



**International Co-operative
Alliance – Africa**
A Region of the International
Co-operative Alliance

LEGAL FRAMEWORK ANALYSIS

GHANA NATIONAL REPORT

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ACRONYMS

BOG	Bank of Ghana
CUA	Credit Union Association
DOC	Department of Cooperatives
EU	European Union
GCC	Ghana Cooperatives Council
ICA	International Cooperative Alliance
LI	Legislative Instrument
MELR	Ministry of Employment and Labour Relations
NLC	National Liberation Council
NLCD	National Liberation Council Decree
PNDC	Provisional National Defence Council

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PART I – INTRODUCTION

1.1 Objectives of the Legal Framework Analysis

The Legal Framework Analysis (LFA) is undertaken under the auspices of the Framework Partnership Agreement “Cooperatives in Development – People Centred Businesses in Action” between the International Cooperative Alliance (ICA) and the European Commission to which the Alliance Africa is a co-signatory. Cooperatives benefit from regulations acknowledging their specificities and ensuring a level playing field with other types of business organizations. The absence of a specific legal framework for cooperatives or a weak legal framework may damage cooperatives, while in contrast a supportive regulation may allow their development. This is the reason why knowledge and evaluation of cooperative legislation is a necessary tool for ICA offices and members to support their advocacy and recommendations on the creation or improvement of legal frameworks, to document the implementation of cooperative legislation and policies, and to monitor their evolution. Against this background, the objectives of the LFA are: (i) to acquire general knowledge of the national legislation on cooperatives, including but not limited to the legislation in force in the 107 countries (as of April 2018) represented by ICA members, as well as of supranational cooperative legislation if existent; (ii) to evaluate the national jurisdictions covered by the LFA according to their enabling environment for cooperatives, in order to compare national cooperative laws with pre-determined indicators, based on a scale of “cooperative friendliness” of the national legislation; and (iii) to provide recommendations for eventual renewal of the legal frameworks in place.

1.2 Historical Legal Background

Cooperatives were first introduced in colonial Ghana in 1910, then called the Gold Coast, in an attempt to improve the quality of cocoa for export. It was not until 1928 that the first successful cooperative society was established. Between 1928 and 1940, there was no specific law that regulated cooperatives in Ghana. In early 1941, the colonial government adopted the INDIA / CEYLON Cooperative Ordinance of 1937, as the cooperative law in the then Gold Coast. The law operated from 1941 to 1968 when the first military Government (National Liberation Council) enacted the first cooperative law for independent Ghana, known as the National Liberation Council Decree 252 of 1968 (NLCD/Decree) which has been in existence to date.

Given the conditions and the period of the enactment of the NLCD, it was specifically designed to ensure full governmental control over cooperatives by appointing a government official as the regulator and supervisor of cooperatives. The law governing cooperatives is different from

the law governing companies and other non-cooperative businesses which are governed by the Companies Act of 1963 (ACT 179) and regulated by the Registrar of Companies.

The NLCD is the national law governing cooperatives. There are also subsidiary legislations namely the Co-operative Credit Union Regulations, 2015 (L.I. 2225) which regulate the operations of credit unions in Ghana and bye-laws of respective cooperative societies. However, the NLCD takes precedence over the regulations and bye-laws.

The NLCD contains some important provisions which cover aspects such as registration procedures, exemption from some taxes and charges and measures for dissolving cooperatives which are imperative for the operations of cooperatives. However, the law does not create room for the practice of some cardinal cooperative principles such as autonomy and independence and member control and limits the ability to create an enabling environment for cooperatives to thrive. Overall, the law does not create an enabling environment for cooperative development and growth.

Cooperatives have the potential to improve livelihoods and drive millions out of poverty. The NLCD is however archaic and only sought to serve the purpose of a military regime at the time when it was promulgated. It does not create an enabling environment for cooperatives to exploit their full potential and contribute to poverty alleviation. To ensure that the benefits of the cooperative model are enjoyed by members, attention needs to be given to the recognition of the ICA principles; limiting the powers of the Registrar of Cooperative Societies giving authority to central societies; refining the governance structure of cooperatives; and clearly defining the role of the apex body or council.

1.3 Objective of the Report

The objective of the report is to present a thorough analysis of the legal framework governing the operations of cooperatives in Ghana. It is purposed to enhance the understanding of the regulatory framework and environment for cooperative development and growth in Ghana. The report explores historical regulatory antecedents, the legal structures and operational guidance for cooperative businesses as well as how such measures are enforced.

1.4 Methodology

This report is the result of a collaborative effort between the Ghana Cooperatives Council and the International Cooperative Alliance (ICA) supported by the European Union (EU), to analyse the legal framework governing cooperatives in Ghana. Primary and secondary data sources were used in completing the report. Primary data was produced from responses to

questionnaires developed by the ICA. Secondary data was gathered from online resources on cooperatives. The report was elaborated by undertaking a desktop study to expand the responses to the questionnaires into a composite report highlighting the key components of the legal underpinnings of cooperatives in Ghana. A validation workshop was held to discuss the draft report and for gathering more inputs from stakeholders.

1.4 Outline of the Report

This report is organised into five parts. The first part gives introductory information with historical background to cooperative legislation in Ghana. It further provides objectives of the report and how the report was compiled. Part II gives a general overview of the Ghana cooperative law and describes the contents of the law and other related regulations. Part III assesses the strengths and weaknesses of the cooperative law and determines whether the law is friendly or unfriendly to cooperative development in Ghana. Part IV provides recommendations and Part V gives concluding information on the report.

