

Seminar on Co-operative Business Enterprise, A New Dimension to Co-op. Practice:

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Bye-Laws Drafting For Co-operatives:

A Co-operative Society functions as per the provisions of :

1. Co-operative Societies Act under which the same is registered.
2. Co-operative Societies rules made there under
3. Bye-laws approved by the registrar at the time of registration and amendments made from time to time and approved by the registrar.
4. Notification and Orders.

Bye-laws: Each society also registered with the bye-laws for internal management of the societies duly approved by the registrar at the time of registration of the society. The bye-laws of a society constitute a contract between a member and the society and it provide for the management of the society. The bye-laws are framed within the provisions of the Act and the rules made there under. Bye-laws include the objects of the society and completely define and restrict the society's activities, but the rights and liabilities of members are determined by the Act and Rules and not by the bye-laws as such. The bye-laws being proposed should not be contrary to the Act or Rules.

Samples: http://delhi.gov.in/wps/wcm/connect/doiit_rcs/RCS/Home/Downloads/Model+Bye-Laws+of+Co-operative+Societies

Guidelines to Framing Bylaws of a Cooperative : A Handbook For Promoters Of Cooperatives

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1. Name & Address Of The Cooperative:

When we set up our cooperative, obviously we will want to give it a name. That sounds simple, doesn't it? Nonetheless, we need to think carefully before we choose a name for our cooperative. It would be best if the name gave an indication of the key business of the

cooperative.

A paddy farmers' processing and marketing cooperative, for example, calls itself "Dhanyalakshmi Rytu Paraspara Sahayaka Sahakara Parimita Sangham". A housing cooperative could prefix "Paraspara Sahayaka Sahakara Sangham" with "Kutira", or "Nivasa", or "Gruha", or any other suitable word. Although the law does not require the inclusion of "cooperative" or "mutually aided" in the name, we may nonetheless include these words, so that everyone who deals with us knows that we are a cooperative, and that we were set up on the basis of mutual aid, not external aid. The Act does expect us to use the word "limited" at the end of our name, if we register our cooperative as one with limited liability.

With so many words in our name, we may feel that the name is too long, and takes too much space on our letterhead, our receipts, and so on, especially since the Act requires us to display our full name in all correspondence and other transactions. Therefore, we may, additionally, include in our bylaws, a shorter name by which we wish to be popularly known. For example, if our full name is Kutira Paraspara Sahayaka Sahakara Parimita Sangham, we may print this full name in smaller letters on our stationery, and use our shorter name, "Kutira Sangham" in larger, more attractive letters, with a logo!

We need also to give the complete address of our cooperative. For that, we need to decide where we will function from, which will depend partly on what kind of space we need to do our business from, and how much rent our business can afford to pay. Therefore, even at the time of registration, we should have done a fair bit of thinking about our proposed business.

It is important that we remember that under the Act, this is one of the bylaw provisions, whose amendment is to be registered by the Registrar before it can come into force. Therefore, we must be careful to give a complete and correct postal address, which we do not expect to change quickly.

2. Object of the Cooperative

The Act is very particular that the object of the proposed cooperative should be "explicitly stated as a common central need of the members which the cooperative aims at fulfilling". This means that the Act does want us to be explicit, clear, definite, categorical about the central need of the members, about the aim of the cooperative. It does not want us to be wishy-washy, long winded, vague, generalist, all-encompassing, when stating our object. Many of us tend to mix the term "object" with the term "activities". When asked to state what we aim at, we give a long list of the activities we take up or wish to take up. We must remember that activities are only the means to achieve an end, they are not an end in themselves. This Act, however, requires us to make a clear distinction between object and activities. What it wants us to do under the provision on "object" is to think clearly, not what we do, but what we hope to achieve for our members. It wants us to think, not of the means, but of the end which we wish to achieve.

Therefore, if, for example, the core need of our members is to increase the income on their produce, let us simply state that under “Object”. Later, under the head “Services to members”, let us list supply of quality seed, and other inputs, and the procuring, storing, processing, and marketing of member produce. Or, if the core need is to save in the most productive manner, then, under “Object” let us say “provision of beneficial savings facilities”, and under “Services”, let us list the types of savings facilities that we offer, the loan facilities that we offer against the savings, any loan insurance service that we offer. In a housing cooperative, our object would be to provide members with quality living conditions at affordable rates, and the services that we would provide to reach that aim could be either rented or owned accommodation, loans for home construction if necessary, maintenance services, etc.

Under the 1995 Act, this, too, is one of the bylaw provisions, whose amendment requires to be registered by the Registrar before it can come into force. Therefore, we must be careful when drafting this provision, so that we do not find the need to change it frequently.

3. **Membership: Eligibility, Ineligibility, Procedure For Obtaining/For Retaining:**

Although the Act puts eligibility, ineligibility, procedure for obtaining membership, and procedure for retaining membership under a single heading, it would be better for our members, if we treated each of these as a separate heading in our bylaws.

Under the provision dealing with eligibility for membership, we must clearly mention the criteria required to make a person eligible for membership in our cooperative. In particular, we may want to mention the age group (definitely not less than 18 years), from which we want our members, if that is relevant, and we may also mention the area from which we expect to draw our members. We could, for example, mention the names of the villages, towns, etc from where membership may come. We may also want to be specific about whether the applicant for membership is expected to reside in the area, and/or to own property there, and/or to work there.

In the case of a producers’ cooperative, we may wish to additionally require that the person be a producer of the commodity which is to be handled by the cooperative. In the case, say of a housing cooperative, we may wish to require that members come from a particular income group, or a particular workplace/organisation.

In the case of a workplace thrift and credit cooperative, on the other hand, we may only wish to say that a person needs to work in that place, and be willing to save regularly with the cooperative, in order to be eligible to be admitted as a member.

There is nothing in the new Act to prevent us from having more than one type of member. For example, in a thrift and credit cooperative, we may want to encourage children to save, even though they are not 18 years of age, and cannot enter into a contract. We may, therefore, call them associate members, give them the facility of saving, and of attending our annual meetings, but we may not wish to give them voting rights, or the right to take loans.

Apart from eligibility criteria, we may also have a provision which mentions some criteria that make a person **ineligible to become a member**. For example, in the case of a thrift and credit cooperative, we may wish to say that persons engaged in money lending or living in the same household as a money lender are ineligible to become members. Or, in the case of a housing cooperative, we may perhaps want to say that one who already owns a house elsewhere cannot become our member. In the case of a producers' cooperative, we may want to deny membership to a person engaged in processing or trading in the commodity that we are interested in.

In any case, we should note that the new Act does not permit a person to become a member of our cooperative, if he/she is already a member of some other cooperative which already provides him/her with the services that we intend to provide. Therefore, in the **procedure for admission as member**, we may require every applicant to declare that he/she is not a member of another cooperative providing similar services, and only then provide for the processing of the application. Keeping in view the various provisions of these bylaws, we may also include in our bylaws that admitting a person as a member implies that he/she agrees to conditions laid in the bylaws of the cooperative, to the process of settling disputes, as provided for in the bylaws, and to the attachment of his/her property by the cooperative, in the event of any default by the member to the cooperative.

We may require the applicant for membership to remit a fee with the duly filled application form. This fee is best called application fee, and not entrance fee, as we may or may not admit the member, and we may make this fee non-refundable. The days of asking for Re 1 as entrance fee are over, as the cost of cutting a receipt for the rupee, and making the entries in books of accounts will cost more than that! Along with this, we may require some share capital contribution from the applicant, which may be refunded if the person is not admitted as a member. Please read subject no. 28 of this handbook, dealing with the nature and extent of capital, and on how to arrive at share value.

