

1 Formation and Registration of a Cooperative

Core Principles	Implementing Core Principles	Underlying Reasons
Provide coherent and efficient regulatory framework	Time limits/default registration periods. To minimize possibilities for long periods of bureaucratic delay, a time period may be set for approval of applications for registration, after which point the application is presumed to be granted.	In countries where the registration process is cumbersome, not timely, or filled with uncertainty, cooperatives frequently organize under non-profit or general company statutes.

Enabling Example: Philippines Cooperative Code, § 16, 1990: "All applications for registration shall be finally disposed...within a period of thirty (30) days..., otherwise the application is deemed approved."

Disabling Example: Ghana Cooperative Societies Decree, 1968: Law imposed a six month probationary period for cooperative registration that often stretches for two or more years.

Promote equitable treatment	Register cooperatives in the same office as other businesses. It may be preferable to locate registration functions in the same institution that registers other businesses.	Cooperatives will be dissuaded from using a registration process that is more onerous than that for other businesses.
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Enabling Example: United States: Articles of incorporation are generally filed in accordance with the provisions of the general corporation law and are *prima facie* evidence of due incorporation.

Avoid conflicts of interest	Streamline registrar's role. Where a separate registrar is maintained for cooperatives, its role may be streamlined to eliminate non-registration activities such as promotion, supervision, and dispute resolution.	Combining regulatory and promotion functions in the same office creates an inherent conflict of interest that has compromised the neutrality of registration/regulation and the effectiveness of promotion efforts in many countries.
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Enabling Example: South Africa: Moved its cooperative registrar from the Ministry of Agriculture to the Ministry of Trade and Commerce to separate sector-specific promotion efforts from the registration function.

Disabling Example: India Co-operative Credit Societies Act, 1904: The "Classical British Indian" model of cooperative legislation creates an inherent conflict of interest in the office of the registrar by vesting the office with both regulation and promotion functions.

Protect autonomy and independence	Avoid mandatory model by-laws. Registration process and statute should provide maximum flexibility for a cooperative to define its governance through by-laws and articles of incorporation.	Central to the success of cooperatives is the development of the capacity of their members to govern the organization democratically and to adopt the most beneficial structure given its line of business.
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Enabling Example: Botswana, Co-operative Societies Act, § 125, Schedule 1, 1989: Statute provides minimum requirements for by-laws, such as including procedures for the appointment and removal of officers, without mandating specific language.

Disabling Example: Thailand Cooperative Societies Act, 1968: Registrar commonly imposes model by-laws on cooperatives.

PRINCIPLES FOR COOPERATIVE LAW and REGULATION

2 Cooperative Supervision

Core Principles	Implementing Core Principles	Underlying Reasons
<p>Promote equitable treatment</p> <p>Protect autonomy and independence</p>	<p>Coordination of business regulatory functions. Many countries integrate cooperative regulation functions in agencies with similar responsibilities for other businesses.</p>	<p>Cooperatives should be subjected to regulatory requirements that are comparable to those of other businesses. The main regulating mechanism for cooperatives should be empowering members to govern the organization.</p>

Enabling Example: *Philippines Cooperative Code, § 124(2), 1990:* Prohibition on “[d]irect or indirect interference or intervention by any public official or employee into the internal affairs of a co-operative of which he is not a member.”

Disabling Example: *Uganda White Paper on the Affairs of all Co-operative Unions, 1968:* “[T]he duty of the Government is to assist and guide [cooperatives]. In this connection, the Government intends to...bring the control of the Co-operative movement more directly under the control of the Minister.”

<p>Avoid conflicts of interest</p>	<p>Separation of regulatory from promotion functions. Regulatory functions should be institutionally separated from other functions, such as promotion or registration.</p>	<p>Entrusting the same agency with both promotion and law enforcement responsibilities may lead to conflicts of interest that compromise the efficacy and fairness of regulation.</p>
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Enabling Example: *South Africa Co-operatives Bill 4, § 75, § 80, 2005:* Cooperative Advisory Board advises the government and makes recommendations with regard to policy, but lacks a direct regulatory role over cooperatives.

Disabling Example: *Philippines Cooperative Development Authority Act, § 3, 1990:* Cooperative development authority is granted all powers of registration, promotion, and regulation of cooperatives.

