

THE COOPERATIVES ACT OF BHUTAN, 2001

Royal Government of Bhutan

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THE CO-OPERATIVES ACT OF BHUTAN, 2001

PREAMBLE

An Act to provide legal framework for the formation of Co-operatives, in order to facilitate economic development.

CHAPTER I Preliminary

Article 1: Title, commencement and Extent.

- (1) This act shall be called “**The Co-Operatives Act of Bhutan, 2001**”.
- (2) It shall come to force on 27th day, 6th month of the Female Iron Snake Year coinciding with the 18th July of the Year 2001.
- (3) It shall extend to the whole Kingdom of Bhutan.

Article 2: Definition of Terms

- (1) **Co-operative** means an association of persons united voluntarily to meet their common economic needs and aspirations through a jointly owned and effectively governed enterprise.
- (2) **Primary co-operative** means the first level of co-operative under this Act whose main purpose is the provision of quality products and services to satisfy the economic needs of members and their communities.
- (3) **Federation of co-operatives** means the second level of co-operative under this Act organized by primary cooperatives that operate in the same industry or are selling similar products and services.
- (4) **Union of co-operatives** means the national apex organization of all co-operatives in the Kingdom of Bhutan.
- (5) **Special type of co-operatives** means the co-operatives that are not classified under the other types of co-operatives. In this Act these co-operatives are the co-operative banks and insurance co-operatives.
- (6) **General assembly** means the highest body within the co-operative structure composed of qualified members.
- (7) **Board of directors** means the policy-making body of the co-operative whose members are elected by the General Assembly.

- (8) **Committees** mean the committees of finance and audit, election and training of co-operative.
- (9) **Values and principles of co-operatives** values mean norms and beliefs on self-reliance and self-management founded on the basis of voluntary initiatives, equity and solidarity and also on the ethical values of honesty, openness, and caring. Principles mean the guidelines by which values are practiced.
- (10) **Members** mean the owners and patrons of the co-operative.
- (11) **Common needs and aspirations of members** mean the primary and core bases from which a co-operative may be organized, registered and developed as an economic enterprise.
- (12) **Rule making through consultation** means the power and responsibility entrusted to the Ministry of Home affairs (MOHA) to implement this Act by issuing implementation rules after consultation with stakeholders.
- (13) **Consolidation of co-operatives** means the amalgamation of two or more co-operatives into a single, new co-operative.
- (14) **Merger of co-operatives** means the absorption of one or more existing co-operatives by another co-operative.
- (15) **Insolvency of co-operatives** means co-operatives fails to meet its obligations to creditors and applies for remedies for the protection of creditors and members based on existing laws.
- (16) **Dissolution of co-operatives** means the process of winding up of the affairs of the co-operative and the subsequent cancellation of the certificate of registration of the same co-operative.
- (17) **Natural persons** mean the individuals who are members of primary co-operatives.
- (18) **Juridical persons** mean the registered co-operatives and entities referred to in this Act.
- (19) **Share capital** means a unit of capital contributed by a member the value of which may be fixed at any figure by the co-operative but not less than one Ngultrum (Nu.1.00).

CHAPTER II

State policy on, and Values and Principles of, Co-operatives

Article 3: Declaration of State policy.

It is the declared policy of the Royal Government of Bhutan (RGOB) to promote co-operatives for the well-being of members and communities. The RGOB shall facilitate the development of co-operatives as strong and sustainable pillar of the private sector that will contribute to the economic development of the Bhutanese society, especially the poor.

Towards this end, the RGOB shall create the legal environment, through this Act, for the regulation of co-operatives on registration and monitoring, mediation and conciliation, and the provision of legal services on research, education and information. Complementary to regulation, government shall provide support for the economic development of co-operatives.

The RGOB recognizes co-operatives as private enterprises with economic purposes. Thus, its support aims to help co-operatives realize their purposes and to help strengthen and sustain their capacity for self-reliance and self-management so that co-operatives will grow to stand on their own as autonomous enterprises and as partners of government in development. Mutual agreement shall be the basis of partnership between co-operatives and government.

Article 4: Values and Principles of Co-operatives.

