

# **COOPERATIVE ACCOUNTING AND AUDITING**

## **LEVEL – II**

**Based on January 2022, Version Occupational  
standard**



**Module Title: -Apply Cooperative law**

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## Introduction to the Module

Dear student! Welcome to the module “**Cooperative Legal Frame Work**”. This learner’s guide was prepared to help you achieve the required competence in “**Cooperative Accounting & Auditing Level II**”. This will be the source of information for you to acquire knowledge attitude and skills in this particular occupation with minimum supervision or help from your trainer. This course has three learning out comes such as

Identify Cooperative Legal framework, Differentiate unique feature of Cooperative law Implement, Legal requirements in the formation of cooperatives. The **first** learning outcome of this module presents Cooperative Legal framework: Define cooperative policy and law

Discuss historical development of cooperative laws and proclamation Explain Roles of cooperative legal system List sources of cooperative law. The **second** learning outcome deals about the Cooperative law: Describe Unique feature of cooperatives law, Distinguish cooperative law verses other business laws, Identify hierarchy of cooperative law, elaborate contents of cooperative law. The **third** learning outcome deals about requirements in the formation of cooperative: Identify legislative requirements, Explain cooperative formation process , Describe cooperative registration process, Mention rights and duties of members, Identify duties and responsibility of management and employees, Explain special privileges of cooperatives, Conduct asset and funds management, Distinguish amalgamation, division and liquidation of cooperatives, Resolve disputes.

## LG #4

## LO #1-Cooperative Legal framework

### Instruction sheet

This learning guide is developed to provide you the necessary information regarding the following content coverage and topics:

- Cooperative policy and law: meaning and definition
- Historical development of cooperative laws and proclamation
- Roles of cooperative legal system
- Sources of cooperative law

This guide will also assist you to attain the learning outcomes stated in the cover page.

Specifically, upon completion

of this learning guide, you will be able to:

- Define cooperative policy and law
- Discuss historical development of cooperative laws and proclamation
- Explain Roles of cooperative legal system
- List sources of cooperative law

### Learning Instructions:

1. Read the specific objectives of this Learning Guide.
2. Follow the instructions described below.
3. Read the information written in the information Sheets
4. Accomplish the Self-checks

## Information Sheet 1

### 1.1. Cooperative policy and law: meaning and definition

#### 1.1.1 Cooperative policy meaning and definition

Cooperative policies provide just this kind of map. Policies are a set of guidelines defined by the cooperative in its first stages of development that cover topics as large as the disbursement of member refunds of sales, and as small as employee coffee breaks. Ideal policies are not completely left open to interpretation yet are still broad enough to provide flexibility.

Policies should deal with recognized needs of the coop and should be carefully thought out and researched. The basic guide in the development of the policies should be found in the objectives set forth by the cooperative and help in the realization of the mission of the cooperative.

**Public policies on cooperatives:** Underlining the attempt to identify what factors contribute to success and failure in cooperative development is an ongoing debate over the proper relationship between each country's government and cooperatives. Experience throughout the world has been shown that government policies impede or enhance independent cooperative development.

The debate centers on the need to preserve autonomy and democratic control of the cooperative by its members, while recognizing the cooperatives need, in some countries, to receive management and financial support from the government and to operate in favorable legislative environment.

#### Types of Government Policy towards Cooperatives

Government policies toward cooperatives can be viewed as a continuum from overt hostility to total control. The continuum in the following figure describes public policies toward cooperatives. There are 5 main government policies. These are:

1. Destructive Policy
2. Neutral policy
3. Supportive policy
4. Participating policy
5. Controlling policy

## 1. Destructive Policy

Destructive policy Countries at level 1 are hostile towards cooperatives. They are suspicious of them and attempt to restrict, suppress or outlaw them as the fascists did in Italy and as the government of Chile has more recently attempt to do. The Uganda government allowed cooperatives to operate by law, but set agricultural prices in such a way that cooperative could not compete. Roy cites the case of Indonesia, where, cooperatives were deprived of all legal rights, may were forcibly disbanded, and state assistance to cooperative, was terminated during the 1960s. Since 1966, the government of Indonesia has encouraged cooperatives. Governments that actively oppose cooperatives are usually authoritarian regimes, which are unable to tolerate freely operating democratic institutions. By their nature, cooperatives are a threat to the power of these governments.

## 2. Neutral policy

Neutral policy at level 2, the government does not actively attempt to destroy cooperatives, nor does it give them special treatments. In effect, cooperative business operates in the same climate as all other businesses. This limited involvement by government has been typical of industrialized countries.

In Western Europe, cooperatives come into being through the action of popular movements. The cooperative movement in France, Sweden, the United Kingdom and other western European countries has a strong tradition of independence, voluntarism, and self-help.

## 3. Supportive policy

At level 3, governments demonstrate a positive attitude toward cooperatives as a tool that citizens can use to improve their economic wellbeing and participate in economic democracy. Artificial barriers to cooperatives operations are removed. For example, special legislation is passed to make it easier to organize and operate them. Education, research, and technical assistance programs are initiated to help cooperatives be successful. The aim of government is to encourage the development of cooperatives; however, responsibility for initiating and carrying through this development rests with members.

Because the members benefits of cooperatives should succeed or fail according to their own performance. Although the government may provide services and incentives which make the cooperatives an attractive form by which to conduct business, the government is not actively

involved in the day to day affairs of the cooperative, does not participate in cooperative management and does not have representatives on the board of directors.

An example of government support which falls between level 3 and 4 is the cooperative law enacted by Egypt in 1980. That law regulates the establishment of cooperatives, and national cooperative federations. It also establishes cooperative bank. The law guarantees cooperatives autonomy as well as support by the state, which is to actively promote cooperative development and stimulate the activity of cooperative enterprises.

#### **4. Participating policy**

At level 4, governments directly involved in organizing cooperatives and providing capital and management. This is common in developing countries, where the lack of capital and education among farmers must be overcome. Many third world cooperative organizations are undercapitalized. To the extent that they depend on external financing, including government financing, they may be subject to manipulation. To the extent that development projects, including those carried out by cooperatives, attempt to meet credit needs rather than create debt capacity, they may contribute the failure of those projects. Further, when cooperatives are carrying out the development programs of government, risks should be shared between government and cooperatives. The risk of providing services to the poor should not be assumed entirely by cooperatives.

An attempt by the government of Ecuador to establish an agricultural producer's cooperative in the Guyas basin characterizes the problems encountered;

There had been, for some years, a strong peasant movement demanding title to the land. As part of it(s) agrarian reform program, the government encouraged the setting up of rural cooperatives. But ten years later, their state of health, was disastrous. There was a major crisis of participation, of leadership and of economic stability and the national credit institutions were threatening to confiscate the land.

#### **5. Controlling policy**

At the last level, governments use cooperatives as a tool to achieve their own agenda (e.g. to provide employment) and take control of the cooperative. Government hires management and dictates policy. In a number of countries, the government has the power to appoint and dismiss cooperative board officials and in doing so, has undermined their autonomous and democratic character. Cooperative members have in these situations not only lost control over the management of the organization but are often required to submit to government controls on the

production, pricing, and marketing of their products. Cooperatives become an arm of the state. For example, the Indonesian government sets the price of fertilizer and rice, for agricultural cooperatives and the board of directors is obliged to follow government decision. In this situation, there is often no difference between the rights and obligations of members and non-members.

**Table 1.1: summary of cooperative policy**

Type of policy and their level	Destructive 1	Neutral 2	Supportive 3	Participating 4	Controlling 5
Descriptions	Antagonism, hostility, violent destruction	No public policy positive or negative	Creation of a favorable legal/business environment for cooperatives	Active provisions of support services for cooperatives; may include management	Total control over cooperative management and decision making

### 1.1.2 The draft of cooperative policy in Ethiopia

#### The goal of cooperative policy

Ethiopia had been managing the affairs of cooperatives without having any definite cooperative policy for the past decade. At present, the Federal Cooperative Agency has issued a draft of such policy. It should be born in mind that this draft policy remains “draft” because the information we have from the Federal Cooperative Agency shows that it has not been ratified yet. This presentation should be taken simply as intellectual exercise rather than its legal implication.

Accordingly, it is stated in the draft policy, that the goal of the cooperative policy is to create conducive socio-economic environment, legal and institutional framework both for the rural and urban dwellers of the population so that they voluntarily organize cooperative societies by coordinating their knowledge, labor and wealth with which they can be the direct participants and users of the fruits of their movement.



The draft cooperative policy includes the following major issues in order to transform the country's cooperative movement to an elevated level;

- Expansion and development of cooperatives
- Cooperative organizational structure
- Cooperative finance
- Cooperative education and training Cooperative audit and inspection system
- Social participation by cooperatives
- Role and support of the government
- The relationships between the cooperatives and other institutions
- Policy implementation

### 1.1.3 Cooperative Law: Meaning And Definition

**Cooperative law** means the rule and regulations established in a country by cooperative appropriate authority and applicable to its people, whether in the form of legislation or policies recognized and enforced by appropriate authority. It includes cooperatives proclamation, regulations, directives, by laws and internal by laws. For example, law establishes the criteria for the definition of legal persons, which gives physical persons the possibility of avoiding personal, financial liability.

The duality of law is apparent here. It represents the just balance between the autonomy of the Cooperators and the cooperatives on the one hand, and the scope of normative control by the state on the other. At the same time, law is the instrument, which establishes this balance.

**Dear trainees what do you feel about the cooperative law?**

Is it a government/private law?

Is it a development law?

#### **A. government or private law**

The legal nature of the cooperative law depends on the definition of its objective. If cooperative legislation is to regulate the activity of the cooperative sector, it will be part of public economic law and should include besides rules on the formation, structure, operations and dissolution of cooperatives, rules on a tutelage authority and its powers. If, on the other hand, it is only a question of proposing to potential Cooperators a mode of organization, one finds oneself in the domain of private law.

The insertion of the cooperative law in one or the other of these fields reflects a political choice. In the context of structural adjustment to the requirements of human right, democracy and the rule of law, private law is the logical choice since the legislator is not seeking to interfere in the activities of cooperatives. In accordance with ILO Recommendation No.127 (paragr.10 (a)), the law thus offers Cooperators a legal framework, which will permit them to develop their activities in an autonomous manner.

## **B. Development law**

The history of cooperatives has been frequently marked by their being used as instruments to serve the development goals of the state, be it socialist or capitalist.

Guided by the theories of “development of law” which saw law as a technique apt to be developed, and ignoring the theory of “law of development”, which is rather concerned with finding out how development could be induced and supported by law, states often ended up in managing cooperatives on a day to basis in order to make them fit modern more often than not important law. Public funding has brought about tighter control, thus closing the vicious circle of government involvement and a growing dependence of the cooperative system on the state. State administration intervened in the management of cooperatives more or less directly. For example, it

- Organized general assembly’s (GA) to establish cooperatives; sometimes it simply created cooperatives ex nihilist;
- Held ordinary or extraordinary GAs, meetings of the board of directors and of other organs, by delegating state representatives to sit in these sessions, which sometimes had been convened directly by them;
- Took decisions normally made by the organs of the cooperative.

The personnel, elected or employed, found themselves under close supervision, regarding their selection, their remuneration and their eventual "replacement" at times by state commissioners.

### **1.2 Historical development of cooperative laws and proclamation**

Most scholars recognize the business of the Rochdale pioneers of England as the first coop. In 1844, this group of 28 men (weavers and skilled workers in other trades) formed a cooperative society. They created business principles to guide their work and established a shop in which to

sell their goods. It is usually considered the first successful co-operative enterprise, used as a model for modern co-ops, following the 'Rochdale Principles'. England set up the society to open their own store selling food items they could not otherwise afford. Within ten years there were over 1,000 co-operative societies in the United Kingdom. Other events such as the founding of a friendly society by the Tolpuddle Martyrs in 1832 were key occasions in the creation of organized labor and consumer movements.

The history of the cooperative law concerns the origins and history of cooperatives. Although cooperative arrangements, such as mutual insurance, and principles of cooperation existed long before, the cooperative movement began with the application of cooperative principles to business organization.

Robert Owen (1771–1858) is considered the father of the cooperative movement. A Welshman who made his fortune in the cotton trade, Owen believed in putting his workers in a good environment with access to education for themselves and their children. These ideas were put into effect successfully in the cotton mills of New Lanark, Scotland. It was here that the first co-operative store was opened. Spurred on by the success of this, he had the idea of forming where workers would drag themselves out of poverty by growing their own food, making their own clothes and ultimately becoming self-governing. He tried to form such communities in Orbiston in Scotland and in New Harmony, Indiana in the United States of America, but both communities failed.

### **1.2.1 Historical development of cooperative law in Ethiopia**

As far as the cooperative laws in the country are concerned the first cooperative law of the modern cooperative movement in our country was agricultural cooperatives decree No. 44/1960 which is prepared at the time of Emperor Regime. After time later in the Emperor regime the empire made some adjustment on the first decree/cooperative law and enacted proclamation No. 241/1966 as agricultural cooperatives proclamation.

After the collapse of the imperial regime the Derge government enacted agricultural cooperatives proclamation No. 138/1978 for control and follow up of cooperatives in Derge regime.

After the downfall of the Derge Regime the Transitional government enacted agricultural cooperatives proclamation No. 85/1992 for management of the cooperatives of the time.

Then the FDRE government developed the first ICA principle and societies based cooperatives society proclamation No. 147/1998 to manage the cooperative movement in the country. Following this the government developed 106/1996 implementation regulation for proclamation no.147/98 then the FDRE government enacted another proclamation 402/1996 which deals Amendments for proclamation No. 147/98

Lastly, at recent time FDRE government proclamation No. 985/2016 which is called as Cooperatives society proclamation.

### **1. Distinct features of cooperative proclamation 985/16**

Discuss and reflect for the class the basic differences of the past cooperative proclamation and the present one.

