



MALTA CO-OPERATIVE FEDERATION



Recommendations on changes to the
Maltese Legislation effecting
Co-operative Societies
2014





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Preface

The Malta Co-operative Federation accepted the Ministry for Economy, Investment and Small Business' invitation to actively contribute as a key stakeholder towards strengthening the Maltese co-operative legislation.

The Federation's co-operative society members have long been discussing various issues and the proposals being put forward in this document are therefore the result of mature and thorough discussion. Many of the Federation's contributors to this document are experienced co-operators who, through their work over many years not only in and with co-operative societies, but also with the Regulator and the Government Ministries responsible for co-operative societies, have gained insight into the various problems that limit or prohibit co-operative societies and the Maltese co-operative movement from further development.

The Federation is committed to strengthening the Maltese legislation effecting co-operative societies and to supporting the creation and expansion of co-operative societies in all sectors in Malta. To that end, we are putting forward a number of recommendations concerning, in the main, fair funding opportunities, the reduction in the minimum number of members, membership and financial matters, among other issues.

The Malta Co-operative Federation welcomes and appreciates Minister Cardona's acceptance to consult with the Federation once the first draft of the amended Co-operative legislation is available, prior to the Bill being presented to Cabinet and Parliament.

Notwithstanding the lack of funding from the Central Co-operative Fund, the Malta Co-operative Federation has been able to prepare this comprehensive document which is being made available also to the general public.

Finally, the Federation is indebted to all co-operators, Council Members and friends of the Federation each of whom has generously and voluntarily made his or her invaluable contribution through discussion, research and ideas.

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1 Fair funding opportunities through the Central Co-operative Fund

[Co-operative Societies Act, 2001 - Article 91 & Subsidiary Legislation 442.03]

1.1 Discrimination and inequitable treatment

Currently the Federation has a membership base of over 15% of all provisionally registered and fully registered co-operative societies. It is also estimated that the Federation's member societies contribute between them approximately 40% of the annual 5% Central Co-operative Fund contribution.

The Central Co-operative Fund is, among other things, available to support the existence and development of all co-operative societies in all sectors of the economy and society, and to finance education and training programmes relating to the promotion and development of the co-operative movement for members of and personnel engaged by co-operative societies and other persons who may actively contribute to the promotion of the co-operative movement.

The Federation was pleased to note that in its Budget for 2014 the Government of Malta promised that "the regulations governing the Central Co-operative Fund shall be revised to reflect the developments that are taking place within the sector." Currently, the practices within the Central Co-operative Fund have created two tiers of co-operative societies, based on Federation membership; one with funding, and the other with no funding at all, notwithstanding the fact that *all* co-operative societies contribute towards the Fund.

The Central Co-operative Fund Members and the Central Co-operative Fund (Provisional Board) Members are obliged to avoid any form of discrimination against either of the two Federations which currently represent Maltese co-operative societies. The Malta Co-operative Federation regrets that notwithstanding two funding requests made to the Central Co-operative Fund (a public fund) to cover the Federation's activities, research and administration over two years, both these public entities (CCF and the Provisional Board), the members of which are appointed by the Minister, have chosen to ignore, without any feedback, these official requests. This goes against the basic principle of fair and equitable treatment and is considered a discriminatory act against the Malta Co-operative Federation and its member societies.

1.2 The Structure of the Central Co-operative Fund

The Malta Co-operative Federation proposes the following changes to the structure of the Central Co-operative Fund:

- The Central Co-operative Fund Committee is to be converted into a Board of Trustees, whose members are appointed directly by the Minister for a period of three years following a call for applications. The trustees will have clear professional competences in financial matters, be persons of repute, and will be responsible for:
 - ensuring maximum benefit from the Fund's investments, taking into consideration issues of ethical investments;
 - ensuring that the funds entrusted to the respective Federations are used with due diligence and good governance. This will be done through clear, unambiguous and standard procedures laid down in the regulations;
 - processing and deciding on specific project funding proposed by the respective Federations.



