



LEGAL COOPERATIVE FRAMEWORK ANALYSIS

Within the ICA-EU Alliance

NATIONAL REPORT of JAMAICA

I. Introduction

This report was produced within the investigation of the Legal Cooperative Framework Analysis initiated by the International Cooperative Alliance (ICA) and its regional offices. The investigation is carried out in the framework of an alliance signed between the European Union and the ICA for the 2016-2020 period, which aims to strengthen the cooperative movement and its capacity to promote international development.

The analysis of the legal framework seeks to improve the knowledge and evaluation of cooperative legislation, with the aim of ensuring that legal regulations recognize the specificities of the cooperative model and equality of conditions, compared to other forms of association. This analysis will also serve ICA members as input into their advocacy and recommendations regarding the creation or improvement of legal frameworks, to document the implementation of cooperative laws and policies, and to monitor their evolution.

In line with the objectives set out in the ICA-EU Project, this report aims to provide a general understanding of Jamaican cooperative legislation and an assessment of the degree of its ability to promote the development of cooperatives. Recommendations are also made for the improvement of legislation in order to overcome some difficulties that cooperatives are currently facing.

The document has been prepared by John S. Bassie & Co. Attorneys-at-Law under the supervision of John S. Bassie, J.P. LLB (HONS), LL.M, DipCARb (Oxon) FCIArb, C.Arb as the independent expert. In order to create this document, the contributions made by national cooperative organizations affiliated to Cooperatives of the Americas have been taken into account.

Contributions from the expert was collected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was also sent to Jamaican organizations members of Cooperatives of the Americas and completing it was voluntary. However, there was no response from the majority of members.



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II. National Cooperative Legislation of Jamaica

i. General Context

The Co-operative Societies Act and the Co-operative Societies Regulations (“hereinafter referred to as “The Act” and “the Regulations” respectively) govern all classes of Cooperatives no matter what their common objective may be. The Act and the Regulations were promulgated in 1950 and were most recently amended in 1992. It should be noted that, there are no special or exclusive laws for most co-operatives, however the Act and the Regulations contain special provisions for Credit Unions.

The Department of Cooperative and Friendly Societies (“hereinafter referred to as the “DCFS”) is an agency within the Ministry of Industry, Commerce Agriculture and Fisheries which has the responsibility for the administration and overseeing of the regulatory framework of Cooperative Societies and Friendly Societies within the island. The main objectives of the DCFS are to facilitate the establishment and development of Co-operative Societies and Friendly Societies and to supervise their operations. The Department’s mandate is to focus primarily at ensuring the safety of the Societies' assets, the protection of Members' savings and investments and the protection of other stakeholders’ interests, Friendly Societies differ from Cooperative Societies as they are geared towards providing assistance to members, their relatives and dependents during times of hardship, sickness, old age and community development.

Under the Act and Regulations Credit Unions are required to meet specific standards and regulations, including but not limited to, having a minimal capital base and special committees. Within the jurisdiction of Jamaica, Credit Unions are gazetted as ‘Special Deposit Taking Institutions’ which is the broad categorization for different banking institutions supervised by the Bank of Jamaica. It should be noted that it is the intention of Parliament to enact legislation in the near future which will appoint the Bank of Jamaica as the body with oversight of Credit Unions.

It should be noted that the Constitution does not include any references to Co-operatives. The Act was most recently amended in 1992, and thus does not refer to the Revised Statement of Cooperative Identity which contains the principles and values of cooperatives. Notwithstanding the lack of a direct reference to the principles of cooperative identity the Act does state “A society may be registered under this Act which has as its object the promotion of the economic interests of its members in accordance with co-operative principles”. These



principles are not expressly referred to in the Act and Regulations but are conveyed with the provisions therein.

ii. Specific Elements of the Cooperative Law

a) Definition and Objectives of Cooperatives

The Act describes a Co-operative, as a Society which “has as its object the promotion of economic interests of its members in accordance with co-operative principles” (Section 4). The characteristics and essential elements of cooperatives are highlighted in several provisions of the Act and Regulations, some of which refer to the cooperative principles.

