

CLARITY SCORECARD QUESTIONS

Question	CLARITY Principles & Explanation	Enabling & Disabling Examples	Score/ Notes	Law Reference
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1 Formation and Registration of a Cooperative Score: Article:

1a. Is a time period set for the approval of registration applications (after which there is automatic approval)?	Principle 7 – efficient regulatory framework Explanation – the default for regulatory inaction should be to approve the registration to minimize the impact of bureaucratic delay on cooperative formation	Enabling – all applications shall be finally disposed of within 30 days or assumed to be granted Disabling – statutory 6 month approval period that in practice runs into years and prohibits operation until registration is formally approved		
1b. Are registration requirements for cooperatives the same as for regular businesses?	Principle 5 – equitable treatment Explanation – How do requirements for starting a cooperative compare with requirements for starting a new business? Some groups may choose to register as an association or other type of business if it is easier and quicker than registering as a cooperative	Enabling – cooperatives are required to file with similar requirements to corporation law Disabling – there are many special requirements for formation of cooperatives that do not apply to other businesses		
1c. Are the Registrar's duties combined with other cooperatives promotion or regulation activities?	Principle 9 – conflict of interest 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	Enabling – registration functions are handled by a separate ministry than those charged with cooperative promotion and technical assistance Disabling – registrar of cooperatives is also charged with cooperative promotion, regulation and dispute mediation		
1d. Does the government impose mandatory by-laws or otherwise restrict member governance?	Principles 1 & 2 – democratic governance and autonomy Explanation – a central characteristic of a cooperative that supports their vitality is the vesting of ultimate governance of the organization in its membership	Enabling – membership has maximum ability to shape the structures and processes of the organization through bylaws, law imposes minimum requirements applicable to other businesses, such as procedures for appointing officers Disabling – mandatory by-law language is imposed for all cooperatives		

Scoring Scale – Level of Law Compliance

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2 Cooperative Supervision/Regulating a Cooperative

Score: _____ Article: _____

2a. Are cooperatives subject to the same or similar regulatory requirements as other businesses?	<p>Principle 5 – equitable treatment</p> <p>Explanation – cooperatives should be subject to similar minimal regulations as other forms of business; the main force for regulating cooperatives is member governance</p>	<p>Enabling – cooperatives are subject to the same regulator agency and laws as other businesses</p> <p>Disabling – cooperatives are subject to much more onerous reporting and oversight requirements that other private businesses</p>		
2b. Does the law protect the cooperative from government interference in cooperative business decisions?	<p>Principle 2 – autonomy and independence of cooperatives</p> <p>Explanation – cooperatives, like other businesses, should be empowered to manage their businesses free from the dictates of government officials</p>	<p>Enabling – law prohibits government interference in internal affairs of cooperatives</p> <p>Disabling – government officials are given authority to control or approve cooperative business decisions</p>		
2c. Are the regulatory and promotion functions separate offices or a separately controlled agency/institution?	<p>Principle 9 – conflict of interest</p> <p>Explanation – Entrusting the same agency with promotion and regulation could result in conflicts of interest and compromise the efficiency and fairness of regulation</p>	<p>Enabling – creation of a promotion office that gives technical assistance, but has no control over regulating cooperatives</p> <p>Disabling – One agency is granted all power over registration, promotion, and regulation of cooperatives</p>		

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3 Legal Status and Rights of a Cooperative

Score: Article:

3a.1. Is a cooperative granted the same legal rights as other businesses (the right to sue, enter into contracts, hold assets, etc.)?	Principle 2 – autonomy Explanation – Businesses form corporations in part to obtain the same legal rights to enter contracts and utilize legal processes as individuals have – known as “legal personhood.” Cooperatives, like other businesses, must have these rights to do business effectively	Enabling – an explicit statement giving the rights of individuals to cooperatives (access to courts, contracts) Disabling – Requiring government approval for entering contracts, engaging legal processes or other activities normally undertaken by individuals or corporations		
3a.2. Is a cooperative granted the same legal rights as other businesses (the right to sue, enter into contracts, hold assets, etc.)?	Principle 5 – equitable treatment Explanation – Businesses form corporations in part to obtain the same legal rights to enter contracts and utilize legal processes as individuals have – known as “legal personhood.” Cooperatives, like other businesses, must have these rights to do business effectively	Enabling – an explicit statement giving the rights of individuals to cooperatives (access to courts, contracts) Disabling – Requiring government approval for entering contracts, engaging legal processes or other activities normally undertaken by individuals or corporations		
3b. Are cooperative officials given the same legal liability as corporate officers (not held personally responsible for coop matters, unless they act fraudulently)?	Principle 5 – equitable treatment Explanation – Cooperative officials should owe fiduciary duties to the cooperative (as in corporate law), but be protected from legal responsibility (unless there was dishonesty or fraud) because it allows them to confidently represent the cooperative in all situations without fear of personal reprisal	Enabling – stating that coop personnel owe fiduciary duties to the cooperative, but are not liable (i.e. are indemnified) in the course of their duties, unless there was willful misconduct Disabling – considering law suits against cooperatives or their officers to be suits against the government		

