



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

## LEGAL FRAMEWORK ANALYSIS

**NATIONAL REPORT - Lesotho**

**June, 2021**



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## **ABBREVIATIONS**

AGM	Annual General Meeting
BDS	Business Development Services
CBL	Central Bank of Lesotho
FIA	Financial Institutions Act
ICA	International Cooperative Alliance
LIA	Lesotho Institute of Accountants
MSCM	Ministry of Small Business Development, Cooperatives and Marketing
MTI	Ministry of Trade and Industry
SACCOs	Savings and Credit Cooperatives
VAT	Value Added Tax
SMME	Small, Micro and Medium Enterprises

## **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 General Context**

In Lesotho, the Cooperative Societies Act, 2000 (the Cooperatives Act) and Cooperative Societies (Amendment) Act, 2014 (the Amendment Act) unifies the legal regime for all kinds of cooperatives. The 2000 Act repealed the Cooperative Societies (Protection) Act No. 10 of 1966, Cooperative Societies Proclamation No. 67 of 1948 and the Cooperative Societies Rules promulgated there under. The rules were referred to as the Cooperative Societies Rules High Commissioner's Notice 174 of 1948 of the 28<sup>th</sup> August 1948. According to Sets'abi (2006:8)<sup>1</sup>, the 1948 legislation was neither based on the culture of the Basotho people nor their experiences between 1931 when the first cooperative was formed and 1947 prior to its enactment. Moreover, the cooperative movement was not consulted in the process of its formulation.

Presently, all types of cooperatives, including SACCOs, are regulated under one umbrella legislation. However, there is a dual regulation for large Financial Cooperatives in terms of the Financial Institutions (FIA) Act, 2012 and Financial Institutions (Licencing Requirements) Regulations, 2016. The administration and regulation of this legislation are the responsibility of the Central Bank of Lesotho (CBL). Financial Cooperatives are defined under the FIA as the specialised deposit taking institutions and are subject to the full regulation of the CBL regulation. In the year 2016, the new legislation for financial cooperatives was proposed and currently awaits the enactment by parliament as Financial Cooperatives Act, 2016.

The Cooperatives Act mentions the Cooperative Principles in the interpretation section but the principles and the other aspects (values and definition) of the Identity Statement are not reflected in the substantial provisions of the Act.

The Constitution of Lesotho does not have any specific clause factoring in or making any mention of cooperatives. However, the Constitution contains a provision which protects the people's right to associate freely with other persons for ideological, religious, political, economic, labour, social, cultural, recreational and similar purposes.

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<sup>1</sup> Dr. A.M. Sets'Abi, 2006 "Some Salient points in the History of Cooperative Development in Lesotho"

## 2.2 Specific Elements of Cooperative Law

### 2.2.1 Definition and objectives of Cooperatives

The Cooperative Societies Act defines cooperatives as private business organisations of a special nature which are registered under the Act and operate according to cooperative principles and practices. This definition is slightly different from the ICA one according to which a cooperative is 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<sup>2</sup>.

The essential elements of the notion of ‘cooperative’ in Lesotho are the economic interests and social interests of members. Cooperatives in Lesotho are mainly distinguished from for-profit organizations by the following legal characteristics:

- (i) Minimum number of persons who are permitted to register a cooperative is limited to ten and for the case of Apex organisations 50% +1 of primary cooperatives operating in the same sector while a company may be registered by one or more persons.
- (ii) Cooperatives are registered by the Commissioner for Cooperative Development (the Commissioner) under the Ministry of Small Business Development, Cooperatives and Marketing (MSCM) while companies are registered by the Registrar of Companies under the Ministry of Trade and Industry (MTI).
- (iii) Cooperatives are required to prescribe in their by-laws, the minimum share capital whereas companies must determine the authorized capital in advance in their articles of incorporation which cannot be exceeded by issued share capital at any point in time.
- (iv) Cooperatives can only register one class of shares while companies are allowed to issue non-participatory shares such as preference shares.
- (v) Decisions in cooperatives are made by voting by members in person through the one member one vote principle regardless of capital subscribed to while in companies voting by proxy is allowed and done in terms of capital subscribed to.
- (vi) In cooperatives, the Commissioner approves the auditor even if appointed by the AGM while in companies auditors are appointed by directors/shareholders without approval by the Registrar of Companies.

