

## FOREWORD

Cooperative societies are the autonomous associations of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. They are the means for forming a legal entity to conduct business besides forming a company. It pools together human resources in the spirit of self and mutual help with the object of providing services and support to members.

The operation of co-operative societies is subject to control and regulation by the cooperative societies laws. The control and regulation are purposed to prevent fraud and to ensure that every member enjoys equal rights and benefits in respect of the business of the society. There are restrictions and principles on profit disposal and rules to sustain corporate governance. Hence, the readers will appreciate the importance of statute, common law and equitable principles have played a major role in the development of cooperative law.

This booklet entails the concept, origins, development and classification of the cooperative societies. Hence, it induces basic knowledge and understanding of the what are the cooperative societies, their origins, classification and purposes. In addition, it deals with beginning to the ending of the cooperative societies. It embraces registration issues of the cooperative societies, membership, management and administration as well as termination of the cooperative societies. It induces knowledge of how cooperative societies are formed, governed and terminated basing on the law governing the cooperative societies.

Therefore, this booklet is designed to help readers to develop an understanding of cooperative law principles and acquire a basic framework within which the cooperative societies are formed, operate and dissolved. Consequently, the readers will be able to understand and analyse cooperative law issues as they are encountered by lawyers, regulators and policymakers, and other stakeholders of the cooperative sector.

***Eliud Kitime***

***Author, 2019***

## LIST OF CASES

*Puget Sound Plywood v Commissioner* 44 T.C. 305, 307-308 (1965)

## **LIST OF STATUTES**

The Companies Act, Cap 212 RE 2002

The Cooperative Societies Act, Act No. 6 of 2013

The Cooperative Societies Regulations, GN no. 272 of 2015

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# CHAPTER 01

## COOPERATIVE SOCIETIES

### 1.0 Introduction

Cooperative societies are typically more economically resilient than many other forms of enterprise, with twice the number of co-operatives surviving their first five years compared with other business ownership models. Cooperatives frequently have social goals which they aim to accomplish by investing a proportion of trading profits back into their communities. This chapter intends to impart general understanding of the cooperative societies. It covers concept, nature, characteristics, manifestation and significance of the cooperative societies.

### 1.1 Objectives

This chapter intends to cover the general understanding of the concept of the cooperative societies. Hence, at the end of this chapter, you should be able to: -

- Define and explain the concept of the cooperative societies;
- Describe the nature and characteristics of the cooperative societies;
- Demonstrate how the cooperative societies can be manifested; and
- Discuss the significance of the cooperative societies.

### 1.2 Cooperative Societies

The definitions of cooperative societies vary depending on whether you are looking at it from the perspective of a cooperative enthusiast, a corporate lawyer, or a tax lawyer.

Cooperative societies refer to autonomous associations of persons united voluntarily to meet their common economic, social, and cultural needs and



aspirations through a jointly-owned and democratically-controlled enterprise.<sup>1</sup>

Cooperative societies can be defined to mean jointly owned enterprises engaging in the production or distribution of goods or the supplying of services, operated by its members for their mutual benefit, typically organized by consumers or farmers.<sup>2</sup>

Cooperative societies are private business organizations that are owned and controlled by the people who use its products, supplies or services.

Cooperative societies are organizations established for the purpose of purchasing and marketing the products of its members, and / or procuring supplies for resale to the members, whose profits are distributed to the members not on the basis of the members' equity investment in the cooperative, but in proportion to their contribution.

The international Labour Office (I.L.O) defines a cooperative society as association of persons usually of limited means, who have voluntarily joined to gather to achieve a common economic end and through the formation of democratically controlled business organization, making equitable contributions to the capital required and accepting a fair share of risks and benefits of the undertaking.

### **1.3 Nature of Cooperative Societies**

All cooperative societies are formed to meet the specific objectives of members, and are structured to adapt to member's changing needs. Cooperatives are formed by individuals who coordinate among themselves to achieve vertical integration in their business activities.

Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibility and concern for others.

Cooperatives are useful for promoting the interests of the less powerful members of society. Farmers, producers, workers, and consumers found that they could accomplish more collectively than they could individually.

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<sup>1</sup> International Cooperative Alliance, Statement on the Cooperative Identity, the Way Back Machine, 4 February 2012

<sup>2</sup> Dictionary.com, Find the Meanings and Definitions of Words at Dictionary.com

Most states have one or more statutes specifically designed for cooperatives. In many states, an organization that is not formed under a cooperative statute may not use the word cooperative in its name.

There is cooperation among the members and not competition. It aims at moral solidarity of the members and not of undercutting one another. The motto is each for one and all for each.

Cooperative societies are entitled to various beneficial tax treatments. However, it does not matter if the entity is formed under a particular statute but rather whether it meets the tax law definition of “operating on a cooperative basis.” This has been tested by the courts. The leading case is ***Puget Sound Plywood v Commissioner***<sup>3</sup>, in which the court said that “operating on a cooperative basis” means (1) democratic control by the members, (2) operation at cost, and (3) subordination of capital. Democratic control means that a cooperative is governed by its members on a one-member-one-vote basis. Operation at cost means that any money left over (beyond a reasonable reserve) after expenses are paid is returned back to the members. Subordination of capital means that returns to investors must be limited.

#### **1.4 Manifestation of Cooperative Societies**

Cooperative societies manifest in a variety of ways. The term “cooperative” can refer either to a specific type of business entity recognized under the law or to the internal governance structure of an organization.

##### *(i) Cooperative societies as legal entities*

Cooperative societies are legal entities owned and democratically controlled by its members. They refer to a specific type of corporation, recognized under the law. The legal requirements for forming a cooperative corporation vary from state to state. Cooperative societies may take the form of companies limited by shares or by guarantee. They often share their earnings with the membership as dividends, which are divided among the members according to their participation in the enterprise, such as patronage, instead of according to the value of their capital shareholdings.

##### *(ii) Cooperative societies as sets of practices and values*

A group of tenants might create a housing cooperative, simply by adopting highly participatory and democratic ways of operating. Similarly, workers at a

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<sup>3</sup> 44 T.C. 305, 307-308 (1965)

non-profit organization or fiscally sponsored project, may elect to operate through cooperative, democratic principles, such as one-person one-vote. This type of cooperative organization may or may not have the other cooperative attributes of joint ownership and cooperative distribution of earnings.

(iii) *Cooperative societies as tax category*

The seminal Tax Court case ***Puget Sound Plywood, Inc. v. Commissioner***<sup>4</sup> set forth three core factors of cooperative associations on the basis of the Rochdale Principles. They are generally accepted as a framework for determining whether an organization is operating on a cooperative basis within the meaning of the tax laws.<sup>5</sup>

(iv) *Cooperative societies as democratic societies*

Cooperative societies have a range of democratic characteristics. Membership is open, meaning that anyone who satisfies certain non-discriminatory conditions may join. Economic benefits are distributed proportionally to each member's level of participation in the cooperative, for instance, by a dividend on sales or purchases, rather than according to capital invested.

## 1.5 Characteristics of Cooperative Societies

The principal characteristics or features of cooperative societies are as follow:

-

(i) *Voluntary Membership*

Membership to a cooperative society is voluntary. A peasant should assess his needs and accordingly take membership to a particular society. For instance, where a person does not have any cattle or sugarcane crop, why should he be member of a dairy or sugarcane growers' cooperative society. A cooperative society has definite objectives and those who find possibility of their objectives fulfilled should opt for membership.

(ii) *Body Corporate*

The cooperative society is registered under the cooperative societies Act being a corporate body like a company; it enjoys certain privileges which are

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<sup>4</sup> (44 T.C. 305, 308 (1965))

<sup>5</sup> Kroger, J, The New Frontier: Tax Implications of Limited Cooperative Associations, Fed. B.A. Sec. Tax'n Rep., Summer 2009, at 4, 10.)

subject to control and supervision of the state. A cooperative society enjoys perpetual succession. It has its own common seal. It can hold property in its name. It can enter into contract with other persons. It can file and defend suits. A cooperative society requires at least ten members to form a society.

(iii) *Service Motive*

A cooperative society is primarily setup for rendering service to its members in a particular in a particular field. A society is, however, not debarred to earn profit on the service provided to the non-members.

(iv) *Distribution of Profit*

The objective of cooperative organization is the provision of service to its members. Whatever little profit it earns is partly spent (10 % at the most) for the welfare of its members. The society also keeps one fourth one fourth of the profit as reserve.

(v) *Management*

Each member has vote in a cooperative society. The members elect the managing committee to carry on day to day affairs of the society. The managing committee carries out the policies as laid down in the general meeting of the society.

(vi) *Democratic Control*

In a cooperative society, a member has only one vote irrespective of a shares held by him. The principle of one man one vote makes the society truly democratic.

## **1.6 Significance of Cooperative Societies**

Cooperative societies play a vital role in ensuring that the nation's economic progress conforms to the requirements of democratic planning.

First, cooperative societies help farmers to pool their small and fragmented land holdings. This facilitates improvements on the land. It paves the way for intensive cultivation by using modern technology.

Second, cooperative societies provide support towards paddy milling, oil seed crushing, processing fruits, vegetables and so on. The farmers, gain through value addition to their produce.

Third, cooperative societies enable farmers to benefit from increased bargaining strength. By removing intermediaries, they help farmers to have a direct interaction with the consumer.

Fourth, cooperative societies are instrumental in arranging cheaper transportation, storage facilities and similar such services. Through pooling of experience, knowledge and by helping one another, cooperative societies help members to find solutions to their problems.

Fifth, cooperative societies ensure income source without negative externalities. As societies tie-up with purchasers' form cities on contract basis which generally last for longer periods, farmers are assured that their produce has been sold and corresponding monetary benefits are obtained. Members do not get exposed to vulnerability of market as the rates for purchase were fixed during contracts.

Sixth, the cooperative societies are to be registered under the cooperative societies Act and thus have defined accountability relating to accounts, procedures and policies towards the member farmers. Thus member can approach judiciary if he feels like his interests are compromised due to acts of society.

## **1.7 Summary**

In this chapter, you have been acquainting yourself with the basic understanding of the cooperative societies. Cooperatives have economic and social goals which they aim to accomplish by investing a proportion of trading profits back into their communities. They play a vital role in ensuring that the nation's economic progress. Cooperative societies have a range of democratic characteristics. Membership is open, meaning that anyone who satisfies certain non-discriminatory conditions may join. Economic benefits are distributed proportionally to each member's level of participation in the cooperative, for instance, by a dividend on sales or purchases, rather than according to capital invested.

## **1.8 Exercise**

Songambele group desires to establish business association according to the laws of Tanzania. The group members do not understand the differences between companies and cooperative societies. They were informed that you are pursuing bachelor of laws. They requested you to make them understand the difference between the two. Assist them by contrasting between the cooperative societies and companies as per the laws of Tanzania.

## 1.9 Review Questions

1. Define the term cooperative societies. Why people want form the cooperative societies?
2. Enumerate the nature of the cooperative societies.
3. What the principal characteristics of the cooperative societies?
4. Discuss the significance of the cooperative societies in promoting the social and economic development in the society.

## 1.10 References

International Cooperative Alliance, Statement on the Cooperative Identity, the Way Back Machine, 4 February 2012

Kroger, J, The New Frontier: Tax Implications of Limited Cooperative Associations, Fed. B.A. Sec. Tax'n Rep., Summer 2009, at 4, 10.)

## CHAPTER 02

### ORIGINS AND DEVELOPMENT OF COOPERATIVE SOCIETIES

## 2.0 Introduction

Through the cooperative societies, many lives have been transformed therefore improved standards of living. Cooperative societies are formed by individuals who have a common goal and come together to achieve their goals. Cooperative societies are inseparable from the human development. This chapter deals much on the historical growth and development of the

cooperative societies. It traces the origins and reasons for the growth of the cooperative societies.