- It is proposed that the Federations are to be funded by their member co-operative societies by a 5% annual contribution of their net surplus in replacement of the CCF 5% annual contribution. This has a number of distinct advantages:
 - each federation will be responsible for its own success;
 - It will be in the interest of the federations to ensure that contributions are paid in a timely manner;
 - the federations will be encouraging the highest degree of self-regulation possible, as success depends on the collective co-operation of all members;
 - it will ensure that federations use their funding wisely; they will be responsible for funding their own operations, staffing, memberships, network, and assistance to their respective members;
 - it will be in the federations' interest to hand-hold and assist those co-operatives who have an issue with viability, in order to make them healthier and financially sound, in line with co-operative principles;
 - it will be in the federations' interest to increase their respective memberships through the setting up of new co-operatives. The Malta Co-operative Federation believes that this will bring about a healthy and fresh impetus of new and needed co-operatives in all sectors.
- Federations will be given the opportunity to apply for additional funds to the Board of Trustees for specific projects not covered by their annual funding. These will be granted by the Board of Trustees on an ad hoc basis.
- Individual co-operative societies cannot operate in isolation. Consequently, all newly set-up co-operative societies are to be encouraged to become part of a co-operative federation. This ensures that the basis of the principle of co-operation between co-operative societies is upheld.

2 Minimum number of co-operative society members to be set to three

[Co-operative Societies Act, 2001 - Articles 22(2)(a), 26(1)(a) & First Schedule]

2.1 Co-operative societies should be formed by a minimum of three members

The minimum number of members forming a co-operative society in Malta should be three and not five. The Malta Co-operative Federation has on a number of occasions presented its views for making a change to the Co-operative Societies Act in this respect, namely, reducing the minimum number of members in a co-operative society from five to three. This section highlights the salient points based on the Federation's research.

The ethos of co-operative societies is that they promote the work of their members. However, because of Malta's size and economic structure and the fact that about 95% of its economic enterprises are presumed to be micro in size, it is not always possible to win contracts and obtain enough work during the year to guarantee the salaries of five individuals. Reducing the minimum statutory limit to three members therefore makes economic and also practical sense.

Keeping the statutory limit at five members because of a fear that fictitious co-operative societies may be formed with three members is not justified, because fictitious co-operative societies may also exist with five or more members. Keeping tabs on abuse should be the role of the Regulator. Progress aimed at improving the economy and reducing unemployment should not be hindered by those who attempt to suppress competition or by those who believe that worker co-operative societies are not real co-operative societies.



This proposal is also within the context of the Europe 2020 strategy, which proposes a departure from the 'business as usual' approach. The main task the European Commission placed on Member states is to turn the EU into a "smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion". The Federation believes that this is partly achievable by reducing the barriers of entry into the economy for small groups of three individuals who wish to participate within their own co-operative society.

2.2 Following the economic leaders for co-operative growth

Fourteen of the EU-28 Member states boast of a GDP per capita which is healthier than that of Malta. All of these, except for Luxembourg, Ireland and Cyprus have recognised the advantages their economies reap when the number of members in a co-operative society is set at three.

The EU Member States of Austria, Belgium, Croatia, Denmark, France, Finland, Germany, Italy, Netherlands, Slovenia, Spain, Sweden and the United Kingdom have adopted in their legislation the possibility of having all co-operative societies, or specific co-operative sectors, exist with a minimum of three members.

Of particular interest to the Maltese co-operative movement is the fact that in 2006 Germany recognised the benefits of allowing small groups of individuals to work together co-operatively and therefore reduced the minimum number of members that form a worker co-operative society from *nine* to three. Non-European Union industrialised countries such as Japan and Canada, amongst others, have also adopted this policy.

[See table at the end of this section]

2.3 Benefits for reducing the minimum number of members to three

- The reduction in the incidence of non-active members who may have been enrolled as dormant members of the society solely to satisfy a statutory requirement;
- An increase in the participation of worker/owners in the country's economy, thereby further reducing the incidence of precarious work and increasing the possibility of the integration of disadvantaged persons into the labour market;
- An increase in micro entrepreneurial activities and the stimulation of further participation in the labour market;
- The facilitation of youth employment and also of persons aged 55-64 who need an opportunity to be integrated once again into the labour market.

