
UNIT 18 COOPERATIVE LEGISLATION IN INDIA

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18.0 OBJECTIVES

After going through this unit you will be in a position to:

- explain the evolution process of cooperative legislations in India;
- explain the salient features of the All India Cooperative Credit Societies Act, 1904;
- explain the salient features of the All India Cooperative Societies Act, 1912;
- explain the salient features of Multi-State Cooperative Societies Act, 1984; and
- explain the procedure of establishing a cooperative society.

18.1 INTRODUCTION

Organization and registration of cooperatives is one of the primary functions of cooperative law. It provides for the appointment of Registrar and sub-ordinate officers and entrusts the powers and functions under the statute to them. The following are the basic functions of cooperative law:

- Provision for organization and registration of cooperatives.
- To allow certain privileges, concessions and financial and other assistance.
- To preserve cooperative character by compelling the cooperatives to observe principles and practices of cooperation.
- To exempt cooperatives from provisions of certain other laws.

18.2 COOPERATIVE CREDIT SOCIETIES ACT, 1904

The Cooperative Credit Societies Act 1904 was modeled largely on the English Friendly Societies Act, 1896. It was simple and elastic and was operational throughout India. It followed Nicholson's recommendation for the creation of village banks. Accordingly the operation of the Act was restricted to credit only. The following were the important provisions of this Act:

- 1) Ten persons living in the same village or town or belonging to the same class or caste might be registered as a cooperative society for the encouragement of thrift and self-help among the members.
- 2) The main objectives of a society were to raise funds by deposits from members and loan from non-members, government and other cooperative societies. This money was lent to members or with the special permission of the Registrar of Cooperative Societies, to other cooperative credit societies.
- 3) The organisation and control of cooperative credit societies in each province (state) were put under the charge of the Registrar Cooperative Societies.
- 4) The account of every society were to be audited by the Registrar or by a member of his staff free of charge.
- 5) Rural societies were to have fourth-fifth of their members agriculturists while urban societies should have four-fifth of their members non-agriculturists.
- 6) Liability of members of a rural society will be unlimited. While in the case of urban society it would be either limited or unlimited.
- 7) No dividend would be paid from the profit in a rural society; it would be credited to the Reserve Fund.
- 8) In urban society one-fourth of the profit will be credited to the Reserve Fund.
- 9) Loans will be provided to the members usually on personal guarantee or on security.
- 10) The interest (share capital) of any one member in the society was strictly limited.
- 11) Societies formed under the Act were exempt from fee payable under Stamp, Registration and Income Tax Acts.

Under the provisions of this Act societies were classified into Rural and Urban. The urban societies were given better facilities while the rural societies were with unlimited liability and restricted area of operation. Loans were advanced to members on personal or such other security. There was no provision for high amount of finance in rural societies. The Act also did not permit creation of either non-credit societies or federal societies.

However, the success and usefulness of credit societies encouraged people to create societies in other areas. The necessity of removing deficiencies of the above was also felt. Accordingly, the second Cooperative Societies Act was passed in 1912.

18.3 COOPERATIVE SOCIETIES ACT, 1912

This Act retained the principle of simplicity and elasticity embodied in the 1904 Act. The 1912 Act recognised the necessity of organising large societies for proper supervision of credit and also paved the way for creation of central and non-credit societies. It had 29 sections. The following were the important features of All India Cooperative Societies Act, 1912:

- 1) The Registrar of Cooperative Societies was to be appointed by the State Government. He will, however, appoint his own staff/ officers to assist him.

