

LEGAL FRAMEWORK ANALYSIS

UGANDA NATIONAL REPORT



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ABBREVIATIONS

BoU	Bank of Uganda
ICA	International Cooperative Alliance
MTIC	Ministry of Trade Industry and Cooperatives
SACCOs	Savings and Credit Cooperatives Societies
UCA	Uganda Cooperative Alliance Ltd
UMRA	Uganda Microfinance Regulatory Authority
URSB	Uganda Registration Services Bureau

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1 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 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 About the Author

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2 NATIONAL COOPERATIVE LAW

2.1 General Context

The cooperative movement in Uganda can be traced as far back as 1913 when the first Farmers' Association was founded by African farmers in response to exploitative systems by Asian traders. However, formal regulation and supervision of cooperatives started with the enactment of the 1946 Cooperative Ordinance. The Ordinance was later amended by the Cooperative Act of 1952 which was also amended by the Cooperative Societies Act and Rules of 1963. The 1963 Act that was repealed and replaced by the 1970 Cooperative Societies Act. Consequently, the Cooperative Societies Statute was enacted in 1991 and later transformed into the Cooperative Societies Act Cap 112 with the objective to amend and consolidate the law relating to the constitution and regulation of cooperative societies and other matters connected therewith.

To date, the constitution and regulation of cooperatives in Uganda is thus governed by the Cooperative Societies Act Cap 112, which commenced on 15th November, 1991 and operationalized by the Cooperative Societies Regulations SI 112-1. This law provides for registration of societies, rights and liabilities of members, duties of registered societies, duties and privileges of the board, supervision and inspection of affairs, dissolution of cooperatives and dispute resolution.

Besides the Cooperative Societies Act, the Tier 4 Microfinance and Money Lenders Act, 2016, governs the licensing and management of Tier 4 microfinance institutions which include Savings and Credit Cooperatives Societies (SACCOs). This law came into force on 1st July, 2017 but it is not yet operationalized since the Minister in charge of Finance has not yet made its regulations. Additionally, the Tier 4 Microfinance and Money Lenders Act, 2016 amended some provisions of the Micro Finance Deposit Taking Institutions Act, 2003, to empower the Bank of Uganda (BoU) to regulate the licensing of large SACCOs.

Laws Governing Cooperatives

Law	Type of cooperative and nature of regulation	Particular elements to note	Link to full text
1. The Cooperative Societies Act Cap 112.	All cooperatives.	Every type of cooperative must be registered under this law.	https://ulii.org/ug/legislation/consolidated-act/112
2. The Tier 4 Microfinance and Money Lenders Act, 2016.	Regulates the licensing of small SACCOs.	Small SACCOs must be registered under the Cooperative Societies Act and licensed under this law. If the proposed regulations to the Act are passed, small SACCOs will consist of SACCOs whose voluntary savings do not exceed Uganda Shillings One Billion Five Hundred Million and institutional capital not exceeding Uganda Shillings Five Hundred Million.	https://ulii.org/ug/legislation/act/2016/4
3. The Micro Finance Deposit Taking Institutions Act, 2003	Regulates the licensing of large SACCOs.	Large SACCOs must be registered under the Cooperative Societies Act and licensed under this law. Under the proposed regulations to the Act, big SACCOs will consist of	https://ulii.org/ug/legislation/act/2015/2003-5

		SACCOs whose voluntary savings exceed Uganda Shillings One Billion Five Hundred Million and institutional capital above Uganda Shillings Five Hundred Million.	
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2.2 Specific Elements of the Cooperative Law

2.2.1 Definition and Objectives of Cooperatives

The Cooperatives Societies Act does not precisely define a “cooperative”. However, a cooperative which seeks to be registered under the law must aim at promoting the economic and social interests of its members in accordance with the cooperative principles and must be capable of promoting those interests.

