

REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

LAW ON COOPERATIVES

Source: REO Live (Atty. Kris), ReSA Lecture (Atty. Nicko), and REO Pre-Recorded (Atty. Diane)

Topics Covered:

7. Law on Business Organizations
- 7.4. Cooperatives
 - 7.4.1. Organization and Registration
 - 7.4.2. Administration
 - 7.4.3. Responsibilities, Rights, and Privileges
 - 7.4.4. Membership
 - 7.4.5. Capital, Property of Funds
 - 7.4.6. Audit, Inquiry and Members' Right to Examine
 - 7.4.7. Allocation and Distribution of Funds
 - 7.4.8. Types and Categories of Cooperatives
 - 7.4.9. Merger and Consolidation of Cooperatives
 - 7.4.10. Dissolution of Cooperatives

Principles, Organization, and Registration

Cooperative - an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by:

- Making equitable contributions to the capital required
- Patronizing their products and services, and
- Accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles

Separate Juridical Personality

- Obtained by a cooperative upon issuance of a Certificate of Registration by the CDA under its official seal
- Cooperatives also have limited liability, right to succession, and the powers like a corporation

Cooperative Principles

1. Voluntary and Open Membership

- Open to all who are able to use their services and willing to accept responsibilities of membership
- Without gender, racial, social, cultural, political, or religious discrimination

2. Democratic Member Control

Highest rank in authority is the **"General Assembly,"** composed of voting members (directors for corporations)

3. Member Economic Participation

Contribution and democratic control of members as to the cooperative's capital

4. Cooperating Among Cooperatives

Primary Cooperatives	Composed of Natural Persons
Secondary Cooperatives	Composed of Primary Cooperatives
Tertiary Cooperatives	Composed of Secondary Cooperatives

Federation	○ Belonging to the same line of business ○ ≥ 3 Secondary Cooperatives as members
Union	○ Regardless of line of business ○ ≥ 10 Secondary Cooperatives as members

5. Autonomy and Independence

Entering into agreements with other organizations are done in terms that ensures members' democratic control and maintains cooperative autonomy

6. Education, Training and Information

Provides education and training for their members, representatives, managers, and employees to contribute to its development

7. Concern for Community

Works for the community's sustainable development through policies approved by their members

Required Submission to the CDA upon Organization and Registration

1. Articles of Cooperation (Signed and Acknowledged by Organizers)

a. Name

Requirements:

- Indicate the nature of the cooperative
- Use the words **"cooperative"** or **"kooperatiba"**
- Not be deceptively similar to an existing cooperative
- Not using the term "incorporation," "corporation," or "incorporated"
- **Not in all caps**, unless acronyms, which must still be spelled out

b. Term of Existence

- **Maximum of 50 years**
- Renewable as early as 5 years prior to expiration

c. Purpose/s and Scope of Business

- Single Purpose
 - Can transform to a multi-purpose cooperative as long as complied with its requirements and has been **operating for at least 2 years**
- Multi-Purpose

d. Area of Operations of Principal Office

e. Common Bond of Membership

Anything common among the members

f. Names of Initial Directors

g. Names, Nationality, and Addresses of Registrants (Incorporators)

Qualifications of a Registrant of a Primary Cooperative

- Composed of **15 or more natural persons**
- Of **legal age** (XPN: Laboratory Cooperatives)
- Common bond of interest or membership
- **Filipino citizens**
- **Residing or working within the area of operation**
- Must have completed a **Pre-Membership Education Seminar**

h. Capital Structure

- Amount of share capital
- **Names and residences** of contributors
- Statement of whether the cooperative is primary, secondary, or tertiary

2. By-Laws

- Filed **only at the same time the articles of cooperation was filed**
- Not allowed to be subsequently filed

3. Economic Survey

General Statement describing among others

- Structure and purposes of the proposed cooperative
 - Actual staffing plan shall **include a bookkeeper** (always)
- Other pertinent data in a CDA-provided format