Starting from the first law of the cooperative movement all cooperative laws at each level and regime has got unique features from the former one but this current proclamation is different from others is in its particular nature of

- Participative all stakeholders are involved in its development process
- Differentiate cooperative societies
- Solved number of question raised from farmers and other stakeholders
- Proclamation is common for all regional states
- Magnified the implementation of international principles
- It is permissive
- Permitted cooperative league, fund and minister of councils to be established
- The decision authority is given to members
- Solved trade transactional problems in cooperatives in light of trade laws
- Differentiate duties of cooperatives in its type and structural arrangements.
- Solved export problems
- It has given the collateral right.

### **1.3 Roles of cooperative legal system**

Cooperative legislation shall establish that cooperatives are entities capable of holding legal rights or obligations, that is, entities whose existence is recognized by the national legal system as having all rights of any legal person, on equal terms as corporations, non-profit organizations and other legal forms of association admitted under national law.

The law shall in a clear and precise way establish the proceeding for cooperatives to obtain legal status, which shall be similar to that provided for corporations and associations, without costly and or excessive requirements.

- ✓ If the legal system of the country permits it and clearly states its legal nature, the cooperative law could contain a preamble, possibly alongside a clause in the constitution or a policy declaration on cooperatives.
- ✓ Cooperative legal system might be play the following significance role but not restricted to:-
  - It is a reference point and a guide mark.
  - Guarantees the autonomy
  - Reduces bureaucracy;
  - It helps to regulate the day to day activities of cooperative
  - It offers Cooperators a legal framework, which will permit them to develop their activities in an autonomous manner.
  - It is a reference point and a guide mark.
  - Guarantees the autonomy of cooperatives because of its inevitably general character;
  - Favors the unity of the cooperative movement; and finally
  - Guarantees legal security for those dealing with cooperatives

### **The linkage between cooperative legal system and principal**

The cooperative law is thus only one of the elements of a system where cooperative principles, certain ideas on political and economic issues and the cooperative law reciprocally stabilize and complement each other.

Cooperative law falls within organizational law, thus sharing, in principle, its general objectives. Stipulating the cooperative identity and preserving its distinguishing features should therefore be considered the primary objective of cooperative law

The purpose 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 bodies and in accordance to the universally accepted cooperative principles.

The legal framework for cooperatives consists of the law, rules made under it and the bye-laws adopted by the members of cooperatives in accordance to the act and rules.

For example: voluntary open membership within the limits of the social objective defined in the bye-laws of the cooperative society in question and the right to freely withdraw.

The interpretation of the open door principle, i.e. negative and positive nondiscrimination as regards gender, social origin, race, political affiliation or religion must take into account the associative character of cooperative societies.

The free will of the members to work together constitutes one of the keys of their motivation. This is incompatible with any attempt to impose members.

The seventh principles of ICA cooperative identity says that: service to the members and concern for the community-

According to the cooperative ideal, the well-being of the community stems from that of the members of cooperatives. Nevertheless, questions linked to the quality of life, such as the dissipation of natural resources, the non-mastering of certain technologies and the growing of decision making procedures etc., require that the interests of the members of cooperatives be constantly redefined.

Generally, both cooperative guiding principles and legal system has positive relationship regarding up lifting and guaranteeing the society's socio –economic and cultural stabilities.

#### **1.4 Source of cooperative law**

International sources of cooperative law are the 1995 ICA's Statement on the Cooperative Identity (ICA Statement) 9, the 2001 UN Guidelines on creating a supportive environment for the development of cooperatives 10 and the ILO's Recommendation No. Jul 5, 2022 which admittedly increases their authoritativeness, also in terms of juridical effectiveness if one holds that said Recommendation is a source of public international law.

In any event, the fact that the ICA Principles are explicitly referred to, or even formally incorporated into many national cooperative laws, demonstrates that they are a global “persuasive” source of cooperative law, which validates the choice to take them into

consideration, or rather to move from them, when seeking a common, cross national, denominator to discuss the cooperative identity issue from a comparative law perspective.

One of the main problems in dealing with cooperative law from a comparative perspective (and sometimes even within a single jurisdiction!) arises from the fact that the system of sources of cooperative law is very complex due to a number of reasons.

Firstly, because there are several, formally distinct models of cooperative legislation depending on the jurisdiction, the general cooperative law may be found, *inter alia*:

- In a single instrument which deals exclusively with cooperatives (normally an act
- In several instruments dedicated to cooperatives only or
- In a more general instrument (such as a civil code, a commercial or a company code,

An act that deals with a plurality of legal entities Of course, the above classification has only a formal value, since a juridical effectiveness does not depend on the denomination or location of the regulation but on the nature of the source from where the regulation flows and its relationship with other sources of law. Moreover, the above may also be found, although probably to a lesser extent, in the regulation of other legal entities, such as companies. It remains, however, that this variety makes comparative investigation of cooperative law more complex.

Furthermore, in some countries, cooperative law is a matter of (exclusive or concurrent) regional/state competence, which further complicates the legal framework of cooperatives at the national/federal level and for comparative legal research objectives.

This may also raise an issue in terms of cooperative equal treatment when a country's company law is, by way of contrast, a matter of exclusive competence of the state (or federal state).

Secondly, because the majority of jurisdictions have regulations on particular types of cooperatives (worker cooperatives, agricultural cooperatives, consumer cooperatives, Cooperative banks and credit unions, etc.) in addition to—or, in a few instances, instead of—a general cooperative regulation.

Depending on the country, the regulation of these particular types of cooperatives may be contained either in separate special laws or in the very body of the general cooperative law



The main sources of co-operative laws applicable to the co-operatives in our countries are:

- Constitution of the country
- The Co-operative Societies Act /Cooperative society proclamation 985/2016.
- Cooperative society rule
- The registered By-laws of the co-operative society
- Other sources include government policies issued from time to time in form of circulars (commissioner's circulars) and resolutions passed by members in validly convened and conducted general meetings.

- **Cooperative society Act/ Cooperative society proclamation 985/2016**

Act of Parliament relating to the constitution, registration and regulation of co-operative societies. It is the supreme law relating to the operations of the co-operative societies. Like any other law, the provisions of the Act do not in any way conflict the constitution of Ethiopia.

The Act is one of the documents that should be available in every co-operative society office and should be thoroughly understood and referred to by the officials from time to time in the conduct of the society business.

The Co-operative Societies Act provides the following areas registration of co-operative societies privileges of a registered co-operative society rights and liabilities of members duties of co-operative societies amalgamation and division of co-operative societies rights and obligations of co-operative societies property and funds of co-operative societies inquiry and inspections n surcharge dissolution settlement of disputes offence under the Act, the rules and penalties

- **The Co-operative Societies Rules**

The rules are subsidiary legislation made by the Minister. The Minister derives powers to make rules under Section 91 of the Act. The current rules were made and became effective from November 2004. Being subsidiary legislation, the Rules do not conflict with the Act.

The rule is another document that society should keep in the office and should be referred to and used by the society officials from time to time.

Important provisions in the rules the procedures and forms used in the registration of co-operatives the procedure for making and amending the by-laws of co-operatives b the procedure for admission of members in the co-operative societies the procedure of general meeting of



members and powers of members the appointment, suspension and removal of committee members the formation and maintenance of reserve fund the procedure for appeals to the Minister the returns to be submitted by the co-operative societies the procedure to be followed in liquidation of societies.

The Act and the Rules cannot give adequate details on how each individual co-operative society should be internally governed. Internal regulations are made by each society, because not all aspects are the same in all societies. The rules therefore provide for every society to make by-laws to serve as internal regulations.

- **The registered By-laws of co-operative societies**

By law is rule of cooperatives to control and manage their activities that is prepared and is owned by each and every society. Every society shall have its own by-laws. The By-laws are internal regulations made by each co-operative society to bind and govern its members. The By-laws are only effective if they are registered by the Commissioner for Co-operative Development.

**The By-laws** of a co-operative society are subordinate to the Act and Rules. They should not contradict any of the above.

**Copies of the registered By-laws** should be acquired by each member of the society so that they are conversant with each provision there-in. This can be through suitable arrangement with the society officials.

The by-laws bind only members of the respective co-operative society. They bind all members irrespective of when they joined the society. They should therefore be obeyed by all members and be observed by the society officials in the conduct of all business of the society

- **Other sources of co-operative laws**

**Government Policies/Commissioners Circulars:** The government issues policy circulars from time to time. Such circulars are normally issued by the Commissioner for Co-operative Development and are meant to be implemented and their purpose is to assist in the growth and development of the societies, and in the administration of the provisions of the Act and rules.

**General Meeting Resolutions:** Members do pass resolutions in general meetings. These resolutions, as long as they are passed in validly convened and conducted general meetings and

Self- check 1	Multiple choice, written test
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Name \_\_\_\_\_ ID \_\_\_\_\_ Date \_\_\_\_\_

**Directions:** Answer all the questions listed below.

**Time Allowed 30 min, Weight 10%**

**Part I choose the correct answer (1 point each)**

- Which one of the following are not the main sources of co-operative laws?
  - Cooperative society law
  - Cooperative society rule
  - Appropriate authority
  - Constitution of the country
- the rule and regulations established in a country by cooperative appropriate authority and applicable to its people is \_\_\_\_\_
  - Cooperative law
  - cooperative policies
  - Cooperative proclamation
  - bylaws cooperative
- Which one of the following is the role Cooperative legal system?
  - It is a reference point and a guide
  - Guarantees the autonomy
  - Reduces bureaucracy
  - all
- the father of the cooperative law movement \_\_\_\_
  - Rochdalepioneers
  - Robert Owen
  - Welshman
  - all

**Part I Essay part (2 pointeach)**

- What is cooperative law -----  
-----
- List the role of cooperative legal system?-----  
-----  
-----
- List the source of cooperative society law  
-----  
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**Note:** Satisfactory rating - 7points      Unsatisfactory - below 7 points

**You can ask you teacher for the copy of the correct answers**

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## LG #5

## LO #2- Cooperative law

### Instruction sheet

This learning guide is developed to provide you the necessary information regarding the following content coverage and topics:

- Unique feature of cooperatives law
- Cooperative law verses other Business Laws
- Hierarchy of cooperative law
- Contents of cooperative law

This guide will also assist you to attain the learning outcomes stated in the cover page. Specifically, upon completion of this learning guide, you will be able to:

- Describe Unique feature of cooperatives law
- Distinguish cooperative law verses other business laws
- Identify hierarchy of cooperative law
- Elaborate contents of cooperative law

### Learning Instructions:

1. Read the specific objectives of this Learning Guide.
2. Follow the instructions described below.
3. Read the information written in the information Sheets
4. Accomplish the Self-checks

## Information Sheet 2

### 2.1 Unique feature of cooperatives law

The feature cooperative law is part of cooperative legislation. The rule of law is a fundamental element in the new approach to development which emphasizes the respect for human rights. This presupposes that the legal relationship between citizens and the state is founded on acts of parliament. International cooperation uses law, in an ever increasing manner, as a means of information and communication. Law is a reference point and a guide mark. Those unique features of a cooperative society are explained below:

1. **Voluntary Association:** A cooperative society is a voluntary association of persons eager to raise their economic status in the locality through collective actions. The membership of cooperative society is free to those having a common interest. They can leave the society at their will after giving a due notice. A member can withdraw his or her capital but cannot transfer the shares to another person.
2. **Open Membership:** Members join the cooperative society by choice. A minimum of 10 members are required for the formation of a cooperative society. The Cooperative Societies Act, 1912 does not put a limit on the membership of cooperative societies. However, after the formation of a cooperative society, the members may unanimously decide to specify the maximum number of members.
3. **Service Motive:** Unlike other forms of business organizations, a cooperative society does not function to earn profits. The main objective of a cooperative society is to serve the public. It sells quality goods at cheaper rates to the members by retaining a small margin for profit. The profits are then transferred to the general reserve and used for the welfare of members.
4. **State Control:** Cooperative societies are voluntary business associations. However, like any other forms of business entities, they are required to observe the laws and regulations framed by the government. The government exercises its control on these societies from time to time by checking their accounts. To fulfill this duty, the cooperative societies are required to send their account books to the registrar for inspection.

**5. Democratic Management:** To perform the managerial work, the members elect the honorary office bearers in a democratic way. The management committee of the society is elected on the basis of ‘one person one vote’ in the general meeting. Thus, irrespective of the status or number of share holdings, all the members have the right to cast one vote.

**6. Separate Legal Entity:** After getting registered under the Cooperative Societies Act, a cooperative society becomes a separate legal entity with an identity of its own. Its members have limited liability. The death, lunacy or insolvency of its members does not affect its existence. It can buy properties and can make contracts in its own name.

**7. Distribution of Surplus:** Apart from rendering services to their members, cooperative societies also earn some profits, which are a by-product of their business activities. Profits, however, are not earned at the cost of the members’ welfare. Profits are distributed among the members not on the basis of the capital holdings, but in proportion to the participation of each member in the functioning of the society. The entire profits are, however, not distributed to the members. The surplus is used in four ways. These are:

- As per the law, one fourth of the profits are transferred to the general reserve.
- A portion of the profits, not exceeding 10 percent, is used to pay dividend on share capital.
- A part of the surplus, not exceeding more than 10 percent, can be used for the benefit of the areas where the business is working.
- The remaining surplus can be divided among the members as bonus.

**8. Cash Trading:** Cooperative societies conduct business activities on cash basis. Cash trading spares the cooperative societies to avoid bad debts and credit collection expenses. It also ensures continuous flow of capital and protects from short-term insolvency. However, these societies are not barred legally to sell goods on credit. Exceptions are made in case of some members.

**9. One Man One Vote:** Cooperative societies make no distinction among the members on the basis of their financial strength or the number of shares held by them. Therefore, each member is allowed one vote regardless of the number of shares held by him or her and has equal say in the management.

## **2.2 Cooperative law vs. other Business Laws**

The legal nature of the cooperative law depends on the definition of its object. If cooperative legislation is to regulate the activity of the cooperative sector, it will be part of public economic law and should include besides rules on the formation, structure, operations and dissolution of cooperatives, rules on a tutelage authority and its powers. If, on the other hand, it is only a question of proposing to potential cooperators a mode of organization, one finds oneself in the domain of private law.