2.4 Increasing minimum membership levels by statute

The Malta Co-operative Federation is aware that the established traditional co-operative societies in Malta are in the main not in favour of reducing the minimum number of members forming a co-operative society to three. It is important to bear in mind that the co-operative movement worldwide, as is also the trend in Malta, is facing changes which include a departure from the classical forms of co-operative societies and the creation of co-operative societies in a variety of new sectors. However, in order to safeguard everyone's opinions and interests, the Act should allow the members of a co-operative society to increase, by means of its Statute, the minimum number of members required in that particular society to any number deemed acceptable.



2.5 Malta Co-operative Federation's recommendations

The Federation recommends that all co-operative societies are to be allowed a minimum of three members.

Country	GDP per capita in PPS 2012 = 100	Minimum number of members in a co-op may be 3 or less
 European Union	100%	
 Luxembourg	263%	7
 Austria	130%	Yes
 Ireland	129%	7
 Netherlands	128%	Yes
 Sweden	126%	Yes
 Denmark	126%	Yes
 Germany	123%	Yes
 Belgium	120%	Yes
 Finland	115%	Yes
 France	109%	Yes
 United Kingdom	106%	Yes
 Italy	101%	Yes
 Spain	96%	Yes
 Cyprus	92%	12
 Malta	86%	5
 Slovenia	84%	Yes
 Czech Republic	81%	5
 Portugal	76%	5
 Slovakia	76%	5
 Greece	75%	5
 Lithuania	72%	5
 Estonia	71%	5
 Hungary	67%	7
 Poland	67%	10
 Latvia	64%	5
 Croatia	62%	Yes
 Romania	50%	5
 Bulgaria	47%	7

EU-28 Member States GDP per capita compared to legislation of Member States allowing minimum number of Members in a co-op to be 3 or less.

[GDP per capita - Eurostat data (15th November 2013) -

<http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00114&language=en>]



3 Co-operative membership eligibility criteria

[Co-operative Societies Act, 2001 – Articles 53(1), 53(2) and 55(1)]

3.1 Revision of membership eligibility criteria for individuals

Both the Regulator and the co-operative societies' Committees of Management have no means of putting in place practical controls over all membership qualification criteria as imposed by the Act. While it is possible to confirm that a person has attained the age of eighteen or is interdicted, other criteria such as testing whether a person is of sound mind, as established by the Act, is not tested in practice. The Legislator is to consider whether the disqualification tests for membership in a co-operative society are to be replaced, in part, by those tests found in Articles 32(1)(d) and 142(1) of the Companies Act Cap. 386, based on the disqualification of a partner and disqualification criteria for appointment of persons on boards of directors.

3.2 Revision of membership eligibility criteria for commercial partnerships

Article 53(2)(a) of the Act has been subject to interpretation on many occasions and there has been disagreement, in official spheres, as to the spirit of the legislation on this issue. Unfortunately a number of potential co-operative societies were not formed solely because of the uncertainty created by the eligibility conditions in this Article. This Article imposes that the commercial partnership wishing to become a member of a co-operative society must satisfy the qualification test that *the operations* and not *the object clauses* of the commercial partnership are to be wholly or mainly similar or equivalent to the operations of the co-operative society. In other words, a commercial partnership with similar or equivalent operations as those of a co-operative society, would be accepted as a member of the co-operative society and concurrently allowed to operate potentially in direct competition with the co-operative society.

Ironically, the interpretation of the Act, as it currently stands, does not permit membership of a commercial partnership in a co-operative society if the operations of the commercial partnership are complementary to those of the co-operative society. This therefore automatically prohibits vertical integration of operations, possibly beneficial to the co-operative society.

