



## LEGAL COOPERATIVE FRAMEWORK ANALYSIS

Within the ICA-EU Alliance

NATIONAL REPORT of St. Kitts & Nevis

### 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 ensure equal 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 Saint Kitts and Nevis 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 Dorwin Manzano, Attorney-at-Law and Adjunct Faculty Cipriani College of Labour and Co-operative Studies, Co-operative Studies Department. 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 and Saint Kitts and Nevis member organization of Cooperatives of the Americas were collected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Saint Kitts and Nevis and completing it was voluntary.



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## II. National Cooperative Legislation of Saint Christopher and Nevis

### i. General Context

It should be noted that the Prime Minister is the Head of Government of the sovereign democratic federal state, styled Saint Christopher and Nevis or Saint Kitts and Nevis or the Federation of Saint Christopher and Nevis or the Federation of Saint Kitts and Nevis, while Her Majesty The Queen is the Head of State, and is represented by a Governor General, who resides and operates within the territory.

Co-operatives and Credit Unions within the jurisdiction of Saint Christopher and Nevis are governed under one legislation, that is to say, the Co-operative Societies Act, 2011. This legislation forms part of the domestic landscape of the territory and provides for the registration, supervision, governance, operation and management of Co-operative Societies including Credit Unions, the members of which have a common bond of philosophy and socio-economic objectives. The Act made specific provision for Specialized Co-operative Societies, namely: Credit Unions, Consumer Co-operatives Societies and Housing Co-operative Societies, Industrial Co-operative Societies and Apex Bodies with separate levels of restrictions, limitations, parameters, operating standards etc.

The National Constitution, which came into effect on 19<sup>th</sup> September, 1983, does not include dispositions for Co-operatives or references to the cooperative principles included in the Declaration of the Cooperative Identity adopted by ICA in 1995. These principles while not reproduced literally in the Constitution, their meaning is faithfully integrated in the Co-operative Societies Act (CSA) 2011, and provides for the concept of cooperative and its unique characteristics.

### ii. Specific Elements of the Cooperative Law

#### a) Definition and Objectives of Cooperatives

Section 2 of the CSA defines a Co-operative Society as “a self-help, collectively owned and democratically controlled business enterprise registered under the Act, which consists of a group of people that provides socially desirable and economically beneficial services to its participating members on a joint action and not-for-profit basis”; the CSA also defines a Credit Union as “a Society organized by a group of people with a shared field of membership for provident and productive purposes and providing cooperatively pooled financial services to its members, including savings and lending business”.



The CSA aptly promotes the co-operative principles and do not pose a limit to the number of members nor to the social capital and also do not have as primary or secondary objectives the advertising of political, religious ideas or ideas of nationality, region or race, nor do they impose conditions for the admission linked to them". In fact section 3(1)(c) of the CSA provides that membership in Co-operatives is open, voluntary and available without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibility of membership, thus embracing the co-operative principle of open and voluntary association.

Regarding the democratic control of members, the CSA is categorical: it establishes that "only one vote is given to each member, whatever the amount of their capital share" (sec. 3 (1)(a). Where a Society is a member of another Society, it shall exercise its voting right via one individual. This avoids discriminatory predominance of any of the member Cooperatives (sec 36 and 37) and embraces the second principle.

In respect of economic participation, the business of Cooperatives is carried on primarily as an economic activity for the benefit of its members. Its primary concerns are its institutional capacity and financial strength, including adequate reserves, retained earnings and internal systems designed to ensure continuous growth and service to members. Pursuant to section 3 of the CSA, a Cooperative has the power to utilize any surplus or savings arising out of its operations :

- (1) to strengthen its business;
- (2) to provide or improve common services to its members;
- (3) for the payment of dividends on permanent ownership capital purchased by its members;
- (4) among its members in proportion to the business done by each member with the co-operative society;
- (5) to educate its members, employees, directors, committee members and the general public in the principles and techniques of economic and democratic cooperation;

There is no mention to the autonomy and Independence principle, but its recognition comes from the definition of cooperative and from the political neutrality imposed by section 3(1)(c)

For what concerns education, training and information (5<sup>th</sup> principle), section 3(1)(f)(v) and (h) provides for continuing education and training of members, employees, directors, committee members and the general public in the principles and techniques of economic and



democratic cooperation. Ten percent of the annual net surplus is invested in cooperative education (Section 126 (1) and (2)).

Regarding the cooperation between cooperatives principle, section 3(1)(g) speaks directly to the principle and provides for cooperative integration within the framework of the law.

