*The new Co-operative Societies Act 2001*

# A case of new wine in old bottles?

by **David Fabri,** LL.D.

THE new Co-operative Societies Act 2001, or most of it, will come into force on Tuesday. It shall replace the similarly named 1978 Act, which will be repealed and laid to rest as from the same date.

The new Act is neither a clone of the current Act nor a complete and radical departure from it. The basic framework of the present law has been retained, but some important differences immediately appear. Indeed, one should not be tempted to describe the exercise as a mere updating exercise. On the other hand, substantial similarities remain.

The questions that merit an answer are (i) whether the changes and innovations are conceptually significant or not and (ii) whether they introduce a new vision for the future of co-operatives.

A very appropriate analogy can be made to the Companies Act of 1995. With some licence, it may be said that the 2001 Act is to the 1978 Act what the Companies Act of 1995 was to the Commercial Partnerships Ordinance of 1962. Not a radical departure, but a reappraisal and an updating of a framework that has still been considered acceptable and workable for the future.

The new Act follows quite closely the structure of the existing Act and this means more continuity and less needless disruption in the changeover period. Nevertheless, the new law does introduce some interesting and often substantial changes to practically every single section of the current law. Various novel structures and techniques adopted in the new Act merit serious consideration. In some respects, admittedly a few, the 2001 Act may yet have a few lessons to teach to the Companies Act.

These few lines cannot hope to reflect the essence of the new provisions and revisions that a careful reading of the new Act should uncover. What follows is only a brief indicative selection of some of the more material changes and innovations that may warrant some attention.

The judicial powers formerly vested in the Co-operatives Board and in the Minister responsible for co-operatives have been removed. Disputes between members and their co-operative or between members themselves should be more properly addressed either by the courts of law in the usual fashion or by the newly established method of arbitration which for the first time finds specific mention in the new Act. The minister's role has now been rightly reduced to relaying Government's general policy directions to the Board and making regulations.

The powers of the regulatory body too have been reduced to a more focused core of essential functions. To give one illustration, the power assigned to the Board under current law to specifically approve the appointment of a society's auditor and his fees in every case has been removed. Nor is the Board any longer expected to supervise the auditing of co-operatives.

The Supervisory Board is no longer a mandatory structure and will only be set up if the members so desire. This second-tier management device was often found cumbersome or useless under current law especially where very small co-operatives were involved. It would appear that members have rightly been given the autonomy to make up their own minds on the matter and to weigh the possible benefits against the disadvantages.

Another important innovation lies in the extension of the activities that a society can be established to carry out. It has now been made clear that a co-operative may be established for purposes other than strictly business activities and may include social, educational and cultural purposes.

Measure intended to further facilitate the establishment of new co-operatives include the provisions which lower the minimum threshold of members to five and which allow for the first time a limited but controlled space for companies and other commercial companies to become members of co-operatives. Under current law, only physical persons could be members. The law now establishes a list of parameters that need to be met by a co-operative wishing to hold a majority shareholding or controlling interest in a commercial partnership.

The new Act – also for the first time – embraces the internationally accepted set of seven principles and values adopted by the International Co-operative Alliance that should underlie the establishment of co-operatives. The new Act gives these principles almost complete legal recognition. Henceforth local co-operatives will have to adhere to these principles not only in word but also in practice.

New, rather detailed accounting rules have been introduced and the model adopted is very close to that found in the Companies Act 1995. A new Third Schedule has been added to the Act explaining the Form and Content of Individual Accounts.

The co-operative society remains the only corporate entity, which may be registered provisionally. This occurs where the Board is still not satisfied that the applicant society meets all the statutory requirements in full. Under current law, a co-operative may remain for up to three years under a provisional registration. During such period, it is legally treated as a fully-fledged society.

The new Act seeks to reduce this uncertainty of status not by deleting the notion or consequences of provisional registration altogether, but by limiting the duration to a maximum of eighteen months. It is felt that this gives sufficient time to establish definitely whether the co-operative in question should be retained or removed as a mature and complete entity.

The 1978 Act may have been the first law in Malta to introduce the germ of what we would today describe as a whistle-blowing provision. The original section 41 required an auditor to immediately notify the Board of any irregularity resulting from the audit which he feels is important enough to justify this action. The new section 49 retains the principle but now requires the auditor to disclose to the regulatory body "any material irregularity disclosed in the course of the audit". The duty to disclose irregularities has now been extended to the liquidator of a society.

As already indicated earlier, few of the current provisions have escaped amendment or replacement. A more extensive description of the other changes and a study of their implications for the future development of co-operatives shall have to be carried out elsewhere. Indeed, a comparison between this new Act and the two previous laws on co-operative societies of 1946 and 1978 provide useful insight into the development of ideas on regulation and on the extent of the role played by government and regulatory bodies in this and analogous sectors.

The co-operative model is not only another form of business organisation which is available to carry out a number of commercial and non-commercial activities, but it has served and still serves as a useful comparative model able to challenge and to test the much more popular limited liability company model. There are some very obvious similarities between a co-operative and a company; indeed they share some common features. However, it is the differences which allow them to remain conceptually and functionally distinct.

These differences are heightened and not reduced by the new Co-operative Societies Act 2001. One hopes that the new 2001 Act shall attract more academic interest than the current law, which undeservedly failed to achieve any.

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