- 2) A cooperative society may be established and registered:
 - for the promotion of interest of members
 - in accordance with the cooperative principles, and
 - with unlimited and limited liability – the member's liability was limited while society's liability was unlimited.
- 3) At least 10 members were required for registering a cooperative society.
- 4) The Amendment of the bye-laws of the society will not be valid unless registered with the Registrar, who had to satisfy himself that the proposed amendment were not contrary to the act or the rules.
- 5) In an unlimited society one member will have only one vote while in a limited society he may have as many votes as laid down in the bye-laws.
- 6) No member can acquire more than one-fifth of the total shares or not exceeding Rs.1,000/- in a limited liability society.
- 7) The societies were granted exemption from compulsory registration of instruments relating to shares, debentures and other documents.
- 8) The central or the state government may grant exemption to the society from the payment of income tax, stamp duty, registration fee, etc.
- 9) The society may receive deposits and loans from non-members, as may be prescribed by the rules.
- 10) The society may invest or deposit its funds in government saving bank, in trustees securities, in shares of other cooperative societies or in any bank approved by the Registrar.
- 11) One fourth of the net profit of the society must be carried to the reserve funds.
- 12) The registrar on his own motion or on the application of one-third members can undertake an enquiry into the constitution and working of the society.
- 13) On the application of a creditor, the Registrar can undertake an inspection of a cooperative society. After the enquiry/inspection or on the application of three-fourth members of the society, the Registrar can cancel the registration of the society.
- 14) The State government can exempt any society or any class of societies from any of the provisions of the Act.

18.4 COOPERATION AS A STATE SUBJECT

As a result of the implementation of Montagu-Chelmsford reforms in 1919 cooperation was transferred to the Provincial (State) governments and they were required to enact their own legislation. The Bombay Provincial Government was the first to pass its own act, “Bombay Provincial Cooperative Societies Act” in 1925. With exhaustive provisions for registration, membership, funds, management, settlement of disputes, recovery of dues, liquidation, etc. this Act served as a model for many other provinces / States for a fairly long time. The government of United Province (now Uttar Pradesh) passed its Act in 1931. Other provincial governments like Madras, Bengal, Bihar and Punjab followed the Bombay Act and passed their own acts in due course.

It is pertinent to note that if any provincial government had neither passed its own Act nor adopted Bombay Act, the All India Cooperative Societies Act 1912 was applicable to it.

In the post-independence period the Central Government appointed a committee in 1955 on Cooperative Law to draft a model which could serve as guidelines to all State

Governments and Union Territories. Considering the development of cooperative movement and political environment in a particular state, each state passed its new act or amended its existing act thoroughly, as the case may be, in the light of the model bill circulated by the Central Government. The existing cooperative Societies Acts of different states, therefore, differ from state to state. However, there are several common features that exist in all the state acts. These are summarized below:

- 1) Conditions and procedure of registration of a cooperative society and powers of the Registrar in respect of organization, registration and management of cooperative society. The supervision and control over cooperative society remains with the Registrar.
- 2) Conditions and procedure of amendment of bylaws on voluntary basis as well as under compulsion from the Registrar.
- 3) Condition and procedure of amalgamation, division and reorganization/conversion of cooperative societies on voluntary basis as well as under compulsion from the Registrar.
- 4) Types of membership rights and liabilities of members and provision relating to compulsory membership and dismissal of membership. Principle of open membership incorporated.
- 5) Rules regarding management of funds, such as reserve fund and other funds of a cooperative and rules relating to borrowing and lending by a cooperative.
- 6) Provisions relating to privileges extended to a cooperative under the cooperative societies act as well as under other Acts such as Stamp Act, Registration Act, Income Tax Act, etc.
- 7) Provisions relating to management of cooperative: These include: (i) holding of Annual General Meeting, (ii) holding of special General Meeting, (iii) Powers and functions of Board of Directors, (iv) removal of Board of Directors, (v) appointment of Administrator in place of Board of Directors, and (vi) giving directions to a society.
- 8) Provision relating to annual audit of accounts of the society and follow up action on the audit report.
- 9) Powers relating to ordering an inquiry/inspection into the affairs of a society and also instituting surcharge – proceedings against diligent promoters and office bearers of a society who are found responsible for misutilisation or misappropriation of funds of a society causing loss to the society.
- 10) Provision relating to settlement of disputes in a cooperative, execution of awards, recovery of dues, etc.
- 11) Provisions relating to summary recovery of dues of certain types of cooperatives in the interest of cooperative movement.
- 12) Pattern of state assistance and rules relating thereto.
- 13) Provisions relating to winding up the affairs of a society, powers of a liquidator in winding up the affairs of a society as well as provisions regarding disposal of surplus assets, termination of liquidation proceedings.
- 14) Provisions showing nature of offences in a cooperative and quantum of punishment thereto.

