

Legal Compliance for Incorporating Startup
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Lecture – 09
Law Relating to Co-operative

I welcome you in my 9th Lecture regarding Legal Compliance for Incorporating Startup, and I am in the Module of Incorporation of Partnership, LLP and co-operatives. In this present lecture I will concentrate more on law relating to co-operatives. Now I believe I have introduced this particular concept of co-operatives as a business form in my introductory lectures, and I told you that co-operatives is one of the association of person is a flexible organization but having some sort of formal set up.

So, when you talk about the co-operatives it is more formal than a partnership, but it is less flexible or it is a flexible than that of a company. Now at the same time in case of the co-operatives there is a kind of the element which indicates about the social service

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That means, whenever you are talking about the co-operatives it should have some kind of a objective which will promote the interest of the group who are promoting this

particular co-operatives or it will ultimately help to the society at large.

But co-operative can be use for the purpose of startup also because if you are wanted promote a technology startup and in that particular technology startup you have a objective of solving some of the societal issues then co-operative can be one of the business form for you, because it gives you flexibility co-operatives somewhere give you less cost relating to the compliance at the sometimes you can carry forward your objective the way you wanted to go ahead in your startup. And it also give you the opportunity to scale it up because you can finance your co-operative from the public financial institutions and some of the state government do provide financial backup for the co-operatives or encourage to incorporate the business through the co-operatives.

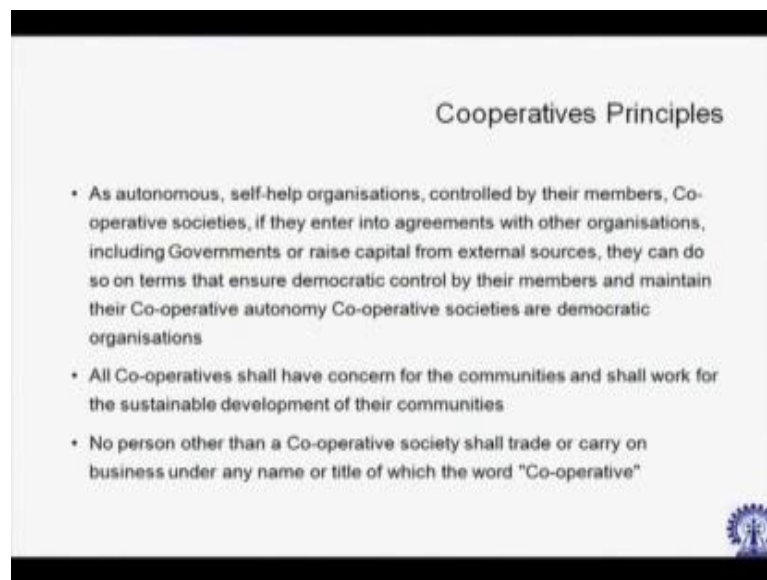
Now, I have discussed this particular point with you previously that the co-operatives are governed by the different state co-operative laws. That means, every state have their own co-operative laws and some where they have some kind of a benchmark that is means a similarity between all this particular co-operatives law, but they are not same. So, some state government law might add some additional provision which you might not find in other co-operative laws. At the sometime I have given the example here is the West Bengal Co-operative Societies Act 2006, it is you know further amended and consolidated act which has been now in force.

But at the same time will find that the co-operative act is not these new it is basically quite old and the system with the co-operatives is basically we get from the European legal system. So, I am not going to go into the origin and all this particular thing, but for information let me tell you co-operatives is give you kind of a flexibility which the member might look for in promoting the business or the research or some kind of a social innovation or participate in social problem solving and so much so forth.

Now the affair of the co-operatives should be managed by the person who are elected and appointed by the members, and generally you will find the members are elect themselves in the management position or which we call a board of directors. But in generally the power of managing the co-operatives is laid which is the general body which I am going to discuss with you.

Now member holding the share capitals are only receive strictly limited compensation by way of dividend. So, what it indicates that you know co-operatives is not actually for money making or profit distribution organization, but it is more promoting the interest of the society or the members or the society members belong. That is the reason I said that it is kind of a social organization, I am going to talk further as I will go head that there is a some kind of restriction which is also provided relating to the amount of holding of shares which you hold or amount of shares which you can hold in this particular co-operatives.