In relation to the cooperative principles, the Regulations state that no registered society shall fix any limit to the number of its members thus embracing the principle of open and voluntary association (Regulation 10). Regarding the democratic control of its members the Act provides that no member of the Cooperative will have more than one vote in the conduct of the affairs of the Society (Section 26) and the Regulations indicates that any question submitted to the decision of the members at a meeting will be determined by the majority of the votes (Section 23).

As it pertains to the principle of economic participation, the Act provides that no individual member, apart from a Cooperative itself may hold more than 20% of the share capital (Section 28). However, the nature and extent of liability of each member, should be outlined in the respective rules of each Cooperative (Regulation 40). Further, where a Cooperative makes profit, at least 10% of same is required to be held in a reserve fund and the surplus may be distributed pursuant to the rules of the respective Cooperative (Sections 35(1) and 37 respectively).

On the principle of Autonomy and Independence, Cooperatives can create their own rules subject to the legislation and its’ regulations, as well as the approval of the Registrar. Section 40 of the Regulations outline provisions that must be included in the rules of the Cooperative including the liability of members and the manner of investment of the funds of the Cooperative. With respect to education, training and information each Cooperative is required to appoint a Steering Committee which is required to receive cooperative training.

Regarding concern for the community the Act stipulates that a Cooperative, after meeting the allocation of its reserve fund, may within its discretion contribute an amount not exceeding 10% of the balance of its net profits to any educational or charitable purpose. Please note that



the Act and Regulations are silent on the principle of cooperation among cooperatives, but it can be reasonably inferred that this principle may be expressed in the rules of a Cooperative

Provisions in the Act and Regulations clearly differentiate Cooperatives from Companies that are Limited by Share Capital. Within the Jurisdiction Companies are regulated by different legislation and have their own Register which governs their functions pursuant to the Companies Act of Jamaica. Further and as distinct, from Cooperatives, the vote of each shareholder of a Company is proportional to the amount of capital invested and their profits are distributed similarly. It should be noted that , there are no restrictions on a Company to allocate 20% of its net profits to a reserve fund and there is no limitation as it pertains to a Company's interactions with non-members.

As outlined above the main purpose of a Cooperative under the Act is to promote the economic interests of its members in accordance with cooperative principles. However, The Act or Regulations do not explicitly stipulate or limit how membership promotion is to be performed or implemented by a Cooperative. Provisions governing membership promotion would be included in the rules of a Cooperative as proposed and agreed to by its members at General Meetings.

Having regard to the interaction with members, there are no provisions which expressly mandate that the Cooperative must transact with its members separate and apart from providing capital and making deposits. In general, transactions between the cooperatives and its members would be governed by the rules of each respective cooperative. For example, the Act articulates that members of cooperatives whose object is to dispose of produce from agriculture, fisheries, forestry, handcrafts or otherwise may provide in its rules or may otherwise contract with its members for the sale of such produce through the Cooperative (Section 15).

The Act and Regulations do permit Cooperatives to perform transactions with non-members; however such transactions have particular limits and stipulations. The Act provides that a Registered Society may not directly make a loan to any other person that is not a member, except in the circumstances where the non-member is a Registered Society or a member thereof (Section 31). On the other hand, a Registered Society may receive loans and deposits, from non-members subject to the prohibitions and restrictions of the rules of the Society (Section 32).





With exception to the sections outlined in the paragraph above the Act stipulates that all transactions between a non-member and Registered Society shall be governed by the prohibitions and restrictions of the Regulations (Section 33). On this point it is important to note that the Regulations permits the transfer of shares between members of the Society and non-members (Section 36). However, there is a requirement that the non-member be approved as a member by the Committee or at a General Meeting of the Cooperative according to its rules of admission of members. In relation to other operations with non-members and the surplus generated therefrom same would be governed by the rules of the respective Cooperative, subject to the provisions of the legislation.

The Act and Regulations do not permit the formation of cooperatives of general interest. As per Section 23(b) of the Act each member of the registered Society must have some “common bond of occupation or association or of residence in a defined neighbourhood, community or district”.