The insertion of the cooperative law in one or the other of these fields reflects a political choice. In the context of structural adjustment, private law is the logical choice since the legislator is not seeking to interfere in the activities of cooperatives. In accordance with ILO Recommendation No.127 (paragr.10 (a)), the law thus offers cooperators a legal framework which will permit them to develop their activities in an autonomous manner.

**The difference between cooperative law and other law is mentioned as follow:-**

- Cooperative law form the special legal framework for their establishment and operation
- Cooperative law alters the attitude of the cooperative as a form of organization of natural persons; relatives the effect of the principle of one cooperative member - one vote, self-help and identity in order to strengthen the market functions of the cooperatives.
- Cooperative law shows the direction to individual how to become the members of the cooperative. Whereas, other law for examples if take public law
- Public law deals with issues that affect the general public or state - society as a whole.

**Some of the laws that its wide scope covers are:**

- Administrative law - laws that govern government agencies, like the Department of Education and the Equal Employment Opportunity Commission.
- Constitutional laws are laws that protect citizens' rights as afforded in the Constitution
- Criminal laws are laws that relate to crime
- Municipal laws are ordinances, regulations and by-laws that govern a city or town
- International laws are laws that oversee relations between nations
- Contract law - governs the rights and obligations of those entering into contracts

- Tort law - rights, obligations and remedies provided to someone who has been wronged by another individual
- Property law - governs forms of property ownership, transfer and tenant issues
- Succession law - governs the transfer of an estate between parties
- Family law - governs family-related and domestic-related issues

### **2.3 Hierarchy of cooperative law**

The cooperative movement in Ethiopia has its own legislative process and structure to be used and enacted. So this all process and culture is administered through the set up in the ladder. The ladder of cooperative law start with supreme law of the land since every law has to be enacted in line with the law of the land then the sector prepares the cooperative proclamation which will work for all regions following to this different regulation and directives will be made then manuals and model bylaws are made by the experts the lastly By-laws and internal by-laws are made by the cooperatives in the country.

Hierarchy of cooperative law according to Ethiopian constitution

- **Constitution of the Country**
  - Made by the Legislators
- cooperative societies proclamation
  - Made at country level by the federal cooperative agency
- Regulation
  - Ministers of councils
- Directives
  - By Federal Cooperative Agency, Regional cooperative development agencies
- By laws
  - Modeled By Woreda,Zonal, Regional cooperative development agencies and approved by the cooperatives General Assembly
- Internal by laws
  - By the cooperative's General Assemble

## 2.4 Contents of cooperative law

### Contents of a Cooperative law

- |   |  |
|---|--|
| a. Preamble;  | f. Audit;  |
| b. General, registration and publication;                   | g. Forms of dissolution;                           |
| c. Obligations and rights of members;                       | h. Simplified structures;                          |
| d. Organs and management of the cooperative society;        | i. Vertical integration;                           |
| e. Capital formation, accounts and distribution of results; | j. Dispute settlement;                             |
|   | k. Miscellaneous, transitory and final provisions. |

#### a. Preamble

If the legal system of the country permits it and clearly states its legal nature, the cooperative law could contain a preamble, possibly alongside a clause in the constitution or a policy declaration on cooperatives.

The preamble will define guidelines for the interpretations of the law, which are all the more important where genuine cooperatives, are not yet solidly implemented. The preamble could indicate the following matters:

- The role and the function of cooperatives in society in general and in the economy of the country in particular.
- The characteristics of cooperatives as private and autonomous organizations having access to all lawful activity.
- The limited intervention of the government regarding the formation and promotion of cooperatives.
- Equal treatment of cooperatives with regard to other business organization, where possible, but different whenever the specific nature of the cooperatives so requires.



## **b. General Provision**

### **Defining Cooperatives**

The legal definition of cooperatives is of paramount significance since it is the chore upon which any legislative legislation rests. The correct definition of cooperatives is the milestone for any adequate law. The correct definition of cooperatives should lead to draw a distinction from other forms of legal organizations such as corporations, associations, etc. and thus build the cooperative profile according to its specific nature.

ICA Statement on the Cooperative Identity contains a definition of cooperative that may be of guidance, together with Recommendation N° 127/66. Notwithstanding, the definition shall have to be adjusted to the specificities of the national legal system.

Cooperative principles should also be incorporated into any definition of cooperatives since they contribute a more rigorous definition of the nature of such organizations. It is worth noting, however, that pursuant to the Statement on the Cooperative Identity, the principles are ‘general guidelines’ through which cooperatives put their values in practice. In other words, adjustments are admitted provided that the essentials are not affected.

A proper definition of the term and of cooperative principles constitutes an essential requisite of cooperative legislation to characterize authentic cooperatives and avoid misunderstandings or even undue uses of the term. This requirement should be supplemented by the prohibition of using the term ‘cooperative’ by entities that do not meet the legal provisions.

In addition, the definition should reflect four elements of the cooperative identity principle and of the principle of member promotion:

- Members should be the main owners of the cooperatives.
- Cooperative must promote their members interest.
- Cooperatives are user driven, that means members should be the user of their cooperatives.
- There should be voluntary and open membership to form a cooperative society.

## **c. Formation and Registration**

Cooperative legislation shall establish that cooperatives are entities capable of holding legal rights or obligations, that is, entities whose existence is recognized by the national legal system as having all rights of any legal person, on equal terms as corporations, non-profit organizations and other legal forms of association admitted under national law.

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The law shall in a clear and precise way establish the proceeding for cooperatives to obtain legal status, which shall be similar to that provided for corporations and associations, without costly and or excessive requirements. Generally, such proceeding shall consist in the registration with a registration authority, which may well be a section of the Registrar of Companies where all other legal entities are registered upon compliance with the relevant formalities. Upon denial by the authority to register a cooperative, applicants shall be entitled to appeal before the courts, thus enforcing judiciary control over administrative decisions and avoid any likely arbitrariness.

The existence of bye-laws that fulfill all legal requirements, and adequately set forth the main issues relating to cooperative organization, operation and winding-up, is a condition precedent to register a cooperative with the registration authority, since such instrument, freely accepted by members shall govern the life of a cooperative and its relationship with them. Model bye-laws furnished either by the registration authority or higher ranking cooperative organizations could be helpful in organizing cooperatives, provided that they shall be not obligatory but reference documents.

The register shall be public, that is, open to any and all persons willing to obtain information about registered cooperatives, this, notwithstanding the existence of bulletins or publications disseminating new registrations. The registration authority shall also provide evidence or certificates of registration to registered cooperatives.

#### **d. Members Rights and Obligations**

Joining a cooperative is a voluntary and free decision open to all persons in a position to use its services who accept the responsibilities arising from association without racial, political, religion, social or gender discrimination. Accordingly, the text of the law shall expressly contain This principle in order that all persons with shared needs and a willingness to solve them through common action may join cooperatives. This is a particularly defining trait of cooperative organizations, reason why law-makers should ascertain proper and careful treatment thereof.

Once the principle of free and voluntary association is established, the law should set out the effects of association, that is, the rights and obligations arising from membership. The provisions shall be general in nature, leaving the specifics for the bye-laws. Certain rights and obligations should be established, however, in the statutory rule, such as the right to democratically participate in the management of a cooperative and the duty to perform the obligations established in the bye-laws.

The cooperative intends to meet members’ needs and purposes through a common organization; hence the law shall generally establish the rights and obligations assumed by members upon joining a cooperative.

**e. Organs and management of the cooperative society**

The organizational structure of a cooperative is of paramount significance for the correct operation thereof. Such structure should combine an active and dynamic management, democratic governance, and internal controls. Consequently, different bodies are required with specific and clearly defined powers and functions. Where functions are overlapping, the bodies interfere with each other, conflict arises, and cooperative operations deteriorate.

As a rule, cooperative organs include: a governance body (the general meeting), an administration body (the board of directors), and a control body (the supervisory committee).

Although the by-laws of each cooperative shall clearly describe the functions of each body, the law should establish generally the respective powers and functions in accordance with the nature of each organ.

The general meeting –consisting of all members entitled to one vote each– elects theMembers who will constitute the other organs and also appoints the auditor, approves the annual budget and main investments, approves the annual balance sheet, and considers any such other Matters the significance of which may affect the cooperative’s general operations such as the reforms of the bye-laws and new activities of the cooperative.

The board of directors –consisting of a reduced number of members – is entrusted with the administration in the framework of the provisions of the bye-laws and general meeting resolutions; carry the cooperative records and accounts; and submit the balance sheet and the annual report to the consideration of the general meeting.

The supervisory committee –consisting of the number of members set forth in the byelaws– is charged with overseeing the board of directors’ activities and reporting their findings to the general meeting. This committee may be in charge of appointing the external auditors instead of the general meeting.

#### **f. Capital formation and distribution of results**

A cooperative, as an economic organization, shall be funded as necessary to meet its purposes to the benefit of its members. Financial resources basically consist of the capital contributed by members and any reserves built out of undistributed surplus. This matter deserves specific statutory rules consistent with cooperative principles.

It should be mentioned that funding needs may advise the granting of compensation on shares in the form of limited interests. In addition, capitalization mechanisms can be established in proportion to the use of the services provided by the cooperative, or in the form of, among others, revolving funds permitting the cooperative to avail of reasonable capital to work without economic constraint.

Any reserve built out of undistributed surplus constitutes a funding mechanism in which cooperatives do not incur costs, hence it is particularly interesting and helps consolidate the cooperative capital. The law should establish that at least a portion of such reserve shall be of a non-divisible joint ownership nature, that is, not subject to allocation to members individually but forming a genuine joint ownership capital fund.

The law shall also provide for possible allocations of any financial surplus from the cooperative business, although it is for each cooperative to decide, whether in its by-laws or in the general meeting of members, the destination thereof. One such allocation may be to constitute the above-mentioned reserve fund. Another may be the distribution to members prorate to their transactions with the cooperative, hence reimbursing to those members who contributed to the cooperative activity (such reimbursement may also be in the form of shares).

Moreover, it may be allocated to support activities of common interest as decided by the general meeting. Legislation in many countries set forth the sound obligation of allocating certain percent of the surpluses to educational activities to be performed by the cooperatives in order to ensure that members and officers improve their level of cooperative education and training.

#### **g. Accounting and Audit**

The law should establish that cooperative accounts shall be carried in a clear and reliable manner, to the benefit of both its members and any third party in any way related to the cooperative.

The purpose of the audit is to check that everyone respects the rules of the game. It is a periodical control of whether the attribution of the status of legal person continues to be justified.

It helps to monitor the interests of third parties, managers and members. As such, it is a general tool for any kind of enterprise.

The specificity of cooperatives requires the auditor to make additional investigations to ensure that cooperatives comply with the task of promoting their members.

Accordingly, it shall contain adequate provisions in line with the cooperatives economic capacity and transactions volume, trying to avoid excessive requirements the cost or complexity of which may exceed the cooperative's ability to cope with them.

Aside from accounting provisions, the law shall contain rules about the preparation and publication of the balance sheet, the document that states the economic and financial condition of the cooperative. The balance sheet shall also be brought to the consideration of members in a general meeting, and raised to the registration authority for access to it by the public at large.

The auditing of cooperative accounts is a requirement that secures the reliability thereof.

It is then advisable that the accounts be audited by independent public accountants, or by specialized cooperative organizations. Certain advantages arise from shared cooperative specialization; the lower costs incurred being one of them.

#### **h. Dissolution and Winding-up**

A cooperative may cease operating for different reasons that should be specifically provided for by the law, such as by decision of a special majority of its members, the inability to fulfill its purposes, maturity of its term, failure to comply with registration requirements, etc.

Upon dissolution of a cooperative, either its board of directors or a committee specially appointed for this purpose shall proceed to its winding-up –disposition of its assets, payment of liabilities, and if any balance remains, proceed to reimburse to members the capital contributed by them. Non-divisible reserves shall be treated in accordance with the provisions specifically set forth by the law or the bye-laws.

The supervisory committee and auditors shall oversee the winding-up process to ensure compliance with the regulations and transparency deals.

If, on the contrary, the cooperative were in default, the winding-up shall proceed pursuant to the general procedure provided for in the statutory bankruptcy rules applicable to any corporation.

Moreover, in the case of merger with another cooperative, dissolution without winding up is also possible.

Whichever the reasons that leads to cooperative dissolution, upon completion of winding up proceedings the cooperative shall be deleted from the respective registry with cancellation of its legal status.

#### **i. Simplified structures**

Even though the experiences of pre-cooperatives can be criticized, this does not mean that the provision of a less complex form of organization than cooperatives is not necessary. Among other forms,

Unlike with pre-cooperatives it is not a question of granting a temporary status to organizations which should eventually become cooperatives, but to recognize the diversity of needs and organizational capacities. The state might, in a simplified procedure, recognize such groups taking into account their reduced size, turnover, share capital, degree of inter-relatedness with third parties etc., which might require less strict rules on accountancy, audit and internal administration (number of organs, number of members of the organs, documents to be kept etc.)

#### **j. Apex organizations, unions, federations and confederations of cooperatives**

The freedom of association includes the right of cooperative organizations to form apex organizations, unions, federations or confederations.

The state should refrain from any intervention except monitoring these organizations' compliance with their duty to represent their members. In order to establish a system of partnership between the state and cooperatives, in full respect of the freedom of association, the state should promote an independent and competent cooperative movement.

#### **k. Dispute settlement**

The question is whether disputes within the cooperative movement, i.e. between members, between members and their cooperative, between organs of a cooperative, between cooperatives, between cooperatives and their secondary or tertiary organization, must be subject to general or special arbitration before the parties may access a general or a special court of law.

Generally, arbitration is preferred to official procedures, for financial reasons, delays, and also because it allows for the consideration of local human and social issues. Especially because of the latter, the legislator should recognize such procedures and attempt to preserve traditional modes of mediation.

## **I. Miscellaneous, transitory and final provisions**

**Administrative decrees of application:** In countries where the law is traditionally accompanied by a decree, the statutory powers of the government must be limited to setting rules for the application of the law only.

**Period of limitation:** Any right emanated from a contract concluded by the cooperative society involving its properties shall be barred by statute of limitation after ten years.

