



**SACCOS**

**BANKING & FINANCE ALERT**

**REVIEWING THE CONFLICTING LEGAL  
AND INSTITUTIONAL FRAMEWORK  
FOR SACCO'S IN UGANDA**

## Introduction

In Uganda, Savings and Credit Co-operatives (SACCOs) have for a long time been part of the Cooperative movement and regulated under the Ministry of Trade and Cooperatives. However, in 2016 parliament enacted a law that required licensing of SACCOs under the Ministry of Finance but no regulations were made to operationalise the Act till 4 years later. In 2020, Parliament further amended the law governing cooperatives which essentially brought back the supervision of SACCOs to the Ministry of Trade and Cooperatives thereby creating a confusing legal framework that is hard to implement practically. This article provides an overview of the growth of the Cooperative Movement and SACCOs, in Uganda, the conflicting legal framework and doctrines of statutory interpretation, compares other jurisdiction and suggests means by which the current legal impasse can be resolved.



## Historical Regulation of Cooperatives in Uganda.

The International Cooperative Alliance defines cooperatives as ‘autonomous associations of persons united voluntarily to meet common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise’.

The rise of the cooperative movement in Uganda was as a response to the unfavourable terms of trade imposed on peasants by the Asian Traders. Ugandan farmers thus sought to organise themselves in order to have a common voice in trade.

In 1920, 5 groups of farmers in Mengo met in Kampala to form the “Buganda Growers Association” whose supreme goal was: “To control the domestic and export marketing of members’ produce.” This was a big cooperative group and from that time we see cooperatives grow at a high and steady pace. Counterparts in other parts of the country shared this vision and acted accordingly.

A cooperative movement was therefore born to fight the exploitative forces of the colonial administrators and alien commercial interests which sought to monopolise domestic and export marketing.

However, the colonial gov't of the time considered the emergency of cooperatives as premature and subversive and denied them legal backing that would have enabled them, among other things, to access credit from lending institutions. Laws were instead enacted to make it an offense for any financial institution to lend money to an African farmer.

These restrictions made cooperatives to operate underground and it was not until 1945 that Britain allowed colonies to organise cooperatives. The 1946 Ordinance was enacted to enable the colonial administration to control the unions and cooperative groups that had come to existence. However, the peasant farmers saw the Ordinance as a means of increasing government control in their business and many groups refused to register under it. Those that registered were considered as stooge organizations.

In 1952, Sir Andrew Cohen came to Uganda as governor, he appointed a commission of inquiry headed by Mr. R. Dreschfield to inquire into the progress of the societies. The commission submitted its report on June 11, 1952 which stipulated that;

- It was not the function of government to guide private enterprise as doing so ,would arouse suspicion.
- The cooperative movement would be stronger if it was independent of government.
- It was a legitimate and reasonable aspirations of cooperative societies to be free of gov't control.

Basing on the aforementioned recommendations, the 1946 Cooperative Societies Ordinance was amended. This gave rise to the Cooperative Societies Act 1952- which was more accommodative and provided the frame work for rapid economic development of cooperatives in Uganda. Particularly, the 1952 Act provided for enough autonomy to make registration acceptable to the cooperative groups that had defied the 1946 ordinance. It also provided for both the elimination of discriminatory price policies and offered private African access to coffee processing. Thus, between 1952 and 1962 coop membership increased 8 fold and the tonnage of crops increased 6 fold. The co-operative turnover was nearly £9 million Pound Sterling per annum.



## The post-independence era and subsequent loss of autonomy.

By the time of Uganda's political independence in 1962, participation in cooperative activities had given a number of leaders national visibility. Their departure created leadership vacuum in the coop movement. Other aspiring politicians began to see coops as useful launching pads into politics. Hence involving people who had motives other than commitment to serving cooperatives paved way for mismanagement, nepotism and corruption in coops. This caused discontent in various rural areas and setting up of various commissions of inquiry.