Alternatively, it does not forbid the formation of specific types of cooperatives or prevent a cooperative from engaging in specific types of economic activity provided that the Cooperative is formed in compliance with the governing legislation.

b) Establishment, Cooperative Membership and Government

Cooperatives are legally constituted after authorization is granted from the Registrar of Cooperatives who will review the application to ensure that it conforms with the provisions of the Act and Regulations. However, prior to making an application the group of members interested in forming the cooperative will have to appoint a Steering Committee which will receive training from a cooperative officer from the DCFS. The cooperative officer will provide education training and guidance on how to form a Cooperative and to remain compliant with legislation.

To obtain authorization from the Registrar an application form will need to be filed, accompanied by the rules of the Cooperative, the list of members, a registration fee and any other documentation requested by the Registrar. Although not specifically stated in the Act or Regulations, the Registrar normally requests that a business plan be provided with cash flow projections as well as projected income and expenditure statements. Where the Cooperative being formed is a Credit Union the Registrar will need to be satisfied that there is a minimum capital base sufficient to generate revenue needed to meet expenses including but not limited to rent, utilities, salaries and audit fees.





Upon being satisfied with the application the Registrar will register the Cooperative and its rules and publish notice of same in the Gazette. After being gazetted the Registrar will present the Cooperative with a certificate of registration. Once registered the Cooperative shall be deemed a body corporate (Section 8).

A Cooperative must be formed with a minimum of ten (10) members. These members must be at least 16 years of age and have a common bond of occupation or association or of residence in a defined neighbourhood, community or district to qualify as a member (Section 23). Further the Act permits a cooperative society to be registered as a member of another Cooperative. This is relevant as Section 42 of the Act gives the Registrar the power to cancel the “registration of a Cooperative Society other than a society which includes amongst its members one or more registered societies if it can be proven that the number of members has been reduced to less than ten (10)”.

The Act embraces the open-door principle allowing any legal persons and cooperative societies who meet the requirements of the statute to be appointed as members of a Cooperative. The Regulations provide that a Cooperative may not fix any limit to the number of members it may have, and any member may withdraw from the Society by providing a notice to the Secretary of the Cooperative. Normally other requirements for the election and/or admission of new members would be governed by the rules of the Cooperative.

Pursuant to Section 26 of the Act, members are given one vote in the conduct of the affairs of Cooperative regardless of the share capital that they may have with a few exceptions. A registered Cooperative which is a member of any other Cooperative will have such voting rights as prescribed by the rules of that Cooperative. In addition, where a Cooperative’s principal business is marketing of agricultural products, it may pursuant to its rules provide for the voting rights to be determined by the actual or estimated amount of the product marketed.

Each Cooperative is required to appoint a governing body referred to as “The Committee” to whom the management of its affairs are entrusted. The Committee shall represent the Cooperative before public authorities, in dealings with all third parties and in general shall manage the affairs of the Cooperative that have not been specifically assigned by the rules or regulations or to an officer of the Society.

Section 26 of the Regulations provide that the Committee shall be elected from amongst the members of the Cooperative during the annual general meeting of the Cooperative according to its rules. Each member of the committee is entitled to hold office until their successors are





elected and shall be eligible for re-election. The Regulations further mandate that the Committee is to appoint a Secretary while the appointment of treasurers and officers of the Cooperative are left to its discretion.

The Committee is required to conduct an annual general meeting. The Committee may also call special general meetings for the purpose of dealing with management of general issues/matters of the Cooperative. Having regard to the general management of the Cooperative the Committee is required to meet at least once every three months. Each member must be given 7 days' notice before any general meeting is held. Members participate in the meetings with one vote subject to the exceptions outlined above. For any decision to be made at an annual or special general meeting a specific quorum must be met which is dependent on the number of members in the Cooperative.

Pursuant to the Regulations any question submitted to the decision of the members present shall be determined by a majority of all votes (Regulation 24). In the case of a deadlock the Chairman of the Committee is given a casting vote. Decisions at the annual general meeting are binding on all members, however they may be legally challenged and struck out if they breach the provisions of the Act or Regulations.

The governing body of a Credit Union is required to contain two main bodies that are separate and apart from the governing committee. Regulation 40(3) (c) of the Regulations require that an Audit and Supervision Committee and a Loans Committee be elected from amongst its members. The Regulations further stipulate that each member may not serve on more than one of the Committees.