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4 Membership in a Cooperative Score: Article:

4a. Can the government require specific individuals or groups to be members in cooperatives?	<p>Principle 3 – respect voluntary membership</p> <p>Explanation – government mandated membership undermines the democratic character of cooperatives and harms the accountability links between a cooperative and its members</p>	<p>Enabling – allowing cooperatives to set the requirements for membership and permitting (not requiring) membership based on uses of cooperative services</p> <p>Disabling – Requirement that a certain group (e.g. dairy farmers) be a member of a national cooperative</p>		
4b. Can the government dictate size and qualifications for membership in a cooperative?	<p>Principle 1 – democratic member control</p> <p>Explanation – the number and attributes of members for a given cooperative will vary depending on the goals and services of the cooperative; these decisions should be left to the members and management</p>	<p>Enabling – permits the members to determine the minimum number of members and the qualification requirements for a given cooperative</p> <p>Disabling – requires that a cooperative have at least 20 members</p>		
4c. Does the law permit government agencies to be members of cooperatives?	<p>Principle 2 – autonomy and independence of cooperatives</p> <p>Explanation – if the government was a member it would not provide the independence needed for the cooperative to be considered a private organization</p>	<p>Enabling – banning a member of the cooperative regulatory authority from being an officer or director of a cooperative</p> <p>Disabling – allowing the cooperative regulatory authority to appoint officers of a cooperative</p>		

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5 Member Governance – Membership Control of a Cooperative

Score: Article:

5a. Does the law require one-person-one-vote democratic governance?	<p>Principle 1 – democratic member control</p> <p>Explanation – unlike stock corporations, where voting shares are distributed according to capital invested in the corporation, cooperatives are governed by its members based on a one-person-one-vote principle</p>	<p>Enabling – each cooperative member has only one vote, which may be voted through a variety of means (e.g. cumulative voting, etc.)</p> <p>Disabling – permitting votes to be weighted by contribution to the cooperative</p>		
5b. Does the government require the business records to remain open to inspection by members?	<p>Principle 1 – democratic member control</p> <p>Explanation – access to information on the operation of the cooperative is necessary for members to effectively perform their role as the owners and governors of the cooperative</p>	<p>Enabling – requiring the cooperative to make its records, auditing reports and other essential information available to any member upon request</p>		

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6 Regulating Officers & Directors of Cooperatives Score: Article:

6a. Does the government have the authority to dictate the roles and responsibilities of management?	<p>Principles 1 & 2 – democratic control and autonomy</p> <p>Explanation – the members of the cooperative should remain responsible for defining the division of roles between the board of directors and management (e.g. through the bylaws) depending on the nature of the sector in which they do business</p>	<p>Enabling – gives members the authority to define the responsibilities of the Board of Directors and Management</p> <p>Disabling – dictates the adoption of generalized structures for governance that may be at odds with business necessity</p>		
6b. Does the government have power to appoint or remove officers of a cooperative?	<p>Principle 2 – autonomy and independence of cooperatives</p> <p>Explanation – cooperatives must remain responsible to members, who should be the sole electors of the Board and Management, not to government officials</p>	<p>Enabling – giving all authority to appoint officers and directors of the cooperative to members</p> <p>Disabling – granting the cooperative regulatory authority power to appoint or remove officers of the cooperative</p>		
6c. Does the government retain power to dictate or supervise cooperative financial arrangements?	<p>Principle 2 – autonomy and independence of cooperatives</p> <p>Explanation – subject to auditing requirements, cooperatives should have complete autonomy over their expenditures and investments like other businesses.</p>	<p>Enabling – granting full discretion over financial management decisions, subject to financial audits</p> <p>Disabling – mandating certain expenditures or investments or requiring government approval for financial decisions</p>		

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7 Regulating the Board of Directors of a Cooperative Score: Article:

7a. Does the government have the authority to appoint or remove members of the Board of Directors?	Principle 1 – democratic member control Explanation – the board should be responsible to the members who elect them, not to the government or any other outside entity	Enabling – all responsibility for electing or removing directors belongs to the cooperative’s members Disabling – cooperative regulator has authority to appoint or remove board members		
7b. Can the government dictate the size of the Board	Principle 2 – autonomy and independence of cooperatives Explanation – the size (above the minimum number for decision making, e.g. 3) of a Board of Directors should be determined by the members through bylaws; the appropriate number will depend upon factors internal to the cooperative and should not be dictated by government	Enabling – the board shall be elected in the number determined by the bylaws and be at least three members Disabling – requiring the Board be no less than five members and no more than nine members		