Regarding the concern for community principle the CSA aptly provides for Co-operative to contribute to the social and economic development of its community.

The remaining sections of the CSA include some specific characteristics assigned to Cooperatives and Credit Unions within St. Christopher (St Kitts) and Nevis Law, such as: (a) variable capital (b) unlimited duration (c) minimum number of one hundred (100) members for Credit Unions and a minimum of fifteen (15) members for Co-operatives (d) barring exceptions permitted by the authority of application (e) provision of services to non-members under certain circumstances (f) the responsibility of offers and members (g) the application and qualifications for membership; and (d) the liability of current and past members which is specifically covered in section 29 of CSA in the following terms: (i) the liability of a current member of a co-operative society is limited to the unpaid amount of his or her subscription for shares; and (ii) the liability of a past member or the estate of a deceased member for debts of a co-operative society as they existed on the date on which the member ceased to be a member or died continues for a period of two years after the cessation of membership or death.

The CSA clearly differentiates co-operatives from companies with share capital since in these the vote is proportional to the invested capital and profits are distributed likewise; reserves can be distributed and the capital increases only thanks to the decision of the members. These companies have their own legal system and register. The goal of these Co-operatives is to provide services to their members. Such goal is implemented through the operations that the members realized with the Co-operative. The realization of these operations of the members with the cooperative is voluntary, barring the statute has established special requirements. Nevertheless, subject to the provisions of any bye-laws of a Co-operative Society made for the purpose, a Co-operative Society may receive loans, grants and donated capital from persons or institutions that are not members of the Co-operative Society for the purpose of meeting any of its obligations or discharging any of its functions under the Act. The CSA also provides that where a Co-operative Society realizes a surplus in a financial year, before





it allocates among or credits to members the surplus, the directors : (a) shall use any part of the surplus that the co-operative society will require to refund all or any part of a deficit it has previously incurred; (b) shall establish and maintain a reserve to be known as its statutory reserves; and (c) may provide, out of any surplus remaining after (a) and (b) above, have been complied with, in the manner set out in its bye-laws for payment out of the surplus, dividends on members' equity shares.

The statutory reserves required by section 125 (1)(b) shall be part of the institutional capital of the Co-operative Society and may, subject to the approval of the Registrar, be used in the business of the Co-operative Society, including unforeseen losses, unexpected shortfalls in liquid cash, capital retention, improved earnings, financing of non-earning assets, repair and maintenance and the avoidance of external borrowing.

The CSA does not consider Cooperatives of general interest, and while the realization of certain economic activities are permissible, there are certain restrictions, eg. Credit Unions are not allowed to underwrite insurance or issue security by another person. The CSA recognizes certain specialized co-operatives and prescribed certain regulations for their operations. (Part XIV sec. 198). The specialized Cooperatives are: Credit Unions, Consumer Co-operative Societies, Housing Co-operative Societies and Industrial Co-operative Societies.

## **b) Establishment, Cooperative Membership and Government**

Cooperatives in Saint Christopher (St Kitts) and Nevis are required to register with the Registrar in order to be recognized as a legally constituted body and enjoy the protection of the law. A co-operative society shall not be registered, or having been registered, shall not continue to be registered under the CSA (sec. 15):

- (1) unless its membership consists:
  - a. in the case of a Credit Union, of not less than one hundred members;
  - b. in the case of any other Co-operative Society, of not less than fifteen members
  
- (2) unless it is economically viable and has provision for equity capital expansion and continuous business growth. In the determination of the viability of an applicant or existing Co-operative Society pursuant to s 15(3) the Registrar, may, have regard to:



- a. the demand for the proposed or current services;
- b. the capital base of the co-operative society;
- c. the co-operative society's membership and business size, growth and growth potential; and
- d. the capacity of the co-operative society to sustain management and audit costs.

(3) unless there's conformity among the membership with all the cooperative principles set out in section 3 of the CSA.

Once the Registrar is satisfied that an application has been made in accordance with the CSA, the Registrar shall, within three months of the receipt of the application, register the co-operative society and its bye-laws and issue the Co-operative Society with a certificate of registration in the prescribed form. The name under which a Society is registered under the CSA shall be published in the Gazette and shall be noted in the Register. In the event that the Registrar refuses to register a Society, the Registrar shall give the applicant reasons in writing for the refusal. A Co-operative society normally comes into existence on the date shown in its certificate of registration except those Societies deemed to have been registered prior to the enactment or coming into force of the CSA. This is provided under section 250 of the CSA.