PART II - NATIONAL COOPEATIVE LAW (GHANA)

2.1 General Context

Cooperatives in Ghana are highly regulated by the government. The NLCD is the principal national legal instrument governing the operation of cooperatives. The NLCD repealed the INDIA / CEYLON Co-operative Ordinance of 1937 (CAP 198) which was adopted in the then Gold Coast in 1941 by the colonial government as a measure to regulate cooperatives in the colony. Following Ghana's independence in 1957, the Cooperative Ordinance continued to be used as the key regulatory instrument until 1968 when the NLCD was decreed by the then military regime, the National Liberation Council (NLC). It was further adopted by the Provisional National Defence Council (PNDC) military regime as a legislative instrument (LI 604).

The NLCD has lived through decades without any significant modification and has being the principal instrument governing cooperative operations in Ghana since its promulgation on 28 June 1968.

The NLCD puts cooperative regulation in the ambit of a government official referred to as the Registrar of Cooperative Societies (Registrar) who performs his responsibilities through the Department of Cooperatives, a government agency under the Ministry of Employment and Labour Relations (MELR). The NLCD has seven (7) main parts namely; registration of cooperative societies, duties and privileges of registered societies, membership rights and liability of members, disputes, audit inspection and enquiries, dissolution of a registered society and miscellaneous matters. It details the conditions for the registration of cooperative societies, funds and restriction, registration regarding non-cooperative members, membership, investment of funds and use of surplus funds and shareholding.

The Decree primarily focuses on providing regulations on aspects of cooperative operations to allow for more control to be exerted by government through the Registrar. The Decree in its current state thus, undermines some key cooperative principles such as democratic member control, autonomy and independence of cooperatives.

The Decree has not seen any reform since it was passed in 1968. It was passed at the time when the framers assumed the purpose of the law as giving the Registrar wide ranging powers of control over the activities of cooperatives because cooperative development was still at a

rudimentary stage. Cooperatives in Ghana have since developed and expanded their activities in four key sectors of the Ghanaian economy including service, finance, industry and agriculture. The control orientation of the law as was assumed in the sixties no longer holds as trends in worldwide cooperative development favour granting autonomy and independence and democratic member-control to cooperatives.

Apart from the NLCD, there is also the Cooperative Credit Union Regulations, 2015 which govern the operations of cooperative credit unions, and cooperative financial institutions in Ghana. The Regulations allow credit unions to fully operate as non-banking financial institutions with certification from the Bank of Ghana and gives the Cooperative Credit Union Association (CUA) the mandate to supervise the activities of all cooperative credit unions. By virtue of the Regulations, the Bank of Ghana is the regulatory body of cooperative credit unions and cooperative financial institutions. However, the Regulations recognise the NLCD as the law for the registration of cooperatives and only apply to societies that are duly registered and incorporated in terms of sections 5 and 6 of the NLCD.

All cooperative societies are required to have bye-laws as a key requirement for registration which is provided in sections 4 and 5 of the NLCD. Bye-laws of cooperative societies are subservient to the NLCD and must be approved by the Registrar. Section 5(1) of the NLCD states:

If the registrar is satisfied that a society has complied with the provision of this Decree and that its bye-laws are not contrary to the objects thereof, he may register the society and its bye-laws.

The 1992 4th Republic Constitution of Ghana did not make any provision specifically for the operation of cooperative societies; it only categorised cooperatives as part of the private sector.

The International Cooperative Alliance (ICA) Statement on the Cooperative Identity provides the definition of a cooperative society as well as the cooperative values which are; self-help, self-responsibility, democracy, equality, equity, and solidarity. These values are made practical through the seven cooperative principles namely voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community.¹

¹<https://www.ica.coop/en/cooperatives/cooperative-identity>

However, the NLCD establishes a regulatory environment convenient for more control of cooperatives by the government through the Registrar and therefore focuses on a control-oriented approach rather than an open, participatory and member-control approach. The NLCD does not explicitly incorporate the ICA cooperative principles in its provisions. Section 3(2) makes mention of “cooperative principles” but does not provide an interpretation to this. This is in part because the drafting of the NLCD took place during the era of the military regime and little consultations were made with the key stakeholders.

Some aspects of the ICA cooperative principles such as voluntary and open membership and member economic participation are implicitly expressed in the bye-laws of the various societies, but members of cooperative societies are denied some key rights and privileges because some of the cooperative principles such as autonomy and independence contravene national legislation and as such unacceptable in bye-laws of the societies. On establishing conditions for acceptance of bye-laws by the Registrar, the NLCD explicitly states in Section 8(4) of the NLCD that:

If the Registrar is satisfied that any bye-laws submitted to him under sub-paragraph (3) of this paragraph are not contrary to the provisions of this Decree or any regulations made thereunder, he may register the bye-laws.

In the eyes of law cooperative societies in Ghana cannot be autonomous and independent since such assumption in the bye-laws of the societies will be contrary to the provisions of the NLCD.

2.2 Specific Elements of the NLCD

2.2.1. Definition and Objectives of Cooperatives

A cooperative society is as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise as defined by the ICA Statement on the Cooperative Identity.²

The NLCD does not precisely define a cooperative society. In an attempt to provide for entities which qualify to be registered as cooperatives, Section 2 (1) referred to cooperatives as “...any society which has as its object the promotion of the economic interest of its members in

²<https://www.ica.coop/en/cooperatives/cooperative-identity>

accordance with cooperative principles...” It however fails to provide a meaning of ‘cooperative principles’.

