laws.

Under article 40 (2) "The cooperative shall not share: state subsidiary, public building, infrastructure designed to serve community of residents to serve community of residents to the cooperative members."

Under article 41 after winding up procedure the public assets as mentioned in article 40 (2) will be transferred to the local authorities and the balance can be distributed to the members.



Under article 42 General Body is empowered for profit distribution including declaring dividend and patronage rebate.

Under article 43 General Meeting can decide to recover any losses incurred due to fault of any member.

### ***Chapter VI : Merger, Division, Dissolution, Bankruptcy of a Cooperative***

The General Meeting of members shall decide on the merger of two or more cooperatives into one cooperative or division of one cooperative into one or more cooperatives.

Article 46 deals with voluntary and compulsory dissolutions. In case of voluntary dissolution the winding process has to be done by the society and in case of compulsory dissolution people's committee is to appoint commission for dissolution.

### ***Chapter VII : Union of Cooperatives, Alliance of Coops***

Article 48 describes union of cooperatives as:

Cooperatives may voluntarily establish a Union of cooperatives if they desire to do so.

Union of Cooperatives is an economic entity and operating under principles of a cooperative with the purpose to enhance effectiveness of manufacturing, business and service activities of the member cooperatives, assist each other in business as well as satisfy other needs of the members.

Article 49 (1) explains alliance of cooperatives as:

Central Alliance of cooperatives shall be recognised by a decision of the Prime Minister. Provincial Alliance of cooperative shall be recognised by a decision of the

Chairman of Provincial People's Committee.

**Chapter VIII : State Administration Over Cooperatives**

Article 50 states the role of government with regard to cooperatives as under:

1. The Government shall exercise overall state administration over cooperatives throughout the country on the following matters:
  - a. To make and direct the implementation of strategy, plans on cooperative's development throughout the country.
  - b. Based on the law on cooperatives to promulgate the model bye-laws of Cooperatives applied to all type of cooperatives according to special features of each industry in the national economy.
  - c. Based on development of demand of cooperatives as well as specific conditions of each industry and locality, make policy of priority, assist cooperatives on matters relating to land, taxation, credit, investment, export, import, training of personnel, science technology information make policy on reduction or exemption of corporate tax applied to certain industries or localities suffering difficulties;
  - d. To create favourable conditions for alliance of cooperatives at central and local level to operate in accordance with laws;
  - e. To specify duties and powers of the cadres, branches and Provincial People's Committees on state administration over cooperatives;

- f. To exercise inspection, control over cooperatives operation according to the provisions of the law.
2. The ministries, bodies of ministerial ranking, bodies of the government shall within their functions, duties and powers, assist the Government in the implementation of State administration over cooperatives in respective areas assigned.

Article 51 deals with role of people's councils as:

The People's Councils at all levels shall decide policies, measures on building and developing local cooperatives, conduct propaganda and encourage the people to join cooperatives, supervise the implementation of laws on cooperatives.

### ***Chapter IX : Reward, Dealing with Breaches***

Article 53 proposes rewards for good cooperators and cooperative and article 54 provides action against those who breach the law.



# PART THREE

## PRESENT SITUATION AND FUTURE NEEDS

### Present Situation

1. In the second half of the present century, practically in all countries in Asia and the Pacific, cooperatives were considered as an instrument of bringing socio-economic development and particularly agricultural production and rural development. Governments provided liberal financial assistance and support to the cooperatives. In the process while quantitatively cooperatives grew manifold it suffered in quality. In many countries cooperatives lost their basic character and became more of a state agency. Cooperative laws were modified to vest more and more arbitrary powers to cooperative department. The situation further worsened by using these powers for the benefit of politicians and bureaucrats. The Royal Commission on the cooperative movement of Ceylon has this to say:

“It is notorious and scandalous that cooperative societies and the cooperative movement generally in Ceylon have been outrageously misused by certain politicians to serve their own ends. In some places their machinations have gone far to undermine two levels of organisation . . . In many societies the politicians are in almost absolute control of the movement with the result that non-political initiative and leadership have been pushed into the background and silenced. In such a

situation neither cooperators nor government can play their respective roles properly and the whole system suffers."

The above observations are relevant not only to (Ceylon) Sri Lanka but to many other developing countries in the region. To find out a solution to these regrettable developments and to work out a collaborative strategy for the growth of cooperatives in the right direction, the ICA-ROAP decided to convene periodical conferences of Cooperative Ministers, Cooperative Leaders and UN agencies interested in the development of cooperatives. The first such conference was held in Sydney in February, 1990. The conference made comprehensive and far-reaching recommendations in this regard. The subject of role of governments towards cooperatives was again considered by the Second Cooperative Ministers' Conference held in Jakarta in February, 1992, and the Third C-operative Ministers Conference was held in Colombo in July, 1994 and the Fourth Conference in Chiangmai, Thailand in March, 1997. Many important recommendations related to cooperative laws were made in these conferences. Some of them are:

- i. enactment of progressive cooperative laws in conformity with Cooperative Principles (Sydney 3.5 and Chiangmai 3.9);
- ii. transfer of functions of audit, inspection, supervision and responsibility for elections, etc. to cooperatives (Sydney 3.9 and Chiangmai);
- iii. discontinuation of the practice of ex-officio holding of elective offices by government officers (Sydney 3.19);