In framing provisions for **retaining membership** in the cooperative, we may simply want to say that one who at any time ceases to fulfil the conditions that were required for obtaining membership, and one who loses the right to vote (see no. 6 dealing with fixation of minimum performance) for 2 or 3 consecutive years, loses the right to remain a member.

4. Membership: Withdrawal, Cessation, Termination:

Again, while the Act clubs membership withdrawal, cessation, and termination under a single head, we may want to make separate provisions for these in our bylaws.

For **withdrawal from membership**, we may simply want to say that a person may resign from membership at any time, and that the board at its next meeting shall accept such resignation. However, we may require the person to meet his/her share of all current liabilities of the cooperative, including contribution to deficit, if any. We may further require the person to be liable to meet his/her share of the current year's deficit, if any, which will

be known of only in the subsequent year.

We may mention that a person **ceases to be a member** on death, or when the board accepts his/her resignation, and he/she is notified of the same.

On **termination of membership**, we may mention that on a member becoming ineligible to continue as a member, or on a member acting against the interests of the cooperative, the board may terminate the membership of the person, having given him/her an opportunity to present his/her case.

5. Services To Be Provided To Members:

Under this provision, all the restraint that we had exercised when writing our object (see no. 2) can be compensated for! Keeping the object in view, let us make a list of all the services that our cooperative is to provide to members, and let us also add a sentence at the end of that list which says that the cooperative may engage in all such other activities which will help fulfil its objectives.

Therefore, for example, while under services, we may have “storage of members’ produce”, under the last all-comprehensive sentence on activities, we would have the right and duty to buy land, construct godowns, and so on. Buying land, constructing an office or a godown is not part of the services to be provided to members. They are activities that a cooperative undertakes in order to provide services.

In a thrift and credit cooperative, we may mention the types of savings, loan, loan insurance, financial counselling facilities that our cooperative will provide to members, as services. In a producers’ cooperative, we may mention supply of necessary farm counselling, inputs, storage, processing, transport and sale of produce as services to members. In a housing cooperative, we may include assistance in obtaining credit, in design of house, in house construction, in house and area maintenance, etc as services.

Whatever the type of cooperative that we set up, we should require the provision of cooperative education to all members as an important service to be organised.

Finally, we can see that the Act expects all enterprises under the new Act to be based on thrift, self-help, and mutual aid. Therefore, regardless of the type of cooperative that we are going to promote, we should perhaps list in the services to be provided, regular thrift service.

6. Fixation Of Minimum Performance:

The Act is very clear that our cooperative is supposed to be only for those who use the services of the cooperative regularly. It is not enough that once upon a time, we admitted someone as a member. Once a person becomes a member, he/she must need and use the services of the cooperative regularly. It is only from the use of the services that a member attains his/her right to contribute to the decision making and control processes in the cooperative. Therefore, the new Act suggests that we fix some minimum performance that is

expected of each member each year. Under this provision, we may require that members attend every annual general meeting, and vote at every election in which they have the right to vote. In a thrift and credit cooperative, we may additionally require that a member is regular in payment of thrift and loan and interest dues. In a producers' cooperative, based on the acreage under the crop, we may require each member to supply to the cooperative at least "x" amount of that produce within a particular period after harvest. In a housing cooperative, we may require members to pay regularly the loans, maintenance charges, and other dues, and to attend all special meetings called to discuss urgent issues.

7. Penalty For Not Reaching Minimum Performance Level:

For every item of performance that we have required of each member in no. 6, we may mention how much leeway we are willing to give members, before we suspend their voting right for a year, and under what circumstances, we might even remove them from membership. Therefore, for example, in a thrift and credit cooperative, if a member is irregular in payment of, say, 3 consecutive thrift and/or loan instalments, or, if in any year, a member is irregular, say, 4 times in payment of thrift and/or loan instalments, we might wish to suspend the voting right of the member in the ensuing year. So, too, in the producers' or housing cooperative, we may suspend voting rights for a year for non-fulfilment of minimum performance in a particular period. In all these cases, we may, if we so wish, add that the general body has the right to lower the performance level, in a year of severe hardship for all the members. It would be best not to provide for any discretion in individual cases. We may also add that if a member loses voting rights for two, or perhaps three years in succession, then he/she may lose membership altogether.

8. Consequence Of Default In Payment Of Due:

Different types of cooperatives may require different remittances to be made by members from time to time. Therefore, apart from regular thrift or other deposit in any thrift or other cooperative, a cooperative may require its members to contribute to a building fund, or an annual service fee, or even to place some special deposits in the cooperative to enable some important new activity to be started.

In all these cases, apart from the penalties that may visit under no. 7 above, we may provide for the collection of the dues from the attachment of the defaulting member's properties and subsequent sale. We may also provide for the issue of notice to the member regarding the default, providing him/her an opportunity to clear the dues or to prove that the amounts mentioned have already been paid and are not due. Finally, we may actually provide for the process of attachment of the member's property, for its sale, for the settlement of the dues, and for return to the member of any balance remaining.

9. Rights of Members:

We need to carefully list the rights of members. While the right to attend all meetings, and the right to vote, the right to receive annual reports and audited statements of accounts, etc, are rights available to all members/eligible members, the right to all services at all times is not automatic. A member may, for example, have the eligibility to borrow three times of his/her thrift in a thrift and credit cooperative, but we cannot call this a right. If we did, we would be obliged to make available loans to every member who asks for a loan, when he/she ask for it. However, we are all aware that we may not have enough capital to meet everyone's needs simultaneously, especially in the first few years.

Similarly, if grain is discoloured, or damp, or full of admixture, we may or may not accept it in the condition in which it is offered by members. Therefore, when it comes to services, we can only say that this is a right, subject to various conditions laid down by the cooperative.

Now, this bylaw is another one whose amendment requires registration. Therefore, we need to frame this bylaw carefully, so that we do not have to amend it frequently.

10. Liability of Members:

Whenever a cooperative receives loans and deposits from outsiders, all members become responsible for their repayment in one way or other. After all, it is the members who elect the board, which then makes the policies and manages the affairs of the cooperative.

Therefore, if for any reason, at any time, external agencies want to withdraw their money, or a cooperative is about to be closed down, and external agencies have to be paid their money back, then through this provision, we need to lay down what the obligation of each member is to meet those external agencies' dues.

It is best to fix each member's obligation to meet external debt at the level of services that each member can access. Therefore, if a member is eligible to borrow three times of his/her thrift, it would be useful to fix member obligation at 3 times of thrift. Or, if a producers' cooperative is permitted by its bylaws to borrow up to 8 times its members' funds, then each member, too, may have the obligation to meet up to 8 times of his/her funds in the cooperative, if ever external debt has to be cleared at once.

External agencies will be willing to lend to us only if they see us as willing to be responsible for their funds.

This, too, is a provision whose amendment needs to be registered, before it can come into force. Therefore, it would be best to give this provision careful thought at the time of first framing the bylaws.