The 1952 Ordinance was replaced by the Coop societies Act and Rules 1963 which restored control of society by Registrar. In 1964, a Co-operative Development Bank was formed to mobilize co-operative savings and generate funds for co-operative development. In 1970, the 1963 Act was repealed and a 1970 cooperative societies Act was put in place. This Act finally, took away all the autonomy and gave the Minister direct control over the affairs of registered cooperative societies.



# Regulation of SACCOs in Uganda

Savings and Credit Co-operatives (SACCOs) are community membership-based financial institutions that are formed and owned by their members in promotion of their economic interests. SACCOs are for promoting and mobilizing savings and extending credit and financial services to their members. Unlike other cooperatives which are formed for social or cultural purposes, SACCOs are specifically formed to extend financial services to their members.

In Uganda, SACCOs were introduced through the Uganda Cooperative Alliance Ltd (UCA) as a response to the 1990's government policy of scaling down on its participation in the cooperative movement. SACCOs were formed to work as conduits for agricultural credit and as a result, many SACCOs were formed to access that money. The rise of SACCOs was basically meant to fill the financing vacuum created by the collapse of the credit facilities which were embedded in the cooperative network. The main purpose of the SACCOs was to provide financial services based on self-reliance that is to say being able to mobilize and manage their financial activities.

Until 2016, SACCO's were registered and regulated like other Cooperatives under Cap. 112 and restricted transactions with non-members. Cap. 112 restricted provision of loans to only members and required consent of Registrar in case of non-members. The Act allowed receiving of deposits and loans from persons who are non-members under the authority of the Registrar.

There was an upsurge of SACCOs in the country which accumulated a lot of money in terms of savings. At some point, the government did not know how many SACCOs were in the country.

In 2016, the government moved to regulate SACCOs depending on their size. Parliament enacted Tier 4 Microfinance and Money Lenders Act, 2016 which provided for the licensing of small SACCOs (; below Ugx.1.5 billion in savings and Ugx.500 million institutional capital). The Small SACCO's were to be licensed by Uganda Micro Finance Regulatory Authority (UMRA). Large SACCO's (Voluntary savings exceeding Ugx.1.5 billion and institutional capital of Ugx.500 million) were to be licensed by the Central Bank.

## In 2016, SACCOs were now regulated under 3 laws as follows;

- The Cooperative Societies Act Cap 11 was only for registering the society.
- Once registered, the society which intended to carry out financial services had to apply for a license to the Uganda Micro-Finance Regulatory Authority (UMRA) as stipulated under the Tier 4 Microfinance and Money Lenders Act, 2016.
- However, if a SACCO's voluntary savings were in excess of one billion five hundred million Ugandan shillings, or its institutional capital was Q above five hundred million shillings, such a SACCO is required to obtain a license from Bank of Uganda under the Micro Finance Deposit Taking Institutions of 2003.

Once a SACCO obtained a license, the Registrar no longer had powers over it and any exercise of such power was vested in UMRA.

Conflict of laws;

The Co-operative Societies (Amendment) Bill of 2016 was debated and passed by Parliament in May 2019. The Bill was assented to by the President in January 2020 and subsequently gazetted on 20th March 2020 which marked its commencement date.

The amendment provided for the registration and supervision of SACCOS by the Registrar but this was done without causing any amendments in the Tier 4 Microfinance and Money Lenders Act, 2016 Act. This resulted in the conflict of laws governing SACCOS.

The conflict in the law can be seen at registration, supervision and liquidation of SACCOS. Whereas Tier 4 Act prohibits use of the name SACCO unless a society is licensed, the 2020 Amendment of Cap 112 provides the words "SACCO shall form part of the name of a society formed at the time of registration. The implication of Section 55A is that a society can be registered direct from inception by adopting the name SACCO but without a license to grant it such a status.