Check Your Progress 1

- 1) What are the functions of Cooperative Law?

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- 2) Write four important features of the Cooperative Credit Societies Act 1904.

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- 3) Write five important features of the Cooperative Societies Act 1912.

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- 4) Identify five important but identical features of state cooperative acts.

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18.5 MULTI UNIT COOPERATIVE SOCIETIES ACT,1942

With the progress of cooperative movement some cooperative societies commenced their operations in other states also. Under such circumstances the question arose whether a society formed in one state can operate in other states? If so, which cooperative act should govern its operation? In order to remove duplicity of provisions of different acts, the central Government passed Multi-Unit Cooperative Societies Act in 1942. This act provided for the regulation of affairs of such society by the provisions of cooperative societies act of the state where the principal business of the society is located. Thus, the State Registrar of Cooperative Societies enjoyed the power of the Central Registrar under the Multi-Unit Cooperative Societies Act.

As a result, within a state, we could see a large number of Multi-Unit Cooperative Societies having similar objects but governed by different cooperative laws. This created a chaotic position. Besides far reaching changes had also occurred in the organizational structure and the size of the multi-unit cooperative societies. Further, a number of national level cooperative societies were also established in different sectors in different states. These development necessitated enactment of a self contained, comprehensive central legislation. Accordingly, the “Multi-State Cooperative Societies Act 1984” was enacted by the Central Government.

18.6 MULTI STATE COOPERATIVE SOCIETIES ACT, 1984

The Multi-State Cooperative Societies Act, 1984 replaced the Multi-Unit Cooperative Societies Act, 1942. The objectives of this act are as given below:

- i) To avoid different multi-unit cooperatives being governed by different state cooperative laws in the country.
- ii) To have common comprehensive central legislation to meet the needs of administration and management of national cooperative societies and federations which have been organised after independence in large numbers.
- iii) To provide for the central authority to be responsible for their promotion, registration and supervision.

18.6.1 Schemes of the Act

The schemes of the Act is the same as any other cooperative law. It provides for:

- a) Appointment of a Central Registrar
- b) Registration of multi-state cooperative societies
- c) Members’ rights and responsibilities
- d) Management of cooperative societies including properties and funds
- e) Privileges of multi-state cooperative societies
- f) Audit, enquiry and inspection
- g) Settlement of disputes
- h) Winding up and cancellation of registration of multi state cooperative societies.

18.6.2 Salient Features of the Act

1) Appointment of Central Registrar

The act provides for the appointment of the Central Registrar by the Central Government to exercise various powers under the act. The central government can also empower any officer of the state government to exercise specific powers of the central registrar in respect of the multi-state cooperative society having registered office in that state. In the case of national cooperative societies/ federations such powers will only be exercised by the Central Registrar.

2) Definition of Cooperative Principles

For the first time in the history of cooperative legislation, cooperative principles have been precisely defined in the Act. Further, the Act specifically mentions that, “only such multi-state cooperative society, which has as its objects the provision of the

economic and social betterment of its members through mutual aid in accordance with the cooperative principles, may be registered under this Act.” The provision, perhaps, intends to promote registration of genuine cooperative societies and to prevent registration of spurious organizations which are cooperative only in name.

3) *Deletion of powers of compulsory Amendment of Bye-laws, Amendment or Division*

Under the provisions of this act the bye-laws of a multi-state cooperative society can be amended, or the society may be amalgamated with other multi-State Cooperative Societies or can be divided into more than one societies when the society itself voluntarily opts for such amendments/ amalgamations/ division. Unlike most of the state laws the Central Registrar does not enjoy the powers to force such amendments / amalgamation or division to unwilling societies.

4) *Conversion of Cooperative Society into Multi-State Cooperative Society*

The Act provides for the conversion of a cooperative society into a Multi-State Cooperative Society. The proposal for amendment of bye-laws extending the area of operation beyond the frontiers of one state has to be approved by the Central Registrar, who has to consult the Registrars of the States concerned before registering the amendment.