11. Amendment of Bylaws:

The procedure for amending the bylaws needs to be laid down in this provision. A part of

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the process is laid down in the Act itself, and it would be best if we incorporated that in our bylaws. Therefore, we need to say in our bylaws:

- (a) that we will give a written notice of the general body meeting to each member at least 20 full days before the meeting;
- (b) that the notice will be accompanied by a copy of the proposed amendment;
- (c) that the notice and the proposed amendment will be displayed on the notice board of the cooperative for all of the 20 days;
- (d) that when certain provisions in our bylaws are amended, (and we should clearly mention which ones), the chief executive should apply, by registered post, for the registration of the amendment, to the Registrar, within 30 days from the date of the resolution amending the provision/s;
- (e) that every such application shall be signed by the chairperson, shall mention the date of the meeting at which the amendment was passed, the total number of members eligible to vote on the day of the meeting, the number of members who attended, and the number that voted for the amendment; and the application shall be accompanied by a copy of the resolution adopting the amendment;
- (f) that if within seventy five days of receipt of the application for registration of the amendment, the Registrar sends a copy of the registered amendment with a certificate signed by him, the amendment shall come into force immediately, and that if no order of refusal to register the amendment is received in the same period, the amendment will be deemed to have come into force on the seventy-sixth day;
- (g) that in case of amendments to all provisions other than those requiring registration, information about the amendment shall be sent by the chief executive to the Registrar exactly as in (d) and (e) above, and the amendment will come into force 30 days after sending information to the Registrar.

All these provisions are in the Act, and we need to include them in our bylaws, so that we do not have to refer to too many documents. However, in addition, we might want to include a provision, if our cooperative is to be a member of any higher tier cooperative, that we will not amend certain provisions in our bylaws without the specific approval of the higher tier cooperative to which our cooperative is affiliated.

There is a tendency to copy sections of the new Act word for word for this provision relating to bylaw amendment. It is best not to do that, because in the Act, there are references to the duty of the Registrar. Although the Act can place obligations on the Registrar, we really have no right to include such duties of the Registrar in our bylaws. Nonetheless, in our bylaws, when dealing with the procedure for amendment of our bylaws, we should specifically mention the bylaw numbers whose amendment can come into effect only after they are registered by the Registrar.

This is yet another provision whose amendment needs to be registered by the Registrar before it comes into force.

12. General Body:

Under this provision, we need to specify the powers and functions of the general body of our cooperative. The Act is fairly specific on the subjects that are expected to be the general body's concern. However, in our bylaws, we may wish to make a distinction between an annual general meeting, and other general meetings, and ensure that some subjects are discussed at annual general meetings, whereas others are discussed at annual or other general meetings. We may, therefore, require in our bylaws, that the following, among such other matters as are considered necessary by the board, be dealt with by the general body at its annual general meeting:

- (a) election of directors;
- (b) consideration of the long term plan and budget, when required;
- (c) consideration of the annual operational plan and budget for the current financial year;
- (d) appointment of auditors for the current financial year;
- (e) consideration of the annual report of activities for the previous financial year;
- (f) consideration of the annual audited statements of accounts, the auditor's report relating to the previous financial year, and the audit compliance report of the year prior to that;
- (g) consideration of the auditor's report on deviations, if any, from the approved budget relating to the previous financial year;
- (h) disposal of surplus, if any, of the previous financial year;
- (i) management of deficit, if any, of the previous financial year;
- (j) creation of specific reserves and other funds;
- (k) review of actual utilisation of reserves and other funds;
- (l) review of the chief executive's report on the attendance at meeting by directors;
- (m) review of the use of the cooperative's services by the directors;
- (n) review of remuneration paid to any director or member of any committee or internal auditor in connection with his/her duties in that capacity or his/her attendance at related meetings;
- (o) review of quantum and percentage of services provided (if any) to non-members vis-à-vis services provided to the members;
- (p) report of activities and accounts related to member education and board and staff training.

We may also require in our bylaws, that the following, among other matters considered necessary by the board be dealt with by the general body at its annual or any general

meeting:

- (a) amendments to bylaws;
- (b) removal of directors;
- (c) elections/appointments to vacancies on the board;
- (d) removal, and consequent appointment, of auditors;
- (e) membership of the cooperative in secondary cooperatives;
- (f) partnership with other cooperatives;
- (g) amalgamation, division, merger, transfer of assets and liabilities;
- (h) dissolution of the cooperative;
- (i) consideration of the Registrar's report of inquiry.

If, however, our membership is very large, or scattered, or diverse, we may feel that our general body meetings are more in the nature of a celebration, that it is too unwieldy for real business to get done. In such cases, we may want to have a representative general body. This is, as its name suggests, a smaller general body, fairly representative of the entire membership.

In case we do decide to have such a representative general body, then we will need to spell out the role of the general body, and the role of the representative general body separately. We will also need to spell out how the representative general body is to be constituted. For example, assume that our cooperative will have at least 5000 members, and that although we would like all 5000 to meet every year, we would also like a smaller group, of say, 100 members to take most of the decisions that the general body is to take.

Then, we could include in our bylaws a provision to say that every 50 members, (categorised area-wise, or type-wise, or membership number-wise), will elect a person from among themselves to be a delegate to the representative general body, for the same period as the tenure of the board members (see no. 16). We could then give to this body all the functions of the general body listed above, except perhaps the powers to decide on amalgamation, division, merger, and dissolution, and to amend bylaws relating to the object of the cooperative, to eligibility for membership, and any provision relating to the general body's role or general meetings, and to the constitution and functions of the representative general body. These powers may be retained by the general body for itself.

Amendment of any of these provisions will need to be registered before it can come into force. Therefore, it would be best to think through and draft these carefully.

13. General Meetings:

Under this provision, we need to mention the manner in which we will be calling general meetings, the frequency of general meetings, and quorum needed. Where we have a representative general body, we will also need to mention the manner in which the representative general body meetings will be called, their frequency, and quorum necessary.

In our bylaws, we will need to mention that the date of general and representative general

body meetings will be fixed by the board, that the notices will be sent in the name of the chairperson by the chief executive, at least 7 clear days in advance, except for such general meetings in which we intend to amend our bylaws - in such cases, the Act requires us to give 20 clear days notice of the meeting to our members. We will also need to mention whether we intend to send the notices under certificate of posting (where the membership is large or scattered), or by hand (where the membership is small and compact).

The Act requires the annual general meeting (of the general body or the representative general body) to be called within 6 months of closure of the year. However, it may be in our interest to require our board to call for an annual general meeting within 3 months of closure of the year, as there is little point in presenting the report and accounts of the previous year half way through the next year. Where we have a representative general body, we may additionally require the calling of the general body once a year, perhaps around some lean season when the majority of members will be able to come for such a meeting.

While the quorum for our general body may range between one-fifth (in the case of large/scattered membership) and one-half (in the case of small/contiguous membership) of the membership, the quorum for the representative general body should really be between one-half and three-fourths of delegates. Otherwise, a very small group of persons will end up taking very major decisions about our cooperative.

In accordance with the Act, we should include in our bylaws that our board should convene a general meeting within 30 days of receipt of a request for convening such a meeting, signed by at least one-tenth of the members having the right of vote.

This is yet another provision whose amendment can come into force only after it is registered.

14. Manner Of Conducting Elections:

15. Size And Composition Of The Board:

16. Term Of Office Of The Directors:

17. Removal Of Directors:

These provisions are being dealt with as a set, since these are interdependent. Although the Act places these in the order given above, we may deal with them in our bylaws, in the following order. We may also deal with the process of election of the delegates to the representative general body, if we have decided to have such a body.

First, let us discuss the term of office of our directors. The Act permits us to have up to 5 years tenure for our directors. Next, the Act expects our directors to have staggered or rotating terms - that is, elections for all the directors will not normally take place at once, and each year, only some seats will become vacant. The Act also says that the size of the board will be a multiple of the term of office of the directors, and that less than half the

directors should retire at a time.

Keeping these points in view, let us first fix the term of office of our directors. If ours is a small cooperative, we may not want a long term of office for our directors. A 3 year term may be good enough. If our cooperative is expected to be in big business, then the term can be either 3, or 4, or 5 years.