A certificate of registration issued by the Registrar to a Co-operative Society is conclusive proof that the Society named in the certificate is registered under the CSA and has complied with all the requirements of registration under the CSA. The registration of a Co-operative Society also renders it a body corporate and, subject to the CSA and its bye-laws, it shall have the capacity, rights, powers and privileges of a body corporate in accordance with the Interpretation Act (sec. 17).

The CSA dictates that the admission of new members has to be determined by the Board of Directors and may be subject to the conditions such as mental capacity, character of the individual and citizenship/residency etc. (sec. 26). A member of a Co-operative Society may at any time withdraw from membership of the co-operative society in such a manner as may be prescribed by the byelaws or the Regulations. Withdrawal of membership from a Co-operative Society must be by written notice addressed to the Board and, it doesn't affect any existing liability of the member to the Society. Apart from voluntary withdrawal, the Board



and or the general membership (via a special general meeting of the assembly) may terminate the membership of a member of the Society.

All members only have one vote in general meetings, independently from the amount of capital share that they may have. This principle is valid for any class of cooperatives, but in upper tier organizations there is a discretion, whether to establish a system with a vote proportional to the number of members of each cooperative or to the volume of operations that each of them realizes with the upper tier organization or a combination of both systems.

The governance structure of Cooperatives under the CSA consists of a three-tier system comprising: The Board of Directors, the Credit Committee and the Supervisory Committee. The Supervisor Committee has general supervisory powers and are often seen as the internal auditor. The Credit Committee is the body responsible for approving loans, while the Board of Directors set policies, approves organizational structure, strategic planning, general administration etc. The members of these Committees have but one vote, except the Chairman of each Committee who exercises a casting vote in addition to the original vote, in the event there is an equality of votes.

All members are entitled to participate in general meetings of the assembly with only one vote each. The assembly is the governing body and it decides on the subjects of greatest importance established by the CSA. Societies are required to hold an Annual Meeting (AGM) in each year no later than 3 months after the end of the financial year. Key purposes of the AGM includes, to evaluate the report and the financial statements of the year and nominate the members of the board of directors, credit and supervisory committee, appoint auditors, adopt resolutions etc. The assembly may also have extraordinary meetings at any time to deal with other matters on the initiative of the administration and audit bodies or of a certain number of members. The decisions of the assembly are mandatory for all members, but may be legally impugned if they oppose the law or the statute.

The members of the Board must be nominated by the assembly in accordance with the by-laws of the Society and shall constitute not less than five (5) members and no more than thirteen(13) (sec 53(2)). The duration of the their tenure cannot exceed three years, but they can be nominated again, barring the statute forbids a director serving for more than six (6) consecutive year without at least a one-year break (sec. 73(2)). The Board must meet at least once a month. It may nominate an Executive Committee composed by some of its members





to deal with the management of ordinary matters and may appoint managers -employees not working as consultants- in charge of the executive functions of the administration. The President is also Chairman of the Board of Directors and is one the key legal representative of the Cooperative. Members of the Supervisory Committee meet at least once every month and pursuant to sec. 69 of the CSA, they are required to meet with the Board at least four (4) times per year to review the Board's performance of its function.

### **c) Cooperative Financial Structure and Taxes**

The CSA does not establish a minimum capital for cooperatives in general, but in determining the viability of an applicant for registration, the Registrar may have regard to the capital base of the cooperative as a condition for registration.

A Co-operative Society's share capital is expressed in its bye-laws as (a) an amount of money divided into a specified number of shares set out in the bye-laws; or (b) an amount comprising an unlimited number of shares with a specified par value. A Society will issue qualifying shares as well as equity shares, provided that the value of the qualifying shares and equity shares owned by the members, shall not fall below the equivalent of ten per cent of the asset worth of the Society, as a result of any redemption of shares. The Registrar can grant such period of time, not exceeding three years or as the Registrar considers reasonable to enable an existing Society to make good any deficiency in the adequacy of its capital base. (sec. 97)

Societies enjoy the right to allocate or credit its surplus in respect of the relevant financial year; but before doing so, the directors:

- (a) shall use any part thereof that the Co-operative Society will require to refund all or any part of a deficit it has previously incurred;
- (b) shall establish and maintain a reserve to be known as its statutory reserves; and
- (c) may provide, out of any surplus remaining after clauses (a) and (b) above have been complied with, in the manner set out in its bye-laws for payment of dividends on members' equity shares. (sec. 125).

It should be noted that the statutory reserves required by section 125 (1)(b) shall be part of the institutional capital of the Co-operative Society and may, subject to the approval of the



Registrar, be used in the business of the Society, including unforeseen losses, unexpected shortfalls in liquid cash, capital retention, improved earnings, financing of non-earning assets, repair and maintenance and the avoidance of external borrowing.