3.3 Discrimination between types of members on eligibility

Article 55(1) categorically prohibits members from being in two different co-operative societies with the same or similar objects or activities, yet the Act contradictorily does not prohibit membership eligibility if members of a society are also shareholders in a commercial partnership or other commercial activity with the same or similar objects or activities. It is a known fact that in practice this rule is not enforced.

3.4 Malta Co-operative Federation's recommendations

The Federation recommends that:

- the Act is to include membership disqualification tests that are to determine whether a member is capable of carrying out his/her membership duties and responsibilities;
- the membership qualification tests should also be imposed on the person duly authorised to represent a commercial partnership or other body of persons in a co-operative society;
- the Act is to clearly prohibit membership in co-operative societies of persons or bodies of persons who may have a conflict of interest with the co-operative society or who may act in competition with the co-operative society.



4 One member one vote principle

[Co-operative Societies Act, 2001 – Articles 21(2) and 56]

4.1 Conflict between Article 56 and the second international co-operative principle

The second international co-operative principle which is enshrined in the Act dictates that members in a co-operative society have democratic equal voting rights with each member having only one vote. On the other hand the wording of Article 56 of the Act gives the opportunity for the Statute to provide otherwise.

The Federation is not aware as to whether this rule is being applied within the Maltese co-operative societies, but is definitely not in line with the international principles.

4.2 Malta Co-operative Federation's recommendations

The Federation recommends that the legislation is to be corrected to allow only for the one member one vote principle, with no statute options.

5 Transfer of shares *causa mortis* and *inter vivos*

[Co-operative Societies Act, 2001 – Articles 43 and 58]

5.1 Further rules required in the Act in case of transfer of shares

The Federation is of the opinion that Articles 43 and 58 in the Act need further clarification in order that the statutes of the co-operative societies are regulated by the Act thus avoiding abuse to the detriment of the transferor, whether the transfer is caused by withdrawal, expulsion or death of the member in a co-operative society.

5.2 Membership duration

The Act imposes that a member may not transfer his or her share if that member has held the share for a period of less than one year. The Federation believes that this imposition does not make sense especially since a member should not be forced to remain within the co-operative society against his/her wishes or from which s/he was expelled.

5.3 Malta Co-operative Federation's recommendations

The Federation recommends that:

- the legislation is to be revised in order to create a uniform procedure in all cases of transfer of shares;
- the word "interest" found in these two Articles in the Act is to be carefully defined or eliminated;
- the membership duration limitation should be abolished, establishing rules for the methodology for the liquidation of the nominal share of the outgoing member which in all cases is not to exceed twelve months, thus protecting the liquidity of the co-operative society.



6 Membership eligibility criteria on the Committee of Management

[Co-operative Societies Act, 2001 – Article 72]

6.1 Membership eligibility criteria

Both the Regulator and the co-operative societies' Committees of Management have no means of putting in place practical controls over the Committee of Management qualification criteria as imposed by the Act. While some of these have already been dealt with in this report under the Membership eligibility criteria section, other issues are to be taken into consideration with respect to the conditions of membership for the Committee of Management.

6.2 Persons convicted of a crime

With respect to Article 72(f) of the Act, the Legislator is to consider whether the disqualification of persons convicted of any crime punishable by more than one year imprisonment is to be retained in the Act. Currently persons convicted of such a crime are not eligible for membership on the Committee of Management of their co-operative society. The Legislator is to consider whether the disqualification tests of Article 72(f) of the Act are to be replaced by the wording of Article 142(1)(b) of the Companies Act Cap. 386, thus disqualifying solely persons who have been convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud. In line with current debates in Parliament, the Legislator should consider whether a member seeking election onto the Committee of Management of his/her co-operative society, but who has been given a suspended sentence, is to be considered eligible.

6.3 Conflict of interest

While the proviso of Article 72 of the Act allows for the general meeting to exempt a member of the Committee of Management to engage in an activity which gives rise to a conflict of interest, Article 72(d) contradictorily prohibits a member of the Committee of Management to take part, on a permanent or occasional basis in any activity which is directly or indirectly in competition with that of the co-operative society.