- iv. instead of dissolving the entire elected board for any irregularities, erring individual members of the board of director / office-bearers should be brought to book. In the event of inevitability of removal of board, the management should be entrusted to the concerned federal organisation; (Sydney 3.20);
- v. governments' collaboration in cooperative development is vital to strengthen cooperative values in several ways, particularly providing appropriate cooperative legislation and administrative policies (Jakarta 0.5) ;
- vi. the cooperative values need to be safeguarded while extending government financial and other assistance. (Colombo 0.6);
- vii. cooperative elections, audit, education and training should, as far as possible, be undertaken by the cooperatives themselves. The governments, however, may continue to extend assistance for audit, education, and training (Colombo 1.10);
- viii. cooperatives by nature are autonomous institutions. The government should play the role of a facilitator through policy initiative and should nurse and nurture them to play their full role as people's organisations. Giving and receiving of assistance - financial, managerial or otherwise - itself is not infringement of autonomy, provided it is done on mutually agreed terms (Chiangmai 2);
- ix. discontinuation of the practice of ex-officio holding of elective offices by government officers; (Chiangmai 3.19);
- x. instead of dissolving the entire elected board for any irregularities, erring individual members of the

board of directors/office bearers - should be brought to book. In the event of inevitability of removal of board, the management should be entrusted to the concerned federal organisation (Chiangmai 3.20).

At the global level also, ICA was concerned with developments in developing countries as also industrialised countries. While the problem in developing countries has been the over involvement of Governments with cooperatives, in industrialised countries it is the excess domination of professionals; the effect of both being members losing their involvement and interest. In the ICA Manchester Congress in September, 1995, not only the Cooperative Principles have been revised, but also a universally agreed definition and cooperative values have been included in the Statement on Cooperative Identity (Annexure-B).

This should help distinguish between the genuine and pseudo-cooperatives.

## **Challenge**

Thus the present cooperative laws are the product of the period when cooperatives were extensively supported by the Government and used for their planned development programmes. Since the introduction of market economy and globalisation of trade, state support to cooperatives is constantly declining. However, no perceptible change is taking place in the cooperative laws and government-cooperative relationship. The government continues to exercise their control on the working of cooperatives including interference in the day-to-day affairs in many



countries. The cooperative leadership also continues to look towards government for guidance and financial support more than towards their members. If this attitude is not changed, both by the Governments and cooperative leaders cooperatives will not be able to stand long. Cooperatives will have to compete and justify their existence by showing efficiency, better services and competence. This will also need changes in the existing cooperative legislative structure. With their hands and feet tied under the existing laws, in many cases, cooperatives will not be able to compete and stand with the market forces. Therefore, there is need to examine the various existing cooperative laws in the countries in today's context and changes brought, so that the cooperatives are able to stand and play an effective role to serve their members and needs of the society at large in matters such as environment protection, food security, gender integration etc.

In Asia at present there are two types of Cooperative Laws prevailing, viz (i) a Common Law for all types of cooperatives and (ii) Sectoral Laws for specific or special cooperatives. With the exception of Japan and South Korea, in all the countries in Asia there is one common law for all types of cooperatives. In Japan and South Korea there are different Cooperative Laws for different types of cooperatives and they are regulated by different ministries. For example, there are seven separate comprehensive cooperative laws in Japan for Agriculture Cooperatives, Consumer Cooperatives, Fisheries Coops, Forestry Cooperatives, Labour, Credit, Credit bank, and Central Cooperative Banks, etc. The same is true for South Korea. In Philippines, in the past, though there was a general cooperative law, yet

specialized cooperatives, like Sugar and Electric Cooperatives were registered under separate statutes. But now they have been brought under one common law. However, important thing is not whether there is one law or multiple laws but their approach and contents.

### **Object of Cooperative Law**

Cooperative Law is not an absolute necessity for a country. In a country like Denmark, cooperatives are governed by their bye-laws only. In many European countries, the cooperatives are regulated by Commercial laws, without any specific cooperative laws. However, practically all countries in Asia have specific cooperative laws. Only in Australia, cooperatives have option to get themselves registered either under the State Cooperative Law or under the Federal Corporation law. However, only when they have more than 90% business with members, they can get tax benefits under the federal revenue law as cooperatives.

The object of enacting cooperative law should be to give a legal status to the cooperatives and facilitate their working. It should also ensure that cooperatives work as genuine cooperatives according to the universally accepted Cooperative Principles and Statement of Identity. The legal framework of cooperatives consists of the law, rules made under it and the bye-laws adopted by the members of cooperatives in accordance with the act and rules. All these together lay down procedure for the organisation and working of cooperatives and protect and preserve their cooperative character. The Cooperative Law, thus, should facilitate the working and should not curtail the autonomous working of cooperatives and change their

basic character. The day-to-day working regulations should be included in the bye-laws. Mr. P.E. Weeraman, the Regional Director of ICA ROAP in the seventies on the subject stated: "the greatest contribution that a government can make to the development of a cooperative movement is to enact legislation that would give a legal framework and the necessary safeguards and privileges that would create an atmosphere conducive to cooperative development".