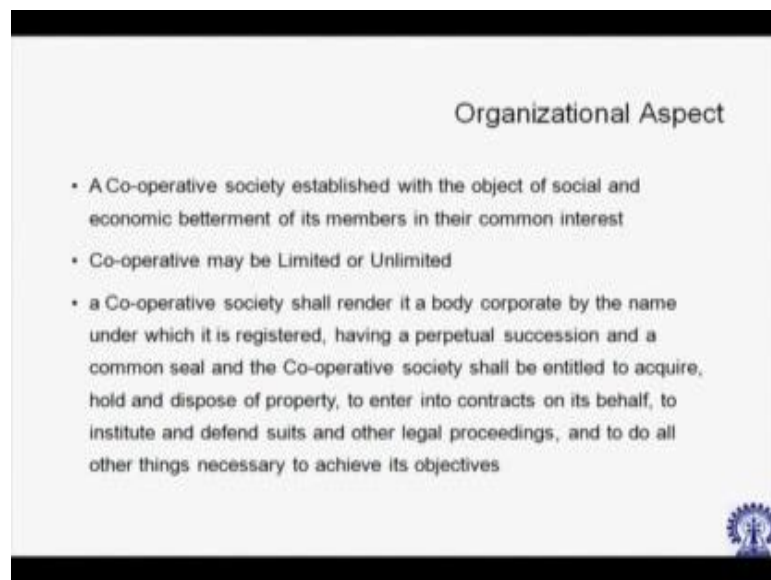
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Now, I have given principles this particular principles in generally followed by the co-operatives which is incorporated in different states and if you look into this particular principles it tell that it works like a self help group and controlled by the member and then it says that they can raise the capital from the external sources. In case of the partnership if I have said that there is a kind of a limitation that the partner has to bring the capital in that particular organization, but here in it is not so you can even access the external capital. At the same time you can also access the state finances and at the same time it talk about the self help group. That means, though people who are the member of this particular organization they are suppose to run the administration.

And at the same time as I was talking about that it should have kind of agreement among the member themselves that how they are going to run this particular organization because this particular organization also called that it is a democratically controlled by their member. Now co-operatives are also concerned relating to the communities where they are working, that is what I said there might should some kind of a social element or they should be use for benefiting the society. And no other people than co-operatives societies are use the name co-operative society in the trade name. So, there is a kind of a bar of using the word co-operatives in the trade itself if that particular society is not a co-operative society.

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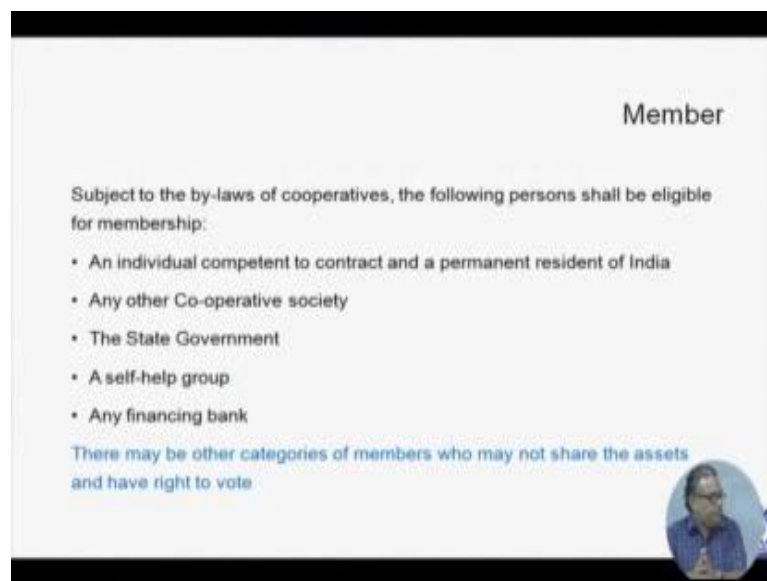
Now co-operative society I have talked with you generally established with the social objective and it can be with the limited and unlimited liability. Now, if it is unlimited liabilities then in that case that has to be specifically provide it in the society by-law which I am going to discuss in my next lecture in detail.

And in those particular circumstances the member of the society will have several joint and several liabilities for the debt which is incurred by these co-operatives during the course of the business. But if is the limited liability then in that case it is actually governed by whatever has been promise that particular by-laws or what about the

provisions has been provided in the by-laws in generally it limited to the extent of the capital contribution, but there can be a further more than that also. That means, in addition to the capital contribution you might ask for something more to be taken care by the member of this particular society. So, it is governed by whatever you have provided in the by-laws of that co-operative.

