

Co-Operative Organisations: Establishing a Co-Operative Company or Industrial & Provident Society

What is a co-operative?

A co-operative is a form of business organisation that is owned and democratically controlled by its shareholders / members. The organisation is run for the mutual benefit of its shareholders / members, being the people who purchase goods or use services of the organisation, rather than being established for the purpose of earning profits for investors.

There are a number of forms of co-operative or mutual organisations, including friendly societies, credit unions and building societies as well as co-operative companies and industrial & provident societies. The key feature of all those businesses is that their main purpose is mutual support for members or the promotion of a specific purpose or social benefit.

Origins of co-operative organisations

Co-operative organisations emerged from the *Co-operative Movement* that started modestly enough in Rochdale in the United Kingdom in 1844. A group of flannel weavers set up a store, contributing one pound each, from which they distributed goods without profit that they bought in bulk from wholesalers. As the scheme developed, goods were sold at normal retail prices with the profit being shared among the customers according to the value of their purchases over a year. In those days also there were no standards for food products and these were frequently adulterated before reaching the public. By negotiating with suppliers directly, those in the co-operative benefited not only from lower prices, but also from being able to buy better quality products, as there was no incentive to cheat themselves.

Co-operatives became immensely popular and were widely established, particularly in Northern England. Membership of the “Co-op” meant substantial savings in the cost of living. The co-operative concept has continued strongly into our time. It became clear early on that some sort of corporate structure was required for easier administration and it was from this that *co-operative companies* and *industrial and provident societies* developed. In New Zealand, legislation was put in place enabling dairy companies to be established as co-operative companies and this was extended to cover other co-operative enterprises.

Industrial and provident societies continued to operate co-operative enterprises as well. Besides co-operative taxi businesses, industrial and provident societies have been established in New Zealand for such purposes as trading societies amongst farming communities, livestock development for particular breeds of animals, staff welfare associations, collective marketing arrangements, Maori community services and developments, and promoting irrigation for farmers within a district.

Co-operative companies

What is a co-operative company?

A *co-operative company* is one established for the purpose of allowing its owners to carry on business on a mutual basis. It is a company incorporated under the Companies Act 1993 that applies for registration under the Co-operative Companies Act 1996 in order to operate as a co-operative. Only a co-operative company may have the word “co-operative” in its name.

A co-operative company must principally carry out a *co-operative activity* as defined in its constitution. Such activity may include providing shareholders of the co-operative company with goods or services, including processing and marketing services and those things ancillary to the activity.

Not less than 60% of the voting rights in a co-operative company must be held by *transacting shareholders* - the shareholders who supply the company, buy its goods or use its services. For example, a dairy farmer supplying milk to a co-operative dairy company would be a *transacting shareholder* as would a plumber buying equipment from a plumbers supply co-operative.

Traditionally co-operative companies were agricultural-based businesses such as dairy companies and produce marketing companies, however wider co-operative activities are possible. The PSIS, which offers a range of financial services to its members, is a co-operative company.

Features of co-operative companies

An application is made to the Registrar of Companies on incorporation or can be made for an existing company at any later time. Some co-operative companies that were registered under earlier legislation reregistered before 1 July 1997 to maintain their co-operative status.

The key difference between a standard company and a co-operative company is in features of its ownership that ensure continuous active membership. These include the ability of a shareholder to surrender shares if, for example, a dairy farmer who is a transacting shareholder changes to another type of farming.

The profits of a co-operative company are returned to the shareholders as rebates referable to transactions during the particular accounting period) or as shares in lieu of rebates. Shares can be issued with a nominal value to assist in such accounting.

The key features of a co-operative company are set out in the Schedule.

Advantages of a co-operative company

The advantages of a co-operative company are the mutual bond between *transacting shareholders* and the special features relating to shareholdings that depart from the normal arrangements under the Companies Act 1993. These include power to:

- Issue shares with a nominal value;
- Redeem shares to ensure continuous active membership of company;
- Accept surrenders of shares;
- Hold surrendered shares for later allocation;
- Forfeit shares of untraceable shareholders; and
- Give rebates to shareholders, unless the constitution prohibits this.

Otherwise, the advantages of a co-operative company are the same as those enjoyed by shareholders incorporating generally under the Companies Act 1993.