There is an obligation on the Board to ensure that Society's statutory reserves and other institutional capital reserves are, at no stage, less than ten per cent of its total assets. If at the end of any financial year the amount standing to statutory reserves and other institutional capital reserves before any transfer under this section is less than ten per cent of total assets, the Co-operative Society must transfer to statutory reserves for that year not less than twenty five per cent of its surplus or such lesser sum as may be required, in order to increase the statutory reserves to ten per cent of total assets. If at the end of any financial year, the amount standing to statutory reserves and other institutional capital reserves before any transfer, is more than ten per cent of total assets, the Society cannot make any transfer to statutory reserves. In the case of termination or dissolution of a cooperative that has an unallocated surplus and the authorization approved, it is not paid out at the time of dissolution, but paid to one or more Trustees who are named in the special resolution.

Where not named in the special resolution, appointed by the Registrar the Trustee(s) named or appointed is required to deposit the monies in a special trust account: (1) in a cooperative society, or (2) in any financial institution licensed under the Banking Act or any company registered under the Insurance Act or (3) invest the money in securities issued by the Government or (4) in any other manner authorized by the Registrar (sec. 164).

#### **d) Other Specific Characteristics**

All Co-operatives are subject to State supervision through, the same entity that is in charge of giving them the recognition as legal entities. Furthermore, depending on the activity they realize, Co-operatives may be subject to the control of other public entities, such as the Central Bank and Financial Services Regulatory Commission. There is a Registrar of Co-operative Societies, who is a public officer appointed by the Public Service Commission and whose duty shall be to regulate Co-operative Societies. For the purposes of regulating Credit Unions, there is a Registrar of Credit Unions who is appointed by the Financial Services Regulatory Commission. The Registrars are assisted by professional and administrative staff, and may delegate duties to any other person or agent under his or her control as is necessary, to enable the Registrar to perform his or her regulatory duties and to exercise the powers conferred on the Registrar under the Act.



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There are wide audit faculties that include the application of fines, but the annulment of resolutions or the displacement of cooperative bodies in case of a violation of the law or of the statute are reserved to a judicial decision. Fines as well as resolutions related to the authorization to operate and with the approval of changes to the statute, are appealable before a court of law. Co-operatives in St. Kitts and Nevis are required to carry out annual external audits under the care of a certified public accountant. This service may be provided by cooperative upper tier organizations or entities constituted to this end. Audit reports must be at least quarterly and be transcribed in a special book. The general assembly (Annual General Meeting of Members) must be informed of the annual audit report.

Besides including the cooperation between Co-operatives as one of the defining characteristics of cooperatives, the CSA provides a wide catalogue of choices so that cooperatives may implement this principle according to their needs: they may associate to achieve their objectives; they may merge if they have common or complementary goals; they may realize one or more common operations, establishing which will be the representative and will assume responsibility in front of third parties; they may constitute cooperative upper tier organizations that are regulated by regulations of the CSA.

Primary Co-operatives are entitled to form upper tier cooperatives (federations or confederations) to fulfill economic or representative functions. In these cases the statute has established the representative and voting system which may be either identical to that of primary cooperatives (one member, one vote) or proportional to the number of members of each federate cooperative or the volume of operations realized with the upper tier entity or a combination of these systems, but always with the requirement of fixing a minimum and a maximum value to ensure the participation of all of them and prevent the discriminatory predominance of any of them. This disposition, that may only be applied to upper tier cooperatives, constitutes a clarification of the democratic governance system.

A registered co-operative society, subject to the provision of CSA and the bye-laws of the society, has the capacity, rights, powers and privileges of a body corporate pursuant to the Interpretation Act Cap 1.02 and may, for the realization of joint economic activities, either form another co-operative with share capital or execute an associate contract. In respect of the formation of another co-operative, it is instructive to note that pursuant to s100 CSA, subject to the approval of the Registrar, only a registered co-operative may purchase more than one-fifth (1/5) of the shares of another society where: (1) the society is insolvent (2) the proposed purchase/acquisition would not render the purchasing society insolvent, or (3) the proposed purchase would not in the opinion of the board, be detrimental to the financial





stability of the purchasing society. The surplus generated from such activity is distributed on the basis of the shares owned by the participating societies. Where a joint economic activity was entered into by way of a contract, the surplus thereof will be governed by the terms and conditions of the contract, in accordance with the law of contract.

