



**CDP**  
**Cooperative Development**  
**Project**

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**CLARITY SCORE CARD ANALYSIS  
OF TANZANIAN COOPERATIVE LAW**

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## EXECUTIVE SUMMARY

When analyzing Tanzanian cooperative law through the lens of the CLARITY analysis, it is clear that a strong legal foundation for the successful proliferation of cooperative societies does exist. Yet, the CLARITY analysis also reveals some opportunities for enhancement. With the goal of helping Tanzania maximize the potential of cooperative societies as engines for economic and social development as enshrined in the CLARITY principles, we make the following observations:

- Promote Equitable Treatment of Cooperative Societies. Cooperative societies need to enjoy the full rights and responsibilities afforded to other privately-organized forms of business organization. This includes the freedom to enter into financial transactions and joint ventures, determine the rules regarding the composition and election of its own board of directors, set its own standards for membership, select its own auditor, and decide when and whether to come into existence and enter particular markets, without the prior approval of the Registrar. While the Registrar may indeed have useful information to share and advice to offer to cooperative societies in all of these areas, cooperative societies are at their best when they function as truly autonomous institutions – of course, subject to law and to the regulations of the markets in which they participate, but as self-reliant market participants that operate on an equal playing field with other business organizations. Equitable treatment would also be encouraged by making certain discrete reforms to Tanzanian law: (a) formalizing the standard of conduct owed by the directors and officers of a cooperative, the applicability of the “business judgment” rule, and the ability for cooperatives to provide indemnification, consistent with those rights afforded to private businesses and their officers; (b) differentiating between member surpluses and transaction profits in Tanzanian tax law; and (c) providing exemptions from certain antitrust restrictions, as well as sector-specific price controls, for cooperative societies, that would prevent them from competing on an even playing field with other market participants.
- Protect the Autonomy and Independence of Cooperative Societies; Avoid Conflicts of Interest. Tanzanian lawmakers need to think critically about the role of the Registrar. The office of the Registrar plays a vital role in facilitating the registration of cooperative societies, providing regulatory oversight of such societies, and promoting their success and growth. However, placing each of those functions in a single government regulatory body could potentially create the appearance of conflicts of interest. If a cooperative society receives advice and guidance from the same regulator that is responsible for approving its registration and its ongoing oversight, that society might perceive such guidance to be a mandate, rather than optional advice. Such a situation, in effect, could undermine the independence and autonomy of such societies. Moreover, the provisions of Tanzanian cooperative law that permit government membership on a cooperative society’s board, as well as those provisions that grant the Registrar the power to remove board members, to veto certain financial and business transactions, to have the ultimate say over the selection of the society’s auditor, to

control the dispute resolution process for society members, and to ultimately dissolve a society for inactivity – even if such powers are not exercised or abused in practice – draw into question the true autonomy of cooperative societies.

- Create a Coherent Regulatory Framework. While Tanzania’s cooperative law permits a cooperative society to operate on a “probationary” basis while its application is being evaluated, there should be a clear end-date for when the Registrar will have to decide on its application. The lack of a deadline generates uncertainty for market participants. Likewise, in addition to streamlining the registration process, we encourage all regulatory bodies that a cooperative society is likely to encounter – from sector-specific regulators to the tax authorities – to seek to simplify and standardize their interactions, in order to minimize the overall regulatory costs borne by cooperative societies.
- Protect Democratic Member Control. Tanzanian cooperative law sets minimum size requirements on cooperatives and minimum eligibility requirements for members. While such requirements may be well-intentioned, the CLARITY analysis views granting societies the right to set such requirements on their own as essential to protecting the democratic member control of such societies. Also, while Tanzanian law enshrines the ideal of one-member/one-vote for primary societies, it does not require proportional representation in secondary or apex societies, which is essential to preserving democratic member control of cooperative societies at all levels.

Cooperative societies are a valuable tool to spur economic growth and build robust civil societies. Tanzania possesses a complex body of law governing the creation and oversight of cooperative societies that goes a long way to uphold the CLARITY Principles that we believe are essential to the success of cooperative societies. However, while Tanzania’s laws do many things right, we believe that addressing the aforementioned concerns will help Tanzania unlock the full developmental potential presented by cooperative societies.

# **INTRODUCTION**

## **I. WHAT IS THIS REPORT?**

This report applies the CLARITY Score Card to assess the extent to which Tanzanian Cooperative law fulfills the CLARITY Principles on legislation pertaining to cooperative societies.

## **II. FUNDAMENTAL COOPERATIVE SOCIETY PRINCIPLES.**

The “cooperative association” is generally defined as a joint enterprise based on the principles of self-help, self-reliance, democracy and equality, established by private persons for the purpose of meeting their economic needs, both in consumption and production.<sup>1</sup> In such endeavors, all members are intimately involved in all aspects of the operation of the organization, as consumers, producers, suppliers, employees, and decision-makers (self-help). The enterprise is free from outside support, aid, influence and control (self-reliance). Members have equal say in governance (democracy). And there is only one class of membership, having one set of rights and responsibilities, open to anyone who can meet criteria reasonably related to the functioning of the organization (equality).

Advocates of cooperative societies believe that such organizations greatly benefit their members and their countries. In their judgment, regardless of cultural differences, societies that embrace the principles of self-help, self-reliance, democracy and equality appear to best meet human economic and social needs.

## **III. THE CLARITY PRINCIPLES.**

CLARITY is the acronym for the Cooperative Law and Regulation Initiative, an undertaking of eight Cooperative Development Organizations that are members of the Overseas Cooperative Development Council. The object of this Initiative is to create and disseminate a set of principles for the reform of laws governing cooperatives. The **CLARITY Principles** are the set of principles for cooperative law reform produced by the Initiative.

## **IV. THE CLARITY SCORE CARD ANALYSIS: PURPOSE, PROCEDURES, LIMITATIONS, AND BENEFITS.**

### **A. Score Card – Overview.**

The CLARITY Score Card is a tool for analyzing the extent to which a nation’s laws (i) fulfill the CLARITY Implementing Core Principles and (ii) achieve the goals of

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<sup>1</sup> See the **Statement on the Co-operative Identity** (1995 version), promulgated by the International Co-operative Alliance (ICA), which is based on the Rochdale Principles of Co-operation, dating back to 1844 (see [http://en.wikipedia.org/wiki/Rochdale\\_Principles](http://en.wikipedia.org/wiki/Rochdale_Principles)). The CLARITY Principles that form a basis for this report are grounded in the Rochdale Principles.

the CLARITY Core Principles. It provides a subjective impression of the degree to which laws favor the development of cooperative societies along the principles set out above.

The completed CLARITY Score Card, which is attached to this report as Annex A, presents 18 topics for analysis, each containing one or more questions. The questions follow the Core Principles developed for the CLARITY analysis, each containing an explanation in the score card. Each sub-question for a topic is scored in one of the columns of the score card, with scores ranging from 0 to 4 (as explained below). The law is analyzed with respect to each question and underlying principles, and examples and explanations for assigning a particular score are set out as “enabling” or “disabling” factors. For ease of reference, legal references to provisions in the Cooperatives Act are provided in one column. Some of the CLARITY Implementing Core Principle boxes contain more than one principle because success in reaching the basic goal may be determined by multiple principles. Thus, for example, on the topic of **Member Governance**, both having **Majority Voting Rules** and **Records Subject to Inspection** are necessary to **Protect Democratic Membership Control**.

### **B. Steps in Applying Score Card.**

The Score Card analysis is completed in three steps.

First, a nation’s laws pertinent to cooperative societies are studied. Their provisions are grouped by the CLARITY Implementing Principles to which they pertain on the Examples of Law and Regulation sheets or elsewhere.

Second, an evaluation is made of the provisions collected under each of the CLARITY Implementing Core Principles. The evaluation is made both with respect to each Implementing Core Principle and with respect to each Core Principle, or basic goal, that is its object. The questions asked are: Which of these provisions of law complies with the Implementing Core Principle? What are the effects of such compliance in achieving each basic goal? Which provisions have no effect on the fulfillment of the Implementing Core Principles and the basic goals? Which violate the Implementing Core Principle and what is the effect of that violation on the CLARITY goals?

These questions are answered by the assignment of a number from 0 to 4, having the following significance:

0 = Does not comply with CLARITY Implementing Core Principle or contribute to achievement of Core Principle goal.

1 = Weak compliance with CLARITY Implementing Core Principle and Contribution to achievement of Core Principle goal.

2 = Partial compliance with CLARITY Implementing Core Principle and Contribution to achievement of Core Principle goal.

3 = General compliance with CLARITY Implementing Core Principle and Contribution to achievement of Core Principle goal.

4 = Complete compliance with CLARITY Implementing Core Principle and Contribution to achievement of Core Principle goal.

Third, each of the CLARITY questions is analyzed and assigned a value from 0 to 4. The scores are summed in the corresponding boxes of the first matrix and added vertically to indicate the total score with respect to each Core Principle or basic goal. The scores are also summed by each Implementing Core Principle, written in the Score Card Question sheet to indicate the extent to which each such principle is fulfilled, and added vertically for a total score indicating the extent to which the nation's cooperative laws contain cooperative-friendly provisions.

### **C. Limitation and Benefits of Score Card Analysis.**

The CLARITY Score Card analysis is not meant to provide a rigorous evaluation of the compliance of a nation's cooperative law with the CLARITY Principles. The nature of the scoring process is too inexact and subjective to provide that. Rather its purpose is to uncover areas of law that merit review and that may be amenable to improvement, and areas where the cooperative law is strong and worthy of praise.

It cannot be concluded from a CLARITY Score Card analysis that a nation's cooperative laws are inappropriate for that nation. A nation's laws can only be fully understood within the context of that nation's customs, cultural norms, economic circumstances, and its stage of economic, political and social development. All this analysis can do is hold up the CLARITY Principles as ideals and point out those parts of Tanzanian cooperative law that present potential opportunities for improvement.

## **V. THE PRESENT ANALYSIS OF TANZANIAN COOPERATIVE LAW.**

The following is confined to the Tanzanian Cooperative Societies Act (the "Act"),<sup>2</sup> though we do occasionally include citations to other laws and regulations where Tanzanian counsel thought it would be informative. Cooperative societies are affected by far more than just laws that expressly govern cooperatives ("cooperative laws"), but also by the laws that govern the industries in which they operate ("sector-specific laws"), and by general laws, insofar as they pertain to cooperatives ("general law"). All three types of law may, to a greater or lesser degree, promote or hinder the establishment and effective functioning of cooperatives.

The present analysis is limited to the CLARITY Principles that concern cooperative law. No analysis is made of compliance with the CLARITY Principles that cover sector-specific laws, though we did highlight some areas where sector-specific law

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<sup>2</sup> Cooperative Societies Act No. 20 of 2003, passed in the National Assembly on 10<sup>th</sup> November, 2003, and published on November 20.

could potentially complicate compliance with the CLARITY Principles and where further research would perhaps be beneficial.

While this analysis does pinpoint certain aspects of Tanzanian cooperative law that deviate from the norms of CLARITY, no attempt is made to evaluate whether legitimate social and economic goals account for these deviations or whether they lack redeeming rationale. As noted above, context matters. Nevertheless, this analysis can serve as an aspirational exercise – holding up the ideals of self-help, self-reliance, democracy and equality that are embodied in the CLARITY Principles, pointing out how far Tanzanian cooperative law has already come to embrace those ideals, and highlighting areas where improvement is possible.

## **THE SCORE CARD ANALYSIS**

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### **FORMATION AND REGISTRATION**

#### **SCORE CARD QUESTIONS 1A – ID**

<b>TOTAL SCORE 6.0 out of 16.0</b> <b>PERCENTAGE SCORE 37.5%</b>
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#### **SCORE CARD QUESTION 1A**

##### **IMPLEMENTING CORE PRINCIPLE:**

**To minimize the possibility of long periods of bureaucratic delay, a time period may be set for approval of applications for registration, after which point the application is presumed to be granted.**

##### **RELATED CORE PRINCIPLE:**

**Provide Coherent and Efficient Regulatory Framework.**

<b>SCORE: 2.0</b>
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##### **DISCUSSION:**

##### **Disposal of application after 90 days, with no automatic approval**

Under the Act, new applications for cooperatives shall be finally disposed of within 90 days from the date of the application (§25(1)). The Act allows a cooperative that is in partial compliance with registration requirements to operate as a legal cooperative declaring it a Probationary Society. The Probationary Society has all the legal rights and powers of a fully complying entity while measures are taken to bring the society in full compliance with the registration requirements. Under the Act, such probationary period shall not exceed two years (§30(1) – (3)). The Act is silent as to what happens if a decision with respect to the application is not made in 90 days. In such cases, there should be an automatic approval if registration requirements have been fully complied with, to limit bureaucratic delays on cooperative formation, however such a provision is not included in the current Act.

