

JOINING FORCES FOR E-COMMERCE

HOW SMALL AFRICAN FIRMS SUCCEED WITH
COLLABORATIVE BUSINESS MODELS



Joining forces for e-commerce

How small African firms succeed with collaborative business models

About the paper

Micro, small and medium-sized enterprises in Africa can tackle e-commerce barriers such as formalization, e-payments and delivery by joining forces through collaborative business models. This paper examines the pros and cons of three models – associations, consortiums and cooperatives – and finds that cooperatives are the most suitable to connect small African firms to cross-border e-commerce.

By working together, these companies can pool their resources, address competition issues and jointly develop new market opportunities online. Governments have a vital role to play by ensuring that business-friendly conditions are in place to enable the private sector to capitalize on these opportunities.

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Foreword

Connecting small firms to cross-border e-commerce matters, because these firms make up the majority of businesses and employ the most workers in the manufacturing and services sectors. When micro, small and medium-sized enterprises become more competitive and do business across borders, it can have a direct impact on more and better jobs, higher incomes and inclusive economic development.

By making it possible for companies to scale across global markets without having to invest in a significant physical presence in multiple countries, the internet has helped small businesses export to an unprecedented degree.

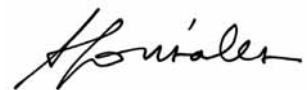
But while we have seen many cases of such micro-multinationals trading internationally from emerging economies, there are still far too few from Africa. ITC's experience across Africa, including in the West African Economic and Monetary Union and in Rwanda, Senegal and Kenya, have shown us the practical difficulties encountered by local firms wishing to engage in e-commerce. We saw how small companies find it challenging to take part in cross-border e-commerce without access to soft and hard infrastructure, market knowledge and e-payment services. Export procedures, customs regulations and compliance with tax, privacy and payment norms present additional burdens.

Despite the challenges, I am optimistic about the opportunities for African e-commerce to flourish. For one, the trend lines are pointing in the right direction. Africa is home to nine of the world's 15 fastest-growing economies. In Nigeria, 32 million people started to use the internet between 2012 and 2015. The rapid adoption of smartphones combined with the world's youngest population means Africa places first in global internet penetration growth, with digital connectivity rising from 167 million to 412 million people in the last five years.

We know that young people are more inclined to accept digital solutions, and with the rise of the middle class in Africa, the willingness to buy online will only increase in the coming years. Women entrepreneurs are also increasingly finding success in going digital, as it often removes some of the gender barriers that offline selling can perpetuate.

Governments have a crucial role to play by ensuring that business-friendly conditions are in place to enable the private sector to capitalize on the opportunity.

But how can the private sector respond and deliver the opportunity for small firms? We believe that by working together, companies can pool their resources, address issues of competitiveness and jointly develop new market opportunities online. This paper explores how the use of associations, consortiums or cooperatives finds new application in the era of e-commerce and adds an incentive for small firms to take part in the formal – and digital – economy.



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Acronyms

Unless otherwise specified, all references to dollars (\$) are to United States dollars, and all references to tons are to metric tons.

GIE	Groupement d'intérêt économique
ICA	International Cooperative Alliance
ICT	Information and communications technology
ITC	International Trade Centre
ILO	International Labour Organization
LDC	Least developed country
MSME	Micro, small and medium-sized enterprise
OHADA	Organization for the Harmonization of Commercial Law in Africa

Executive summary

Running an international e-commerce business is a complex operation requiring a good understanding of new technologies, business processes, and complex payment, shipping and customs practices.

Micro, small and medium-sized enterprises in developing and least developed countries are at a particular disadvantage in meeting these requirements. They may suffer from poor information and communications technology infrastructure, have inadequate technical and business skills, and lack access to information, international payment solutions and competitive logistics. What can be done to address these challenges?

This paper presents options for groups of small firms to work together to achieve success in e-commerce. By 'joining forces', enterprises can benefit from an efficiency in scale, such as sharing access to facilities at a lower cost per enterprise or negotiating better rates for services (such as logistics).

There are many other potential benefits – including the ability to promote goods collectively (perhaps even under a shared brand through an e-commerce platform) or set up representative structures in foreign markets that are able to negotiate better distribution arrangements.

To do so successfully, enterprises must adopt some degree of formalized organization. This paper considers the three most typical structures: associations, consortiums¹ and cooperatives.

Associations are voluntary member-based organizations that can be informal or formal, with consequent increases in documented processes and governance. They are relatively easy to set up, but have a significant limitation: they are not able to engage in commercial transactions. Firms grouped in an association may coordinate their activities for e-commerce, such as sharing technologies and training, but they cannot sell or engage in contracts for logistics and payment solutions on behalf of members.