Now, co-operative is a body co-operatives. So, once it is body co-operate it has the consequential issues like it can have own seal, then it can have a perpetual succession, it can acquire the property, it can be sue. That means, which I have discuss even when I was talking about with you LLP that they have basically attribute like a natural person this is bit of a legal connotation, but you can understand this that whatever the property which the co-operatives are acquiring it is acquiring in the name of the co-operatives unlike the partnership. In case of the partnership what I said there is a joint property of a partners and the form, but in case of the co-operatives its property of the co-operative. So, member cannot say this is my property, but member can get the benefit out of that particular property or they can enjoy, they can use that particular property for a particular purpose for which this particular co-operatives is been promoted.

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Member

Subject to the by-laws of cooperatives, the following persons shall be eligible for membership:

- An individual competent to contract and a permanent resident of India
- Any other Co-operative society
- The State Government
- A self-help group
- Any financing bank

There may be other categories of members who may not share the assets and have right to vote

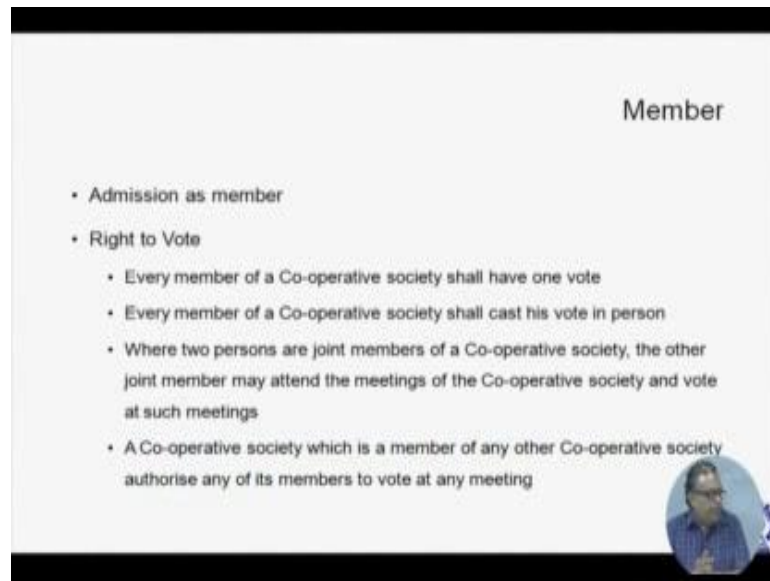
Now in case of the co-operatives who can be the member. In generally the individual

who is competent to enter into contract can be a member, then other co-operative society can be a member, then you will find the state government can be member and self-help group can be a member, even the financial bank can be a member. Many of the time you will find the co-operative is incorporated for several purposes. Now I am talking with using the co-operative for purpose of promoting the startup, but you will find the co-operative use for financing the local ventures like you know co-operative banks you will find at the same time you will find the state government is promoting the co-operatives for a development of a particular group of people like for the farmers, they can promote a co-operatives which can sell the fertilizers or the agricultural equipment and all things.

In other cases like other co-operative society further can they have promote the another co-operatives or they can have a number subsidiaries under they themselves only. Or at the sometime even individual can promote these particular co-operatives. In case of the co-operative is there can be a multilayer structure that means there can be holding co-operative, at the same time under that particular co-operatives if there is a number of subsidiaries which has been promoted by the particular holding co-operatives. But at the same you should keep in the mind in case of co-operatives there can be a some member who might not share the profit, at the sometime who might not able to vote; like you know employee of a co-operatives can be a member.

At the same time some other co-operatives who have promoted this particular co-operative or who is some here related to this particular co-operative can be a member of that particular co-operative itself. For example, a student who is participating, who is studying in an institute which is run by co-operatives can be a member of that particular co-operative. So, this particular member cannot be a member of the board and they cannot also have a financial interest or cannot share the profit in those particular co-operatives.