#### **SCORE CARD QUESTION 1B**

##### **IMPLEMENTING CORE PRINCIPLE:**

**It may be preferable to locate registration functions in the same institution that registers other businesses.**

**RELATED CORE PRINCIPLE:**

**Promote Equitable Treatment.**

<b>SCORE: 2.0</b>
-------------------

**DISCUSSION:**

**Requirements and Fees are Lower for Cooperatives**

There are registration requirements mandatory for companies that are not applicable to cooperatives. Registration fees are also lower for cooperatives (§15(1)).

**Requirement for a Higher number of Members and Feasibility Study as part of Application Process**

The Act sets forth a requirement for a feasibility study/project write up indicating the viability of the society as part of the application for cooperatives (§24(1)(b)). A similar requirement does not exist for setting up a corporation.

The Act sets out minimum numbers of members for different types of cooperatives (50 for agricultural societies, 20 for savings and credit cooperatives, 10 for specialized skill societies and 10 for other types), which are higher than the required number of members for a corporation (§24(1)(b)). It would be preferable to lift these restrictions in order to promote equitable treatment of cooperatives with other forms of corporate organization.

**SCORE CARD QUESTION 1C**

**IMPLEMENTING CORE PRINCIPLE:**

**Where a separate registrar is maintained for cooperatives, its role may be streamlined to eliminate non registration activities, such as promotion, supervision, and dispute resolution.**

**RELATED CORE PRINCIPLE:**

**Avoid Conflicts of Interest.**

<b>SCORE: 1.0</b>
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**DISCUSSION:**

**Delegation of some of Registrar’s duties to the Cooperatives**

The Registrar shall gradually delegate duties of promoting, advising, educating and training to the cooperatives. However, the law appears to be silent as to under what circumstances these duties will be delegated (§11(1) and (2), §65-68, §57).

The Registrar of cooperatives is also charged with cooperative promotion, regulation and dispute mediation – *i.e.*, the Registrar, Minister and his officers have rights to call special meetings and adjudicate disputes amongst members, with final judgment power on appeal. Disputes regarding by-law interpretation are referred to the Registrar. The Registrar arbitrates disputes regarding death/disability of a member (§11(1) and (2) §65-68, §57).

According to the CLARITY Principles, it may be beneficial for the Registrar to be less involved in the supervision and promotion of cooperatives, as well as in the resolution of disputes in which cooperatives may become involved, in order to promote more autonomy for cooperative societies.

**SCORE CARD QUESTION 1D**

**IMPLEMENTING CORE PRINCIPLE:**

**The registration process and statute should provide maximum flexibility for a cooperative to define its governance through bylaws and articles of incorporation.**

**RELATED CORE PRINCIPLE:**

**Protect Autonomy and Independence**

<b>SCORE: 1.0</b>
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**DISCUSSION:**

**Cooperatives are free to draft by-laws, but Registrar given discretion to amend prior to registration**

Every registered society has the power to make by-laws for any such things as are necessary or desirable for the purpose for which the society is established, thereby recognizing a cooperative’s power to draft its own by-laws (§45(1)). However, §25(2) provides that the Registrar has the power to require amendments to the by-laws before it grants the application to form the cooperative. The Registrar’s discretion in this regard seems unfettered and this power impairs a cooperative’s flexibility to define its own governance. Also impairing a cooperative’s flexibility is the prescriptive regulation of the number of members required to form specific cooperatives noted above as well as the fact

that a person may not join a cooperative unless he has certain qualifications and meets certain criteria. In addition, Section 15 appears to promote monolithic/uniform composition in cooperatives (§45(1), §15 (1) and (2), §25(2), §46(1) and (2)).

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## **COOPERATIVE SUPERVISION**

### **SCORE CARD QUESTIONS 2A-2C**

<b>TOTAL SCORE: 5.0 out of 12.0</b> <b>PERCENTAGE SCORE: 42%</b>
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### **SCORE CARD QUESTION 2A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**Cooperatives should be subject to the same or similar regulatory requirements as other businesses.**

#### **RELATED CORE PRINCIPLE:**

**Promote Equitable Treatment.**

<b>SCORE: 4.0</b>
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#### **DISCUSSION:**

#### **Cooperatives have similar regulatory requirements as other businesses**

Cooperatives have similar corporate governance requirements in the management of their affairs as other businesses, and are required to file annual returns similar to those of companies (Part IV, §61 -§68).

### **SCORE CARD QUESTION 2B**

#### **IMPLEMENTING CORE PRINCIPLE:**

**The law should protect cooperatives from government interference in cooperative business decisions.**

#### **RELATED CORE PRINCIPLE:**

**Protect Autonomy and Independence.**

**SCORE: 0.0**

**DISCUSSION:**

**The Act does not prohibit governmental interference in internal affairs of Cooperatives**

The Act recognizes cooperatives as body cooperatives capable of making their own decisions. However, the Act does not directly prohibit government interference in internal affairs of cooperatives. The Registrar has an advisory role in many cooperative activities. On occasion, the Registrar's advice appears to be mandatory, which is potentially troubling for cooperatives. The legislation remains somewhat vague and inconsistent in this respect. There are certain instances where the Registrar may advise primary societies. In addition, the Registrar may advise any registered society to invest its funds or any portion of its funds in any one or more of the investments authorized by or under the Act.

The Registrar or any other person authorized by him may also summon a special general meeting of the society in such a manner and at such a time and place as he may direct. The Registrar may also direct what matters shall be discussed at the meeting. Furthermore, the Registrar may advise any primary or secondary society to join an Apex society by notice in writing.

Moreover, the Registrar may advise two or more societies to amalgamate by providing them with a notice in writing (§17, §73(2), §61(4), §17, §94(5)).

**SCORE CARD QUESTION 2C**

**IMPLEMENTING CORE PRINCIPLE:**

**Any regulatory and promotion functions should be placed in separate offices or a separately controlled agency/institution.**

**RELATED CORE PRINCIPLE:**

**Avoid conflicts of interest**

**SCORE: 1.0**

**DISCUSSION:**

**Regulatory and promotional duties are gradually delegated to Cooperatives**

Under the Act, the Minister of Cooperative Societies, the Registrar, and their delegates are responsible for administering the registration process for cooperative

societies, as well as promoting, advising, educating, and training cooperative societies. The Act does state that the Registrar shall *gradually* delegate his duties of promoting, advising, educating and training cooperative societies to the cooperatives themselves, as mutually agreed. However, this is purely permissive, and there is no firm requirement or timeframe for this delegation. So, fundamentally, the Act places all power over the registration, promotion, and regulation of cooperative in a single agency, creating the perception of potential conflicts of interest. (§11(1) and (2); §6, §7(2)(a)).

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## **LEGAL STATUS AND RIGHTS**

### **SCORE CARD QUESTIONS 3A – 3B**

<b>TOTAL SCORE 9.0 out of 12.0</b> <b>PERCENTAGE SCORE 75%</b>
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### **SCORE CARD QUESTION 3A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**A cooperative should have legal personhood similar to that held by other corporations.**

#### **RELATED CORE PRINCIPLES:**

**Promote Equitable Treatment.**

<b>SCORE: 4.0</b>
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**Protect Autonomy and Independence.**

<b>SCORE: 3.0</b>
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#### **DISCUSSION:**

#### **Promote Equitable Treatment: Full Legal Personhood is Granted.**

Cooperatives appear to be given legal personhood similar to that held by other business organizations: that is, to enjoy all of the rights and be subject to all the obligations of legal personhood under Tanzanian law. The Act states that the “registration of a society shall render it a body corporate . . . with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other proceedings, [and] to do all things necessary for the purposes laid down in its

constitution.” (§29(1)). This bundle of rights is equivalent to that afforded to other forms of business organization under Tanzanian corporate law.<sup>3</sup>

Also, unless a cooperative’s bylaws expressly provide otherwise, cooperative members have limited liability for the debts and obligations of the cooperative – that is, a cooperative member’s liability for the debts and obligations of the cooperative is limited to the nominal value of its shares in the cooperative (§§35(3), 40(1)-(2)). Limited liability is one of the primary motives for natural persons to form corporate entities, and granting cooperative societies this limited liability status puts them on an equal footing with other forms of business organization.

### **Protect Autonomy and Independence: Some Impediments Remain.**

While a cooperative society may possess the same rights of full legal personhood as other private forms of business organization in Tanzania, and in many ways possesses the same autonomy as a private business, there are certain restrictions on its independence. For example, in order for a cooperative society to be formed, an application for registration must be prepared and filed for approval with the Ministry’s Registrar for Cooperative Societies, and the application will not be approved if the Registrar determines that “the volume of business from members is [not] sufficient to cover its costs[,] proper provision has [not] been made for the financing of the society[, or . . . another] society exists in the same locality performing similar activities for people of the same class or occupation” (§25(4)). Moreover, societies are not permitted to create joint ventures or enter into joint business enterprises with other cooperatives or private businesses without prior approval of the Registrar (§21). While these legislative restrictions on a cooperative’s business choices may be motivated out of a genuine desire to mitigate bad business decisions, a private business would not need to ask government permission before entering a particular market or particular business arrangement. These restrictions are part of a larger integrated scheme that grants the government’s Registrar for Cooperative Societies considerable discretion to regulate cooperatives. While government regulation of cooperative societies is to be expected in any jurisdiction and is not by itself problematic – and in some instances may be necessary in order to meet the CLARITY principles – the potential for government involvement in what are fundamentally business decisions prevents Tanzanian law from being in perfect alignment with the CLARITY principle of meaningful autonomy and independence for cooperative societies.

## **SCORE CARD QUESTION 3B**

### **IMPLEMENTING CORE PRINCIPLE:**

**Similar to other corporate officials, directors and officers should be indemnified by the cooperative when sued because of their role in the**

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<sup>3</sup> See generally Chapter III of the Tanzanian Companies Act [R.E 2002].

**cooperative, unless the liability was incurred because they willfully or negligently failed to perform a fiduciary duty owed the cooperative.**

**RELATED CORE PRINCIPLE:**

**Promote Equitable Treatment**

<b>SCORE: 2.0</b>
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**The Act Defines the Scope of Liability, But Somewhat Incompletely.**

Tanzanian law contains some provisions addressing the liability of cooperative officials, directors, and officers. It enumerates certain circumstances under which a past or present cooperative society officer may be held liable for losses resulting from his or her acts or omissions: if, after a government audit or enquiry into the financial affairs of a society, the Registrar determines that the officer made an unlawful payment or has “by negligence or misconduct caused a deficiency or loss or failure to bring to account or has by negligence or misconduct caused loss of or damage to any property of the registered society” (§93(1)); or if, during the winding-up of a society, the Registrar determines that an officer has “disapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society” (§107(1)).

Making an “unlawful payment” or “disapplying” funds appear to be strict liability offenses under the Act, without an explicit requirement for bad faith or gross negligence, though one could argue that such actions are by definition breaches of an officer’s duty to the cooperative. All other offenses for which an officer might be liable are defined in terms of “negligence,” “misconduct,” “misfeasance” or “breach of trust.” Contrary to CLARITY concerns, however, in no place does the Act provide a straight-forward definition of an officer’s fiduciary duty to the cooperative or explicitly restrict an officer’s liability to breach of that fiduciary duty. Furthermore, no “business judgment” rule appears to be contemplated by or implicit in the Act – the absence of a business judgment rule is worrisome, as in hindsight, any business decision that ultimately loses money can appear “negligent.” In order to fulfill the CLARITY principles, Tanzanian law needs to grant protections to cooperative society officers from any liability arising from the exercise of their business judgment in good faith.

Analyzing the Act from an “equitable treatment” perspective, however, this treatment of officer liability is consistent with the treatment of officers of other private business organizations, pursuant to the Prevention and Combating of Corruption Act, the Public Procurement Act, and the Public Leadership Code of Ethics Act.<sup>4</sup> Officers of cooperatives are not in a uniquely vulnerable position when compared to the officers of other private business organizations.

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<sup>4</sup> See Sections 28, 29 and 31 of the Tanzanian Prevention and Combating of Corruption Act and, generally, Part VIII and Section 104 of the Public Procurement Act.

**The Act Does Not Address Indemnification.**

The Act does not address indemnification. However, this may not mean that cooperatives cannot agree to indemnify their directors, officers, and agents. The Act does not prohibit it, and it can be reasonably assumed that indemnification is left to the decision of the members.

**The Act Complies with CLARITY Principles in a Number of Key Areas but could be improved in others.**

The CLARITY Core Principle, Implementing Core Principle, and Underlying Reasons appear to have three concerns: (i) that cooperative officials, directors, and officers are treated the same as the officials, directors, and officers of other legal entities, (ii) that they are held responsible for their acts and omissions, and (iii) that they are insulated from responsibility for acts and omissions performed conscientiously and in good faith.