As mentioned above, the Cooperative Law consists of Cooperative Act enacted by the legislature of the country, in some countries Rules framed by the Government and subsidiary of the Act and Bye-laws as adopted by the members and registered under the Act. In case of conflict between the three i.e., Act, Rules and the Bye-laws, the Act is supreme, followed by the Rules and then the Bye-laws.

The Act should include the basic provisions relating to the principles of membership, registration requirements, management pattern, arbitration, liquidation, etc. The best law is that which is simple and brief, which can be understood by the common man and does not need a plethora of rules thereunder. The details of working should be left to the members to be included in the bye-laws. Cooperative Laws are in the process of change in many countries. It is a continuous process. Some suggestions are made in this regard which could be useful for consideration by framers of Cooperative Law.

### **Definition and Objectives**

The object of cooperatives, definition and preambles have been mentioned either very differently in laws or they do not find any reference at all. In some laws a

reference is made to cooperative principles but what is meant by principles is not included in the law. To bring clarity in thought and action in and about cooperatives it will be desirable to include "Identity Statement on Cooperatives" as adopted by ICA Manchester Congress in 1995 and universally recognised in the law itself. This will facilitate right interpretation about the working and objectives of cooperatives as and when needed, particularly in judicial disputes. This statement includes not only revised Cooperative Principles, but also a definition of cooperatives and cooperative values, which have been adopted for the first time. The Statement is as under:

## **STATEMENT ON THE COOPERATIVE IDENTITY**

### **Definition**

A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs, and aspirations through a jointly owned and democratically controlled enterprise.

### **Values**

Cooperatives are based on the values of:

1. Self-Help;
2. Self-Responsibility;
3. Democracy;
4. Equality;
5. Equity; and
6. Solidarity

In the tradition of their founders, cooperative

members believe in the ethical values of honesty, openness, social responsibility and caring for others.

## **Principles**

The Cooperative Principles are guidelines by which cooperatives put their values into practice:

First Principle : Voluntary and Open Membership

Second Principle : Democratic Member Control

Third Principle : Member Economic Participation

Fourth Principle : Autonomy and Independence

Fifth Principle : Education, Training & Information

Sixth Principle : Cooperation among cooperatives

Seventh Principle : Concern for community

## **Registration**

In all the countries in Asia without registration use of the word 'cooperative' is an offence. However, the procedure and requirements are different. While it is difficult to suggest about the minimum membership for a cooperative for registration and will depend on country situation, with regard to period allowed for registration the minimum period allowed to dispose of an application is 2 weeks (Kuwait, Taiwan) and in many others up to six months.

In some other countries, there is no time limit at all for registration. A reasonable time could be two months. In case of failure of registration within the time limit it should be deemed as registered as in the case in laws of Japan, Philippines, etc. Alternatively, it could be treated as refusal and appeal could be filed on expiry of this period.

## **Viability**

In several countries the registration papers have to be with a feasibility report about the future activities and in case the registrar is not satisfied with the viability of the society, he could refuse registration.

The discretion on viability of a society should not be left to the Registering Authority. The better thing would be to follow the Fiji provision, where the registering authority, if doubtful about the viability, is allowed to issue provisional registration, operative for a maximum period of two years.

Registering authority should satisfy itself with two things primarily before registration:

- a. the application and bye-laws are in conformity with the laws and cooperative identity statement, and
- b. the members are capable of using the services of the proposed cooperative.

## **Membership**

To make a cooperative a genuine member-oriented, member user institution; it is necessary to ensure that a member uses the services and if he fails to use the services his membership should cease after a year as provided in Korean Law. If this is not feasible, then he should at least lose his right to vote and contest elections. The principle should be "no use of service no participation in the management".

There should also be provision in the law that if a cooperative fails to have less than certain percentage of business with members it should cease to be treated a cooperative. The reasonable range could be 60 to 80 percent.

*Nominal/Associate Members* : Provision is usually provided in the bye-laws for those who are not users but have business dealings, to bring them under the scope of arbitration to save the cooperatives from long and expensive civil litigation.

*Area of Operation*: This indicates the area from which a cooperative can enroll members and provide service to them. It has nothing to do with its other business operations, which cannot have any geographical limits. It could also not be binding for nominal/associate members. The area of operation is included in bye-laws of a cooperative. Most laws prohibit non-nationals to become members of cooperatives, except in case of Nepal, where it is provided that a member of ICA could be admitted as a member. This restriction does not seem to be justified particularly in case of consumer and utility cooperatives.

### **Annual General Meeting**

In cooperatives, General Body is considered supreme and must meet at least once a year. The powers and functions of AGM, by and large, are uniform. However, while some countries provide the AGM functions in the law, others provide this in their rules or bye-laws. For example Sri Lanka does not mention anything about the General Meetings in main law and details in the rules. However, two items are provided in the law, one is quorum and the other relates to powers of General Body. In some countries the quorum is very low. In Fiji 25% (Section 58) and in Philippines 25% (article 36). In Korea it is 50% and Thailand 50% or 100 (articles 29, 30). Further, if there is no quorum present, for the adjourned meeting no quorum is needed in Fiji, India, and Bangladesh.