The NLCD does not provide for autonomy of cooperative societies and as such does not expressly recognize the established concept of autonomy and independence of cooperatives.

Notwithstanding the limitations in terms of a clear definition of a cooperative society, the NLCD makes a clear distinction between a cooperative society and other businesses and entities. The NLCD distinctly provides for conditions for registration as a cooperative society, minimum required members, ownership and shareholding, transfer of ownership, use of investment returns, audit, and dissolution of a cooperative society.

According to the NLCD, the main object of registered cooperative societies is promotion of the economic interest of their members in accordance with ‘cooperative principles’ which principles are not defined in the Decree.

The main characteristics that distinguish a cooperative society from other forms of business organizations are explained in Table 1 below.

Table1: Cooperatives vs. for-profit businesses

Cooperative Society	Other For-Profit Businesses
<ul style="list-style-type: none"> Registration is solely done by Registrar of Cooperative Societies 	<ul style="list-style-type: none"> Registration is done by the Registrar Generals Department (Registrar of Companies)
<ul style="list-style-type: none"> Exempt from paying taxes on profit 	<ul style="list-style-type: none"> Required to pay tax on profit
<ul style="list-style-type: none"> Membership is restricted to a specific operational geographical area 	<ul style="list-style-type: none"> Membership is not restricted to a specific area and can even emanate from locations outside the country
<ul style="list-style-type: none"> Re-capitalization can be done by members only 	<ul style="list-style-type: none"> Non-members are also allowed to invest
<ul style="list-style-type: none"> Requires a minimum of ten members 	<ul style="list-style-type: none"> One or more persons can form
<ul style="list-style-type: none"> Audited by the Department of Cooperatives which is led by the Registrar of Cooperative Societies 	<ul style="list-style-type: none"> No restrictions on the auditor to employ

Another distinction provided by the NLCD is in the prohibition of the use of the word 'cooperative'. Section 65(1) stipulates that:

No person other than a registered society shall, without the prior approval of the Commissioner responsible for Labour and Social Welfare, trade or carry on business under any name or title of which the word "Co-operative" is part.

The overall objective of the NLCD was to strengthen the government's role in controlling cooperative societies in terms of regulating and promoting their activities. The drafters of the Decree recognised the role of cooperative societies in stimulating development country-wide. They however viewed cooperatives, as they existed at the time, as not strong enough to engineer the needed development. As such what was envisaged as a legislation to regulate cooperative operations in Ghana was one that provided a stronger role for government involvement and participation in cooperative societies' affairs.

The NLCD therefore focuses on establishing the role of the Registrar in cooperative operations with the powers of the Registrar spanning across all possible operational spheres of cooperative societies from registration of the cooperative, how funds are invested, transfer of membership, auditing to dissolution of the cooperative society. The law is however limited on establishing a clear purpose for cooperatives leaving that to various interpretation by respective cooperative societies as stipulated in their bye-laws. Additionally, the law is silent on member-promotion. Sections 34, 36, 37, 38 and 39 elaborate on the qualifications of a member; exercise of rights; shareholding; restriction on members and voting of members respectively. It however fails to detail out what member-promotion means and how it should be carried out.

Similarly, the NLCD does not provide adequately on the manner of transacting business in cooperatives. The Decree does not prohibit transacting core cooperative business with non-members neither does it prohibit employment of non-members particularly to administrative roles. Cooperatives can sell or purchase from members and non-members. The Decree does not establish any order of priority regarding business transactions and employment of members and non-members. However, the NLCD prohibits transfer of membership interest to non-members. It further prohibits granting of loans to non-members and transfer of shares to non-members.

Member-promotion is however provided for in the bye-laws of the respective societies, unions, associations and the national apex body focusing on economic, social and cultural interest of members based on the activities focus of the cooperative.

Member-promotion is usually carried out through:

- (i) Education and training to elected board, members and the management.
- (ii) Advocacy in solving problems hindering the economic, social and cultural advancement of the cooperative organization.
- (iii) Publicity through periodic publication of a cooperative journal and magazine.
- (iv) Dissemination of information about contemporary issues confronting cooperative development.

Cooperatives can pursue different objectives or activities in any sector of the Ghanaian economy so far as it serves the interest of its members. The law does not mandate cooperatives to pursue social, general or community interest. Cooperatives are recognized as part of the private sector and are thus free to participate in and compete in all economic sectors. Indeed, cooperatives in Ghana operate in various sectors such as; the Ghana Agriculture Producers and Marketers Cooperative Association (AGRICOOOP), the Ghana Cooperative Marketing Association (GCMA) as a cooperative cocoa marketing entity, Ghana Cooperative Credit Union (CUA), the Ghana Cooperative Susu Collectors Association, Ghana Cooperative Hairdressers Association, Ghana Cooperative Fashion Designers Association etc. These are all cooperative umbrella bodies for cooperative societies affiliated to the apex body, the Ghana Cooperatives Council and working in the finance, agriculture, service and industry sectors of Ghana. Cooperatives are free to operate in any legally recognised economic or social activity so far as it is member focused and not monopolistic in nature.

2.2.2 Establishment, Membership and Governance

a. Establishing Cooperatives

Establishing a cooperative is by the voluntary will of a group of individuals realising that their economic, social or cultural need or interest will best be served by aligning their efforts as a group. For such a voluntary group to be legally registered and duly incorporated as a cooperative entity, section 2 of the NLCD describes the qualifications for entities which may be registered as a cooperative. It provides:

...any society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles, may be registered under this Decree with or without limited liability.