In its present state, Tanzanian law meets the first two of these three concerns: upon a determination by the Registrar, the officials of a cooperative can be held responsible for losses incurred by the cooperative resulting from their acts or omissions; and cooperative officials are subject to the same liability as the officers of private business organizations, demonstrating that cooperatives and their officers are subject to equitable treatment under Tanzanian law. In other respects, however, Tanzanian law falls short of the CLARITY Principles, including in the following ways:

1. It has no provisions mandating indemnity or expressly providing that cooperatives may indemnify their agents or describing the conduct for which indemnification is allowed, and cooperatives may assume that they have no such right to indemnify absent an express indication in the Act that they do;
2. It does not clearly establish the standard of conduct owed to cooperatives by persons acting on their behalf in different capacities, such as a fiduciary duty, good faith, or the care of an ordinary and prudent person, etc.
3. It does not contain provisions enumerating what types of losses, costs, expenses, claims, etc., will be indemnified against, if less than all. For example, is a recovery of consequential damages allowed? Is a recovery of lost surpluses allowed?

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**MEMBERSHIP**

**SCORE CARD QUESTIONS 4A – 4C**

<p><b>TOTAL SCORE 4.0 out of 12.0</b> <b>PERCENTAGE SCORE 33%</b></p>
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## SCORE CARD QUESTION 4A

### IMPLEMENTING CORE PRINCIPLE:

**The state should not have the authority to compel membership in the cooperative.**

### RELATED CORE PRINCIPLE:

**Respect Voluntary Membership.**

<b>SCORE: 3.0</b>
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### DISCUSSION:

#### **Membership in Primary Societies is Voluntary; Membership in Secondary or Apex Societies Might Not Be.**

The Tanzanian government does not have any authority to compel membership in a primary society. The Act expressly recognizes such cooperatives as “voluntary organizations.” (§4(2)(i)). The Act also does not place any restrictions on the withdrawal of members from a cooperative, deferring to each cooperative to set up its own rules and procedures regarding member withdrawal (§32(3)(c)).

However, while membership in primary societies is purely voluntary, the Act does permit the government to “advise” existing primary societies to join secondary societies, and secondary societies to join apex societies by notice in writing (§17). The weight of this “advice” is not clear from the text of the Act, and in practice it might not be problematic – primary societies might be at an information disadvantage regarding the activities of other societies, and the Registrar might be in the best position to inform them of certain economies of scale and possible opportunities for collaboration. But, given the Registrar’s broad regulatory powers, a primary society might ultimately view such “advice” as coercive. Because secondary societies are not required to adhere to the one-person/one-vote principle (§36), anything that could make membership in a secondary or apex society anything less than purely voluntary is potentially problematic.

## SCORE CARD QUESTION 4B

### IMPLEMENTING CORE PRINCIPLE:

**Cooperatives should determine through internal governance procedures any requirements for size and eligibility criteria for membership, subject to generally applicable non-discrimination laws.**

## RELATED CORE PRINCIPLE:

### **Protect Democratic Membership Control.**

**SCORE: 0.0**

## DISCUSSION:

### **The Act Imposes Minimum Size and Eligibility Requirements on Society Membership**

The Act mandates a minimum number of members that a cooperative can have, based on the sector: 50 for agricultural societies, 20 for savings and credit cooperatives, 10 for specialized skill societies, and 10 for other types (§§15(1), 23). There is no limit on the maximum number of members.

The Act also sets the following eligibility requirements for membership:

1. be 18 years old and of a sound mind (with a carve out for 15 year old members who do not participate in committees, or 15 year old members of certain school-based societies)
2. be following a trade or occupation relevant to the society's object as stated in its bylaws;
3. have a "common need which the society seeks to satisfy;"
4. be capable of paying fees and acquiring shares. (§15(2)).

Subject to the foregoing, a society is allowed to set its own additional membership criteria, subject to a general gender, social, racial, political and religious non-discrimination requirement (§§45(2)(e), 4(2)(i)). The society may also set its own procedures for admitting new members, but such procedures must adhere to relevant regulations promulgated by the Minister of Cooperative Societies (§131(2)(d)).

### **Certain Membership Requirements could be Liberalized.**

In sum, protecting member control (the concern of the Core Principle) could be liberalized by changing or removing the requirements for minimum size and the eligibility criteria for cooperatives. Foremost, the Act's requirement for minimum membership sizes appears to be a disabling factor because the number of members required in certain sectors is substantial and may discourage the formation of some small but productive cooperative enterprises. Additionally, the Act has some mandated membership requirements. While some of these requirements are straightforward and not necessarily problematic – minimum age and financial suitability – others are quite subjective and little guidance is provided in how they should be applied by a society's admissions committee – possessing a "common need" with the society and following an occupation "relevant to the society's object." Regardless, legal imposition of even objective and common-sense eligibility criteria is inconsistent with the principle that cooperative societies should be able to set their own membership standards pursuant to democratic principles.

## SCORE CARD QUESTION 4C

### IMPLEMENTING CORE PRINCIPLE:

**A cooperative law should not permit the government to be a member of the cooperative.**

### RELATED CORE PRINCIPLE:

**Protect Autonomy and independence.**

SCORE: 1.0
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### DISCUSSION:

#### **Government Membership, *Per Se*, Is Not Required or Permitted.**

The cooperative law does not contain any provisions expressly requiring that the government or any governmental representatives shall be a member of a cooperative. In addition, the Act does not contain any provision expressly permitting the government or a governmental representative to be a member. There is also no provision for entities (as opposed to natural persons) being members of primary societies nor for non-cooperative societies being members of secondary societies, apex societies or federations.

#### **Government Membership on a Society's Board Is Permitted**

While the government might not be a member of the cooperative, *per se*, the Registrar is permitted to require government representation on a society's board if the cooperative has received financial assistance from the government or if the Registrar "considers such appointments to be necessary in the public interest or in the interest of the society." (§127(1)). It is our understanding that this provision is rarely exercised, and the provision contains certain safeguards to ensure that such government board members would never constitute more than one-third of the number of ordinary board members. Governmental membership on a society's board, however, is not meaningfully different from actual membership in the society, as it permits the government to play a role in the decision-making and governance of a cooperative as if it were part of the membership.

#### **The Registrar is granted certain powers with respect to Governance**

Putting aside membership in a society's board, the Act grants the Registrar considerable power to intervene in the governance of a cooperative society, effectively granting the Registrar *de facto* membership in the cooperative. For example, the Registrar can call general meetings (§61(4)) and remove the board when, after consultation with the Minister, it is satisfied that it is in the interest of the society's members and the public (§67(1)). The Registrar is also granted general permission to "assist," (§7(1))

“encourage,” (§6) and “advise” (§11) such cooperatives, to conduct financial inquiries and to promulgate any regulation “prescribing anything for ensuring the proper administration of the affairs of registered societies.” (§132). This grant of powers is broad.

Thus, the government is, in many respects, a *de facto* member of Tanzanian cooperatives, if not a member *de jure* in the area of control, although not in the areas of the contribution of capital and services to the cooperative, the performance of work for and the use of the cooperative, and the receipt of benefits and surpluses. The broad opportunities for government intervention provided by the statute, even if not exercised in practice, combined with potential governmental membership in a society’s board of directors, compromises the autonomy and independence of the cooperative society and is not in full compliance with the CLARITY principle.

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## **MEMBERSHIP GOVERNANCE**

### **SCORE CARD QUESTION 5A – 5B**

<b>TOTAL SCORE 5.0 out of 8.0</b> <b>PERCENTAGE SCORE 62.5%</b>
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### **SCORE CARD QUESTION 5A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**A cooperative law should permit the by-laws of a cooperative to implement a range of voting rules that are consistent with democratic governance requirements, including one person one vote, super-majority decisions for alteration of a cooperative’s structure, cumulative voting and patronage requirements for voting.**

#### **RELATED CORE PRINCIPLE:**

**Protect Democratic Membership Control.**

<b>SCORE: 2.0</b>
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#### **DISCUSSION:**

**The Act Enshrines One-Person/One-Vote For Primary Societies, But Not For Secondary Societies or Above.**

Tanzanian cooperative law guarantees that each member of a cooperative will have one vote “in the affairs of the society and shall be entitled to attend the general meeting of the society and to record his vote in regard to any matter for decision of such meeting.” (§36). There is, however, an explicit carve out from this “one-person/one-vote” requirement for secondary societies or federations. Instead, each such secondary society or federation is permitted to set its own voting requirements in its bylaws. One can envision that some secondary societies may voluntarily choose to implement a proportional voting system, where member societies’ votes are weighted based on size of membership, thus preserving the “one-person/one-vote” standard, but this is not required by the statute. Moreover, the Act does not provide any guarantee that society bylaws setting the voting systems for secondary societies or federations will be subject to unanimous or at least supermajority consent of the member societies, creating the possibility that smaller member societies – including those who may have been “advised” to join the secondary society by the Registrar pursuant to Section 17 of the Act – will effectively be disenfranchised.

One-person/one-vote is at the heart of democratic governance. The Tanzanian law adheres to this standard with primary societies, where the bulk of day-to-day decision-making occurs. However, the fact that secondary societies and federations are not required to build their voting systems on one-person/one-vote representative principles, combined with the possibility that a primary society might be coerced into joining a secondary society without any say in the development of such society’s voting system, causes the Tanzanian statute to fall short of the CLARITY principle of democratic member control.

### **SCORE CARD QUESTION 5B**

#### **IMPLEMENTING CORE PRINCIPLE:**

**To facilitate member control over management, business records generally should be open to inspection by any member of the cooperative.**

#### **RELATED CORE PRINCIPLE:**

**Protect Democratic Membership Control.**

<b>SCORE: 3</b>
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#### **DISCUSSION:**

##### **The Act Requires Disclosure of Some Business Records.**

The Act requires every society to maintain a “register of charges” chronicling all charges specifically affecting the property of the society, as well as “all floating charges on the property or assets of the society.” For each such charge, the register is required to

include a “short description of the property charged, the amount of the charge and the names of the persons entitled thereto.” (§88) Any member of the society has the right to inspect the register of charges and copies of the instruments creating such charges for free and during normal business hours, subject to “such reasonable meeting restrictions as the society in general meeting may impose.” (§89). The Act also provides an enforcement mechanism for violations of this open access requirement, stating that any effort by a society’s officers to omit any entry from the society’s register of charges or to knowingly obstruct the inspection of such records will be considered to be an “offence” under the Act and will be punishable by fine.

However, the register of charges and related instruments are the only society records to which members are guaranteed access. For example, the Act does not otherwise grant members the right to access audited financial statements of the society, without the intervention of the Registrar and members of the society’s board. Upon petition by one-third of the members of a society’s board, the Act permits the Registrar to conduct an inspection or audit of the society’s books and records. The Registrar is also permitted to hold an inquiry into the society’s activities and financial affairs at any time, on its own volition (§90). Moreover, while any creditor of the cooperative society is permitted to petition the Registrar to inspect the society’s books upon making an accusation that an unpaid debt is owed, the Registrar is not permitted to undertake such an inquiry unless the creditor makes a security deposit for the costs of the inquiry (§90(2)).

**The Act Provides Only Partial Disclosure.**

The aim of this CLARITY Implementing Core Principle is to protect democratic membership control by ensuring that the members have sufficient information to supervise the board of directors and protect their interests.

While the Act recognizes the right of members to be provided with certain information about the cooperative, it falls short of full compliance with the CLARITY principles because there is additional information beyond the register of charges that should be made freely available to members. In order to fully comply with the CLARITY principles, cooperative societies should also be required to keep and grant free and ready access to their audited financial statements or, at the very least, permit the membership itself to initiate a governmental inquiry into the society’s finances without approval of any of the society’s board members. Furthermore, in order to facilitate meaningful and informed democratic control, all members should be guaranteed free and ready access to: the minutes of all meetings of the board of directors, oversight committee, general assembly, and all other committees; any correspondence involving the cooperative; agreements of all types (contracts, leases, licenses, etc.); and accounting back up for all revenue and expenditures of the cooperative.

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## **OFFICERS AND DIRECTORS**

### **SCORE CARD QUESTIONS 6A – 6C**

<b>TOTAL SCORE: 3.0 out of 12.0</b> <b>PERCENTAGE SCORE: 25%</b>
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#### **SCORE CARD QUESTION 6A**

##### **IMPLEMENTING CORE PRINCIPLE:**

**A cooperative law may give general instructions on the core division of roles between the board of directors and management without being so detailed as to prevent necessary flexibility in organizing the business.**

##### **RELATED CORE PRINCIPLE:**

**Protect autonomy and Independence.**

<b>SCORE: 2.0</b>
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##### **DISCUSSION:**

##### **The Law Establishes No More Than a General Division of Authority Between Members, Registrar and Board of Directors.**

Tanzania law requires that a cooperative have a Registrar, an annual general meeting of members and a board of directors of not less than five members and not more than nine members, with staggered terms (Part IX).

The control of the affairs shall be vested in the general meeting including the following functions (§61):

1. the election, suspension or removal of members of the Board;
2. the consideration and adoption of the annual balance sheet;
3. the disposal of sums available for distribution;
4. determining the amount of honoraria, if any, for unsalaried officers and board members;
5. receiving the report from the Board;
6. the acquisition or disposal by the society of all immovable property and of movable property of such value as provided for in the rules;
7. to decide whether (a) a person is following a relevant trade to the society; (b) a persons is a resident in the area of operation; (c) two or more societies can be considered to form a joint venture; and (d) a person has attained the apparent age of eighteen years.