## 2.1 Objectives

This chapter caters for the origin and development of the cooperative societies in the world and Tanzania in particular. Hence, at the end of this chapter, you should be able to: -

- Trace and account for origins of the cooperative societies in the world;
- Describe the historical development of the cooperative societies in Tanzania; and
- Identify and explain the major reasons which led to the growth and development of the cooperative societies.

## 2.2 Historical Development of Cooperative Societies Worldwide

Cooperation dates back as far as human beings have been organizing for mutual benefits. Tribes were organized as cooperative structures, allocating jobs and resources among each other, only trading with the external communities.<sup>6</sup>

In alpine environments, trade could only be maintained in organized cooperatives to achieve a useful condition of artificial roads such as Viamala in 1472. Pre-industrial Europe is home to the first cooperatives from an industrial context.<sup>7</sup>

The roots of the cooperative movement can be traced to multiple influences and extend worldwide. In the English-speaking world, post-feudal forms of cooperation between workers and owners that are expressed today as profit-sharing and surplus sharing arrangements, existed as far back as 1795.<sup>8</sup>

The key ideological influence on the Anglosphere branch of the cooperative movement, however, was a rejection of the charity principles that underpinned welfare reforms when the British government radically revised its Poor Laws in 1834.

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<sup>6</sup> Letter of Intent to build Road in Old German (1473), [http://www.hohenraetien.ch/HR-Web-2008/web-content/HR-08-Materialien/Viamala\\_Brief\\_vollstText.pdf](http://www.hohenraetien.ch/HR-Web-2008/web-content/HR-08-Materialien/Viamala_Brief_vollstText.pdf). (retrieved on 17<sup>th</sup> September 2018)

<sup>7</sup> Carrell, S, Strike Rochdale from the record books. The Co-op began in Scotland., The Guardian, 7 August 2007.

<sup>8</sup> Gates, J, The Ownership Solution, Penguin, London, (1998)

As both state and church institutions began to routinely distinguish between the deserving and undeserving poor, a movement of friendly societies grew throughout the British Empire based on the principle of mutuality, committed to self-help in the welfare of working people.<sup>9</sup>

Friendly Societies established forums through which one member, one vote was practiced in organisation decision-making. The principles challenged the idea that a person should be an owner of property before being granted a political voice.

Throughout the second half of the nineteenth century there was a surge in the number of cooperative organisations, both in commercial practice and civil society, operating to advance democracy and universal suffrage as a political principle.<sup>10</sup>

Friendly societies and consumer cooperatives became the dominant form of organization amongst working people in Anglosphere industrial societies prior to the rise of trade unions and industrial factories. It is reported that by the end of the 19<sup>th</sup> century, over 80% of British working age men and 90% of Australian working age men were members of one or more friendly society.<sup>11</sup>

Since the mid-19<sup>th</sup> century, mutual organisations embraced these ideas in economic enterprises, firstly amongst tradespeople, and later in cooperative stores, educational institutes, financial institutions and industrial enterprises.

The common theme is the principle that an enterprise or association should be owned and controlled by the people it serves, and share any surpluses on the basis of each member's cooperative contribution rather than their capacity to invest financial capital.<sup>12</sup>

The cooperative movement has been fuelled globally by ideas of economic democracy. Economic democracy is a socioeconomic philosophy that suggests an expansion of decision-making power from a small minority of corporate shareholders to a larger majority of public stakeholders.<sup>13</sup>

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<sup>9</sup> Cliff, T and Cluckstein, D, *The Labour Party: A Marxist History*, London: Bookmarks. (1988)

<sup>10</sup> Rothschild, J and Allen-Whitt, J. *The Cooperative Workplace*, Cambridge University Press (1986)

<sup>11</sup> Weinbren, D and James, B, *getting a Grip: The Roles of Friendly Societies in Australia and Britain Reappraised*, *Labour History*, (2005) Vol. 88

<sup>12</sup> Ridley-Duff, R. J, *Social Enterprise as a Socially Rational Business*, *International Journal of Entrepreneurial Behaviour and Research*, (2008), 14(5): 291-312.

<sup>13</sup> Rothschild, J and Allen-Whitt, J. *The cooperative workplace*, Cambridge University Press, Chapter 1. (1986)



## 2.3 Historical Development of Cooperative Societies in Tanzania

The history of cooperative in Tanzania has its roots that started from different periods of time. The beginning of the cooperative has initially started from colonial period, where the idea of cooperative came from the result of increasing of production of cash crops.

In the colonial ages, coffee was cultivated in Usambara Mountains by Missionaries who they were invited by Colonial Administration. Later on, the Missionaries shifted from Usambara to Kilema, Moshi Rural and Hai areas where the crop grew well, and also they found cheap labours.

In 1921, the District Commissioner of Moshi who known as Sir Charles Dundas posted to Moshi and encourage the local people to grow coffee along their home farms.

Later in 1922/23 peasants produced 40 tons of coffee, and the number of African growers was 3300, by that number it led to the formation of Kilimanjaro Native Planters Association (KNPA) which used to unite all coffee growers so as to control the sales of coffee, to promote and protect the economic interest of African farmers, to assist in uniform planting and protect the coffee against diseases, and to enable farmers to get money.

In 1930 D.C of Moshi and governor of Tanganyika invited Indians governor to visit Tanganyika and the main aim to visit was to advise the government on how to initiate a Cooperative Law. It was resulted to the formation of Cooperative Society Ordinance which passed in 1932 and cooperative movement in Tanganyika was built. The ordinance enabled registration of Cooperative in Tanganyika. This law stipulated that a society whose object is the promotion of economic interest of its members in accordance with Cooperative Principles may be registered under this ordinance.

Between 1932 and 1950 different cooperative societies was registered from different areas in Tanganyika, including the first cooperative in Hai known as "Kibong'oto Cooperative Society". During the time, eleven societies united and formed a secondary society in 1933, that's Kilimanjaro Native Cooperative Union (KNCU).

In 1950's different Cooperative Departments were established in order to promote welfare of the cooperative movement, through information, education training, and propaganda. Examples of these departments are East African Schools of Cooperative at Kabete, Kenya (1951), Training School for Primary Cooperative societies at Mzumbe, Morogoro (1957), creation of

Ministry of Cooperative and Social Welfare, and Sir George C. Kahama was appointed as a Minister.

After the independence of Tanganyika in 1961, 9<sup>th</sup> December, on 27<sup>th</sup> November, 1961 the Cooperative Union of Tanganyika was registered as an Apex Organization or Territorial society for all types of cooperatives in the country.

Also in the same year (1961) Saving and Credit Union were first registered in Moshi – Mawella Mission Credit Union and in Dar es Salaam, known as Kianga Credit Union.

By 1963 Moshi Cooperative College was established under Cooperative Development division, and courses were formerly run by Kabete Kenya transferred to this college (M.C.C)

By 1963 registered cooperative societies reached 857, and up to next year (1964) numbers of credit unions in the country were 18. Then they united and formed a secondary society for credit unions known as Saving and Credit Cooperative Union League of Tanganyika (SCCULT) with aim of providing education and training for member societies, to publish and print stationeries, to be agent for insurance, and to distribute stationeries and books to member societies.

In 1967 the Arusha Declaration was announced; which aimed to discipline leaders to nationalize all the major means of production and put them under the leadership of the workers and farmers and to do away with all forms of exploitation.

The cooperative Ordinance of 1932 was repealed by new Act and replaced it by 1968 Act which required multipurpose Cooperative societies to be formed.

In 1972 Agriculture policy statement was announced at Iringa, that Agriculture was the back born of the economy of Tanzania. This was because the economy of the country depended on cash crop production.

In 1973 a Presidential decree announced to say that by 1975 all Tanzania must be living in Ujamaa villages'. That 250 households should constitute a village. The maximum number for each village to be 600 households; each village to be registered as a multipurpose cooperative society.

In order to affect the above decree a new act was passed to repeal the 1968 Cooperative societies Act. This act was called Village and Ujamaa village Act of 1975. The main purpose of this Act was to implement the policy of Decentralization.

After 1976 cooperative movement reflected more government control than before. the primary societies in the rural areas were no members of the crop Authorities. The primary societies became buying posts. The member had no control or say over the crop authorities. At the national level, the government established the WASHIRIKA in 1979 which was an affiliate of the party. Its members were all primary societies.

In 1982 a new Act was passed to replace the 1968 Act and Village Act of 1975 was replaced by Local Government Act 1982. The aim of the Cooperative Act 1982 was to provide for the societies as instrument for the implementation of the policy of socialism and self-reliance to repeal the cooperative society act of 1982 and Washirika Act of 1979.

Up to 1980's, two or more villages could register a rural cooperative society under the 1982 Act. The membership was voluntary, and the cooperative activities operated under the umbrella of the registered rural cooperative society should be able to pay its own operating cost. It should not be burden to the agriculture marketing Exercise. A lot of unviable activities were established and interfered the income of the main Exercise which rendered many rural cooperatives to become unviable.

In 1991 government came up with a new Cooperative Act 1991 after some mistakes to happened in 1982 Act that it didn't take into account the importance of carrying out an economic survey before registering any rural cooperative society. So, the Cooperative Society Act of 1991 object was to correct the mistakes of 1982 Act and gave more powers to cooperative members. The Act aims at forming autonomous cooperative organization, controlled and managed by the members with less government interference.

The 1991 Cooperative Act intended to insure that members are given the freedom to own and control their cooperative and that only economically viable societies are registered and members have the final say on their cooperative, and the government remain as advises.

As a result, the Cooperative Act of 2003 was passed to replace the 1991 Act. The aim of the new Act (2003) was to implement the suggested improvements provided in the Cooperative Policy of 2002 which was in place.

The Co-operative Societies Act, 1991 and the Co-operative Societies Act, 2003. The latter was operational for almost a decade. Of latest, the same has been repealed and replaced by the Co-operative Societies Act, 2013

## **2.4 Reasons for the Growth of Cooperative Societies**

Throughout the history of the cooperative societies, the growth of cooperative societies in world and Tanzania in particular has been very rapid due to the following reasons: -

### *(i) Availability of common goals*

There has been an availability of common business ideas among many Tanzanians therefore leading to the formation of cooperatives. A good example is the public transport sector where majority of people aspire to conduct business. This has led to the formation of SACCOS (Savings and Credit Cooperative Society) like the UPATU group among others.

### *(ii) Employment*

Unemployment has been an economic problem in Tanzania for a long time as many young people are unemployed and therefore the need to create cooperative societies in order to benefit from their ideas. These small cooperative societies benefit by getting business starting capital from the Youth Enterprise Fund among other financial institutions. Through the societies many people have secured employment.

### *(iii) Cooperative Societies law*

The governing laws of cooperative societies has been favourable to many people compared to the other forms of business units. Members of a society can get loans at favourable interest rates and the amount of loan given is also favourable.

### *(iv) Government funding*

The government supports majority of cooperative societies especially youth societies by giving them monetary funds to boost their growth which affect the economy positively.

### *(v) Easy formation*

It's easy to form a cooperative society as few legal requirements are needed. The registrar of cooperative societies then issues a certificate of cooperative and the society is ready to start its business operations.

## **2.5 Summary**

In this chapter, you have learnt where the cooperative societies and their movement came from and how did they evolve to the contemporary phenomena. Co-operative societies are one of the forms of business unit that drive the economy of societies. Cooperative societies are inseparable from the human development. Cooperation dates back as far as human beings have been organizing for mutual benefits. The commencement of the cooperative has initially started from colonial period, where the idea of cooperative came from the result of increasing of production of cash crops.