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Member

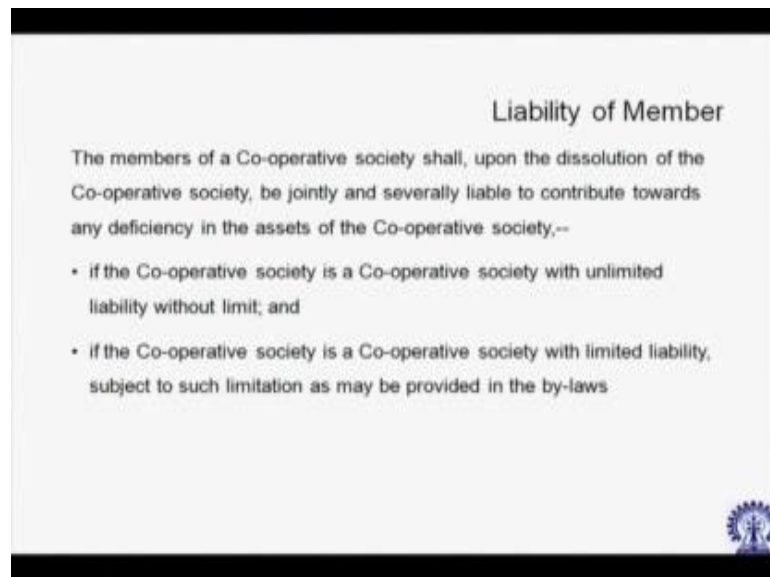
- Admission as member
- Right to Vote
 - Every member of a Co-operative society shall have one vote
 - Every member of a Co-operative society shall cast his vote in person
 - Where two persons are joint members of a Co-operative society, the other joint member may attend the meetings of the Co-operative society and vote at such meetings
 - A Co-operative society which is a member of any other Co-operative society authorise any of its members to vote at any meeting

Now, there can be a criteria relating to the admission as a member and the law generally provide that in what circumstances and what are the producer one need to follow relating to the member. Like in ordinarily if there is a no specific reason or compiling reason he cannot refuse any person to be a member of that particular co-operative where that particular person meets the interest of the co-operative. And there can also provide the time line with in which the co-operative board has to take a decision or the general body of the co-operatives has to take a decision that that particular person can be given the membership. Sometimes even the law prescribes that if you are not giving the membership with in a specific state then in that case by default that particular person who has applied for the membership will be a member. Like sometimes it prescribes 60 days, sometimes it prescribes 90 days so much so forth.

Now, the member has a right to vote. Every member of the co-operative has a one vote and every member of co-operative society can cast vote in person. Now if the co-operative is a member of another co-operative then in that case there will be authorized person who can vote it, or where the membership is a joint that means one membership is held by two person then in absence of one member another member can (Refer Time: 14:46) the vote if it is authorized to do. When I am talking about casting the vote I am basically talking about casting the vote in the general meeting which I am going to

discuss little later.


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Liability of Member

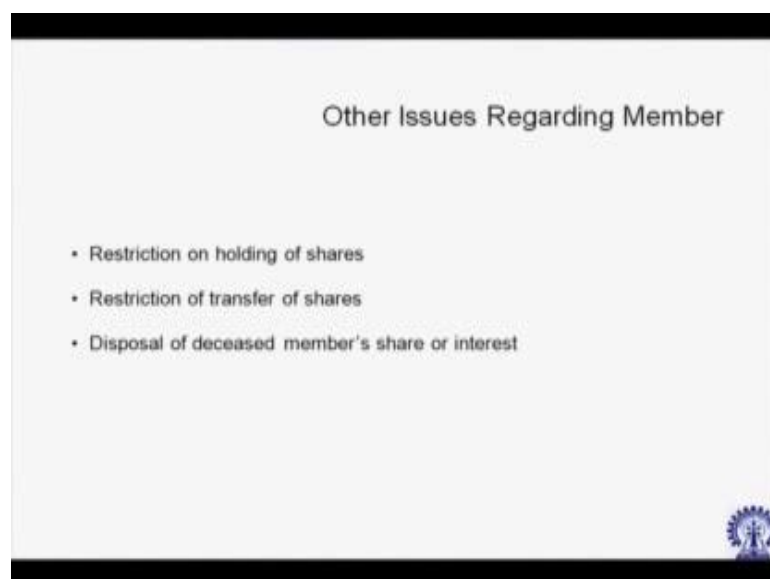
The members of a Co-operative society shall, upon the dissolution of the Co-operative society, be jointly and severally liable to contribute towards any deficiency in the assets of the Co-operative society,--

- if the Co-operative society is a Co-operative society with unlimited liability without limit; and
- if the Co-operative society is a Co-operative society with limited liability, subject to such limitation as may be provided in the by-laws




Now I have talk with you relating to the liabilities; that is a unlimited liability and limited liabilities and whatever the liabilities you are taking in that particular co-operatives you need to put it a clearly in your by-laws.