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<sup>2</sup> ICA Statement on the Cooperative Identity, <https://www.ica.coop/en/cooperatives/cooperative-identity>

- (vii) Cooperatives are liquidated by Order of the Commissioner while companies are put into liquidation by Order of the Court.

The objectives of cooperatives are not specified in the Cooperatives Act. However, it is required that cooperatives should prescribe in their by-laws their own objectives. Any activity which is outside the prescribed objectives can be invalidated by the Commissioner. These objectives are precisely assigned to a specific purpose of promoting the economic and social interests of members in accordance with cooperative principles and practices. According to the Cooperatives Act, member promotion means cooperatives are bound by law to pursue only the objectives in line with members' interests and restrict transactions with non-members to the extent only approved in the by-laws. While it is provided that a cooperative may contract with its members, there is no precise obligation binding members to transact with their cooperative except if the obligation is set out in by-laws.

Under the current legislation, cooperatives may not pursue any other objectives besides member promotion. If in the opinion of the Commissioner any resolution or action by officers or management committee is outside the objects which serve the promotion of member interests, such resolution or action may be rebutted. However, in pursuit of the cooperative principle of concern for the community, in accordance with policies approved by the members, community interests in the area where the cooperative is based may be served. As such, there is no particular type of cooperative specifically designed by the legislator for the pursuit of community interest as all cooperatives are allowed to undertake such community activities.

Except under circumstances where other statutes state specific requirements to be fulfilled, cooperatives may carry out any activity only to the extent prescribed in its by-laws. For instance, for a cooperative to offer banking services or receive deposits from non-members, it must meet the requirements set out under the FIA.

### **2.2.2 *Establishment, Cooperative Membership and Governance***

Registration and supervision of cooperatives is done by the Commissioner who is a public servant appointed by the Minister of Small Business Development, Cooperatives and Marketing (MSCM). The Cooperatives Act sets out conditions for registration. The use of the

word 'cooperative' is restricted to only those organizations registered under the Cooperatives Act.

Registration requirements are:

- (i) application signed by at least ten persons which is the minimum required number;
- (ii) not less than 50% of cooperative societies in the sector for the case of Apex organisations; and
- (iii) application should be accompanied by copies of proposed by-laws, list of names and particulars of persons elected to the provisional management committee, description of proposed business and activities, feasibility study and estimated capital, minutes of the preliminary meeting signed by persons wishing to become members and such other information the Commissioner may require.

If the number of members falls below the required number of ten in the course of a cooperative's operations, such cooperative is subject to winding up through the due process of law.

It is, as a matter of fact, the responsibility of members to ensure their membership grows. To this effect, members prescribe in their by-laws the manner in which new members should be admitted and subscribe to the shares of the cooperative. Investor shareholders are not permitted under the prevailing legislation to buy shares in cooperatives. Third parties may only hold bonds and/or debentures subject to approval of the Commissioner. If approved by the Commissioner, holders of bonds and debentures become creditors of the cooperative and enjoy full protection of the law such that upon their request to the Commissioner, examination of books of the cooperative may be carried out. Moreover, creditors are given preference when a cooperative undergoes liquidation. Subject to the conditions prescribed in the bylaws of a cooperative society, every member has the right to withdraw from the membership of the cooperative.

In order to ensure good governance, the Cooperatives Act provides that members shall vote on the basis of one member one vote principle regardless of shares held by them. However, the one member one vote principle is only compromised when a meeting of members is substituted by meeting of delegates in a primary cooperative to exercise their voting right on their behalf subject to the provisions of relevant by-laws.



The governance structure is organised in such a way that the Annual General Meeting (AGM) is the supreme authority of a cooperative which elects the management committee from among themselves to implement their decisions. The Management Committee may also delegate their responsibilities to persons employed by them. According to the law, the management committee cannot, however, absolve themselves from their responsibilities even if the managers are employed.

The main internal bodies are the management committee and sub committees which can be set by the management committee in accordance with by-laws. Democratic Member control is ensured the by one member one vote principle. Directors are elected from the AGM of members and delegates for the case of Apex organisations. The election is limited to members only.