### **Address of a cooperative society**

Any cooperative society shall have an address registered pursuant to Article 10 of this Proclamation; and all summonses, notices and other communications shall be sent via such address. The cooperative society shall, within 30 days, inform the appropriate authority of any change in such address.

### **Power and Duties of the Appropriate Authority**

Without prejudice to the powers and duties vested in by the provisions of other laws the Appropriate Authority without interfering in the affairs of the cooperative societies, shall have the following powers and duties:

- organize, register, strengthen and cancel cooperative societies;
- provide uniform accounting system of cooperative society and strengthening same ;
- conduct study and research on cooperative societies;
- inspect, audits and give legal service to cooperative societies;
- assess and certify competence status of cooperative societies and accredit their level;
- build the capacity of cooperative society and their professionals

### **Establishment of Cooperative Societies Advisory Council**

The cooperative advisory council (herein after the Council) which is accountable to the Ministry of Agriculture and Natural Resource is hereby established. The members of the Council shall be persons representing the interest of the cooperative society in the country. The chairperson of the Council shall be assigned by the Ministry of Agriculture and Natural Resource. The manner of election and the number of members of the Council shall be determined by the Federal Cooperative Societies Agency. Members of the Council appointed pursuant to sub-article (4) of this Article shall be appropriate experts having the knowledge of cooperative society and dedicated to produce guiding idea,



### **Accessibility of Laws, Regulations, Directives and By-laws**

Any cooperative society shall deposit in its address and make accessible the Proclamation, Regulations, Directives and the by-laws related to the cooperative societies.

**Obligation to Cooperate:** Any concerned organ shall have obligation to cooperate for the implementation of this Proclamation.

### **Repealed and Inapplicable laws**

The Cooperative Societies Proclamation No. 147/1998 (as amended by Proclamation No. 402/2004) is hereby repealed. No law, regulation or directives in so far as it is inconsistent with this Proclamation, be applicable in respect of matters provided for by this Proclamation.

### **Sanctions**

The cooperative law must establish a list of acts liable to penal sanctions, indicating the articles of the penal code.

This should prevent cooperatives from taking on the role of judge, a duty which is not within their competence.

Its own sanctions are those foreseen by the bye-laws and by individual contracts. The daily functioning of cooperatives is guaranteed by the possibility of dismissing the members of the board of directors and of the supervisory committee and applying sanctions to those who do not fulfill their obligations.



Self-Check – 2	Multiple choice and Written test
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Name \_\_\_\_\_ ID \_\_\_\_\_ Date \_\_\_\_\_

**Directions:** Answer all the questions listed below.

(Time allowed 30), **Weight 10%**

**Part I: Multiple choices (1 points each)**

1 the actual law enacted by a legislative body at the national, state, or local level governmental and cooperatives organizations refers to \_\_\_\_\_

- |                       |                            |
|-----------------------|----------------------------|
| A. Dispute settlement | C. Cooperative legislation |
| B. Sanctions          | D. Cooperative law         |

2) Which one of the following are elements of the cooperative identity principle and of the principle of member promotion:

A. Members should be the main owners of the cooperative C. cooperative must promote their B. open membership to form a cooperative society D. All

3) Which one of the following is not content of cooperative law?

- |                         |                              |
|-------------------------|------------------------------|
| A. Vertical integration | C. Miscellaneous, transitory |
| B. Dispute settlement   | D. Funds management          |

**Part II: Short Answer Questions**

1) What are the difference between cooperative law and other types of law? (3 points)

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-----  
-----

2) Write the hierarchy of cooperative law ( 2 points)

-----  
-----

3) Write content of cooperative law (2 points)

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**Note: Satisfactory rating - 7 points**

**Unsatisfactory - 7 below points**

You can ask you teacher for the copy of the correct answers

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## LG #6

## LO #3- Legal requirements in the formation of cooperatives

### Instruction sheet

This learning guide is developed to provide you the necessary information regarding the following content coverage and topics:

- Legislative requirements
- Cooperative formation process
- Cooperative registration process
- Rights and duties of members
- Duties and responsibility of management and employees
- Special privileges of cooperatives
- Asset and funds management
- Amalgamation, division and liquidation of cooperatives
- Settlement of disputes

This guide will also assist you to attain the learning outcomes stated in the cover page.

Specifically, upon completion of this learning guide, you will be able to:

- Identify legislative requirements
- Explain cooperative formation process
- Describe cooperative registration process
- Identify duties and responsibility of management and employees
- Explain special privileges of cooperatives
- Distinguish amalgamation, division and liquidation of cooperatives
- Resolve disputes

### Learning Instructions:

1. Read the specific objectives of this Learning Guide.
2. Follow the instructions described below.
3. Read the information written in the information Sheets
4. Accomplish the Self-checks
5. Perform Operation Sheets
6. Do the “LAP test”

## Information Sheet 3

### 3.1 Legislative requirements

Legislative Requirements means the relevant legislation, regulations, rules and codes and other associated documents applicable to the Services in the country where the Services are taking place. Its Acts, ordinances, regulations, subordinate legislation, by-laws, orders, awards and proclamations and delegated legislation (whether national, state, territory or local) applicable where the Subcontractor's Activities or any part thereof are being performed.

#### 3.1.1. Legislative requirements and issues in the formation and registration

- **Initial Capital**

Any primary cooperative society shall be established with an initial capital that covers at least one year operation cost based on its plan and feasibility study Any cooperative societies union shall be established with an initial capital of at least 25% raised from member cooperative societies through special resolutions of general assembly to implement plan developed for the union based on a feasibility study. Any cooperative society's federation shall be established with an initial capital of at least 30% raised from member unions through special resolutions of general assembly to implement plan developed for the federation based on a feasibility study.

- **Formation of Cooperative Societies**

Cooperative societies may, according to their nature, be established at different levels from primary up to federation level. The primary cooperative society shall be established: by individuals who live or work or engaged in specific profession within a given area; and b) by number of members not less than fifty. Notwithstanding paragraph (b) of sub-article (2) of this Article, the appropriate authority may specify in the directive the minimum number of members of a society based on the nature of the work and economic feasibility; provided, however, that the minimum number of members shall not be less than 10. Primary cooperative society established at federal level shall consist members from two or more regional states. The appropriate authority shall establish and register cooperative societies at federal or regional levels.

- **Types of Cooperative Societies**

A cooperative society may be established to engage in production or service rendering activities or both in production and service rendering activities. Without the prejudice to the provision of sub article (1) of this Article, types of cooperative societies to be established shall not in the areas prohibited by law, immoral to public values, activities affecting environmental security, hence the appropriate authority shall give professional support after conducting due socio-economic study in order to identify the potential resources a variable to organize cooperative societies.

- **Name of a cooperative Society**

Any cooperative society shall have its own name; and such name shall be rational, does not contravene law and public morality. The phrase “Cooperative Society with Limited Liability” shall appear in the end of the name of any cooperative society. No similar and misleading name or distinguishing mark shall be used by another cooperative society within the same operation area of a registered name or distinguishing mark of a given cooperative society. The name of any cooperative society shall be written boldly and be put at every place where the cooperative society's activities are performed. It shall also be written or sealed on any notices, letters, other statements and documents which are signed on behalf of the cooperative society. 5/ No person may use the name “Cooperative Society” without obtaining permission from the appropriate authority.

- **Registration of a cooperative society**

Any cooperative society shall be registered by the appropriate authority. Any cooperative society, to get registered as a cooperative society, shall submit an application for registration together with the following particulars to the appropriate authority:

- Minutes of the founders meeting;
- The by-laws of the cooperative society in three copies;
- Names, address and signature of the members of the management committee of the cooperative society;
- Name, address and signature of the members of the control committee of the cooperative society;

- e) A detailed description which proves that the registered members of the cooperative society have met the requirements for membership in accordance with the provisions of this Proclamation and the bylaws of the cooperative society;
- f) if the cooperative society is of a higher level than the primary cooperative society, the name and address of the member primary cooperative societies and signature of their representatives;
- g) three up to five years action plan of the society;
- h) documents showing the amount of initial capital of the society and the capital that has been collected and deposited in a bank account, if there is no bank in the area, that it has been deposited in a Financial Institution where the appropriate authority has designated;
- i) The description of the place at which the cooperative society operates;
- j) Other particulars that may be specified in the regulations or directives issued hereunder;

- **Juridical Personality and Responsibility**

Any cooperative society registered in pursuance of Article 10 of this Proclamation shall have juridical personality from the date of its registration. Any cooperative society shall not be liable beyond its total asset; and it has limited liability.

- **By-laws of a Cooperative Society**

Any cooperative society shall have its own by-laws; and the contents of the by-laws shall include the following particulars: a) name and address of the cooperative society; b) objectives and activities of the cooperative society; c) working place and area of the cooperative society; d) requirements necessary for membership of the cooperative society; e) the rights and duties of members of the cooperative society;

- **Amalgamation and Division of Cooperative Society**

The general assembly of a cooperative society through a special resolution may; a) divide itself into two or more cooperative societies, or b) amalgamate with one or more cooperative societies and form a new cooperative society.

- **Establishment of Cooperative Societies Union**

A cooperative societies union shall be establish by two or more primary cooperative societies having similar objectives. Cooperative societies union may be established at the federal or regional levels based on their social and economic feasibility./ The members of a cooperative

societies union established at federal level shall be drawn at least from two regional primary cooperative societies

- **Establishment of Cooperative Societies Federation**

Cooperative society's federation shall be established by two or more cooperative societies unions having similar objectives. Where it is socially and economically feasible, cooperative societies' federation may be established at federal or regional levels. The members of a cooperative society's federation to be established at federal level shall be two or more than two cooperative societies unions drawn at least from two regional cooperative societies unions.

- **Requirements to Establish a Professional Cooperative Society**

If any primary cooperative society is established based on the member's profession, such members shall produce evidence of occupational competence certificate from the appropriate authority. Pursuant to sub-article (1) of this Article, the occupational competence certificate produced for professionals carrier shall be those activities obliged by law. Professional cooperative societies shall present quality assurance certificate for their value added products they produce or services they provide.

- **Establishment of Cooperative Societies League**

Subject to the provision of this Proclamation and that of other relevant laws, primary cooperative societies, cooperative society unions and federations may establish a league that represents all cooperative societies in Ethiopia. The number of the league established pursuant to sub-article (1) of this article shall not exceed one. The establishment, functions and financial sources of cooperative societies' league shall be determined by the council of ministers regulation.

- **Obligations of Cooperative Societies**

The cooperative societies shall have the following obligations:

- 1/ provide services to their members according to the plans uphold;
- 2/ protect the rights of employees of the cooperative society according to the labor law of the country;
- 3/ except income tax cooperative societies shall pay the necessary payments to government according to the law and on time;
- 4/ respect and work according to the by-laws;

- 5/ provide the necessary information to the appropriate body at request time;
- 6/ operate only by upholding the principle and purpose for which it is established.

- **Commencement of Operations**

A cooperative society fails to commence operation in accordance with its plan within six months after its registration shall be given a written notice so as to commence within three months. When a cooperative society fails to commence operation within the notice period given pursuant to sub-article (1) of this Article, upon liquidation and decision on its dissolution, its registration shall be cancelled and lose its legal personality.

- **Renewal of Certificate Registration**

Any cooperative society shall renew its certificate of registration every three years starting from its establishment in accordance with this proclamation and the date of its registration with the directive issued by the appropriate authority.

The appropriate authority shall take measures in accordance with the directive on any cooperative society that fails to renew its certificate of registration pursuant to sub-article (1) of this Article.

### **3.2 Cooperative formation process**

#### **3.2.1 Forming of cooperative society**

Formation of Society: The formation of a society shall be initiated through a general meeting of promoters which shall take all decisions necessary for the formation and registration of the proposed society and its by-laws;

- adopt the proposed rules; and
- Prepare the application for registration.

The rules shall conform to such requirements as may be prescribed and may follow such model rules as may be prepared by the Ministry

Cooperative societies may, according to their nature, be established at different levels from primary up to federation level.

1/ the primary cooperative society shall be established:

- a) By individuals who live or work or engaged in specific profession within a given area; and
- b) By number of members not less than fifty.

2/ Notwithstanding paragraph (b) of sub-article (2) of this Article, the appropriate authority may specify in the directive the minimum number of members of a society based on the nature of the work and economic feasibility; provided, however, that the minimum number of members shall not be less than 10. 3/ Primary cooperative society established at federal level shall consist members from two or more regional states.

4/ the appropriate authority shall establish and register cooperative societies at federal or regional levels.

In order to thrive=develop or be success full, cooperative societies need a favorable political framework. The current development model is based on economic and political freedom. Being democratic, the state must ensure the respect for human and civil rights, the rule of law, the free choice of one's economic activity, free access to national and international markets, private property as well as a clear distinction between the public and the private sector according to the principle of subsidiary.

Apart from exercising the functions of registration, deregistration and general normative control, the state in a market economy must not interfere in the economic affairs of private agents and must maintain favorable conditions for their development.

This statement needs three clarifications:

- a. This type of relationship between the state and cooperatives in a market economy is not cooperative specific. It determines the legal nature of the cooperative law and restrains the possibility to grant cooperatives preferential treatment.
- b. After decades of interference in the affairs of cooperatives and in times where the living conditions of disadvantaged people in a number of developing countries are further deteriorating, the state must not withdraw completely and instantly.

For new and genuine cooperatives to develop without hindrance, cooperative policy needs to be complemented by a policy of disengagement /= to become separate or to stop being connected / of the state and of promotion of cooperative societies. The first should be conceived and applied alongside the cooperative policy as such, because of its temporary and subsidiary=less important than something else with which it is connected / character. The birth of an authentic / = genuine / cooperative movement can only become effective once the old system has been discharged.



The redefinition of the role of cooperatives must be accompanied by a fair redistribution of the assets and the debts of the dissolved or restructured societies, taking into account, in particular, the responsibility of the state in the past errors while preserving the interests of the creditors.

The gradual transfer of tasks to the cooperative movement means that government personnel will have to be retrenched / to reduce costs /. The state will have to take into account the problems related to this. It goes without saying that the application of these necessary measures should be dealt with case by case, associating the persons concerned with the decisions.