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Other Issues Regarding Member

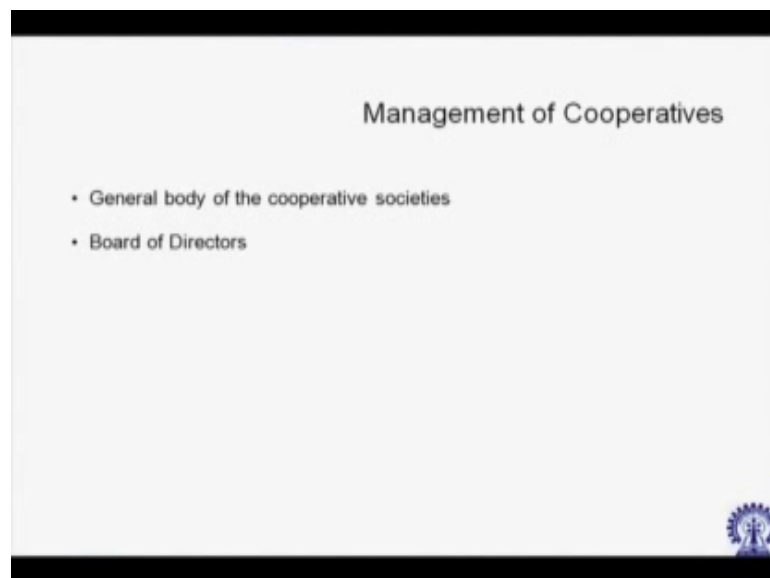
- Restriction on holding of shares
- Restriction of transfer of shares
- Disposal of deceased member's share or interest



Now there can be a restriction on holding of the shares by the members. Like, the law might specify that a single member cannot hold more than one fifth of the total shares of the co-operative. So that kind of restriction can be imposed, because I told you before also that co-operative cannot be use as a profit making vehicle, co-operative are generally use for the purpose of social good or for promoting the social cause or promoting the interest of a particular committee. Now there can be restrictions in the transfer of the shares and there can be several conditions which may specify then in which circumstances their share can be transfer.

Now, there can be a provision relating to disposal of the deceased members. In that particular co-operatives in generally if there is nominee is mentioned in the membership of the co-operatives then nominee as given all the benefit which the deceased member otherwise entitled to. In other cases the legal (Refer Time: 16:33) can get this particular benefit or in the circumstances where they are not trustable neither nominee nor any legal member is traceable. Then in that case the by-laws might provide some kind of provision for disposing of the deceased member shares of the in the co-operatives.

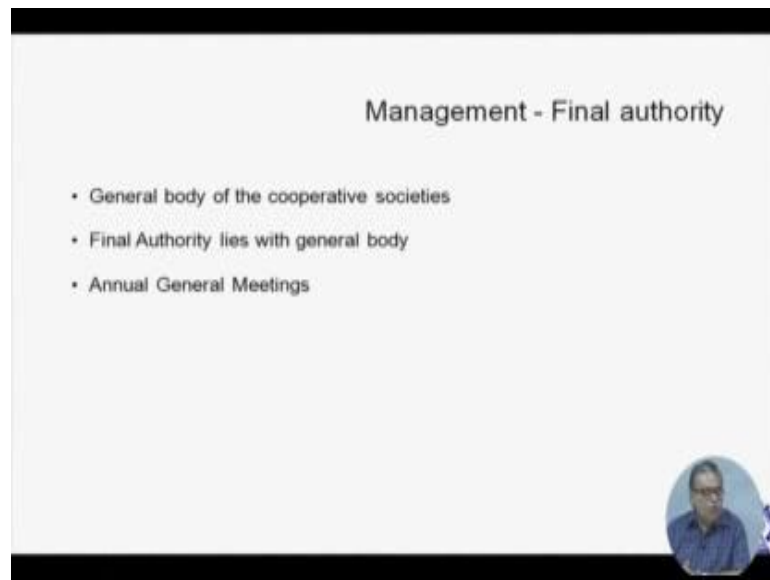
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Now the management of the co-operatives is generally happen in two layers. One layer is known as generally of the co-operatives and the second layer is known an aboard of

directors.