The NLCD further sets conditions for registration of cooperatives under section 3 as summarised in Table 2 below.

Table 2: Conditions for registering a Cooperative Society

Conditions for Registering a Cooperative Society
<ul style="list-style-type: none">(i) A minimum number of ten members.(ii) A name which is unique and does not resemble the name of another cooperative which in the opinion of the Registrar might deceive or mislead the public.(iii) The word “co-operative” must be part of the name of the cooperative.(iv) The word "limited" shall be the last word in the name of every registered society with limited liability.(v) Any two or more registered cooperatives with the object of facilitating the operations of their registered cooperatives may, by a resolution passed by their respective general meeting, form a union.(vi) The Decree also describes registration requirements for central societies. It provides in Section 3(2) that “a society established with the object of facilitating the operations of registered societies in accordance with co-operative principles (in this Decree referred to as a "central society") shall not be registered unless it consists solely of registered societies not being less than two in number”. Registered central societies may, by a resolution passed by their respective general or special meetings, form a tertiary society or an association.
Other requirements for the registration include: <ul style="list-style-type: none">(i) An office with a registered address;(ii) A Board of Directors democratically elected by members;(iii) An appointed Manager;(iv) Fully paid up minimum share capital; and(v) Bye-laws.

The Registrar has the mandate to register a cooperative when he is satisfied that a society has met the conditions for registration. In the event an application for registration is rejected, the NLCD makes provision for appeal to the High Court. Where a cooperative is registered, a

certificate of registration is issued as evidence of registration by virtue of section 7 of the Decree.

The NLCD limits the minimum member requirement for a cooperative to ten. When membership falls below the required minimum number, the cooperative has until its next annual audit session by the Registrar to meet the minimum requirement. If the cooperative has not met the minimum requirement by the time of the audit, the Registrar shall withdraw its certificate of registration and that cooperative shall cease to exist.

b. Membership

The strength of a cooperative is in its membership. Cooperatives are governed by their members, who typically invest in the cooperative and have an ownership stake in it, as well as a voice in how it should be run. Decisions are often made on a one-member, one-vote basis, so in many societies, cooperatives provide a much-needed example of democratic governance amid otherwise inequitable conditions. Members own and invest in their cooperative because they trust that doing so is in their best interest. Cooperatives must create economic linkages with their member-owners by undertaking activities that make clear the close connection between the prosperity of the cooperative and the prosperity of the member.³

The NLCD recognises the role membership plays in the development and growth of cooperatives. The law does not specifically define a cooperative member but provides conditions that qualify one to be a cooperative member in Section 38(1). To qualify for membership of a registered cooperative society a person must be;

- i. capable of entering into a legally enforceable contract;
- ii. resident within or in occupation of land within the area of operations of the society as defined in its bye-laws. However, in the case of a society with limited liability, the Registrar may grant exemption from the qualification based on residence or land occupation.

³ Anku-Tsede, Amankwaa, The Institutional and Regulatory Framework of Co-operative Societies in Ghana: Implications for Credit Unions; International Journal of Cooperative Studies Vol. 4, No. 2, 2015, 18-26 DOI: 10.11634/216826311504628.

A cooperative member is deemed to be in good standing when such member has paid all amounts due as share capital and payments due as membership fee. Section 36 on the rights of membership posits that:

No member of a registered society shall exercise the rights of a member unless and until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by regulations or by the bye-laws of the society.

Admission of new members is regulated by the bye-laws of the cooperatives. However, cooperatives are restricted to accept third parties as members except with the written permission of the Registrar. Section 35 of the Act on the 'restriction of companies as members' points out that:

No Company incorporated or registered under the Companies Code, 1963 (Act 179) and no unincorporated body of persons shall be entitled to become a member of a registered society except with the written permission of the Registrar and subject to such conditions as may be prescribed.

A member of a cooperative is free to exit his/her cooperative without any hindrance or limitation. The bye-laws of respective societies outline the process and procedures for exit of members. Even though members are free to exit, the Decree restricts transfer of a member's shares. Section 40(2) clarifies conditions under which shares of members could be transferred by positing that:

No member of a registered society shall transfer any share held by him or his interest in the capital of the society or any part thereof unless— (a) he has held such share or interest for not less than one year; and (b) the transfer or charge is made to the society or to a member of the society.

Decision making in cooperatives is grounded on democratic principles in that all members are owners of the organisation and must therefore have equal say in how it is run usually through voting.

In the least, this principle is manifested in the NLCD under section 39 which elaborates on votes of members as including:

- i. Each member of a registered society shall have one vote only as a member in the affairs of the society.
- ii. In any case where the votes are equally divided the chairman may exercise a casting vote.
- iii. In the case of a central society the voting powers of its members shall be as prescribed by its bye-laws.

- iv. A registered society which is a member of any other registered society may appoint, as its proxy, for the purpose of voting in the affairs of the other registered society, any one of its members.

c. Governance of Cooperatives

The NLCD does not detail out the governance structure for cooperatives. The only reference to a governance structure is in Section 10(2) which provides for the set-up of a committee to operate the cooperative on behalf of members. However, respective cooperative societies have set out appropriate governance systems in their bye-laws. By practice the governance structure within societies include; board of directors elected from among the members, manager or administrator recruited by the society and the members of the society. The society may form *ad hoc* committee(s) to perform certain functions at different times. This governance structure is adopted by all cooperative bodies regardless of the level of the cooperative be it a primary society, a union, an association or a national body. The Board of Directors are members of the cooperative and are elected to fixed terms as defined in the bye-laws of the society and exercise oversight responsibilities over the affairs of the cooperative.