6.4 Malta Co-operative Federation's recommendations

The Federation recommends that:

- the Legislator is to revise the Committee of Management membership criteria such that:
- all contradictions are eliminated;
- the Act enables the integration of disadvantaged persons;
- the Act clearly prohibits membership in the Committees of Management of co-operative societies of persons or bodies of persons who may have a conflict of interest with the co-operative society or who may act in competition with the co-operative society.



7 Non-members to join the Committee of Management members

[Co-operative Societies Act, 2001 – Articles 22(2) and 72(a)]

7.1 Professionals on the Committees of Management

Only a member of the co-operative society and a person appointed by a commercial partnership which is a member of the co-operative society may be a member of the Committee of Management of their society. The Malta Co-operative Federation believes that the Act is to permit on an optional basis the appointment of professionals with voting powers on the co-operative societies' Committees of Management. The Act permits the employment of professional management, who may be allowed to participate in the Committee of Management meetings yet who cannot have any voting powers.

Research has shown that a number of co-operative societies lack management professionalism and business acumen in the running of their commercial affairs. In many cases this is because the persons running the co-operative society do not have the knowledge, skill and experience to carry out the statutory functions entrusted to them in the most proficient manner in respect of the Act, the Statute and its bylaws.

The Legislator should consider balancing the principle of democracy with that of economic efficiency within a co-operative society.

7.2 Benefits for allowing professional non-members to influence policy

- Introduces professionalism and technical know-how within the Committees of Management where this is lacking;
- Introduces expertise in numerous business specialities that complement the members' contributions on the Committees of Management;
- Allows for a wider participation in the management decision making process of the co-operative society.

7.3 Malta Co-operative Federation's recommendations

The Federation recommends that:

- Co-operative societies may nominate and elect non-members on their Committees of Management under the conditions that:
 - the Statute of the society categorically permits non-member elections on the Committees of Management;
 - professional non-Members are to be a minority elected number on the Committee of Management.



8 Salaries and honoraria to Committee of Management members

[Co-operative Societies Act, 2001 – Articles 77(1) and 77(2)]

8.1 Making work pay

The Malta Co-operative Federation is aware that a number of conflicts have arisen in the past within a number of co-operative societies regarding the interpretation of these Articles in the Act. It has also been questioned whether these are in line with labour law currently in force and whether they are to be retained in the Act.

In essence, these Articles provide for allowances and honoraria to be paid to members of the Committees of Management, yet prohibit a member of a Committee of Management of a non-worker co-operative society to be paid a salary if that member is also an employee of the same co-operative society. Arguments have been raised as to whether it is legitimate for a member/employee of a non-worker co-operative society to be nominated and elected on the Committee of Management of his/her co-operative society, since this Article would implicate that the employee would automatically lose his/her salary.

8.2 Malta Co-operative Federation's recommendations

The Federation recommends that:

- Article 77 is to be removed;
- only the honoraria and allowances to the Committee of Management should be determined in a general meeting.

9 Co-operative surplus distribution and capitalisation of surpluses

[Co-operative Societies Act, 2001 – Articles 92(1), 104 and 105(3)]

9.1 Eliminating restrictions and facilitating investment opportunities

The Act, as it stands, limits the possibility of ploughing back co-operative society surpluses into the co-operative society - undistributed prior-year surpluses become “asset locked”. This means that members who have contributed towards the accumulation of the surpluses cannot access such funds. The Federation believes that the “asset lock” should be applied only to the Reserve Fund. It should be possible to distribute all other undistributed surpluses to the co-operative society's members.

The Federation has observed that the “asset lock” issue on undistributed reserves has been overcome by many co-operative societies via the declaration and distribution of *all* surpluses in the year the surpluses are declared. This sometimes creates cash flow difficulties when the co-operative society needs to make investments.

9.2 Capitalisation of surpluses

The Act currently does not allow for the capitalisation of surpluses to a co-operative society's members, yet it allows for the distribution of surpluses in the form of Bonus Shares and Bonus Certificates which have repayment term conditions established by the Act.