- c. It would be an illusion to think that modern market economy needs only a simple political and legal structure. Quite on the contrary, it can only function thanks to a highly complex political and legal structure. A complex law can only maintain the balance between non-intervention and a policy of laissez-faire, / unwillingness to get involved in or influence other people's activities / which would be destructive in the long term to the system as a whole. The law must induce maximum participation of private agents who should have the essential decision-making power in economic matters. With regard to cooperatives, this implies the impossibility for decision makers to convert cooperatives into transmission belts for national policies and, in particular, for policies accompanying structural adjustment.

The private character of cooperative law should thus prevent cooperatives from being used as instruments for political; develop mentalist, social or other goals. Any such use of cooperatives endangers their economic efficiency.

This necessary redistribution of roles between the state, the cooperative movement and other private actors might be facilitated by setting up a national council for cooperatives which could reconcile state sovereignty with the independence of the cooperative movement. Conceived as a forum, this council would in no case take on a mission of tutelage /= support /.

The application of a policy of non-intervention in the economic activities of the private sector depends essentially on the organization of the politico-administrative system and the willingness of its office holders.

Thus, to the extent the constitutional system permits it, decentralization and de concentrating should be favored, so that decisions can be taken and applied at the local level where

cooperatives mainly operate.

The administration of cooperatives by the state must be as restrained as that of the private sector in general. Thus, for example, one single register for companies and cooperatives could be envisaged /imagine /.

Cooperative administration by the state is required to ensure the good functioning, at all levels, of the tax administration, of the judiciary, of the banking system, the insurance system and the promotion of chambers of commerce, industry and agriculture. These institutions are all necessary for the good functioning of cooperatives as of other enterprises.

In theory, the administration is only an instrument in the hands of the government. Frequently, however, administrators acquire certain independence, going as far as to oppose changes in orientation. The situation of the employees of the old state and parasternal structures in charge of the control of cooperatives is particularly delicate since the passage to market economy brings about a real revolution in their domain.

The transition from a more or less direct intervention in the management of dependent cooperatives to the necessity to recognize cooperatives as independent structures by applying more subtle /obvious/ rules requires flexibility and qualifications which administrators have not always been prepared to exercise.

**Application:** Application for registration of a society shall be submitted to the Registrar in the form specified by him and shall include the following:

- (a) the name, objects and area of operations of the proposed society;
- (b) whether the liability of the proposed society is limited or unlimited;
- (c) the names of the applicants, who shall not be fewer than ten (10) where the application relates to the registration of a
- (d) primary society, together with such particulars as are necessary for membership under Article 14 hereof;
- (e) two (2) copies of the proposed rules; and
- (f) such other particulars as may be prescribed

The application shall be signed by each individual applicant and by the duly authorized representative of any juridical person who is an applicant.

The Registrar may require the applicants to furnish to him additional information relating to the economic background and potential of the proposed society.

**Registration:** Where the Registrar is satisfied that an application conforms with the requirements set forth in this Proclamation and in the regulations and that the purposed society will serve the purposes and objects set forth in Article 4 hereof, he shall register such society and its rules and shall issue to the applicants a registration certificate signed by him and showing the date of such registration. N A registration certificate issued pursuant to paragraph (1) of this Article 10 shall, unless the registration of the society has been cancelled, be conclusive evidence that the society therein mentioned is a society duly registered under this Proclamation.

**Society to Have Juridical Personality:** A society shall become and be a juridical person as of the date of registration thereof.

**Amendment of Rules:** A society may amend its rules on such conditions as are provided in this Proclamation and as may be prescribed or specified in the rules. No such amendment shall be valid until it has been registered. hereunder, for which purpose two (2) copies of any proposed amendment shall be forwarded to the Registrar who shall register same when he determines that the effect thereof will be consistent with the purposes and objects set forth in Article 4 hereof and shall thereupon issue to the society a copy of such amendment dated and certified by him which shall be conclusive evidence of the fact that such amendment has been approve and has on such date been duly registered.

### **Change of Liability, Transfer of Assets and Liabilities, Division or Amalgamation**

A society may by a special resolution containing all the particulars regarding the carrying into effect of such resolution and upon registration of such resolution pursuant to paragraph (3) of this Article 13:

- (a) change the nature or extent of liability of its members;
- (b) transfer all or part of its assets and liabilities to another society;
- (c) divide into two (2) or more societies; or
- (d) amalgamate with one (1) or more societies to form a new society.

A society shall cause such resolution to be served on its creditors and on such of its members as did not attend the meeting at which the resolution was passed and shall inform them that they will be deemed to have agreed thereto unless they state their disagreement within forty-five (45)

days from the date of such service. The Registrar shall register such resolution when he determines that:

- a) all the members and creditors have either specifically or impliedly agreed thereto; or
- b) Any dissenting members have withdrawn from the society and have been paid off or the payment of any such dissenting members or creditors has been guaranteed to the satisfaction of the Registrar.

**Upon registration of such special resolution:**

- a) any transfer to be undertaken pursuant to subparagraph (1) (b) of this Article 13 shall be effected automatically;
- b) the registration of the transferring society or of the former society or societies, as the case may be, shall, if appropriate, be cancelled and such society or societies shall thereupon cease to exist; and
- c) The Registrar shall, where appropriate, issue to the society a copy of such special resolution dated and certified by him, which shall be conclusive evidence of the fact that such special resolution was on such date duly passed in accordance with the law.

**WHEREAS**, it has become essential to establish and manage cooperative societies for those persons with common interest by bringing together their finance, knowledge, resource and labor voluntarily to meet their common economic, social and cultural needs and other aspirations which would then allow mutual support and create savings.

WHEREAS, cooperative societies are required to contribute to the country's economic and social development, and to be nationally and globally competent creation of an employment opportunities through supporting production and productivity increment in both rural and urban settings, value addition on members produce, creating financial and market linkage, shortening unnecessary market chains, in the way helpful to sustain one economic community in accordance to our constitution; through a uniform cooperative societies proclamation. **WHEREAS**, it has become necessary to cause the cooperative societies to play pivotal role in the free market economic system by maintaining their guiding principles and unique features. WHEREAS, it is necessary to establish and strengthen cooperative societies that are directed and managed by members and also ensure their rights, owners and benefits of them.

**WHEREAS**, it has become necessary to promulgate laws on establishment and management of cooperative societies by replacing existing cooperative societies proclamation, in order to achieve the objectives of the cooperative society; **NOW, THEREFORE**, in accordance with the provisions of Article 55 (6) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows.

**This Proclamation may be cited as the “Cooperative Societies Proclamation No. 985/2016”.**

**. Definitions:** In this Proclamation unless the context otherwise requires:

1. **“Cooperative society”** means an autonomous association having legal personality and democratically controlled by persons united voluntarily to meet their common economic, social and cultural needs and other aspirations, which could not addressed individually, through an enterprise jointly owned and operated on the basis cooperative principles.
2. **Primary cooperative society** means a cooperative society established by individuals having similar interest and objective with a minimum number of members prescribed in this Proclamation to produce, provide service or to engage in both activities.
3. **“Cooperative societies union”** means a secondary level cooperative society established by primary cooperative societies having similar objective with a minimum number of members as prescribed in this Proclamation to produce, provide service or to engage in both activities that are beyond the capacity of primary cooperative societies
4. **“Cooperative societies federation”** means a tertiary level cooperative society established by cooperative society unions having similar objective with a minimum number of members prescribed in this Proclamation, to produce, provide service or to engage in both activities that are beyond the capacity of cooperative society unions.
5. **“Cooperative societies league”** means a league which represents primary cooperative societies, cooperative society unions and cooperative society federations operating in Ethiopia.
6. **"Multi-purpose cooperative society"** means a society established to engage in production and service delivery activities for its members;
7. **“Saving and credit cooperative society”** means a society established to provide saving, credit and loan-life-insurance services to its members;
8. **Loan-life-insurance”** means an insurance given by a cooperative society to its members to cover loan taken by a deceased member before full repayment of debt;

9. “**Cooperative’s societies working area**” means an area stated in cooperative society’s by-laws and registered by appropriate authorities;
10. “**Member**” means any individual or a primary cooperative society or a cooperative societies union or cooperative societies federation who applied and admitted for membership upon fulfilling the minimum membership requirements that are determined in the bylaws by taking into account the nature of the cooperative society;
11. “**General Assembly**” means a meeting of individual members or their representatives at primary cooperative society or representatives of primary cooperative societies, cooperative societies unions or cooperative societies federations when it is above primary cooperative society;
12. “**Representative**” means as prescribed in the by-law of the cooperative society with regards representation, an individual in primary cooperative societies, represented by members to vote in general assembly, or in cooperative unions and federations elected by General Assembly of the cooperative society to represent and vote for in any General Assembly of the cooperative society;
13. “**By-laws**” means the law governing a cooperative society including amendments made to it and approved by two third vote of the General Assembly and registered by appropriate body upon fulfilling particulars specified under Article 12 of this Proclamation; “special resolution” means a resolution passed by a two third majority of the members of the cooperative society to be binding on all members;
14. “**Management committee**” means a body elected and empowered by the general assembly with the responsibility to manage the activities of a cooperative society;
15. “**Manager**” means an officer accountable to the management committee and operates the day-to-day activities of the cooperative society within the limit of the powers and responsibilities entrusted to it;
16. “**Worker**” means an individual who has an employment relationship with the employer cooperative society to perform day-to-day activities in accordance with the agreement reached in the contract of employment;
17. “**Reserve fund**” means part of annual surplus retained and reserved by cooperative societies in accordance with the law and not distributed as dividend to members;

18. **“Capital”** means the amount of asset accumulated after deducting liability of a cooperative society, and it includes share of the members, reserve fund, donation, inheritance, and funds prescribed by by-laws and investments;
19. **“Appropriate authority”** means the Federal Cooperative Agency, or an organ established at regional levels to execute the cooperative societies proclamation, lead and regulate the cooperative sector;
20. **“Region”** means any state referred to in Article 47 (1) of the Constitution of the Federal Democratic Republic of Ethiopia and includes  
The Addis Ababa City Administration and Dire Dawa Administration;
21. **“Cooperative societies fund”** means a type of fund established to achieve cooperative societies joint benefit for education or training or audit service or incentive, or research and development or legal service or for promotion and communication, and for social services purpose by pulling incomes from cooperatives net income as decided after audit by the general assembly, and also income from gift or hire or different project initiatives or support and income from different income generating activities and other incomes pulled from common indivisible money and asset remained after the liquidation of cooperative societies;
22. **“Payment of shares”** means the declared share having par value and serve members as precondition for membership paid prescribed in cash or in kind;
23. **“Person”** means a natural or juridical person; any expression in the masculine gender includes the feminine.
24. **“Society”** means a cooperative society established and registered in accordance with this Proclamation and it shall in particular include the following:
- (a) Agricultural Cooperative Societies;
  - (b) Housing Cooperative Societies;
  - (c) Industrial and Artisans Producers’ Cooperative Societies;
  - (d) Consumers Cooperative Societies;
  - (e) Savings and credit Cooperative Societies;
  - (f) Fishery Cooperative Societies;
  - (g) Mining Cooperative Societies.



### **3.2.2 Objectives of a Cooperative Society:**

A cooperative society established pursuant to this Proclamation shall have any one or more of the following objectives:

- to collectively overcome, withstand and solve economic and social problems which members cannot individually achieve;
- to achieve a better result by coordinating members' knowledge, resource and labor;
- to promote self-reliance among members;
- to reduce production and service costs and to offer inputs and services to members with lower costs and finding better market prices to their products or services;
- to expand situations by which technical knowledge could be put into practice and promote entrepreneurship;
- to develop and promote saving culture between members;
- to provide loan to members and promote investment;
- to provide loan-life- insurance coverage to members;
- to minimize and reduce damage and lose of each individual members, if it had been undertaken individually, by sharing it to members;
- to develop the social and economic capacity and culture of the members through education and training.

### **3.2.3 Types of cooperative society**

A cooperative society may be established to engage in production or service rendering Activities or both in production and service rendering activities.

Without the prejudice to the provision of sub article (1) of this Article, types of cooperative societies to be established shall not in the areas prohibited by law, immoral to public values, activities affecting environmental security, hence the appropriate authority shall give professional support after conducting due socio-economic study in order to identify the potential resources a variable to organize cooperative societies.



Cooperatives vary depending on the service offered and the way that the members are organized. They also differ depending on the economic activity, how members use the Cooperative and kind of management. Types of cooperative society are the following:

- Producer / Marketing Cooperatives
- Consumer Cooperatives
- Worker Cooperatives
- Housing Cooperatives
- Financial Cooperatives
- New Generation Cooperatives
- Multi-Stakeholder Cooperatives
- Non-profit Community Service Cooperatives

**Cooperative Structure:** Cooperatives exist in nearly every business sector and are organized in a variety of ways. Like other businesses in our economy, they range in size from organizations with only a few member-owners to large and complex organizations with thousands of member-owners. The way a cooperative is organized determines how it is operated, managed, and controlled by its members, and the types of benefits offered.

Cooperative structure can be classified into five types as follows:

**Geographic, governance, functions, financial, and other arrangements.** Each will be defined and discussed in this circular.

Geographic Territory Served Cooperatives can differ in structure, depending on the size of the area served:

**Local or regional:** Local cooperatives typically operate in a single State, often within one or two counties. Individuals are the members of these local cooperatives. Regional cooperatives usually serve an entire State or a number of States. They can have operations that are nationwide or that cover major portions of the United States. Some regional cooperatives also Have international operations with sales and members in more than one country.

**Governance or Control Structures:** Based on membership structure, cooperatives can be classified as centralized, federated, or mixed. A local cooperative is a centralized Cooperative individual producer's make up the membership. A centralized regional may serve members in a

large geographical area, and have one central office, one board of directors, and a manager (chief executive officer) who supervises the entire operation. Business may be conducted through several branch offices.