## **2.6 Exercise**

Trace the historical growth and development of the cooperative societies in Tanzania.

## **2.7 Review Questions**

1. Describe the origins of the cooperative societies in the world.
2. Account for the growth and development of the cooperative societies in Tanzania
3. Discuss the reasons which led to the growth and development of the cooperative societies.

## **2.8 References**

Carrell, S, Strike Rochdale from the record books. The Co-op began in Scotland., The Guardian, 7 August 2007.

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## CHAPTER 03

### CLASSIFICATION OF COOPERATIVE SOCIETIES

#### 3.0 Introduction

Classification of the cooperative societies is a process and variant. It involves identifying the criteria and features through which the cooperatives may be classified. There are many types of cooperative societies. They are classified differently depending on the criteria applicable. Hence, this chapter deals with the process of categorising the cooperative societies. It identifies the criteria and types of the cooperative societies.

#### 3.1 Objectives

This chapter concerns itself with the process of the classification of the cooperative societies. Hence, at the end of this chapter, you should be able to: -

- Identify and explain the criteria of classification of the cooperative societies;
- Point out and describe types of the cooperative societies according to different criteria; and
- Distinguish the types of cooperative societies.

### 3.2 Classification of Cooperative Societies According to Affiliation

The cooperative societies may affiliate themselves depending on their natures and desire of their members. Hence, due to association of the cooperative societies, there are three types of the cooperative societies. These are: -

#### (i) *Primary Cooperative Societies*

These are registered societies whose members are individual persons or associations of individual persons and any cooperative body other than bodies registered under the Companies Act.<sup>14</sup>

The primary cooperative societies may form secondary cooperative societies.<sup>15</sup> They may be allowed to become member of federation when they are unable to join secondary societies. This may happen due to the nature and desire of members of the primary cooperative societies.<sup>16</sup>

The primary cooperative societies are formed to strive to raise the standard of living of their members. In addition, they may be established to facilitate the operations of their individual members. Moreover, they are made to provide services to their members such as supplying the agricultural inputs, collecting, processing and marketing of the products of their members. Furthermore, they are created to provide relevant information of their undertakings. Also, they are established to do any other things connected to the principal objects.<sup>17</sup>

#### (i) *Secondary Cooperative Societies*

These are registered societies whose memberships are open only to the primary societies which are their members.<sup>18</sup> They are registered societies which are formed by the primary societies. Hence the primary societies may join together to form a single society. They may form federation.<sup>19</sup>

The secondary cooperative societies are formed to facilitate the operations of their member primary societies. They also are to provide services to the primary cooperative societies. This has to be stipulated in the secondary cooperative societies bylaws. They can collect, process and sell the products

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<sup>14</sup> The Cooperative Societies Act, s 2

<sup>15</sup> Ibid, s 21 (1)

<sup>16</sup> Ibid, s 21 (2)

<sup>17</sup> The Cooperative Societies Act, s 23

<sup>18</sup> Ibid

<sup>19</sup> Ibid, s 21 (1)

of their member primary societies. They can provide consultancy services to their members. They may provide relevant information of their undertakings. They may do other things related to the stipulated objects.<sup>20</sup>

(ii) *Federations*

These are registered cooperative societies whose members are primary and secondary cooperative societies.<sup>21</sup> They are formed by either primary or secondary societies. They are higher in structure than the secondary cooperative societies.

The formed and registered federations provide, organise and supervise effective centralised services for the member societies and for the cooperative education and training and such other services which may be necessary or expedient to their members.<sup>22</sup>

Federations are also called tertiary cooperative societies whose object is to advocate and engage organs of state, the private sector and stakeholders on behalf of its members, and may also be referred to as a co-operative apex.

### **3.3 Classification of Cooperative Societies According to Registration Requirements**

The registration of the cooperative societies is regulated and determined by the law. The conditions and compliances are set by the laws. Hence, due to compliance of the registration of the cooperative societies, there three types of cooperative societies. These are: -

(i) *Registered Societies*

These are cooperative societies which have complied with the conditions and compliance procedure of the registration of the cooperative societies as specified by the law dealing with the cooperative societies.

They are granted with certificate of registration which is issued by the Registrar of the Cooperatives. The certificate of registration is the conclusive evidence that the cooperative society has been registered according to the laws dealing with cooperatives.

(ii) *Pre-Cooperative Societies*

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<sup>20</sup> Ibid, s 24

<sup>21</sup> Ibid, s 2

<sup>22</sup> The Cooperative Societies Act, s 25(1)



These are organisations of economic and social nature set up voluntarily by individual members having common interests and working together as a society.<sup>23</sup> They are only representatives to act for and on behalf of their members. The members have exclusive rights to their services.<sup>24</sup>

The pre-cooperative societies are formed by written declaration. This written declaration must be during the constituent meeting of the organisation. The constituent meeting has to be composed of at least five persons. The written declaration has to be submitted to the registrar of the cooperative societies.<sup>25</sup>

The pre-cooperative societies have to appoint the delegate in charge to represent it in all civil matters within the powers conferred on him by the regulations and discussions of the said societies.<sup>26</sup>

The pre-cooperative societies may be recognised and registered. Their recognition can be done through letter of recognition of the cooperative society formation. This letter is issued by the registrar of the cooperative societies. The registrar may register the pre-cooperative societies for a term not exceeding three years.<sup>27</sup>

The recognition can be done only when the conditions have been fulfilled. The conditions are appointment of the delegate in charge and officials of the pre-cooperative societies. The officials of the pre-cooperative societies must keep the simplified accounts and register of the members of the pre-cooperative societies.<sup>28</sup>

The pre-cooperative societies may be come cooperative societies when they fulfil the conditions of the registration of the cooperative societies. On the other hand, when they fail to fulfil the conditions for registration of the cooperative societies within three years, their letter of recognition may be cancelled.<sup>29</sup>

### (iii) Probationary Cooperative Societies

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<sup>23</sup> The Cooperative Societies Act, s 2

<sup>24</sup> Ibid, s 38(2)

<sup>25</sup> Ibid, s 38(1)

<sup>26</sup> Ibid, s 39(1)

<sup>27</sup> The Cooperative Societies Act, s 40(1)

<sup>28</sup> Ibid, s 39

<sup>29</sup> Ibid, s 40(2)

These are cooperative societies which have not fulfilled the compliance for registration.<sup>30</sup> The compliances for registration of the cooperative societies are specified within section 36 of the Cooperative Societies Act.<sup>31</sup>

They are cooperative societies whose registration have been deferred pending the compliance of the registration conditions. This done when the registrar issues the written notice of deferment of the registration of the cooperative societies to the persons who had applied for registration of the cooperative societies.<sup>32</sup>

The notice of deferment of the registration of the cooperative society entitled the cooperative society to operate as a registered society. However, this entitlement is conferred in respect of which the notice of deferment is issued. In addition, the notice of deferment can be subjected to conditions therein and from the laws.<sup>33</sup>

Moreover, the probationary society is the one which has been entitled to operate as a registered society. It shall be deemed to operate as body corporate with perpetual succession and common seal. The probationary society has the power to hold movable and immovable property, to enter into contracts, to institute and defends suit and other legal proceedings.<sup>34</sup>

This entitlement of the probationary society to operate as registered society shall be limited to period of two years. When the probationary society fails to meet the conditions of the registration of the cooperative society within the period of two years, the notice of deferment of the probationary society shall be cancelled.<sup>35</sup>

When the probationary society meets the conditions of registration within the period of two years, it shall be registered. When registered, the certificate of registration supersedes the notice of deferment of the probationary society. The notice of deferment shall be inoperative thereafter. The probationary society then after is deemed to be registered society since the date of issuance of the notice of deferment.<sup>36</sup>

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<sup>30</sup> Ibid, s 2

<sup>31</sup> Act No. 6 of 2013

<sup>32</sup> The Cooperative Societies Act, s 36(1)

<sup>33</sup> Ibid, s 36(2)

<sup>34</sup> Ibid, s 36(3)

<sup>35</sup> Ibid, proviso of s 36(3)

<sup>36</sup> The Cooperative Societies Act, s 36(4)

### 3.4 Sectoral Classification of Cooperative Societies

Cooperative Societies may be different depending on the sector they are specialised. Hence, according to the sector of specialisation, there are following types of cooperative societies: -

#### (i) *Agricultural Cooperative Societies*

These are cooperative societies whose principal object is business of supplying inputs for crop production, purchasing, processing, marketing and distribution of the agricultural produce.<sup>37</sup> Agricultural produce are products of farms, gardens, orchards, greenhouses, forestry, poultry, beekeeping, dairy, and fishing and includes animal and fish products.<sup>38</sup>

The agricultural cooperative societies produce, process or market agricultural products and supplies agricultural inputs and services to its members. They designed to deal with crop production, collecting, processing, marketing, distribution and any such other activities provided in the regulations and bylaws.<sup>39</sup>

#### (ii) *Financial Cooperative Societies*

These are cooperative societies which provide financial services to its members or a secondary co-operative that provides financial services to a primary co-operative.<sup>40</sup> They are non-bank financial institutions whose primary Exercise is to furnish secured and unsecured loans to households, small holder producers, small and micro-enterprises for rural and urban sectors.<sup>41</sup>

#### (iii) *Industrial Cooperative Societies*

These are associations of workers and craftsmen involved in cottage or village industries, who come to gather to undertake collective production, processing and marketing of goods manufactured by the members & provide them with the necessary services and assistance.<sup>42</sup>

These are registered societies whose principal objectives are manufacturing, making, servicing, assembling of industrial goods and whose members are

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<sup>37</sup> Ibid, s 2

<sup>38</sup> Ibid, s 2

<sup>39</sup> Ibid, s 27(a)

<sup>40</sup> The Cooperative Societies Act, s 27(b)

<sup>41</sup> Ibid, s 2

<sup>42</sup> Verma, N, Industrial Cooperative Societies, <https://www.slideshare.net/imfully/industrial-co-operative-societies>. (24<sup>th</sup> February 2013), (accessed on 19<sup>th</sup> September 2018)

respectively manufacturers, craftsmen, artisans, industrial workers and apprentices.<sup>43</sup> They are cooperative societies dealing with production, manufacturing and sales of goods.<sup>44</sup>

(iv) *Housing Cooperative Societies*

These are cooperative societies that deal with building, construction and housing programmes for members.<sup>45</sup> They provide housing to its members, or a secondary co-operative that provides technical sectoral services to primary housing co-operatives.<sup>46</sup>

They are formed when people come together to own and control the buildings they live in. They formed as corporate bodies, to which they pay a monthly amount to cover operating expenses. The housing cooperative societies own the land, the buildings, and any common areas. Members buy shares in their housing cooperative societies.<sup>47</sup>

(v) *Mining Cooperative Societies*

These are cooperative societies which deal with mining operations and mineral marketing.<sup>48</sup> These organizations have been getting increasing importance as powerful actors to support diggers through initiatives and policies to improve small-scale mining activities.<sup>49</sup>

They are cooperative societies created by miners which aim to support the exploitation, industrialization and commercialization of mining products. They are commonly linked to a network of contracts or coalition.<sup>50</sup>

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<sup>43</sup> Op-cit, s 2

<sup>44</sup> The Cooperative Societies Act, s 27(d)

<sup>45</sup> The Cooperative Societies Act, s 27(e)

<sup>46</sup> COFISA, Forms of Cooperatives, <https://www.cofisa.co.za/forms-of-co-operatives.html>. (accessed on 19<sup>th</sup> September 2018)

<sup>47</sup> Northcountry Cooperative Development Fund, Housing Cooperatives: An Accessible and Lasting Tool for Home Ownership, <http://www.uwcc.wisc.edu/pdf/HousingCoopsAccessibleLastingHomeOwnership.pdf>. (retrieved on 19<sup>th</sup> September 2018), at page 2

<sup>48</sup> Op-cit, s 27(i)

<sup>49</sup> Alves, W, Mining Cooperatives in Brazil: An Overview, *Procedia Manufacturing*, Volume 13, 2017, Pages 1026-1033

<sup>50</sup> Alves, W, Mining Cooperatives in Brazil: An Overview, *Procedia Manufacturing*, Volume 13, 2017, Pages 1026-1033

### 3.5 Classification of Cooperative Societies According to Undertakings

The undertakings of the cooperative societies may differ. Their difference makes different types of the cooperative societies. Hence, according to the nature of the undertakings, there are following types of the cooperative societies: -

#### (i) *Saving and Credit Cooperative Societies*

They are registered societies whose principal objects are to encourage thrift among their members and to create sources of credits to their members.<sup>51</sup> They are voluntary and mutual aid associations.