Directors' duties and responsibilities are set out in the law and include to:

- (a) conduct and manage the affairs and business of a cooperative subject to any restrictions contained in the by-laws or in any resolution taken at a meeting of members;
- (b) exercise all the powers required to ensure the full and administration and management of the affairs, business and property of a cooperative, except those powers reserved to the AGM of the cooperative;
- (c) legally and judicially represent a cooperative before competent authorities and in all dealings and transactions with third parties;
- (d) consider, approve or reject subject to the provisions of the Cooperatives Act applications for membership of persons who apply after registration of a cooperative society;
- (e) call for and examine regular reports from persons employed by the cooperative with the object of disclosing the true position of the cooperative, its operations and financial conditions;
- (f) open and operate bank accounts;
- (g) appoint sub-committees if necessary and prescribe their functions;
- (h) keep members informed of the progress of the cooperative to encourage interest and a sense of ownership on the part of the members;
- (i) carry out educational and advisory work among the members with respect to co-operative principles and the objects of the cooperative;
- (j) prepare and present to the AGM of the cooperative society a proposal for the distribution of any net surplus accrued during the preceding financial year in accordance with the Cooperatives Act and by-laws of a cooperative society;
- (k) submit a report to the AGM on the work of the Management Committee during the preceding financial year and make such recommendations as it

may deem necessary to maintain or improve the services provided by the cooperative society to its members;

- (l) take immediate action to correct mistakes, errors or malpractices which are disclosed in the reports of the Commissioner or the auditor.

### ***2.2.3 Cooperative financial structure and taxation***

The minimum share capital required for establishing a cooperative is not prescribed in cooperative legislation. The rules governing capital contribution are decided by members in their by-laws. These rules include:

- (i) the prescription of the minimum amount of share capital each member is required to hold;
- (ii) how share capital may be increased or reduced; and
- (iii) the manner in which repayment of amount paid in respect of shares may be paid in case of termination of membership.

Members make diverse contributions to the share capital subject to the prescribed minimum requirement except that no individual member may subscribe to more than one-fifth (20%) of the total share capital of a cooperative. Where a member has subscribed for shares in excess of the minimum contribution, the excess is either withdrawable or transferable in line with rules laid down for that purpose. However, except for conditions of excess, the share capital is neither withdrawable nor transferable unless membership is terminated. Section 35 of the Cooperatives Act prescribes restrictions on the transfer of shares such that transfer must be in favour of the cooperative or a member thereof or a nominee appointed by such a member and by the direction of the management committee.

The manner in which the net surpluses may be distributed and invested is a reserved function of the AGM subject to the rules set forth in the by-laws and the Act. The allocation is appropriated on the following basis, although the Act provides that a cooperative may provide its by-laws to establish other funds:

- (1) Reserve Fund which is not less than 5% and 5% when the Reserve fund is equal to 50% of its paid-up share capital.
- (2) By way of dividends the maximum rate to be determined from time to time by the Minister responsible for cooperative development.
- (3) Bonus shares which members are entitled to withdraw or transfer only after five years from the date of issue.
- (4) Donations not more than 10% to charity subject to AGM approval.

Requirement for distributing net surpluses in proportion to share capital subscribed or according to the volume of cooperative transactions is not prescribed by the law. Section 71 of Cooperatives Act merely mentions surpluses resulting from the operations of the cooperative from the preceding financial year. As such, there is no distinction between surpluses derived from transactions with members or non-members. The Cooperatives Act recognizes the concept of 'patronage refunds'.

Cooperatives are allowed to issue financial instruments by the issue of bonds or debentures. These are subject to the approval of the Commissioner. In accordance with the Amendment Act, cooperatives cannot receive deposits from non-members. Non-members can only extend credit to the cooperative subject to the maximum liability determined by the AGM and conditions prescribed in the by-laws. The maximum amount fixed is subject to the approval of the Commissioner who may at any time reduce or impose conditions as he deems necessary and his decision is final. A cooperative can borrow from members under the same conditions for receiving loans from non-members.

When a decision for winding up a cooperative has been made, following the inquiry by the Commissioner or on receipt of the application by three-fourths of the members, the Commissioner appoints a Liquidator. Section 79 (2) of the Cooperatives Act provides that the Commissioner may make a winding up order in respect of a cooperative society which has ceased or the membership of which is reduced to less than minimum membership of ten. The liquidator then takes immediate possession of all assets belonging to a cooperative. All assets including the reserve fund are applied in the order provided below:

- (i) to the costs of liquidation
- (ii) to the discharge of the cooperative's liabilities
- (iii) to payment of share capital held by members
- (iv) to the payment of dividend or bonus to the extent permissible by the by-laws.

Any amount of money remaining after the disposal of assets on liquidation and any sums unclaimed after two years are carried to the cooperative societies liquidation account kept by the Commissioner.