A federated cooperative is a cooperative of cooperatives. The members of a federated cooperative are local cooperatives, each operated by a manager responsible to a board of directors. Each local association in a federated cooperative is a separate business entity that owns a membership share entitling it to voting rights in the affairs of the regional. The federated cooperative has its own hired management and staff, and a board

Of directors elected by and representing the local associations.

A mixed cooperative is a combination of the two — their members may be individual producers as well as local cooperatives.

**Functions Performed:** Cooperatives may perform one or more of these functions for members:

- Marketing products;
- Purchasing supplies; and
- Providing services.

**Marketing:** The need to meet consumer demands and expand markets for products presents an Increasing problem for farmers acting independently. Few farmers produce in quantities needed to deal directly with large wholesalers or retailers.

Marketing cooperatives provide an increasing variety of off-farm processing and marketing services for about one-fourth of all products that farmers produce. Marketing cooperatives help farmers produce and process quality products to Market specification. Cooperative marketing includes the operation of grain elevators, milk plants, wool pools, cotton gins, livestock markets, vegetable markets, and nut- and fruit-packing plants. Some marketing cooperatives include the coordination of processing, canning, drying, blending, concentrating, extracting, freezing, or consumer packaging of animal and animal products, such as dairy, fish, meat, and poultry and the same for fruit, nut, and vegetable products, and many other products in integrated organizations.

Marketing cooperatives enable farmer members to extend control of their products as long as the cooperative retains physical or legal title to a commodity handled through processing, distribution, and sale. Some marketing cooperatives also can be called bargaining associations, which may not handle the actual product but rather act as the selling agent on behalf of the member.

**Purchasing:** Farmers first turned to cooperatives as economic tools to gain advantage of quality and quantity of farm production supplies such as feed, fuel, fertilizer, and seed. These early efforts often became businesses having full-time managers and warehouses to handle other production supplies and services such as farm chemicals, animal health products, fencing, building supplies, construction contracting, automotive accessories, etc.

Most purchasing cooperatives have affiliated with other cooperatives, often through regional and interregional cooperatives. These efforts reduce farmer costs and strengthen purchasing power through owning large-scale facilities, such as petroleum refineries and feed mills. One of a purchasing cooperative's objectives is to reduce production costs for members through quantity purchasing,

Manufacturing, and distributing, procuring quality products, and providing related services as needed. Distribution to producer members is a major concern at the local level because added services are needed. Another objective is to provide a dependable supply of quality products for members. Many cooperatives now perform both marketing and purchasing functions, although they started as single-function organizations.

**Service:** Some agricultural service cooperatives provide services related to the production and Marketing of farm commodities. Others provide general services. Related service cooperatives offer unlimited possibilities and are used in ever-widening circles to solve mutual problems and Provide specialized services that affect the location, form, or quality of farm products or supplies for members.

Services may be part of the operation, or they may be performed by separate cooperatives. Examples of services offered by farm supply co-ops include: recommending and applying fertilizer, lime, or pesticides; cotton ginning; animal feed processing; and crop harvesting. General Service cooperative times provide a number of specialized services assisting farmers in their business such as credit, electricity, and telephone service.

**Financial:** Cooperatives are incorporated as either stock or non-stock organizations. The type of capital structure is specified in the articles of incorporation. If the association is a capital stock organization, members receive stock certificates as evidence of their ownership interest.

More than one type of stock may be issued, but usually no more than two types are necessary. Most stock cooperatives issue one share of common stock per member to show membership. Preferred stock is issued to show additional capital contributions. (Common stock is usually the voting stock; preferred stock is generally nonvoting.)

If the association is a non-stock organization, it issues some kind of certificate to show capital contributions of members. Two types are usually used — a membership certificate as written proof of the right to vote and capital certificates in a manner similar to the way stock cooperatives use preferred stock.

### 3.3 Cooperative registration process

#### Registration of a Co-operative Society

- 1) Any society shall be registered by the appropriate authority.
- 2) Any society, when established shall submit an application for registration together with the following particulars to the appropriate authority:

##### 3.3.1 Necessary requirements for registration of cooperative

Any society when established shall submit an application for registration together with the following particulars to the appropriate authority:-

- Proclamation and the by-laws of the society;
  - ✓ Minutes of the founders meeting;
  - ✓ The by-laws of the society in three copies;
  - ✓ Name, address, and signature of members of management committee of the society;
  - ✓ A detailed description which proves that the registered members of the society have met the requirements for membership in accordance with the provisions of this proclamation and the by-laws of the society;
  - ✓ Plan of the society;

- ✓ Documents showing that the amount of capital of the society and capital has been collected and deposited that has been deposited in a place where the appropriate authority has designed;
- ✓ The description of land on which the society operates;
- ✓ Other particulars that may be specified in the implementation of this proclamation.
- The appropriate authority shall register a society and issue a certificate of registration within 15 days when it is satisfied that the application for registration submitted to it has fulfilled the requirements for registration.
- When the appropriate authority rejects the application for the registration of a society, it shall give a written explanation to the representatives of the society within 15 days. The representatives may appeal to the high court which has jurisdiction on the decision of the appropriate authority.
- The certificate of registration issued to a society pursuant to Sub-Article (3) of this Article is an evidence to prove that a society is registered in accordance with this Proclamation.

### **3.3.2 Bylaws of the cooperative society**

The general assembly, or the constitutive first meeting of the founder members, may stipulate on a matter through its bylaws/statutes where the law is silent, where the legislator leaves it a choice amongst several options, invites it to specify legal provisions or when the members decide to rewrite certain clauses of the law in order to make them easier to understand and/or more easily operational. Although the adoption of model bylaws/statutes, recognized by the authorities, makes registration of organizations easier because of their supposed conformity with the law, their adoption should not be made compulsory.

### **Contents of the bylaws**

The contents of the by-laws shall include the following particulars:-

- Name and address of the society;
- Objectives and activities of the society;
- Working place (area) of the society;
- Requirements necessary for membership of the society;
- The rights and duties of the members of the society;

- The powers, responsibilities, and duties of management bodies;
- Conditions for withdrawal and dismissal from membership;
- Conditions for re-election, appointment, term of office and suspension or dismissal of the members of the management committee or other management bodies;
- Conditions for calling of meeting and voting of the society;
- Allocation and distribution of profit;
- Auditing;
- Employment of workers;
- Other particulars not contrary to this Proclamation.

**By-laws of a society may be amended by:** - the special resolution of the general assembly. However, the amendment of the by-laws of the society shall be effective of date of its submission to and registration by the appropriate authority. Where the Society decides on the amendment of its by-laws three copies of the amendment and the special resolution of the society made in accordance with this Proclamation shall be submitted to the appropriate authority within 30 days from the date of the decision. The appropriate authority shall register the amendment and give evidence or its registration to the society where it is satisfied that the amendment of the by-laws was made in accordance with this Proclamation and regulations issued for the implementation of this Proclamation.

### 3.4 Rights and duties of members

**Requirements Necessary for Member ship in a Cooperative Society:** Any person who meets the requirements specified under sub-article (2) and (3) of this Article may become a member of a cooperative society.

**If the membership is for primary cooperative society, the individual:**

1. has attained the age of 18;
2. is able to pay the share capital and registration fee required by the cooperative society;
3. has accepted the objectives of the cooperative society and its by-laws and willing to discharge his obligation;

4. Fulfills other requirements specified in the regulations and directives issued for the implementation of this Proclamation.
5. If the membership is for a cooperative society above a primary cooperative society, the member shall be a cooperative society registered by the appropriate authority and have legal personality.

**Any member of a cooperative society shall have the following rights:**

- i. to obtain services and benefits proportionate to his participation in the cooperative society;
- ii. the member or representative to participate in the meetings of the cooperative society and to vote;
- iii. the member or representative to participate in the General assembly to elect and be elected;
- iv. To withdraw from the cooperative society on his request upon securing his rights and benefits.
- v. the member of a cooperative society shall have the right to obtained any information about the activities of cooperative societies’

**Any member of a cooperative society shall have the following Duties:**

- to respect the by-laws, directives and decisions of the cooperative society;
- to perform activities which ought to be performed in accordance with the by-laws and directives of the cooperative society;
- to protect the common property of the cooperative society;
- to conduct transaction of products or services with the cooperative society in accordance with the contractual agreement or as determined in the bylaws of the cooperative society ;
- To respect the Proclamation, the regulations and directives issued pursuant to this Proclamation.

**Dismissal from membership**

Any member of a cooperative society may leave the cooperative society on his own initiative. Any member of a society may leave the cooperative society when it is decided by the

general assembly to dismiss him from the cooperative society because of committing repeated faults or disobedience.

The rights of any dismissed member shall be respected in accordance with the by-laws of the cooperative society. Any member of a cooperative society who left the cooperative society on his own initiative; reapply may become a member if he obtains the approval of the management committee after one fiscal year.

Any member of a cooperative society who has been dismissed for failing to meet his obligations; reapply may become a member, if he obtains approval of the general assembly after one fiscal year.

in relation to cooperative society who has been dismissed because of criminal conviction may be accepted as a member, after five fiscal years from the date of his dismissal, if he obtains the approval of the general assembly. Without prejudice to the provisions of this Proclamation, any member dismissed may reapply for membership; provided, however, A member dismissed in accordance with sub article (5) and (6) of this Article may become A member of the society only if he obtains the approval of the general assembly.

### **Payment of Shares**

Any cooperative society shall, after securing the decision of the general assembly sell approved number of shares that shall have equal par value with the view to enable the society to obtain capital necessary to start its function.

Any cooperative society shall collect, upon its formation from the members at least one fifth of the amount of the share that the general assembly has decided to be sold. And it shall sell the rest of the shares to members within four years as of the time of its establishment.

Where the need for additional capital is arose, upon completion of the sale of shares decided by The general assembly it may decide once again for the sale of additional shares in accordance with Sub article (1) of this Article

The share that the cooperative society sells may be sold either in cash or in kind. Shares paid in kind shall be determined by the bylaw of the cooperative society.

No primary cooperative society member shall hold more than 10% of the total share sold by the decision of the general assembly. Any member of a cooperative society union and federation shall not hold more than 50% of shares out of those that the general assembly



decided to be sold. If the value of shares prescribed in the name of any member are not sold within four years, it shall be presented for special decision of the General Assembly.

If the value of shares are not presented for the special decision of the General Assembly, to be sale the appropriate authority shall cause adjustment of the financial statement of the cooperative society. The members of the cooperative society retaining value of shares prescribed in their names but not sold within four years shall be subject to pay interest pursuant to the prescribed in the by-laws of the cooperative society. The member shall be subject to pay the loss incurred based on the evidence provided.

### **Organizing Register of Members**

Any cooperative society shall organize and keep register of members. He registers to be organized pursuant to sub article (1) of this Article shall contain the following particulars:

- When it is primary cooperative society, the name, address, occupation, age and sex of each member; where it is above primary cooperative society, the name, address, date of establishment and kind of work field the cooperative society holds.
- the date on which he became a member or ceased to be a member;
- the amount of shares held and the registration fee paid by each member;
- Any other particulars that may be specified in the by-laws.

## **3.5 Duties and responsibility of management and employees**

### **3.5.1 General assembly**

The supreme organ of any cooperative society shall be the general assembly.

The ordinary and the extraordinary general assembly, composed exclusively of the members of the cooperative, is the supreme decision taking body of the cooperative. Third parties who have invested in the enterprise may possibly participate in the general assemblies, but they should not have voting rights. An ordinary general assembly must convene at least once a year; an extraordinary general assembly may take place at the request of the persons entitled to do so according to the law or the bylaws/statutes.

If the size of a cooperative in terms of territorial coverage or the number of members is such that the necessary quorum is difficult to attain or the proceedings of the general assembly become too

cumbersome, or where in a multi-purpose cooperative diverse interests so require, regional assemblies and/or assemblies by sections may be formed. These decentralized assemblies elect their representatives to a delegates' assembly which replaces the general assembly.

The agenda of these meetings as well as the mode of deliberations and voting will be decided at central level so as to ensure the same standards throughout the cooperative. In order to reinforce communication between the different parts, members of the board of directors and of the supervisory committee, if any, should participate in the meetings of these decentralized assemblies.

These basic rules about the general assembly fit with the reality of most cooperatives. Generally, cooperatives are locally rooted, in the physical sense of the term. While this is a safeguard against quick shifts of their activities in search for comparative business advantages, one must not exclude the cooperatives from being run without a physical center. New ways of communication and production neither require a stable physical production unit or an administrative center, nor the physical presence of the members in order to hold a general assembly.

Where this is required, the members may decide so in their bylaws/statutes. Otherwise, they should be free to discuss and vote via, for example, the internet. What matters is the democratic control by the members, not their physical presence at meetings, although this may still help to generate and regenerate the necessary reciprocal confidence. Powers As already mentioned, the dual character of cooperatives as associations and enterprises is indicative of the way in which powers must be shared amongst the general assembly and the board of directors.

According to the definition of cooperatives, the members use the cooperative enterprise to attain certain economic, social or cultural objectives.

The board of directors/management must have the necessary working margin which is indispensable for efficient management, whereas all decisions concerning the cooperative as an association must be taken by the general assembly. Starting from this basic distinction, one may draw a list of exclusive powers of the general assembly. These powers may not be transferred to any other body or person, not even by a unanimous decision of all the members.

**Among these powers the most prominent one is the general assembly of a society shall**

- Pass decisions after evaluating the general activities of the societies;
- Approve and amend the by-laws and internal regulations of the society;
- Elect and dismiss the members of the management committee, control committee and when necessary the members of other sub -committees;
- Determine the amount of shares of the society;
- Decide on how the annual net profit of the society is distributed;
- Give decision on the audit report;
- Hear work reports and give proper decision;
- Decide that a society either be amalgamated with another society or be divided in pursuance of this proclamation;
- Approve the annual work plan and budget;
- Decide any issue submitted by the management committee and other committees.

### **Calling of General Assembly**

The general assembly shall meet at least twice in a year. If the management committee decides by a majority vote or if one-third of the members of the General Assembly require a meeting to be called, an emergency general assembly may be held by giving 15 days prior notice.