5) *Persons who become Members of Multi-State Cooperative Societies*

Section 19 of the Act contains relevant provisions in this behalf. While the provisions are in accordance with the usual provisions existing in the state cooperative laws, it has specifically provided that except in the case of National Cooperative Union of India no individual shall be eligible for admission as a member of a national cooperative society which is defined as a Multi-State cooperative society and specified in the second schedule of the Act. This restriction on admission of individuals to the membership of National Cooperative Societies is intended to preserve and promote the federal character of such cooperatives.

6) *Tenure of the elected member of the Board of Directors*

Sub-section 3 of Section-35 of the Act states that the tenure of the elected member on the Board of Directors of a Multi-State Cooperative Society shall be such, not exceeding 3 years, as may be laid down in the bye-laws of the society.

7) *Holding of Office in a Cooperative Society*

Section 36 of the Act provides that no person shall be eligible to hold at the same time office of a President or Chairman or Vice-Chairman or Vice-President on the Board of more than one Multi-State Cooperative Society. Further, Section-37 of the Act stipulates that no person shall be eligible to hold the office of a President, Chairman, Vice-President, Vice-Chairman of a Multi-State Cooperative Society, after he has held the office for two consecutive terms whether full or part. These provisions are intended to curb growth of vested interests in cooperatives.

8) *Removal of Elected Member by General Body*

Section-39 of the Act empowers the general body of a Multi-State Cooperative Society to remove from the Board of Directors an elected member who has acted adversely to the interests of the society. However, a resolution in this behalf has to be passed by a majority not less than two-third of the members present and voting at the general body meeting. Further, before passing the resolution, the member concerned has to be given a responsible opportunity of being heard in the matter. This provision is based on the concept of sovereign power of the general body of the society.

9) *Chief Executive*

Section-44 of the Act requires that every Multi-State Cooperative Society shall have a chief executive to be appointed by its Board. The chief executive so appointed shall be a full time employee who shall be a member of the Board. In the case of a National Cooperative Society in which the Central Government has subscribed more than half of the share capital, the appointment of chief executive and other functional directors shall be only with the prior approval of the Central Government.

Section 45 of the Act bestows on the Chief Executive specific powers and requires him to discharge specific functions, some of which are indicated below:

- a) Day to day management
- b) Arrangement for safe custody of cash
- c) Arrangement for proper maintenance of books and records and for correct preparation and timely submission of periodical statements and returns in accordance with the provisions of law.
- d) Convening meetings of the general body of the Board of Directors and other committees or sub-committees and maintaining proper record of such meetings.
- e) Making appointments to posts other than those in respect of which powers are specifically reserved to the Board.
- f) Assisting the Board in the formulation of policies.

This section intends to promote professional management in cooperatives. The idea is that vesting specific powers in the Chief Executive and allowing him to exercise them without any interference would ensure result oriented actions and decisions for which the Chief executive could be held accountable.

10) *Central Government's Powers to give Direction in Public Interest*

Section-47 of the Act gives necessary powers to the Central Government in this respect. The power has to be exercised in the public interest or for securing proper implementation of projects and other developmental programmes approved or undertaken by the Central Government. It is obligatory on the Multi-state Cooperative Society to comply with the directions issued by the Central Government.

11) *Constitution of Panel Authority for preparation of a list of persons to be appointed as Chief Executive or other senior executives in National Cooperative Societies*

Section-50 of the Act makes it obligatory to create a panel authority for preparation of list of persons to be appointed as Chief Executives and other senior executives in National Cooperative Societies. The provision is intended to promote professional management by adopting scientific and objective methods of recruitment which are free from nepotism, corruption and other malpractices.

12) *Miscellaneous*

Section-41 of the Act relates to the power of the Central or the State Governments to appoint their nominees (not exceeding one-third of the total number of Directors or 3 whichever is less) on the Board of Directors of a Multi-State Cooperative Society which has received financial assistance (in the shape of share capital, or loans or guarantee for payment of such loan or interest thereon or grant) from the central or the state government. The nominee director shall not have veto power.

Check Your Progress 2

- 1) What are the objectives of Multi-State Cooperative Societies Act, 1984?