Co-operatives shall be promoted, organized and developed in harmony with the national policy, based on the values of self-reliance and self-management, and to the service of **Tsa Wa Sum**. These values are home grown, having evolved from the culture and experience of Bhutan, and enriched and practiced along with the following universally accepted principles of co-operatives:

(1) Voluntary and open membership.

Co-operatives are voluntary organizations, open to all persons who are able to use their services and willing to accept the responsibilities of memberships, without any discrimination.

(2) Effective member governance.

Co-operatives are voluntary organizations governed 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 co-operatives members have equal voting rights (one member, one vote), and co-operatives at other levels are also governed based on mutual agreements.

(3) Member economic participation.

Members contribute equitably to the capital of their co-operatives. Surpluses shall be allocated in accordance with Article 25 of this Act.

(4) Autonomy and independence.

Co-operatives are autonomous, self-reliant organizations governed by the members. If they enter into agreements with other organizations, including government, or raise capital from external sources, they do so based mutually agreed upon terms that ensure effectively governance by their members and maintain their c-operative autonomy.

(5) Education, training and information.

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public-particularly young people and opinion leaders-about the nature and benefits of cooperation.

(6) Cooperation among co-operatives.

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional, and international associations.

(7) Concern for the community.

Co-operatives work for the sustainable development of their communities through policies approved by their members.

Co- CHAPTER III Regulation of operatives

Article 5: Regulatory agency and its powers.

The Ministry of Home Affairs (MOHA) is mandated to implement this Act. It shall discharged the following regulatory powers and responsibilities:

- (1) Register all co-operatives under this Act;
- (2) Require all registered co-operatives to submit annual report including duly audited financial statements;

- (3) Monitor and evaluate co-operatives to ensure that they abide with and sanction those that have violated, this Act; their Constitution and By-laws and the policies and rules of the MOHA;
- (4) Provide legal services on training, information and advice to co-operatives;
- (5) Prescribe, after consultation with the co-operative sector, the implementing rules of this Act, which shall include, but shall not be limited to, the following:
 - (a) Mediation and conciliation of co-operatives;
 - (b) Division, merger and consolidation of co-operatives; and
 - (c) Dissolution and insolvency of co-operatives;

Article 6: Management and decentralization.

The MOHA shall, when necessary, delegate the power of registration and monitoring of co-operatives to Dzongkhag and prescribe the rule governing such delegation.

CHAPTER IV

Types of Co-operatives and their requirement for Registration

Article 7: Types of co-operatives.

The types of co-operatives that may be organized under this Act primary co-operatives, federation of co-operatives, union of co-operatives, and special types of co-operatives.

Article 8: Primary co-operatives

Members and purposes.

Natural persons may organize and join primary co-operatives to realize the following purposes:

- (1) To provide or satisfy the common economic needs of members and communities by engaging in any of the business activities in production, processing/manufacturing, supply and marketing, and financing;
- (2) To establish a strong, sustainable, human and physical resource base to ensure the provision of quality and timely goods and services to members and communities;
- (3) To promote the educational and economic advancement of members and communities;

- (4) To inculcate among members the discipline of thrift and savings and the importance of capital and savings build-up for the financial sustainability of the cooperative.
- (5) To contribute to the development of agriculture, industry, and service sectors of the local economy; and
- (6) To perform other related purposes as prescribed in this Act.

Requirements for registration.

The following are the requirements for the registration of a primary co-operative.

- (1) A minimum of fifteen natural persons who are Bhutanese citizens with a common bond of interest in the area of operation of the cooperative;
- (2) Three copies of duly accomplished Constitution and By-laws;
- (3) Evidence that the proposed primary co-operative is organized based on a) the members' common needs or demand, and b) the economies of scale and requirements of the market of its business under takings;
- (4) Bond of accountable officer; and
- (5) Proof of bank account.

Article 9: Federation of co-operatives:

Members and purposes.

Registered primary co-operatives from the same industry or selling the same products or services may organized and join federation of co-operatives to realize the following purposes:

- (1) To contribute to the increase or expansion of the business capacity of member-primaries through pooling of resources, wholesale or bulk purchase and distribution, linking with sources of supply, and to ensure and expand markets;
- (2) Protect member-primaries from competition in the industry;
- (3) Provide support services to member-primaries on business education and counselling, installation of accounting, finance and administrative system, and conduct of financial and management audit;
- (4) Represent member-primaries in industry organizations and in government; and
- (5) Perform other related responsibilities as prescribed in this Act.