Where the management committee fails to call an emergency general assembly meeting in accordance with sub-article (2) of this Article in response to the request of one-third members of the general assembly; such emergency general assembly called by the appropriate authority shall be presumed as an emergency general assembly called by the Management Committee.

There shall be a quorum of cooperative society where:

- a) More than half of the members or representatives of the cooperative society are present during the regular meeting of the general assembly;
- b) two-third of members or representatives of the cooperative society are present during emergency meeting of the general assembly.

### **3.5.2 Management Committee**

Any cooperative society shall have a management committee which are loyal and respectful and also can overcome their responsibility and accountable to the general assembly and whose members and manner of election to be determined in the by-laws of the cooperative society.

The term of office of the management committee shall be three years. Members of the management committee of any cooperative society shall not be elected for more than two consecutive terms; provided, however, the management committee member may be re-elected after one fiscal year after he left office upon completion of his term.

Members of management committee of any cooperative society may be dismissed at any time by the general assembly. When members of the management committee leave their office for whatever reasons, they have obligation to cause inspection of the activities they performed during their term of office.

The election of management committee members shall be conducted starting from the second election year by replacing at least one third of the members every year; the particulars as to election of management committee members of any cooperative society shall be determined by the directive of the appropriate committee. Where there is possible number of females at least 30% of any cooperative society management committee shall be held by female members.

### **Powers and Duties of the Management Committee**

The powers and duties of the management committee shall be determined in pursuance of the by-laws of the cooperative society and in particular shall include the following:

- maintain the minutes of a meeting in writing and keep records;
- maintain the documents and books of accounts of the cooperative society;
- prepare the annual work plan and budget of the cooperative society and implements same upon approval;
- call general assembly in accordance with the by-laws of the cooperative society;
- execute decisions of the general assembly;
- manage all activities of the cooperative society, submit reports to the general assembly;

- Distribute dividend Based on the approved audit reports by the general assembly of the cooperative society.

### **2.2.1 Control Committee**

Any cooperative society shall have not less than three control committee members which is accountable to the general assembly and the number and manner of election of which shall be specified by the by-laws of the society.

The term of office of members of the control committee shall be three years and no member of the control committee shall be elected for more than two consecutive terms and they may be dismissed by the general assembly at any time during their term of office.

The election of members of control committee shall be conducted starting from the second election year by replacing at least one third of the members every year.

Any member of control committee may be reelected after one fiscal year after he left office upon completion of their term.

### **Powers and duties of the control committee**

The Control Committee shall have the following powers and duties:

- follows up that the management committee is discharging its responsibilities properly;
- control that the fund and property of the cooperative society is properly utilized;
- follow up that the various activities of the cooperative society are carried out pursuant to law, by-laws and internal regulations of the cooperative society;
- execute decisions of the general assembly;
- performs other duties given to it by the general assembly

### **3.5.4 Other Sub-committees**

Other sub-committees may be established pursuant to the by-laws of the cooperative society.

### 3.6 Special privileges of cooperative

#### 3.6.1. Tax exemption

Income of a society earned through operations conducted within the scope of this proclamation shall be exempt from income tax;

The appropriate administrative authorities shall have power in accordance with the law to;

Give to any society any kind of financial assistance and, in particular, give loans, advances subsidies or *ad hoc* grants to a society and guarantee the payment of share capital of a society and dividends thereon, at such rates as may be prescribed; and

Allot government land to any society in such manner as shall be prescribed.

#### 3.6.2. Audit and inspection of cooperatives

##### Audit

The appropriate authority shall audit or causes to be audited by a person assigned by it, the accounts of any cooperative society at least once in a year in accordance to its fiscal year. The audit conducted pursuant to sub-article (1) of this Article shall include the examination and verification of overdue debts, if any, and cash balance, securities and assets and liabilities.

The audit report shall be presented to the general assembly within 30 days starting from the date of its submission to the cooperative society. Any complaint and requested for reexamination of the audit report shall be presented within 30 days starting from the date of its approval by the general assembly.

Any complaint and requested for reexamination of the audit report not presented within the period specified under sub-article (4) of this Article shall not be acceptable.

**Inspection** The appropriate authority may make an inspection of any cooperative society's organizational status, operations, documents and financial conditions. The appropriate authority shall make an inspection of a cooperative society when the majority of the executive committee or one third of the total members or their representatives request. Any cooperative society shall let its operations be measured by setting acceptable standards in its area of operation. The appropriate authority shall issue directive on operational standards to measure the status of a cooperative society.

The appropriate authority may make or cause to be made by such person to be assigned by it an inspection to the organization, work execution, documents and financial condition of a society. Without prejudice to Sub-Article (1) of this Article, inspection may be made when:

- a. a majority of the members of the executive committee request;

- b. not less than one-third of the total number of members of the society request

### **Keeping Audit and Inspection Results:**

Audit and Inspection results conducted pursuant to Article 36 and 37 of this Proclamation shall be kept in the office of the authority and the society, open and easily accessible to everyone.

### **3.6.3 Priorities of claim**

**Priorities of claim Priority of Claims by Society:** Not with standing any provision to the contrary in what, ever law contained, any debts owed to a society by a member or past member or the estate of a deceased member, in respect of such membership, shall take precedence over all other debts of such person, except debts owed to the Government.

### **3.6.4 Benefits transfer**

The shares or benefits of any member may be set-off for debts due to the cooperative society from such a member

### **3.6.5 Voting and transferring of share**

**Voting:** decisions of any cooperative society shall pass by majority vote (50+1) ,where issues need special resolutions must pass by two third members vote. Any member shall, regardless of the number of shares he has, have only one vote at the meeting of the cooperative society. Any member in a primary cooperative society shall personally be present at the meeting of the society to cast a vote. provided, however, if the number of members of primary cooperative society is more than 500, voting may be conducted by Representatives. Particulars as to representation in cooperative society shall be determined in the directive issued by the appropriate authority. Members of a cooperative society above Primary cooperative society shall cast a vote through their representatives.

### **Voting**

- 1) Every member shall, regardless of the number of shares he has, have only one vote at the meeting of the society;
- 2) Every member in a primary society shall personally be present at the meeting of the society to cast a vote;
- 3) Every member in a primary society shall personally be present at the meeting of the society to cast a vote;
- 4) Members of a society above primary level shall cast a vote through their representatives

There shall be at least one representative of a member cooperative society in any general

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assembly of cooperative society unions and federations as it is prescribed in their bylaws. Particulars of the representation shall be specified in directive to be issued by the appropriate authority. Particulars as to election of management committee members of cooperative society union and federation shall be determined in their by-laws.

**Transfer of share or benefit:** A member may transfer the share or benefit he holds in a cooperative society if:

- the member has held such share or benefit for at least three years; and
- The transfer is permitted by the management committee.

1) No transfer by a member of his share or benefit in a society shall be valid unless:

- (a) The member has held such share or benefit for at least one year before he transfers;
- (b) The transfer is approved by the management committee.

2) On the death of a member of a primary society, his share or benefit shall be transferred to one of his heirs designated as such in the register of society or failing such designation to his legal heir at law, and where such heir is a member or is willing to be a member.

3) Where such heir is not a member and does not wish to become or is not admitted as a member, he shall be paid the value of the share or benefit of the deceased member.

4) If the shares or benefit to be transferred to a member under Sub-Article (2) of this Article are found to be beyond the limitation prescribed in Sub-Article (3) of Article 16 hereof, the member shall be paid the difference in cash.

4) The transfer or payment concluded in pursuance of Sub-Article (2) of this Article shall not be reversed due to the claims raised by third parties on the society



### 3.7 Asset and funds management

#### Asset and funds of cooperative societies

Indivisibility of asset and funds of a cooperative society except as otherwise prescribed under Article 45 and 59 of this Proclamation, the asset and fund of a cooperative society shall not be divided for the members or any other party. .

#### Allocation of net profit

Any cooperative society shall deduct 30% of the net profit and allocate for the reserve fund. The amount allocated for the reserve fund shall continue to be deducted until it reaches 30% of the capital of the cooperative society and it shall be deposited in the saving account of the society.

The distribution of the remaining 70% net profit shall be determined by the general assembly; provided, however, that the general assembly may allocate for education or training or incentive or audit fund for social service from same net profit pursuant to the by-law of the cooperative society.

The members of cooperative society who has received net profit pursuant to sub article (2) of this Article may buy additional share.

#### Establishment of Cooperative Societies Fund

1/ To enable the cooperative societies progressively so as to cover expenses related to audit activities or legal services or capacity building or for research and study or promotion and communication or other similar activities by their own capacities, they may establish a cooperative society fund.

2/ the establishment and source of finance for a Fund to be established pursuant to sub article (1) of this Article shall be prescribed by regulations to be issued by the Council of Ministers

#### Restriction on Borrowings

A cooperative society shall receive loans from its members or other organizations to such extent and on such conditions as may be specified in the by-laws of the cooperative society. 48.

#### Restriction on Loans

1/ a cooperative society shall not extend loan other than to its members or a cooperative society established under this Proclamation.

2/ any cooperative society for the money lends, shall prescribe the interest rate in its by-laws based on the special resolution of the General Assembly.

3/ Particulars as to amount and conditions under which any cooperative society may extend loans pursuant to sub-article (1) of this Article shall be specified in the by-laws of the cooperative society.

4/ the amount of annual loan to be extended by any cooperative society shall be decided by the general assembly and be included in annual plan of the cooperative society.

### **Types of Guarantee and Alternatives**

Any cooperative society may decide and use in its by-laws the types and alternative guarantee it uses for the loans it extends.

## **3.8 Amalgamation, division and liquidation of cooperatives**

### **Amalgamation and Division of Societies**

The general assembly of a cooperative society through a special resolution may;

- a) Divide itself into two or more cooperative societies, or
- b) Amalgamate with one or more cooperative societies and form a new cooperative society.

The special resolution on the amalgamation or division of a cooperative society shall be effective upon verifying that:

- c) The members and creditors of the cooperative society are agreed on the amalgamation or division;

1) Without prejudice to Article 6 (3) and (4) of this Proclamation, the general assembly of a society through a special resolution may form a new society:

- (a) By dividing itself into two or more societies; or
- (b) By amalgamating itself with one or more societies.

2) The special resolution on the amalgamation or division of the society shall be effective on the date of its registration by the appropriate authority upon verifying that:

- (a) The members and creditors of the society fully agree to the amalgamation or division; or
- (b) The members and creditors that do not agree have been paid off or their payment is guaranteed.

3) The previous registration of societies shall be canceled from the register as soon as the newly formed society by amalgamation or by division is registered.

4) The rights and duties of societies which have lost their identities by amalgamation shall be transferred to the newly formed society.

5) The rights and duties of a society which has lost its identity by division shall be transferred to the newly formed societies as specified in Sub-Article (2) of this Article.

### **Liquidation of cooperatives Societies**

1/ where the dissolution of a cooperative society has been decided upon, pursuant to Article 55 of this Proclamation, the appropriate authority may assign a liquidator. It shall, if necessary, determine that his remuneration be paid out of the accounts of the cooperative society.

2/ the liquidator shall receive records, documents and properties of the society as soon as he is assigned. He shall also take the necessary measures to protect the properties and rights, records and documents of the cooperative society from damages.

### **Powers and Duties of the Liquidator**

1/ the liquidator shall have all the necessary powers to complete the winding up proceedings. He shall in particular perform the following in order to carry out his duties properly:

- Investigate all claims against the cooperative society and decide on priority of payment among them;
- collect the assets of the cooperative society;
- Distribute the assets in accordance with the plan of liquidation approved by the general meeting of the cooperative society;
- Carry on the work activities of the cooperative society in so far as may be necessary for the proper liquidation of the affairs of the cooperative society;
- Represent the cooperative society in legal proceedings;
- Call meetings of the members as may be necessary for the proper conduct of the liquidation.

2/ the liquidator shall issue notice in a newspaper having wider circulation,

Before the distribution of property of the cooperative society takes place in accordance with paragraph (c) of sub-article (1) of this Article that the cooperative society is to be dissolved. It shall proceed with the distribution, where no claim is presented within two months from the date of such notice. No claimant shall have a right after the expiration of such limitation unless hindered by force major.

3/ upon completion of the winding up proceedings the liquidator shall prepare and submit a report to the appropriate authority, he shall deposit the records and documents of the cooperative society in such places as the appropriate authority may direct

### 3.9 Settlement of disputes

**Settlement of Disputes:** Disputes within the cooperative movement, i.e. disputes involving exclusively members, the organs of the co-operatives, the co-operatives themselves or their apex organizations, should be subject to conciliation, mediation and/or general or special arbitration procedures before the parties may access a general or a special court of law. Because of the importance of good personal relations for the success of co-operatives, most legislations therefore provide for the obligation to resort to such out-of-court procedures before submitting a dispute to a court of law. This is stipulated either by law or through the bylaws/statutes of the co-operatives.

Generally, the parties prefer these procedures to official ones because they are cheaper, more expedient and also because they allow for the consideration of local human and social issues. Especially because of the latter, the legislator should recognize such procedures and attempt to preserve traditional modes of dispute settlement.

Societies have done their expensive duty in civil litigation in allowing judges to declare important rules of law in disputes in which they have been involved. Newton Abbot society for example has given its name to a case establishing an important rule of land law and Leeds Society has the honour of being named in the books on jurisprudence where the binding force of judicial pronouncements is examined.

From time to time, societies appear in courts where the question is one of interpretation of society rules. Cases involving cooperative societies qua cooperative societies, however, are conspicuous by their rarity. One can only speculate why this is so. Possibly the helpful guidance of the commissioner and the cooperative union are enough to keep societies out of legal trouble. But it may be because no one has yet found a way to use the Act as a means to commit irregularities. Part XIV of the Cooperative Societies Act, provides for settlement of disputes and establishes the following mechanism as follows briefly:

**If any dispute concerning the business of a co -operative society arises:**

- a) among members, past members and persons claiming through members, past members and deceased members; or
- b) between members, past members or deceased members, and the society, its committee, or any officer of the society; or
- c) between the society and any other co -operative society; it shall be referred to the Tribunal.