Consortiums regroup enterprises for a common purpose, such as shared manufacturing processes. Consortiums are more formal than associations, but still cannot enter independently into commercial transactions. The consortium is unable to earn profits or have losses, and liabilities are shared among member firms. So, for instance, an e-commerce consortium could be established for a group of enterprises selling under a common brand. The consortium could promote its members collectively, but each member would make sales independently. Consortiums are relatively easy to set up and member firms retain their independence.

A **cooperative** is a grouping of businesses (or people) in a democratically controlled enterprise that is owned and managed by its members – with one vote per member. The cooperative may enter into business arrangements, including selling goods or signing contracts on behalf of members. It is more challenging to set up, not least because members must agree to relinquish part of their independence.

Of the three forms of collaborative structures reviewed, the **cooperative model** offers small business the broadest range of possibilities to act on behalf of the collective interest. For instance, a cooperative can set up jointly owned logistics facilities on behalf of members and negotiate good transport rates. It can sign up to international payment solutions and collect online payments. And it can enter into agreements to handle duties and taxes in foreign markets in the most efficient way. Cooperatives also have the benefit of limited personal and financial liability, which reduces the risk of undertaking new projects.

Establishing a successful collaborative structure to engage in e-commerce may not be a straightforward matter. Enterprises seeking the benefits of working together must agree to governance structures and management processes that require significant trust among members.

Africa in focus

Business collaborations are possible and take place anywhere in the world, but the particular focus of this paper is Africa – which is generally far behind in the development of e-commerce, especially across borders. A number of initiatives are under way to support the continent's development of digital trade – from

¹ The French term *groupement d'intérêt économique* (GIE) or economic interest group is commonly used in many parts of Africa, and is used interchangeably with 'consortium' in this paper.

investments in information and communications technology infrastructure, regional trade policy and legislation to support efforts (including those of the International Trade Centre) to build relevant capacities among African stakeholders. The contribution of this paper is to explain how groups of small firms in Africa can help themselves by acting together in a structured manner, and to present some case studies illustrating where this has been done.

In Africa, the cooperative model remains largely associated with farming operations (for the purpose of buying raw materials) and far less with commercial activities. In effect, trust has been difficult to build among small enterprises. This paper presents case studies showing where this has started to change – and how small companies in Africa may be helped in setting up one of these collaborative business models.

This paper also provides practical information on how such structures can be created, managed and dissolved in different parts of Africa, with a special focus on the Organization for the Harmonization of Commercial Law in Africa, as well as international principles and best practices.

Recommendations

The basic legal frameworks are in place in all countries, but more could be done to promote formal business collaboration for e-commerce. We recommend that local institutions concerned with e-commerce, which may be chambers of commerce or e-commerce associations, advocate and take charge of initiatives to make greater use of these models.

Promote awareness of the advantages that result when small businesses work together to solve collective challenges for e-commerce.

Create an enabling environment that facilitates the establishment and registration of such structures, including simplified administration, access to support and better information, and fiscal incentives to formalize and develop shared structures.

Establish pilot programmes to demonstrate the potential for businesses to collaborate on initiatives related to e-commerce and encourage local entrepreneurs to follow suit.

Provide direct support to e-commerce collaborations, such as subsidizing shared infrastructure at low or no cost, while ensuring fair competition and access to the facilities.

Share best practices through case studies and testimonials from experienced entrepreneurs in both online and offline networks.

INTRODUCTION

E-commerce can boost economic activity in developing and least developed countries (LDCs), offering the opportunity to tap wider international markets without many of the traditional constraints. The benefits of e-commerce are particularly relevant to micro, small and medium-sized enterprises (MSMEs). According to the International Trade Centre's Global MSME Competitiveness Survey, more than 80% of respondents that engage solely in e-commerce are micro and small-sized firms.²

Moreover, e-commerce offers opportunities to women-owned enterprises that are not available in more traditional business environments. The share of women-owned firms doubles when moving from traditional offline trade to cross-border e-commerce.³ For Africa, three out of four firms trading exclusively in e-commerce identified themselves as women-owned.

E-commerce is no panacea, however. Worldwide, businesses have had to grapple with new technologies, business processes, payment methods and logistics and shipping requirements related to establishing their businesses online. MSMEs in developing countries and LDCs are particularly disadvantaged, due to information gaps, high costs, difficulties in accessing payment solutions and underdeveloped digital infrastructure.