Co-operative societies may establish an apex body which shall be composed of such member representatives of the of co-operative societies which may exist in St. Kitts and Nevis. The apex body shall be a co-operative society under this Act and shall coordinate, assist and promote activities for the development, growth and expansion of all co-operative societies and shall perform representational and other functions as may be determined by its constituent members. Cooperatives are free to constitute and belong or not to them.

While being regulated by a Registrar and under the provision of a specific legislation, Co-operatives do enjoy the liberty to operate to a large extent as an autonomous group of people united voluntary to meet a socio-economic need within the community and nation. There is no external control per say, except what the primary and other applicable legislations prescribe. A Society registered under the CSA also enjoys the statutory benefit of being exempt from any stamp duty and taxes with which, under any law for the time being in force, instruments executed by or on behalf of such Society or by an officer or member and relating to the business of such Society, or any class of such instruments, are respectively chargeable.

Notwithstanding the provisions of any other law in force in Saint Christopher and Nevis, a Co-operative Society shall be exempt from the payment of income tax, corporation tax and any other tax on the incomes of such Society. It is also provided that the Minister in Cabinet may by Order published in the Gazette, exempt a society registered pursuant to the CSA from liability to customs duties, excise taxes, environmental levy or customs service charge on goods imported by the Society.

### **III. Degree of Ease of National Legislation for Cooperatives**

From enquiries made, there are no precise legal obstacles or barriers (deriving from a cooperative specific regulation or any other source of law including tax law, public procurement law etc.) to the development of Co-operatives within the jurisdiction. It has been brought to my attention that there appear to be an anomaly in the age requirement to join a Co-operative being 16 and the age requirement to apply for a loan being 18 years. Apart from this, there are no known legal provision within the legislation that seeks to damage Co-operatives or hamper their development.





It should be highlighted that while the Credit Union Co-operative Societies have embraced technology and have acquired the requisite training resources and exposure for their members, the same cannot be said for the Producer Co-operatives in St Kitts and Nevis; the main producer or service co-operatives are either Agriculture or Fishing Coops. Therefore, the level of education, training and exposure among their fold of membership are not on par with the Credit Unions or other types of Coops. Additionally, most of their membership are not fully acurrant with the provision of the Law. A direct correlation would be reporting standards and requirements as these will pose a major challenge to the producer coops, due to the lack of business acumen among them and sufficient exposure to training and developmental issues.

There is a general concurrence that the specific law for Co-operatives is somewhat user friendly, but it still doesn't address the gap between the producer coops and the other types of Coops being able to effectively leverage on the benefits that the current legislation offers.

#### **IV. Recommendations to Improve the National Legal Framework**

- (1) There should be an expressed recognition of the cooperative difference, its diverse services and objective differences from that of for-profit companies, within the CSA.
- (2) By way of policy intervention, there should be mandatory training and performance evaluation of officers and leaders of Producer Co-operatives.
- (3) Credit Unions and Co-operatives should be empowered via legislation to conduct meetings via private or public social entities meeting systems, allowing distance meetings (video and online conferencing) and accounting recording and certificates of contributions through digital means.
- (4) Recognition of Co-operatives as not subject to the income tax instead of exempt, since this treatment only implies a legal concession.
- (5) By way of a Policy and Advocacy Strategy, to ensure that Co-operative education is included in the curriculum at all levels within the education system (from kinder garden to university level).



- (6) By way of Policy and Advocacy Strategy, to maintain a permanent and organic relationship with the Parliament, to have an impact in any laws that may affect Cooperatives, by having one of the Independent seats within Parliament being designated for a representative of the Co-operative sector.

## V. Conclusions

It is necessary to highlight that the answers of the member entities of ICA have been limited, but coinciding, in general, between them and with the expert's opinion, and for this reason their inclusion in the report has not faced any problems. Besides, the different declarations and documents recently produced by the cooperative movement have also been taken into account, whether they are generic or referred to specific fields.

On the other hand, the devising of the report has coincided with the parliament process of the yearly budget law of the national public administration which includes disturbing dispositions related to the taxation of cooperatives, which highlights the importance of relying on these investigation dispositions related to the taxation of cooperatives, which highlights the importance of relying on these investigations and on the orientation leading to an adequate and opportune incidence work. The information on this subject that reflects the situation and experience of other countries, both in the region and worldwide, is considered very opportune.

Port of Spain, Trinidad. March 2020.

**Dorwin P Manzano**

The legal frameworks analysis is a tool developed under the ICA-EU Partnership #coops4dev. It is an overview of the national legal frameworks at the time of writing. The views expressed within are not necessarily those of the ICA, nor does a reference to any specific content constitute an explicit endorsement or recommendation by the ICA.

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