Once the term is fixed, the number of members has to be a multiple of this term. Therefore, we may have a 6 or 9 member team of directors in a small cooperative, with 3 year tenure for directors, and in a bigger cooperative, say with 4 year tenure, we could have 8 or 12 directors, or where we have given a -5- year tenure, we could have a board with 10 or 15 directors. At any rate, a board of more than 15 may become too unwieldy.

If we divide the numbers of directors by the term of office, we will arrive at the number of directors who should retire each year. Keeping in view the profile of our members, we could require that directors come from different categories of membership. For example, if our membership is spread geographically over, say 6 villages, then initially, we could require representation from each village for a 6-member board. We could then say that based on an annual review of membership from each of these villages, such representation may be changed from time to time by a resolution of the general body.

Depending on what seems most appropriate, elections could be by show of hands, or by secret ballot, or by consensus, or even by postal ballot. Postal ballot is useful when members are spread over large areas, and useful especially for the election of delegates to the representative general body in such cases. Each of these methods has its own advantages and disadvantages, and we should carefully choose the system most appropriate and reasonable to us. We must remember that conduct of elections is a part of the business of the general body, and avoid, if we can, an election process which resembles general elections to the Lok Sabha or the Assembly, as elections to cooperatives is much more personal, because the voters are very closely associated with one another through the cooperative.

Where membership is large or is expected to be large, we may consider the setting up of a nominations committee, or even ask the Elders' Council, to nominate twice the number of members for the vacancies to be filled in any election. Members will have to vote for persons to become directors, from among these members. Such a provision is workable when we expect homogeneity in, and harmony amongst, membership.

We must also specifically mention that our very first elections will be conducted within 6 months or a year of the cooperative getting registered, and that at the first elections, all the directors will be elected, and that they will have to draw lots to decide who has a one-year term for this first time, who has a 2-year term, and so on. In subsequent years, whoever gets elected will serve a full term. This is a problem only of the first election.

We may also clearly mention that directors whose terms come to an end are eligible for re-election, if that's what we want. On the filling of casual vacancies that arise on the board,

we may wish to permit the board to co-opt an eligible member to fill a vacancy on the board, only till the next annual general meeting, when this vacancy, too, may be filled by the normal election process for the remainder of the term of the ex-director who was the cause of the vacancy.

On removal of a director from office, we need to follow the simple rule that the one who hires is the one who may fire. Therefore, since it is the general body which elects directors, it is the general body which will normally remove a director from office.

However, a director may cease to be a director because of non-fulfilment of one or more duties/conditions imposed on him/her by the Act, and/or the bylaws. In such circumstances, it is not for the general body or any other authority to “remove” him/her from office, as the person simply loses the right to continue in office. We may, therefore, mention that where a person ceases to be director because of non-fulfilment of statutory/bylaw conditions, it will be the duty of the chief executive to inform the director concerned of the same, and to place this matter before the board at its very next meeting. The board shall, if the report is correct, place on record the cessation from directorship of the person concerned, and the chief executive shall inform him/her of the same. The director concerned may appeal to the Elders’ Council against the board’s assessment of his/her having ceased to have the right to continue in office.

In other cases, the bylaws may specify, for example, that a director who has acted against the interests of the cooperative, or taken undue advantage because of access to information as a director, may be removed from office by a vote of no-confidence moved by at least 20% of members, at a general meeting, and that the board shall arrange for such no-confidence motion against the director/s, provided the members moving the motion had requested the board to call for a general meeting to discuss the same, or to include this matter in the agenda a month before a regular general meeting.

Amendments to any of these provisions require registration before they come into force.

18. Board Meetings:

We need to be specific in our bylaws about the frequency of our board meetings, the quorum required, and the manner of convening the board meetings. If our cooperative is a very small cooperative, say of 15-20 artisans, or of 15-20 residents of a multi-storeyed housing cooperative during the phase of construction, our board may need to meet once a week, or more, since several decisions have to be taken in rapid succession. On the other hand, we may be a producers’ cooperative, whose board needs to meet frequently during procurement season, and less frequently the rest of the year.

Keeping all such points in mind, and keeping in mind also that the Act expects the board to meet at least once every quarter, if not more frequently, we should write into our bylaws the minimum frequency at which we want our board to meet. Based on need, the board can always meet more often. This is a provision which can be amended and has to be sent only

for information, not registration, to the Registrar, and it will come into force on the 30th day from the date of sending the amendment to the Registrar for information. In many cooperatives, the date of the board meeting is fixed - for example, as the first Saturday of every month or the first working day of every month, or the fifteenth of every month, with the caveat that if in any month the day happens to be a holiday for the cooperative, then the very next working day that month will be the day the board meets. In such cases, directors tend to keep the day free of other engagements, and so we have a good turnout. The other advantage is that we can write into our bylaws that it shall not be necessary to inform directors of the board meeting, except in the months when the meeting cannot, for some reason be held on the fixed day. The bylaws may also require that the board make note of the date of the next meeting as part of its agenda in each meeting. The quorum for the board meeting is usually more than half the strength of the board. Where the board strength is 15 directors, we could require a quorum of 8, and where it is 6, we could require 4, where it is 5, quorum could be 3, and so on.

19. Powers And Duties Of The Board:

The Act places certain responsibilities clearly on the board of directors. We may as well include them in our bylaws, and add such other powers and duties as we think necessary for the board of our cooperative. We may, therefore, require that our board should :

- (a) admit and terminate membership;
- (b) interpret the organisational objectives, set up specific goals to be achieved towards these objectives, and make periodic appraisal of operations;
- (c) elect and remove the chairperson and other office bearers;
- (d) appoint and remove the chief executive;
- (e) fix staff strength;
- (f) make provisions for regulating the recruitment and appointment of all employees of the cooperative and the scales of pay, allowances and other conditions of service including disciplinary action and removal from service;
- (g) finalise the long term perspective plan, and the annual plan and budget, and direct the affairs of the cooperative in accordance with the plan and budget approved by the general body;
- (h) arrange for funds necessary for the provision of services to our members;
- (i) authorise acquisition and disposal of immovable property; and
- (j) frame, approve and amend regulations relating to services, funds, accounts and accountability, and information and reporting systems.

We might also include in our bylaws, something else that is contained in the Act, namely, that every director of our cooperative, while performing functions, discharging responsibilities, and exercising powers shall:

- (a) act honestly and in good faith and in the best interests of the cooperative;
- and

(b) exercise such due care, diligence and skill as a reasonably prudent person would exercise in similar circumstances.

Yet another provision from the Act which we should include in our bylaws is that any director who is guilty of misappropriation, breach of trust or any other omission or commission, resulting in loss or shortfall in revenue to the cooperative, shall be personally liable to make good that loss or shortfall, without prejudice to any criminal action to which the director may be liable under law.

As this is a provision, whose amendment needs to be registered before it can take effect, it would be best to add a single sentence at the end to say that the board shall also have such powers and duties as may be specified from time to time by the general body.

20. Chairperson:

The chairperson, according to the Act, has to be elected by the board members from among themselves. Obviously, each time we have elections, the character of the board could well change, with the new entrants not necessarily on the same wavelength as the ones who vacated office. Therefore, it would be best to provide in our bylaws that after each election of directors, the new board should meet to elect a chairperson from among themselves.

We may need to mention in our bylaws that the chairperson is expected to preside over all board and general meetings, and can cast his/her vote only in the event of an equality of votes in any meeting.

If in our cooperative, the chairperson is going to be a full time person, playing a crucial role in the functioning of our cooperative, we may want to mention that in the bylaws, and mention also that the remuneration may be as decided by the general body. If the chairperson and chief executive are two different persons, then we may mention that the chief executive shall be accountable to the chairperson. We need to think carefully about the responsibilities of chairperson, and we intend to have another person as chief executive, then we need to think carefully about his/her role, too. Our bylaws need to be specific about these roles. We should note that, if the bylaws are not specific about who is responsible for what, then all the directors will be held equally responsible for any offences that may be committed under the Act.