Without waiting for solutions to arrive from outside, what can enterprises themselves do to overcome these challenges?

There is an old African proverb that says: 'If you want to go fast, go alone. If you want to go far, go together.' With this inspiration, the paper focuses on how collective structures can help improve the ability of small firms to compete online, reducing costs and opening access to services that would otherwise be out of reach.

This paper refers to these collective structures as 'collaborative business models' – established with the purpose of enabling participating firms to reduce their individual costs and serve their mutual interests. It highlights how and when collaborative business models can be effective and the issues that need to be considered.

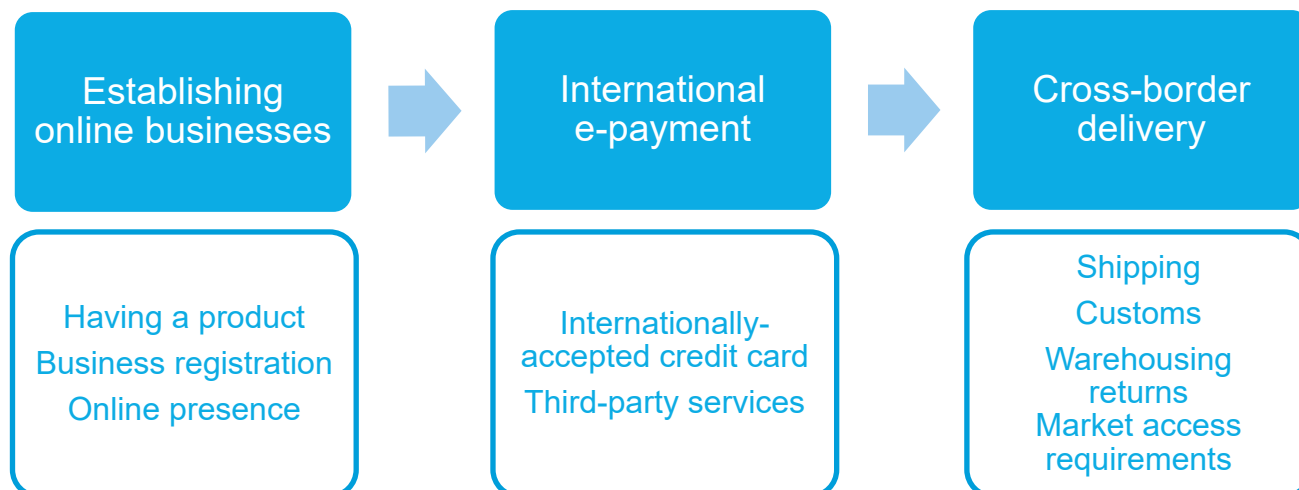
² International Trade Centre (2017). *New Pathways to E-commerce: A Global MSME Competitiveness Survey*, p. 4.

³ *Ibid.*: 5.

CHAPTER 1: TACKLING START-UP, PAYMENT AND SHIPMENT

This chapter considers how collaboration in its broadest sense can help address the main barriers that micro, small and medium-sized enterprises (MSMEs) face in the different stages of the e-commerce process chain.

Figure 1 Stages of collaboration in the e-commerce process chain⁴



Obstacles to setting up an online business

Business registration

Unregistered businesses are effectively precluded from cross-border e-commerce. Proof of registration is usually required to open a company bank account, enlist third-party financial service providers or open a seller account on an e-commerce marketplace. Many MSMEs in developing countries and LDCs, especially in Africa,⁵ are informal, meaning they do not comply with at least some of the regulations that apply to their activities.⁶

Results from the International Trade Centre's (ITC) Global MSME Competitiveness Survey found that MSMEs from developing and least developed countries face significant challenges early on when establishing a business, with 37% of respondents from LDCs and 34% from developing economies reporting a lack of relevant technical skills and business knowledge.⁷ Engaging in e-commerce requires significant bookkeeping and administrative hurdles that MSMEs with minimum financial literacy may find difficult to handle.

A key barrier to registration is knowledge of the process; MSMEs often lack the required basic financial literacy. Many countries have complicated and costly business registration systems that actually discourage

⁴ This is modified from *ibid.*: 9.

⁵ ITC (2015). Working Paper Series, SMEs Trade and Development in Africa, p. 3.

⁶ *Ibid.*

⁷ ITC (2017). *Op. cit.*: 5.

business people from establishing their business.⁸ Furthermore, distrust of the state and pervasive corruption as well as unwillingness to pay taxes can discourage MSMEs from formalizing operations.⁹

Various channels to establish an online presence

There are several different channels to establish an online e-commerce presence: through an e-commerce module on the company's own website, setting up a virtual shop (e.g. a page on Facebook) or selling through an e-commerce platform.