9.3 Benefits for postponing surplus distribution and allowing for capitalisation of surpluses

- Reduces business uncertainty;
- Committee of Management has more freedom in considering investment opportunities;
- Guarantees a continuous stream of surplus distributions only when cash flow is favourable;
- Guarantees future distribution of surpluses to those members who contributed to earning that surplus;
- Increases the total equity of the co-operative society in the balance sheet, making the co-operative society look healthier in the eyes of investors, finance institutions and grant providers.

9.4 Co-operative Societies Liquidation Account

In the winding up process, Article 105(3) prohibits the distribution to the Members of any monies remaining after the application of Article 104. In addition, Article 104 restricts the distribution of undistributed surpluses to those periods when no distributions were made.

As the Act stands today, the Members who contributed to the growth of the society are penalised for not having distributed all the surpluses of every year in every year.

9.5 Creating the rules by Statute

The Malta Co-operative Federation is aware that the nature and scope of co-operative enterprises varies depending on the type and form of each co-operative society. The Federation can agree that surplus distribution is tied to cash availability, yet only on the condition that prior year undistributed surpluses may be declared and distributed in future years to the members who contributed to those surpluses.

9.6 Malta Co-operative Federation's recommendations

The Federation recommends that:

- only the Reserve Fund be "asset locked";
- all brought forward undistributed prior year surpluses may be carried forward into the following years and subsequently distributed to the members of the co-operative society who contributed to the society's growth;
- any undistributed surpluses, with the exception of the Reserve Fund, that emanate following the winding up of a society, should be distributed among the members who contributed to the society's growth.



10 Transfers to the Reserve Fund

[Co-operative Societies Act, 2001 – Article 90]

10.1 Revision of Reserve Fund calculation mechanism

Co-operative societies transfer annually to Reserve Fund 20% of the surplus, up to an optional and ambiguous ceiling. The Act imposes that this Reserve Fund be held in the form of liquid assets.

The Malta Co-operative Federation is aware that there is a lobby within the co-operative movement that is willing to retain the Reserve Fund mechanism calculation as it currently stands. However, the Legislator may wish to consider retaining the current mechanism while introducing the Federation's recommendations as an optional measure.

10.2 Malta Co-operative Federation's recommendations

The Federation recommends that:

- the annual Reserve Fund transfer is to be calculated based on a mechanism that allows for a brought-forward policy (this brought-forward policy is to be introduced also to the Central Co-operative Fund annual contribution mechanism or its replacement);
- the Reserve Fund is to reach a clear, unambiguous, ceiling equivalent to the share capital of the co-operative society;
- the Reserve Fund is not to be retained in liquid form since this deprives the co-operative society of available funds.

11 Subsidiary co-operative societies

[Co-operative Societies Act, 2001 – Articles 2, 22(3), 33, 53(2) and Third Schedule]

11.1 Investing and participating in other co-operative societies

The Act is to contain clear and unambiguous rules as to how a co-operative society may become a member of another co-operative society, be it another Primary, Secondary or Tertiary co-operative society.

11.2 Malta Co-operative Federation's recommendations

The Federation believes that this subject merits specific and comprehensive discussion.



12 Financial statements and auditing within co-operative society legislation

12.1 General Accounting Principles for Smaller Entities (GAPSE)

[Co-operative Societies Act, 2001 – Article 2 and Paragraph 2(2) of Part I of the Third Schedule]

The Accountancy Profession (General Accounting Principles for Smaller Entities) Regulations have been in force in the Malta for over five years, yet the co-operative society legislation has not been amended to reflect this. As a result, co-operative societies do not have the opportunity to freely choose whether to adopt GAPSE as an alternative to other General Accepted Accounting Principles such as International Financial Reporting Standards (IFRSs) as adopted by the EU.

The Federation is aware that a number of co-operative societies that are eligible to adopt GAPSE have moved with the times and adopted this principle when preparing their financial statements, disclosing in the notes to their accounts why they have departed from the format of the Third Schedule of the Act.