Responsibilities and Duties of Directors

The Board of Directors is responsible for:

- (i) Making decisions and policies for their cooperative;
- (ii) Supervising activities of their cooperative;
- (iii) Attending all board meetings; and
- (iv) Supervising management and the accounts of their cooperative.

Responsibilities and Duties of Administrator/Manager

The Administrator/Manager is responsible for:

- (i) Attending all board meetings;
- (ii) Recording proceedings of all meetings;
- (iii) Keeping all financial records of the cooperative;
- (iv) Managing and supervising the activities of the cooperative; and
- (v) Reporting activities regularly to the Board of Directors.

Member control in cooperatives is exercised in a democratic manner and aligns with the ICA's cooperative principle of democratic member control. Members elect a board of directors as specified in the bye-laws of the society and by a resolution at a special meeting

or annual general meeting can sanction directors for non-performance or failure to abide by ethical and legal standards. An administrator or manager is an employee of a cooperative and may or may not be a member of the cooperative which employs him/her. An administrator is required by society bye-laws to provide an employment bond to the cooperative before assuming employment. The board has an oversight responsibility over the activities of the administrator. In case of any fraudulent act or mismanagement of funds on the part of the administrator, the board may fall on the bond to recover the losses or sue the administrator.

2.2.3 Cooperative Financial Structure and Taxation

Cooperatives just like any business require finance to operate. The main source of funding is contributions of its members. This represents members' investment in their cooperative and forms the share capital of the cooperative. Share capital makes resources available to the cooperative to purchase more efficient technology, invest in staff, provide education and training and make other improvements to the running of the cooperative's business activities.

The NLCD does not prescribe the minimum share capital to be contributed by each member of a cooperative. The law does not define share capital and does not detail out specific criteria for capitalising and recapitalising cooperatives. This notwithstanding, the Decree limits the shareholding of individual members to not more than one-fifth of the cooperative society's share capital. Section 37 of the Decree on shareholding states that "[n]o member other than a registered society shall hold more than one-fifth of the share capital of any co-operative society". That is, no member shall have hold more than 20% of the share capital.

Financing in a cooperative is largely regulated by the bye-laws of the cooperative which, among other things, set out minimum share capital. Contributions towards share capital vary based on the economic activities that are pursued by a cooperative. In some cooperatives, members contribute equally towards the capital base, while others demand varied contributions from members. Contributions are made proportional to the volume of transactions within the cooperative. When a member exits a cooperative the share capital and returns are paid to the member after deductions of all charges and fees that have accrued at the time of the exit as specified in Section 22 of the Decree. The Decree however restricts the transfer of a member's share capital. Section 40(2) sets conditions for the transfer of shares by members by positing that:

No member of a registered society shall transfer any share held by him or his interest in the capital of the society or any part thereof unless— (a) he has held such share or interest for not less than one year; and (b) the transfer or charge is made to the society or to a member of the society.

In the event a cooperative ceases to exist, the Decree states in section 57 that the Registrar shall appoint a liquidator who shall, among other things, decide on what share contribution is to be paid to members after considering issues for all creditors of the cooperative.

Profits made from operations of a cooperative are not prohibited from being distributed to members of the society. However, distribution of profit is restricted until the balance sheet of the society has been certified by an auditor and the scheme for distributing part of the society's net surplus is approved by the Registrar. This is stated in section 28 of the Decree. Furthermore, the Decree in Section 29 requires cooperative societies to contribute not less than 25% of their net surplus disclosed in the profit and loss account for the year, to a fund to be called the reserved fund. Again, the Registrar is given the power to decide how the reserve fund will be invested or deposited. After deducting the reserve fund contribution, the remainder of the net surplus can then be distributed to members as dividend or reinvested based on provisions in the bye-laws of the society as set out in section 29(2) of the Decree.

The scheme for distributing dividends or bonuses is set out in the bye-laws of the societies. The Decree prioritises transactions among members limiting non-member transactions to instances after the demands of members are served. Distinction between profits accumulated from transactions with members and transactions with non-members are relevant because it helps the cooperatives to know where their profits were derived from.

The Decree does not provide for patronage refunds and as such draws no distinction from dividends or bonuses. Bye-Laws of some cooperatives recognize patronage refunds. In this case part of profits stemming from transactions of the cooperative is returned to the members or owners of the specific products that were transacted. Cooperative societies that provide patronage refunds make a clear distinction between patronage refunds from dividends in their bye-laws.

Cooperatives may issue financial instruments with the approval of the Registrar. The Decree permits investments by other cooperative societies into a society issuing the instruments. It

however prohibits investment from non-cooperative members. Again, government may assist a cooperative through loans or take shares in the cooperative.⁴

The Decree permits cooperatives to borrow or take deposits from non-members but sets instructions on borrowing from minors.⁵ Section 19 of the Decree on restrictions on borrowing stipulates that:

Subject to the provisions of paragraph 20 of this Decree, a registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed, by regulations or its bye-laws.

Cooperatives are prohibited from giving loans to non-members. Section 16 of the Decree provides for restrictions on loans.⁶

In a case of dissolution, a liquidator is appointed by the Registrar.