Cooperatives are subject to the general tax regime applicable to all other business organizations. According to the Income Tax Act, 1993 profits are taxed at a standard rate of 25%.

#### ***2.2.4 External Control***

Cooperatives are subject to regulation by law like any other business association in Lesotho and are under extensive supervision by the Department of Cooperatives. This supervision starts from formation through study groups<sup>3</sup> prior to registration, operations after registration, and through to dissolution. The autonomy and independence principle of cooperatives is exercised by way of rules prescribed by members in their by-laws. However, the excessive powers vested to the Commissioner neutralize the autonomy and independence principle. For instance, the Commissioner appoints or approves the Auditor, some investments must be authorized by the Commissioner, the maximum borrowing fixed by the AGM may at any time be reduced or have conditions imposed on by the Commissioner, issue of bonds and debentures are subject to the approval of the Commissioner. This supervision may be delegated to apex cooperatives in order to promote self-regulation.

#### ***2.2.5 Cooperation among cooperatives***

The principle of cooperation among cooperatives is implemented in the national legislation through the Amendment Act. Under the Amendment Act, a two-tier structure was introduced together with sectorial apex cooperative bodies. It is provided that an apex organization shall consist of 50%+1 of the registered primary cooperative societies within a sector. This is a commendable improvement of the Principal Act in two ways; firstly it encourages cooperation amongst cooperatives without the need of the middle level cooperatives namely secondary cooperatives. Secondly, it encourages sectorial cooperation whose benefits cannot be overemphasized.

### **3. Degree of “Cooperative friendliness” of National Legislation**

National cooperative legislation is characterized by obstacles that may not create a favourable legal environment for cooperatives to thrive. Specific barriers include the fact that while the Cooperatives Act gives autonomy to cooperative societies to state their objectives in their by-laws; then again, the same robs the members of their benefit of self-regulation encapsulated

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<sup>3</sup> Study group means a group of individuals who come together for the purpose of establishing a cooperative society and recognised as such by any cooperative apex organisation or by the Commissioner.

in the autonomy and independence principle of cooperatives. This emanates from excessive powers vested in the Commissioner. For instance, section 91 of Cooperatives Act provides miscellaneous powers of the Commissioner which include freezing bank accounts of societies, suspension of all or some activities of a cooperative, convening extraordinary special meetings for members, as well as rescinding the resolutions or actions of officers and management committee. Even so, the circumstances under which some of these miscellaneous powers may be invoked are not distinctly provided in the Cooperatives Act.

More obstacles are as provided below:

- (i) The Act provides that disputes between the cooperative or its management committee and any officer of the cooperative may be referred to the Commissioner. Matters between employer and employee are operational in nature and referring such matters to the Commissioner being provided by the Cooperatives Act is over-regulation and participation in the affairs of the cooperative. Furthermore, in disputes where the Commissioner is involved on personal capacity, the Cooperatives Act does not make provisions on where such disputes may be referred to.
- (ii) The fact that the Commissioner regulates cooperatives, which under prevailing cooperative legislation translates into control of cooperatives and that he controls liquidation of cooperatives is another significant weakness of the country's cooperative legislation.
- (iii) The law restricts the recapitalization of cooperatives. The effect of this is that a cooperative experiencing capital inadequacy is prohibited to borrow in its own entire discretion to the extent of their capital requirements. The Commissioner has powers vested on him by the Act to control the cooperative borrowings and to impose conditions he considers necessary. The circumstances which may necessitate these conditions or actions are subjective and not provided in the law.
- (iv) Another impediment to cooperative development is demonstrated in that, while members contribute equitably and prescribe in their by-laws the manner in which surpluses may be distributed and how funds should be utilized, the Cooperatives Act gives the Commissioner the powers to approve the manner in which funds may be invested and to the Minister the Act bestows power to determine the maximum rate when paying out dividends to members. Under

such provisions, members do not have total control over their economic benefits.

- (v) The Cooperatives Act, without due consideration of size and stage of development of cooperative societies, provides that cooperatives should have their books and accounts audited at least once a year. According to the Amendment Act, the auditor is defined as a member of the Lesotho Institute of Accountants (LIA) who holds a valid license to practice as an auditor. The costs of audits are completely borne by the cooperatives. Many cooperatives cannot comply due to the high costs of audits and have their books not audited for years.

