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The legal nature of Co-operatives in South Africa

Differences are often effectively resolved with the collaboration of more than one person.

This forms the basis on which co-operatives were established, where more than one person voluntarily co-operates in achieving a common goal.

A co-operative is a registered entity that provides services or products to its members.

What is the legal nature of a Co-operative?

Co-operatives have distinct characteristics that differentiate them from other types of businesses. Unlike companies and close corporations, a group of people is required to form a co-operative. It cannot be formed by only one person. The group should have a common need or objective which can be addressed more effectively by the activities of the co-operative than by a single individual.

To register a co-operative, a legal entity is created with powers and responsibilities as prescribed in the amended Co-operatives Act 6 of 2013. Different types of co-operatives can be registered.

- **A primary co-operative** must have at least five natural persons or two juristic persons, or a combination of any five persons, as founding members.
- **A secondary co-operative** must be formed by two or more operational primary co-operatives.
- **A tertiary co-operative** must be formed by two or more operational secondary co-operatives.
- **A national apex co-operative** must be formed by three operational sectoral tertiary co-operatives that operate on a national level and five operational multi-sectoral tertiary co-operatives that operate on a provincial, district or local level. An operational secondary co-operative may join the apex where there is no sectoral or multi sectoral tertiary that can represent the secondary co-ops.

The founding members are responsible for appointing the initial board of directors. The board of directors will subsequently elect the Chairperson, Secretary and Treasurer.

Constitution of the Co-operative

Co-operatives have certain principles and are expected to include certain values in their Constitution which govern the objectives and management of that co-operative. Co-operatives are controlled by their members and each member participates in the decisions.

To become a member, shares are issued to raise share capital. Shares can be compared to the membership fees paid to join a private club. Unlike private companies, each member has one vote regardless of the number of shares held by each member. Profits are known as surpluses in a co-operative, which are distributed to its members in relation to the amount of the business each member did with the co-operative.

A key principle is that only members are allowed to benefit from the activities of the co-operative. It would undermine the objective if non-members were allowed to benefit from the markets created with great effort by members and to which non-members had not contributed. Members are allowed to sell to non-members and the proceeds will form part of the co-operative's income. Non-members do not benefit from any surplus distributions, meaning members in fact benefit from the business of non-members.

Model constitutions especially designed for co-operatives can be adopted, which are generated upon registration; alternatively, a customised constitution can be submitted upon registration to suit the requirements of the particular co-operative.

CIPC provides the following as model constitutions:

- Primary Agricultural Co-operatives
- Primary Non-Specific Co-operatives
- Primary Housing Co-operatives
- Primary Worker Co-operatives
- Secondary Co-operatives
- Tertiary Co-operatives
- Financial Co-operatives
- Social Co-operatives

Conclusion

The main principle of any co-operative is for each member to take part voluntarily and to share knowledge, ideas, skills and experience to develop and educate all participating members. Co-operatives create activities in which all members achieve a common goal and should foster the idea of mutual collaboration for mutual benefit.

In terms of the B-BBEE Codes, Co-operatives may be used as ownership structures similar to trusts, etc. It is an ideal vehicle to achieve transformative goals due to its interactive nature, with members of the co-operative transferring much-needed skills as one of the B-BBEE programme's objectives.

SERR Synergy offers a holistic solution that swiftly guides businesses through South Africa's business legislation maze in the direction of greatness. Our range of business solutions includes BEE consulting, *unique ownership structures*, *business registrations, shareholder agreements* and providing specialist information to make an informative decision regarding the most appropriate business structure.

About the Author: Sanet van Zyl joined SERR Synergy in June 2014. She currently holds the title of Legal Corporate Advisory Manager where she specialises in Ownership structures, specifically ownership trusts and collective ownership structures such as non-profit companies and co-operatives.