Whereas both companies and cooperatives have corporate personality, they have clear distinctions in form and objectives. A company can have a single member at incorporation while the minimum number of members in a cooperative is thirty. Secondly, other than those limited by guarantee, companies generally focus on profit maximization as opposed to member welfare that cooperatives uphold. A company can be registered in a matter of hours while cooperatives are registered on probation for twenty four months before a certificate of registration is issued. Cooperatives are registered with the Registrar of Cooperatives (Registrar) whereas companies are registered by the Uganda Registration Services Bureau. Furthermore, SACCOs must obtain a license from the Uganda Microfinance Regulatory Authority (UMRA) or Bank of Uganda and must offer financial services their members only, which is not the case with companies.

Besides the Ministry of Trade Industry and Cooperatives (MTIC) and the Uganda Cooperatives Alliance Limited, the apex organisation of all cooperatives in Uganda, promotion of cooperatives is the responsibility of every society. Additionally, the Act provides for the National Cooperative

Education Fund to which every registered society contributes one percent of its turnover. The Fund is used to carry out educational programs for cooperative development.

In as far as the transaction of members and their cooperatives is concerned, the byelaws of societies determine. At the same time, the Registrar may prohibit or restrict transactions of any registered society with non-members if in his or her opinion those transactions are contrary to the cooperative principles or involve an abuse of any privilege accorded to registered societies.

Joining and exiting a cooperative is at free will. Therefore, the right to form or join a cooperative in Uganda is derived from the Constitution of the country which is the supreme law of the land from which all other laws derive their legitimacy. It provides for freedom of association which includes the freedom to form and join associations. Apart from the new legal regime on the licensing of SACCOs, the Cooperatives Societies Act allows cooperatives to take charge of their affairs through byelaws which are made in the exercise of any powers conferred by the law and bind the members. Byelaws must not be contrary to the provisions of the law and must be registered with the Registrar.

Equally, cooperatives are recognized as private sector organizations and have the right to carry out any economic activity that is permissible by law. In this respect, they can pursue different objectives or activities if only they will fulfil the interest of members and improve their socio-economic interests.

2.2.2 Establishment, Cooperative Membership and Governance

Establishment

Cooperatives are registered by the Registrar of Cooperatives. An application for registration of a primary society must be signed by at least thirty people qualified for membership. In the case of a secondary society, it must consist of at least two registered primary cooperatives. Tertiary and apex cooperatives must consist of at least two or more secondary societies respectively.

For a cooperative to be permanently registered, it must be first registered on probation for a period not exceeding twenty four months. Where the Registrar is not satisfied with the performance of the cooperative at the expiration of twenty four months, he or she may either cancel the registration or extend the probation for period not exceeding twelve months. If after

the extension he or she is still not satisfied with the performance of the cooperative, he or she shall cancel the registration. In case membership falls below the required minimum number, the law empowers the Registrar on his or her own motion, by order in writing, to cancel the registration of a cooperative. This applies to both probationary and permanently registered societies.

All cooperatives seeking registration in Uganda must:

- (i) Have a name which is unique to it and does not resemble the name of another cooperative which in the opinion of the Registrar might mislead the public;
- (ii) Include the word “cooperative” as part of the name of the cooperative;
- (iii) Use the word “limited” as the last word of the name of the cooperative;
- (iv) Have an office with a registered address; and
- (v) Have bye-laws.

The Registrar is required to keep or cause to be kept at his or her office two registers namely; the Register of Societies and the Register of Probationary Societies. Upon registration, a cooperative is issued with a certificate of registration and becomes a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to enter contracts, to institute and defend suits and other proceedings as well as doing all things necessary for the purpose of its constitution.

Cooperatives Membership

To qualify for membership, one must have attained the age of eighteen years and be a resident within or in occupation of land within the society’s area of operation as prescribed by the relevant byelaws. A person above twelve years may become a member of a cooperative but such person is ineligible to act as a committee member. A company or an unincorporated body of persons can only be a member of a cooperative with the Registrar’s written permission. A cooperative may, with the approval of the Registrar, limit the maximum number of its members. Membership in an existing cooperative is voluntary provided a member adheres to the procedures laid down in the byelaws.

Governance

The affairs of members in a cooperative are governed by byelaws. Each member of a registered society has one vote only and in any case where the votes are equally divided, the provisions of the rules of procedure made by the cooperative decide. A registered society, a cooperative union or an apex society which is a member of any other cooperative has as many votes as may be prescribed by the byelaws.