Requirements for registration.

The following are the requirements for the registration of a federation of co-operative.

- (1) A minimum of five registered primary co-operatives from the same industry or are selling similar goods and services and are operating in the area of operation of the proposed federation;
- (2) Three copies of duly accomplished Constitution and By-laws;
- (3) Evidence that the proposed federation of co-operative is organized based on the members' common needs or demand, and that it has the economies of scale and markets for of its products and services;
- (4) Bond of accountable officer; and
- (5) Proof of bank account.

Article 10: union of Co-operatives:

Members and purposes.

Registered federation and special types of co-operatives may organize and join the union of co-operatives for the following purposes:

- (1) To represent the interest of co-operatives in the country;
- (2) To be the social development arm of the co-operatives on education and training, research and information, legal studies and advocacy, and social auditing of co-operatives;
- (3) To publish the Annual Report on the status and future challenges and direction of co-operative development in Bhutan for the benefit of its member and the government and for the information of co-operatives abroad; and
- (4) To perform related powers and responsibilities as prescribed in the Act.

Requirements for registration.

The following are the requirements for the registration of the union of co-operatives.

- (1) A minimum of five federations and special types of co-operatives;
- (2) Three copies of duly accomplished Constitution and By-laws;
- (3) Bond of accountable officer; and
- (4) Proof of bank account.

Article 11: Special types of co-operatives.

The following enterprises that do not fall under Articles 8,9 and 10 above may be organized as special types of co-operatives:

(1) Co-operative banks.

Co-operative bank may be organized to provide financial services to primary co-operatives, federation of co-operatives and insurance co-operatives and to serve as the financial arm of the co-operatives in the economy.

The Royal Monetary Authority (RMA), upon consultation with the MOHA and the Co-operative Sector, shall issue and implement the rules governing the banking operations of co-operative banks. A co-operative bank shall be registered with the MOHA after the issuance of the license to operate as a co-operative bank by the RMA. A registered and licensed co-operatives bank may offer all types of banking services needed by member-cooperatives and may open a maximum of twenty person (20%) of its loan portfolio to the general public.

(2) Insurance co-operative.

All types of registered co-operatives may join as insurance co-operative. The insurance co-operative shall provide life and non-life insurance services to all members. Membership shall also be open to socially oriented non-profit organizations (NPOs). At least fifteen registered cooperatives and NPOs may organize and register insurance co-operative.

The Ministry of Finance, in consultation with the MOHA and the cooperative sector, shall issue and implement the rules governing the operations of insurance co-operatives. The issuance of a license to operate by the Ministry of Finance shall be prerequisite to the registration of insurance co-operative with the MOHA.

Article 12: Effects of Registration.

A co-operative, upon registration under this Act, acquires a juridical personality from the date the MOHA issues a certificate of registration under its official seal. The registered co-operative, from the date of the issuance of the certificate of registration, shall henceforth be protected by the laws of the state, and shall discharge its powers and responsibilities in accordance with this Act.

A registered cooperative under this Act are conferred the following powers and responsibilities:

- (1) To adopt or amend its Constitution and By-laws;
- (2) To use the word “co-operative” in its official name;

- (3) To sue and be sued in its name;
- (4) To engage in any lawful business transactions with and for the interest of members and the communities in its area of operation;
- (5) To enter into division, merger or consolidation, as provided in this Act;
- (6) To join federation, in the case of primary co-operatives, and to join the union, in the case of federations and special types of co-operatives;
- (7) To accept and receive grants, donations and assistance from foreign and domestic sources, prior approval is required from the Ministry of Finance. Other requirements include annual report and duly audited financial statements; and
- (8) To exercise other related powers and responsibilities as granted by this Act or necessary to carry its purposes as stated in its Constitution and By-laws.

CHAPTER V

Governance of Co-operatives

Article 13: Constitution and By-laws.