MSMEs building their own website require, at a minimum, access to fast internet, a domain name, a content developer, access to technology to make and receive payments, and compliance with the relevant regulations in the market of the consumer (such as data privacy and consumer protection). Doing so is costly, time-consuming and, for most business entrepreneurs with limited digital literacy, complicated. The number of firms engaging in e-commerce in this way is particularly low in Africa. According to a 2013 study, fewer than half of the MSMEs in Kenya had functioning websites, 30% had static websites, 22% had active interactive websites and fewer than 5% were actually engaged in online sales.¹⁰

Most small companies find the simplest option is to sell through social media.¹¹ Such an online presence can be free of charge. Others choose to sell through online marketplaces, even if the costs (fees and commissions) are high – and prohibitive to many. Opening an account on an international marketplace can be laborious and, for the small enterprises of many African countries, not possible due to origin restrictions imposed by the marketplaces. Many African MSMEs simply cannot justify the effort and high costs, and abandon the effort.

Collaboration reduces costs, simplifies administration

By working collaboratively, small firms can share the costs and navigate the informational requirements of company registration, in addition to the legal, accounting and bookkeeping fees. Issues related to informality can also be addressed. As explained in more detail below, the cooperative structure has been accredited with bringing unregistered companies into the formal economy.

Collaboration with other businesses enables MSMEs to reduce the costs of joining a marketplace by setting up shared accounts. Together, small firms can afford to promote their goods using the promotional tools offered by marketplaces.

MSMEs could also join forces to build their own joint e-commerce shop – an undertaking that may be too complex and costly alone.

Obstacles to international e-payment

Access

African MSMEs have cited failure to access internationally recognized payment systems as a major obstacle to cross-border e-commerce.¹² Although domestic e-commerce offers a wide range of payment possibilities¹³ – including cash on delivery – cross-border transactions with customers in high-value markets such as the

⁸ ITC (2016), Bringing SMEs onto the e-Commerce Highway, p. 18.

⁹ Professor Attiya from Nairobi University (September 2018). Interview with author.

¹⁰ Mutua, J., I.N. Oteyo and A.W. Njeru (2013). The extent of e-commerce adoption among small and medium enterprises in Nairobi, Kenya. *International Journal of Business and Social Science*, 4(9), p. 116.

¹¹ ITC (2016), *op. cit.*: 11.

¹² Suomien K. (2017). International E-commerce in Africa. USAID, Ecommerce Development Survey and Index, p. 13. Cited in World Economic Forum (2018), Delivering the Goods: E-commerce Logistics Transformation, p. 5.

¹³ A number of other e-payment solutions have opened up e-commerce possibilities, but they often function exclusively at national level.

European Union and the United States require sellers to have access to internationally recognized payment systems.

In a number of African countries, MSMEs can only receive payments from foreign credit card holders through costly intermediaries, as the domestic system lacks the necessary international links.¹⁴ Global platforms such as PayPal or Google Wallet offer integrated payment solutions that could overcome some of these transaction barriers. However, these services come at a cost, and are not available in all countries.

For instance, PayPal business accounts are only available in 73 countries, and MSMEs in many African countries are precluded from establishing a business account through which they can receive payments.¹⁵ These institutions are subject to stringent international agreements that require them to know the identity of their counterparts.¹⁶ As a result, services such as PayPal cannot operate in countries with inadequate systems for verifying an individual's identity and tracking the actions of corporate officers – many of them African.¹⁷

Local regulations that restrict individuals' access to a foreign bank account or impose strict limitations on foreign currency coming into the country often impede the ability of a firm to receive e-payments.¹⁸ This further limits the way MSMEs can engage in cross-border e-commerce and interact through international marketplaces.

Collaboration through a shared foreign representative

A way to help MSMEs overcome barriers to international payment solutions is by setting up a collective representative office in the United States or Europe. By registering a subsidiary or legal representation of a foreign firm in the target market, the MSMEs could open a bank account in the target market. This, in turn, would permit access to international e-commerce marketplaces and payment solutions and facilitate the handling of duties and taxes.¹⁹ While companies could consider doing this individually as well, this is often too costly and the administrative and logistical hurdles are hard to overcome for one MSME.