The major function of this type of society is to provide credit on personal security or on the basis of nominal security to its members, who are either cultivators, workmen or lower middle class people.

#### (ii) *Consumers Cooperative Societies*

These are cooperative societies that procure and distribute goods or commodities to its members and non-members and provides services to its members.<sup>52</sup> They are designed to deal with wholesale and retail business amongst members.<sup>53</sup>

The membership of these societies consists of agricultural workers and the middle class people who organise a consumer store. The members of the society earn their independent living and they are not supposed to depend on the consumer society.

The society only helps them in the better utilisation of their income. And, thus lowering their cost of living, correct weight, quality goods and reasonable prices are the chief aims of consumer's society.

#### (iii) *Producers' Cooperative Societies*

A producer's society is organised for the production of goods and services based upon common ownership and management by a group of workers to eliminate the employee-employer relationship.

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<sup>51</sup> The Cooperative Societies Act, s 2

<sup>52</sup> COFISA, Forms of Cooperatives, <https://www.cofisa.co.za/forms-of-co-operatives.html>. (accessed on 19<sup>th</sup> September 2018)

<sup>53</sup> The Cooperative Societies Act, s 27(c)

### **3.6 Summary**

In this chapter, you have learnt the classification and types of the cooperative societies. You learnt that classification of the cooperative societies is a process and variant. It involves identifying the criteria and features through which the cooperatives may be classified. Cooperative societies according to affiliation are primary, secondary and tertiary societies. Cooperative societies according to registration requirements are registered, pre-cooperative and probationary societies. Cooperative societies according to sector are agricultural, financial, housing, mining and industrial societies. Cooperative societies according to undertakings are producers', consumers' and credit and savings societies.

### **3.7 Exercise**

Discuss the types of the cooperative societies according to the Cooperative Societies Act, No. 6 of 2013

### **3.8 Review Questions**

1. List and explain the criteria applicable in the process of classifying the cooperative societies.
2. Differentiate the following terms
  - a. Primary and Secondary Societies
  - b. Pre-cooperative and probationary societies
  - c. Agricultural and industrial societies
  - d. Producers' and Consumers societies
3. What is probationary society? Explain the entitlements of the probationary societies.
4. What is pre-cooperative society? Describe the necessary conditions for the operation of the pre-cooperative society.
5. Discuss with relevant authorities the consequences of the failure to meet the registration requirements for the pre-cooperative society and probationary society.
6. Can a primary society be a member of the federation? Explain your answer with relevant authorities.

### 3.9 References

Alves, W, Mining Cooperatives in Brazil: An Overview, *Procedia Manufacturing*, Volume 13, 2017, Pages 1026-1033

COFISA, Forms of Cooperatives, <https://www.cofisa.co.za/forms-of-co-operatives.html>. (accessed on 19th September 2018)

Northcountry Cooperative Development Fund, Housing Cooperatives: An Accessible and Lasting Tool for Home Ownership, <http://www.uwcc.wisc.edu/pdf/HousingCoopsAccessibleLastingHomeOwnership.pdf>. (retrieved on 19th September 2018)

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## CHAPTER 04

### REGISTRATION OF COOPERATIVE SOCIETIES

#### 4.0 Introduction

Registration of the cooperative societies is the legal process. It deals with the procedures stipulated by the law governing cooperative societies. It deals with the requirements set by the provision of the laws dealing with the cooperative sector. This chapter shades light on the registration of the cooperative societies.

#### 4.1 Objectives

This chapter generally intends to impart understanding on the overview of the registration of the cooperative societies. Therefore, by end of this chapter you should be able to: -

- Define and explain relevance of the registration of the cooperative societies;
- Identify and explain the conditions for the registration of the cooperative societies;
- Describe the procedures of applicable in the registration of the cooperative societies;
- Evaluate the powers and limitations of the powers of the registrar of the cooperative societies in respect of the registration of the cooperative societies;
- Discuss the consequences of the registration of the cooperative societies; and
- Apply the knowledge and understanding of this chapter in solving the problems related to registration of the cooperative societies.

#### 4.2 Registration of Cooperative Societies

Registration of cooperative society deals with the official recording of the particulars of the cooperative society. It is the act of recording a name or



information of the cooperative society on an official list.<sup>54</sup> The official list for recording the particulars of the cooperative society is the register of the cooperative societies. This register is established by the Registrar of the cooperative societies.<sup>55</sup>

### 4.3 Conditions for Registration of Cooperative Societies

Registration of the cooperative societies is the legal process. It involves conditions which have been specified by the law. The conditions must be complied with to ensure the cooperative societies get registered.

(i) *Minimum number of persons*

The cooperative societies have to contain minimum number of the persons of which the society can be formed. The minimum number of the persons depends on the type of the cooperative society.

The number of persons required to form primary agricultural cooperative society is from twenty to thirty persons. Twenty or more persons are required to form the saving and credit cooperative societies. Ten or more are required to establish the other types of the cooperative societies.<sup>56</sup>

Ten or more persons are needed to establish specialised skill societies. The specialised skill societies are the cooperative societies whose memberships consist of specialised skills.<sup>57</sup> Specialised skills are expertise possessed by any person in such particular field. They may be described in the regulations.<sup>58</sup>

The secondary societies that deal with agriculture, marketing or financial services cannot be registered unless they have twenty members. The members must be registered societies.<sup>59</sup> Nonetheless, the specialised secondary societies may be registered with five members as registered societies.<sup>60</sup> Federation shall be registered unless it has ten members who are registered societies.<sup>61</sup>

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<sup>54</sup> Online Cambridge Dictionary  
<https://dictionary.cambridge.org/dictionary/english/registration>. (accessed on 19<sup>th</sup> September 2018)

<sup>55</sup> The Cooperative Societies Act, s 2

<sup>56</sup> The Cooperative Societies Act, s 20(1)

<sup>57</sup> Ibid, s 29(7)

<sup>58</sup> Ibid, s 2

<sup>59</sup> The Cooperative Societies Act, s 29(2)

<sup>60</sup> Ibid, s 29(3)

<sup>61</sup> Ibid, s 29(4)

(ii) *Minimum qualifications for persons to form cooperative societies*

The law specifies not only minimum number of the person to form the cooperative society so as to get registered but also minimum qualification of the of those persons to form the cooperative society.

The minimum qualifications for the person to form the cooperative societies are many. First, a person must be of 18 years of age or above to be member of the cooperative society.<sup>62</sup> The person of 15 years of age may be a member of the agricultural cooperative society. However, such person is incapable of being member of board of the cooperative society until reaches 18 years old.<sup>63</sup> A person who has not attained 15 years of age may be member of a school society.<sup>64</sup> The school cooperative society is the cooperative society whose membership is restricted to the pupils of a school.<sup>65</sup>

Second, the person must be of sound mind.<sup>66</sup> Third, the person must undertake trade or occupation relevant to the cooperative society's object.<sup>67</sup> Fourth, the person has the common need which the society seeks to satisfy.<sup>68</sup> Fifth, the person must be capable of paying fees and acquiring shares.<sup>69</sup>

(iii) *Paid Up shares or Minimum Capital*

The saving and credit cooperative societies must have paid up its shares to be registered as cooperative societies. Also the saving and credit cooperative societies must meet the minimum capital requirements to be registered as cooperative societies.<sup>70</sup> The operations and regulations of the Saving and Credit Cooperative Societies shall be subjected to the financial laws.<sup>71</sup>

(iv) *Proposed bylaws*

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<sup>62</sup> Ibid, s 20(2)(a)

<sup>63</sup> Ibid, s 20(3)

<sup>64</sup> Ibid, s 20(4)

<sup>65</sup> Ibid, s 2

<sup>66</sup> The Cooperative Societies Act, s 20(2)(a)

<sup>67</sup> Ibid, s 20(2)(b)

<sup>68</sup> Ibid, s 20(2)(c)

<sup>69</sup> Ibid, s 20(2)(d)

<sup>70</sup> Ibid, s 29(5)

<sup>71</sup> Ibid, s 29(6)

These are the rules and regulations enacted by an association or a corporation to provide a framework for its operation and management. Bylaws may specify the qualifications, rights, and liabilities of membership, and the powers, duties, and grounds for the dissolution of an organization.

Hence, cooperative society cannot be registered unless there is proposed by laws which govern the operation and management of the cooperative societies. Proposed bylaw is the mandatory requirement for registration of the cooperative society.<sup>72</sup>

(v) *Feasibility Study Report*

This a comprehensive report that examines in detail the five frames of analysis of a given project. It summarizes results of the analysis and evaluations conducted to review the proposed solution and investigate project alternatives for the purpose of identifying if the project is really feasible, cost-effective and profitable.<sup>73</sup>

The registration of the cooperative societies demands the report of the feasibility study. The report indicates viability of the society.<sup>74</sup> The goal is to determine whether the societies should go ahead, be redesigned, or else abandoned altogether.

#### **4.4 Application for Registration of Cooperative Societies**

Registration of the cooperative societies cannot be done *suo motu* by the registrar of the cooperative societies that is it can only be done upon application of the members of the cooperative society or representative of the members of the cooperative society. The application must consider the following requirements: -

(i) *Prescribed form*

The application for registration of the cooperative society has to be made in the prescribed form. The prescribed form has to be signed by the qualified members of the cooperative societies for the primary cooperative societies.<sup>75</sup>

(ii) *Signature of Qualified or Authorised Persons*

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<sup>72</sup> The Cooperative Societies Act, s 30(1)(a)

<sup>73</sup> Matson, J, Cooperative Feasibility Study Guide, United States Department of Agriculture, Rural Business-Cooperative Service. October 2000.

<sup>74</sup> The Cooperative Societies Act, s 30(1)(b)

<sup>75</sup> The Cooperative Societies Act, s 30(2)(a)

In addition, the prescribed form must be signed by authorised persons of at least twenty registered primary societies except for specialised secondary societies.<sup>76</sup> Federation application form must be signed by authorised persons of at least ten registered secondary societies or primary societies.<sup>77</sup>

(iii) *Attachments*

Moreover, the application form for registration of the cooperative societies must be accompanied by four copies of the proposed bylaws, feasibility study report or project indicating the viability of the society and other information required by the registrar.<sup>78</sup>

#### **4.5 Consideration of Application for Registration of Cooperative Societies**

When application has been made to the registrar of the cooperatives, the consideration must be made upon it thoroughly before deciding whether to grant registration or refuse the registration of the cooperative societies.