A co-operative registered under this act shall be governed by its constitution and by-laws. A duly adopted constitution and by-laws must conform to this act, the rules of the MOHA, and other related laws; co-operative values and principles; and accepted morals of Bhutanese society. The governance of co-operative shall aim at improving the quality of life of members and communities.

Contents of a Constitution.

The constitution articulates the governance of co-operatives in terms of purposes and objectives, relations with government and other parties, and the overall framework of decision-making and management. The constitution includes the following provisions:

- (1) The name (which must include the word “co-operative”) and the address of the co-operative;
- (2) The purpose of the co-operative and the common bond of interests of members;
- (3) The type of co-operative, the scope of business and the area of operation;

- (4) The overall system of governance: structural arrangement of responsibilities and accountabilities, checks and balances, key elected officials, and reporting system;
- (5) The names and postal addresses of member-incorporator;
- (6) The list of names of members of the Board of Directors; and
- (7) The amount of its share capital and the names and addresses of contributors.

Contents of By-laws.

The by-laws amplifies the constitution and prescribes in details the internal organization and management of the co-operative. It includes the following provisions:

- (1) Membership: kinds, qualifications, duties and responsibilities, and termination;
- (2) General Assembly: powers and Composition and quorum, voting system, Meetings, agenda and minutes of meeting;
- (3) Board of Directors and Committees: powers and responsibilities, composition and qualifications of members and officials; meetings, agenda and minutes of meetings;
- (4) Privileges of co-operatives;
- (5) System of mediation and conciliation of disputes between members;
- (6) Resource management: capital, property, and funds; accounting and auditing, allocation and distribution of net savings;
- (7) Other provisions: mode of amendment or revision; commencement;

General Assembly.

Every registered c-operative shall have General Assembly as the highest legislative body and composed of all qualified members. The powers and responsibilities of the General Assembly prescribed in the constitution and By-laws. Regular general assembly shall be held in accordance with the By-laws. Unless prescribed in the by-laws, a quorum of a regular or special general assembly shall be simple majority or fifty one (51%) of all qualified members.

Board of Directors.

Every registered co-operative shall have a Board of Directors as the policy making body. The powers, duties and accountabilities of the Board and officials shall be prescribed in the constitution and By-laws.

The Board shall be composed of a minimum of five and a maximum of fifteen members who are elected directly by the General Assembly. It shall elect from its members the

following officials who shall serve for one year and will be eligible for re-election: a chairman, a vice chairman, a secretary and a treasurer.

Regular Board meeting shall be held monthly. Special board meetings may be called by the chairman or by majority of its members. Unless prescribed in the By-laws, a quorum of a regular or special meetings shall be simple majority or 51% of the members of the board of Directors.

The Board may appoint a manager and staff depending on the volume of business and financial capacity of the co-operative.

Committee.

Every registered co-operative shall have a finance and audit committee and election committee with three members each who are elected directly by the General Assembly and to serve for a term of two consecutive years with re-election.

Co-operatives engaged in the business of loans shall include a credit committee with three members who are elected directly by the General Assembly and shall serve for a term of two consecutive years with re-election. Co-operative engaged in the supply and marketing of goods shall include, as part of the functions of the audit committee, the functions of inventory of goods.

An education and training committee shall be established by the Board of Directors, chaired by the vice-chairperson of the Board. The Board shall appoint qualified members from the co-operative.

The functions and responsibilities of these committee shall be prescribed in the constitution and By-laws.

Article 14: Liability of directors, officials, committee members and manager.

Directors, officials and committee members, who wilfully and knowingly vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith or acquire any personal or pecuniary interest in conflict with their duty shall be liable jointly and individually for all the damages resulting therefrom to the co-operative, members and other persons.

The MOHA together with the co-operative Sector shall issue the code of conduct of, including the penalties for violations by, directors, officials, committee members and managers of co-operatives.

Article 15: Termination of membership

A member may be terminated on any of the following reasons;

- (1) Withdrawal of membership by giving thirty days notice to the board of Directors;

- (2) Death or insanity, in the case of natural person, and insolvency or dissolution, in the case of juridical persons; and
- (3) Removal by majority vote of the board of directors for any of the following reasons:
 - (a) failure of the member to patronize the co-operative for a period of time fixed by the board of directors;
 - (b) failure of member to comply with his obligations;
 - (c) violation of the constitution and by-laws and the policies of the Board of directors; and
 - (d) committed acts or omission injurious or prejudicial to the interest or welfare of the co-operative.