Obstacles to cross-border delivery

Costly logistics

Shipping costs are a key bottleneck for MSMEs interested in participating in cross-border e-commerce. High costs for shipping services, in particular postal and courier delivery, is the top challenge in cross-border e-commerce for these enterprises, followed by difficulties related to finding warehouses and delivery at destination, customs procedures and duties, lack of traceability in delivery, anticipating payable duties and preparing documentation.²⁰ The share of logistics costs in the final retail price of the product tends to be nearly double for MSMEs in developing countries compared to developed countries.²¹

Logistics is costly for MSMEs as they typically export on an ad hoc basis; i.e. each time there is an order, an individual shipment goes out. The rates offered by large express distribution companies for individual business-to-commerce packages are rarely competitive and, for low-value purchases, could easily double or even triple the product price.²² Postal operators are cheaper, but they are slower, less reliable, and

¹⁴ ITC (2015). International E-Commerce in Africa: The Way Forward, p. xi.

¹⁵ *Ibid.*: xi, 16.

¹⁶ *Ibid.*: 16.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*: 17.

²⁰ World Economic Forum (2018), *op. cit.*: 11, cited in ITC's Global MSME Competitiveness Survey 2017.

²¹ ITC (2017), *op. cit.* and *ibid.*: 11.

²² ITC (2015), *op. cit.*: 27.

generally lack traceability functions.²³ This means that MSMEs often have no choice but to use expensive courier delivery. Moreover, to engage in cross-border e-commerce, these enterprises must display shipping information on their websites and manage delays, damages and return policies.²⁴ All these activities are complex, time-consuming and expensive.

Legal and regulatory information gaps

Navigating the labyrinth of legal and regulatory hurdles is complex.²⁵ This involves issues such as calculating duties and taxes (which, in turn, requires identifying any *de minimis* thresholds as well as tariff exemptions) and ensuring compliance with regulatory requirements for products (e.g. thresholds for chemical products in garments or prohibited substances in cosmetics).

While MSMEs engaged in traditional trade must likewise navigate these challenges, they are often multiplied in the context of e-commerce. Businesses engaged in e-commerce typically target multiple markets simultaneously.²⁶ This means that this enterprise must be able to identify and comply with the different legal and regulatory requirements of end markets where it expects to have consumers. Uncertainties about customs requirements, including duties and taxes that must be paid at the border, could mean sending customers a bill retroactively, which would undermine trust.²⁷

Moreover, e-commerce makes new transactions possible, such as trade in online services, which present new regulatory questions. Indeed, firms that participated in ITC's Global MSME Competitiveness Survey identified their lack of understanding of relevant international trade rules, including modes of supply, as a significant issue.²⁸

Collaboration in shared shipping

Collaboration would enable MSMEs to cut shipping costs.²⁹ For instance, they could ship products in stock on shared pallets or in containers. In addition to lowering costs per shipment, this could reduce the time to fulfil orders. Instead of shipping individual parcels one at a time, collaboration could permit MSMEs to ship in bulk and temporarily store stocks closer to the customer. In doing so, they could access fast local delivery networks.³⁰ Replenishment of stock could be shipped through slower modes of transport.³¹ Collaboration would also allow the sharing of warehouses and other facilities.

Another option that could facilitate MSME participation in cross-border e-commerce is outsourcing delivery to third-party logistics companies. While this requires payment of a fee, it could lower logistic costs and enable companies to focus on their primary business activities.³²

The benefits of these models go beyond improved shipping and reduced fees. They would open up opportunities for MSMEs to ship heavier and more voluminous products and would significantly facilitate product return – another major obstacle these firms face.³³ Thus, collaboration would enable MSMEs to

²³ ITC (2017), *op. cit.* and World Economic Forum, *op. cit.*: 11.

²⁴ ITC (2016), *op. cit.*: 32.

²⁵ Van der Ven, Colette (2017). Entrepreneurial lawyering for digital trade. ITC International Trade Forum, p. 28.

²⁶ Ebay (2016). Small Online Business Growth Report: Towards an Inclusive Global Economy.

²⁷ World Economic Forum (2018), *op. cit.*: 11.

²⁸ ITC (2017), *op. cit.*: 7.

²⁹ ITC (2015), *op. cit.*: 26.

³⁰ *Ibid.*

³¹ World Economic Forum (2018), *op. cit.*: 7.

³² Giri, B.C. and B.R. Sarker (2017). Improving performance by coordinating a supply chain with third party logistics outsourcing under production disruption. *Computers & Industrial Engineering*, 103, pp.168–177; Samadi, B., B. Gharleghi and M. Syrymbetova (2015). An Analysis of Consumers' Trust, Logistic Infrastructure and Brand Awareness towards E-commerce Implementation in Kazakhstan. *International Journal of Business and Management*, 10 (10), pp. 96–107.