The President shall appoint a public officer to be the Registrar of Cooperative Societies (§10).

The Registrar may summon a special general meeting or direct what matters shall be discussed at the meeting per the by-laws of the society (§61).

Any person aggrieved by a decision of the members at a general meeting may appeal to the Registrar, and then to the Minister, whose decision shall be final (§61).

Every registered society shall establish a Board to manage its day-to-day activities (§63). This Board shall (a) consist of not less than five members and not more than nine members; and (b) hold office for a period of up to nine years, provided that one-third of the board members shall be voted out at the general meeting after 3 years, half of the remaining board members after 6 years, and the remaining half at the end of 9 years (§63).

The Board may hire management, provided that management does not have any criminal conviction history nor any history of being dismissed from public service on ground of mismanagement or on any disciplinary ground (§64).

Tanzanian law adheres to CLARITY principles by allowing democratic member control and autonomy to define the responsibilities of the Board of Directors and their chosen Management through by-laws.

The appointment by the President of the Registrar and the final appeal power of the local Minister may be at odds with the CLARITY principles as the Registrar and Minister are both government agents.

The Registrar also has unilateral powers to summon a Special General Meeting that may give the Registrar over-reaching powers to supersede the by-laws of the cooperative (§127(1)).

### **SCORE CARD QUESTION 6B**

#### **IMPLEMENTING CORE PRINCIPLE:**

**The state should not maintain any right to appoint managers of a cooperative.**

#### **RELATED CORE PRINCIPLE:**

**Protect Autonomy and Independence.**

<b>SCORE: 1.0</b>
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#### **DISCUSSION:**

**The Registrar's power to appoint and replace board members compromises cooperatives' autonomy.**

All managers are nominated by the board of directors and approved by the members (§ 66).

The State does appoint the Registrar and the Minister, which have limited powers to call meetings and render decisions on final appeals for grievances that may arise between members (§10; L Art. 62).

The Registrar has the power to appoint and replace members of a cooperative management board through its powers to summon a Special General Meeting (§127(1)). This power is a significant intrusion into a cooperative's autonomy.

**SCORE CARD QUESTION 6C**

**IMPLEMENTING CORE PRINCIPLE:**

**Subject to general auditing requirements, cooperatives should have discretion over their expenditures and investments. The law should not mandate expenditures on specific functions or require government approval of basic business decisions.**

**RELATED CORE PRINCIPLE:**

**Protect Autonomy and Independence.**

<b>SCORE: 0.0</b>
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**DISCUSSION:**

**Cooperatives May Generally Spend and Invest as They Choose, But Limitations Exist on Borrowing and Lending Activities as well as Eligible Investments.**

Generally a cooperative may invest its funds in (a) an interest bearing deposit account in a cooperative financial institution, or any financial institution as may be approved by the Registrar; (b) in the shares of any other registered society; (c) in government bonds and other securities; or (d) in such other investments as the Registrar may order with approval of the Minister, published in the Gazette and declared to be authorized investments for the purpose of this section (§73).

In the case of any loss, every officer who is a party to the loss commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings and in addition shall be required to compensate the loss so occasioned (§73).

In addition, the law concerns itself in great detail with classifying different types of cooperatives and their relative borrowing and lending policies (§71).

A cooperative may expend on any charitable, educational or medical purpose or other objects (§79). The cooperative society's by-laws shall provide for the raising of funds to finance its activities either by share issuance or by imposing a levy on agricultural or other produce or handicraft marketed through the cooperative, or "by other means as may be approved by the Registrar" (§75(1)). Accordingly, the Registrar has to approve other types of financings of a cooperative's activities, and it also has certain powers with respect to share issuances (*e.g.*, the share capital may not be reduced without its consent) (§75(2)(a)).

In cases where the Registrar is given power to approve such financing transactions, the cooperative has less flexibility in financing its activities because it has to seek approval, which may be time consuming. Other types of corporate organizations do not have to contend with this type of restriction, and this could potentially hinder the ability of cooperatives to quickly deploy their capital to seize opportunities.

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## **BOARD OF DIRECTORS**

### **SCORE CARD QUESTIONS 7A – 7B**

<b>TOTAL SCORE: 1.0 out of 8.0</b> <b>PERCENTAGE SCORE: 12.5%</b>
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### **SCORE CARD QUESTION 7A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**The board should be elected by the members of the cooperative. The state should not retain any authority to select or approve board members.**

#### **RELATED CORE PRINCIPLE:**

**Protect Democratic Membership Control.**

<b>SCORE: 1.0</b>
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#### **DISCUSSION:**

**Members Elect Directors without State Intervention.**

Members of the board of directors and of the oversight board are elected by the members of the cooperative (§63).

However, the one significant exception is that the President of Tanzania appoints the Registrar (and his officers) and the local Minister (and his officers) that have rights to call special meetings and adjudicate disputes amongst members, with final judgment power on appeal (§10-14; §65-68).

### SCORE CARD QUESTION 7B

#### IMPLEMENTING CORE PRINCIPLE:

**The law should not prescribe quotas or other specific criteria for selecting the board of directors beyond an absolute minimum for collective decision-making (e.g., three or more members).**

#### RELATED CORE PRINCIPLE:

**Protect Autonomy and Independence.**

SCORE: 0.0
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#### DISCUSSION:

**The Law Prescribes the Minimum and Maximum Number of Directors and Establishes A Staggering of Board Members.**

The law imposes minimum and maximum numbers of directors. Boards of directors must have a minimum of 5 and a maximum of 9 members (§63).

Every registered society shall establish a Board to manage its day to day activities (§63). This Board shall (a) consist of not less than five members and not more than nine members; and (b) hold office for a period of up to nine years, provided that one-third of the board members shall be voted out at the general meeting after 3 years, half of the remaining board members after 6 years, and the remaining half at the end of 9 years (§63). The imposition of minimum and maximum numbers of directors and staggering of the Board contravenes the CLARITY principles of autonomy and independence.

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### **CAPITAL ACCOUNTS**

#### SCORE CARD QUESTIONS 8A – 8B

TOTAL SCORE: 5.0 out of 8.0 PERCENTAGE SCORE: 62.5%
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## SCORE CARD QUESTION 8A

### IMPLEMENTING CORE PRINCIPLE:

**Distribution of surplus of the cooperative should be required to be allocated according to patronage of the cooperative, rather than capital invested.**

### RELATED CORE PRINCIPLE.

**Require Member Economic Participation.**

<b>SCORE: 2.0</b>
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### DISCUSSION:

Subject to certain reserve requirements, the cooperative may apply the annual net balance together with any sum available for distribution from previous years to payment of bonus and to any staff incentive bonus schemes in such manner and in such proportions as may be prescribed by its by-laws (§78).

A cooperative may by resolution in general meeting appropriate from its funds and expend on any charitable, educational or medical purpose or other objects (§79).

There is no express provision requiring that surplus profits be apportioned according to capital investment or use by the cooperative, which may lead to a negative results in use of surplus profits in cases where a cooperative may be seeking to invest in new areas that do not align with the original investment of capital.

## SCORE CARD QUESTION 8B

### IMPLEMENTING CORE PRINCIPLE:

**The law should not mandate distributions such that a cooperative could not choose to build reserves or a capital fund for business investments, nor mandate a specific amount of contribution to such funds.**

### RELATED CORE PRINCIPLE:

**Protect Democratic Membership Control.**

<b>SCORE: 3.0</b>
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### DISCUSSION:

The Act specifically foresees that all cooperatives that derive a profit from their transactions shall maintain a reserve fund. Cooperatives with unlimited liability that advance money or goods to members in excess of the money or goods deposited shall put a minimum of one-quarter of their annual net surplus into the reserve fund (§77(2)). Other cooperatives have to keep such portion of net surplus as may be prescribed by the rules or their by-laws (§77(3)).

Accordingly, the Act does provide for cooperatives to build reserves. However, it does so in a prescriptive way by providing for the one-quarter minimum threshold that will apply to many cooperatives. This threshold is inflexible and may put a cooperative in a position to be unable to deploy capital as it sees fit in business related endeavors. Such a reserve requirement is not present for other types of corporate organization.

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### **AUDITOR**

#### **SCORE CARD QUESTION 9**

<b>TOTAL SCORE 3.0 out of 4.0</b> <b>PERCENTAGE SCORE 75%</b>
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#### **SCORE CARD QUESTION 9A**

##### **IMPLEMENTING CORE PRINCIPLE:**

**The members of the cooperative should have the right to select their auditor of choice.**

##### **RELATED CORE PRINCIPLES:**

**Protect Democratic Membership.**

<b>SCORE: 2.0</b>
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**Protect Autonomy and Independence.**

<b>SCORE: 1.0</b>
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##### **DISCUSSION:**

**Auditor Will Be Either the Cooperative Audit and Supervision Corporation or an Auditor Selected by the General Meeting, but Approved by the Registrar.**

The accounts of every registered society shall be audited at least yearly (§48(3)). The Cooperative Audit and Supervision Corporation or a competent and registered auditor appointed by the general meeting shall audit the accounts (§48(3)). Every member of the registered society may vote at the general meeting (§36). The Registrar, however, who is appointed by the President, must approve any auditor selected by the general meeting (§48(3)). Such power in the Registrar may lead to political influence playing a role in the selection of an auditor.

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## **DISPUTE RESOLUTION**

### **SCORE CARD QUESTION 10**

<b>TOTAL SCORE 6.0 out of 8.0</b> <b>PERCENTAGE SCORE 75%</b>
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### **SCORE CARD QUESTION 10A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**Any body entrusted to adjudicate disputes that involve cooperatives should be independent from promotion, supervision, and other cooperative oversight functions. Cooperatives should be free to access courts and other existing tribunals, as well as to voluntarily enter into arbitration arrangement.**

#### **RELATED CORE PRINCIPLES:**

**Avoid Conflicts of Interest.**

<b>SCORE: 2</b>
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**Provide a Coherent and Efficient Regulatory Framework.**

<b>SCORE: 2</b>
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**Protect Due Process.**

<b>SCORE: 2</b>
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#### **DISCUSSION:**

**Dispute Mechanisms Are Not Independent of the Agencies That Promote and Regulate the Cooperatives.**

Disputes arising out of the interpretation of a registered society's by-laws are referred to the Registrar (§47(2)). The Registrar also arbitrates disputes between members and societies arising out of the death or incapacity of a member (§§57(1), 57(4)). The Minister, after consulting the Registrar, may provide the procedures for dispute settlement (§131(2)(m)). Cooperative members are also free to access courts and to voluntarily enter into arbitration agreements if a dispute arises.

Although the Act provides that the Registrar and Minister may set dispute resolution mechanisms, the Act also makes the Registrar and Minister responsible for promoting cooperatives (§11(1)) and oversight. Unless a cooperative accesses courts or enters into an arbitration agreement, the cooperative will be subject to the dispute resolution mechanisms and arbitration. There is no inherent conflict of interest arising out the Minister and/or Registrar adjudicating a dispute between disputing cooperatives. However, a conflict of interest may arise between the Registrar and/or Minister and the disputing cooperatives if one of the cooperatives carries more political influence or would otherwise benefit the Registrar and/or Minister.

**No Specific Provision Granting Access to the Courts and Other Independent Tribunals.**

There are no specific provisions relating to dispute resolution outside of the Minister and Registrar. Under §116(4), a liquidator can enforce his own rights by a civil suit in any court of competent jurisdiction. The Act does not specifically provide for equal access to courts, tribunals, or voluntary dispute resolution. However, general recourse to the courts is provided under other Tanzanian laws, like the Civil Procedure Code and the Companies Act, as cooperatives have full legal personality. It would be preferable if the Act contained an express provision.

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**DISSOLUTION/AMALGAMATION/MERGER**

**SCORE CARD QUESTION 11A**

<b>TOTAL SCORE 2.0 out of 8.0</b> <b>PERCENTAGE SCORE 25%</b>
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**SCORE CARD QUESTION 11A**

**IMPLEMENTING CORE PRINCIPLE:**

**The law should provide procedures for changing or dissolving the organization, including quorum and voting requirements, procedures for notifying members, for permitting withdrawal, and for distributing assets remaining after dissolution.**

**RELATED CORE PRINCIPLES:**

**Respect Voluntary Membership.**

**SCORE: 2.0**

**Protect Due Process.**

**SCORE: 0**

**DISCUSSION:**

**The Act Provides for Dissolution and Distribution of Assets Following Dissolution, But Largely Under the Powers of the Registrar. No Provision relating to Mergers of Cooperatives.**

The Act respects voluntary membership in that it allows three-fourths of the members of a society to apply to the Registrar to cancel a society's registration and dissolve it (§97). However, the members of a society may request dissolution, the power to dissolve it still ultimately rests with the Registrar, who may also control and guide the dissolution. The Registrar holds broad power with respect to matters of dissolution in that it also appoints the custodian and liquidator (§101). While the liquidator is given broad powers, the Registrar holds overall power to manage the winding-up process and the liquidator (§§, 102(1), (2)). In addition, the Registrar has power to dissolve a society following inactivity (§98-2), a feature not included in the general corporate law. This is a serious measure and undermines a cooperative's autonomy. The rules may allow for the appeal from any liquidator decisions (§102(3)). The Act does not include any specific provision relating to mergers of cooperatives, which could be helpful to cooperatives, although societies may join in association or form a joint enterprise (§21).