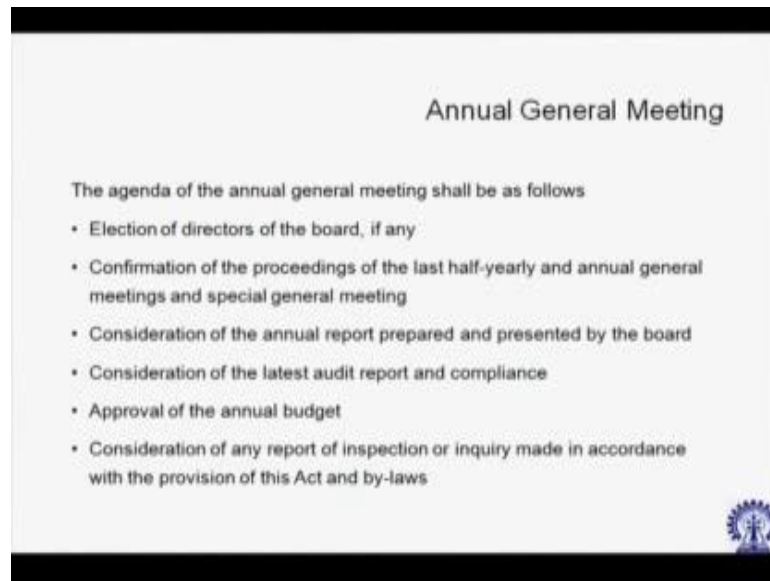
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Generally body of the co-operative society is basically holding the entire authority that means he is a final authority who will decide on any matter of the co-operatives. To put it in another way round, the residual power which is not been delegated to the board is lying with the general body. So, the general body can take a decision even amendment of the by-laws to rustication of the member, to restructuring of the co-operatives, to amalgamate the co-operatives, to spin up the co-operatives, to start subsidiaries of co-operatives. Any matter relating to the change of organization, any matter relating to the finance, any matter relating to the management of the co-operatives can be taken by general meeting and I am going to talk more detail in my next lecture in this.

Now you need to have a annual meeting of the general body. And several law specify in several manner; sometimes even the law specify that in which at the month you need to hold the first meeting, in which month you need to hold the second meeting, third and fourth meeting. Sometimes law specifics as that you have to hold the meeting in every quarter or sometimes there might be prescription of a more number of meetings of this particular general body. And whenever general body is meeting there is a specific agenda which need to be placed general body to decide issues.

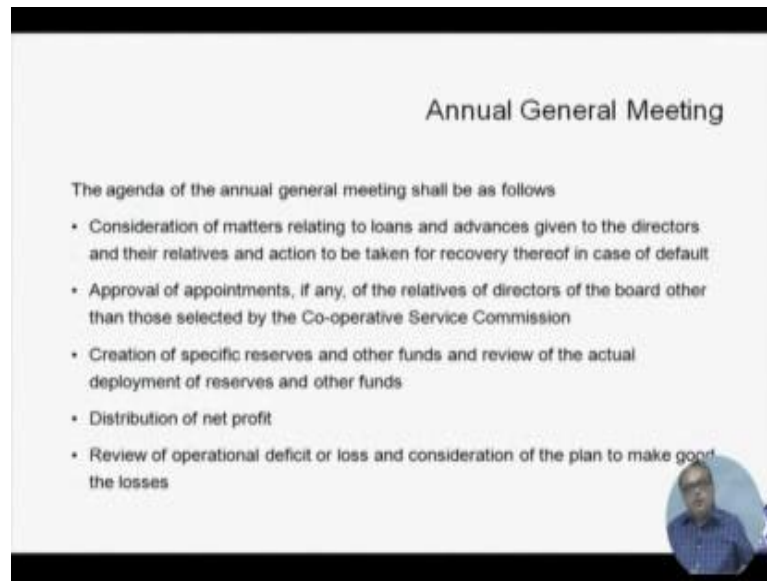
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Now, the agenda here I have listed down this is more based on the West Bengal Co-operative Society Act, but it is a more of a generic in nature so you will find most of this particular provision in almost all the co-operatives there might be some kind of variation to this particular thing. Now the agenda of the general meeting may include the micro relating to the election of director, then conformation of the proceeding of the last half yearly and annual general meeting and special general meetings.


Then it can talk about the consideration of annual report which has been submitted by the board. It need to consider the audit report, then it need to consider the annual budget, and then if you wanted to make any inquiry or inspection relating to the affair of the co-operative then in that case it can be considered by the annual general meeting also.

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The agenda of the annual general meeting shall be as follows

- Consideration of matters relating to loans and advances given to the directors and their relatives and action to be taken for recovery thereof in case of default
- Approval of appointments, if any, of the relatives of directors of the board other than those selected by the Co-operative Service Commission
- Creation of specific reserves and other funds and review of the actual deployment of reserves and other funds
- Distribution of net profit
- Review of operational deficit or loss and consideration of the plan to make good the losses