Registration of a co-operative company

As noted above, registration as a co-operative company can be on incorporation or on application from an existing company. For a new company the steps are:

1. Reserve a name - that may or may not include the word *co-operative*;
2. Complete the usual incorporation requirements for a company under the Companies Act 1993 with a constitution that states, in particular, the nature of the *co-operative activity*;
3. Have each director make a statutory declaration that in his or her opinion the company will be a *co-operative company* within the meaning of the Co-operative Companies Act 1996 and the grounds for that opinion;
4. Arrange for the intending shareholders to approve the application for registration by at least a 75% majority of the shares to be issued and supply a copy of that resolution;
5. Have a person who is acting with the express or implied authority of the intending directors of the company sign the application Form 2, as set out in the Schedule to the Co-operative Companies Act 1996.
6. Pay the fee prescribed for incorporating a company. There is no additional fee to register as a co-operative company.

For an existing company that wishes to register as a co-operative company, the procedures are similar. If the word *co-operative* is desired, the altered name will have to be reserved. The shareholders will need to adopt a new constitution that states, in particular, the nature of the *co-operative activity*. The application would have to be authorised by a special resolution of the company's shareholders unless the existing constitution authorises this. The relevant form is Form 1 of the Schedule to the Co-operative Companies Act 1996. There is again no fee to register as a co-operative company.

Once the Registrar receives a properly completed application, and is satisfied that the intended co-operative company will be carrying on a co-operative activity, he will accept the application and register the new or existing company, as the case may be, as a co-operative company and issue a certificate to this effect. Details of the company can then be viewed on the Companies Office website.

Industrial and Provident Societies

What is an industrial and provident society?

An industrial and provident society may be established under the Industrial and Provident Societies Act 1908 on application to the Registrar of Industrial and Provident Societies by 7 members and the secretary for carrying on any industry, business or trade authorised by its rules with the exclusion of banking. The primary purpose of the society should not be for the profit of its members.

An industrial and provident society will usually consist of the owners of small businesses who, while continuing to operate independently, become part of this larger entity for mutual benefit. They work (industrial) and receive benefits (provident) from the society for their future well-being. A co-operative taxi society is a good example with independent operators benefiting from car insurance schemes and a radio booking system.

Societies are identifiable by having names ending in *Society Limited* sometimes *Co-operative Society Limited* and operate according to registered rules.

Features of industrial and provident societies

The key features of an industrial and provident society are set out in the Schedule.

Under the amendment to Industrial and Provident Societies Act 1908 in 1939, a society has to be either a *bona fide co-operative society* or where the activity to be carried on will *improve the conditions of living or the social well being of members of the working classes* or be for *community benefit*.

In many ways, societies combine the features of a limited liability company and an incorporated society. Members are not liable for a society's debts. By restricting the degree of participation of any one member to a value fixed by the Act, domination by one member is not possible. This ensures that the co-operative nature of the society will continue. Approximately 300 societies are currently registered in New Zealand.

Advantages of a industrial and provident society

The advantages of an industrial and provident society are similar to those of other bodies corporate, including:

- A society becomes a separate legal entity once incorporated;
- A society will have a common seal (no longer applicable to companies);
- A society can lease, rent, buy and sell property, borrow money and enter contracts in its own name, generally under its common seal. No member of the society can have personal rights or interest in any of the assets of the society;
- A society will continue as a separate entity even though its membership changes; and
- Members will not be personally liable for the debts, contracts or other obligations of the society.

Registration of an industrial and provident society

An application for registration in the prescribed form needs to be made to the Registrar of Industrial and Provident Societies. That application must be signed by seven members and the secretary and be accompanied by two copies of the rules of the society.

The rules must comply with the requirements of Industrial and Provident Societies Act 1908 and provide for all matters specified in Schedule 2 of that Act. These include:

- Object, name and registered office of the society;
- Entry criteria for membership of society;
- Modes of holding meetings and voting;
- Appointment and removal of executive; and
- Matters relating to the holding and transfer of shares in the society.

The name of the society must not be identical to that of any other society or any company carrying on business in New Zealand or any other body corporate established or registered in New Zealand, or so nearly resemble that name as to be calculated to deceive, unless that other society, company or body corporate gives its consent in a form acceptable to the Registrar and provided that registration under that name will not be contrary to the public interest.