While the law further provides that the term of office of the management committee is one year, members become reluctant to replace the committee members without their activities being audited. Some management committees make the issue of pending audits excuses for not convening AGMs, also in fear of the possibility of not being re-elected. Consequently, management committees overstay their legal term of office. This adversely affects the morale of members and their right to exercise control over their cooperative, leading to high exit rates, dormancy and subsequent failure of the cooperative movement in Lesotho.

Lastly, the implementation of the Amendment Act was received with tension by many. The Amendment Act provides that an Apex Organisation shall consist of at least 50% +1 of registered primary co-operative societies within the sector and eliminated the secondary cooperatives. Prior to the Amendment, there was one Apex organization representative of all sectors originally formed by secondary cooperatives most of which had become dormant. The Amendment Act fails to provide the clear recognition and direction of the Apex and Secondary cooperatives which existed or were active prior to the Amendment.

The 50%+ 1 sectorial apex formation is not without its challenges. With no clear definition of what constitutes a sector under this legislation, the right of cooperatives to cooperate is at stake. If a Sector has three societies today, two societies may form a sectorial apex. When a sector has grown to five, it means three societies which have not affiliated or joined are now the majority and if so wish can apply to form their own apex. The legislation does not precisely provide regulation on how such matters should be dealt with. The Amendment Act also ignores cooperation among apex organizations by way of federating which can be representative of all sectors.

Despite the legal obstacles which discourage cooperative development in Lesotho, there are some best practices that support and may contribute to cooperative development. There are specific legal provisions that could greatly benefit the members if well supported to exploit them. These include;

- (i) Freedom of a cooperative society to invest in the shares of any other cooperative society without approval of the Commissioner;
- (ii) Freedom to invest in the purchase or leasing of land or buildings or in the construction of building necessary for the conduct of its business and the welfare of the Cooperative Movement without approval of the Commissioner;
- (iii) Clear governance structure which recognizes the AGM as the supreme authority of the cooperative and the right of members to elect from among themselves the management committee which can also delegate its responsibilities to employees of the cooperative;
- (iv) The provision that a cooperative may provide in its by-laws that every member who produces any such article such as the produce of agriculture, animal husbandry, fisheries, handicraft or otherwise shall dispose of the whole or any specified amount, proportion or description thereof to or through the cooperative and a member who contravenes the contract shall pay the cooperative as liquidated damages as may be prescribed in the by-laws.
- (v) The autonomy of an Apex organisation to make its own rules and to establish a Cooperative Fund into which a member may invest part of its earnings subject to the rules and regulations where the benefits derived from the fund shall be based on the investment made.

In view of these practices some of which represent unique features of the cooperative business model, there are no incentives in any other legislation in recognition of unique model of cooperatives. There are no tax exemptions or tax holidays for cooperatives.

When striking a balance between the magnitude of the negative aspects and the positive aspects of the national legislation, the degree of ‘cooperative friendliness’ is limitedly so.

A number of cooperative legislation have been recently improved by countries to ensure their ‘cooperative friendliness’. The following foreign legislation may be the sources of inspiration in addressing specific barriers in Lesotho and for creation of a favourable legal environment that may be supportive of cooperative development:

### ***Philippine Legislation***

In the Philippine cooperative legislation, the ICA principles of cooperatives are clearly articulated in the Act. The Act further describes the objectives of cooperatives and different types of cooperatives that can be registered. This could be a good reference for Lesotho where cooperation among cooperatives is structured according to sectors within the applicable legislation. The manner in which cooperatives are exempt from both income Tax and VAT to the extent of transactions with members and non-members is provided in the cooperative legislation. Moreover, the tax incentives are provided in law together with explicit intent of the promotion of patronage refunds to members. Mostly, the Philippine legislation affords the cooperative movement the autonomy it deserves and mandates the formation of Audit Committees and different types of audits. Lastly, the financing structure is admirable and liquidations are controlled by competent courts.

### ***Tanzanian Legislation***

The existence of the Tanzania Cooperative Development Commission in Tanzania (for promoting and regulating cooperatives), which comprises different stakeholders including representatives from different cooperative sectors, to which the Registrar of Cooperatives is the Chief Executive Officer and therefore does not act unilaterally, may be another source of inspiration. The legislators may wish to adopt the same structure to contain the exorbitant powers vested to the individual occupant of the office of Commissioner.

### ***Finland and Canadian Legislation***

In Finland, the Directors of the cooperative have a preference in selecting the Liquidators. If Directors do not have competent liquidators entered into the register, the registration authority then appoints the liquidators. Under the Canadian cooperative legislation, liquidation of cooperatives is controlled by the Court and not the Registrar of Cooperatives. The Canadian capitalization of cooperatives is also very impressive where different classes of shares are issued and other financial instruments allowed without interventions of regulating authorities.