4. Sworn Statement of Treasurer as to the Minimum Paid-up Capital

5. Bond of Certain Accountable Officers

Approval of Applications for Registration

Must be completed within 60 days from filing

Inaction	Deemed Approved (Unless cause of delay is attributable to the applicant)
Denial	• Appeal can be made to the Office of the President within 90 days from receipt of notice of denial • Inaction from the Appeal is Deemed Approved

Registration Fee of Proposed Federation

Whichever is higher between:

- **10% of the 1% (0.1%) of the Authorized Share Capital**, or
- The amount prescribed in the CDA Schedule of Fees

Capital

Minimum Subscription

25% of Authorized Share Capital

- As to **common shares only**
- If preferred shares are provided, it shall only be a **maximum of 25% of the total authorized share capital**

Minimum Paid-up Capital

Periodically reviewed by the CDA, and may be increased every 5 years, when necessary, upon consultation with NEDA and the cooperative sector

Primary (In General)	Single-Purpose	Whichever is <u>Higher</u> : ▪ 15,000 ▪ 25% of Total Subscription
	Multi-Purpose	Whichever is <u>Higher</u> : ▪ 100,000 ▪ Feasibility Study Requirement
Secondary Cooperatives	Federation	Whichever is <u>Higher</u> : ▪ 1,000,000 ▪ Feasibility Study Requirement
	Union	None
Tertiary Cooperatives	Federation	Whichever is <u>Higher</u> : ▪ 5,000,000 ▪ Feasibility Study Requirement
	Union	None

Types of Cooperatives

Advocacy Cooperative	Promotes and advocates cooperativism among its members and the public through <u>socially-oriented projects</u>
Dairy Cooperative	Engaged in the <u>production of fresh milk</u> which may be processed and/or marketed as dairy products
Fishermen Cooperative	Organized by <u>marginalized fishermen</u> in localities
Multi-purpose Cooperative	<u>Two or more business activities</u> of the different types of cooperatives
Workers Cooperative	<u>Organized by workers</u> , including the self-employed, who are at same time the members and owners of the enterprise
Agriculture Cooperative	Engaged in <u>raising/culture of plants, animals, fungi, and other living organism</u> for productive and economic purpose
Agrarian Reform Cooperative	Organized by <u>marginal farmers</u> majority of which are agrarian reform beneficiaries
Consumers Cooperative	One of the primary purpose of which is to <u>procure and distribute commodities</u> to members and non-members
Marketing Cooperative	Engages in the <u>supply of production inputs to members</u> and markets their products
Producers Cooperative	Undertakes <u>joint production, the production and processing of raw materials or goods</u> produced by its members into finished or processed products for sale
Cooperative Bank	Provides a wide range of financial services to their members and to cooperatives
Credit Cooperative	Provides savings and lending services to <u>its members</u>
Financial Service Cooperative	Provides savings, credit, and other financial services
Service Cooperative	Engages in medical and dental care, hospitalization, transportation, insurance, housing, labor, electric light and power, communication, professional and other services
Electric Cooperative	Organized for the primary purpose of undertaking <u>power generations, utilizing renewable energy sources</u> , distribution to its household members
Health Services Cooperative	Organized for the primary purpose of <u>providing medical, dental and other health services</u>
Housing Cooperative	Organized to assist or provide <u>access to housing</u> for the benefit of its regular members who actively participate in the savings program for housing.
Insurance Cooperative	Engaged in the business of <u>insuring life and property</u> of cooperatives and their members
Transport Cooperative	Includes <u>land and sea transportation</u> , limited to small vessels
Education Cooperative	Organized for the primary purpose of <u>owning and operating licensed educational institutions</u>
Water Service Cooperative	Organized to <u>own, operate and manage waters systems</u> for the provision and distribution of potable water for its members and their households

Laboratory Cooperatives

- Organized by minors from 7 to 17 years old
- Must be **affiliated with a registered guardian cooperative**
- Its name must be "Laboratory Cooperative of ..."
- **No juridical personality**; the guardian cooperative is liable for its violations
- Upon dissolution, the certificate of registration as a laboratory cooperative is revoked

Membership, Administration, Responsibilities, Rights

Kinds of Membership

a. Regular Member

- Part of the General Assembly
- With **exclusive power to vote and be voted**

Requisites:

- Meets minimum requirements of regular membership
- Continues patronizing the cooperative for 2 years
- Signifies intention to remain a member

b. Associate Member

Non-voting

Termination of Membership

a. Voluntary Withdrawal

Requisites:

- Comply with **60-day notice requirement to the BOD**
- Withdrawal will not result to insolvency of the cooperative

b. Death or Insanity (for Primary Cooperatives)

c. Dissolution or Insolvency (for Non-Primary Cooperatives)

d. By Majority Vote of Entire BOD

- Only in any of the following instances:
 - **Failed to patronize product or service** of the cooperative for an unreasonable period of time
 - **Failed to comply with his obligations** as a member of the cooperative
 - **Violation of by-laws and rules** and regulations
 - **Guilty of act or omission injurious or prejudicial to the interest and welfare of the cooperative**

- Must be given an **opportunity to be heard**

- **Appealable to the General Assembly within 30 days from receipt** thereof, whose decision will be final

XPN:

To the **Appeal and Grievance Committee**, if such was created by the General Assembly (serves for 1 year period)

General Assembly

- Highest policy-making body of the cooperative
- Composed of **all regular members** (entitled to vote)

Delegation of Powers by the General Assembly

General Rule:

Allowed to a smaller body is allowed with **¾ vote of all its regular members**

XPNs:

Non-Delegable Powers of the General Assembly

- Amendment of articles of cooperation and by-laws
- Electing, appointing, and removing for cause members of the BOD
- Approving developmental plans of the cooperative

Board of Directors

Composition	5 to 15 Members
Term	2 years
Powers	○ Strategic planning ○ Direction-setting ○ Policy formulation

Qualifications	• Regular Member • Others as provided by the By-laws XPN: Special Director for Technical Knowledge ◦ Appointed <u>by any financing institution</u> from which the cooperative received financial assistance ◦ <u>No power, rights, nor responsibilities</u>, except for solely providing technical knowledge or assistance not available within its membership
Prohibitions	• Can't hold other positions directly involved in daily operations and management within the same cooperative • Can't engage in same line of business of that of the cooperative • Can't engage in any form of conflict of interest

Special Issues to Directorship

Self-Dealing Directors

Does not cover officers and committee members (valid)

General Rule:

Voidable to the Cooperative

XPNs (Must **meet ALL** to be **VALID**):

- Fair and Reasonable Contract
- Presence was not required for quorum
- Vote was not required for approval

XPN to XPNs:

Valid if ratified by $\frac{3}{4}$ of the Regular Members, provided that the contract is **at least fair and reasonable**

Disloyalty of Directors

General Rule:

Liable for Damages and Accounts for Twice the Profits Earned

XPN:

Ratified by $\frac{3}{4}$ of the Regular Members

Cooperative Officers

- Chairperson - must be a director
- Vice-Chairperson - must be a director
- Others as provided in the By-Laws

Prohibitions for Cooperative Officers

- Can't engage in **any conflict of interest**
- No two or more persons **within the 3rd degree of consanguinity or affinity** shall serve at the same time
- Can't be an **officer or employee of the CDA**
(XPN: In a cooperative that they established)
- Can't be an **elective official**
(XPN: Party-list representatives whose party list is organized as a cooperative)

Removal of Elected Officers

- Complaints shall be filed to the BOD
- Majority of the BOD may place him **under preventive suspension** pending the resolution of the investigation
- May **only be removed** by $\frac{3}{4}$ votes of Regular Members present in a General Assembly meeting

Removal of Directors

Only for cause after due hearing

- By $\frac{3}{4}$ votes of Regular Members present in a General Assembly meeting
- Loss of confidence is not a valid ground, unless evidenced by acts or omission causing loss of confidence in the officer's honesty and integrity

Vacancies of Directorship

Reason	Remaining BOD Still Constitutes Quorum?	Who May Fill-in the Vacancy?
Expiration of Term	✓	General Assembly
	X	
Other Reasons	✓	Remaining Directors
	X	General Assembly

Executive Committees (Created by the by-laws)