The consideration of the application must be done by the registrar of the cooperative societies. The consideration of application must be done within sixty days since the application date. The consideration of application focuses on the contents of the application and their alignment to the conditions for registration of the cooperative societies.<sup>79</sup>

The registrar must be satisfied on the sufficiency of volume of business from members to cover the costs. In addition, the registrar must be satisfied on the whether there are proper provisions for financing the cooperative society to be registered.<sup>80</sup>

The registrar upon consideration of the application may require further information from the applicants.<sup>81</sup> The registrar may require the applicants to amend the bylaws so as to conform with the directions given.<sup>82</sup>

The registrar has been vested with powers after consideration of the application for the registration of the cooperative societies. First, the registrar

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<sup>76</sup> Ibid, 30(2)(b)

<sup>77</sup> Ibid, s 30(2)(c)

<sup>78</sup> Ibid, s 30(1)

<sup>79</sup> The Cooperative Societies Act, s 31(1)

<sup>80</sup> Ibid, s 31(5)

<sup>81</sup> Ibid, s 31(2)(b)

<sup>82</sup> Ibid, s 31(3)

may register a cooperative society and issue certificate of registration<sup>83</sup> when the conditions for registrations have been met.

Second, the registrar may refuse the application and inform the applicants in writing stating the reasons for the refusal.<sup>84</sup> The registrar may do so if satisfied that the applicant has failed to meet the prescribed requirements for the registration of the cooperative societies.<sup>85</sup>

Applicant who is aggrieved by the refusal of registration of the cooperative societies may appeal to the minister within sixty days since date of decision of refusal.<sup>86</sup> The minister within thirty days from the date of appeal has to determine the appeal.<sup>87</sup>

Third, the registrar may defer the registration of the cooperative society pending the compliance with the directions or compliance requirements.<sup>88</sup>

#### **4.6 Effects of Registration of Cooperative Societies**

Registration of the cooperative societies has various legal implications. These are: -

##### *(i) Certificate of Registration*

The certificate of the registration of the cooperative society shall be issued when the cooperative society has been registered. It is issued by the registrar of the cooperative societies.<sup>89</sup>

The certificate of registration of the cooperative societies must be signed by the registrar. The signed certificate of registration is conclusive evidence that cooperative society has been duly registered. However, the presumption can be rebutted when it is proved that the registration of the cooperative society has been cancelled.<sup>90</sup>

##### *(ii) Certified Copy of bylaws*

When the cooperative society has been registered, the certified copy of the bylaws must be issued. These bylaws must be certified by the registrar of

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<sup>83</sup> The Cooperative Societies Act, s 31(2)(a)

<sup>84</sup> Ibid, s 31(2)(c)

<sup>85</sup> Ibid, s 32(1)

<sup>86</sup> Ibid, s 32(2)

<sup>87</sup> Ibid, s 32(3)

<sup>88</sup> Ibid, s 31(2)(d)

<sup>89</sup> The Cooperative Societies Act, s 33

<sup>90</sup> Ibid, s 34

societies. The certified copy of bylaws must be issued by the registrar of the cooperative societies. The certification of the bylaws of the cooperative society must be preceded by approval of the same by the registrar of the cooperative societies.<sup>91</sup>

(iii) *Body corporate*

The registration of the cooperative society renders the cooperative society a body corporate by the name under which it is registered. This makes the cooperative society a corporate body with perpetual succession and common seal. The body corporate cooperative society has power to own property, enter contracts, institute and defend suits and other legal proceedings.<sup>92</sup>

(iv) *Non-removal of Records of the Society*

The records, papers and seal of the registered cooperative societies are not required to be moved from the registered premises of the registered cooperative societies. However, the removal can be done when the provisions of the law have been complied fairly and squarely.<sup>93</sup>

(v) *Preparation and submission of reports*

When the registrar effects the registration of the cooperative societies, he is required to prepare and submit the reports of the registered cooperative society to the Tanzania Cooperative Development Commission.<sup>94</sup>

#### **4.7 Summary**

In this chapter, you have learnt that registration of the cooperative societies is the legal process. It covers the conditions and procedures prescribed by the law governing the registration of the cooperative societies. You have learnt that registration is the official recording of the particulars of the cooperative society in the register of the cooperative societies. The registration requires certain conditions to be met such as minimum number of members, minimum qualification of the members, bylaws, feasibility study report, paid up shares or minimum capital requirements. Registration begins with the application to the registrar. The registrar has the power to register or refuse registration. This power is appealable to the minister.

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<sup>91</sup> Ibid, s 33

<sup>92</sup> The Cooperative Societies Act, s 35(1)

<sup>93</sup> Ibid, s 35(2)

<sup>94</sup> Ibid, s 35(3)

#### **4.8 Exercise**

Ujamaa Jitegemee group which consists of the 15 members who are peasants is not aware on how to go about the registration of their association as the cooperative society. Assist them on what it takes to get their association registered.

#### **4.9 Review Questions**

1. What is registration of cooperative society? Is there any relevance of the registration of the cooperative society? Explain your answer with vivid examples.
2. Identify and explain the conditions for the registration of the cooperative societies in Tanzania. Support your explanation with relevant authorities.
3. Application process for the registration of the cooperative societies involves mandatory requirements. Substantiate with legal authorities.
4. Discuss the powers of the registrar of the cooperative societies in respect of the registration of the cooperative societies. Back up your discussion with relevant authorities.
5. Describe the consequences of the registration of the cooperative societies with relevant authorities.
6. Ujamaa Jitegemee Group members have applied for registration of their association as cooperative society. The registrar has refused to grant registration of the same. What is remedy available to the members of the Ujamaa Jitegemee Group? Support your answer with relevant authorities.

#### **4.10 References**

Matson, J, Cooperative Feasibility Study Guide, United States Department of Agriculture, Rural Business-Cooperative Service. October 2000.

Online Cambridge Dictionary

<https://dictionary.cambridge.org/dictionary/english/registration>. (accessed on 19<sup>th</sup> September 2018)

The Cooperative Societies Act, Act No. 6 of 2013

## CHAPTER 05

### MEMBERSHIP TO COOPERATIVE SOCIETIES

#### 5.0 Introduction

Membership of cooperative societies is crucial aspect. Cooperative societies without members are not cooperative societies. Membership of the cooperative society is governed by the laws. The law prescribes the who can be members and their qualification to become members of the cooperative societies. What are members of the cooperative societies and how do they become members are crucial questions to be discussed in this chapter. henceforth, this chapter entails all aspects related to membership of the cooperative societies.

#### 5.1 Objectives

This chapter deals with the membership of the cooperative societies. Hence, at the end of this chapter, you should be able to: -

- Define and explain the member and membership of cooperative societies;
- Describe the legal qualifications for the person to become the member of the cooperative society;
- Describe the persons that are disqualified to become members of the cooperative society; and
- Point out and describe the rights, duties and liabilities of the members of the cooperative societies.

#### 5.2 Member of Cooperative Society

Member of cooperative society is a person who belongs to the registered cooperative society. The relationship between members of the cooperative society is mutual and voluntary.<sup>95</sup>

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<sup>95</sup> COFISA, Forms of Cooperatives, <https://www.cofisa.co.za/forms-of-co-operatives.html>. (accessed on 19th September 2018)



A member of the cooperative society is a person or registered society joining in the application for the registration of a society. This includes a person or registered society admitted to membership after registration. The admission to membership after registration is governed by the bylaws and rules of the particular registered society.<sup>96</sup>

### **5.3 Qualification of Members of the Cooperative Societies**

The membership to the cooperative society is open to all persons who possess qualifications for membership.<sup>97</sup> The law specifies minimum qualification of the of those persons to form the cooperative society.

The minimum qualifications for the person to form the cooperative societies are many. First, a person must be of 18 years of age or above to be member of the cooperative society.<sup>98</sup> The person of 15 years of age may be a member of the agricultural cooperative society.<sup>99</sup> However, such person is incapable of being member of board of the cooperative society until reaches 18 years old. A person who has not attained 15 years of age may be member of a school society. The school cooperative society is the cooperative society whose membership is restricted to the pupils of a school.

Second, the person must be of sound mind.<sup>100</sup> A person of unsound mind cannot become the member of the cooperative societies. This is because a person of unsound mind is incapable of understanding what he or she is doing and unable to make rational judgment.

Third, the person must undertake trade or occupation relevant to the cooperative society's object. The cooperative societies are formed by persons who have relation in their undertakings. Hence person becomes member of the particular cooperative society if his undertakings are relevant to the objects of the cooperative society.

Fourth, the person has the common need which the society seeks to satisfy.<sup>101</sup> It is the commonness of the needs of the person that pool them together to form associations which they can register as cooperative society. Hence a person must have common need with what the cooperative society seeks to satisfy to its members.

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<sup>96</sup> The Cooperative Societies Act, s 2

<sup>97</sup> The Cooperative Societies Regulations, reg. 28(1)

<sup>98</sup> The Cooperative Societies Regulations, reg. 28(2)

<sup>99</sup> Ibid, reg. 28(4)

<sup>100</sup> Ibid, reg. 28(2)

<sup>101</sup> Ibid, reg. 28(3)

Fifth, the person must be capable of paying fees and acquiring shares.<sup>102</sup> Formation and operations of the cooperative societies depends much on the desire and ability of the members of the said cooperative societies. Henceforth, the person should have capacity of the paying the fees and acquiring the shares as stipulated by the regulations and bylaws of the cooperative societies.

#### **5.4 Who cannot be member of Cooperative Society**

The following have been prescribed by the law that they cannot become the members of the cooperative societies.

(i) *Incorporated or Registered Companies*

The companies which have incorporate under the Companies Act have no right to become the members of the cooperative societies. Nevertheless, the companies incorporated or registered under the Companies Act may become member of the cooperative societies under two conditions.

First, there must be written permission of the registrar of the cooperative societies. Second, membership of the company to the registered society shall be subjected to the regulation of the cooperative societies.<sup>103</sup>

On the other hand, the company can decide to change into cooperative society. This has to be done when there is special resolution of the company stipulating the conversion as well as there must be prior approval of the registrar.<sup>104</sup>

(ii) *Unincorporated body of persons*

The unincorporated body of persons are not entitled to become members of the cooperative societies. Nonetheless, they may be member of the cooperative societies when there is written permission of the registrar of the societies as well as subjected to the cooperative societies regulations.<sup>105</sup>

#### **5.5 Rights of Members of Cooperative Societies**

A right is what a member of a co-operative deserves to be given, or is entitled to get, enjoy or feel. In order to enjoy these rights, a member must have paid the necessary membership fees and purchased at least one

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<sup>102</sup> The Cooperative Societies Regulations, reg. 28(2)

<sup>103</sup> The Cooperative Societies Act, s 49(1)

<sup>104</sup> The Cooperative Societies Act, s 49(2)

<sup>105</sup> Ibid, s 49(1)

minimum share.<sup>106</sup> The rights of the member of cooperative societies must be provided by the bylaws of the cooperative societies.<sup>107</sup>

(i) *Right to Attend General Meeting*

Every member of the registered cooperative society is entitled to attend and participate in the general meeting of the cooperative societies.<sup>108</sup> Affairs of the cooperative societies are discussed and planned in the general meeting. Hence the member has the right to attend in those meeting so as to take part in decision making relating to the affairs of the cooperative societies.<sup>109</sup>

The right to attend in general meeting can be done either in person or through a delegate of the member of the cooperative society. This has to be stipulated in the bylaws of the cooperative societies. Delegate shall have the right to vote as it is entitled to the member of the cooperative society.<sup>110</sup>

(ii) *Right to Vote and be votes for*

Every member of the registered cooperative societies is entitled to have one vote.<sup>111</sup> Right to vote is exercised during decision making of the cooperative societies. The right to vote extends to recording of the such vote in regard of any matter for decision in the cooperative societies.<sup>112</sup>

(iii) *Right to hold shares*

The member of the registered cooperative society has the right to hold shares of the cooperative societies.<sup>113</sup> Individual members of the cooperative societies are entitled to hold not more than one fifth of the share capital of the cooperative society. A member which is registered society may hold more than one fifth of the share capital of the cooperative society.<sup>114</sup>

(iv) *Right to transfer shares*

The member of the registered cooperative society has the right to transfer shares held by him or her in the said cooperative society. However, this right has limitations. First, the member may be entitled to transfer shares if he has

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<sup>106</sup> The Cooperative Societies Regulations, reg. 31(4)

<sup>107</sup> Ibid, reg. 31(1)

<sup>108</sup> Ibid, reg. 31(2)(b)

<sup>109</sup> The Cooperative Societies Act, s 42

<sup>110</sup> Ibid, proviso of s 42

<sup>111</sup> The Cooperative Societies Regulations, reg. 31(2)(a)

<sup>112</sup> The Cooperative Societies Act, s 42

<sup>113</sup> The Cooperative Societies Regulations, reg. 31(2)(g)

<sup>114</sup> The Cooperative Societies Act, s 45(1)

held the shares for not less than two years.<sup>115</sup> Second, the member is entitled to transfer his or her shares to another member or the society or the person whose application for membership has been accepted by the board.<sup>116</sup>

Third, the member may be entitled to transfer share if he or she has ceased to be member of the cooperative societies<sup>117</sup> due to undertaking trade or occupation irrelevant to objects of the society<sup>118</sup>, has no common need with the society<sup>119</sup> and incapable of paying fees<sup>120</sup>.