The minimum quorum for AGM should be not less than 50%. If the society fails to have AGM for consecutive three years for want of quorum it is a clear indication that members have lost interest in the society and it should be wound up.

The General Body should be final authority in all matters of the society and should not be subject of approval by the Registrar, including financial matters, except under contractual obligations (Bangladesh).

Proxy within family members and through another member could be provided. But a member be allowed only one proxy in addition to his vote. However, in case of election and amendment of bye-laws, proxy may not be allowed.

It should not be obligatory for the society to invite the Registrar (Malaysia) to attend AGM. It should be at the discretion of the society. However, there could be provision to send agenda and minutes of the AGM to RCs.

Societies should have the authority to conduct their own elections. They should make their own rules for this purpose. Only when a society fails to have elections / AGM in time or a request is made, RCs should intervene (India).

### **Board, Chairperson and Chief Executive**

The powers and functional areas of Board, Chairperson, and Chief Executive should be clearly defined in the law. The basis of this could be:

- i. Board should decide on the programmes, priorities, resources, policy directions and membership issues;



- ii. Chairperson should either be a Chairperson in which case he should preside the meetings and be a friend, philosopher and guide to the Chief Executive and should not try to direct him or interfere in business or administrative affairs; or in case he is to be involved in business and administrative affairs (South Korea) he should be a whole time person and designated accordingly Chairperson-cum-President (Korea) Chairman-cum-Managing Director, Chairperson-cum-Manager, Executive Chairperson, etc.

Any action on the performance of the Board should be in the purview of General Body and not RCs, except when the Board is guilty of contravention of Act, Rules, Bye-laws or Laws of the land. All other irregularities observed by the department should be brought to the notice of General Body for action.

If the irregularities are of serious nature and the General Body fails to rectify them, action could be initiated to have fresh elections or cancel the registration of the society and initiate civil/criminal actions against the concerned officers. But Department should not create vested interest by dissolving the Board and managing the society departmentally.

Powers of appointment of Chief Executive should be with the Board, subject to rectification by the General Body and Government should not be involved.

Provision of executive board / executive committee of wholetime board members (employees) for taking business decisions to help the Chief Executive be considered (Japan).

Most laws provide strength of the Board and tenure of 3 to 5 years. However, in case of Fiji and Kuwait one-third members have to retire every two years. This maintains continuity and fresh blood and is a desirable provision.

### **Chairperson**

In practically all laws no powers have been defined for the Chairperson except in Fiji, Japan and South Korea. Thus the main function of the Chairperson is to preside the meetings and exercise such other powers as board may delegate to him or prescribed in the by-laws.

However, in India and Sri Lanka a person cannot hold Chairpersonship or Vice-chairpersonship of more than one national cooperative at a time as also he cannot be Chairperson or Vice-chairperson for more than two terms.

In Korea the President has powers to run the society under the law and bye-laws in addition to preside the Board and General Meetings and acts as a Chief Executive also. Similar powers can also be given to the other directors who work under the directions of the President. (Articles 47, 57.2)

### **Audit**

In some countries law provides that audit will be done by the department either by departmental auditors or qualified auditors appointed by the department (Bangladesh, India, Nepal, Fiji, Thailand, Sri Lanka). In others, there is provision of audit committee or auditors to be appointed by the General Body (Korea, Japan, Philippines, Malaysia, Indonesia). Audit should be the

authority of General Body and department should not get involved in the annual audit partly in view of a large number of cooperatives involved, increasing turnover and complexities and partly because it is not in conformity with the character of cooperatives. However, department may have audit periodically in the form of management audit to ensure their supervision.

In countries where law provides monoist system (only board) it may be changed to dualist system (Board and audit committee) to facilitate transfer of audit work from department to cooperatives.

### **Inspection**

Inspection is provided in most cooperative laws at the initiative of the Registering Authority or at request. Only in Japan it is obligatory under the law to inspect every cooperative by the government every year.

It will be desirable that inspection is done by the Department every year as in Japan or at least once in two years. Every cooperative should be either inspected or management audit is done. This may include along with others:

1. Member's share in business turnover;
2. Percentage of members utilising services;
3. Expenses incurred on Board Members and AGM whether they are within the approved budget.
4. To what extent annual workplan is implemented.
5. Compliance of Act and Bye-laws.

### **Dissolution of Board**

In some laws there is provision empowering the Registrar to dissolve the Board and appoint an

administrator after an enquiry, inspection or audit. In other laws, if the Registering Authority finds the necessity to do so he can order to wind up the cooperative. The best course would be that Registering Authority should serve notice to the society to remove the defects and in case of failure wind-up the cooperative. He should not get involved in the management of cooperative and become vested interest. He should act more as quasi-judicial authority.

This provision of appointing an administrator or nominate Board or Board members on the ground of financial support by the Government should not be in law. It should be the part of the terms of the financial assistance, giving the option to a cooperative to accept or not to accept these terms.

## **Funds**

Under the laws, cooperatives are encouraged to create own funds for various purposes. Creation of reserve fund is obligatory practically in all laws. In some laws (Indonesia) separate funds are proposed out of profits from members and non-members. These funds, particularly reserve fund, in most cases are not allowed to be involved in the business of the societies and kept in low return high security investments. For its use in business RCs approval is provided in most laws. This is not a very satisfactory situation. The funds belong to the society/members and General Body should have the power to allow the use of own funds in such a way as it deems reasonable.