- (i) Section 57 grants powers to the Registrar to appoint a liquidator on cancellation of registration.
- (ii) Section 58 details the powers of the liquidator.
- (iii) Section 59 stipulates the power of the Registrar to control liquidation.

The liquidator is required to value the assets and accumulate all proceeds within the cooperative and is also expected to address all issues regarding debtors and creditors. Assets are then distributed with the approval of the Registrar. Section 58(I) states as part of the powers of the liquidator *to* “distribute the assets of the society in accordance with any scheme approved by the Registrar”.

⁴Section 18 of NLCD provides that “Government may, subject to such regulations as may be made, grant loans to, take shares in, or give financial assistance in any other form to any registered society.”

⁵ Section. 20(1) provides, “A registered society may receive deposits from, or for the benefit of minors, and it shall be lawful for a registered society to pay to such minors the interest which may become due on the deposits.” Section 20(2) further states, “Any deposit made by or on behalf of a minor may be paid to him personally, or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon.”

⁶Section 16 of the Decree provides, “Subject to paragraph 17 of this Decree, a registered society shall not grant a loan to any person other than a member: Provided that a society may, with the sanction of the central society of which it is a member, grant a loan to another society being a member of this same central society.”

2.2.4 Cooperative External Control

Legally cooperatives are subject to intensive state control through the Registrar. The office of the Registrar is mandated to regulate and supervise the activities of cooperatives. The Registrar exerts control over registration, financing, audit, member relations, and dissolution. Cooperative societies have some level of self-control as stipulated in the Decree and their bye-laws particularly regarding their operations and relationship with members. This control is however limited.

2.2.5 Cooperation among cooperatives

The principle of cooperation among cooperatives is not comprehensively addressed in the Decree. The law only refers to the establishment of central societies⁷ involving two or more cooperatives willing to cooperate for their mutual interest.

In practice however, cooperatives have established a relatively fluid relationship by forming unions, associations and an apex body. There are special rules defined within the bye-laws of the respective societies, be it primary, secondary or tertiary that govern the formulation of secondary cooperatives (unions) and tertiary cooperatives (associations and apex body).

Two or more primary societies may form a secondary cooperative (union); two or more secondary cooperatives (union) may form a tertiary cooperative (associations); and two or more tertiary cooperatives (associations) may form a council, which is the national apex body.

Currently, cooperation among cooperatives is by interacting as members at the primary level; as primary societies being members of a district or regional union; as regional unions being members of a national association and finally, as national associations being members of the council, the national apex body.

Operations of cooperatives within these structures vary. Associations operate from a two to four tier system.

Within the two-tier system, the chain of communication flows from the primary society directly to the Association. Regarding the three-tier system, the chain of communication flows from primary society to the regional unions before it gets to the association. Also, within the four-tier system, the chain of communication flows from primary society to the district unions before

⁷Section 3(2) provides "A society established with the object of facilitating the operations of registered societies in accordance with co-operative principles (in this Decree referred to as a "central society") shall not be registered unless it consists solely of registered societies not being less than two in number."

it gets to the regional union and thereafter to the Association. All associations then interface with the council; the apex body at the national level.

2.2.6 Cooperative taxation

Cooperatives are subject to a specific tax regime and do not pay tax on their profits. This tax arrangement is unique to cooperatives because of the legal nature of cooperatives to serve their members and the community. The Decree requires cooperatives to allocate at least 25% of their profit in their profit and loss account to a reserve fund. This percentage is similar to what other non-cooperative businesses pay as tax on profit or corporate tax. Shares or interest of members are also not liable to any legal attachments.⁸The tax regime is very supportive to the growth and expansion of cooperatives.

⁸Section 25 provides; "Subject to the provisions of paragraph 23 of this Decree the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court in respect of any debt or liability incurred by the member."

PART III - DEGREE OF “COOPERATIVE FRIENDLINESS” OF THE NLCD

Cooperative businesses are organized for improving the bargaining power of the individual members and the product or quality service provided by the members. They also aim to reduce costs incurred during the production process, to provide competition to larger companies with deeper pockets, to expand opportunities in the market and take advantage of them, and to obtain products and services that would otherwise be unavailable because for-profit companies see them as unprofitable.⁹ Cooperatives are guided by the values of self-help, self-responsibility, democracy, equality, equity, and solidarity¹⁰ and these are underpinned by the principles of voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community.

Enjoyment of the benefits and advantages of the cooperative model requires a dedicated adherence and practice of the guiding principles by cooperative societies, unions, associations and national apex bodies. As such, any regulation that permits part rather than whole implementation and adherence to the guiding principles, only provides an incomplete legal framework for governing cooperative operations thus limiting the benefits thereof for cooperative businesses.

It is a consensual viewpoint of practitioners in the cooperative movement in Ghana that Ghana's parent cooperative law, NLCD has outlived its usefulness. This viewpoint is further corroborated by an analysis of the provisions of the Decree juxtaposed with requirements and expected operational capacity for stimulating successful running of cooperatives in the 21st century.

The Decree was developed in an era of military dictatorship and was therefore developed in a manner that would allow for a central role of government to exert maximum control over cooperatives.

⁹Anku-Tsede, Amankwaa, 'The Institutional and Regulatory Framework of Co-operative Societies in Ghana: Implications for Credit Unions' International Journal of Cooperative Studies, Vol. 4, No. 2, 2015, 18-26 DOI: 10.11634/216826311504628.