12.2 Preparation and submission of financial statements of co-operative societies

[Co-operative Societies Act, 2001 – Articles 48(1), 48(6), 49(2) and 65(1)]

Submission dates of financial statements in the Act have created conflicts of interpretation between a number of co-operative societies and the Co-operatives Board.

The Act provides that the financial statements:

- are to be presented to the auditor, presumably after the Committee of Management have discussed them, not later than 3 months after the co-operative society's financial year end;
- are to be submitted to the Co-operatives Board, presumably after the Committee of Management have approve them, not later than 5 months after the co-operative society's year end, with the possibility that these would not have yet been approved at an annual general meeting of the co-operative society;
- are to be available for inspection by the members of the co-operative society 5 days before the annual general meeting;
- are approved by co-operative society members in general meeting by not later than 6 months after the co-operative society's financial year end.

12.3 Statutory audit requirements for Micro and SMEs applicable for co-operative societies

[Co-operative Societies Act, 2001 – Article 45 and others]

The Act imposes that all co-operative societies carry out an audit of their financial statements by an auditor who holds a warrant issued under the Accountancy Profession Act. It is still uncertain whether Malta will be adopting the Single Accounting Directive which undoubtedly will affect the annual audits of financial statements of co-operative societies that are considered Micro and SMEs.



12.4 Regulations regarding auditors and financial statements

[Co-operative Societies Act, 2001 – Article 51]

Article 51 of the Act is an enabling clause whereby the Minister may make further rules regulating:

- the appointment, removal, qualification, disqualification, remuneration and resignation of auditors;
- the powers, functions and duties of auditors;
- the keeping of accounting records, and the form and content of accounts;
- the auditor's report and any other reporting duties.

The Federation is of the opinion that further regulation may additionally protect the members and the creditors of the co-operative society.

12.5 Malta Co-operative Federation's recommendations

The Federation recommends that:

- the GAPSE regulations be allowed within the legislation in order that the co-operative societies need not justify departure from the Schedule in the Act;
- the dates of submission of the society's financial statements be adjusted to compare well to the submissions of financial statements of limited liability companies, in order to create a level playing field;
- the Federation be consulted on the discussions with Government and the Accountancy Board with respect to the implementation or otherwise of the Single Accounting Directive;
- Articles 46 to 50 be fine tuned to bring them in line with new developments that have occurred over the past 14 years. New regulations are to be introduced for the further protection of members and creditors of co-operative societies.

13 New concepts to be introduced in the co-operative legislation

13.1 Converting the Co-operatives Board to an Authority

The Federation is of the opinion that the Co-operatives Board should be converted into a Co-operative Authority. The Co-operatives Board cannot function effectively and efficiently with the current structure and government funding.

The Federation is of the opinion that the amendments of the Act are to cater for:

- the transfer of some of the Board's functions and responsibilities to the Co-operative Federations;
- the introduction of the Registry concept with a similar functionality to that of the Registrar of Companies;
- the introduction of monitoring powers to assess co-operative societies on a periodic basis.



13.2 Conversion of commercial partnerships to co-operative societies and *vice versa* [Co-operative Societies Act, 2001 – Articles 108(4) and 108(5)]

The Act has an enabling clause whereby commercial partnerships may be converted to co-operative societies and vice versa, yet no regulations have as yet been put in place. The Federation believes that these regulations should be drafted for publication together with the new changes to the Act. It is therefore the ministers responsible for co-operative societies and commercial partnerships to establish these regulations.

The Federation is aware that there are commercial partnerships and other entities that would opt to convert to a co-operative society. Currently this would mean having to liquidate that entity and create a new co-operative society, a situation which is not considered desirable or economically viable to do so.

The Federation is also aware that a number of co-operative societies may have lost their co-operative spirit or are dormant with no economic activity whatsoever. Some of these cases would be eligible for conversion out of the co-operative movement.