In Fiji under section 100, 30% of surplus from members business and 100% surplus from non-members business has to go to statutory reserve fund.

Twenty-five percent of this fund is to go to the National Reserve Investment Trust Fund to be administered by the National Cooperative Federation. In addition to this the cooperatives have also to contribute to the Central Cooperative Fund as prescribed by Registrar but not less than dollars 40 annually. This provision is heavily tilted towards the National Federation.

There are limits on the borrowing by cooperatives under some laws (MCL). This is uncalled for. These restrictions/ regulations on borrowing have to be in the lending institutions policies or to be incorporated in the banking laws of the country. They should not be the part of the cooperative legislation.

### **Government Assistance**

Most laws provide concessions, facilities, tax exemptions and financial support to the cooperatives. In some cases, these facilities are without strings, in others, provisions are made empowering government to involve/interfere in the management/business of the cooperative. The right approach would be that the cooperative laws should not include provisions of such nature, which allow the department to interfere in the management, as this would be against the Cooperative Principles. However, as and when any financial assistance is provided it may lay down its lending terms and then it should be left to the cooperative to accept the assistance or not.

### **Subsidiaries/Joint Ventures**

Many countries provide for creation of subsidiaries and joint ventures either as cooperatives or even as companies. This provision should be available only to secondary cooperatives and not to primaries. Further,

such bodies should be only for the purpose of providing service to the members and not for investment.

### **Winding Up**

While the grounds for winding up in most laws are reasonable in actual practice, the winding up process takes too long, in some cases decades, even though in most laws a time limit is prescribed. The suggestions therefore are:

- In cases of voluntary dissolution the society may be allowed to carry out its own winding up process within a prescribed period by the Registering Authority.
- In cases where the liquidation process takes more than one year, they should be de-listed from the records of registered society and a separate record of such societies be maintained.
- It is also suggested that in case where a society has failed to have three Annual General Meetings consequently it should be brought under liquidation as it is a clear indication that members are no more interested in the society.

### **Conversion of Legal Entity**

In many laws, there is provision for allowing conversion from cooperatives to companies (Australia, Fiji, etc.) provided it is approved by two-thirds of members.

In case of cooperatives, whose majority members do not use its services for a long period, it may be better to allow them conversion, if they cannot operate as genuine cooperatives.

## Rule Making Power

The countries which provide rule making power are Bangladesh (Sec. 139), Fiji (Sec. 55), India (Sec. 109) Philippines (Article 123) Sri Lanka (Article 61), Nepal (48) Malaysia (Article 86).

The countries having Act and Bye-laws only and not provided for rules are Indonesia, Thailand, Japan and South Korea. It can be seen that in these countries the law itself is self-contained and what is not covered in act is provided in the bye-laws. Thus there is clear demarcation between the intentions of the legislation and the intention of the members of the society and the administrative authorities have only to ensure compliance of these provisions.

In countries where the administrative authorities have been authorised to make rules under the law, the rules at times go beyond the spirit of the law. This is not a very healthy practice. The practice followed by Japan, South Korea, Indonesia should be adopted by other countries also for the sake of clarity and avoid misuse of the flexibility through rule making.

To conclude, cooperative laws are important instruments to sculpture the shape of cooperatives. Positive and progressive laws encourage members to participate and involve in the activities and affairs of their cooperatives, while regulatory and restrictive laws discourage them. Cooperative laws ought to be development-oriented and facilitate the working of cooperatives. They must sensitize people to work in conformity with Cooperative Values and Cooperative Principles which, as such, have been laid down in ICA Cooperative Identity Statement. There should be on-

going monitoring to ensure their adoption in day-to-day working of cooperatives, otherwise they would carry no value. In the changing socio-economic scenario of Asia-Pacific Region, cooperatives have vast potential for expansion, development and serving the ordinary people. Let the law support people's initiative for true and genuine cooperatives. The existing laws do not respond to the present changing global economic environment. Therefore, the existing laws need changes and amendments in the light of Cooperative Ministers' Conference recommendations and the Cooperative Identity Statement. The earlier it is done the better it would be. It must be stressed that cooperators have also to be responsive to the changes and challenges of present times. They should use cooperative laws, and their own efforts, to strengthen the cooperative structure and system for the benefit of millions of cooperative members, who need them to improve their living.



## Extracts from the Laws and Objects of the Rochdale Society of Equitable Pioneers, 1844\*

1. The objects and plans of this society are to form arrangements for the pecuniary benefit, and the improvement of the social and domestic condition of its members, by raising a sufficient amount of capital in shares of one pound each, to bring into operation the following plans and arrangements.

The establishment of a store for the sale of provisions and clothing, etc.

The building, purchasing or erecting a number of houses, in which those members desiring to assist each other in their domestic and social condition may reside.

To commence the manufacture of such articles as the society may determine upon, for the employment of such members as may be without employment, or who may be suffering in consequence of repeated reductions in their wages.