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**APEX ORGANIZATIONS**

**SCORE CARD QUESTION 12A**

**TOTAL SCORE 1.0 out of 4.0  
PERCENTAGE SCORE 25%**

**SCORE CARD QUESTION 12A**

**IMPLEMENTING CORE PRINCIPLE:**

**The law should permit the formation of apex organizations such as unions, federations, and confederations, without dictating their structure or requiring cooperatives to form or support such organizations.**

**RELATED CORE PRINCIPLE:**

**Protect Autonomy and Independence.**

<b>SCORE: 1</b>
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**DISCUSSION:**

**Primary Societies May Form Secondary Societies; Secondary Societies May Form Apex Societies.**

Primary societies may form secondary societies, the membership of which is composed of primary societies (§§2, 16(1)). Secondary societies may form apex societies, the membership of which is composed of secondary societies (§2, 16(1)). Apex societies are established to facilitate the operations of all primary and secondary societies (§2). A Federation may be formed by apex societies (§2, 16(1)). In general, the purposes of each level of society are as follows:

- Primary societies: strive to raise the standard of living of its members, facilitate operations of individual members and provide services to individual members such as supply of agricultural inputs and marketing services (§18);
- Secondary societies: to facilitate operation of primary societies, provide services to primary societies, collect and sell products, provide consulting services (§19);
- Apex societies: provide services to secondary societies, collect and sell products of secondary societies, provide consulting services (§19); and
- Federations: cooperative education and training for its members (§20).

Thus, the Act provides for varying levels of organization under which members can consolidate their efforts. Allowing apex societies and federations can be of significant support to cooperatives. However, the Registrar may advise a primary society, secondary society or category of cooperative societies to join an apex or secondary society, if the Registrar considers the Apex or secondary society economically viable in relation to the area (§17). This advisory power may impair members' independence and undermine the use of apex and secondary societies.

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**IMPACT OF SECTOR-SPECIFIC REGULATIONS**

**SCORE CARD QUESTIONS 13A –13B**

<b>TOTAL SCORE 10.0 out of 12.0</b> <b>PERCENTAGE SCORE 83.33%</b>
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**SCORE CARD QUESTION 13A**

**IMPLEMENTING CORE PRINCIPLE:**

**Sector Specific Regulations Should Not Restrict Cooperatively-Formed Businesses From Entering the Sector.**

**RELATED CORE PRINCIPLES:**

**Promote Access to Markets.**

<b>SCORE: 3.0</b>
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**SCORE CARD QUESTION 13B**

**IMPLEMENTING CORE PRINCIPLE:**

***De Facto* Barriers To Entry Should Not Bar Cooperative Societies From Entering Sectors.**

**RELATED CORE PRINCIPLES:**

**Promote Equitable Treatment.**

<b>SCORE: 4.0</b>
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**Promote Access to Markets.**

<b>SCORE: 3.0</b>
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**DISCUSSION:**

**Tanzanian Law Creates Certain Regulatory Barriers to Entry, Though Cooperatives Are Not Expressly Barred From Any Sectors**

The Act envisions the creation of cooperative societies in numerous sectors of the Tanzanian economy – ranging from agriculture, to banking, to industrial manufacturing, to mining, and also allows for cooperatives from any other sector to be registered (“such other societ[ies] as may be established” (§22)). The utilities’ sector is the only sector that is not expressly mentioned in the Act, which in part may be due to historical monopolies in that industry making entry by any new market participant challenging. However, while the Act does not restrict any cooperative society’s access to any market sector, it also does not contain any express guarantee that societies will be granted access to every market. Such a guarantee would help ensure compliance with the “access to market” CLARITY principle.

Moreover, under Tanzanian law, virtually every market sector – whether it be banking or energy or mining – is subject to its own regulatory regime. Reviewing all of these regulations is beyond the scope of this analysis, but it is likely that some of these regulations may pose regulatory barriers to entry for many cooperatives – not because cooperatives are expressly barred from entering the market, but because the regulatory requirements imposed on market participants are too great for many small cooperatives to bear. For example, for a cooperative to operate as a bank, it would need to register as a “financial institution” with the Bank of Tanzania, as stipulated under its Financial Regulations of 2011. This entails certain capitalization and other requirements that many cooperatives might not be able to meet. And, beyond the regulatory obligations themselves, market participants may need to expend considerable legal costs in order to ascertain what their regulatory obligations actually are – an expense that may be prohibitive for many cooperative societies. That said, the fact that a cooperative finds the regulatory cost of entering a particular market prohibitive, is not *per se* evidence that the regulation is discriminatory against cooperatives – a private business of similar size, capitalization and sophistication might find the prospect of clearing such regulatory hurdles similarly difficult.

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## **ACCESS TO INFRASTRUCTURE MARKETS**

### **SCORE CARD QUESTION 14A**

<b>TOTAL SCORE 6.0 out of 8.0</b> <b>PERCENTAGE SCORE 75%</b>
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### **SCORE CARD QUESTION 14A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**New entrants in infrastructure markets should be granted the right to interconnect to the system through regulated, non-discriminatory rates.**

#### **RELATED CORE PRINCIPLES:**

**Promote Access to Markets.**

<b>SCORE: 3.0</b>
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**Protect Due Process.**

<b>SCORE: 3.0</b>
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#### **DISCUSSION:**

**Cooperatives’ Access to Infrastructure Markets**

While the Act does not expressly prohibit cooperative societies from gaining access to certain infrastructure markets, it also does not guarantee such access. Infrastructure markets – e.g., the electricity or telephone markets – are governed by their own set of complex regulations. While we have not conducted a review of all potentially applicable regulations, it is our understanding that these regulations do not expressly prohibit cooperative societies from entering such markets, but each regulatory regime is quite complex and may not be amenable to market participants of the size and sophistication of most cooperative societies. Moreover, Tanzanian counsel has advised that certain Tanzanian utility industries – the electricity supply industry, for instance – are still dominated by nationalized monopolies and no market participants, whether cooperatives or not, are permitted entry. In the spirit of the CLARITY principles of market access and due process, we encourage reform of all market sectors to permit entry by new market participants, especially cooperative societies.

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## **STANDARDIZED REPORTING**

### **SCORE CARD QUESTIONS 15A – 15B**

<b>TOTAL SCORE 3.0 out of 8.0</b> <b>PERCENTAGE SCORE 37.5%</b>
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### **SCORE CARD QUESTION 15A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**For regulatory systems requiring detailed financial reporting requirements, standardized reporting forms should be available.**

#### **RELATED CORE PRINCIPLES:**

**Promote a Coherent and Efficient Regulatory Framework.**

<b>SCORE: 2.0</b>
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#### **DISCUSSION:**

#### **Some Reporting Forms Are Different Sector-by-Sector**

The Act does not contain any provisions guaranteeing that cooperatives will be subject to a unified reporting regime across the entirety of the Tanzanian economy. Under Tanzanian law, most industries have their own government regulators with their own reporting requirements. Tanzanian counsel advises that in addition to these industry-specific regulatory reporting requirements, standardized forms are used for some cross-

industry financial and tax reporting requirements. Though we have not conducted a comprehensive survey of such industry regulations, there is no indication that cooperatives operating in the banking, telecommunications or energy sectors would be subject to different reporting requirements that other non-cooperative market participants.

This CLARITY Principle is motivated by a belief that standardized reporting forms enable governments to more efficiently create and monitor performance benchmarks, with minimum disruption to cooperative enterprises. As a general principle, we would recommend that to the extent feasible standardize reporting forms be used across industries in order to streamline any reporting requirements, so as to minimize the regulatory cost to cooperatives. As many cooperative societies are operating in historically underserved markets and geographic regions where profit margins are very thin, anything regulators can do to lower the regulatory cost to such societies, while still ensuring that regulators are able to conduct their important work, improves the chances of a cooperative society's success and further the goals of the CLARITY principles.

### **SCORE CARD QUESTION 15B**

#### **IMPLEMENTING CORE PRINCIPLE:**

**For systems that regulate the prices of utilities, cooperatives should be exempted from price caps.**

#### **RELATED CORE PRINCIPLES:**

**Promote Equitable Treatment.**

<b>SCORE: 1.0</b>
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#### **Cooperatives Are Not Specifically Exempted From Utility Price Caps**

Many governments regulate prices for utilities based on the premise that a for-profit monopoly would price-gouge customers without government intervention. According to the CLARITY Principles, such price-capping would not need to be applied to a cooperative society, because a cooperative would lack the same profit-motive as a private actor. The Act itself is silent on this issue and, to the extent cooperatives are able to make any entry into the mostly nationalized utilities markets, the applicability of any price caps would be governed by the regulations governing that particular industry. Though an exhaustive survey of all potentially applicable regulations has not been conducted, based on advice from Tanzanian counsel, we are not aware of any regulator granting an exemption to a cooperative society from such price regulations. To the extent a price cap is not government imposed, but rather the result of a government-approved price-fixing arrangement between market participants under the Fair Competition Act, the regulator is empowered to grant exemptions from such agreements to other market participants on a case-by-case basis (§§8, 12 of the Fair Competition Act). Again, there is

no precedent for government regulators granting such exemptions to cooperative societies. Failure to provide such exemptions is disabling.

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## **FINANCIAL ASSISTANCE**

### **SCORE CARD QUESTION 16A**

<b>TOTAL SCORE 3.0 out of 4.0</b> <b>PERCENTAGE SCORE 75%</b>
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### **SCORE CARD QUESTION 16A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**The government should extend loan guarantees or direct finance to assist cooperatives in underserved areas.**

#### **RELATED CORE PRINCIPLES:**

**Promote Equitable Treatment.**

<b>SCORE: 3.0</b>
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#### **DISCUSSION:**

#### **Government Ministries Do Provide Financing To Certain Cooperatives, But No Centralized Infrastructure For Matching Money to Recipients**

The Act grants the Minister of Cooperative Societies the authority to “facilitate the financing of societies, where necessary for their establishment and management.” (§7(1)(b)). While this provision does speak to the CLARITY principle, it is important to point out that this is a broad grant of discretionary authority, and there is no requirement that the Minister actually provide any financing, nor is there any requirement that such financing be directed to assisting cooperatives in underserved areas or industries.

The Minister of Cooperative Societies is also not the only potential government source of financing for cooperatives. Various other industry-specific government ministries, *e.g.*, the Ministry of Fisheries or Ministry of Agriculture, periodically dispense grants or financing to recipients within their purview to advance governmental aims, and cooperative societies are often eligible for such benefits. These have included the *Kilimo Kwanza* (Agriculture First) Fund, which is coordinated by the Office of the President.

The goal of this CLARITY Principle is to ensure that cooperatives that are serving underserved areas, where the costs of service and of accessing capital are higher, receive special government financing assistance, so that they can compete on an even playing field with other firms. The discretionary authority of the Minister of Cooperative Societies to facilitate financing for cooperative societies, as well as similar authority granted to other government ministries, potentially could be of service to this end. However, it does not appear that there is an existing centralized system where eligible cooperatives can apply for special financing, and there are no published guidelines explaining to cooperatives that their activity in certain market sectors or certain geographic regions could make them eligible for financial assistance from the government. Rather, it appears that any government-backed financing is offered on an *ad hoc* basis, without coordination between different government ministries. To properly incentivize cooperatives to enter underserved markets, those cooperatives need to know upfront what special financing or other government assistance will be available to them.

To this end, one recommendation would be the creation of a centralized grant pool or loan facility, administered by the Minister of Cooperative Societies. This could potentially be done in coordination with other governmental ministries and non-governmental organizations with an interest in providing funding to certain underserved geographic areas or industries. Creating a system where cooperative societies know what market activities and conditions will make them eligible for special financing, and creating a sense of certainty that such financing will be there, would help create the necessary market incentives for cooperatives to enter currently underserved markets that otherwise would not be profitable.

