

Legal Alert – February 2013 – Co-operative Societies: Laws, Taxes & Regulations

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2. Disclaimer Notice.
3. Copyright Notice.

Introduction

A Co-operative Society is an autonomous and voluntary association of individuals who come together with the objective of owning common property, and promoting the economic interest of its members.

A Co-operative Society may be registered with limited or unlimited liability; with the last word in a Co-operative Society's corporate name been "Limited" or "Unlimited".

Types of Co-operative Societies

A Co-operative Society may also be registered as an Industrial Co-operative Society, or as a Primary or Secondary Co-operative Society.

An Industrial Co-operative Society may only be registered if it has at least six persons as its members, and provides evidence that it is commercially viable.

A Primary Co-operative Society may be registered if it has at least ten (10) persons, each of whom must have attained the age of sixteen (16) years old, and all of whom must be resident in the area where the Co-operative Society will be operational. An educational institution's Co-operative Society could be granted exemption from the age limitation requirement if it makes a successful application to the Federal or State Director of Co-operatives in the area where the Co-operative Society will be resident.

A Secondary Co-operative Society may be established and registered if it has at least five (5) registered Co-operative Societies as its prospective members.

No member of a Co-operative Society is however allowed to hold or own more than one-fifth of the share capital of such a Co-operative Society.

Registration of Co-operative Societies

Applications for the registration of a Co-operative Society must be submitted to the Federal or State Director of Co-operatives. All applications for registration must be accompanied by the Bye-Laws of the applicant Co-operative Society.

The Bye-Laws of a Co-operative Society are the rules and regulations which govern the affairs of the Co-operative Society, with its members and by implication, its non-members.

The Director of Co-operatives has the authority to refuse to register a Co-operative Society where such an Applicant Society's Bye-Laws, for example, do not comply with the provisions of the Nigerian Co-operative Societies Act (as amended), CAP. N98, or the Lagos State Co-operative Societies Law, CAP. C15, where the application is made in Lagos State.

An aggrieved Co-operative Society that is refused registration, for any reason, has the right to appeal against such a decision, within sixty (60) days, to the Minister or Commissioner charged with supervising Co-operative matters at the State or Federal tier of government.

Effect of Co-operative Society's Registration

The primary implication of the registration of a Co-operative Society is that such a Society assumes corporate personality with the right to sue or be sued in its corporate name.

A Co-operative Society, upon registration, also assumes perpetual succession with a common seal to enter into contracts or agreements in its own name.

A further benefit of the registration of a Co-operative Society is that, it has the authority to own movable and immovable property, of any description, in its corporate name.

Exemption from Taxes and Duties

Section 23 (1) (b) of the Companies Income Tax Act, CAP. C21, and Section 26 (1) (c) of the Capital Gains Tax Act, CAP. C1, exempts from taxation all the profits and gains of a registered Co-operative Society, from all trade or business that such a Co-operative Society engages in, on behalf of its members.

Also, all legal instruments executed by or on behalf of a registered Co-operative Society, in relation to the business of such a Co-operative Society, are exempted from Stamp Duties assessment and payment; and from such similar tax provisions regulating the registration of such legal instruments.

Registered Co-operative Societies in Nigeria are further exempted from the application of the provisions of the Companies & Allied Matters Act, the Trade Unions Act, the Arbitration and Conciliation Act, the Money Lenders Law and the Pawn Brokers Law.

It is however instructive that Co-operative Societies, and not their members, are listed among the Institutions that enjoy exemption from the provisions of Section 3, Parts 1 and 2 of the Value Added Tax Act (as amended) ("VAT"); this Section 3 is on the goods and services exempted from compliance with the provisions of the VAT Act.

Taxation of Individual Members' Profits

By the provisions of Section 19 (1), Paragraph 22 of the Third Schedule of the Personal Income Tax Act (as amended), the income of a registered Co-operative Society is/are exempted from the provisions of the Personal Income Tax Act (as amended).

It is however contestable whether the individual members of a Co-operative Society can claim individual exemption from the re-distributed profits that they earned from the already exempted Co-operative Society's profits?

Distribution of Profits

The Nigerian Co-operative Societies Act requires that, at least one-fourth of a registered Co-operative Society's net profits must be paid into a Reserve Fund; unless where the Director of Co-operatives grants written exemption from this mandatory statutory provision.

In Lagos State, registered Co-operative Societies are required to, from the second year of their registration, pay one per cent (1%) of their profit to the Lagos State Directorate of Co-operatives as audit and supervision fees.

Loans and Deposits

A registered Co-operative Society may receive deposits and take loans from persons who are not members of the Co-operative Society. A Co-operative Society cannot however extend credit or loans to any person or institution who is not a member of the Co-operative Society except the express approval of the regulatory Director of Co-operatives is obtained.

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