It is mandatory for every cooperative to elect a Committee consisting of the chairperson, vice chairperson, the treasurer and not less than two or more than six members. The Committee is the controlling authority of a cooperative and must appoint a secretary who is either a member of the Committee or paid employee of the society.

2.2.3 Co-operative Financial Structure and Taxation

Shares of a Cooperative

The Cooperative Societies Act Cap 112 does not prescribe the minimum share capital for cooperatives in Uganda. However, it forbids a member other than a registered body to hold more than one-third of the paid up share capital. Transfer of shares is prescribed by the byelaws. A member has the freedom to transfer their shares to another member without any hindrance or limitation in accordance with the procedures laid down in the byelaws.

When a cooperative is to be dissolved, the Registrar may appoint one or more persons to be a liquidator or liquidators of the society, and all the property of the society vest in the liquidator or liquidators with effect from the date of dissolution. Where no liquidator is appointed, the assets and liabilities of the society vest in the Registrar. No society can be dissolved except by an order of the Registrar.

Upon death of a member, a cooperative may transfer his or her share or interest to the person nominated by the deceased in writing prior to his or her death in the presence of two attesting witnesses. Where no person is nominated, the shares of a deceased person are transferred to the legal personal representative by the Committee.

Dividends

No registered society can pay an annual dividend exceeding ten percent on shares of the paid up capital. Equally, no cooperative can pay a dividend or bonus or distribute any part of its accumulated funds without the prior written consent of the Registrar and the acknowledgement of the Registrar that the balance sheet has been lodged with him or her disclosing the surplus funds out of which the dividend, bonus or distribution is to be made.

Surplus

Every society which does or can derive a surplus from its transaction must maintain a reserve fund. The portion of the net surplus to be carried to the reserve fund at the end of each financial year is ten percent of the net gain or surplus resulting from the operations of the society during that financial year. The reserve fund may be invested in a registered cooperative bank, or such other mode as the Registrar may approve. Upon dissolution of a cooperative, the reserve fund must be applied to discharging the liabilities of the society and the balance is distributed in such a manner the members may, in a general meeting, decide. It is mandatory for every cooperative to annually pay five percent of its surplus in a Cooperative Development Revolving Fund. This fund is administered by a committee of trustees composed of five appointed members. The Fund may be invested in the Cooperative Bank or such other mode as the board may approve. At the time when the Cooperative Societies Act was enacted, there was a Cooperative Bank which had been established in 1963. However, in 1999, the Bank was liquidated by the Bank of Uganda for various reasons. To date, there is no Cooperative Bank although there are attempts to restart one.

Transactions with Non-Members

A registered society can receive deposits and loans from persons who are not members only to such extent and under such conditions as the Registrar may from time to time authorize in writing. The Registrar may prohibit or restrict transactions of any registered society with non-members if in his or her opinion those transactions are contrary to the cooperative principles or involve an abuse of any privilege accorded to registered societies.

Taxation

Cooperatives are subject to the general tax regime applicable to all other business organizations. However, the Minister responsible for finance may, by statutory order, in the case of a registered society or class of registered societies, reduce or remit the duty or tax. Currently, through the Income Tax (Amendment) Act, 2017, SACCOs whether registered or to be registered are exempted from paying corporate tax for a period of ten years starting July 1, 2018 up to 30th June 2027.

2.2.4 Other Specific Features

Co-operative External Control

Cooperatives are subject to external control. Generally, they do not have absolute control over themselves because they are answerable to the Registrar of Cooperatives in many respects. For example, the Registrar has powers to, among other things, deregister a cooperative, appointment of liquidators and his permission must be sought in order to dissolve a society. It is however important to note that cooperatives are generally autonomous and independent in as far as they operate within the legal confines. Also, where a society feels that the Registrar is overstepping his powers, it can seek legal redress in the courts of law.

Cooperation among Cooperatives

Cooperation among cooperatives is not specifically addressed by the law although it can be determined by the Annual General Meeting and the byelaws. Cooperatives have the power to resolve to establish structures which are meant to facilitate cooperation among cooperatives. However, membership of secondary, tertiary and apex societies requires more than one cooperative where two registered primary societies can form a secondary society, two secondary societies can form a tertiary society and two or more secondary societies can form an apex society.