The right to transfer shares of the member of the cooperative society becomes valid and effective when the transfer and name of the transferee are registered. The registration shall be on directions of the board. In addition, the right to transfer becomes valid and effective when the valuation of such transfer has been done.<sup>121</sup>

The right to transfer shares of the members of the financial cooperative societies has to be done according to the prescribed procedures. These procedures have to be laid out by the bylaws and rules of the financial cooperative societies.<sup>122</sup>

## **5.6 Duties of Members of Cooperative Societies**

### *(i) Payment of Shares, fees and other dues*

The members of the cooperative societies are duty bound to pay the shares, entrance fees and other dues as stipulated by the bylaws and rules of the cooperative societies.<sup>123</sup> Failure to pay fifty or more of the shares, entrance fees and other dues, the member cannot exercise any legal rights.<sup>124</sup>

On the other hand, the unpaid shares have to be paid within 24 months since the date of payment of initial shares. The payment of the unpaid shares shall be determined by the bylaws of the cooperative societies.<sup>125</sup>

### *(ii) Pay debts of the cooperative society*

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<sup>115</sup> The Cooperative Societies Act, s 45(2)(a)

<sup>116</sup> Ibid, s 45(2)(b)

<sup>117</sup> Ibid, s 45(2)(c)

<sup>118</sup> Ibid, s 20(2)(b)

<sup>119</sup> Ibid, s 20(2)(c)

<sup>120</sup> Ibid, s 20(2)(d)

<sup>121</sup> Ibid, s 45(3)

<sup>122</sup> The Cooperative Societies Act, s 45(4)

<sup>123</sup> The Cooperative Societies Regulations, reg. 33(2)(b)

<sup>124</sup> The Cooperative Societies Act, s 41(1)

<sup>125</sup> Ibid, s 41(2)

The member of the cooperative society is duty bound to pay the debts of the cooperative society through the unpaid shares prescribed by the bylaws of the cooperative society and regulations.<sup>126</sup>

*(iii) Participation in the activities of the cooperative society*

The member of the cooperative society is required to participate in the economic activities undertaken by the cooperative societies.<sup>127</sup> It is the economic activities that make them together hence each member must participate.

*(iv) Compliance of the Laws and Bylaws*

The formation, operation and dissolution of the cooperative societies are governed by the laws of the land. Hence members of the cooperative societies are required to comply not only with the Cooperative Societies Act, Regulations but also rules and bylaws made by the cooperative societies.<sup>128</sup>

## **5.7 Liabilities of Member of Cooperative Societies**

The liability of the cooperative societies is limited. The liability of both primary, secondary, joint enterprise and federation shall be limited.<sup>129</sup> The liability of the society does not extend to the assets of the members of the said cooperative society.

On one hand, the liability of member of the cooperative society shall be liability limited by shares if there are unpaid shares held by him or her in the said cooperative society.<sup>130</sup> Hence members will be required to pay their unpaid shares but subscribed shares in case the cooperative societies fail to discharge its debts and liabilities.

On the other hand, the liability of the member shall be liability by guarantee when the amount of liability of member is expressed to be greater than nominal value of shares held by him. The amount expressed has to state that the liability of such member shall extend to such greater amount. This has to be expressed in the bylaws of the cooperative society.<sup>131</sup>

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<sup>126</sup> The Cooperative Societies Regulations, reg. 33(2)(f)

<sup>127</sup> The Cooperative Societies Regulations, reg. 33(2)(c)

<sup>128</sup> Ibid, reg. 33(2)(a)

<sup>129</sup> The Cooperative Societies Act, s 41(4)

<sup>130</sup> Ibid, s 46(1)

<sup>131</sup> The Cooperative Societies Act, s 46(2)

The liability of the past member of the societies shall continue for a period prescribed by the bylaws from the date of his ceasing to be a member. This liability shall be for the debt of the registered society existed at the time of his ceasing to be a member of the said society.<sup>132</sup>

However, the financial liability of such a member shall cease if the first audit of accounts after ceasing to be a member discloses that the cooperative society is solvent. This occurs in case of the cooperative society with limited liability.<sup>133</sup>

The estate of the deceased member shall be liable for a period of one year from time of death of the member for the debt of registered society. This shall be so if the debts of the registered society existed at the time of his or her death.<sup>134</sup>

Nonetheless, the liability of the past or deceased member of the registered society shall not continue if the registered society is wound up immediately after period of two years after cessation of membership or death of the member. However, this extends until the completion of the liquidation proceedings of the registered society. But the debt shall continue to the debt existed at the time of death of the members or ceasing to be a member.<sup>135</sup>

## **5.8 Summary**

In this chapter, you have learnt about memberships. You have learnt that membership is legal matter as it prescribes the qualifications and procedures. Being a member entails entitlements, duties and liabilities.

## **5.9 Exercise**

Upendo Limited Company wants to become member of the Uhuru Cooperative Society, stationed at Songea Municipal. Some members of the Uhuru Cooperative Society argue that a limited company cannot be member of the cooperative society while other saying the limited company can be member of the cooperative society. They have both come to you for legal opinion on their issue. Provide legal opinion.

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<sup>132</sup> Ibid, s 47

<sup>133</sup> Ibid, proviso s 47

<sup>134</sup> Ibid, s 48(1)

<sup>135</sup> The Cooperative Societies Act, s 48(2)

### **5.10 Review Questions**

1. What do you understand by the term a member of the cooperative society? Explain what it takes a person to become a member of the cooperative society.
2. Discuss the rights and duties of the members of the cooperative societies. Support your discussion with relevant authorities.
3. Argue with authorities whether the company can be a member of the cooperative society.
4. The liability of member of the cooperative society shall be limited. Substantiate the statement with relevant authorities.
5. Discuss the nature, scope and the limitation of the right to transfer shares of the members of the cooperative societies.
6. The right of the members to hold shares of the cooperative societies is absolute. Discuss the statement with relevant authorities.

### **5.11 References**

COFISA, Forms of Cooperatives, <https://www.cofisa.co.za/forms-of-co-operatives.html>. (accessed on 19th September 2018)

Northcountry Cooperative Development Fund, Housing Cooperatives: An Accessible and Lasting Tool for Home Ownership, <http://www.uwcc.wisc.edu/pdf/HousingCoopsAccessibleLastingHomeOwnership.pdf>. (retrieved on 19th September 2018)

The Cooperative Societies Act, Act No. 6 of 2013

The Cooperative Societies Regulations, GN 272 of 2015

## CHAPTER 06

### ADMINISTRATION AND MANAGEMENT OF COOPERATIVE SOCIETIES

#### 6.0 Introduction

The effective operation of the cooperative societies depends inter alia on the effectiveness of the management and administration of the said cooperative societies. Hence, administration and management is very crucial towards development of the cooperative societies. This chapter shades light on the principles and mechanism of the administration of the cooperative societies.

#### 6.1 Objectives

This chapter generally intends to impart understanding on the principles and mechanism of the governance of the cooperative societies. Hence, at the end of this chapter, you should be able to: -

- Define and explain the concepts of the administration and management of the cooperative societies;
- Identify and describe the principles which govern the administration and management of the cooperative societies;
- Analyse the mechanisms applicable in the administration of the cooperative societies; and
- Analyse the management of the cooperative societies and evaluate the legal frameworks governing the management of the cooperative societies.

#### 6.2 Principles of Cooperative Societies

Cooperatives operate according to seven basic principles. Six were drafted by the International Cooperative Alliance (ICA) in 1966, based on guidelines written by the founders of the modern cooperative movement in England in 1844. In 1995, the ICA restated, expanded and adopted the 1966 principles to guide cooperative organizations into the 21<sup>st</sup> Century.

*Voluntary and Open Membership*



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

#### *Democratic Member Control*

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

#### *Owner Economic Participation*

Owners contribute equitably to, and democratically control, the capital of the cooperative. The economic benefits of a cooperative operation are returned to the Owners, reinvested in the co-op, or used to provide Owner services. You control the capital.

#### *Education, Training and Information*

Cooperatives provide education and training for Owners so they can contribute effectively to the development of their cooperatives. They inform the general public about the nature and benefits of cooperation. You can develop yourself into the consumer you want to be.

#### *Cooperation Among Cooperatives*

Cooperatives serve their Owners most effectively and strengthen the cooperative movement by working together through local, regional, national and international structures. You are more successful when you cooperate with others who know how to cooperate.

#### *Concern for the Community*

While focusing on Owner needs, cooperatives work for the sustainable development of their communities through policies accepted by their Owners. You can do something for the community even as you keep succeeding.

#### *Autonomy and Independence*

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

### **6.3 Management of Cooperative Societies**

Management of the cooperative societies consists of the interlocking functions of creating corporate policy and organizing, planning, controlling, and directing a cooperative society's resources in order to achieve the objectives of that policy. The management of the cooperative societies is very crucial to the operation and development of the cooperative societies.

The board who have the power and responsibility to make decisions and oversee an enterprise. The size of management can range from one person in a small organization to hundreds or thousands of managers in multinational companies.

The cooperative societies shall be managed by the board of the cooperative societies.<sup>136</sup> Board is the governing body of the registered society to whom management of its affairs are entrusted.<sup>137</sup>

The members of the board of the cooperative societies are elected by the members of the cooperative societies at the general meeting.<sup>138</sup> The election has to be free and democratic. No person shall be elected to the board by illegal means.<sup>139</sup> Illegal means implies the acts coercion, corruption, intimidation or nepotism.<sup>140</sup>

To ensure effectiveness of the functioning of the board members, they have to attend seminars on cooperative management. The seminar has to be organised by the respective cooperative society. The board members must attend such seminar before assuming the responsibilities.<sup>141</sup>

In addition, no board member is allowed to interfere with responsibilities reserved for the executive staff of the cooperative society. The board

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<sup>136</sup> The Cooperative Societies Act, s 68(1)

<sup>137</sup> Ibid, s 2

<sup>138</sup> The Cooperative Societies Act, Second Schedule, rule 7

<sup>139</sup> Ibid, rule 8(1)

<sup>140</sup> Ibid, rule 8(4)

<sup>141</sup> Ibid, rule 13

members have to observed their roles and responsibilities. The roles and responsibilities may be stipulated in the rules and bylaws.<sup>142</sup>

The board of the cooperative societies is accountable to the general meeting of the cooperative societies. The general meeting is general assembly of the cooperative societies. The general meeting may suspend, remove or elect board members of the cooperative societies.<sup>143</sup>

#### **6.4 Cooperative Societies Meetings**

The general meeting shall be held at least once in a year.<sup>144</sup> However, the registrar may call special general meeting. The call shall state place and time of the general meeting. Any other person may summon the special general meeting. However, he or she must be authorised by the registrar.<sup>145</sup>

There are several different types of general meeting.