#### **4 Recommendations for improvement of national legal framework**

The following changes are necessary to make the Lesotho legislation more adequate for the development of cooperatives:

- (i) The powers of the Commissioner should be reduced.
- (ii) In dispute resolution, where the Commissioner has or can be proved to have a conflict of interest, there should be guiding provisions in the Cooperatives Act. Moreover, disputes between the officers employed by the cooperative and the management committee should be left to the competent courts to decide.
- (iii) The Cooperatives Act provides that the Commissioner may issue a dissolution order after making an inquiry under the Act. The critical issues that may warrant the issue of dissolution order should be provided in the Act.
- (iv) Cooperative refinancing should be only to the extent or decision by members and their competent staff.
- (v) The autonomy of cooperatives to appoint its auditors without need for approval of Commissioner should be protected.
- (vi) The term of Management Committee being one year should be reviewed and extended to at least three years.
- (vii) Liquidation of cooperatives should be referred to competent courts.
- (viii) Where the Commissioner remains with reserved powers, conditions under which such powers may be invoked should be clearly articulated.
- (ix) The manner in which cooperatives may invest their funds should be completely the discretion of the members.
- (x) The Commissioner should cause extraordinary meetings to be convened but should not convene such meetings.
- (xi) The Commissioner should review the annual reports including the financial statements on the returns filed to her office by cooperatives and should not force inquiry and investigation in the books as and when he deems appropriate.

There are a number of modifications that will further make the legislation more cooperative-friendly if considered. The Legislators may consider limiting the powers of the Commissioner by instigating a legally backed council or commission to which the commissioner must be answerable as the Chief Executive Officer. The Council may have significant representation of cooperative structures in Lesotho and persons knowledgeable with cooperatives in Lesotho.

The categorization of cooperatives in terms of Micro, Medium, and Large cooperatives irrespective of the sector may also be considered. If that is considered, the mandatory audits may be applicable to only medium to large cooperatives. Furthermore, different audits such as Performance Audits and Social Audits may be incorporated into law and delegated to apex organizations. Such audits may be planned and executed in such a way that micro cooperative members who may be exempt from mandatory financial audits have a sense of assurance of the performance of their management committee.

Lastly, the promotion of cooperatives must be an issue of public concern. This should be made as a public function with the declared policy of the State to foster the creation and growth of cooperatives as a practical vehicle for promoting self-reliance and economic development and creating an atmosphere that is conducive to the growth and development of cooperatives. In all structures of government, margin preference should be given in procurement policies such as in evaluating the tenders. Public Procurement Regulations of 2007 grants 15% margin preference to a Basotho business who can demonstrate a majority shareholding of at least 51% in tendering for Government business. Cooperatives should be specifically included in these Procurement Regulations with a higher margin preference to encourage the public to form cooperatives. Moreover, the exemption of cooperatives from taxes is of paramount importance and must be incorporated into cooperative legislation.

While it has been acknowledged that Lesotho cooperatives are governed under unified cooperative legislation, pending the enactment Financial Cooperatives Bill, there are specific sectors that must be given close attention to; the youth cooperatives in particular. This sector has no specific provisions in the Amendment Act although there is an Apex organization representing youth cooperatives. While cooperatives within the youth cooperation function in different sectors of the economy, it is unclear how youth alliance features as a sector independent from sectorial activities they engage in. Another important aspect to consider is whether dual membership to apex organizations is permitted and under what circumstances. On this note, it must be further clarified in law whether the apex formation in terms of sectors, allows multiple apexes in one sector or if the first mover applicants will enjoy the protection of the law. Due care must be given to cooperative principles in that regard.

## **5 Conclusion**

The Cooperative Movement in Lesotho has experienced setbacks brought about by unsupportive legislation and excessive regulation for many years. The legal framework analysis has identified areas that need urgent attention by legislators if cooperatives are to flourish in Lesotho. The ICA cooperative principles must be the backbone of friendly cooperative legislation. Members must feel independent and in charge of their own cooperative enterprises and take the praise for their success or the blame for their failures without pointing fingers to the legal provisions or the Commissioner.

*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 this report are not necessarily those of the ICA, nor does a reference to any specific content constitute an explicit endorsement or recommendation by the ICA.*