¹⁰<https://www.ica.coop/en/cooperatives/cooperative-identity>

The Decree in its current state is inimical to the development and growth of cooperatives. Key weaknesses of the law are summarised below;

I. Excessive powers of the Registrar

The Decree provides for over-regulation of co-operatives by government through the Registrar. It gives too much power to the Registrar and the activities of the Department of Cooperatives. The powers of the Registrar override cooperative principles which adversely impact cooperative businesses. The powers granted by the Decree to the Register are summarised in Table 3 below.

Table 3: Powers of the Registrar

Powers of the Registrar
<ul style="list-style-type: none">• The Registrar controls the granting of loans.• The Registrar gives approval to the society's final accounts before distribution of surplus.• The Registrar has the power to prescribe the manner in which reserve funds shall be invested or deposited.• The Registrar may issue directions of a general or specific nature prescribing the accounts and books to be kept by a registered society.• Any decision of an arbitrator appointed by the Registrar shall be final and shall not be called in question in any court.• The Registrar audits or causes to be audited the accounts of every registered society at least once in every year.• The Registrar has the power to hold enquiry into the composition, operations and financial condition of a registered society.• The Registrar has the power to dissolve the committee of a cooperative society and appoint a suitable person to manage the affairs of the society.

II. Vague Description of the Cooperative Identity

The Decree refers to the cooperative identity but falls short in describing it. The limitations placed on the autonomy of cooperatives obscure the identity of cooperatives in Ghana.

III. Lack of definition of Cooperative governance Structure

The Decree provides for a cooperative society to form a committee (board) to run the affairs of the society. It further mentions the appointment of an administrator to manage the day to day operations of the cooperative. However, this only provides a limited governance framework. The Decree does not clearly define cooperative governance structure. It does not define the roles of the board, duties of the administrator, relationship between board, administrator, members etc. There are no sanctions defined for board members or administrators or other committee members who act contrary to the goals of the society. Furthermore, the Decree fails to establish a clear relationship between societies and unions, associations and the national apex body. The Decree permits the formation of cooperative unions or associations referred to as 'central societies' by two or more societies willing to come together to advance their interests. However, the law is still not adequate as it fails to establish a clear governance framework for cooperatives and the relationship among cooperative societies at the local, district, regional and national levels.

IV. Prohibition of the Autonomy of Cooperative Societies

Autonomy and independence which is the fourth cooperative principle, imply the ability of cooperatives as self-help organisations to enter any agreement with any entity on terms that ensure democratic control by their members and maintain their cooperative autonomy. The NLCD does not promote autonomy and independence of cooperative societies. Cooperatives may decide to enter an agreement with an entity but only if this decision is approved by the Registrar. The Registrar has power to decide how cooperatives invest their reserve fund. Any scheme for dividend sharing must also be approved by Registrar. Bye-laws of any cooperative society that contradict these restrictions will not be approved hence the society will not be duly registered. These restrictions hinder member control and consequently erode the autonomy and independence of the cooperative.

V. Limitations on the Authority of Central Societies, Associations and National Cooperatives

The powers and mandate accorded to the Registrar by the Decree leave little space for central societies and associations to exercise authority over their respective societies. The Registrar plays the role of a regulator and at the same time as a supervisor of cooperative societies. Central societies who are supposed to coordinate and supervise the activities of the primary

societies at the district, regional, or national levels, are limited in terms of what they can do in their engagements with the primary societies. This is because they tend to compete in the same space with the regulator in terms of coordinating and supervising the activities of primary societies. This impairs the ability of the cooperative umbrella bodies to effectively engage the primary societies and mobilise resources to provide much needed linkages, education and training to the primary societies.

Notwithstanding these barriers imposed by the Decree hindering the development of cooperatives, the law still makes some salient provisions that clearly distinguish cooperatives from other forms of business organizations. The Decree clearly sets out qualifications and procedures for registering cooperatives and grants cooperatives the power to make and amend bye-laws and change society's name. The Decree also allows the conversion of a company into a cooperative society. It further emphasises mechanisms for government support for cooperatives as well as permitting payment of dividends and bonuses to members. Investment into securities and contributions to a reserve fund are some of the best practices permitted by cooperative legislation in Ghana. Additionally, the Decree grants certain privileges to cooperatives such as tax exemptions on the profits earned. The tax exemption on cooperatives is a unique provision in the law that gives cooperatives the impetus to increase capacity to expand and grow. A summary of some provisions in the law supporting cooperative development is provided in Table 4 below.

Table 4: Positives of NLCD

Provisions in the NLCD in favour of Cooperative Development
<ul style="list-style-type: none"> • A society registered under the Decree becomes a body corporate with perpetual succession and ability to sue and be sued by the corporate name under which it is registered. • A registered society owns a common seal. • A registered society has power to hold movable and immovable property of every description and may enter into contracts and do all things necessary for the purposes of its constitution. • Upon registration a society is issued with a certificate of registration which is conclusive evidence that the society therein mentioned is duly registered. • A cooperative society has the power to make and amend its own bye-laws. • A cooperative society has power to impose fine to members who act in contravention of the bye-laws of the society.

- The law protects the share capital of cooperatives and allows investment of funds. Under the law, the share or interest of a member in the capital of a registered society is not be liable to attachment or sale under any decree or order of a Court in respect of any debt or liability incurred by the member. With regards to investment a registered society may invest or deposit its funds in:
 - (a) the Ghana Savings Bank;
 - (b) any securities issued or guaranteed by Government;
 - (c) the shares of any other registered society; and or
 - (d) any other bank registered under the laws of Ghana.
- Cooperatives are exempted from certain duties and fees. Under the law, the Commissioner responsible for Labour and Social Welfare may, with the prior approval of the Ministry of Finance, by legislative instrument, in the case of all or any registered society, reduce or remit—
 - (a) the stamp duty with which, under any enactment for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member thereof and relating to the business of the society or any class of such instrument are respectively chargeable;
 - (b) any fee payable under any enactment relating to the registration of instruments for the time being in force.