Further, Tier 4 Act provides that no other person can liquidate a SACCO other than UMRA and provides for takeover of an unsound SACCO by UMRA. However, under the amendment, the Registrar has power to place a SACCO considered unviable into involuntary liquidation One wonders in such a case, who shall take over management of the SACCO, UMRA or the Registrar?

Therefore the net effect of the amendment is that currently SACCOs are registered, developed, supervised, deregistered and liquidated by the Registrar of Cooperatives. At the same time SACCOs are licensed, regulated and supervised by the Ministry of Finance either under UMRA or Bank of Uganda.

It should be noted that even though UMRA and Bank of Uganda were given power in 2016 to license SACCOs, no regulations were enacted to operationalize the Act. Later, UMRA enacted regulations which were, interestingly, gazetted on the same day as the 2020 Amendment (30th March 2020) meaning that both the 2020 Amendment and the Regulations by UMRA commenced on the same day. UMRA further went ahead and issued guidelines for licensing of SACCOs.

## Principles of statutory interpretation.

There are two principles of statutory interpretation applicable to this situation. The first one is that; *Where the provisions of a particular Act of Parliament dealing with a particular subject matter are wholly inconsistent with the provisions of an earlier Act dealing with the same subject matter, then the earlier Act is repealed by implication.*

This would mean that the 2020 Amendment has repealed the Tier 4 Microfinance and Money Lenders Act, 2016 Act by **necessary implication**.

The second principle is; where there is a conflict between a general and specific Act, the earlier Act is not considered indirectly repealed, altered or derogated from by use of general words in a later enactment.



Almost all of the provisions on SACCOs in the Tier 4 Microfinance and Money Lenders Act, 2016 have been replicated in the amendment with necessary modifications. One of the Objects of the Bill was to ensure that all types of Cooperatives are supervised by the Registrar and brought under the Ministry of Trade.

The only provisions in Tier 4 Microfinance and Money Lenders Act, 2016 which are not replicated in the amendment are those relating to licensing, takeover, shareholding, a Reserve Fund, the SACCO Stabilisation Fund, Central Financing Facility and minimum capital requirements. On the other hand, the amendment establishes an Asset and Liability Management Committee which is mandated among others to determine minimum capital requirements.

The 2020 Amendment has further included corporative governance, dispute resolution, Credit Reference Bureau, the credit committee, dormant accounts, interest and other charges on loan, investment of society funds, the cooperative central finance fund, involuntary liquidation, and dispute resolution in savings and credit cooperative societies which are not in the Tier 4 Microfinance and Money Lenders Act, 2016.

The intention of Parliament as can be seen from the Hansard was to bring SACCO's back to the Ministry of Trade under the supervision of the Registrar. On the other hand, the purpose of licensing SACCOs' under the Tier 4 Microfinance and Money Lenders Act, 2016 was to provide for licensing and management of tier 4 microfinance institutions which include SACCOs. However, the amendment now specifically states that SACCOs shall be formed to provide financial services and shall adopt the name savings and credit co-operative societies.

Since the purpose of licensing is to be allowed to use the name SACCO, it would imply that there is no need to obtain a license from UMRA since now a SACCO can be registered purposely to offer financial services and use the name SACCO, yet this is what Tier 4 Microfinance and Money Lenders Act, 2016 prohibits in absence of a license from UMRA. This clearly repeals by necessary implication any provision relating to SACCO's under the Tier 4 Microfinance and Money Lenders Act, 2016.



## Attorney General Opinion

Due to the conflicting laws, the Attorney General provided an opinion to the Minister of Finance advancing the second principle of statutory interpretation". He noted that the intention of both laws was to regulate SACCOs but that the Cooperative Amendment Act was a general act applying to all cooperatives whereas the Tier 4 Act is a specific to licensing SACCOs.

This means that Tier 4 Act takes precedence over the Amendment. Section 109 (1) of the Tier 4 Microfinance and Money Lenders Act, 2016 expressly states that the Cooperative Societies Act Cap 112 shall not apply to SACCOs regulated except as expressly provided. Principally, the Tier 4 Microfinance and Money Lenders Act, 2016 regulates "financial services" for which, in order to operate, a license must be obtained.