Article 16: Voting.

In primary co-operatives, members are entitled to one vote. In the other forms of co-operatives, the voting shall be done based on their by-laws.

Article 17: Application of relevant management and social development principles and practices.

Effective governance of co-operatives does not rely only on their legal bases, values and principles of co-operatives and morals of the Bhutanese society as mentioned under Article 4. Co-operatives must be pragmatic and must adapt to relevant changes under the initiatives of the Board and committee members and the managers.

CHAPTER VI
Financial Management of Co-operatives

Article 18: Capital and their sources.

The capitalization and accounting of resources of registered co-operatives shall be governed by this Act and the rules issued by the MOHA. Registered co-operatives may derive their capital from the sources that include, but not limiting to, the following:

- (1) Members' share capital;

- (2) Loans and borrowings including deposits;
- (3) Revolving capital which consist of the deferred payments of patronage refunds or interest of share capital; and
- (4) Subsidies, donations, legacies, grants, aids and such other assistance from any local or foreign institutions whether public or private but with prior approval from the Ministry of Finance.

Article 19: Liability of members

A member shall be liable to the debts of the co-operative to the extent of his contribution to the share capital of the co-operative.

Article 20: Share capital, Interest and limitations to share capital holding.

It is the responsibility of every member to contribute share capital for the operations of the co-operative. The co-operative shall issue share certificates as proof of the amount contributed by the member.

The share capital of member shall earn interest based on the constitution and By-laws.

To ensure wider ownership of members of the co-operative through share capital, no member other than the co-operative itself shall own or hold more than ten per cent (10%) of the total share capital of the co-operative.

Article 21: Investment of capital.

For the interest of members, a co-operative may invest in any capital of the following:

- (1) In shares or debentures or securities of any other co-operative;
- (2) In any reputable bank in the country or any company list under the Bhutan Stock Exchange;
- (3) In securities issued or guaranteed by the government;
- (4) In real estate primarily for the use of the co-operative or its members; or
- (5) In any other manner authorized in the constitutional and by-laws or approved by the General Assembly.

Article 22: Financial sustainability of co-operatives from members; proceeds.

The General assembly may authorize its Board of Directors to pursue schemes and prescribe the policies that would increase or improve the capacity of the co-operative on financial sustainability. Such schemes should generate funds from proceeds of members from their capital and products and shall be managed as revolving funds.

The schemes may include the deferring of payment of patronage refunds and interest on capital, and the deduction of a percentage from the proceeds of products sold or per unit of product handled.

Article 23: Audit of co-operatives.

All registered co-operatives under this Act shall be subject to annual audits by qualified auditors as certified by the Royal Audit Authority (RAA). The audit guidelines shall be prescribed by the RAA after consultation with the Co-operative sector.

The auditor shall submit his report of audit to the audit committee of the subject co-operative. After thorough review, the audit committee shall submit the audit report, with its comments or observation to the board of Directors. The Board of directors shall present the audit report to the general assembly.

Article 24: Ssafety of records of co-operatives.

All registered co-operatives shall maintain official records required by this Act, which includes directory of members, official receipts, duly audited financial statements, annual reports, and minutes of meetings of the General Assembly, board of Directors and committees. The Board of directors shall prescribe the policies required for the maintenance of record.

Article 25: Allocation and distribution of net surplus.

The net surplus of a co-operative shall not be construed as a profit but as a excess of payment made by a member from his/her business transactions with the co-operative. At the end of the accounting period, the net surplus shall be allocated in the following order of distribution:

- (1) Reserve fund of a minimum of thirty percent (30%);
- (2) Co-operative education and training fund (CETF) of ten percent (10%);
- (3) An optimal fund of not more than ten percent (10%);
- (4) Interest on capital and patronage refund of the remaining balance after deducting items (1), (2) and (3) in this article.

Reserve fund.

This is a buffer fund of the co-operative to cover for its financial limitations that are brought about by economic or business dislocations such as price fluctuations or inflation or brought about by fortuitous events such as earthquakes and fires and to meet net losses in its business operations.