3 DEGREE OF “COOPERATIVE FRIENDLINESS” OF THE NATIONAL LEGISLATION

Generally, the Cooperative Societies Act is more cooperative friendly than not, fairly balanced and it allows members to take charge of their affairs with less government interference. Equally,

it allows cooperatives to grow by giving them space to thrive, allowing tax exemptions and making it mandatory for societies to apply the cooperative principles.

However, the regulation of SACCOs under the Tier 4 Microfinance and Money Lenders Act, 2016, is a very big obstacle to cooperative development. It fragments the licensing of SACCOs to three separate legal regimes and due to the continued delay to make regulations, SACCOs in Uganda are practically unregulated. Perhaps, Uganda can learn from the Kenyan legal regime that governs registration, licensing and management of financial cooperatives.

4 RECOMMENDATIONS FOR THE IMPROVEMENT OF THE NATIONAL LEGAL FRAMEWORK

There is an ongoing process by Uganda's Parliament to amend the Cooperative Societies Act Cap 112 through the Cooperatives Societies (Amendment) Bill 2016 to harmonize the cooperative legal regime in Uganda. If the amendment is achieved, it will make the national law more cooperative friendly by for example strengthening and empowering the Ministry of Trade Industry and Cooperatives (MTIC) to register and license financial cooperatives thereby relieving UMRA and BoU from their current role in far as SACCOs licensing is concerned.

The following changes are necessary in order to make Uganda's national legislation more adequate for the development of cooperatives:

- (i) Streamlining and realigning the role and powers of the Registrar.
- (ii) Reducing the minimum required number of members in primary cooperatives to fifteen from thirty. This will ensure that groups of professionals like lawyers can form a cooperative without struggling to raise the required minimum number of thirty people that the law currently requires.
- (iii) Expressly recognizing the ICA principles within the law.
- (iv) Repeal the parts of the Tier 4 Microfinance and Money Lenders Act, 2016, which apply to SACCOs and bring the management and licensing of SACCOs under the Cooperative Societies Act Cap 112.

5 CONCLUSION

The uniqueness of the Cooperative business model and the rules that govern it are widely misunderstood and often times are compared to other forms of business like companies. The enactment of the Tier 4 Microfinance and Money Lenders Act, 2016, for example, was aimed at protecting peoples' savings in institutions that referred themselves as SACCOs even when they were not duly registered. At the same time, some registered societies had grown very big with less supervision.

However, when the law was enacted, it directly conflicted with the Cooperative Societies Act Cap 112 which is the principle law that governs cooperatives. Some of the ways these laws conflict include:

- (i) The Registrar of Cooperatives can register a SACCO but cannot deregister it. Only UMRA and BoU have the power to do so;
- (ii) Small SACCOs are licensed by UMRA, an understaffed institution, with only one office in Kampala incapable of serving cooperatives in rural areas;
- (iii) Large SACCOs are licensed by BoU under a law that was specifically made to license profit oriented microfinance institutions which differ from cooperatives in form and management;
- (iv) The law clearly stipulates the specific provisions of the Cooperative Societies Act that apply to SACCOs, which exclude dispute resolution. By implication, SACCOs' disputes have to be handled by civil courts despite the fact that in matters of cooperatives registered under the Cooperative Societies Act, dispute resolution is by arbitration.
- (v) The overlaps between the two legislation have made it difficult for regulations to the Tier 4 Microfinance and Money Lenders Act, 2016, to be passed. To date, SACCOs are unregulated because the law cannot operate without regulations.

In conclusion, therefore, it is important that cooperatives in Uganda should be uniformly registered, licensed and managed under a single legal regime. There is also a need for training to policy and law makers to enable them understand the uniqueness of cooperatives. Accordingly, the sections in the Tier 4 Microfinance and Money Lenders Act, 2016 that provide for the

licensing of SACCOs should be repealed so that the Registrar of Cooperatives is empowered to adequately deal with all matters concerning cooperatives.