##### *a. The First General Meeting*

This meeting takes place in every cooperative but once. Its role is to inaugurate the functioning of the cooperative, to discuss and authorize the list of first members as well as the bylaws and other regulations of the cooperative. It must approve the financial and operational plan for the first year's activities and elects all the institutions of the cooperative.<sup>146</sup>

This first meeting must be held within two months after receiving certificate of registration. However, the registrar of the cooperative societies may decide to extend the time for which this first meeting must be held. All members of the cooperative society have the right to be present and vote in this general meeting.<sup>147</sup>

##### *b. The Annual General Meeting*

The role of this meeting is to assess all aspects of the past year's activities and to approve financial, social and developmental plans for the following year, as well as to elect continuing officers to the various bodies of the cooperative organization. The annual general meeting is never presided over

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<sup>142</sup> Ibid, rule 12

<sup>143</sup> The Cooperative Societies Act, Second Schedule, rule 1(1)(a)

<sup>144</sup> The Cooperative Societies Act, Third Schedule, rule 1(2)

<sup>145</sup> Ibid, rule 1(3)(a)

<sup>146</sup> Ibid, reg. 41(2)

<sup>147</sup> The Cooperative Societies Regulations, reg. 41(1)

by the Manager of the cooperative, but rather by a special ad-hoc committee, responsible for all the sessions.

This annual general meeting must be held once in each year.<sup>148</sup> However, it may be held within nine months after the closure of preceding financial year of the cooperative society.<sup>149</sup>

In this annual general meeting, members of the cooperative society may discuss amendments, annual financial statements, declaration of dividends, annual estimates budget, cooperative society's corporate strategic plan, election of committees, Honoria, allowances, appointment of auditors and other related matters.<sup>150</sup>

#### *c. The Extraordinary General Meeting*

This meeting is called only in the event when the following subjects are to be discussed amendment to the bylaws, acceptance of new members, expulsion of members and dissolution of the cooperative.<sup>151</sup>

Decisions of the extraordinary general meeting require a special majority of 75% of the members present, whereas at other general meetings a simple majority is sufficient.

#### *d. The Special General Meeting*

Whenever the need arises during the year, this general meeting may be called. It is presided over by the registrar of the cooperative societies or any authorised person. Though it may be summoned upon request or demand of the management, the control committee, the audit union, the registrar of cooperatives or one third of the members, according to the bylaws of the cooperative.<sup>152</sup>

It cannot be held unless convened by at least one third of members or board or registrar. It shall have one agenda.<sup>153</sup> However, there may be more than one agenda when stipulated so in the bylaws of the cooperative societies.<sup>154</sup>

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<sup>148</sup> Ibid, 42(1)

<sup>149</sup> Ibid, reg. 42(2)

<sup>150</sup> Ibid, reg. 42(2)

<sup>151</sup> The Cooperative Societies Regulations, reg. 43(1)

<sup>152</sup> Ibid, reg. 44(3)

<sup>153</sup> Ibid, reg. 44(1)

<sup>154</sup> Ibid, reg. 44(2)

## 6.5 Administration of Cooperative Societies

Administration of the cooperative societies involves the arrangements and tasks needed to control the operation of the cooperative societies. These arrangements are made by the state to ensure the operation of the cooperative societies are in line with the objectives and laws that govern the cooperative sector. The arrangements inter alia are inspection, inquiry and supervision by the registrar of the cooperative societies.

## 6.6 Inspection of Cooperative Societies

Inspection of the cooperative societies is the act of looking at cooperative societies carefully to check that everything about the cooperative societies is correct and legal. This includes an official visit to a premises of the cooperative societies.<sup>155</sup>

The inspection of the cooperative societies determines if the cooperative societies are in proper operation and performance standards and conditions, and if they conform to the applicable or specified requirements and standards for the running of the cooperative societies.<sup>156</sup>

The registrar of the cooperative societies may authorise the inspection of the financial affairs, activities and bylaws of the registered cooperative societies. This inspection has to be in continuous basis.<sup>157</sup>

The inspection may be made on suo motu or upon application of the creditor. The inspection by the registrar or by his authorised person. The authorisation to conduct inspection must be done in writing.<sup>158</sup>

The creditor that applies for inspection of the cooperative societies must satisfy to the registrar that the sum is due. In addition, the creditor must satisfy that he demanded the payment thereof with no satisfactory response from the cooperative society within reasonable time. The creditor must deposit sum for the security cost as may be demanded by the registrar.<sup>159</sup>

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<sup>155</sup> Online Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/inspection>. (accessed on 22<sup>nd</sup> September 2018)

<sup>156</sup> Online Business Dictionary, <http://www.businessdictionary.com/definition/inspection.html>. (accessed 22<sup>nd</sup> September 2018)

<sup>157</sup> The Cooperative Societies Act, s 93(1)

<sup>158</sup> Ibid, s 93(2)

<sup>159</sup> Ibid, proviso s 93(2)

The registrar is duty bound to communicate the results of the inspection of the cooperative societies to the creditor that applied for the inspection of the said cooperative society.<sup>160</sup>

## **6.7 Supervision of Cooperative Societies**

The registrar of the cooperative societies has the power to supervise the cooperative societies. The supervision intends to determine and remedy the performance and soundness of the cooperative societies.

The registrar has the power to make periodic supervisory contacts and communication with the cooperative societies officers for the purpose of determining the performance and soundness of the cooperative societies.<sup>161</sup>

In doing so, the registrar has the power to order the board of the cooperative societies to remedy the shortcomings of the cooperative societies. This power is exercised when there is proof that the cooperative society is not performing well and normal supervision procedures cannot remedy the situation.<sup>162</sup>

The order of the registrar to remedy the shortcomings has to specify the remedial measures or actions to be undertaken by the cooperative society. It must also specify time frame for remedying the shortcomings. It must be signed by the board and registrar.<sup>163</sup>

The order is deemed to have been complied with when the shortcomings identified in the order have been remedied and remedial actions specified have been taken into consideration for rescuing the situation of the cooperative societies.<sup>164</sup>

The order is mandatory in nature that is it has to be complied with. Failure to comply with the supervisory order of the registrar amounts to serious violation. The violation of the supervisory order may attract the deregistration of the cooperative societies by the registrar of the cooperative societies.<sup>165</sup>

## **6.8 Summary**

In this chapter you have learnt that administration and management is very crucial towards development of the cooperative societies. Administration of

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<sup>160</sup> Ibid, s 93(3)

<sup>161</sup> The Cooperative Societies Regulations, reg. 75(4)

<sup>162</sup> Ibid, reg. 75(1)

<sup>163</sup> Ibid, reg. 75(3)

<sup>164</sup> Ibid, reg. 75(5)

<sup>165</sup> Ibid, reg. 75(6)

the cooperative societies is needed to control the operation of the cooperative societies. Governance of the cooperative societies is folded within the principles such as democratic control, voluntary membership, autonomy and independence, community concern and owner economic control. Administration of the cooperative societies can be exercised through supervision, inquiry, meetings and inspections. Management of the cooperative societies is exercised by the board of the cooperative societies elected by the members of the cooperative societies in free and fair election at general meeting.

### **6.9 Exercise**

James Mwakipesile is creditor of the Utengule Cooperative Society. He is aware of malpractices and mismanagement of the Utengule Cooperative Society. He thinks these may cause the cooperative to be unable to pay him his money the cooperative society borrowed from him. He is not aware of what to do with the situation. Advise him on measures to take.

### **6.10 Review Questions**

1. What is administration of the cooperative societies? Explain the relevance of the administration of the cooperative societies.
2. Identify and describe the mechanisms of the administration of the cooperative societies in Tanzania.
3. What is meeting of the cooperative societies? Describe types of the meeting of the cooperative societies.
4. Why should the cooperative societies hold the meetings?
5. Describe the management of the cooperative societies with aid of relevant of the authorities.
6. Discuss the principles applicable in the governance of the cooperative societies. Support your discussion with relevant authorities.

### **6.11 References**

Online Business Dictionary,  
<http://www.businessdictionary.com/definition/inspection.html>. (accessed 22<sup>nd</sup> September 2018)

Online Cambridge Dictionary,  
<https://dictionary.cambridge.org/dictionary/english/inspection>. (accessed  
on 22<sup>nd</sup> September 2018)

The Cooperative Societies Act, Act No. 6 of 2013

The Cooperative Societies Regulations, GN no. 272 of 2015



## CHAPTER 07

### TERMINATION OF COOPERATIVE SOCIETIES

#### 7.0 Introduction

The cooperative societies may come to an end due to various reasons. However, the process of bringing the cooperative societies to an end involves the legal ways, circumstances and conditions. This chapter gives understanding on the termination of the cooperative societies.

#### 7.1 Objectives

This chapter in general imparts understanding on the how and when the cooperative societies come to their end. Therefore, at the end of this chapter, you should be able to-

- Define dissolution, cancellation and winding up of the cooperative societies;
- Identify circumstances under which dissolution, cancellation and winding up of the cooperative societies may take place;
- Analyse the procedures of the dissolution, cancellation and winding up of the cooperative societies;
- Point out and explain the legal consequences of the dissolution, cancellation and winding up of the cooperative societies; and
- Apply the understanding and skills to solve the practical situations related to termination of the cooperative societies.

#### 7.2 Dissolution

It is the process by which a cooperative society is brought to an end. This is made by the order of the registrar of the cooperative societies. The order of dissolution should be made in writing. There must be notification to the general meeting of the federation of which the cooperative society is

member. The notification is mandatory if there is federation of which the cooperative society to be dissolved is a member.<sup>166</sup>

### **7.3 Circumstances of dissolution of cooperative society**

There are many circumstances which may lead to the dissolution of the cooperative societies. These are: -

#### *(i) Inquiry of the cooperative society*

When inquiry of the cooperative society has been done and results indicate unsound performance of the cooperative society, there may be initiative to dissolve the cooperative societies.<sup>167</sup> The inquiry focuses on the bylaws, activities and financial affairs of the cooperative societies.<sup>168</sup>

This inquiry may be made by the registrar on his own motion or upon application of the majority of the Board members of not less than one third.<sup>169</sup> However, the general meeting of the cooperative society may decide to hold an inquiry into the affairs of the registered society.<sup>170</sup>

In doing the inquiry, the books and documents of the registered society have to be furnished on the demand of the registrar of the cooperative societies or another person directed and authorised by the registrar of the cooperative societies.<sup>171</sup>

#### *(ii) Inspection of Cooperative Society*

When the inspection of the cooperative society has been done, the results show that the registered cooperative society is unable to operate itself financially, it may lead to dissolution.<sup>172</sup> The inspection centres itself on the activities, bylaws and financial affairs of the cooperative society.<sup>173</sup>

This inspection may be made upon the registrar own motion or upon application of the creditor of the registered society. The registrar may do the

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<sup>166</sup> The Cooperative Societies Act, s 99

<sup>167</sup> The Cooperative Societies Act, s 99

<sup>168</sup> Ibid, s 91(1)

<sup>169</sup> Ibid, s 91(1)

<sup>170</sup> Ibid, s 91(3)

<sup>171</sup> Ibid, s 91(2)

<sup>172</sup> Ibid, s 99

<sup>173</sup> Ibid, s 93(1)

inspection himself or direct and authorise another person to do inspection on his behalf. The authorisation of another person must be made in writing.<sup>174</sup>

*(iii) Application of Members of the Cooperative Societies*

As members can agree themselves to form the cooperative societies, the members of the registered cooperative society may apply to the registrar of the cooperative societies to dissolve the cooperative societies. Hence the registrar may decide to dissolve the cooperative society after receiving application of the members of the cooperative society.