Its purposes are to protect or restore the stability of business operations and to build confidence among members and the community. Any sum recovered on items previously charged to the reserved fund shall be credited to such fund.

The reserve fund cannot be divided among members in case the co-operative is dissolved. Instead, the fund, upon the dissolution of the co-operative, the general assembly may decide to distribute in the following manner: a) establish a trust fund for the federation where it belongs and to the union, and/or b) donate to the communities covered by the area of operation of the co-operative.

Co-operative education and training fund (CETF).

Of the total amount allocated to this fund, the co-operative shall utilize fifty percent (50%) for its own education and training program that should aim to inform the members of the policies and programs of the co-operative. It shall also be used for the specialized and advanced trainings of the staff, board and committee members. The other fifty percent (50%) shall be remitted to the union of co-operatives.

Optional fund.

This fund may be created by the general assembly to raise funds to acquire properties and to contribute to the economic and educational advancement of communities.

Interest on capital and patronage refund.

The remaining balance of the net surplus shall be made available to members as interest on their capital and as refund for their patronage of the products and services.

CHAPTER VII

Merger, dissolution and insolvency of Co-operatives

Article 26: Merger and consolidation of co-operatives.

Two or more co-operatives may merge with and be absorbed by another co-operative that shall continue the purpose of the merged co-operatives.

Two or more co-operatives may consolidate into a new, single co-operative.

Merger or consolidation shall be pursued as a strategy of co-operatives to increase resources and expand or diversify operations for the common economic and educational interest of members and community.

Article 27: Dissolution and insolvency.

Voluntary dissolution

If the dissolution of a co-operative does not prejudice the rights of any creditor having a claim against it, the dissolution may be effected by a two-thirds vote of the General Assembly called for that purpose.

When the dissolution of a co-operative may prejudice the rights of any creditor, the petition for dissolution shall be endorsed by a two-thirds vote of the General Assembly called for that purpose and filed with the MOHA that shall effect the decision.

Involuntary dissolution

A co-operative may be dissolved by order of a court after due hearing on the grounds of (1) violation of any laws, rules, or provisions of the constitution and by-laws; or (2) insolvency.

Dissolution

The certificate of registration of a co-operative may be suspended or revoked in a court of law through legal process.

Insolvency

In case a co-operative is unable to fulfil its obligations to creditors due to insolvency, such co-operative may apply for remedies as it deems fit under the Bankruptcy and related Acts.

Article 28: Implementing rules.

The MOHA shall prescribe rules for merger, consolidation, dissolution and insolvency of co-operatives after consultation with the co-operative Sector.

CHAPTER VIII

Role of Government in Promoting the Economic and Educational Development of Co-operatives

Article 29: Co-operative development strategy.

The Cabinet, after consultation with the Co-operative Sector and other stakeholders, shall issue the strategy that will articulate the goals and priorities of the RGOB on its support to co-operative development as part of every Five-Year Plan.

Consequently, all concerned government agencies shall craft and implement their respective five-year support programs to co-operative development in accordance with the strategy issued by the Cabinet. The cabinet shall issue the guidelines to govern the participation of government agencies including the mechanisms for inter-agency coordination.

Planning Commission shall provide technical support to the Cabinet in drafting the co-operative development strategy and in the monitoring and evaluation of the implementation of approved co-operative plans and programs for all concerned agencies.

Article 30: Government Co-operative sector partnership.

The government and the co-operative sector and other stakeholders shall enter into partnership, based on mutual respect and understanding, for more effective and coordination planning, implementation and review of co-operative development plans and programs.

**CHAPTER IX
Miscellaneous Provisions**

Article 31: Use of the word “co-operative”

Only enterprise registered under this Act shall use the word “co-operative” in their names. Any person or organization found violating this provision shall be punished as per the rules framed by the MOHA.

Article 32: Interpretation and construction.

In case of doubt as to the meaning of any provision of this Act or the rules issued thereof, the same shall be resolved liberally in favour of the co-operatives and their members.

Article 33: Information campaign.

The MOHA shall conduct an information campaign on the provision of this Act.

Article 34: Separability.

If a part of this Act is declared unconstitutional, the rest of the provisions shall remain in force and effect.