21. Dealing With Non-Members:

A cooperative is expected to provide services primarily to members. That is one important distinction between it and other forms of businesses. Apart from the fact that such mutuality in transactions makes tax laws treat us differently, it is when a cooperative is primarily dependent on members using its services, that it will remain sensitive to their needs. Therefore, we may want to mention clearly in our bylaws that our services are primarily intended for our members, and that we will not offer them to non-members. Having said that,

however, we may also wish to state that we will deal with others for the purpose of providing services to our members.

In an agricultural producers' cooperative, it is quite likely that in a year of heavy crop loss, we will not be in a position to have enough produce to feed the processing plant that we have set up. For such situations, we may have a saving clause which says that in a year where the produce of members is insufficient for the capacity of the processing unit, the board may resolve to procure produce from non-members as well.

22. Eligibility For Directorship:

Our bylaws must contain provisions relating to who can become a director, who cannot - and, who cannot continue as a director on the board. The Act has several provisions in this regard, and we may include them in our bylaws, as given below.

We may require in our bylaws that a member of our cooperative shall be eligible for being chosen as a director if:

- (a) such member has the right to vote in the affairs of the cooperative; and
- (b) such member has been a voting member of the cooperative for the two preceding years - this condition, obviously, can apply only after the cooperative has been in existence for more than 2 years; and
- (c) such member has attended the last two general body meetings held before the elections now due;
- (d) such member has patronised the services of the cooperative during the previous financial year to the extent and in the manner specified in the bylaws; and
- (e) such member has no interest in any subsisting contract made with or work being done for the cooperative except as otherwise specified in the bylaws.

We may also want to add here that a member cannot stand for elections as a director, if he/she had been a director, and had lost the right to continue as a director, at any time in the previous 4 years.

Apart from specifying the qualifications necessary to stand for elections as a director, we may borrow from the Act the provisions relating to a director who ceases to be a director for the non-fulfilment of certain duties. We may say that a person elected as director shall cease to be a director if:

- (a) he/she loses the right of vote at any time during the tenure as director; or
- (b) absents himself/herself from 3 consecutive board meetings without leave of absence; or
- (c) absents himself/herself from a general body meeting without leave of absence;
- or
- (d) is penalised under the Act or the bylaws.

We may also mention that all the directors of the board shall cease to be directors if:

- (a) they do not conduct the general meeting or requisitioned general meeting

within the time specified in our bylaws; or

(b) they do not conduct elections to the board when due, and before the expiry of the term of the retiring directors; or

(c) they do not provide copies of the annual report of activities, audited annual financial statements, or auditor's report, to each member and place these before the general body for its approval at the annual meeting each year.

23. Penalties:

Rather than listing a whole set of penalties in the bylaws for members/office bearers/directors/staff acting against the interest of the cooperative, we may mention that penalties for acting against the interests of the cooperative will be levied against members and staff by the board, and against office bearers and directors by the Elders' Council.

In the first instance, we may want to provide for an appeal against the penalty to the Elders' Council. In both instances, we may require that the decision of the Elders' Council be final. In both cases, we may build into our bylaws the process to be adopted to take cognition of a possible offence, to inquire into it, to give the affected person an opportunity to defend himself/herself against the accusation.

We might also want to mention in our bylaws, that the penalties included in our bylaws will be in addition to any penalties imposed as a result of any offence committed under the Act.

24. Liability Of Office Bearers And Directors:

In no. 10, we have already discussed the nature and extent of the liability of members for the debts contracted by the cooperative. Now we need to discuss whether we would like the liability of office bearers and directors to be the same or different.

Members are not responsible for the day to day decision making process in the society. The chief executive, and other office bearers have the greatest responsibility for the mobilisation and management of the funds and business of the cooperative, as have directors. Keeping this in mind, we may want to fix a higher liability on directors.

We need to bear in mind that this bylaw is one whose amendment needs to be registered before it comes into force.

25. Chief Executive

Every organisation needs to create the position of a chief executive. Essentially, this is the person who will sue and be sued on behalf of the organisation, and this is the person authorised by the bylaws to sign important documents pertaining to the cooperative.

In our bylaws, all we need to do is specify that the board shall appoint one among the directors or others as chief executive of the organisation, and that this person shall be the

one to sue and be sued on behalf of the organisation. We also need to say that this person shall have all such powers and functions as are delegated by the board.

26. Delegates To Federations:

Our cooperative may be a member in one or more federations. If it is, we may feel that our chairperson should always be the person to represent us in these federations. Or, we may feel that we should leave it to the board to decide which person should represent us in which federation. Or, the bylaws of the federation might be very clear about who, in our cooperative, can represent us in the meetings of the federation.

We need to have applied our mind on this matter, and to appropriately frame the necessary provision in our bylaws.

27. Rights Of Federation:

We may wish to give our federation some rights over us. For example, we may wish to give them the right to approve proposed amendments to certain provisions in our bylaws, which we and other member-cooperatives of our federation feel might affect other member-cooperatives, if changed.

We, along with other member-cooperatives, may also give our federation the right to depute someone as election officer/ auditor/arbitrator, at our request.

These need to be thought through and included in our bylaws. However, we must remember that we cannot delegate to our federation any obligation that the Act places on us.

28. The Nature And Amount Of Capital

For any business, long term planning is needed. So, too, for any business, it is important to have an estimate of the capital needed in the long run. Of this capital, how much we hope to raise as members' shares, how much in other forms, needs to be mentioned here.

The Act requires us to remit a registration fee amounting to one percent of the authorised share capital, subject to a minimum fee of Rs 100, and a maximum of Rs 10,000. We need, therefore, to mention in our bylaws the authorised share capital, or the total share capital that we intend to raise.

Having decided the total authorised share capital, we then need to decide what the value of each share will be. In deciding the authorised share capital, and the value of each share, we must reflect a little on what type of organisation we are aiming at. For example, a thrift and credit cooperative does not need much capital to begin its operations. From a small rented space, it can begin its activities. A member may at any time borrow, say, three times of the regular thrift accumulated in his/her particular name. Therefore, in such a cooperative, the authorised share capital and, therefore, the value of a share is quite irrelevant, and may be

kept quite nominal - say, Rs 5000 as authorised share capital, and Rs ten as value of each share.

However, in a seed growers' cooperative, the cooperative needs investment capital for the godown, the seed processing unit, etc. While a bank or other lender may be willing to make loans available for this investment, they will do so, only if our members have put in some amount first - anything between 10% to 50% of the total investment, depending on the lender. Till such infrastructure is put into full use and starts earning income, it may not be possible to give members a reasonable interest on their share of this investment.

Therefore, such a cooperative may estimate the total cost of the infrastructure needed, and decide that at least, say, a tenth of it will be raised in the first instance as share capital from members. If more money is to be raised from members, we could raise it in the shape of interest earning deposits, whereas the share capital may or may not earn interest initially. This total amount of share capital thus required, may further be divided by the average seed output per acre, to arrive at the value of each share. For each acre of seed that a member grows, he/she may be required to buy one share.

Another way of handling this is to have every member hold only one share (as in the case of the thrift cooperatives), but to require members to additionally keep long term deposits with the cooperative, in proportion to their use of the services. See no. 31 in this handbook for further details on this.

When we initiate the process of forming our cooperative, we will start mobilising share capital, and perhaps, other forms of contribution. It would be best if we had an interim provision in our bylaws to say that pending registration, the amounts mobilised shall be invested in a particular bank or cooperative in our neighbourhood.