The term *calculated to deceive* is an objective test meaning likely (or reasonably likely) to deceive or mislead the public. Names cannot be reserved in advance of incorporation. Intending applicants thus need to check the proposed name carefully against existing names, starting with those on the registers available for search on the website www.companies.govt.nz.

Registration of documents

The contact address when sending any documents for registration is:

Companies Office
Ministry of Economic Development
National Processing Centre
Private Bag 92061
Auckland Mail Centre
Auckland

Other resources

Information about companies and societies generally can be found at the Information Library at www.companies.govt.nz .

The above information is necessarily generalised. Persons interested in registration of a co-operative company, industrial and provident society or considering other forms of mutual societies (friendly society, credit union etc) should consult their solicitors or accountants before proceeding further.

Thanks to the New Zealand Co-Operatives Association (www.nzco-ops.org.nz) for their assistance with the preparation of this resource.

Schedule – Comparison of Features Co-operative Companies and Industrial & Provident Societies

Business Features	Co-operative Company	Industrial & Provident Societies
Legislation	Co-operative Companies Act 1996	Industrial and Provident Societies Act 1908
Name of business	May, but does not need to have <i>co-operative</i> in the name.	Must end in <i>Society Limited</i> or <i>Co-operative Society Limited</i>
Minimum number of shares	The minimum is two shareholders holding at least one share each, as one cannot be co-operative with oneself	Seven – a society has to have shares, although this is only stated indirectly in the Act. References to <i>members</i> are effectively also references to shareholders
Minimum number of shareholders / members	The minimum is two in order to meet the 60% transacting shareholder requirement	Seven
Rules	Must have a constitution, if only to the extent that this defines the <i>co-operative activity</i> to be undertaken. Note also that only <i>transacting shareholders</i> may vote on a resolution unless the constitution states otherwise.	Needs to have a set of rules to state the society's activities and processes for operation of the society
Democratic voting	Only <i>transacting shareholders</i> may vote on resolutions unless the constitution states otherwise. Voting is on a 'one shareholder, one vote' basis.	Generally based upon the principle of 'one person – one vote'
Business in perpetuity	The co-operative company, being a company under the Companies Act 1993, is a legal entity that may operate in perpetuity, provided it complies with its obligations under the Acts	A society is a legal entity that may operate in perpetuity
Annual Report to shareholders	Yes	Yes.
Annual accounts to be audited	Yes. Co-operative companies are <i>issuers</i> under the Financial Reporting Act 1993. They thus cannot use the exemption from the general rule that all companies must have their accounts audited when all shareholders agree to the contrary. Issuers file a copy of their financial statements and audit report with the Registrar each year.	Yes.

Schedule – Comparison of Features (continued)
Co-operative Companies and Industrial & Provident Societies

Business Features	Co-operative Company	Industrial & Provident Societies
Limitation on type of business that may be conducted	The business can carry out the <i>co-operative activity</i> provided for in the constitution and matters incidental thereto.	May conduct any lawful business in keeping with its rules, except that of banking.
Annual meeting of shareholders / members	Yes.	Yes.
Annual return to the Companies Office	Yes. This has to be accompanied by a copy of the annual board resolution confirming that the company has carried on its co-operative activity during the accounting period.	Yes – in the form of a general statement of receipts, expenditure, funds etc.
Distributions to shareholders / members provided	Yes, generally in relation to their participation in the co-operative activity	Yes – generally in relation to participation in the society.
Prospectus to be issued in terms of the Securities Act 1978	Yes, this needs to be current at all times (usually one or two pages in length) because membership of the co-operative is based upon acquiring share/s. The terms of those shares must be made known in terms of the Securities Act 1978, subject to the relevant Co-operative Companies Exemption Notice.	No, however certain societies that have sought public funding in the past have applied to the Securities Commission for exemptions from aspects of the prospectus regime under the Securities Act 1978. Those exemptions are contained in the relevant Industrial and Provident Societies Exemption Notice.
Investment Statement to be issued in terms of the Securities Act 1978	Yes – refer to the most recent Securities Act (Co-operative Companies) Exemption Notice).	Only for those societies noted under the Exemption Notices referred to in the previous box.