3 Legal Status and Rights

Core Principles	Implementing Core Principles	Underlying Reasons
<p>Promote equitable treatment</p> <p>Protect autonomy and independence</p>	<p>Legal personhood. A cooperative should have legal personhood similar to that held by other corporations. For example, cooperatives should have full rights to hold property, enter contracts, sue, and be sued.</p>	<p>A corporate entity generally has most of the legal rights of an individual in order to act as a single entity to hold property, contract, and resort to the legal system to enforce its rights. Legal personhood is one key element in establishing cooperatives as private entities vis-à-vis the state.</p>

Enabling Example: *Law of Ukraine on Cooperation, § 23, 2003:* “Cooperatives are entitled to conduct any activity stipulated by their statutes that is not prohibited by law.”

<p>Promote equitable treatment</p>	<p>Liability/indemnification of officers and directors. Similar to other corporate officials, directors and officers should be indemnified by the cooperative when sued because of their role in the cooperative, unless the liability was incurred because they willfully or negligently failed to perform a fiduciary duty owed the cooperative.</p>	<p>Cooperatives or their officials should not be insulated from generally applicable laws. To ensure accountability of officials to the cooperative, such officials should have the same fiduciary duties that apply to corporate officials.</p>
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Enabling Example: *South Africa Co-operatives Bill 4, § 75, § 37(1), 2005:* Directors, managers, and employees are not liable for action taken in the course of their duties if it does not involve willful misconduct, dishonesty, gross negligence, or reckless conduct.

Disabling Example: *Sudan Cooperative Societies Act, § 6(a), 2003:* “For the purposes of criminal responsibility, property of the Society shall be deemed to be public property and its employees shall be deemed to be public servants.”

PRINCIPLES FOR COOPERATIVE LAW and REGULATION

4 Membership

Core Principles	Implementing Core Principles	Underlying Reasons
Respect voluntary membership	No compelled membership. The state should not have the authority to compel membership in a cooperative.	Government mandated membership detracts from the democratic character of a cooperative and harms the accountability links between a cooperative and its members.

Enabling Examples:

South Africa Co-operatives Bill 4, § 75, § 3(1)(a), 2005: Cooperatives are deemed to comply with cooperative principles if “membership of that cooperative is open to persons who can use the services of that cooperative and who are willing and able to accept the responsibilities of membership.”

Bosnia General Law on Cooperatives, § 5, 2003: Requires that men and women be treated the same with respect to membership in cooperatives.

Disabling Examples:

Egypt, 1952: Government mandates that farmers in certain sectors join agricultural cooperatives.

Zambia Co-Operatives Act, § 3, 1970: Government discretion to “take such measures as he deems advisable for encouragement of...co-operative development” is used to take over agricultural marketing functions and mandate membership in cooperatives.

Protect democratic member control	Autonomy in determining size and qualifications for membership. Cooperatives should determine through internal governance procedures any requirements for size and eligibility criteria for membership, subject to generally applicable non-discrimination laws.	The number and attributes of members required to create a cooperative will vary from case to case. It is for members and management to determine the attributes of membership that will best ensure success of the venture.
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Enabling Example: Brazil Civil Law No. 10406, Clause II, § 1094, 2002: Permits cooperatives to establish a minimum number of members dependent on the cooperatives’ administrative needs.

Disabling Examples:

Sudan Cooperative Societies Act, § 12(i), 2003: “The members of a Primary Society shall not be less than 20 persons. The registrar may fix a maximum number of members in a Society in special cases for social and geographical considerations.”

Law of Ukraine on Cooperation, § 11, 2003: Requires payment of an entrance fee to join a cooperative.

Protect autonomy and independence	Ban on government membership. A cooperative law should not permit the government to be a member of the cooperative.	State participation in the membership of a cooperative sacrifices the business’ role as an anonymous private organization.
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Enabling Example: Philippines Cooperative Code, § 28, 1990: Any officer or employee of the Cooperative Development Authority, or any elected government official, is ineligible to become an officer or director of a cooperative.

Disabling Example: India Bombay Cooperatives Societies Act, 1925: Authorizes government to participate in the share capital of cooperatives.

5 Member Governance

Core Principles	Implementing Core Principles	Underlying Reasons
Protect democratic member control	Majority voting rules. A cooperative law should permit the by-laws of a cooperative to implement a range of voting rules that are consistent with democratic governance requirements, including one person one vote, super-majority decisions for alteration of a cooperative's structure, cumulative voting, and patronage requirements for voting.	Cooperatives should be required to be democratically governed, but given flexibility to define democratic procedures within the organization.

Enabling Example: *South Africa Co-operatives Bill 4, § 75, § 3(1)(b), 2005:* For Primary Cooperatives, "each member has only one vote."

Disabling Examples:

Hungary: Law dictates many decisions by unanimous vote.

Bosnia General Law on Cooperatives, § 30, 2003: Permits the right to vote to be weighted according to individual contribution to the cooperative.