As a further benefit and security to the members of this society, the society shall purchase or rent an estate or estates of land, which shall be cultivated by the members who may be out of employment, or whose labour may be badly remunerated.

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\* P-511, *British Co-operation* by Arnold Bonner

That as soon as practicable, this society shall proceed to arrange the powers of production, distribution, education and government, or in other words to establish a self-supporting home colony of united interests, or assist other societies in establishing such colonies.

That for the promotion of sobriety, a Temperance Hotel be opened in one of the society's houses as soon as convenient.

2. That the government of the society shall be vested in a President, Treasurer and Secretary, three trustees and five directors, President, Secretary, Treasurer and Trustees to be elected at the general meeting held in January, the directors to be elected at the July general meeting, any of them being eligible for re-election.
3. That two auditors be appointed...They shall audit the accounts of the society, see that they are correctly kept and balanced quarterly, and report the same to each quarterly meeting or be fined.
4. That the officers and board of directors shall meet every Thursday evening, at eight o'clock, in the Committee Room, Weavers' Arms, Yorkshire Street, Rochdale, for the transaction of the society's business....
5. That general meetings of the members shall be holden on the first Monday in the months of January, April, July and October, at eight o'clock p.m., at which meetings the officers of this society shall make their quarterly financial report, in which report shall be specified the amount of funds, and value of stock possessed by the society.
6. That an annual general meeting be holden on the "First Market Tuesday" on which occasion a dinner shall

be provided at a charge of one shilling each person, and one week's notice.

7. The President shall act as Chairman at all meetings of this society, and should he not be present at any of the society's meetings, the officers or members present shall elect one from amongst themselves to act as chairman on that occasion. The president or chairman acting in his absence, shall sign the minutes of the proceedings at each of the society's meetings.

8. The secretary shall attend all meetings of this society, record the names of officers present or absent, take minutes of the proceedings at each meeting, keep all accounts, documents, papers, books, etc., in such form, manner, or place as the society may appoint, and summon all general meetings.

9. The treasurer shall be responsible for such sums of money as shall from time to time be placed in his hands by any of the society's officers, on account of the society, and for the investment and application of the same under the authority of the officers of this society.

10. The property of this society shall be vested in the trustees, and the said trustees shall hold such property for the benefit of this society, and in the names of the trustees for the time being shall be made and taken all grants, conveyances, and assurances of property in favour of this society, and all instruments and assurances for the security of this society; they shall transact all businesses unless all three are present.

11. They shall jointly and severally be responsible for all funds, deeds, effects, or assignments placed in their hands, for the use and benefit of this society; and should they at any time either unitedly or individually

misapply the property placed in their hands, upon due proof thereof, the president and directors shall give such trustee or trustees so misapplying the property, fourteen days' notice to give up possession belonging to the society, and should he or they refuse to do so, then the officers shall compel him or them to give up the property, and transfer the same pursuant to the 10th Geo.IV, c.56, sec.14. The trustees are to attend all weekly meetings, or be fined.

That all securities, investments, and purchases which shall be taken or made by, or in the name of, the trustees of this society, and all monies thereby or therein invested, or accruing therefrom, shall be under the control of the officers and directors touching the management of, or dealing with, the said securities, investments or purchases, shall be obligatory on and observed by the trustees of this society, and be a justification to them, and their indemnification in acting in obedience to the same order, and all such trustees shall when required by a majority of the officers and directors, sign, seal, and execute such declaration of trust, of the estates, securities, moneys, and effects vested in them on behalf of this society, as the majority of the officers and directors shall require.

12. That any person who may be appointed to any office in anywise touching or concerning the receipt, management, or expenditure of money collected for the purpose of the society, shall, if required to do so, before entering upon the duties of such office give such security as may be thought sufficient, by a majority of the members present at a general meeting. 10 Geo.IV c.56, sec.11.

13. Any person desirous of becoming a member of this society shall be proposed and seconded by two members at a meeting of the officers and directors, and if approved by a majority of those present shall be eligible for election at the next weekly meeting. Each candidate shall pay the sum of one shilling as entrance money on being admitted to membership; shares may be paid by instalments of three pence per week on each share.

Any member neglecting to pay such instalments for three months shall, except in cases of sickness or want of employment, be fined in the sum of six pence.

Any member neglecting to pay such instalment for six months shall be expelled, his or her share or shares be sold, and the remainder after paying all necessary expenses, returned to such expelled member. No member to have more than fifty shares.

14. That should the officers and members of this society find the conduct of any of its members to be injurious to the interests of the society, the president is hereby called upon to remonstrate with such member, and should any member after such remonstrance still pursue the same offensive line of conduct, such member shall receive one month's notice of exclusion from this society, at the expiration of which time the offending member shall be expelled without further notice.

15. That should any member wish to withdraw from this society such member shall give one month's notice of such intention to the officers at the expiration of which time the member shall be at liberty to withdraw from the society, such liberty to continue in force until the next meeting of the board, but no longer.

16. That in all cases of exclusion or withdrawal from this society, previous to receiving the balance remaining (after paying all necessary expenses) for shares sold, the excluded or withdrawing party shall sign his or her name in a book kept by the society for that purpose, after which he or she shall have no further claim upon this society, nor shall this society have any further claim upon him or her.