In relation to legal recourse the legislation provides a Cooperative with the capacity to make rules implementing fines and penalties on members who infringe the rules and regulations of the Cooperative. Further, the Act itself does speak to the imposition of fines and imprisonment for members who are found guilty of breaching its provisions (Section 60, 61 and 63).

c) Cooperative Financial Structure and Taxes

The legislation does not prescribe a minimum amount of share capital for cooperatives nor provide provisions which govern the capital contributions to be made by members. However, the Regulations do require Cooperatives, prior to registration, to create rules governing how capital can be contributed, including the maximum interest rates on deposits (Regulation





40(1)(g)). The Regulations also require Credit Unions, prior to registration, to create rules permitting only members to make deposits (Regulation 40(3)(d)).

Members may voluntarily contribute different amounts of capital, with the limitation being that no individual may own more than 20% of the share capital (Section 28). In relation to Credit Unions, where a member chooses to exit the Cooperative the legislation permits members to withdraw any portion of their share capital not otherwise pledged to the Society on demand provided that the Governing Body or Committee is provided with notice of the members' intention to withdraw the share capital for a period not exceeding six months. (Regulation 40(3)(b)).

With respect to reserves, the Act stipulates that at least 20% of the net profits derived from the transactions of the Cooperatives must be maintained in a reserve fund (Section 35 (2)). However, upon application the Registrar of a Cooperative may request that this requirement be reduced to a minimum of 10% of the net profits. In relation to social activities the Act provides that the Cooperative may contribute an amount not exceeding 10% of its profits to any educational or charitable purpose.

Having regard to the remainder of the profits the Act provides that Cooperatives may allocate same to members in proportion to the volume of business done by members with the Cooperatives from which the profits were derived (Section 2). In the Act this is termed a "bonus" which exemplifies the principles of patronage refunds as distinct from the payments of "dividends" which are paid to members in proportion to the share capital which is held by them (Section 2). No Cooperative may pay a bonus or dividend before its balance sheet is certified by an auditor who has been approved by the Registrar.

Cooperatives may provide loans to their members, as defined in Section 2 and as per Section 31 of the Act. In relation to raising capital the Act does permit Cooperatives to receive deposits and loans from non-members (Section 32). Despite the contributions to the capital the investing members are not admitted as members of the Cooperative. It should be further noted that Cooperatives from time to time must fix at general meetings the amount of liability from deposits and loans it may incur (Regulation 16). The Regulations further provides that this limit may not be exceeded.

Cooperatives may be dissolved under Section 42 of the Act by the Registrar after holding the requisite inquiry or on receipt of an application by at least three fourths of its members. Upon the dissolution of a Cooperative the Act provides inter alia that their assets will become the subject of liquidation in which event a liquidator appointed by the Registrar, who under the





control and direction of the Registrar may take possession of, sell the assets as well as arrange for their distribution (Sections 43 - 45).

As it relates to the capital of Cooperatives that have been dissolved and have become the subject of liquidation, the Act provides that the funds of such Cooperatives shall be applied, inter alia, to the payment of share capital (Section 49). Subsequent to the payment of share capital, if the rules of the Cooperative permit, the funds to be allocated to the payments of dividends to members.

However, the Act prohibits the distribution of residual capital and assets of Cooperatives to members following liquidation, but permits them to be devoted to any purpose specified in the rules of the Cooperative (Section 49(3)). Where no purpose is specified in the rules the Act permits the Registrar to consult with the members of the Cooperative to distribute the residual capital and assets to such cooperative purpose as may be agreed.

As it pertains to devolution of assets, the Act requires that notice of the liquidation of the Cooperative be published in the Gazette and permits any creditor who has not claimed or received what is due to him under the scheme to file a claim for same within two years of the publication (Section 49 (2)). However, the Act does permit Cooperatives to make rules which could potentially govern the devolution of assets in such an event (Section 49(3)). Further the legislation is silent on the conversion of Cooperatives to other types of organizations.