**Disputes:** A dispute for the purpose of this section shall include -(a) a claim by a co -operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such a debt or demand is admitted or not; or a claim by a member or past member, or from the nominee or personal representative a deceased member for any debt or demand due from a cooperative society, whether such debt or demand is admitted or not. There is hereby established a Tribunal to be known as the Co -operative Tribunal which shall consist of five members:

- (a) a Chairman and deputy Chairman appointed by the Minister on the nomination of the Judicial Service Commission;
- (b) an advocate of the High Court of Kenya appointed by the Minister on the nomination of the Law Society of Kenya;
- (c) three persons with at least ten years experience in the field of co -operative management and practice appointed by the Minister.’’

If two persons are in dispute as to their rights under an agreement, they may take their dispute to the courts for settlement. Alternatively, they may take their dispute to an independent third person and agree to accept his decision on the question. This statement shows the need and availability of various avenues through which justice may be sought. In enquiring justice mechanisms in cooperative cases the statement of the problem is as follows:-

Does the Cooperative Societies Act adequately provide for institutional and procedural framework necessary in accessing justice in cooperative cases?

How has the High Court and the Cooperative Tribunal under Cooperative Societies Act handled cooperative cases and to what extent do they facilitate access to justice in environmental cases?

Is there need for reforms to further enhance justice in environmental cases?

A tribunal has been defined as a court or any other body charged with the duty of adjudicating disputes. Most tribunals have judicial functions dealing with disputes between individuals and government departments or between an individual and another. They may be permanent or ad hoc, appointed to deal with a specific subject matter. They do not operate in the same ways as an ordinary court and the powers and procedures of the tribunals vary from courts since they are cheap, accessible, and free from technicalities.

They may be composed on the nature of the subject matter at hand such as social security, land, property, housing, economic activities licensing or taxation, and may be classified on the basis of their “general considerations” which include the composition, appointment, dismissal of members, powers, jurisdiction and procedure.

The Cooperative Tribunal was established under section 80 of the 1996 Cooperative Societies Act cap 490 of the laws of Kenya and the subsequent repeal by Act no. 12 Of 1997 establishing the tribunal. It is important to understand that the 2004 amendment strengthened the tribunal. It hears disputes as among members, past members and persons claiming through members, past members and deceased members; or between members, past members or deceased members, and the society, its committee, or any officer of the society; or between the society and any other co-operative society; it shall be referred to the Tribunal.

The rule of law out-rules any obligation to submit disputes to government authorities for final solution. In no case may access to court as a last remedy be prohibited. on a dispute being referred to the Registrar pursuant to Article 43 here of, he may;

- A. decide the dispute himself; or
- B. refer it for disposal to one or more arbitrator whom he shall appoint.
- C. the Registrar may revoke any appointment made pursuant to sub-paragraph (1) (b) of this Article 44 and decide the dispute himself.

**Principles of Decision:** Except as otherwise expressly provided in this Proclamation, every decision, order or award, whether resolving a dispute or otherwise of a judicial or arbitral nature, required to be made hereunder shall be made on the basis of a proper hearing conducted in accordance with the Civil Procedure Code.

**Persons to Have Powers of Civil Court:** Every authority required to make a decision, order or award under this Proclamation shall have the same powers as a civil court with regard, in particular, but without limitation, to the summoning of witnesses, the production of evidence, the conduct of the proceedings and the making of injunctions.

Execution: Any decision, order or award made under this Proclamation shall, where appropriate, be executed as through made by a civil court, and the courts of the Empire shall have jurisdiction to order the enforcement of any such decision, order or award. Every society shall keep a copy of this Proclamation and of the regulations and the rules open to inspection free of charge at all reasonable times at the registered address of the society.

Service of Documents: Any decision or other document required to be served under this Proclamation shall be served in accordance with the provisions of the Civil Procedure Code.

### **3.9.1 Negotiations and contracts**

The art of negotiating (discussions to agree a mutually acceptable conclusion) is particularly important in a market oriented economy. Price, quality, durability, deliverability, guarantees etc., are all factors which need discussion and agreement between partners when deciding to purchase inputs or to sell products to a particular purchaser.

Depending on the importance of the business more or less detailed negotiations take place before contracts are drawn up. In all negotiations, it is assumed that one party has something to offer which the other wants. This relationship is not always easy to recognize when negotiating with government or promotional NGOs. Withdrawal of labour is of limited use in a non-government controlled cooperative, but co-operation with government in more general ways can be part of the negotiations when, for example, cooperatives wish to seek subsidies or achieve an improvement in basic legal conditions.

The goal of negotiations is thus generally, to find acceptable solutions for a problem, in which self-help alone cannot solve the problem. All partners have their own suggestions for solutions at the outset of negotiations: that which appears best to them, and which they hope will be accepted without alteration. Through negotiation, a compromise is reached which is acceptable to all partners.

Strategies and techniques for negotiating: Negotiating can be learnt and the better negotiation processes are understood and applied, the more easily negotiations can be concluded to the benefit of both parties.

#### **A. Debating**

Debating is the most important ingredient in negotiations. It allows both sides to set out why they consider a particular opinion to be right and to justify this claim. Ideally a complete debate



takes on the following form: Claim (thesis), Justification (core of the debate), Support example, and Conclusions.

Method for debate:

1. Clarify the status and aim of your own contribution
2. In order to convince others see to it that
3. Enter into the arguments of the opponents

### **B. Documenting the results of a negotiation**

The result of a negotiation, a conference or other important discussions is usually written down. The form which this documentation takes varies, depending on its significance. The main forms Are:

- The confirming letter (to the business or negotiating partner);
- The report (for internal use, to all participants or other interested persons);
- The memorandum (for internal use);
- The minutes (written by one or by both partners, occasionally meant for third persons);
- Paper of intention (may be part of the minutes) and
- The contract between the participants as legal document.

### **C. Taking minutes**

The purpose of taking minutes is to provide a record of a meeting which acts as a memo for participants, information for absentees and for third persons. It can also be a legal document if confirmed by all participants. Minutes should contain the reason, the date, the place, the theme or the agenda; the names of those present (with attached attendants list); time of beginning and end; the course of, or the result of discussions, maybe the signatures (partners and perhaps, the minute-taker). The course of, or the results of discussions are generally ordered on the basis of the agenda. It is important to distinguish clearly between contributions to discussions and decisions made.

### **D. Contracts**

The majority of economic and socially important agreements are regulated by a contract, generally recognized as a legally binding document. For enterprises with primarily economic goals it is particularly important to remember in negotiations and preparing contracts, that co-operation means working together. The goal is always to strengthen the organization.



The co-operation should be marked by free-will; co-operation as partners; similarly oriented interests and equal decision-making authority. If one of the partners of the co-operation loses his/her independence over arrangements, this can lead to a subordination and restriction of the freedom to make decisions. In this case one can no longer speak of co-operation. Contractual regulations should generally be those set out in the laws of the land unless it is felt necessary to supplement these for a particular contract or cooperative. The contract regulates the conditions under which a transaction or a partnership comes into being. The more complicated the relations are, the more important it becomes to write them down. This generally holds for the following contracts:

- Co-operation contracts between partners with similar interests (co-op/co-op, or co-op/private enterprise
- Buying contract referring to the purchase and delivery of goods
- Rental contracts concerning the use of buildings and vehicles
- Contracts with national and international promotion – NGOs
- Contracts with governments and state departments

Rules and principles for contracts vary considerably from country to country and on the subject matter. In general however, they are composed of six parts:

- a) Identity and location of the contract partners;
- b) Goal of the contract;
- c) How the contracted performance is remunerated;
- d) Which fines are to be expected on non-fulfillment;
- e) Regulations relating to the duration and conditions for cancelling the contract;

### **3.9.2 Identifying means of dispute settlement in cooperative**

Disputes within the cooperative movement, i.e. disputes involving exclusively members, the organs of the cooperatives, the cooperatives themselves or their apex organizations, should be subject to reconciliation, mediation and/or general or special arbitration procedures before the parties may access a general or a special court of law. Because of the importance of good personal relations for the success of cooperatives, most legislation therefore provide for the obligation to resort to such out-of-court procedures before submitting a dispute to a court of law. This is stipulated either by law or through the bylaws/statutes of the cooperatives.

Generally, the parties prefer these procedures to official ones because they are cheaper, more expedient and also because they allow for the consideration of local human and social issues. Especially because of the latter, the legislator should recognize such procedures and attempt to preserve traditional modes of dispute settlement. The rule of law out-rules any obligation to submit disputes to government authorities for final solution. In no case may access to court as a last remedy be prohibited.

Disputes among members, officers, directors, and committee members, and intra-cooperative, inter cooperative, intra-federation or inter-federation disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the bylaws of cooperatives and in such other applicable laws.

### **3.9.3 Performing negotiation**

#### **Dealing with Conciliation for the performance of cooperatives activities**

The disputes provided under Article 49 of this Proclamation shall be heard by a third party appointed by the disputing parties before they are referred to the arbitrators.

#### **Arbitrating**

When the disputes provided under Article 49 regarding cooperative societies are not settled by conciliation they shall be referred to arbitration.

The arbitration shall consist of three persons of high reputation and impartiality. The arbitrators shall conduct their hearing and fulfill any of their duties in accordance with the Civil Procedure Code.

#### **Appointment of the Arbitrators**

- 1) Each party to the dispute shall appoint one arbitrator. The third arbitrator, who shall be the chairperson, shall be appointed by both parties.
- 2) The appropriate authority shall appoint the chairperson arbitrator when the parties fail to reach an agreement.

#### **Disputes to be referred to Arbitration**

The arbitrators shall have the power to hear disputes not settled by conciliation regarding the organization, management, or operations of a society which arises between:

- 1) Members or former members and members or representatives of former members or persons claiming in the name of deceased members; or

- 2) Members, former members or members or representatives of former members or heirs of deceased members and any officer, representative of the management committee or employee of the society; or
- 3) The society or the management committee and any former management committee, any officer, agent or employee, or any former officer, agent or employee or the nominee heirs or representatives or representatives of deceased former members or employees; or
- 4) The society and any other society.

Self-Check – 3	Multiple choice, Written test
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Name \_\_\_\_\_ ID \_\_\_\_\_ Date \_\_\_\_\_

**Directions:** Answer all the questions listed below

**(Time Allowed 30 min) Weight 10%**

**Part I: Write true for correct statment or False for Incorrect statment (1 points each )**

1. The arbitrators shall have the power to hear and decide disputes not settled by conciliation regarding the organization, management .
2. When cooperative societies are not settled by conciliation they shall be referred to arbitration.
3. Dispute is the relationship between the general public and the cooperative and refers to the image which the cooperative presents to the outside world and how this is promoted

**Part II: essay part**

1. Identify and mention the duties and responsibility of the following bodies (5 points)

a) General assembly

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b) Control committee

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c) Managementcommittee

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- 2 Write Necessary requirements for registration of cooperative Societies? (2 points)

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**Note: Satisfactory rating - 7 points      Unsatisfactory - below 7 points**

You can ask you teacher for the copy of the correct answers.

Operation-1	
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## **1.1 contents to develop cooperative society bylaws**

### **A. Tools and equipment's**

- I. Pen, file boxes
- II. pencils, paper,
- III. computer ,Classer,
- IV. personnel protective equipment

### **B. Procedures/ content**

1. Name and address of the society;
2. Objectives and activities of the society;
3. Working place (area) of the society;
4. Requirements necessary for membership of the society;
5. The rights and duties of the members of the society;
6. The powers, responsibilities, and duties of management bodies;
7. Conditions for withdrawal and dismissal from membership;
8. Conditions for re-election, appointment, term of office and suspension or dismissal of the members of the management committee or other management bodies;
9. Conditions for calling of meeting and voting of the society;
10. Allocation and distribution of profit;
11. Auditing;
12. Employment of workers;

LAP TEST-1	Performance Test
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Name: \_\_\_\_\_ ID: \_\_\_\_\_

Date: \_\_\_\_\_

Time started: \_\_\_\_\_ Time finished: \_\_\_\_\_

**Instructions:** Given necessary templates, tools and materials you are required to perform the following tasks within 4hour. The project is expected from each student to do it.

**Task-1** Assume you are employed at woreda /Kebele as an expert of cooperative promoters, develop a cooperative society by law based on the information given on operation sheet1.

**Task2:** by using contents of cooperativebylaw. Prepare General Assembly of one basic cooperative in the woreda.

## Reference Materials

### Books:

1. International Handbook of Cooperative Law **Originally published:** 2013
2. The Agricultural Cooperative in the Framework of the European Cooperative Society
3. Principles of European Cooperative Law **Originally published:** 2017 **Authors:** Deolinda A. Meira, Hagen Henry, Ian Snaith, Antonio Fici, MORE
4. Cooperative Business Law **Author:** MICHAEL W. DROKE
5. Perspectives on Cooperative Law: Festschrift In Honour of Professor Hagen Henry  
Book
6. Handbook of Co-operative and Community Benefit **Originally published:** September 30, 2014 **Editor:** Ian Snaith
7. Co-operative Law in Practice: A Handbook of Legislation for Co-operative Development  
Book by Peter Yeo

### ARTICLES

- FEDERAL NEGARIT GAZETTE OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
- PROCLAMATION No. 985/2016 COOPERATIVE SOCIETIES PROCLAMATION

### Web addresses

- <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/109318/135567/F1774497447/ETH109318.pdf>( access date august 29, 2022)
- <https://www.polyas.com/cooperatives/board-elections/legal-framework>
  - a. Access date August 30, 2022
- <https://coops4dev.coop/sites/default/files/202107/Ethiopia%20Legal%20Framework%20Analysis.pdf> access date August 25, 2022
- <https://www.lawethiopia.com/index.php/legislation/federal-legislation/cooperatives>
  - a. Access date august 28, 2022
- <https://www.lawethiopia.com/index.php/legislation/federal-legislation/cooperatives/155-federal-legislations-by-number/4459-proclamation-no-985>(access date August 22, 2022)
- <https://www.amazon.com/Cooperative-Business-Law-Michael-Droke/dp/0991405544>  
Access date 27, 2022

## ACKNOWLEDGEMENT

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**The experts who developed the learning guide**

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