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## **TAX LAW**

### **SCORE CARD QUESTION 17A**

<b>TOTAL SCORE 1.0 out of 4.0</b> <b>PERCENTAGE SCORE 25%</b>
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### **SCORE CARD QUESTION 17A**

#### **IMPLEMENTING CORE PRINCIPLE:**

**Tax Law Should Differentiate Between The Surplus Distributed to Members and the Profit Gained Transacting With Non-Members.**

#### **RELATED CORE PRINCIPLES:**

**Promote Equitable Treatment.**

<b>SCORE: 1.0</b>
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**DISCUSSION:**

**Tanzanian Tax Law Does Not Differentiate Between Member Surplus and Transaction Profits**

The Act does not differentiate between member surplus and profits for purposes of income taxation. Additionally, Tanzanian counsel advises that Tanzania's Income Tax Act also makes no such distinction. Under the CLARITY Principles, any surplus that is distributed to members should not be taxed as profit to the business or member, because such distributions represent a refund from excess charges, not a distribution of profit to shareholders; income derived from transactions with non-members, in contrast, does represent profit and should be subject to the same tax norms as apply to the profits of other businesses. Tanzanian law's failure to make this distinction is a significant shortcoming, and we would recommend that the tax code be amended accordingly.

In practice, however, Tanzanian counsel advises that this failure to differentiate is not completely disabling, because many cooperative societies are effectively exempt from income taxation. Under Section 1(g) of the 2<sup>nd</sup> Schedule to the Income Tax Act, certain primary cooperative societies whose yearly income does not exceed TShs.50,000,000 are completely exempt from the income tax. Many primary cooperative societies have income below this threshold and therefore would be exempt from income taxation, making the failure to differentiate between surplus distributions and profits moot.

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**COMPETITION/ANTITRUST LAW**

**SCORE CARD QUESTION 18A**

<b>TOTAL SCORE 1.0 out of 4.0</b> <b>PERCENTAGE SCORE 25%</b>
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**SCORE CARD QUESTION 18A**

**IMPLEMENTING CORE PRINCIPLE:**

**Cooperatives Should Be Exempt From The Competition/Antitrust Laws That Prohibit Joint Actions Between Businesses.**

**RELATED CORE PRINCIPLES:**

**Promote Equitable Treatment.**

<b>SCORE: 1.0</b>
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**DISCUSSION:**

**Cooperatives Are Not Expressly Exempt From Antitrust Laws, Though Government Is Permitted to Grant Case-by-Case Exemptions**

The Act is silent on issues regarding anti-competitive practices and does not provide any special status for cooperative societies under the antitrust laws. The Fair Competition Act is the applicable Tanzanian statute and it generally prohibits anti-competitive practices, though it explicitly permits market participants to enter into price-fixing arrangements and engage in other restrictive trade practices provided that certain limited conditions are met and government approval is granted. The Fair Competition Act then empowers the regulator to grant exemptions from these anti-competitive agreements to other market participants, again under certain conditions (Section 12 of the Fair Competition Act). The Fair Competition Act does not provide any general exemption for cooperative societies, either from restrictions on anti-competitive practices or from the price-fixing agreements entered into by other market participants, and there is no precedent of such exemptions being granted. This lack of precedent is perhaps understandable given Tanzania's short history as a free market economy and the limited case history for all such antitrust regulation.

Under the CLARITY Principles, there are certain situations – for example, in the event societies formed a cooperative marketing association – where cooperative societies need to be able to coordinate prices and terms of sale – activities that might normally run afoul of prohibitions on anti-competitive behavior. While it is theoretically possible for government regulators to grant exemptions from certain antitrust laws to cooperative societies in order to allow such behaviors, the fact that the Fair Competition Act does not grant a general exemption and the lack of any precedent of such exemptions being granted is potentially disabling. In order to create greater certainty in the marketplace for cooperative societies, it might be helpful to request interpretive guidance from Tanzania's antitrust regulators regarding how they would apply the Fair Competition Act to cooperative marketing associations engaging in some of these collusive behaviors.

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**ANNEX A – COMPLETED SCORE CARD**

<b>Question</b>	<b>CLARITY Principle</b>	<b>Legal Reference</b>	<b>Example/Explanation</b>	<b>SCORE</b>
1a. Is a time period set for the approval of registration applications (after which there is automatic approval)?	<p><u>Principle 7</u> - Efficient Regulatory Framework</p> <p>Explanation - Set time limit for the approval or rejection of the application (90 days). No automatic approval however.</p>	<p>§ 25(1)</p> <p>§ 30(1) – (3)</p>	<p><u>Enabling</u> - all applications shall be finally disposed of within 90 days from the date of the application.</p> <p><u>Enabling</u>: Act allows a coop that is in partial compliance with registration requirements to operate as a legal coop declaring it a Probationary Society. The Probationary Society has all the legal rights and powers of a fully complying entity while measures are taken to bring the society in full compliance with the registration requirements. Probationary period shall not exceed two years.</p> <p><u>Disabling</u> - The law is silent as to what happens if a decision with respect to the application is not made in 90 days.</p>	2
1b. Are registration requirements for coops the same as for regular businesses?	<p><u>Principle 5</u> - Equitable Treatment</p> <p>Explanation - How do requirements for starting a cooperative compare with requirements for starting a new business? Some groups may</p>	<p>§ 15(1)</p> <p>§ 24(1)(b)</p>	<p><u>Enabling</u> – There are registration requirements mandatory for companies which are not applicable to cooperatives. Registration fees also lower for cooperatives.</p> <p><u>Disabling</u> – Requirement for a feasibility study/project write up indicating the viability of the society as part of application requirements</p>	2

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	choose to register as an association or other type of business if it is easier and quicker than registering as a cooperative		for cooperatives.  <u>Disabling</u> – The required number of members required to form a coop is higher than required number of members for a corp.	
1c. Are the Registrar's duties combined with other coop promotion or regulation activities?	<u>Principle 9 - Conflict Of Interest</u>  Explanation - combining promotion and regulatory tasks can create conflicts of interests in the agency - an agency devoted to promoting cooperative formation should not also be in charge of enforcing regulatory mandates	§ 11(1) and (2) § 65-68 § 57	<u>Enabling</u> : The registrar shall gradually delegate duties of promoting, advising, educating and training to the cooperatives. However, the law appears to be silent as to under what circumstances these duties will be delegated.  <u>Disabling</u> - registrar of cooperatives is also charged with cooperative promotion, regulation and dispute mediation. <i>e.g.</i> Registrar Minister and his officers have rights to call special meetings and adjudicate disputes amongst members, with final judgment power on appeal. Disputes regarding by-law interpretation are referred to Registrar. Registrar arbitrates disputes regarding death/disability of a member.	1
1d. Does the govt. impose mandatory by-laws or otherwise restrict member governance?	<u>Principles 1 &amp; 2 - Democratic Governance &amp; Autonomy</u>  Explanation - a central characteristic of a cooperative that supports	§ 45(1) § 15 (1) and (2) § 25(2) § 46(1) and (2)	<u>Enabling</u> - Every registered society shall have the power to make by-laws for any such things as are necessary or desirable for the purpose which the society is established.  <u>Disabling</u> - number of members required to form specific coops is regulated. And a person may	1

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	their vitality is the vesting of ultimate governance of the organization in its membership		<p>not join a coop unless he has certain qualifications and meets certain criteria.</p> <p><u>Disabling</u> – Registrar has the power to require amendments to by-laws before it grants the application to form the coop.</p> <p><u>Disabling</u> – Registrar has the power to summon a special general meeting of the coop at such time and place as he may direct. And may direct what matters will be discussed.</p>	
2a. Are cooperatives subject to the same or similar regulatory requirements as other businesses?	<p><u>Principle 5</u> - Equitable Treatment</p> <p>Explanation - cooperatives should be subject to similar minimal regulations as other forms of business; the main force for regulating coops is member governance</p>	<p>§ 64</p> <p>§ 51</p>	<p><u>Enabling</u>: similar regulatory requirements as other business however less bureaucratic for coops because the main force for regulation is and should be member governance. Both coops and corps are required to submit annual returns.</p>	4
2b. Does the law protect the cooperative from government interference in cooperative business decisions?	<p><u>Principle 2</u> - Autonomy &amp; Independence Of Coops</p> <p>Explanation - cooperatives, like other</p>	<p>§ 17</p> <p>§ 73(2)</p> <p>§ 61(4)</p> <p>§ 17</p> <p>§ 94(5)</p>	<p><u>Disabling</u> - the Act does not directly prohibit government interference in internal affairs of coops.</p> <p><u>Disabling</u> - legislation remains vague and inconsistent, certain instances where Registrar</p>	0

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	businesses, should be empowered to manage their businesses free from the dictates of government officials		<p>may advise, <i>e.g.</i> Registrar may advise primary societies. The Registrar may advise any registered society to invest its funds or any portion of its funds in any one or more of the investments authorized by or under subsection (1).</p> <p>The Registrar or any other person authorized by him may summon a special general meeting of the society in such a manner and at such a time and place as he may direct. The Registrar may also direct what matters shall be discussed at the meeting.</p> <p>Registrar may advise any Primary or secondary society to join Apex society by notice in writing.</p> <p>Moreover, the Registrar may advise two or more societies to amalgamate by providing them with notice in writing.</p>	
2c. Are the regulatory & promotion functions separate offices or a separately controlled agency/institution?	<p><u>Principle 9</u> - Conflict of Interest</p> <p>Explanation - Entrusting the same agency with promotion and regulation could result in conflicts of interest and compromise the</p>	§ 11(1) and (2)	<p><u>Enabling</u> – Registrar shall <i>gradually</i> delegate promotional duties to coops.</p> <p><u>Disabling</u> - One agency is granted all power over registration, promotion, and regulation of coops</p>	1

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	efficiency & fairness of regulation			
3a. Is a cooperative granted the same legal rights as other businesses (the right to sue, enter into contracts, hold assets, etc.)?	<u>Principle 2</u> - Autonomy	§ 29(1)	<u>Enabling</u> – “The registration of a society shall render it a body corporate . . . with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, to do all things necessary for the purposes laid down in its constitution.”	4
“”	<u>Principle 5</u> - Equitable Treatment	“”	<u>Enabling</u> – Tanzanian counsel advises that this is the same bundle of rights afforded to companies.	3
3b. Are cooperative officials given the same legal liability as corporate officers (not held personally responsible for coop matters, unless they act fraudulently)?	<u>Principle 5</u> - Equitable Treatment	<p><u>For members generally:</u> § 35(3), 40(1), 40(2)</p> <p><u>For officers:</u> § 9, 93, 107, 108, 120, 122</p>	<p><u>Enabling</u> –</p> <p><u>For members generally:</u> The default position is limited liability (<i>i.e.</i>, a member’s liability is limited to the nominal value of his shares in the cooperative). However, the By-Laws of a cooperative can agree to unlimited liability for members (“liability by guarantee”).</p> <p><u>For officers:</u> Tanzanian counsel advises that the legal liability for a cooperative’s officials (explained in more detail below) is consistent with the treatment of corporate officers (per the Prevention and Combating of Corruption Act, the Public Procurement Act, and</p>	2

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
			<p>the Public Leadership Code of Ethics Act).</p> <p><u>Disabling</u> –</p> <p>For officers: Never clearly states the officer’s standard of care/fiduciary duty owed to the coop, and never states officer’s limited liability outside of breaches of that duty. Rather, it pinpoints certain circumstances under which an officer will be liable – <i>e.g.</i>, if upon a government audit, unlawful or unauthorized payments or losses/damages caused by an officer’s negligence or misconduct are discovered, the Registrar may fine the past or present officer accordingly (§ 93); upon the wind-down of a coop, the Registrar may assess damages against past/present officers for any misfeasance or breach of trust, or misapplication of funds (§ 107); and intentional (or by willful neglect) misstatements to the government; ignoring summons failing to disclose required information to the liquidator, etc. (§ 9, 120, 122, 124).</p> <p>The Act does not appear to be built upon the “business judgment” doctrine – that a company’s directors and officers cannot be held liable for losses arising out of the exercise of their “business judgment,” absent evidence of a breach of their fiduciary duty of good faith,</p>	

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
			loyalty and due care.	
4a. Can the government require specific individuals or groups to be members of cooperatives?	<u>Principle 3</u> - Respect for Voluntary Membership	§ 17	<p><u>Enabling</u> – Government cannot require anyone to join a primary society.</p> <p><u>Disabling</u> – Government can “advise” existing primary societies to join secondary societies, and secondary societies to join apex societies. Unclear what weight such “advice” has.</p>	3
4b. Can the government dictate size and qualifications for membership in a cooperative?	<u>Principle 1</u> - Democratic Member Control	§ 15, 23, 45, 61, 131	<p><u>Disabling</u> – Yes. Statute sets minimum sizes of societies (§ 15), and minimum qualifications for membership (§ 23). § 45(2)(e) permits societies to set their own specific membership qualifications above the statute’s minimums. But, § 61(8) permits rejected applicants to appeal to the Registrar/Minister any society’s judgment that an applicant does not meet one of the minimum qualifications.</p> <p>Moreover, the admissions process for new members is subject to rules promulgated by the Minister (§ 131(2)(d)). Please note that we have not reviewed these rules (or any other rules promulgated under the Act).</p>	0
4c. Does the law permit government agencies to	<u>Principle 2</u> - Autonomy and independence of	§ 127, 61, 67, 7, 11, 131, 132	<u>Disabling</u> – Government agencies aren’t permitted to be ordinary members, per se, but	1