There is no specific law that establishes the taxation system of Cooperatives; however the Act does include provisions pertaining to specific tax exemptions. Cooperatives are exempt from paying income tax and stamp duty on all instruments executed by the Cooperative (Section 59). These tax exemptions are also shared by Charities, but Companies with share capital do not enjoy such benefits.

d) Other Specific Characteristics

All Cooperatives due to their legal nature are subject to the supervision of the Government through the DCFS, the agency which gives them legal standing as body corporates and is responsible for overseeing their general administration and supervision. To exercise the regulation of Cooperatives the Government retains the power to appoint the Registrar of the DCFS who is responsible for overseeing the activities of Cooperatives (Section 3).



The Registrar is conferred with a wide variety of powers in exercising the administration of Cooperatives. Pursuant to the Act, the Registrar disposes of a wide range of auditing prerogatives, including making inquiries into the financial condition of Cooperatives, reviewing audited financial statements and the imposition of fines where individuals fail to comply with the request for documentation and/or misapplies property of the Cooperative. The Act and Regulations neither permit nor prohibit assets to be devolved externally following liquidation. However, the Act does permit Cooperatives to make rules which could potentially govern the devolution of assets in such an event (Section 49(3)).

Other powers of the Registrar include review of the constitution (rules) of the Cooperative, cancelling the registration of Cooperatives pursuant to the Act and Regulations as well as appointing liquidators to facilitate the dissolution of a Cooperative. The Registrar also retains the power to appoint an Arbitrator to resolve any dispute which concerns the business of the Cooperatives between members and past members, members and the Committee or between Cooperatives themselves. This use of alternative dispute resolution permits Cooperatives to settle disputes in a less public and more efficient manner.

Notwithstanding the regulatory power of the Registrar, the Act and Regulations do promote and facilitate the self-control of cooperatives; subject to the overview of the Registrar (Section 38-40). Perhaps the most prevalent display of the self-control of Cooperatives is their authority to make their own rules which act as the constitution of the organization. However, it should be noted that this self-control which is given to Cooperatives cannot replace the public control and/or supervisory control of the Government as implemented through the Registrar and DCFS.

Despite not expressly promoting co-operation between Cooperatives the Act and Regulations do contain specific provisions for secondary cooperatives which promotes cooperation between Cooperatives. The Act stipulates that only secondary cooperatives may own more than 20% of the share capital of a cooperative limited by shares (Section 28). Further the statute provides that two or more cooperative societies may become amalgamated into one with or without the need for the dissolution or division of their funds. This particular provision provides Cooperative Societies with the opportunity to merge to achieve their objectives or where they have common or symbiotic goals.



III. Degree of Ease of National Legislation for Cooperatives

This section is solely based on our opinion having performed the requisite research on the subject matter as feedback from the relevant stakeholders has not been forthcoming.

Primarily the main tax legislation do not recognize the nature and characteristics of cooperatives, and for the most part they are primarily treated similarly to for-profit companies. However, as noted above, the Act does stipulate that Cooperatives are exempt from paying income tax and stamp duty. Based on the formulation of the legislative framework it is likely that rather than 'tax exemption' being the primary focus, it could be said that Cooperatives are not liable to pay the aforementioned taxes based on the Act.

The main legal obstacles faced by cooperatives are derived from the legislatures focus on the harmonization of business laws that are favourable to companies and other legal entities. This is evidenced by the fact that the Act and Regulations were enacted over 60 years ago and there has been no significant amendments made to the legislation since its promulgation.

There have been indications from Parliament that its intention is to amend the Act and Regulations. However, same has been delayed, pending completion of the Bank of Jamaica Legislation for Credit Unions to be placed under the Bank's regulatory purview.

Further, the legal recognition for cooperatives in other areas of law are quite limited. One conflict exists in Labour Law and Cooperative Law where there is a failure to adequately distinguish members who work for the cooperatives separate and apart from contractual workers in labor laws. Another conflict occurs between the Bank of Jamaica and Credit Unions. The Credit Union is deemed to be a special deposit taking institution pursuant to the existing legislation, however majority of the oversight of Credit Unions is still performed by the DCFS.