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- 2) Discuss the scheme of the Multi-state Cooperative Societies Act.

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- 3) Identify five important features of the Multi-state Cooperative Societies Act.

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18.7 HOW TO ORGANISE A PRIMARY COOPERATIVE SOCIETY

A cooperative society needs registration under the Cooperative Societies Act before it could commence its business. Since cooperation is a state subject, the cooperative societies act of the state in which the primary society is to be established, should be read carefully before preparing proposal for its registration. The Act provides conditions for registration and the procedure to prepare and submit registration proposal to the registering authority. It also gives formats to be used, with powers of registering authority. The procedures that are followed in considering the proposal are also given in the Act. These provisions also include the procedure for appeal against decision of the registering authority and effect of registration.

Model bye-laws in respect of all important types of societies (credit, consumers, marketing, industrial, agro-processing societies, etc.) as well as application form are available in printed form with the leading book sellers and also in the office of the Registrar of Cooperative Societies or his sub-ordinate offices at all levels.

18.7.1 Conditions of Registration

- a) The objective of the proposed cooperative society should be promotion of economic interest of its members and/or their general welfare and/or welfare of the community as a whole.
- b) The proposal should reveal that the society has reasonable chances of success as a business organization and that it does not affect the working of the existing societies operating in that area.
- c) It also provides for the joining of minimum number of members called promoters to begin with, who are eligible for membership of a cooperative society, as per provisions laid down in the model by-laws. To avoid organisation of family cooperative (society) 15 promoter members belonging to different families, castes and religions should join hands. There should be proper representation of SC/ST and women in the list of members.
- d) The cooperative must promise that it shall achieve the objective by practicing cooperative principles, viz.,
 - i) open and voluntary membership
 - ii) democratic member control
 - iii) member economic participation
 - iv) autonomy and independence
 - v) education, training and information
 - vi) cooperation among cooperatives
 - vii) concern for community
- e) The proposal should be economically viable and technically feasible. The economic viability and technical feasibility is assessed on the basis of project report and the promoters have to collect the minimum capital required. Thus, the project report prepared on scientific lines should accompany the proposal for registration.
- f) The proposal should demarcate the areas of operation of the proposed society. It should be compact and contiguous.
- g) The proposal should also be accompanied by the draft bye-laws indicating constitution of the society, its area of operation, types of membership, share and authorized capital, etc. The draft by-laws should be prepared on the lines of model by-laws issued by the government. The proposed by-laws should not be contrary to the provisions of Cooperative Societies Act and the rules thereunder.

18.7.2 Procedure to Prepare the Proposal

The procedure of preparing a proposal for establishment of a cooperative society are as follows:

- a) Call a meeting of the promoter members and sympathizers to transact the following:
 - i) Elect the chief promoter
 - ii) Decide the name of the proposed society. While deciding the name, care should be taken that no cooperative in that name should exist in that area/district/state.
 - iii) Decide upon the location of the registered office of the society. The area of operation of the society should also be decided in this meeting.

- iv) Decide about the objectives, share capital, entrance fee, authorized capital, types of membership, etc..
- b) Request the Registrar, Cooperative Societies (district level officer for a Primary Society) through an application (Proceeding of the first meeting duly approved by the members should be attached) for
 - i) reserving the proposal name for the proposed society
 - ii) permission to collect share capital and entrance fee in the name of the proposed cooperative society
 - iii) permission for opening of saving bank account in a cooperative bank.
- c) Preparation of application for registration in the form prescribed under the Act, attaching thereto the bank balance certificate, the copies of proposed bye-laws (3-4 copies) duly signed by (11-15) promoter members, copy of the project report and list of persons who have agreed to join the proposed society with contributions made. Proposed contribution to be made by the general public, other than promoters, should also be mentioned.