³³ ITC (2017), *op. cit.*: 26.

reduce their logistic costs, which, in turn would enable them to adopt a more efficient supply chain management model.

MSMEs would be better placed to navigate the regulatory complexity of international trade. For instance, they could organize trainings and workshops to exchange information and best practices, share resources or engage a third-party service provider. They could also opt to centralize compliance, i.e. organizing compliance with product standards on a group level, as opposed to it being done for all MSMEs individually.

Collaboration may benefit e-commerce importers in a similar manner, reducing the costs of logistics through bundling and reduced taxes, and facilitating access to suppliers and service providers.

Box 1: Cameroon and Equatorial Guinea: Companies bundle orders to reduce costs

The Foundation for the Promotion of e-Commerce in Africa is a non-profit organization that provides support to SMEs. It has organized workshops in Cameroon and Equatorial Guinea to explain the benefits of collaborating and has offered advice on the establishment of associations and consortiums to firms wishing to set up e-commerce businesses – initially aimed at supporting the import of goods.

One successful association that has been registered as a result of the foundation's work is Trade Good Malabo. This association, located in Equatorial Guinea, has 13 members that sell various products including refined oil, cosmetics, computer products, lighting products and airline tickets through online channels. The association helps by bundling orders for imports from China and Dubai for resale to the local market. A shared logistics partner transfers the products from the port in Cameroon to the island of Equatorial Guinea.

The association helps its members to find foreign partners and access local services such as accountants, tax specialists and real estate.

Sources: Interview with president of the Foundation for the promotion of e-commerce in Africa (January 2019) and correspondence with Madelle Nganou (head of research and development at Fédération Camerounaise du e-commerce).

CHAPTER 2: GETTING SPECIFIC: THREE DIFFERENT MODELS

In this section, we examine three collaborative business models and how they differ in terms of commercial purpose, taxation implications, risks and level of formality. The specifics of each model will depend on the jurisdiction, but common characteristics can be identified irrespective of the country of registration.

Association

An association is a voluntary member-based organization of businesses or individuals who cooperate to pursue common interests. Members engage in a business association to network and share information and resources; the objective is to share the benefits of working together, not for the association itself to earn profits. Typical activities carried out by associations include lobbying, information gathering, training, providing business services and market research.³⁴ In the context of e-commerce, business associations can operate marketplaces, enable businesses to share ownership of technologies, pool promotional budgets, link MSMEs to suppliers and share the costs of third-party services.³⁵

Associations can differ in level of formality. For instance, the French Civil Code – the legal system that forms the basis of legal frameworks in much of Francophone Africa – makes a distinction between incorporated and unincorporated associations.³⁶ The United Kingdom makes a distinction between unincorporated associations and charitable incorporated organizations.³⁷

Unincorporated or unregistered associations are not regarded as legal entities; rather, they are a collection of people acting together. Members may enter into contracts and take action on behalf of others in the association,³⁸ but without a legal identity, the association itself cannot open a bank account, hold assets in its own name or divide profits.

Associations can also be registered or incorporated – and are then legal entities. As a result, the association can take legal action, receive donations or grants, collect membership fees and obtain goods.³⁹ It can also own premises, but only when strictly necessary to achieve shared goals defined in the registration documents. Registered associations are the most common form.⁴⁰ In principal, associations are not subject to commercial taxes.

Setting up an association is a relatively easy and low-cost way to reap the benefits of collaboration. Registering as an association is typically simpler and less costly than other models, such as cooperatives. Enterprises keep their independence and have only a limited commitment to the functioning of the association. On the downside, associations are limited in the type of function they can undertake and cannot, for instance, engage in commercial transactions.

Consortium

A consortium (also known as a *groupement d'intérêt économique* or GIE) is typically set up in situations where businesses are operating in the same broad field, but are complementary – as opposed to being competitors. Related businesses, companies, organizations or institutions 'formally pool their efforts to enhance competitive advantage'.⁴¹

³⁴ International Labour Organization (2011). ILO Value Chain Development Briefing paper 2: The role of Cooperatives and Business Association in Value Chain Development.

³⁵ ITC (2015), *op. cit.*: xii.

³⁶ Administration Française, Guide Juridique et Fiscal (2008). L'Association Déclarée.

³⁷ Brighton & Hove City Council. Resource Centre. Legal Structures for community groups and not-for-profit organisations.

³⁸ Legal Services Commission of South Australia. (2011). Unincorporated Associations.