8 Capital Accounts Score: Article:

8a. Is the surplus income from cooperatives distributed according to patronage of the cooperative rather than capital investment?	Principle 4 – require member economic participation Explanation – a key distinction between cooperatives and share holding companies is that in cooperatives surplus income (i.e. profits) are distributed according to use of the cooperative rather than capital invested	Enabling – requirement that after deducting operating expenses and costs, the remainder of proceeds shall be distributed to members according to the ratio of their patronage to the total patronage of the cooperative Disabling – permitting the cooperative to distribute surplus income according to capital invested in the cooperative		
8b. Does the government mandate distributions to funds for capital, reserves, education or other activities?	Principle 1 – democratic member control Explanation – although investments in reserves, education and other purposes may be prudent and should be permitted and encouraged, mandating specific contribution levels sacrifices democratic member control and may be unwise in specific circumstances	Enabling – law allows, but does not require, the creation of reserves and distribution to educational funds Disabling – requiring a cooperative to put at least 25% of its annual surplus into a reserve or educational fund		

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9 Regulating the Auditor

Score: Article:

9a1. Does the law allow cooperative members to select the auditor of their choice?	<p>Principle 1 – 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>	<p>Enabling – requiring the auditor to report to and be elected by the general members</p> <p>Disabling – giving the cooperative regulator the authority to conduct an audit or appoint an auditor itself</p>		
9a1. Does the law allow cooperative members to select the auditor of their choice?	<p>Principle 2 – 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 auditor that they trust</p>	<p>Enabling – requiring the auditor to report to and be elected by the general members</p> <p>Disabling – giving the cooperative regulator the authority to conduct an audit or appoint an auditor itself</p>		

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10 Regulations Regarding Dispute Resolution			Score:	Article:
10a. Is the entity that adjudicates disputes independent of the agency that promotes or regulates cooperatives?	Principle 9 – avoid conflicts of interest Explanation – dispute mechanisms must ensure impartiality by being independent of officials with responsibilities for promoting or regulating cooperatives in other settings	Enabling – empowering an independent mediator office with no cooperative oversight responsibilities to handle disputes between cooperatives or between a cooperative and a third party Disabling – referring all disputes involving cooperatives to the cooperative registrar or cooperative regulator		
10b1. Do cooperatives have access to courts and existing tribunals and can they voluntarily enter into alternative dispute resolution agreements?	Principle 7 – efficient regulatory framework Explanation – cooperatives should have equal access to the same tribunals as any other businesses to minimize the duplication of resources and promote equal treatment between cooperatives and other businesses	Enabling – permitting cooperatives full access to the courts as any other business Disabling – mandating that all disputes involving a cooperative be brought before the registrar or cooperative regulator or are considered a dispute with the government		
10b2. Do cooperatives have access to courts and existing tribunals and can they voluntarily enter into alternative dispute resolution agreements?	Principle 8 – due process Explanation – cooperatives should have equal access to the same tribunals as any other businesses to minimize the duplication of resources and promote equal treatment between cooperatives and other businesses	Enabling – permitting cooperatives full access to the courts as any other business Disabling – mandating that all disputes involving a cooperative be brought before the registrar or cooperative regulator or are considered a dispute with the government		
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11 Regulation of the Dissolution, Amalgamation & Merger of Cooperatives

Score: Article:

11a. Does the law provide for the dissolution and distribution of assets after dissolution of a cooperative?	<p>Principles 3 & 8 – voluntary membership and due process</p> <p>Explanation – cooperatives are voluntary organizations which have the right to cease to exist as well as to form; law should ensure that any dissolution is truly voluntary with adequate notice and process involving the membership</p>	<p>Enabling – the law permits dissolution and provides for procedures for notifying all members to approve the action and fairly distributing all assets of the business to the members</p> <p>Disabling – lack of provision for how to dissolve a cooperative</p>		
11b. Does the law provide for the merger and amalgamation of cooperatives through the definition of procedures to notify members, etc?	<p>Principles 3 & 8 – 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>	<p>Enabling – including the procedures needed to complete a merger & member rights to abstain from membership in the new society</p> <p>Disabling – lack of provision for cooperatives to merge or amalgamate</p>		

12 Regulation of Apex Organizations for Cooperatives

Score: Article:

12a. Are the laws surrounding unions/apex organizations permissive (not requiring cooperative membership in them)?	<p>Principle 2 – autonomy and independence of cooperatives</p> <p>Explanation – the allowance of apex organizations can be a great support to cooperatives, however requiring membership in them or requiring certain structures can undermine the efficiency and uses of apex/unions.</p>	<p>Enabling – allowing cooperatives to create structures that will promote, train and provide resources to cooperatives themselves</p> <p>Disabling – permitting the government to mandate membership in a cooperative union</p>		
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