As stated above, the NLCD has made some very important contributions to the development of cooperatives in Ghana and still contain some key provisions that are crucial to the growth and development of cooperative societies and the Ghana cooperative movement generally. However, this does not obscure the weaknesses in the legislation that have, for decades, stifled the performance of effective member-focused cooperatives in Ghana. The limitation imposed on the concept of autonomy of cooperatives vis-à-vis the ‘heavy-policing’ mandate of the Registrar as stipulated in the NLCD, are grounds enough to make the legislation unfriendly to cooperative development. The legislation has outlived its merits and does not address the needs of cooperatives to innovate, acquire new technologies and skills, adopt

varied approaches to be able to effectively operate to serve their members in a contemporary and competitive market space.

Ghana's parent cooperative law is therefore unfriendly to the development of cooperatives. It presents a rather effete approach to developing cooperatives and lacks very key tenets to stimulate the growth of the cooperative movement in Ghana.

Since the early days of Ghana's 4th republic constitution in 1992, the cooperative movement in Ghana has realised the need for a reform of the cooperative movement by having a more robust and all-encompassing legislation for cooperatives. There have been several reviews of the current law and a further review of best practices on foreign cooperative legislation. It is a widely held notion that aspects of the Italian cooperative law and the Mozambican cooperative legislation will be best suited for the development of cooperatives in Ghana.

Within the Italian legislation, the concept of distinguishing cooperatives between "mainly mutual" cooperatives and "other" cooperatives (that is, cooperatives which do not meet the requirements to be included in the first category and therefore are "other")¹¹ is a distinction that will contribute to having cooperatives working mutually exclusively for members and cooperatives that are able to participate in and compete competitively in sectors of the Ghanaian economy with other businesses. The Italian legislation's provisions on governing authority/co-operative supervision, training and education, membership governance, merger and apex organization will have a positive impact on the structure and operations of cooperatives. Mozambican Cooperative Legislation of 2009 recognises cooperatives as autonomous business entities and also provides cooperatives with the power to self-regulate¹². This is an appealing model to cooperative development in Ghana.

¹¹ Fici, A. (2010), 'Italian co-operative law reform and co-operative principles', Euricse Working Papers, N. 002 | 10.

¹² Jan Theron 'Cooperative policy and law in east and southern Africa: A Review' (2010), CoopAFRICA Working Paper No. 18.

PART IV - RECOMMENDATIONS FOR IMPROVEMENT OF THE GHANA COOPERATIVE DECREE

For the national cooperative legislation to respond to effective approaches to model the cooperative movement in Ghana to address 21st century challenges and empower millions of members, an overhaul of the decree is required. A new cooperative law is needed taken into consideration the recommendations discussed below.

Recognition of ICA principles

Cooperative identity should be clearly defined and established based on the ICA Statement on the Cooperative Identity adopted in 1995. Incorporating the values and principles in the law will ensure that legally, cooperatives in Ghana enjoy the benefits afforded by values and principles.

Limiting the Powers of the Registrar

The role of the Registrar and the Department of Cooperatives are imperative to provide a conduit where cooperatives can interface with the government. However, granting enormous powers to the Registrar and his office tends to project cooperatives as government institutions rather than autonomous private entities working to meet the interests of its members. The role of the Registrar should be reasonably decreased, and his powers limited to registration, inspection of books and withdrawal of certificates for non-compliance and corresponding functions. The functions of the Registrar should also be specifically defined.

The Need to give more Authority to Central Societies

The law should recognise the role of central societies, unions, associations and the national body. The supervision of cooperatives for instance should be a joint responsibility of the Department of Cooperatives (Government Agency) and the Ghana Cooperatives Council (Cooperatives Apex Body).

Clear Definition of Governance Structure

The law should clearly define the cooperative governance structure. Roles and responsibilities of members of the board, term limits of the board should be specifically defined. The relationship among primary societies and unions, associations and apex body should also be well defined.

Role of the Apex Body

The role of the national cooperative apex body should be well established. Its governance structure should be clearly defined and sanctions for poor performance, malpractice and non-compliance with cooperative ethics should also be rightly stipulated.

Establishment of a Cooperative Fund

The establishment of central finance facility on behalf of cooperatives should be considered. The fund will be made up of contributions collected from cooperative members for promoting the cooperative agenda through education, training and capacity building of cooperatives and learning and dissemination of endeavours on cooperatives.

PART V - CONCLUSIONS

Cooperatives have the potential to improve livelihoods and drive millions out of poverty. The model has been instrumental in some jurisdictions in building societies by empowering ordinary people economically, socially and culturally. Cooperatives have existed in pre-independence Ghana. Some cooperative members over the years have seen their lives impacted positively through cooperatives. However, the benefits remain underwhelming as millions of people, especially small holder farmers and local workers continue to grapple with economic challenges that a well organised cooperative sector could mitigate. The national cooperative law is archaic and only sought to serve the purpose of a military regime at the time when it was promulgated. A reform of the law is imperative to trigger the needed positive impact that the cooperative model can have on its members.