Even though this bylaw is one whose amendment does not need to be registered, yet it may be noted that the fee to be remitted for registration of the cooperative is 1 percent of the authorised share capital, and, external financiers, if any, will not want frequent changes in this bylaw. Therefore, it would be best if this were a bylaw that we have thought carefully about at the time of forming the cooperative, so that it is not subject to early or frequent amendment.

29. Maximum Capital That A Single Member May Hold:

In cooperatives, every responsible member has a vote, regardless of his/her financial contribution to the cooperative's capital. Nonetheless, if a member has a very significant amount of capital (shares or deposits) in the cooperative, he/she can tend to have a greater say in the affairs of the cooperative, and the cooperative cannot afford to have him/her withdraw his/her money at once.

Therefore, it is important that we provide in our bylaws for the maximum amount that a member may keep in the cooperative. Here, we may need to make a distinction between short term deposits, and long term deposits, share capital, etc, that a member may keep in

the cooperative.

When it comes to short term deposits, say for a couple of months to tide over some working capital crunch, we need not worry too much. However, when it comes to the stable long term funds of members in the cooperative, we may not want any member (or for that matter, non-member, except a financial institution), to have more than, say, a tenth of the total long term internal funds, at any given time. This maximum amount/proportion has to be built into our bylaws.

We need to remember that this bylaw is one whose amendment needs to be registered before it can come into force.

30. Interest On Share Capital:

In other forms of business, people invest with the hope that their investment will earn them the maximum possible returns. However, in a cooperative, members invest in order that they can set up services which they are in need of, from the provision of which, they can get significant financial benefit. That is, they expect to benefit, not from direct return on the investment, but from the services provided by the cooperative, as a result of the investment. Nonetheless, it should be our endeavour to protect our members' share capital, from inflation, and, if possible, to pay an interest on it equal to the maximum rate that commercial banks pay on fixed deposits. In early years, however, we may be able to pay only a nominal rate of interest, if any.

The Act itself does not permit us to give more interest than the banks and, therefore, we may want to include in our bylaws that each year our general body will decide how much interest to give on share capital, such, however, that it does not exceed the maximum interest payable by scheduled banks, on fixed deposits.

31. Funds - Sources, Types, Extent:

When discussing the formation of our cooperative, we must sit together with other prospective members, and try and understand what the business entails. We will need to work out

- (a) what services we want to offer members;
- (b) the quantum of services needed by members and how much of that quantum we feel confident of meeting;
- (c) what infrastructure is needed to provide those services;
- (d) therefore, how much investment capital is needed;
- (e) how much working capital is needed to provide the services;
- (f) what the cost of capital (that is, interest) will be;
- (g) how much staff is needed, what their costs will be;
- (h) what other operational costs might be - that is, costs relating to the provision of

services;

- (i) what administrative costs might be - costs of meetings, rent, stationery, etc;
- (j) what minimum quantity of services have to be provided in order that the cooperative is able to cover all the costs incurred.

Based on this analysis, which is sometimes called a feasibility analysis, we will then need to draw a plan for the funds that we need to raise - the sources from which we will raise them, the quantum to be raised from each source, and the types of funds that will be raised from each source.

From members, we will definitely need to raise some money in the form of share capital - that is, money which will stay with the cooperative till the member leaves or dies, and money on which if at all there is any interest, it will be limited. This has already been dealt with in no. 28 above. Apart from this, we may want to raise other types of funds from members, or from federations of which we are members, or from banks and other external institutions.

We must remember that Act does not permit us to raise share capital from the government or other non-members. It does permit us to raise loans from the government, if we have entered into a memorandum of agreement with the government.

Against each source of finance that we identify, we must mention in our bylaws the types of funds that we intend to raise from that source - share capital, loans, deposits of varying types, donations, etc. Under no. 28 we would already have made mention of the extent of share capital we intend to raise, as based on that we will need to pay registration fee. For other funds to be raised, we need only to say that we will raise them to the extent required, which may be determined by the board, from time to time. We need also to fix some ratio between own funds and external funds.

In the case of thrift and credit cooperatives, for example, we would be wise not to permit ourselves to borrow from any external source other than our own federation, and even from that, to borrow not more than our members' total thrift amount. In the case of producers' cooperatives, we will necessarily have to borrow from external sources, but we may want to fix in our bylaws the ratio between internal and external funds. It might be best if we fixed external funds at a maximum of 8 times, 7 times, 6 times, 5 times, 4 times, and 3 times of total internal funds less losses, in the 1st, 2nd, 3rd, 4th, 5th, 6th and subsequent years, respectively. External agencies might want to give us less than we want, but unless we build such a provision into our bylaws, we will not work towards steadily increasing member stakes in the cooperative.

Whatever the type of cooperative that we intend to set up, we must fix a ratio between a member's access to services and his/her contribution to share capital and long term deposits.

32. Use Of Funds:

33. Constitution Of Various Funds And Their Uses:

Although the Act places these items in the order given above, we may, in our bylaws, first deal with the constitution of various funds, and then speak of their uses, and the use of other funds raised by the cooperative.

There are some funds which we may set up from the surpluses created by the operations of the cooperative. Other funds may, however, be created from special contributions by members and/or others, and/or surpluses generated.

From the surpluses generated in any year, we may want to set aside a portion towards various funds, and one illustration of this is provided below. We may, for example, provide in our bylaws that from the surplus, we should first pay such interest on share capital as decided by the general body. Of the surplus remaining, we may then require in our bylaws that we set aside some percentage for different purposes. One illustration is given below, but we may decide on different percentages. We must note, however, that the Act expects us to have a deficit cover fund, a reserve fund, to spend on cooperative education, and to give patronage rebate to our members. Out of surplus, we may, for example, set aside:

- (a) 20% towards a deficit cover fund, for use in a year in which we have loss;
- (b) 20% towards a patronage rebate fund, out of which we will need to return to each member an amount in proportion to the member's use of the services of the cooperative, in the year in which the surplus was earned;
- (c) 20% towards a cooperative education and training fund - our aim should be that in the first few years, whatever we spend on cooperative education and training should be a part of our regular expenses, but over a period of years, we should be able to spend the interest earned on the annually growing fund set up for this purpose, which should be sufficient to have an ongoing educational and training process for members, directors, and staff;
- (d) 20% on a building cum asset replacement fund; and
- (e) 20% on a price stabilisation fund, (in a producers' cooperative), or for an inflation cover fund (in a thrift cooperative); or for an insurance fund, in a housing cooperative.

We need to think about our own cooperative, and how we intend to distribute surplus in our cooperative. We may also include in our bylaws that the general body may, from time to time, set up various other funds, and require contribution in various forms from members, for these other funds.

We may specifically mention, that funds not in use may be invested only in a non-speculative, secure, manner, which earns the cooperative assured and reasonable returns. We may wish to specify the agencies with which idle funds can be invested - for example, another, neighbouring cooperative which is trustworthy, the local bank branch, the local post office, our federation, government savings schemes, etc. We may also wish to specifically mention that funds must be used primarily for the purpose of fulfilling the objectives of the cooperative.

34. Audit Of Accounts:

A cooperative may get its accounts audited by a chartered accountant or by an officer of the department of cooperation. We are required to include in our bylaws the manner of appointment of the auditors and their powers and functions.

Audit is essentially a check that the members of an organisation exercise on those that they entrust with the management of the affairs of the organisation. When the management of an organisation gets the annual financial statements prepared for presentation to the members of the organisation, and later for publication and sharing with others, it is the auditor who is expected to look at these financial statements, and at our accounts books, and assure the members and others that the financial statements are indeed a true summary, a true reflection of the actual transactions that were carried out during the year.