Members to be elected by the <u>General Assembly</u>	Members may be elected <u>by the Directors</u> (Majority of All the BOD)
• Audit Committee • Election Committee	• Ethics Committee • Mediation and Conciliation Committee • All Other Committees

Compensation of Directors

General Rule:

Not Entitled

XPNs:

Applying to Year 2 Onwards Only

- Provided in the **by-laws**
- By a **Majority Vote of Regular Members** in a meeting

Applying as early as Year 1

- Reasonable Per Diems

Except:

- Incurred **net loss in the prior year**, or
- **Dividend rate is less than the inflation rate** in the prior year

- Compensation for Officers, Committee Members, and Employees are **not covered of such provision**, and may be fixed in the by-laws

Meetings

	General Assembly (All Regular Members)	Directors
Regular Meetings	Annually • On the <u>date stated in the by-laws</u>, or • Within 90 days from the end of fiscal year (only if no stated date in by-laws)	Monthly or as provided in the by-laws
Special Meetings	Whenever necessary by the <u>majority of the BOD</u>, as long as a written notice is sent to all regular members 1 week prior to the meeting Other ways: • By the <u>BOD</u> upon a <u>written request of at least 10% of Regular Members</u> • By the <u>CDA</u>, upon <u>petition of at least 10% of Regular Members</u> (if BOD fails to call a meeting) • By the <u>CDA</u> to <u>report to members the result of any examination or investigation</u> of the cooperative affairs • Within 90 days from approval of a <u>Newly Approved Cooperative</u>	Any time upon the call of the <u>chairperson or majority of the BOD</u> , as long as written notice is sent to all BOD 1 week prior to the meeting
Attendance	Either of the following: • In Person • By Representative Delegate • Proxy (only for non-primary cooperatives)	• In Person only
Quorum	G.R. At least 25% of Regular Members XPNs: ▪ <u>Cooperative Banks</u> $\frac{1}{4} + 1$ of Regular Members (3/4 if to amend Articles & By-Laws) ▪ <u>Electric Cooperative</u> 5% of Regular Members	G.R. Majority of the Board XPN: Otherwise provided in the by-laws, higher or lower

Audit, Inquiry, and Right to Examine

Record of Accounts

- Must be maintained for at least 5 years, after which, may be disposed by burning or other method of complete destruction, except those subject of civil, criminal, and administrative proceedings

Regular Reports of Program of Activities

- Made accessible annually to each member
- **Filed with the CDA within 120 days** from the end of the calendar year
- Failure to file shall be a ground for revocation of Certificate of Registration
- Within 15 days from expiration of prescribed period, a written notice of non-compliance with fines and penalties that will be imposed will be sent to such cooperative

Annual Audit

Financial, performance, and social audit

	Financial Audit	Social Audit	Performance Audit
Requirements for the Auditor	External Auditor, which must be: ◦ Independent ◦ BOA-Accredited ◦ CDA-Accredited ◦ MIGS of PICPA Must not be the auditor for more than 5 consecutive years (2 years as gap needed then)	Independent and CDA-Accredited Social Auditor	No Requirements
Submission of Reports	To the: ◦ BOD ◦ Audit Committee Must then be presented by the BOD to the General Assembly meeting	To the BOD	To the BOD

Members' Right to Examine

- During reasonable hours on business days
- Without charge, except for the cost of production

Excludes:

- Subsidiary ledgers
- Records of natural and juridical members other than their own personal records
- **Refusing officer is liable for damages** and punishable under the Cooperative Code

XPNS:

- Requesting member has **improperly used prior information or was in bad faith** (not for legitimate purpose)
- **Pursuant to a BOD Resolution or Order** (Liability is imposed upon Affirming Directors)

Allocation and Distribution of Funds

Sources of Capital

- Members' share capital
- Loans and borrowings
- Revolving capital (Deferred payments of patronage refunds or interest on shares capital)
- Subsidies, donations, legacies, grants, aids, and other financial assistance

Limitation of Members' Share Capital Holdings

- A member may only hold a maximum of 10% of the total subscribed share capital
- Par value of shares must **not exceed 1,000 per share**

Transfer or Assignment of Members' Shares or Interest

Requisites:

- Member **held such share or interest for at least 1 year**
- Assignment is made to the cooperative, a member of the cooperative, or to a person falling within the cooperative's field of membership
- **BOD approved** such assignment

Principle of Patronage Refunds

Principle of equity establishing an equal right of members to participate in the organization and to equitably share in the benefits accruing therefrom

Patronage Refunds

The sum allocated to patrons - those who availed of the cooperative's goods or services

Member-Patrons

Paid-up Share Capital	Be paid to him , unless he <u>agrees to credit the amount as additional contribution</u>
Unpaid Share Capital	Be credited to his account first until fully paid

Non-Member Patrons

- Set aside in a general fund for such patrons, and allocated to such individuals **only upon**:
 - Request, and
 - Presentation of evidence of amount of patronage
- Such amount will then be credited to his payment of the minimum capital contribution for membership

Deemed and Becomes a Member	Only if: ◦ The <u>accumulated amount is at least equal to the minimum capital contribution</u> ◦ He <u>complies with the period specified in the by-laws</u>. And ◦ He <u>agrees and complies with the provisions in the by-laws for admission to membership</u>
Such amount will be credited to the reserve fund or to the education and training fund instead	In any of the following: ◦ The non-member <u>does not request nor agree to become a member, or fails to comply with the provisions in the by-laws for admission to membership</u> ◦ Any subscriber <u>did not meet or fully pay his subscribed share capital within the period prescribed in the by-laws</u>

Allocation of Net Surplus "RECO 10/10/3/7"

Net Surplus - the excess of revenue over expenses (profit)

1 st Priority	Reserve Fund ◦ Year 1 to 5: <u>Minimum of 50%</u> ◦ Year 6 onwards: <u>Minimum of 10%</u> May be decreased by the General Assembly if it already exceeded the share capital
2 nd Priority	Education and Training Fund Maximum of 10%
3 rd Priority	Community Development Fund Minimum of 3%
4 th Priority	Optional Fund Maximum of 7%
Any Excess	For Patronage Refunds and Interest on Shares Provided that, <u>Interest on Shares shall not exceed the normal rate of return on investments</u>
Any Further Excess	Reserve Fund

Reserve Fund

- Used for the stability if the cooperative and to meet net losses in its operation
- Utilized **only** for the following investments:
 - Shares, debentures, or securities of any other cooperative
 - Any reputable bank in the locality, or any cooperative
 - Securities issued or guaranteed by the government
 - Real estate primarily of the cooperative or its members' use
 - Any other manner authorized in the by-laws

Education and Training Fund

Annually:

- **Half** shall be spent for educational and training purposes
- **Half** may be remitted to a chosen federation or union, of which the cooperative is a member

Community Development Fund

Used for projects or activities that will benefit the community where the cooperative operates

Optional Fund

Land, building, and other necessary fund

Merger, Consolidation, and Dissolution

- **Merger:** $A + B = A$ or B (one surviving entity)
- **Consolidation:** $A + B = C$ (a new entity is formed)

Effectivity of Merger or Consolidation

- Must be approved by $\frac{3}{4}$ vote of present Regular Members of both cooperatives at separate general assembly meetings
- Effective only upon the issuance by the CDA of a Certificate of Merger or Consolidation

DISSOLUTION

Effective only upon CDA's Revocation of the Certificate of Registration

Voluntary Dissolution

No Creditors are Affected	Resolution approved by: - Majority of the BOD, and $\frac{3}{4}$ of present Regular Members - Countersigned by the Board Secretary Notice of Meeting - Published for <u>3 consecutive weeks</u> in a newspaper - Sent to each member <u>at least 30 days prior</u> by mail or personal delivery
Creditors are Affected	Petition to the CDA approved by: - Majority of the BOD, and $\frac{3}{4}$ of the present Regular Members CDA Order - Fixes a date within 30-60 days after the entry of the order - Published at least once a week for 3 consecutive weeks in a newspaper Period to File Objection: <u>5 days from notice of CDA</u>

Involuntary Dissolution

1. By Court Order

After due hearing on **grounds** of:

- Insolvency, or
- Violation of any law, regulations, or the provisions of its by-laws

2. By the CDA

After due notice and hearing on **grounds** of:

- Registration by fraud
- Illegal purpose
- Willful violation of Cooperative Code
- Willful failure to operate on a cooperative basis, or
- Failure to meet required minimum number of members in the cooperative

3. Failure to Organize for 2 years

Not automatic, upon due notice and hearing (unlike corporations)

4. Continuous Inoperation for 2 years

Not automatic, upon due notice and hearing

Distribution of Funds upon Dissolution

Reserve Fund	Shall not be distributed among the members The General Assembly may resolve to do the following: - Establish a usufructuary trust fund for the benefit of any federation or union to which the cooperative is affiliated - Donate, contribute, dispose the amount for the benefit of the community where the cooperative operates - If member can't decide disposal, it shall go to the federation or union that the cooperative is affiliated
Education and Training Fund	Unexpended balance shall be credited to the education and training fund of the chose federation or union

LIQUIDATION

Upon dissolution, cooperatives are given **3 years to wind-up and liquidate**

Distinctions with Corporations and Voting Requirements

Distinctions with Corporations

	Corporation	Cooperative
Juridical Personality	From SEC's issuance of Certificate of Incorporation	From CDA's issuance of Certificate of Registration
Term	Perpetual (G.R.)	Maximum of 50 years , Extendable for another term
Renewal of Term	Not earlier than 3 years prior to the expiration of the term	Not earlier than 5 years prior to the expiration of the term
Articles	Articles of Incorporation (AOI)	Articles of Cooperation (AOC)

	Corporation	Cooperative
Incorporators or Registrants	1 to 15 persons (Except for OPC that must be a natural person, estate, or trust) - No residency or citizenship requirement - Must own or subscribe to at least 1 share	15 or more natural persons - Must be Filipino Citizens and Residing or Working in the Area of Operations - Must have a common bond of interest
Directors or Trustees	Number: 1 to 15 Term: - Stock - 1 year - Nonstock - 3 years - Educational - 5 years (staggered) Qualification: - Shareholder of at least 1 share for Stock, or a Member for Non-Stock	Number: 5 to 15 Term: 2 years Qualification: - Regular Member
Manner of Management	Directors or Trustees	Directors
Ownership	Shareholders or Members	Regular and Associate Members (Only the Regular Members are part of the General Assembly, with the right to vote and to be voted)
Minimum Subscribed Capital	X	25% of the Authorized Share Capital
Minimum Paid-up Capital	X	As to Primary Cooperatives: Whichever is higher, 25% of Subscribed Share Capital, or 15,000
Maximum Portion of Preference Shares in the Capital Structure	X	25% Maximum
Limitations on Transfer of Interest	X	Must comply: 1 year holding period - Made to the <u>cooperative</u>, a <u>member</u>, or <u>any person falling to the field of membership</u> Approved by BOD
Officers	- President - Secretary - Treasurer - Compliance Officer	- Chairperson - Vice Chairperson - Others in the By-Laws (not needed to be a Director)
Ratification of Self-Dealing Directors and Acts of Disloyalty	2/3 vote of Shareholders	3/4 vote of Regular Members
Vacancies in Directors	Filled in by Majority of the Shareholders if due to: - Retirement - Expiration of Term - Increase in the Number of Directors All others are filled in by the <u>remaining directors</u> , <u>provided a quorum</u> still exists	Filled in by Majority of the Regular Members in the General Assembly if due to: Expiration All others are filled in by the <u>remaining directors</u> , <u>provided a quorum</u> still exists
Death of Stockholder or Member	Does not dissolve or affect the corporation	A valid ground for termination of membership

Summarized Regular Members' Voting Requirements

Merger or Consolidation	3/4	Present Regular Members in a General Assembly
Division of Cooperatives		
GA's Delegation of Delegable Powers		
Removal of Elected Officers		
Ratification of Self-Dealing and Disloyal Directors		
Voluntary Dissolution	2/3	All Regular Members
Amendment of Articles of Cooperation		
Amendment of By-Laws		

- In **all other cases**, only majority vote is required.