Protect democratic member control	Records subject to inspection. To facilitate member control over management, business records generally should be open to inspection by any member of the cooperative.	A cooperative's members are ultimately responsible for supervising the board of directors and must be properly informed in order to perform this function.
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Enabling Examples:

Cooperative Law of Mongolia, § 27(6), undated: Board of directors is responsible for keeping records, informing the auditing board of receipt of annual report, and presenting the report to members.

Law of Ukraine on Cooperation, § 12, 2003: Members have right to request "information about membership in cooperative, operation of the cooperative and its officials."

PRINCIPLES FOR COOPERATIVE LAW and REGULATION

6 Officers and Directors

Core Principles	Implementing Core Principles	Underlying Reasons
Protect autonomy and independence	Avoid detailed definitions of management functions. A cooperative law may give general instructions on the core division of roles between the board of directors and management without being so detailed as to prevent necessary flexibility in organizing the business.	A cooperative's governance structure should reflect the best approach for that cooperative's sector and operational capabilities. Generalized structures may not be appropriate for a given cooperative.

Enabling Example: *Cooperative Law of Mongolia, § 23, undated:* The majority of members select the management board, auditing board, and the director, and determine their duties.

Protect autonomy and independence	No state appointment of managers. The state should not maintain any right to appoint managers of a cooperative.	Cooperation rests on a vital link of accountability and responsibility between members and elected officials, not between cooperative officials and the state.
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Enabling Example: *Wisconsin, U.S.A., Wis. Stat. § 185.35, 2004:* "All officers shall have such authority and perform such duties as the bylaws provide, or as the board may determine not inconsistent with the bylaws."

Disabling Example: *Zambia Cooperatives Societies Act, § 161(1), 1970:* Grants registrar power to "appoint...one or more special officers to manage the affairs of a society."

Protect autonomy and independence	Autonomous financial management. Subject to general auditing requirements, cooperatives should have discretion over their expenditures and investments. Law should not mandate expenditures on specific functions or require government approval of basic business decisions.	Autonomy in management is a core characteristic of private enterprise. Cooperatives must learn to be successful businesses through self-management, not an overly protective state.
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Enabling Example: *Philippines Cooperative Code, § 9, 1990:* Grants a cooperative powers to lease, mortgage, purchase, otherwise deal with real property, and "exercise such other powers...necessary to carry out its purpose or purposes as stated in its articles of incorporation."

Disabling Example: *Zambia Cooperatives Societies Act, 1970:* Registrar has the authority to approve a broad range of management activities, including borrowing, investing in stocks and securities, using society's assets, and leasing operations.

PRINCIPLES FOR COOPERATIVE LAW and REGULATION

7 Board of Directors

Core Principles	Implementing Core Principles	Underlying Reasons
Protect democratic member control	The board should be elected by the members of the cooperative. The state should not retain any authority to select or approve board members.	Board members should be responsible to the members who elected them, not to the government or any outside party.

Enabling Example: *Philippines Cooperative Code, § 38, 1990:* Management of the affairs of the cooperative shall be vested in a board of directors “elected by the general assembly for a term fixed by the by-laws.”

Disabling Example: *Tanzania Cooperative Societies Act, § 127, 2003:* “[T]he Registrar may, subject to the provisions of this section, appoint special members to the board of any registered society in receipt of financial assistance from the government or if the Registrar considers such appointments to be necessary in the public interest or in the interest of the society.”

Protect autonomy and independence	By-laws determine the size and composition of board. Law should not prescribe quotas or other specific criteria for selecting the board of directors beyond an absolute minimum for collective decision-making (e.g. three or more members).	The appropriate size and composition of a board of directors depends on the cooperative’s size, industry, and operational capabilities.
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Enabling Example: *Czech Republic Draft Act on Cooperatives, § 31(4), 2001:* “The members of the Board shall be elected in the number specified by the by-laws, however, the Board shall have at least three members.”

Disabling Example: *Tanzania Cooperative Societies Act, § 63(1), 2003:* “Every Board of a registered society shall consist of not less than five members and not more than nine members.”

8 Capital Accounts

Core Principles	Implementing Core Principles	Underlying Reasons
Require member economic participation	Distribution according to patronage. Distribution of surplus of the cooperative should be required to be allocated according to patronage of the cooperative, rather than capital invested.	Patronage based distributions date to the Rochdale pioneers who saw the principle as a way to reward loyalty, pay back the majority of profits to consumer members, and distinguish their businesses from capital-based corporations. Thus, it is said that cooperatives are organizations of people, not capital.