However, the Attorney General does not consider the fact that S. 109 of Tier 4 Act clearly mentions the provisions in Cap 112 that are applicable to SACCOs. Since Tier 4 was enacted in 2016, it cannot be said to extend further to the new provisions contained in the 2020 Amendment with respect to SACCOs. Construing S. 109 as such would imply that the said provisions including the extensive ones on corporate governance under the 2020 Amendment are redundant, simply put, Parliament wasted time to include them since S. 109 would exclude them.

## The need for a license

It must be noted that in Uganda's financial sector, every institution that wishes to offer financial services must always obtain a license. Examples include banks under the Financial Institutions Act, and micro finance deposit taking institutions under the Micro Finance Deposit Taking Institutions Act 2003.

Even though there are overlapping issues, the provisions of the Cooperative Societies (Amendment) Act, 2019 on SACCOs, do not expressly or impliedly provide for the licensing of SACCOs. This means that SACCOs still need to obtain a license in order to offer financial services. To this extent, the two legislations act separately and parallel.

However, there are serious practical difficulties on how the two laws, in their current state, can operate separately and parallel. UMRA can insist that in order to operate "financial services", a SACCO must obtain a license. After all, licensing is post-registration under the Cooperative Societies Act Cap 112 and the Registrar can do nothing about it.

## Comparing other jurisdictions.

There are a number of countries in Africa, Europe and South America that have cooperatives which provide financial services to their members. It is therefore important to briefly review prominent ones and how they regulate SACCOs.

The first one is our neighbor Kenya, which is considered as the model jurisdiction on regulation of SACCOS as it has “the most vibrant and strongest societies in Africa.” In Kenya SACCOS are regulated under the Co-Operatives Societies Act Cap 490, SACCO Societies Act and The SACCO Societies (Deposit- Taking SACCO Business) Regulations, 2010. SACCOS are under the SACCO Societies Regulatory Authority as the regulatory body.

Importantly is the composition of this body which comprises of; (a)the chairman to be appointed by the Minister, the Permanent Secretary to the Treasury, the Commissioner, the Governor of the Central Bank four members, with knowledge and experience, in co-operative practice and management among other qualifications. From this, the regulation of SACCOS in Kenya, recognizes the unique nature of SACCOS as cooperatives rather than pure financial institutions.

In Tanzania, SACCOS are part of micro finance institutions and regulated by the Bank of Tanzania which delegates its authority to the Commission headed by the Registrar. Similarly, the body which governs SACCOS in Rwanda is the National Central Bank of Rwanda. In Malawi SACCOS are considered part of financial institutions and are regulated and supervised by the Registrar of financial institutions who is in fact the Governor of the Reserve Bank of Malawi. However, registration and licensing is done by the Registrar of Cooperatives under the Financial Cooperatives Act 2011.

In Brazil, SACCOS are known as credit cooperatives and are regulated by the Central Bank of Brazil which has full powers to conduct supervision at all stages, from licensing up to issuing the decree that initiates the resolution of a financial cooperative. Financial cooperatives in China are regulated and supervised by the China Banking Regulatory Commission largely in the same way as commercial banks. Further in France and Germany, financial cooperatives (FC) are licensed as a “mutual or cooperative bank” the European Central Bank (ECB).

From the above jurisdictions, SACCOS are referred to by different names, as either credit unions or financial cooperatives. However, one important element manifests through; there must be a single body mandated with registration and licensing of SACCOS.