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
be members of cooperatives?	cooperatives		<p>the Registrar can require government representation on a society’s board (up to 1/3 of the number of ordinary Board members) if: the co-op has received financial assistance from the government or if the Registrar “considers such appointments to be necessary in the public interest or in the interest of the society.” (§ 127(1)).</p> <p>Putting aside technical membership, Registrar has the power to directly intervene in coop governance – <i>e.g.</i>, can call general meetings (§ 61(4)), can remove the board (§ 67(1)), and has very broad grants of authority to “assist,” “encourage,” “advise” coops, along with exercising its broad rulemaking authority (“shall make regulation prescribing anything for ensuring the proper administration of the affairs of registered societies.” (§ 132)).</p>	
5a. Does the law require one-person, one-vote democratic governance?	<u>Principle 1</u> - Democratic member control	§ 36	<p><u>Enabling</u> – On the primary society level, yes.</p> <p><u>Disabling</u> – On the secondary/apex society level, votes can be apportioned pursuant to each society’s by-laws – there is no restriction on how voting on the secondary/apex level can be apportioned.</p>	2
5b. Does the government require	<u>Principle 1</u> - Democratic	§ 88, 89, 90	<u>Enabling</u> – Each society is required to maintain a “register of charges” covering all charges	3

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
business records to be open to inspection by members?	member control		<p>specifically affecting the property of the society. Any member may inspect the register, upon paying a fee as determined by the society's general meeting. Members may also inspect, without fee, copies of the instruments creating any such charges. (§ 89).</p> <p>If 1/3<sup>rd</sup> of the members of a society's board ask for it, the Registrar may conduct an inspection/audit of the society's books and records. The Registrar can also inspect/audit at any time, on its own volition. (§ 90).</p> <p><u>Disabling</u> – Members apparently do not have the right to audited financials without the intervention of the Registrar – they only have the right to the register of charges.</p>	
6a. Does the government have the authority to dictate the roles and responsibilities of management?	<p><u>Principle 2 - Protect Autonomy and Independence.</u></p> <p>Explanation - A cooperative law may give general instructions on the core division of roles between the board of directors and management without being so detailed as to</p>	§ 10, 61-64	<p><u>Enabling</u> – The Law Establishes No More Than a General Division of Authority Between Members, Registrar and Board of Directors.</p> <p><u>Enabling</u> – Tanzanian law adheres to CLARITY principles by allowing democratic member control and autonomy to define the responsibilities of the Board of Directors and their chosen Management through by-laws.</p> <p><u>Disabling</u> – Tanzania law requires that a cooperative have a Registrar, an annual general</p>	3

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	prevent necessary flexibility in organizing the business.		<p>meeting of members and a staggered board of directors of not less than five members and not more than nine members. (§ IX).</p> <p><u>Disabling</u> – The control of the affairs shall be vested in the general meeting including this following functions (§ 61):</p> <ol style="list-style-type: none"> <li>1. the election, suspension or removal of members of the Board;</li> <li>2. the consideration and adoption of the annual balance sheet;</li> <li>3. the disposal of sums available for distribution;</li> <li>4. determining the amount of honoraria, if any, for unsalaried officers and board members;</li> <li>5. receiving the report from the Board;</li> <li>6. the acquisition or disposal by the society of all immovable property and of movable property of such value as provided for in the rules;</li> <li>7. to decide whether (a) a person is following a relevant trade to the society; (b) a persons is a resident in the area of operation; (c) two or more societies can be considered to form</li> </ol>	

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
			<p>a joint venture; and (d) a person has attained the apparent age of eighteen years.</p> <p><u>Disabling</u> – The President shall appoint a public officer to be the Registrar of Cooperative Societies (§ 10)</p> <p><u>Disabling</u> – The Registrar may summon a special general meeting or direct what matters shall be discussed at the meeting per the by-laws of the society (§ 61).</p> <p><u>Disabling</u> – Any person aggrieved by a decision of the members at a general meeting may appeal to the Registrar, and then to the Minister, whose decision shall be final. (§ 61)</p> <p><u>Disabling</u> – Every registered society shall establish a Board to manage its day to day activities (§ 63). This Board shall (a) consist of not less than five members and not more than nine members; and (b) hold office for a period of up to nine years, provided that 1/3 of the board members shall be voted out at the general meeting after 3 years, half of the remaining board members after 6 years, and the remaining half at the end of 9 years. (§ 63)</p> <p><u>Disabling</u> – The Board may hire management, provided that management does not have any</p>	

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
			<p>criminal conviction history nor dismissed from public service on ground of mismanagement or on any disciplinary ground (§ 64).</p> <p><u>Disabling</u> – The appointment by the President of the Registrar and the final appeal power of the local Minister may be at odds with the CLARITY principles as the Registrar and Minister are both government agents.</p>	
<p>6b. Does the government have power to appoint or remove officers of a coop?</p>	<p><u>Principle 2</u> - Protect Autonomy and Independence.</p> <p>Explanation - The state should not maintain any right to appoint managers of a cooperative.</p>	<p>§ 10, 62, 66</p>	<p><u>Enabling</u> – Members Elect All Board Members, Which Subsequently Appoint and Hire Managers.</p> <p><u>Enabling</u> – All managers are nominated by the board of directors and approved by the members (§ 66).</p> <p><u>Disabling</u> – The State does appoint the Registrar and the Minister, which have limited powers to call meetings and render decisions on final appeals for grievances that may arise between members. (§ 10; § 62)</p>	<p>1</p>
<p>6c. Does the government retain power to dictate or supervise coop financial arrangements?</p>	<p><u>Principle 2</u> - Protect Autonomy and Independence.</p> <p>Explanation - Subject to general auditing</p>	<p>§ 71, 73, 79</p>	<p><u>Enabling</u> – A cooperative may expend on any charitable, educational or medical purpose or such other objects (§ 79).</p> <p><u>Enabling</u> – Generally a Society may invest its funds in (a) and interest bearing deposit in a</p>	<p>0</p>

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	<p>requirements, cooperatives should have discretion over their expenditures and investments. The law should not mandate expenditures on specific functions or require government approval of basic business decisions.</p>		<p>cooperative financial institution, or any financial institution as may be approved by the Registrar; (b) in the shares of any other registered society; (c) in government bonds and other securities; or (d) in such other investments as the Registrar may order with approval of the Minister published in the Gazette declare to be authorized investments for the purpose of this section. (§ 73).</p> <p><u>Disabling</u> – Cooperatives May Generally Spend and Invest as They Choose, But Many Limitations Exist on Borrowing and Lending Activities as well as Eligible Investments.</p> <p><u>Disabling</u> – In the case of any loss, every officer who is a party to the loss commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings and in addition shall be required to compensate the loss so occasioned. (§ 73).</p> <p><u>Disabling</u> – In addition, the law concerns itself in great detail with classifying different types of cooperatives and their relative borrowing and lending policies. (§ 71).</p>	
7a. Does the govt. have the authority to appoint or remove members of	<u>Principle 1</u> - Protect Democratic Membership	§ 63, 65, 68	<u>Enabling</u> – Members Elect Directors without State Intervention.	1

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
the Board of Directors?	<p>Control.</p> <p>Explanation - The board should be elected by the members of the cooperative. The state should not retain any authority to select or approve board members.</p>		<p><u>Enabling</u> – Members of the board of directors and of the oversight board are elected by the members of the cooperative. (§ 63).</p> <p><u>Disabling</u> – The one exception is that the President appoints the Registrar (and his officers) and the local Minister (and his officers) that have rights to call special meetings and adjudicate disputes amongst members, with final judgment power on appeal. (§ 10-14; L. Arts. 65-68).</p>	
7b. Can the government dictate the size of the Board	<p><u>Principle 3</u> - Protect Autonomy and Independence.</p> <p>The law should not prescribe quotas or other specific criteria for selecting the board of directors beyond an absolute minimum for collective decision-making (<i>e.g.</i>, three or more members).</p>	§ 63	<p><u>Disabling</u> – The Law Prescribes the Minimum and Maximum Number of Directors and Establishes A Staggering of Board Members to Maintain Autonomy.</p> <p><u>Disabling</u> – The law imposes a minimum and maximum numbers of directors. Boards of directors must have a minimum of 5 and a maximum of 9 members. (§ 63).</p> <p><u>Disabling</u> – Every registered society shall establish a Board to manage its day to day activities (§ 63). This Board shall (a) consist of not less than five members and not more than nine members; and (b) hold office for a period of up to nine years, provided that 1/3 of the board members shall be voted out at the general meeting after 3 years, half of the remaining</p>	0

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
			board members after 6 years, and the remaining half at the end of 9 years. (§ 63)	
8a. Is the surplus income from cooperatives distributed according to patronage of the coop rather than capital investment?	<p><u>Principle 4</u> - Require Member Economic Participation.</p> <p>Explanation - Distribution of surplus of the cooperative should be required to be allocated according to patronage of the cooperative, rather than capital invested.</p>	§ 78. 79	<p><u>Enabling</u> – A cooperative may expend on any charitable, educational or medical purpose or such other objects (§ 79).</p> <p><u>Disabling</u> – Subject to certain reserve requirements, the cooperative may apply the annual net balance together with any sum available for distribution from previous years to payment of bonus and to any staff incentive bonus schemes in such manner and in such proportions as may be prescribed by its by-laws. (§ 78).</p>	2
8b. Does the govt. mandate distributions to funds for capital, reserves, education or other activities?	<p><u>Principle 1</u> - Protect Democratic Membership Control.</p> <p>Explanation - The law should not mandate distributions such that a cooperative could not choose to build reserves or a capital fund for business investments, nor mandate a specific amount of contribution</p>	§ 77	<p><u>Disabling</u> – Minimum reserves are required one ¼ of the annual net surplus to the reserve fund or higher as may be prescribed by by-laws (§ 77).</p>	3

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	to such funds.			
9a1. Does the law allow coop members to select the auditor of their choice?	<p><u>Principle 1</u> - Democratic Member Control</p> <p>Explanation - Purpose of an audit is to facilitate member control of the cooperative by assuring affairs are being conducted in an honest and professional way, to serve this purpose, members should be empowered to select an auditor that they trust.</p>	§ 48-1, 48-3, 36, 10	<p><u>Enabling</u> – The accounts of every registered society shall be audited at least once in a year by the corporation or any such competent and registered auditor appointed by the general meeting and approved by the Registrar. General meetings include voting by all members of a registered society.</p> <p><u>Disabling</u> – The President shall appoint a public officer to be the Registrar of Cooperative Societies. So, the Registrar has the ultimate say and political influence could play a role in the appointment of an auditor.</p>	2
9a2. Does the law allow cooperative members to select an auditor of their choice?	<p><u>Principle 2</u> - Autonomy and Independence</p> <p>Explanation - Purpose of an audit is to facilitate member control of the cooperative by assuring affairs are being conducted in an honest and professional way, to serve this purpose, members should be empowered to select an</p>	§ 48-1, 48-3, 36, 10	<p><u>Enabling</u> – The accounts of every registered society shall be audited at least once in a year by the corporation or any such competent and registered auditor appointed by the general meeting and approved by the Registrar.</p> <p>General meetings include voting by all members of a registered society.</p>	1

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	auditor that they trust.		<u>Disabling</u> – The President shall appoint a public officer to be the Registrar of Cooperative Societies. So, the Registrar has the ultimate say and political influence could play a role in the appointment of an auditor.	
10a. Is the entity that adjudicates disputes independent of the agency that promotes or regulates cooperatives?	<p><u>Principle 9 - Avoid Conflicts Of Interest</u></p> <p>Explanation - Dispute mechanisms must ensure impartiality by being independent of officials with promoting or regulating cooperatives in other settings.</p>	§ 47-2, 131-2(m), 6 and 57-4	<p><u>Enabling</u> – The Minister may provide procedures for dispute resolutions of cooperatives and a third party. The Minister is responsible for promoting cooperatives in other settings.</p> <p><u>Disabling</u> – Disputes regarding by-law interpretation are referred to Registrar. Registrar arbitrates disputes regarding death/disability of a member.</p>	2
10b1. Do coops have access to courts and existing tribunals and can they voluntarily enter into alternative dispute resolution agreements?	<p><u>Principle 7 - Provide A Coherent And Efficient Regulatory Framework</u></p> <p>Explanation - Cooperatives should have equal access to the same tribunals as any other businesses to minimize duplication of resources and promote equal treatment between cooperatives and other</p>	§ 116-4	<p><u>Enabling</u> – The liquidator’s decisions may be enforced by civil suit in any court.</p> <p><u>Disabling</u> – No provisions relating to dispute resolutions outside of the Registrar and Minister.</p>	2