We may, therefore, include in our bylaws that:

- (a) our cooperative shall, at its annual general meeting, resolve to appoint a chartered accountant/auditor from the office of the Registrar, as auditor;
- (b) the remuneration of an auditor may be fixed by the board, and approved by the general body;
- (c) the auditor shall be given notice of every general meeting and, at the expense of the cooperative, will be entitled to attend and be heard on matters relating to his/her duties as auditor and their exercise;
- (d) it shall be the duty of the board to ensure that annual financial statements are prepared and presented for audit within thirty days of closure of the cooperative's financial year;
- (e) it shall be the duty of the auditor to ensure that audited annual financial statements and his/her accompanying report are furnished to the cooperative within thirty days of the submission of annual financial statements by the board;
- (f) the auditor's report shall:
 - (i) state whether the auditor has obtained all the information and explanations which to the best of his/her knowledge and belief were necessary for the purpose of his/her audit;
 - (ii) state whether the cooperative's balance sheet and income and expenditure account dealt with by the report are in agreement with the books of accounts;
 - (iii) indicate the basis on which each asset and liability was valued, and make specific mention of any change in the manner in which such valuation was done in the year under examination and its effect on surplus/deficit;
 - (iv) indicate the amount of surplus earned/deficit incurred from provision of services to non-members as distinct from surplus/deficit accruing because of members or in normal course of business;
 - (v) indicate every deviation in actual expenses and income from the estimated expenses and income in the approved budget;

- (vi) state whether or not any of the directors had at any time during the year under review, become ineligible under the Act or the bylaws to continue in office as a director; and
- (vii) state whether the decisions on disposal of surplus or management of deficit, of the general body, at its previous annual general meeting were implemented correctly and completely or not;
- (g) it shall be the duty of the board to present the audited statement of accounts to each member at the annual general meeting, to be conducted within 90 days of the closure of the financial year.

35. Appointment Of Internal Auditors:

Auditors appointed for the purpose of complying with various laws, have an important place in helping us be accountable. However, if we really want to keep ourselves on a tight leash in terms of accountability, we may have to build a system of regular internal audit, which helps correct most of the problems as and when they arise, and not after the end of the year.

We might, therefore, if we are a small cooperative, require each board member to take responsibility for internal checking of accounts, assets, etc, for one or more months in the year, and require that the board distribute this work of internal audit evenly amongst the directors. Through this process, the directors will have a good knowledge of what's happening in the cooperative, and also, they will exert peer pressure on one another.

In a large cooperative, with many transactions each day, and with, say, 25 or more staff members, we may want the internal audit process to be conducted by a different director in conjunction with one or more different staff members each month, so that directors and staff have a good understanding of the cooperative's functioning, and exercise peer control.

We may require in our bylaws that:

- (a) the board approve of an internal audit check list for the internal auditors to use as a guide;
- (b) the internal audit for a particular month be conducted in the very next month;
- (c) the internal audit report, based on the check list be presented to the board at the latest at the meeting in the month following the month of internal audit.

36. Disposal Of Funds On Liquidation:

37. Dissolution:

Although the Act lists these items for inclusion in our bylaws in the above order, we may first wish to deal with dissolution, and then with disposal of funds at the time of liquidation. It is possible that even though we start our cooperative with much interest and enthusiasm,

after some years we come to the conclusion that our members are no longer interested in the services, and it is not worth our while to change the basic object of the cooperative, or that we wish to merge into another cooperative, or to amalgamate with another cooperative to together form a new cooperative. There can be several reasons why we wish to dissolve our cooperative.

The Act has fairly exhaustive provisions on amalgamation, merger, division, dissolution. Since these are extraordinary events, we need not make our bylaws bulky by including all those provisions in our bylaws. We may, however, mention in our bylaws, that in these matters, we will act in accordance with the provisions of the Act.

When it comes to disposal of funds at the time of liquidation, we may wish to specifically mention that:

- (a) the liquidator shall be responsible to settle the amounts due to members only after amounts due to non-members, creditors, etc are settled;
- (b) any funds remaining after the settlement of dues to external agencies, non-members, and members, may be distributed amongst the members, or transferred to a new cooperative to be organised in the same area, or to a non-profit public society to be set up with one or more purposes in the same area for the welfare of the community at large.

This is a bylaw whose amendment can come into effect only after it has been registered.

38. Language In Which Business Is To Be Conducted:

Most organisations do not have a policy on the language they intend to use in the conduct of their business. The result is that audit is conducted in an alien language, several notices, etc, are issued in an alien language, and even books of accounts and reports are sometimes written in a language with which our members are unfamiliar. It is very important that members exercise effective control over the board, and that the board exercises effective control over the affairs of the cooperative.

Therefore, even though the Act does not require this, we should specify in our bylaws that the business of our cooperative, in all internal matters, shall be conducted in the Telugu language, if the majority of our members are Telugu speaking. In all external matters, too, we should require that the business be conducted in Telugu, except for transactions with persons unfamiliar with Telugu.

39. Financial Year:

Every organisation needs to fix its financial year - that is, to fix a period of 12 months for which, each year, it will prepare its income and expenditure account to arrive at the surplus/deficit for the year. It also prepares and publishes a balance sheet, which indicates its assets and liabilities as on the last day of that year.

We should study the business of our cooperative carefully, to study its natural cycle, and

then fix the financial year for mention in our bylaws. For example, if ours is a sugar or cotton or paddy producers' cooperative, we could fix the year starting on the first of the month of sugarcane/cotton/paddy harvest, and ending 12 months later. Or, if ours is a cooperative which does not have any special cycle, then we could simply stick to the calendar year, or, if we are required to pay income-tax, then we could have our financial year starting 1 April and ending 31 March.

40. Annual Returns:

Although the Act does not require us to mention in our bylaws the returns that we need to file with the Registrar every year, it may be best to include in our bylaws the list of returns mentioned in the Act. We should reword perhaps the opening paragraph, replacing "every cooperative society" with "our chief executive".

41. Records To Be Maintained:

The Act requires every cooperative to keep at its office certain accounts, records, and documents. We should incorporate this section in our bylaws, again changing the words where necessary, so that we are talking about our cooperative, and not about cooperatives in general.

42. Settlement Of Disputes:

The Act provides for the settlement of disputes by a cooperative tribunal, and also suggests that we approach the tribunal only after we have used internally set up mechanisms for dispute resolution. We may, therefore, provide in our bylaws that if any dispute touching the constitution, management or business of a cooperative arises:

- (a) among members, past members and persons claiming through members and deceased members; or
- (b) between a member, past member or a person claiming through a member, past member or deceased member and the cooperative, its board, director, office-bearer, or liquidator, past or present; or
- (c) between the cooperative or its board and any past board, any director, office-bearer, or any past director, past office-bearer, or the nominee, heir, or legal representative of any deceased director or deceased office-bearer of the cooperative, such dispute shall be referred to an Elders' Council, and its decision shall be binding on the disputing parties, except where one of the parties feels aggrieved by the process used by the Elders' Council to settle the dispute.

We may also provide in the bylaws for the constitution of an Elders' Council consisting of three members, appointed by the general body from among its members or others, whose

term of office is, say, 3 years. We may fix a lower age limit of, say, 55 years, and upper limit of, say, 70 years for the members of this committee. We may also require that:

- (a) these persons should not have stood for elections to the board in the previous 5 years;
- (b) once a person has served on the Elders' Council, he/she will not be eligible to be a director again;
- (c) no canvassing will be permitted for membership of the Elders' Council; a member nominated by the board for being considered to be a member of the Elders' Council should at no time during his/her membership in the cooperative have lost his/her right to vote;
- (e) the general body will have the right to reject any or all of the nominations suggested by the board.