18.7.3 Scrutiny of the Registration Proposal

Scrutiny of the registration proposal application is the function of the Registrar, Cooperative Societies. Generally, the powers of registration are delegated to subordinate officers up to the level of Asst. Registrar (AR) who is authorized to register a primary cooperative society with a limited area of operation of a village or a group of villages. On receipt of the proposal, the registering authority has to:

- a) Verify that it includes all the relevant documents that are necessary for consideration of a proposal for registration.
- b) Scrutinize the bye-laws submitted and find out whether the provisions therein conform to the provisions of the cooperative laws and the rules thereunder.
- c) Scrutinize the Project Report and get themselves satisfied about the economic viability and technical feasibility of the proposed society.
- d) See if the promoters have complied with the formalities required under other acts of the land such as Pollution Control Act and Fire Act.
- e) Verify necessary records and documents indicating the availability of resources such as land, building, power and water.

If the registering authority is satisfied with the proposal, he will register the society and issue a registration certificate along with a copy of the byelaws duly signed and sealed.

On registration, the name of the society is published in the Gazette. In case the authority desires to refuse registration, then the chief promoter has to be informed accordingly giving reasons therefor. The decision of refusal to register the society is subject to appeal to a proper higher authority.

18.7.4 Follow Up Action

On receipt of the registration certificate the following steps should be taken by the society:

- a) Board of Directors should be constituted.

- b) Preparation of budget and getting its approval from the general body.
- c) First General Body meeting to be convened within three months of the date of receipt of the registration certificate.
- d) Adoption of byelaws in the General Body meeting.

Check Your Progress 3

- 1) Identify the conditions of registration of a cooperative society.

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- 2) Discuss the procedure that should be followed in preparing proposal for registration.

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- 3) Explain the important steps followed by the registering authority while scrutinizing a proposal for registration of primary cooperative society.

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- 4) Explain the follow-up action the Chief Promoter is required to take after the registration certificate has been obtained by the society.

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18.8 LET US SUM UP

The first Cooperative Societies Act was passed in 1904. It was simple and elastic having 9 sections only. The scope of the act was broadened with the enactment of All India Cooperative Societies Act 1912. This paved the way for creation of Central and Apex Societies and also for the establishment of Cooperatives of non-credit activities.

Under Mountford reforms cooperation was transferred to the Provincial Government, which enacted their own Cooperative Societies Acts during 1925-32.

In order to facilitate the establishment of cooperatives having an area of operation in more than one state and also for the establishment of national level cooperative societies /federations, the multi-unit cooperative societies act, 1942 was enacted. This act was modified and renamed in 1984 as Multi-State Cooperative Societies Act.

Procedure for establishment of cooperative societies at the village to the national levels have been provided in various acts.

18.9 KEY WORDS

RCS	:	Registrar, Cooperative Societies
AR	:	Assistant Registrar (Cooperative Societies)
Provincial Government:		State Government

18.10 SOME USEFUL BOOKS

Government of India, 1915, *Report of the Committee on Cooperation in India*, (Chairman: Sir E.D. Maclagan).

Government of India, 1984, *Multi-State Cooperative Societies Act*.

Government of India, 1959, *Report of the Working Group on Cooperative Policy*, Ministry of Community Development and Cooperation (Chairman: K. R. Damb).

Government of India, 1963, *Report of the Committee on Cooperative Administration*, Ministry of Community Development and Cooperation (Chairman: V. L. Mehta).

Reserve Bank of India, 1981, *CRAFICARD Report* (Chairman B. Shivaraman).

Reserve Bank of India, 1989, *Agricultural Credit Review Committee Report* (Chairman A.M. Khusro).

Reserve Bank of India, 1954, *All India Rural Credit Survey Committee Report* (Chairman: A. D. Gorwala).

18.11 ANSWERS/HINTS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

- 1) Read Section 18.1 for the answer.
- 2) Read Section 18.2 for the answer.

- 3) Read Section 18.3 for the answer.
- 4) Read Sections 18.1 to 18.4 carefully for the answer.

Check Your Progress 2

- 1) Read Section 18.6 for the answer.
- 2) Read Sub-section 18.6.2 for the answer.
- 3) Read Sub-section 18.6.3 for the answer.

Check Your Progress 3

- 1) Read Section 18.7 for the answer.
- 2) Read Section 18.7.2 for the answer.
- 3) Read Section 18.7.3 for the answer.
- 4) Read Section 18.7.4 for the answer.