17. (Provided that a member withdrawing could retain possession of his shares "until they can be disposed of advantageously" for a period of twelve months, during which time no interest would be paid on them. It may be noted that shares were not withdrawable from the society).

18. That this society shall not be responsible for the debts of any of its members except to the amount of the share or shares held by a member....

19. That in the case of a dispute between this society and any of its members, or members or persons claiming on account of a member finding himself aggrieved, or having any complaint against any member or officer, may apply to the officers or directors for redress, but should the party not receive satisfaction, appeal may be final and binding, except reference be made to arbitration.

20. (dealt with appointment and duties of arbitrators).

21. That no person shall be allowed to purchase anything on behalf of this society except those who are regularly appointed by the officers or members, and the officers of this society shall not in any case, nor on any pretence, purchase any articles except for ready money, neither shall they be allowed to sell any article or articles

except for ready money. Any officer acting contrary to this law shall be fined in the sum of ten shillings, and be disqualified from performing the duties of such office.

22. That at each quarterly general meeting the officers in their financial statement shall publish the amount of profits realised by the society during the preceding quarter, which shall be divided thus; Interest at the rate of  $3\frac{1}{2}$  per cent per annum shall be paid upon all shares paid up previous to the quarter's commencement; the remaining profits shall be paid to each member in proportion to the amount of money expended at the store.

23. (dealt with disposal of shares on death of a member).

24. That this society shall not be dissolved so long as the intents and purposes thereof, or any of them, remain to be carried into effect, without obtaining the votes of five-sixths of the then existing members of this society.

### **Management of the Store**

25. That the store be opened to the public on the evenings of Mondays and Saturdays; on Monday from seven till nine; on Saturdays from six till eleven.

26. That all purchases be paid on delivery.

27. That a cashier and salesman be appointed to conduct the business of the store, each to serve six months alternatively and be eligible for re-election.

28. The salesman shall weigh, measure and sell such articles and commodities as are to be disposed of at the store, but shall not receive payment for any goods sold.

29. The cashier shall receive payment for all goods purchased at the store; he shall give a receipt to each purchaser for the amount received, and keep a check of such receipt in a book provided for that purpose, he shall pay over to the secretary at the weekly meetings of the board, as a check on the cashier.

30. The purchasers be furnished with printed forms containing the names of such articles as are on sale at the store, these forms to be filled up by the purchaser and handed to the salesman when goods are required; the salesman shall hand in all such orders to the secretary at the weekly meetings of the board as a check on the cashier.

31. That the amount of money expended by each member during each quarter to be determined by the check receipts produced by each member.

32. That the cashier or salesman be fined one shilling for non-attendance at the proper time, unless 48 hours' notice be given to the president and secretary of inability to perform the duties of his or her office.

33. That the president and secretary be empowered to appoint a member to perform the duty of any officer not attending to his duty but that the board have power to alter such appointment should it be thought expedient to do so.

34. That the store be opened at the proper time by the president.

Miles Ashworth, President  
John Holt, Treasurer  
Charles Howarth  
James Standring  
James Daly, Secretary



**Supplement of Amended L-aws of the First  
Department of the Rochdale Society of Equitable  
Pioneers, Held in Toad Lane, in the Parish of  
Rochdale, in the County of Lancaster\***

*Addition for the first law*

That for the establishment of the store department a capital of one thousand pounds be raised in shares of one point each, by not more than two hundred and fifty members. Each person on his or her admission to membership shall take out four shares in the capital, but should one thousand pounds be found not sufficient to carry out the business...It shall be lawful to augment the shares from four to five...(remainder of a long rule is intended to bring about equality of share holdings).

*A new law to be placed or read between the 4th and 5th laws*

That general meetings of the members be holden on the first and third Monday evenings in each month, the business to commence at eight o'clock, the four general quarterly meetings to be included. The business of these meetings to consist in the explanation of the principles, objects and laws of the society, to discuss the affairs and suggest any improvement for the consideration of the officers and board of directors...Members present at all general, quarterly and annual meetings to have each, one vote, and no more, in the decision of all questions.

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\* *Co-operative Principles for the 21st Century* by Ian MacPherson.

### *Amendment of the 8th law*

That on the general meeting held on the first Monday in October, it shall be decided whether a dinner or tea or either be provided, on the following "First Market Tuesday," to celebrate the anniversary and that if it be decided by a majority then present that one be provided, the whole of the members shall pay for the same whether they attend or not...No part of the expenses to come out of the funds.

### *Eleventh Law*

The eleventh law was repealed, and one substituted to deal with liabilities of officers.

### *Amendment of the 13th law*

Any person desirous of becoming a member of this society, shall be proposed and seconded by two members at a general meeting of the members, and if approved of at the next general meeting by a majority then present shall be admitted to membership...Each person on the night of his admission, shall appear personally in the meeting room and state his willingness to take out four shares of one pound each, and to pay a deposit of not less than one shilling or three pence per share, and to pay not less than three pence per week after, and to allow all interests and profits that may be due to him to remain in the funds until he have four shares in the capital.

### *Amendment of the 22nd law*

That the rate of interest be five pounds per cent per annum, instead of three and a half.