Enabling Example: *Wisconsin, U.S.A., Wis. Stat. § 185.45(3), 2004:* After deducting operating expenses and costs, the remainder of the proceeds shall not constitute income to the cooperative, but “shall be distributed and paid to patrons in accordance with the ratio which their patronage bears to total patronage.”

Protect democratic member control	Allow reserves and capital funds. Law should not mandate distributions such that a cooperative could not choose to build reserves or a capital fund for business investments, nor mandate a specific amount of contribution to such fund.	Building of reserve or capital funds for future investments is necessary for the maintenance and growth of many businesses. The amount that is appropriate to dedicate to a reserve fund will vary depending on the business.
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Enabling Example: *Wisconsin, U.S.A., Wis. Stat. § 185.45(4)(a), 2004:* “Any of the net proceeds may be credited to allocated or unallocated surplus or reserves of the cooperative.”

Disabling Example: *Sudan Cooperative Societies Act, § 33, 2003:* “A Society shall establish a reserve fund and shall in every year transfer to it at least 25% of its annual net profits.”

PRINCIPLES FOR COOPERATIVE LAW and REGULATION

9 Auditor

Core Principles	Implementing Core Principles	Underlying Reasons
<p>Protect democratic member control</p> <p>Protect autonomy and independence</p>	<p>Member selection. The members of the cooperative should have the right to select their auditor of choice.</p>	<p>The purpose of an audit is to facilitate member control of the cooperative by assuring that affairs are being conducted in an honest and professional way.</p>

Enabling Example: *Law of Ukraine on Cooperation, § 18, 2003:* Auditor “reports to the general meeting of the cooperative and shall be elected by the general meeting from within the members of cooperative organization in accordance with the voting procedure that is established by the cooperative’s statute.”

Disabling Example: *Zambia Cooperative Societies Act, §§ 140-41, 1970:* Registrar is given the authority to conduct, audit, or select a third-party auditor.

10 Dispute Resolution

Core Principles	Implementing Core Principles	Underlying Reasons
<p>Avoid conflicts of interest</p> <p>Provide coherent and efficient regulatory framework</p> <p>Protect due process</p>	<p>Availability of independent tribunals and traditional forums. Any body entrusted to adjudicate disputes that involve cooperatives should be independent from promotion, supervision, and other cooperative oversight functions. Cooperatives should be free to access courts and other existing tribunals, as well as to voluntarily enter arbitration arrangements.</p>	<p>Dispute mechanisms must ensure impartiality by not involving officials with other responsibilities for promoting or regulating cooperatives. Existing adjudication and arbitration mechanisms for other businesses may minimize the duplication of resources.</p>

Disabling Example: *Malaysia Cooperative Societies Act, § 82, 1992:* All disputes involving cooperatives “shall be referred to the Registrar-General for decision.”

11 Dissolution/Amalgamation/Merger

Core Principles	Implementing Core Principles	Underlying Reasons
<p>Respect voluntary membership</p> <p>Protect due process</p>	<p>Procedures for member approval. Law should provide procedures for changing or dissolving the organization, including quorum and voting requirements, procedures for notifying members, for permitting withdrawal, and for distributing assets remaining after dissolution.</p>	<p>Cooperatives are voluntary organizations, which implies the ability to change or cease to exist, as well as to form at the members’ discretion.</p>

Enabling Example: *Botswana Co-operative Societies Act, § 90, 1989:* Notice detailing the rights of members with respect to resolution to amalgamate “shall be sent to all the members and creditors” and any member “by notice in writing [may] intimate his intention not to become a member of the amalgamated society.”

Disabling Example: *Lithuania Cooperative Law No. I-164, 1993:* Includes no provision for amalgamation, merger, or division.

12 Apex Organizations

Core Principles	Implementing Core Principles	Underlying Reasons
Protect autonomy and independence	Permissive autonomy. Law should permit the formation of apex organizations such as unions, federations, and confederations, without dictating their structure or requiring cooperatives to form or support such organizations.	The provision of services through apex organizations strengthens the democratic character and substantive expertise of the cooperative movement. Dictating the organizational structure of cooperative movements sacrifices the democratic autonomy of each cooperative and may promote inefficient practices that inhibit competitiveness.

Enabling Example: *Philippines Cooperative Code, § 1, 1990:* “[T]he state recognizes the rights of the co-operative sector to initiate and foster within its own ranks co-operative promotion, organization, training, information gathering, audit and support services.”

Disabling Example: *Tanzania Co-operatives Societies Act, § 17, 2003:* Permits registrar of cooperatives to “require any two or more societies to form and apply for the registration of a cooperative union.”