However, the quorum for application to dissolve the cooperative society must be not less than three fourth of all members of the cooperative societies to be dissolved. The application with less than three quarter of the members of the cooperative societies may not be tenable before the registrar for dissolution of the cooperative society.<sup>175</sup>

*(iv) Failure to comply with Amalgamation and division conditions*

The cooperative societies are allowed to amalgamate with other cooperative societies. Moreover, the cooperative societies are allowed to divide into two or more proposed new cooperative societies.

However, amalgamation and division of cooperative societies are legal oriented processes. Hence there are conditions and requirements stipulated within the laws which must be complied with to justify the processes.

For instance, there must be special resolution made by two thirds of the members of the cooperative societies and many others.<sup>176</sup> If these requirements are not complied, it may attract the registrar to give order of dissolution of the said cooperative societies.<sup>177</sup>

#### **7.4 Cancellation of Registration of Cooperative Societies**

This is process of deregistration of the cooperative societies. This is done by the registrar of the cooperative societies. This can take place due to the following circumstances: -

*(i) Reduction of Minimum Number of members of the cooperative society*

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<sup>174</sup> The Cooperative Societies Act, s 93(2)

<sup>175</sup> Ibid, s 99

<sup>176</sup> The Cooperative Societies Act, ss 96 and 98

<sup>177</sup> Ibid, s 99

Registration of cooperative societies is associated with conditions. One of the condition of the registration is minimum number of the members of the cooperative society. Hence, it may be conditional requirement of the cooperative society registration to stay with the minimum number of members of the cooperative society.

Therefore, when the number of the members falls below the minimum number of the members required by the condition of the registration of the cooperative society, it may be ordered to be dissolved. The order is given by the registrar of the cooperative societies.<sup>178</sup>

(ii) *Failure to commence business within 6 months of registration*

The registration of the cooperative societies marks the commencement of the business or activities of the cooperative societies. Failure to do indicate that the cooperative society is unable to carry out its business.

Henceforth, when the registered cooperative society does not commence the business within six months since registration or ceased to run its business and there is reasonable cause to believe such failure, the registrar may order the cancellation of the registration of the cooperative society which determines its dissolution.<sup>179</sup>

The order has to be done after three months of publishing notice in the gazette about the same. The order of cancellation must be in writing. The order of dissolution takes effect after expiry of three months' notice of publication of the dissolution.<sup>180</sup>

### **7.5 What to do when aggrieved with cancellation of registration?**

The cancellation of the cooperative societies is done by the registrar of the cooperative societies. This power is vested upon the registrar by the law. However, this power is discretionary in nature. Hence, it may be abused.

Therefore, when the members of the cooperative societies whose registration has been cancelled by the order of the registrar are aggrieved by this decision, they have right to appeal against such decision.

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<sup>178</sup> The Cooperative Societies Act, s 100(1) and s 20

<sup>179</sup> Ibid, s 100(2)

<sup>180</sup> Ibid, s 100(2)

The aggrieved member of the cooperative society may appeal to the minister responsible for the cooperative sector in the country. The appeal must be preferred within thirty days since the time of order of cancellation.<sup>181</sup>

When appeal has not been preferred within the time stipulated that is 30 days, the order of cancellation of the cooperative society shall take effect soon after expiry of the period prescribed.<sup>182</sup>

When the appeal against the order of cancellation has been preferred to the minister within thirty days prescribed, the order of cancellation of the registration of the cooperative society shall not take effect until confirmed by the minister in the appeal.<sup>183</sup>

After filing the appeal within stipulated time, the minister shall consider the appeal and determine on the nature of the process and reasons for order of cancellation of the registration of the registered cooperative society. He may proceed to confirm the order. When confirmed, no further appeal is allowed.<sup>184</sup>

## **7.6 Effects of Cancellation of Registration of Cooperative Societies**

### *(i) Cessation of being corporate body*

The cancellation of registration of the cooperative society shall effect the ceasing of the said cooperative society to be corporate body. This takes place since the date of order of cancellation takes effect.<sup>185</sup>

However, the cessation to be corporate body after order of cancellation of the registration of the cooperative society shall not apply for the purposes of the winding up of the cooperative society's affairs.<sup>186</sup>

### *(ii) Protection of Assets of the Cooperative Society*

During the cancellation of the registration of the cooperative society, the registrar may order in relation to respect and custody of the books and documents of the cooperative societies so as to protect the assets of the

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<sup>181</sup> The Cooperative Societies Act, s 101(1)

<sup>182</sup> Ibid, s 101(2)

<sup>183</sup> Ibid, s 101(3)

<sup>184</sup> The Cooperative Societies Act, s 101(4)

<sup>185</sup> Ibid, s 102(1)

<sup>186</sup> Ibid, s 102(1)

cooperative society. This order shall, take place until the order of cancellation of the registration of the cooperative societies takes effects.<sup>187</sup>

## **7.7 Winding up of the Cooperative Societies**

The winding up of the cooperative society is the method of dissolving a business by selling off its assets and satisfying the creditors from the proceeds of the sale. It includes selling all assets, paying off creditors, and distributing remaining assets to the members of the cooperative societies.

### **7.7.1 Timing of Winding up of Cooperative societies**

Winding up of the cooperative societies takes place when the cooperative societies have been dissolved by the order of the registrar of the cooperative societies. In addition, the winding up takes place after the cancellation of the registration of the cooperative societies.<sup>188</sup>

### **7.7.2 The process of winding up of the Cooperative Society is done**

First, the registrar of the cooperative societies has to appoint the custodian of the assets and liabilities of the cooperative societies. The appointment has to be made after the cancellation of registration of the cooperative society effected. The appointment must be done in writing.<sup>189</sup>

Second, the registrar of the cooperative societies must appoint the liquidator. The liquidator shall be in charge of the liquidation of the assets and liabilities of the cooperative society. The appointment of liquidator must be made within forty days since cancellation of registration of the cooperative society has taken into effect.<sup>190</sup>

Third, the registrar must specify the time of liquidation of the assets and liabilities of the cooperative society to be wound up. The specification must be communicated to the liquidators and custodian of the assets and liabilities of the cooperative society. The specification must indicate when the liquidation shall be finalised.<sup>191</sup>

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<sup>187</sup> Ibid, s 102(2)

<sup>188</sup> The Cooperative Societies Act, s 103(1)

<sup>189</sup> Ibid, s 103(1)(a)

<sup>190</sup> The Cooperative Societies Act, s 103(1)(b)

<sup>191</sup> Ibid, s 103(3)

Fourth, the registrar of the cooperative societies must publish the names of the custodian and liquidator of the assets and liabilities of the cooperative society to be wound up. The publication must be done in the Gazette.<sup>192</sup>

Fifth, the liquidation is carried out. Liquidation is the process of bringing a business to an end and distributing its assets to claimants. It is an event that usually occurs when a cooperative society is insolvent, meaning it cannot pay its obligations when they come due.

### **7.7.3 Powers of Liquidators**

The process of liquidation is associated with various powers to the person responsible for liquidation so as to enable them to carry the process into effect. Some of those powers are hereby explained<sup>193</sup>: -

- (i) To institute and defend suits and other legal proceedings related to the cooperative society subjected to winding up;
- (ii) To refer the disputes related to the winding up of the cooperative society to the arbitration;
- (iii) To determine the contribution of the members of the cooperative society to the assets and liabilities of the cooperative society;
- (iv) To investigate all claims by and against the cooperative society and decide the priorities of the same;
- (v) To determine what persons on what proportion to bear the cost of the liquidation of the cooperative society;
- (vi) To take possession of the books, documents and assets of the cooperative society; and
- (vii) To direct distribution and collection of the assets of the cooperative society.

### **7.7.4 What to do when aggrieved with the decision of the liquidator?**

The members and other interested persons may be offended by the manner and bases under which the liquidator carries out the liquidation process of the assets and liabilities of the cooperative society.

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<sup>192</sup> Ibid, s 103(2)

<sup>193</sup> Ibid, s 104(1)

They have the right to appeal against the decision arising from exercising the powers of the liquidators in the liquidation process of the assets and liabilities of the cooperative society.<sup>194</sup>

They may appeal to the court of resident magistrate. The resident magistrate court that has jurisdiction is the resident magistrate court in area where the headquarters of the cooperative societies are located. In addition, when aggrieved by the decision of the resident magistrate, they may appeal to the High Court.<sup>195</sup>

### **7.7.5 Control of Powers of Liquidators**

The liquidators are controlled by the registrar of the cooperative societies when exercising the powers related to the liquidation. They have to exercise their powers subject to control and revision by the registrar of the cooperatives.

The control of the powers of the liquidator includes the power to rescind the order made by the liquidator, remove liquidator from office, limit the powers of the liquidators, call for the books, documents and assets of the cooperative society and other related.<sup>196</sup>

### **7.7.6 Enforcement of the decision and orders**

The decisions and orders made by the liquidators or registrar of the cooperative societies during the liquidation process may be enforced by any court of resident magistrate having jurisdiction when made by the liquidator or same as decree enforcement when made by the high court or court of appeal.<sup>197</sup>

All debts payable on and all claims against the society are admissible proof against the society. They may be made in just estimates, value of such debts, or claims subjected to contingency.<sup>198</sup>

## **7.8 Summary**

In this chapter, you have learnt that cooperative societies may be brought to an end. There are three major methods through which the cooperative societies may be brought to an end such as dissolution of the cooperative

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<sup>194</sup> The Cooperative Societies Act, s 104(3)

<sup>195</sup> Ibid, s 104(3)

<sup>196</sup> Ibid, s 105(1)

<sup>197</sup> The Cooperative Societies Act, s 105(2)

<sup>198</sup> Ibid, s 111



society, cancellation of the registration of the cooperative society and winding up of the cooperative society. All these involve circumstances and requirements prescribed by the law.

### **7.9 Exercise**

Jumanne Kisumu has been appointed as liquidator of the assets and liabilities of the Usalule Cooperative Society. He has made various orders but subjected persons have been denying to comply with such orders. Advise him on how to enforce his orders.

### **7.10 Review Questions**

1. What is dissolution of the cooperative society? Under which circumstances can dissolution of the cooperative society take place?
2. Identify and describe the circumstances through which the registrar of the cooperative societies orders the cancellation of registration of the cooperative society.
3. Discuss the powers of the liquidators appointed for the purpose of liquidation of the assets and liabilities of the cooperative society.
4. What remedy is available when a member is aggrieved by the decision of the registrar of the cancellation of the registration of the cooperative society? Support your explanation with relevant authorities.
5. Are the powers of the liquidators during liquidation controllable? Explain your answer with support of relevant authorities.
6. Describe the process of liquidation of the assets and liabilities of the cooperative societies.

### **7.11 References**

The Cooperative Societies Act, Act No. 6 of 2013

The Cooperative Societies Regulations, GN no. 272 of 2015



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