### *Amendment of the 24th law*

This society shall not be dissolved so long as the intents and purposes or any of them remain to be carried into effect, without obtaining the votes of five-sixths in value of the then existing members of this society, and the consent of all members who may be under any responsibility on account of the society.

### **Laws repealed**

That the 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd and 34th laws be repealed, and the management of the store left in the hands of the officers and board of directors.

That the sale of all shares of persons leaving the society be by ticket.

Benjamin Rudman  
Charles Howarth  
James Tweedale  
James Daly, Secretary  
Certified August 7th, 1845.

## THE ICA STATEMENT ON THE COOPERATIVE IDENTITY

### Definition

A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise.

### VALUES

Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibility, and caring for others.

### PRINCIPLES

The cooperative principles are guidelines by which cooperatives put their values into practice.

#### *1st Principle : Voluntary and Open Membership*

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

#### *2nd Principle : Democratic Member Control*

Cooperatives are democratic organisations controlled by their members, who actively participate

in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are organised in a democratic manner.

### ***3rd Principle: Member Economic Participation***

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

### ***4th Principle: Autonomy and Independence***

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

### ***5th Principle: Education, Training and Information***

Cooperatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their cooperatives.

They inform the general public - particularly young people and opinion leaders - about the nature and benefits of cooperation.

***6th Principle: Cooperation among Cooperatives***

Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

***7th Principle: Concern for Community***

While focusing on member needs, cooperatives work for the sustainable development of their communities through policies accepted by their members.

## **Cooperative Laws and Number of Articles**

Afghanistan Cooperative Act, 1992 - Arts. 51

Australia - New South Wales Cooperative Act, 1924/1992,  
Arts.122/446.

Bangladesh Cooperative Societies Ordinance, 1984, Arts.140

Fiji Cooperative Act, 1947/1996, Arts. 64/122

Indian Multi-State Cooperative Societies Act, 1984, Arts.110

Indonesia Cooperative Act, 1967/1992, Arts. 58/65

Iran Cooperative Societies Law, 1971/1992, Arts.149/71

Japan Agricultural Cooperative Societies Law, 1948/1992,  
Arts.102

Japan Fisheries Cooperative Association Law, 1948, Arts.131

Japan Forestry Owners Cooperative Law, 1951, Art.35

Japan Consumers Livelihood Cooperative Societies Law,  
1964, Arts.101

Japan Central Cooperative Bank for Agriculture and Forestry  
Law, 1943

Japan Laborers Credit Cooperative Law, 1953, Arts.102

Japan Credit Bank Law, 1951, Art. 92

Republic of Korea Agricultural Cooperative Law, 1961/1991,  
Arts. 176

Republic of Korea Credit Union Cooperative Law, 1972/1988,  
Arts: 97

Republic of Korea Community Credit Cooperative Law, 1996, Arts. 75

Republic of Korea Forestry Cooperative Law, 1993, Arts. 77.

Republic of Korea Livestock Cooperative Law, 198, Arts. 147.

Kuwait Ordinance on Coop Societies, 1962/1979, Arts. 58.

Malaysian Cooperative Act, 1922/1993, Arts. 96

Myanmar Cooperative Societies Law, 1992, Arts. 39.

Nepal Cooperative Societies Act, 1992, Arts. 49

Pakistan Cooperative Societies Act, 1925, Arts. 73

Pakistan Multi-Unit Cooperative Societies Act, 1942, Arts. 6

Philippines Cooperative Code, 1989, Arts. 1 30

Singapore Cooperative Societies Act, 1979, Arts. 102

Sri Lanka Cooperative Societies Law, 1972/1975, Arts. 75

Taiwan Cooperative Law, 1934, Arts. 77

Thailand Cooperative Societies Act, 1966, Arts. 119

Tonga Cooperative Societies Act, 1968, Arts. 67.

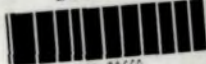
Vietnam Law on Cooperatives, 1996, Arts. 56





**GOVIND KANT SHARMA**, an Indian national, born 1931, started his cooperative career in 1955 as Assistant Registrar of Cooperative Societies in Rajasthan. Since then he has been associated with the cooperatives for more than four decades, from grass-roots to the national level. Until October 1996, G.K. Sharma was the Regional Director of the International Cooperative Alliance Regional Office for Asia and the Pacific, New Delhi for a decade. Before joining the ICA ROAP, he worked with the International Labour Organisation as its Regional Advisor (Cooperatives) for the Asia and Pacific Region during 1978-84. He served the National Agricultural Cooperative Marketing Federation of India (NAFED-India) as its Managing Director, as also of the Indian Tourism Cooperative Limited for a decade. G.K. Sharma had served on the Boards of Directors of several cooperative organisations and has been responsible for promoting many of them. Realising that there was a great need for harmonising the relationship between the Cooperative Movements and the Governments in the Region, while working with the ICA ROAP, G. K. Sharma initiated a dialogue between the two through the medium of Asian Cooperative Ministers' Conference, four of which were organised by him. Obviously, the common theme of these conferences was review, reformation and reformulation of cooperative legislation and cooperative policies. The present publication is aimed at providing the cooperative policy makers, leaders, professionals and scholars with an excellent and exhaustive reference material on cooperative legislation.

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