In Conclusion:

We hope that you have found this handbook useful. We hope, too, that it has made you more confident about the setting up of your new cooperative. Remember, that if in the course of going through this handbook, and in the framing of your bylaws, you have any doubts, all you have to do is get in touch with your local district cooperative office, and you will get all the help you need to think through your concerns.

(References Taken: Department of Cooperation, Government of Andhra Pradesh)

A Few FAQs::

Q. What are the principles of cooperation?

A. Cooperative Principles are guidelines by which cooperatives put their values into practice.

The Cooperative principles are:

- (1) Voluntary and open membership
- (2) Democratic member Control
- (3) Member economic participation
- (4) Autonomy and Independence
- (5) Education, Training and Information
- (6) Cooperation among Cooperatives
- (7) Concern for community

Q. Who can become members of a cooperative society in India?

A. Persons who may become members of a Cooperative society at State level (as per the State Act)

- (a) an individual competent to Contract, attained majority and is of sound mind and belongs to a class of persons if any for whom the society is formed as per its bye-laws;
- (b) a society registered or deemed to be registered under the Cooperative Societies Act;
- (c) the Government;

No individual shall be eligible for admission as a member of a federal society

Persons who may become members of a Multi-State Cooperative Society: (As per Multi-State /cooperative Societies Act, 2002).

- (a) an individual, competent to contract under section 11 of the Indian contract Act, 1972.
- (b) any multi-state Cooperative society or any Cooperative society.
- (c) the Central Government
- (d) a State Government
- (e) National Cooperative Development Corporation (NCDC)
- (f) any other Corporation armed or controlled by the Government.

No individual person shall be eligible for admission as a member of a national Cooperative society or a federal Cooperative

For details on the procedures for forming a cooperative society, see the section on “What are the steps / check list for forming a cooperative society?”

Q. What are the steps / check list for forming a cooperative society?

A. Steps involved for forming a Cooperative Society under a state act:

- (i) Prescribed application duly filled in shall be made to the Registrar of Cooperative societies;
- (ii) the application shall be accompanied by four copies of the proposed Bye-laws of the society;
- (iii) Where all the applicants are individuals, the number of applicants shall not be less than ten;
- iv) the application shall be signed by every one of such applicants if the applicants are individuals;
- (v) if the applicant is a society, by a member duly authorised by such society;

To form a Multi-State Cooperative society,

- (i) An application for registration of a Multi-State Cooperative society shall be made in the prescribed form;
- (ii) the application shall be signed by;
 - (a) In the case of a multi-state Cooperative society of which all the members are individuals, by at least fifty persons from each of the states concerned.
 - (b) In case the members are Cooperative Societies, by duly authorised representatives on behalf of at least five such societies as are not registered in the same state;
 - (c) In case the members are other Multi-State Cooperative Societies and other Cooperative Societies, by duly authorised representatives of each of such societies;
 - (d) If the members are cooperative societies or multi-state Cooperative societies and individuals, by at least (i) fifty persons, being individuals from each of the two states or more and; (ii) one Cooperative society each from two states or more or one Multi-state Cooperative society.

- (e) The application shall be accompanied by four copies of the proposed Bye-laws.
- (f) (i) Name of the proposed multi-state cooperative society;
- (ii) Head Quarters and address to be registered;
- (iii) Area of operation;
- (iv) Main objectives
- (v) a certificate from the Bank
- (vi) Stating credit balance there in favour of the proposed Multi-State Cooperative Society.

The relevant application forms can be obtained from the Office of Registrar of Cooperatives nearest to you.

Q. Which are the laws that regulate cooperative societies in India?

A. Laws regulating Cooperative Societies in India are:

- (a) State Cooperative Societies Acts of individual states
- (b) Multi-State Cooperative Societies Act, 2002 for the multi-state Cooperative societies with Area of operation in more than one State.

Q. What is 'Multi-state Cooperative Act'?

A. A multi-state Cooperative Society means a society registered or deemed to be registered under the Multi-State Cooperative Societies Act, 2002 and includes a national Cooperative society or a Federal Cooperative.

Q. How does a multi-state cooperative society differ from a company?

A. Broad differences between a cooperative and a company

S.	Item	Cooperative Society	Company
No			

Bye-Laws Drafting For Co-operatives

November 17, 2016

1	Object	Interest of members and community	Self interest either of management or the share holders
2	Number of members	<p>Minimum number of members should be 50 for a multi state cooperative society from each state in case of individual membership</p> <p>In case societies are members of a Multi State Cooperative Society, two societies from different states should sign the application of registration of the society</p> <p>If a Multi State Cooperative Society is a member then the multi state cooperative and a society should sign the application of registration</p>	In a public limited company, minimum number of members should be 7 and in a private limited company minimum number of members should be 2
3	Management	Chairperson is elected by the Board of Directors from among themselves. The Managing Director / Chief executive is appointed by the Board of Directors	Usually, Chairperson / Managing Director are persons with maximum number of shares in the company
4	Share Capital	The shares of cooperative society are not issued to general public by advertisement and can be issued any time. Shares can be withdrawn member / society as prescribed by rules in their byelaws.	Shares are issued to general public or by invitation. In a company shares cannot be withdrawn by a share holder.
5	Types of shares	Only equity shares are available	Equity and preferential shares may be issued
6	Voting Power	Member of a cooperative society have right of only one vote, irrespective of the number of shares held of any denomination	Voting rights depend directly on the holding of shares
7	Distribution of Profits	Minimum 25% of net profits should be transferred to the General reserve and the maximum dividend cannot exceed 20%	No restrictions on a company
8	Taxes	Cooperatives are exempt from few taxes in some states like stamp duty. Tax rates also vary	No exemptions provided
9	Workers	Provision for workers participation in	No such provision for workers

Bye-Laws Drafting For Co-operatives

November 17, 2016

	participation	the management through a representative exists	
10	MRTTP Act	Not applicable to Multi State Societies	Applicable
11	Control	The Central registrar of Cooperatives advises in the affairs of a multi state society	Companies are governed by the Company Registrar of the states where its registered office is located

Q. What is the difference between Multi State Credit Co-Operative Society and Financial Companies?

A. Multi State Credit society is registered under Multi State Co-Operative societies act and rules. Society is not a personal institution owned by an individual but is a fully democratic organization managed by Board Of Directors who are elected by the members of the society in the Annual General Meetings and the Board Of Directors also take decisions in a collective manner with total transparency.

The Department of Co-Operatives constantly reviews the functioning of the society at regular intervals.

Finance companies are usually owned by individuals and frame the so called policies according to the owners. The general members/ depositors/ Investors have no role to play. There are some possibilities of the absence of transparency. Members/ Investors have virtually no knowledge of the affairs/ legal provisions of N.B.F.C. and the statutory liabilities of the N.B.F.C. are also limited..

Q. What is the difference between Multi State Credit Co-Operative Society and Banks?

A. (1) Banks works as per the rules of Reserve Bank of India while Society works as per the Co-Op. Act.

(2) Audit of Bank is done by the panel of C.A. or R.B.I. officers as per the guideline of Reserve Bank of India, while in society auditors came from the registrar office of co-op. for audit.

(3) Banks can issue cheque books because they have clearing house license, while society don't have clearing house license so can't issue cheque books.

(4) When anybody wants to do transaction with society first of all he/she has to become member of society & have to purchase the shares of it than & than can take loan & put deposite in society. While in Banks without become member & purchase the shares you can take loan & also put FD & other deposit.