## Registrar's wide discretionary powers

The 2020 Amendment of Cap 112 gives more power to the Registrar with respect to registration, supervision, control of SACCOS. Unlike other licensing bodies, such as UMRA and BOU, the office of the Registrar of Cooperatives is not a big department with enough personnel to be able to supervise all Cooperatives in the country. The powers under the 2020 Amendment extend to appointment of internal and external auditors, vetting of all persons proposed as directors of SACCOS, power to vet all persons proposed as directors of SACCOS and control over management of SACCOS by removing from office a chairperson, director or the chief executive of a SACCO if satisfied in the public interest.

However, there have been incidents where the Registrar had abused this discretionary power and was challenged in Courts wherein it has been found that the Registrar has abused his powers.



*In Tweyambe & Anor v Attorney General & Anor (Miscellaneous Cause-2019/395) [2020] UGHCCD 35 (14)* High Court found that the Registrar had acted illegally, irrational and procedurally improper when he suspended the Chairman Board and General Secretary of Uganda Cooperative Alliance Ltd without consulting the Board as provided for under S, 52 of Cap 112. Court found that the said officials had been removed from office yet they had done nothing wrong.

A similar situation happened to Bugisu Cooperative Union where the Registrar dismissed the Board and took many years without having it replaced. The Registrar's actions were challenged in the Constitutional Court in the case *Nathan Nandala Mafabi and 3 Others v Attorney General (Constitutional Petition-2012/46)*. The Constitutional Court recently delivered a ruling wherein it declared several provisions of Cap 112 which give the Registrar a lot of discretionary power as unconstitutional. These powers include approval of auditors, approval of budget, determining when a society should receive deposits, how to invest and power suspend the Board and officers of a society. The Constitutional Court found the provisions had the effect of delaying decision on the choice of auditors, brings uncertainty and an unjustified interference with the carrying on of trade and business by a society and thus declared them unconstitutional.

However, the 2020 Amendment was not part of the Constitutional Court Petition and it introduces several provisions specifically for SACCOs but the subject matter of some of these provisions is similar to those provisions declared unconstitutional. Does this mean that such provisions have been repealed by necessary implication by the Constitutional Court Ruling? At the time of writing, it was not clear whether the Attorney General had applied and/or obtained an order staying the decision of the Constitutional Court. The ruling had been earlier misinterpreted in the media as declaring all the powers of the Registrar as unconstitutional which is not the case, only a few provisions were nullified.

## Proposed solution.

The above analysis shows that the current law governing SACCOs in Uganda is confusing, and has created overlaps between different bodies which might result in an absurd clash during implementation. The law imposes on SACCOs numerous obligations owed to different bodies yet overlapping and will be hard to comply with.

There is need for a single law that caters for the interest of all stakeholders, from the SACCOs, Ministry of Trade and Ministry of Finance.

Any law to be enacted should look at the example of Kenya and set up one central body for the registration, licensing, regulation and supervision of SACCOs. A body similar to the SACCO Societies Regulatory Authority (SASRA) of Kenya be established whose composition takes into account all the stakeholders in the SACCO sector.

This can be done by elevating the current Department of Cooperative in Ministry of Trade into a Directorate with strategic functions relating to SACCOs." The Directorate can be composed of;

- a. the Governor of the Central Bank or his representative
- b. the Permanent Secretary to the Treasury or his representative;
- c. the Commissioner of Cooperatives or his representative;
- d. the Director UMRA or his representative;
- e. General Secretary UCA or a Board member of UCA
- f. One Member from UCSCU
- g. Two members, not being public officers, appointed by the Minister by virtue of their knowledge, and possession of a minimum years of experience, in co-operative practice and management, law, finance or economics;
- h. and the chief executive officer.

We believe that such a body comprising all stakeholders and still taking into account the uniqueness of SACCOs as cooperatives and the role they play in society in so far offering financial services to its members is concerned, is important to resolve the current conflict of laws.

We thus propose that a new law be enacted providing the registration, licensing, regulation and supervision of SACCOs under one statute and one regulatory body.

KAA is working closely with Uganda Cooperative Alliance Ltd on the above suggested reforms and will always be ready to engage further on this subject.

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