³⁹ Administration Française, *op. cit.*

⁴⁰ La Guide d'Associations (9ième édition).

⁴¹ Braudo, Serge. Dictionnaire du droit privé. Définition de Groupement d'intérêt économique. Available at <https://www.dictionnaire-juridique.com/definition/groupement-d-interet-economique.php>

For instance, several entrepreneurs may be interested in setting up a consortium to publicize their activities, make joint purchases or jointly respond to public tenders. A famous example of a GIE is Airbus, which used to be part of a consortium comprised of enterprises that specialized in different parts of aircraft manufacture. The GIE enabled members to collaborate in the building and commercialization of aircraft.

A consortium can be thought of as a model in between a cooperative and an association. It resembles a cooperative in the sense that its objective is to develop and support the economic activities of its members, and to improve the business. The goal is not to benefit the consortium itself, but rather its members; a consortium cannot earn profits or make losses. A consortium's control is 'generally limited to activities involving the joint endeavour, such as the division of profits'.⁴² Members receive profits as a proportion of their share in the consortium and are jointly responsible for losses incurred.

It is relatively easy to establish a consortium model and no start-up capital is required. It is not directly subject to taxes, and the cost of running a consortium is typically lower than alternatives. Members retain their financial, legal, managerial and commercial autonomy.⁴³ Disadvantages include the difficulty to restrict or limit liabilities and the restriction that consortiums cannot make commercial transactions; with no legal personality, a consortium cannot enter into contracts.⁴⁴

Cooperative

A cooperative is 'an autonomous association of persons or businesses voluntarily united to meet common economic, social or cultural needs through a democratically controlled enterprise'.⁴⁵ A cooperative is different from both capital-centred organizations (such as public limited companies) and non-profit organizations and charities.⁴⁶ It falls somewhere in between.

Any group can form a cooperative – farmers, wholesalers, retailers or workers or a combination of these. One common element that defines a cooperative is that it is owned and controlled by its members – with one vote per member. Typically, an elected board of directors runs the cooperative while regular members have voting power. Members can become part of the cooperative by purchasing shares, though the number of shares they hold does not affect the weight of their vote.⁴⁷ Members democratically decide how profit should be allocated.

Members of cooperatives can pool their resources to buy goods and services at a lower price. Participants are typically businesses operating in the same sector or industry. In many African countries, large cooperatives are mainly found in the more traditional sectors such as credit and agriculture, and smaller cooperatives in activities such as handicraft distribution, manufacturing, transport and social services.⁴⁸

By pooling supply purchases, sales and handling and selling expenses, cooperatives can operate more efficiently, at lower costs per unit than individual businesses.⁴⁹ In the context of e-commerce, platform cooperatives can be established whereby the members jointly own a marketplace. The same cost-saving principles would apply. Cooperatives offer most of the advantages of a for-profit company, while limiting personal and financial liability.⁵⁰

⁴² European University Institute (2017). What is a joint venture or a consortium? Available at <https://www.eui.eu/About/ProcurementattheEUI/FAQs/What-is-a-joint-venture-or-a-consortium>

⁴³ United Nations Industrial Development Organization (2005). Export Consortia: A tool to increase SME exports.

⁴⁴ Belfast City Council, Joint Ventures and Consortia Toolkit, p. 7.

⁴⁵ ILO (2011), *op. cit.*

⁴⁶ ILO, Henry, H. (2005). Guidelines for Cooperative Legislation, p. 19.

⁴⁷ United States Small Business Administration. See <https://www.sba.gov/business-guide/launch-your-business/choose-business-structure>

⁴⁸ ITC (2015), *op. cit.*: 5.

⁴⁹ US Department of Agriculture (1990). Farmer Cooperatives in the United States. Cooperative Information Report 1, Section 3. Available at <https://www.rd.usda.gov/files/cir1sec3.pdf>

⁵⁰ ILO, Henry (2005), *op. cit.*: 21.

Disadvantages arise from the specific features of a cooperative, such as its inability to act beyond its mandate.⁵¹ Moreover, becoming part of a cooperative means a member gives up a significant part of its autonomy.

Table 1 Characteristics of collaborative business models

	Informal Associations	Formal Associations	Consortium/GIE	Cooperatives
Ability to make profit	x	x	x	✓
Profit as main goal	x	x	x	x
Minimum capital requirement	x	x	x	x
Can receive grants	x	✓	✓	✓
Membership fee	x	✓	✓	✓
Legal personality	x	✓	x	✓
Members' liability	x	x	✓	x ⁵²
Subject to taxation	x ⁵³	x/✓	x ⁵⁴	✓
Shareholders	x	x	✓	x
Transactional capacity	x	x	x	✓

Advantages of each model and how they can help

Which one of these collaborative business models is the most advantageous for small enterprises from developing countries wishing to engage in e-commerce? The answer very much depends on the context and objectives, in particular the capabilities of the firms, the maturity of the sector in which they operate and their willingness to collaborate.