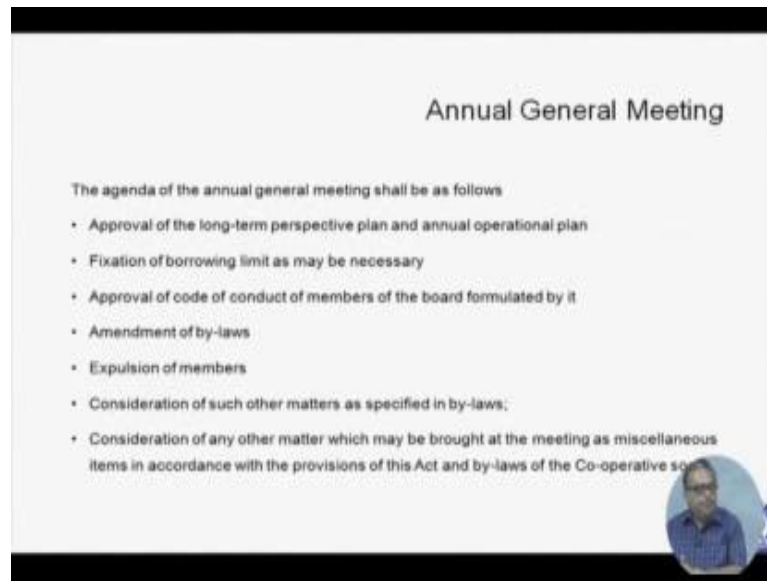


Now, they also further consider micro relating to loan and advances which is given to the directors or the relatives and how they have been recover or what are the procedure have been followed to recover or that particular loan has been at all recover and not.

Now, they can also talk about the appointment of the director and what are the processes they need to follow or they can elect these particular directors who are going to run day today activity of these particular co-operatives. Then they can talk about creation of specific reserves, now this reserve is a very interesting thing. Reserves mean you are keeping sides some of the profit which you are making during the business of the co-operatives. And these particular reserves is can be utilized in the future by the co-operatives for the different purposes either they can earmark this particular purposes in the general meeting or they can simply keep it open and whenever it is required they utilize this particular reserve.


Now, if the co-operatives have the good reserves then co-operatives have a better credit worthiness and the co-operatives might have a very strong market share or a market capitalization. Now you need to talk about in the general meeting relating to the distribution of a net profit, then you need to talk about the operation deficivity if you have and you have to make plan that particular operation deficit.

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The agenda of the annual general meeting shall be as follows

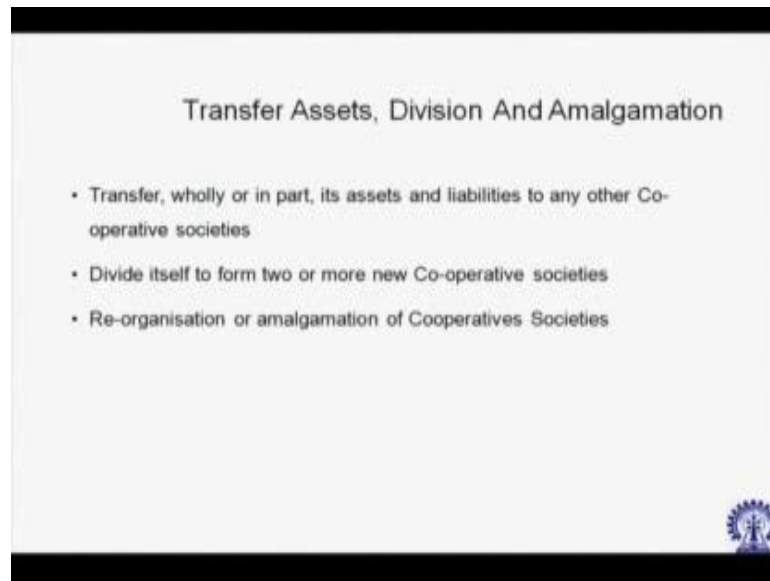
- Approval of the long-term perspective plan and annual operational plan
- Fixation of borrowing limit as may be necessary
- Approval of code of conduct of members of the board formulated by it
- Amendment of by-laws
- Expulsion of members
- Consideration of such other matters as specified in by-laws;
- Consideration of any other matter which may be brought at the meeting as miscellaneous items in accordance with the provisions of this Act and by-laws of the Co-operative society



Then you need to talk about approval of a long term prospective plan and operational plan and you can decide about the plan may be for 5 years may be for 10 years which can be the broad guiding principle for your smaller plan of very years. So, you can fix the target you can accordingly further develop your plan or to go head in the future. Then you can talk about the fixation of the borrowing limit if it is necessary from outsider then you can talk about code of conduct of the members or the member of the board how this would behave into that particular organization. Then there can be amendment of a loss in the general meeting expulsion of the members, that means you can take a decision to expel particular members and you should be according to the by-laws which has been specified then inverse circumstances you should take decision to expel a member.