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	businesses.			
10b2. Do cooperatives have access to courts or existing tribunals and can they voluntarily elect to use alternative dispute resolution mechanisms?	<p><u>Principle 8 - Protect Due Process of Law</u></p> <p>Explanation - Cooperatives should have equal access to the same tribunals as any other businesses to minimize duplication of resources and promote equal treatment between cooperatives and other businesses.</p>	§ 116-4	<p><u>Enabling</u> – The liquidator’s decisions may be enforced by civil suit in any court.</p> <p><u>Disabling</u> – No provisions relating to dispute resolutions outside of the Registrar and Minister.</p>	2
11a. Does the law provide for the dissolution and distribution of assets after dissolution of a coop?	<p><u>Principles 3 &amp; 8: Voluntary Membership and Due Process</u></p> <p>Explanation - Cooperatives are voluntary organizations which have the right to cease to exist, as well as the right to be formed; law should ensure that any dissolution is truly voluntary, with adequate notice and procedures</p>	§ 97, 101 and 102	<p><u>Enabling</u> – Voluntary dissolution possible upon an application made by three-fourths of the members of a registered society. Upon cancellation of registration of a society, the Registrar appoints a custodian. Provides that the rules may provide for an appeal to a higher court. Many bankruptcy-type protections such as provisions against fraudulent transfers/preferences.</p> <p><u>Disabling</u> – The Registrar appoints the custodian, so the membership does not appoint the custodian. The custodian has a broad range of powers such as defending suits, determining</p>	2

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	for involving the membership.		contributions, and collecting/distributing assets, which are unchecked by the membership. Only the Registrar may impose checks on the custodian.	
11b. Does the law provide for the merger and amalgamation of coops through the definition of procedures to notify members, etc?	<p><u>Principles 3 &amp; 8</u> -- Voluntary Membership and Due Process</p> <p>Explanation - A cooperative should have the right to change its shape through mergers or amalgamations to grow and provide better services to its members, while protecting the rights of members.</p>	N/A	<p><u>Enabling</u> – None</p> <p><u>Disabling</u> – No relevant provisions</p>	0
12a. Are the laws surrounding unions/apex orgs. permissive (not requiring coop membership in them)?	<p><u>Principle 2</u> - Autonomy &amp; Independence Of Coops</p> <p>Explanation - the allowance of apex orgs can be a great support to cooperatives, however requiring membership in them or requiring certain structures can undermine</p>	§ 4(2)(v) § 17	<u>Disabling</u> - permitting the Registrar to require membership in a cooperative society. <i>E.g.</i> Registrar may advise any primary or secondary society to join Apex society by providing them with notice in writing.	1

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	the efficiency and uses of apex/unions.			
13a. Do sector specific regulations restrict cooperatively formed businesses from entering the sector?	<p><u>Principle 6 – Access to Markets</u></p> <p>Explanation - Coop businesses should be permitted to operate in any sector of the economy - from banking to utilities; the member-controlled and not-for-profit nature of cooperatives, while still being private businesses, makes them ideal for sectors even where other forms of private business have failed to serve public interests</p>	Section 22	<p><u>Enabling</u> – Section 22 provides a comprehensive list of “types of societies” which the Registrar may register – ranging from agricultural, to banking, to industrial manufacturing, to mining – along with a blanket “and such other society as may be established” grant.</p> <p><u>Disabling</u> – Section 22 does not explicitly mention utilities as a possible sector, though this would fall within the “such other society” grant. There is also no general provision guaranteeing cooperatives access to markets.</p>	3
13b1. Are there de facto barriers to entry in the sector, such as high capital reserve requirements for insurance or banking industries?	<p><u>Principles 5 &amp; 6 – Equitable Treatment and Access to Markets</u></p> <p>Explanation - Coops commonly cater to populations that are underserved by</p>	Not addressed	<p><u>Enabling</u> – The Cooperative Societies Act does not impose any specific financial or operational capacity requirements on societies seeking to do business in different sectors.</p> <p><u>Disabling</u> – Such requirements are likely covered in different statutes or regulations (<i>e.g.</i>, a society that seeks to operate a bank would</p>	4

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	<p>traditional businesses and may not be able to support the high capital requirements imposed on larger businesses</p>		<p>presumably be subject to the same capital requirements as other banks not operated by a cooperative). We have no reviewed any such statutes to confirm this. There is no indication that such requirements would be any higher, or any lower, when applied to a cooperative society.</p>	
<p>13b2. Are there de facto barriers to entry in the sector, such as high capital reserve requirements for insurance or banking industries?</p>	<p><u>Principle 6</u> – Access to Markets</p> <p>Explanation - Coops commonly cater to populations that are underserved by traditional businesses and may not be able to support the high capital requirements imposed on larger businesses</p>	<p>Not addressed</p>	<p><u>Enabling</u> – The Cooperative Societies Act does not impose any specific financial or operational capacity requirements on societies seeking to do business in different sectors.</p> <p><u>Disabling</u> – Such requirements are likely covered in different statutes or regulations (<i>e.g.</i>, a society that seeks to operate a bank would presumably be subject to the same capital requirements as other banks not operated by a cooperative). We have no reviewed any such statutes to confirm this. There is no indication that such requirements would be any higher, or any lower, when applied to a cooperative society.</p>	<p>3</p>
<p>14a1. Are new entrants to infrastructure markets (<i>e.g.</i>, electricity, telephone) granted the right to interconnect to the system through</p>	<p><u>Principle 6</u> – Access to Markets</p> <p>Explanation - Monopolies in infrastructures often</p>	<p>Not addressed</p>	<p><u>Disabling</u> – The Cooperative Societies Act does not address this issue. Presumably this is covered in either the antitrust statute or specific utilities statutes and regulations. No reason to believe that cooperatives would be treated</p>	<p>3</p>

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
regulated, non-discriminatory rates?	have strong incentives to refuse to deal with competitors or provide services at unreasonable rates		differently than other market participants.	
14a2. Are new entrants to infrastructure markets (e.g., electricity, telephone) granted the right to interconnect to the system through regulated, non-discriminatory rates?	<u>Principle 8</u> - Due Process	Not addressed	<u>Disabling</u> – The Cooperative Societies Act does not address this issue. Presumably this is covered in either the antitrust statute or specific utilities statutes and regulations. No reason to believe that cooperatives would be treated differently than other market participants.	3
15a. For regulatory systems requiring detailed financial reporting requirements, e.g., for electricity distribution utilities, are standardized reporting forms available?	<u>Principle 7</u> – Coherent and Efficient Regulatory Framework  Explanation - Standardized reporting forms enable government to more efficiently create and monitor performance benchmarks with minimal disruption to the cooperative enterprise	Not addressed in law	<u>Disabling</u> – The Cooperative Societies Act does not address this issue. Presumably each industry sector has its own regulator with its own reporting requirements, which would be governed by specific regulations.  <u>Enabling</u> – No indication that cooperatives would be treated any differently than other market participants.	2

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
15b. For systems that regulate the prices of utilities, are cooperatives exempted from price caps?	<p><u>Principle 5</u> – Equitable Treatment</p> <p>Explanation - Governments legitimately regulate the prices of for-profit monopoly utilities to protect consumers, but cooperatives do not price gouge their customers because their customers own the business and have a right to any surplus; members of utility cooperatives must have the authority to set their own rates or they may be inhibited from raising sufficient funds to support the level of service they desire</p>	Not addressed in Cooperative Societies Act. See Sections 8 & 12 of the Fair Competition Act.	<p><u>Enabling</u> – In order to enter into such an anti-competitive arrangement, you must apply for and obtain explicit government approval.</p> <p><u>Disabling</u> – The Fair Competition Act permits price-fixing agreements and other restrictive trade practices by market participants, in certain limited situations upon approval by the regulator. Cooperative societies are not explicitly exempted from such agreements.</p>	1
16a. Does the government extend loan guarantees or direct finance to assist coops that serve underserved areas?	<p><u>Principle 5</u> – Equitable Treatment</p> <p>Explanation - where cooperatives are serving underserved areas, where the costs of</p>	Section 7(1)(b); See also Sections 127 and 130 (referencing implications for societies that receive such	<u>Enabling</u> – In order to enter into such an anti-competitive arrangement, you must apply for and obtain explicit government approval. The Minister may “facilitate the financing of societies, where necessary for their establishment and management.” (§ 7(1)(b)).	3

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	<p>service provision is often higher and access to capital lower and more expensive, access to government guaranteed or provided finance may assist cooperatives price their services at levels more comparable to those of other firms</p>	<p>financial assistance)</p>	<p><u>Disabling</u> – This provision is very generic and grants broad discretion to the Minister in carrying (or electing not to carry) out this authority. Also, this grant of authority is not expressly directed to servicing underserved areas.</p> <p>In practice, is there a system in place for coops to apply for such government financing? Are there published guidelines, explaining that coops in certain sectors or servicing certain geographic regions are eligible for such financing? Without some sort of transparent regulatory framework for providing this government financing (rather than pure ad hoc Ministerial discretion), the grant in 7(1)(b) is likely not adequate.</p>	
<p>17a. Where cooperative receipts are subject to taxation, does the law differentiate between the surplus to members and the profit gained transacting with non-members?</p>	<p><u>Principle 5 - Equitable Treatment</u></p> <p>Explanation - surplus distributed to cooperative members should not be taxed as profit to the business or its members because it represents a refund from excess charges, not a distribution of profit to shareholders; income</p>	<p>Section 60(1); See also 1(g) &amp; (r) of the 2<sup>nd</sup> Schedule to the Income Tax Act</p>	<p><u>Enabling</u> – Section 60(1) of the Act empowers the President to reduce or remit the tax burden of any society.</p> <p><u>Enabling</u> – Also, the Income Tax Act excludes certain amounts from “income” under certain circumstance:</p> <ul style="list-style-type: none"> <li>• (g) For a primary cooperative society that is properly registered and is engaged in agricultural activities, home construction, distribution trade, or is a savings and credit society, and whose</li> </ul>	<p>1</p>

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
	<p>derived from sales to non-members, however, may represent profit to the business and therefore subject to the same tax norms as apply to other businesses</p>		<p>yearly income does not exceed Tshs.50,000,000, such society's income is excluded from the definition of income for purposes of the income tax.</p> <p>(r) Amounts derived by a crop fund established by farmers under a registered farmers cooperative society for financing crop procurement from its members are excluded from the definition of "income."</p> <p><u>Disabling</u> – Apparently, the Income Tax Act and the Cooperative Societies Act do not explicitly differentiate between member surplus and profit.</p>	
<p>18. Are there exemptions for coops in the competition/antitrust laws that prohibit joint actions between businesses?</p>	<p><u>Principle 5</u> - equitable treatment</p> <p>Explanation - To enable cooperative marketing associations, such associations must be exempted from competition laws that prohibit joint action of businesses, such as agreeing to prices, terms of sale, etc.</p>	<p>§ 12 of the Fair Competition Act; No addressed in Cooperative Societies Act</p>	<p><u>Enabling</u> – Section 12 of the Fair Competition Act does allow market participants to apply to the government for permission to engage in restrictive trade practices, price fixing agreements, etc. In evaluating such an application, the regulator will consider whether the agreement "is likely to result in benefits to the public." Is there any precedent where the Commission has granted exemptions to coops, or issued a block grant to coops?</p> <p><u>Disabling</u> – The Cooperative Societies Act does not address this issue. The Fair Competition Act does not expressly exempt cooperative societies from its requirements. Any exemptions appear</p>	<p>1</p>

Question	CLARITY Principle	Legal Reference	Example/Explanation	SCORE
			to be granted (if granted at all) on a case-by-case basis.	

## ANNEX B – MODEL SCORE CARD

CLARITY Principles	Protect Democratic Member Control		Protect Autonomy and Independence			Respect Voluntary Membership	Require Member Economic Participation	Promote Equitable Treatment	Promote Access to Markets	Provide Coherent and Efficient Regulatory Framework	Protect Due Process	Avoid Conflicts of Interest	
	a	b	a	b	c			a	b				
Indicators	Questions												
1 - Formation and Registration of Cooperatives			1					2			2		1
2 - Cooperatives Supervision			0					4				1	
3 - Legal status and rights			3					4	2				
4 - Membership	0		1			3							
5 - Member Governance	2	3											
6 - Officers and Directors			2	1	0								
7 - Board of Directors	1		0										
8 - Capital Accounts	3						2						
9 - Auditor	2		1										
10 - Dispute Resolution										2	2	2	
11 - Dissolution / amalgamation / merger						2					0		
12 - Apex Organizations			1										
13 - Impact of Sector-Specific Regulations								4	3	3			
14 - Access to Infrastructure Markets									3		3		
15 - Standardized Reporting								1		2			
16 - Financial Assistance								3					
17 - Tax Law								1					
18 - Competition/Antitrust Law								1					
Actual Score	11		10			5	2	22	9	6	5	4	
Maximum Score	24		40			8	4	36	12	12	12	12	
Percentage	46%		25%			63%	50%	61%	75%	50%	42%	33%	

Maximum Possible Score Cooperative Law Indicators	160
Actual Score Cooperative Law Indicators	74
Percentage	46%