13.3 Re-domiciliation of co-operative societies

The Maltese legislation does not currently permit foreign co-operative societies re-domiciliation to Malta. Therefore, were the (foreign) co-operative society members to choose Malta as their preferred destination country of domicile they would not benefit from seamless ownership transfer of their foreign assets and liabilities from the foreign jurisdiction to Malta. In other words, the foreign co-operative society would have to liquidate its assets and liabilities, transfer these to Malta into a newly formed co-operative society and subsequently dissolve the foreign co-operative society. The Federation believes that Malta could attract foreign co-operative societies to set up shop here with all the benefits this could bring to the country.

13.4 Social audits

The Federation believes that the concept of co-operative social audits is to be introduced into the co-operative legislation on a voluntary basis. Since it is being proposed by the Federation that the 5% annual Central Co-operative Fund contribution of each co-operative society is devolved directly to its Federation, social audits ought to be one of the services the Federations offer their member co-operative societies.

13.5 Credit Unions

Credit Unions are financial co-operative societies offering their members loans out of a pool of savings deposited by the members themselves. Credit Unions are only open to members who meet membership qualification based on criteria such as geographical area, parochial association or trade union membership. The co-operative legislation and other financial legislation may consider catering for the introduction of structured and controlled Credit Unions.



13.6 The Act is to be open to all forms of co-operative enterprises

The Federation is of the opinion that the Act ought to be flexible enough to cater for other forms of co-operative enterprises not mentioned elsewhere in this document.

14 Proposals to changes to other legislation

14.1 Banking Act

[Banking Act, Cap. 371 – Articles 2 and 5(1)]

A co-operative bank in Malta would benefit the Maltese society. Notwithstanding that the Government and Opposition have been in agreement with the introduction of co-operative banking, no government has as yet taken the plunge to remove the legislative barrier that prohibits co-operative banking and limits the business of banking solely to limited liability companies.

14.2 Small Business Act

[Small Business Act, Cap 512 – various Articles]

The Federation is of the opinion that the Malta Co-operative Federation, the co-operative movement and the related government bodies regulating the co-operative sector should be represented by competent individuals within the organs of the Small Business Act.

Co-operative representation ought to be introduced in the Enterprise Consultative Council, the Business Advisory Committee and the College of Regulators.

14.3 Converting tax credits to cash grants for co-operative societies

[Income Tax Act, Cap. 123 – various Articles]

Co-operative societies are exempt from tax as per Article 12(1)(q) of the Income Tax Act Cap. 123. However co-operative societies contribute 5% of their annual surplus to the Central Co-operative Fund. A further capped 20% of the annual surplus is put aside as a non-distributable reserve (The Reserve Fund). Any surplus distributions to the recipient members are taxed at 15% withholding tax. Unlike company shareholders the members of a society cannot utilise the full tax imputation system on the eventual distributions (patronage refund, dividends, bonus certificates and bonus shares).

As a consequence of the above-mentioned tax regime, co-operative societies are not eligible to avail themselves of any government incentives which take the form of tax credits.

The Malta Co-operative Federation believes that since co-operative societies form an integral part of the Maltese economy and members pay taxes directly through the co-operative society, all incentives are to be indiscriminately available to co-operative societies in one form or another, allowing for an economic level playing field. It is the Federation's opinion that co-operative societies are to be given the option of converting tax credits into cash grants.



14.4 Investing in limited liability companies not convenient for co-operative societies

[Income Tax Act, Cap. 123 – various Articles]

As explained earlier in this document, co-operative societies are exempt from tax as per Article 12(1)(q) of the Income Tax Act Cap. 123. The tax authorities do not allow co-operative societies to recoup the tax paid on the dividends received net of tax from their investment in a limited liability company. The co-operative society must pay, on these net dividends, its 5% contribution to the Central Co-operative Fund. In addition, were the co-operative society to decide to distribute to its members the remaining net balance on this investment income, this would attract another 15% withholding tax.

It is the Federation's opinion that a solution ought to be sought regarding this tax issue.

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