And then you can consider any other matter which has been specified by the by-laws and there can be a miscellaneous attempt in the general meeting itself. So, what you can find in the general meeting that anything which is relating to the operation and the constitution and the capital and the membership or anything relating to the by-laws of the organization can be decided.

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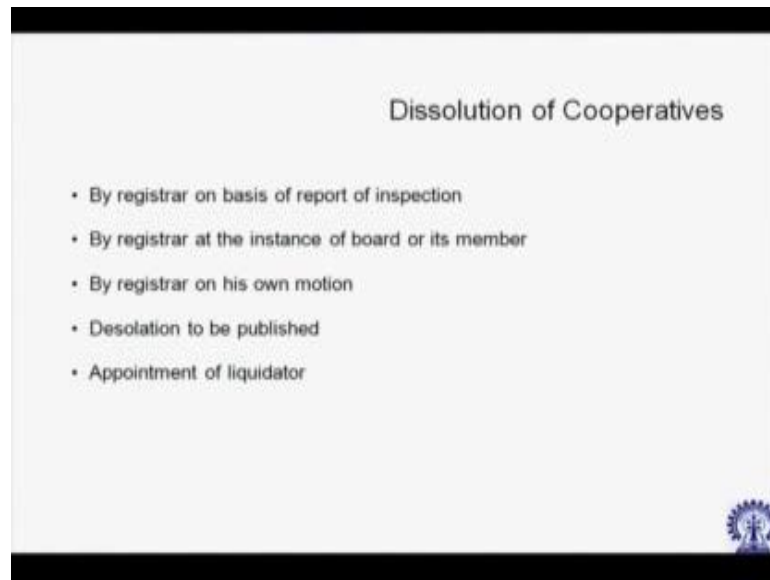


Now in case of co-operatives the important thing is that you can transfer, divide and amalgamate; all this thing is possible. And many of the time you can transfer only in part of his business and the liabilities to other co-operatives or you can divide particular co-operatives into a two co-operatives. That means you can split the co-operatives and you can divide the rights and liabilities of this particular co-operatives or if you thing that while the co-operatives had created a independent business which is for the better administration it need to be decided and it need to be split then in that case even do that. Sometimes it might so happen that there is a tress co-operatives or there is weak co-operatives or there is a financially unsound co-operatives and that particular co-operative is need to be taken over or need to be amalgamated with the strong co-operatives, that also can be done.

You can also thing of merging or amalgamating number co-operatives together for a better operation. So, all these reorganization is possible as we talk in case of in cooperated body, like I have talked with in case of the LLP it can be done in case of the companies and similarly it can be done in case of the co-operatives too. Co-operatives as I have told you that you there can re-organization possible and this particular organization can be based on the strategic reason based on the development based on better market access based on better benefit given to the members of the companies so

much so forth. So, you can you can take this particular decision based on certain criteria relating to this

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Now the last one which I wanted to talk with you relating to the dissolution of the co-operatives; in case of dissolution of the co-operatives there is three way you can do that. First one is based on the report of the inspection. I have talked with you report of the inspection because there might be situation where the affair of the co-operatives are not carrying out according to the by-laws or the laws of the co-operative.

And they can give a report it can be relating to malpractice by those members or some other member who are in charge of the management or it might be relating to the financial issues or it might be relating to other aspect or which has come out because in this particular investigation. Or it might be relating to the instance any board member or the member who has brought some of the information to the registrar and registrar things that it is good time to dissolve these particular properties, because it is creating otherwise the problem to run this particular organization or even the registrar can do it by its own motion.

Now, whatever the position is then in that case you need to publish the dissolution of the

co-operatives and this particular notice should be go to the public domain and once it is done then you need to appoint a liquidation. The liquidator is going to liquidate the entire assets of the co-operatives and it will distribute between the members as well as the creditor in this particular thing. Now before I lead this particular thing let me draw your attention.

Now the state government is taking very serious relating to appointment or appointment of the board in case of the co-operatives. So, some of the state has created the mechanism within the law itself that there will be a body or there the body will be acting and the directors or the registrar of the co-operatives who will hold or manage the election of the members in the board of the co-operatives. So, whatever the law which is governing to you need to check that particular thing that are you subjected to that particular law or not, and if you show then in that case you need to take care about that particular provision.

So, this is all about the law relating to the co-operatives and there can be some further provision or the valuation as you move from one state to another state and you need to be careful or you need to be take a professional advice for this particular purpose.

Thank you.