

Analysis of the differences between SCOPs and SCOPCAs

David Hiez, University du Luxembourg, david.hiez@uni.lu
Willy Tadjudje, University du Luxembourg, willy.tadjudje@uni.lu

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The OHADA lawmakers appear to have established SCOPs to integrate para-cooperative structures¹, and let “classic” cooperative be organized under the form of a SCOPCA. Such distinction had been considered wisely, and therefore lawmakers have instated more flexible rules for SCOPs, in compliance with the pre-existing national rules, while setting stricter norms for SCOPCAs.

Reading the uniform act, though, it appears that no rule is stated as to the choice between the two forms, which means that cooperators are free to choose. Besides, it is not certain that the uniform act triggers the disappearance of para-cooperative structure insofar as the uniform act only targets cooperatives and must be construed as abrogating only the provisions regarding the “cooperatives”, which para-cooperative organizations are not exactly, as they frequently take another name (CIGs in Cameroon, for instance).

The aim of that analysis is to underline the differences between the two cooperative forms so as to provide cooperatives with guidelines. In any case, when amending their articles so as to make it compliant with the UA, cooperatives must choose between, the SCOP and the SCOPCA. This analysis may also interest para-cooperative structure wishing to transform into cooperative companies and which would therefore have to choose between either cooperative forms.

At first sight, we find that SCOPs are meant for lesser cooperatives and SCOPCAs for larger cooperatives. Saving and loan cooperatives, for instance, would rather take the form of SCOPCAs due to their sometimes large quantity of members as well as the financial importance of their operations. Likewise, SCOPCAs are most costly than SCOPs due to the numerous institutions they might be in need of, as seen below.

This analysis is not exhaustive but tries to list the most important elements of differentiation between the two forms, along two axes:

Axis 1 : Incorporation

Minimal number of cooperators

SCOPs: 5 natural or legal persons (Article 204 UA-SC).

SCOPCA: 15 Natural or legal persons (article 267 AU-SC).

Incorporation deed, deposit of funds

In SCOPs, monies coming from the payment of shares must be deposited **immediately** with a licenced banking establishment (Article 213 AU-SC), while in SCOPCAs, members must do so within **eight days** (Article 274 UA-SC). Besides these requirements as to the timing, the lawmakers have added supplemental provisions for SCOPCAs, notably, the obligation for the depositing person to provide the banking establishment, on depositing the funds, with a list mentioning the identity of subscribers and the amount contributed by each; the society being obliged to communicate a list of subscribers to each requesting person.

Likewise, the lawmakers have made thing easy for the SCOPs by diversifying the varieties of financial institutions with which the funds may be deposited: banks, savings and credit cooperatives, postal cheque centres,..., while no such specification exists as to SCOPCAs, even if it is generally stated that the deposit may be made with any institution licensed by national law to receive such funds.

¹ Such as CIGs in Cameroon or groups in Guinea or in Burkina Faso.

Axe 2 : Organisation and functioning

The SCOPCA as legal frame for unions and federations

Unlike cooperatives, unions and federations do not have any choice. Furthermore, in case their statutory provisions are not sufficient, the UA-SC lets the SCOPCA rules apply. Thus, unions and federations are governed by the SCOPCA rules and the SCOPS rules are ineligible.

- Organs

Organs of SCOPCs and SCOPCAs do not follow the same terminology.

A classic distinction opposes control organs and management organs. The difference as to control organs is merely nominal: « supervisory commission » in SCOPCs and “supervisory board” in SCOPCAs. Rules applicable thereto are almost identical.

As to management organs, the role is held in SCOPCs by the management committee and by the board of directors in SCOPCAs. The management committee comprises three natural (not legal) persons *at most* but this number may be increased to five if the cooperative reaches one hundred members (Article 223), while the board of directors is composed of three directors *at least*, and twelve at most, persons whether they be natural or legal persons (Article 295).

Besides, the SCOPCA may add new organs such as a statutory auditor, a contribution auditor or a manager.

- Quorum and majority at general meetings

During OGMs, in both SCOPCs and SCOPCAs, decisions may be taken only if half of the members are present, on first convening. However, in SCOPCs, no quorum is required on second convening, absent any contrary provision in the articles, while the presence of one-quarter of the members of the SCOPCA is required in such case (though the articles of the SCOPCA may set a lower quorum in such case where the society has at least one thousand members (Article 364 UA-SC).

A Simple majority is generally required in SCOPCAs and in SCOPCs, but in the latter case, the dismissal of the chairman and members of the management committee requires a two-third majority (Article 244 UA-SC).

- Information rights

The UA-SC sets forth a right to information which extent is broader in SCOPCAs than in SCOPCs. In SCOPCs, it takes the form of a permanent right to be informed of all society matters and a right to be communicated any and all documents likely to enlighten the member, prior to any general meeting (Articles 237 and 238).

IN SCOPCAs, these rights appear stronger and broader, as the lawmakers have set detailed rules at Articles 351 and 352, listing whole sets of document accessible to members, under specific condition.

- Cumulating mandates

Rules on cumulating mandates are stricter in SCOPCAs than in SCOPCs.

In SCOPCs, the chairman of the management committee may be elected as director of a SCOPCA but not as chairman of the board of directors and, likewise as member of other management committees but not as chairman.

However in SCOPCAs, directors may not be elected as directors of other cooperatives having their registered seat in **the same member State** (but may be members of management committees in SCOPCs). Otherwise, they shall have to choose one mandate and renounce the other.

As to the chairman of the board of directors, he may not serve as a chairman of the board or of the management committee in other cooperatives located *in the same member State*. Likewise, in its capacity as director, *he may not serve as a director of another SCOPCA having its registered seat in the same Member State*. Otherwise, he shall have to choose one mandate and renounce the other, though he may serve as a member of another management committee, but not as its chairman.