Upon performing a comparative analysis of the legislative framework of cooperatives in other jurisdictions, it is our opinion that the cooperative legislation of the Bahamas could be favourably utilized in the amendment of our Act and Regulations. The legislation in the Bahamas is far more extensive and detailed than the Act and Regulations in the jurisdiction which is the subject of this paper.

The legislative framework in the Bahamas contains provisions to assist with the operations and development of specific types of Cooperatives. This approach would be useful in amending the Act and Regulations in our jurisdiction with due regard given to assist agricultural cooperatives which have been plagued by several issues in our jurisdiction.



Further the Cooperative Societies Act of the Bahamas mandates the formation of an “Apex Body” composed of members selected from all Cooperatives in the island. The Apex Body is legally identified as a Cooperative pursuant to the Act and has the duty to co-ordinate, assist and promote all registered cooperatives in the island. Ideally this legislative provision could be mirrored in our jurisdiction to assist with the integration and public promotion of Cooperatives which is a current weakness in the legislative framework of Cooperatives in Jamaica.

Cooperatives in our jurisdiction also experience non-legal obstacles which are particular to developing countries. These include: lack of adequate management, lack of proper financing, lack of training facilities and illiteracy. In terms of financing cooperatives have to compete with all other types of organisations and generally have a disadvantage.

Notwithstanding the above, the utilization of alternate dispute resolution in Cooperatives legislation has proven to be quite an effective process which could be used in settling disputes in other jurisdictions. By mandating that disputes between Cooperatives and past members, members and the Committee or between Cooperatives themselves be referred to arbitration the legislative framework provides cooperatives with a less public and faster alternative to settling disputes rather than seeking direct recourse from the Courts. This feature of the legislation is quite important in our jurisdiction where many cooperatives face several financial challenges.

Although a legislative framework exists for the operation of cooperatives in our jurisdiction it can be concluded that the Act and Regulations require modernization. Cumulatively, the lack of the recognition of cooperative principles in other applicable legislations and other regulations with the foregoing at best reflects that there is a lack of cooperative friendliness in our legislation which may be coined as “more cooperatively unfriendly than friendly”.





IV. Recommendations to Improve the National Legal Framework

- Comprehensive amendment and/or overhaul of the existing legislation to become more modernized with an emphasis on provisions to improve capitalization of cooperatives.
- Future constitutional reform should include recognition and support for cooperatives in order to ensure that the development of public policies will take into consideration the characteristics and attributes of Cooperatives.
- Development of training institutions geared toward providing more on-going training programmes which will improve the regularity, quality and effectiveness of cooperative education and training available for existing and prospective cooperative members
- Recognition of the cooperative principles when enacting legislation and/or amending existing legislation on fiscal policies.
- Establishment of a basic accounting system for smaller cooperatives with special regard given to agricultural cooperatives
- Removal of the restrictions on legal entities becoming members of cooperatives as this may assist with capitalization and solving financial problems currently experienced by cooperatives
- Streamlining of the efforts to enact the Bank of Jamaica Legislation to regulate Credit Unions which will enable more focus to be placed on amending the Act and Regulations.
- Implementation of legislation which support the idea of cooperatives belonging to the social economy alongside an independent business-minded sector
- Implementation of legislative provisions which provide for state-assisted cooperatives with special regard given to the agricultural cooperatives.
- Government and/or Private Sector intervention to increase public awareness and the roles they can play in the economy.
- Harmonization between cooperative legislation and the labor laws



V. Conclusions

It is necessary to highlight that we have not received any answers or assistance from most of the member organizations and the relevant stakeholders in our jurisdiction up to the time of publication of this research paper. Thus, this report is primarily centralized on the legal analysis of our research and our opinion formed thereon.

Based on the foregoing this report was formulated principally by reviewing the existing Act and Regulations of Cooperatives as well as other legislation governing the operation of legal entities in the jurisdiction. Relevant documentation from the cooperative movement was taken into account along with general information from the DCFS as well as articles and papers on the subject area. While there seems to be a greater availability of information internationally, locally the information could be deemed 'sparse' at best. This lack of local information reflects our conclusion that the legislative framework in the jurisdiction generally needs to be seriously reviewed and updated.

Kingston, Jamaica. April 2020

John S. Bassie & Co.



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