This section looks at how each collaborative business model can support MSMEs during the various stages of the e-commerce process chain (as described in Figure 1).

⁵¹ *Ibid.*

⁵² For cooperatives, personal responsibility and, in particular, financial liability are not committed beyond the number of shares subscribed.

⁵³ Although associations are not in principle subject to commercial taxes, this can differ per jurisdiction.

⁵⁴ Each member is personally liable for tax for its share.

Step 1: Establishing an online business

Formalization

Formalization is a major obstacle for many MSMEs interested in engaging in cross-border e-commerce. This is especially true in many African countries, where a large number of businesses operate in the informal economy.

Cooperatives have an important potential role to play in enabling unregistered businesses to transition into formality.⁵⁵ The members of cooperatives collectively register their cooperative and, in doing so, formalize the activities of all members.

Associations can also promote formalization by offering services to help individual enterprises become registered – such as training sessions or advisory.

Production⁵⁶

To take part in e-commerce, MSMEs must have a competitive product or service that is adapted to online sales. Working together, enterprises can access more resources – cheaper and better inputs or production machinery – and can support the development of better products. One simple example where firms can work together is sourcing better packaging for e-commerce.

Cooperating also allows companies to share access to information and knowledge – such as the compliance requirements for food safety and quality of markets such as the European Union and the United States.

Both the **consortium** and **cooperative** models enable joint purchasing activities including postharvest services (such as grading and packaging), processing, accessing agricultural loans and farm inputs (fertilizers and pesticides).⁵⁷

Associations are not adapted to the aggregation of production among members, but can provide shared services, such as training on regulatory compliance or access to financial advice.

Creating an online presence

The **cooperative** structure is probably the best adapted to run an e-commerce marketplace on behalf of member firms, as cooperatives can make sales on behalf of members and share profits accordingly. Members of such cooperatively owned platforms would own their own separate businesses, but manage and share ownership of such a platform.^{58 59}

Associations or consortiums can also set up jointly operated internet platforms but would be limited in the manner in which sales can take place: each member enterprise would sell independently and would in effect have to run their own web-shop within the platform.

Members do not need to own the platform, but can also opt to sell through online marketplaces. There is an increasing number of such platforms in developing economies and LDCs, many of which are able to propose supporting services to participating companies (including reduced rates for transportation).

⁵⁵ ILO, Organization, Representation and Dialogue, Chapter 5.4: Cooperatives: A Stepping Stone out of informality, p. 4.

⁵⁶ This section focuses on MSMEs engaged in the e-commerce of goods, not services.

⁵⁷ Coop (2018). Cooperatives in a rapidly changing world: innovation in enterprises and community.

⁵⁸ *Ibid.*

⁵⁹ Institute for Sustainable Futures (2017). The Sharing Economy in Developing Countries.

Box 2: Example of cooperatively owned marketplaceThe logo for MADEinSCOP features the word "madein" in a lowercase, sans-serif font, with "made" in red and "in" in black. To its right, the word "scop" is written in a larger, bold, lowercase, sans-serif font, also in black.

MADEinSCOP is a business platform in France that represents more than 200 cooperatives specializing in communications and creative services. The cooperatives taking part in the platform reach new clients that they would be unable to serve alone. MADEinSCOP receives requests from potential customers through its portal and consults with participating cooperatives to propose a competitive offer. With a single point of contact, MADEinSCOP acts as a facilitator for communication directors and the individual cooperatives, which are collectively able to answer to a wide range of potential needs, beyond the capability of any one member.

By organizing the cooperatives under a common brand, it is easier for the firms to build a reputation by conducting joint promotional activities. At the same time, members maintain their independence and are free to continue to promote their own services.

Source: <https://www.made-in-scop.coop/>

Box 3: Example of a speciality marketplace in AfricaThe logo for MarketPlace Africa features the words "MarketPlace" in a green, sans-serif font above the word "AFRICA" in a larger, bold, orange, sans-serif font. A stylized orange map of the African continent is positioned between the two words, with the letter 'A' in "AFRICA" partially overlapping the map.

MarketPlaceAfrica is an e-commerce site set up in partnership with DHL for certain African artisans to sell to buyers around the world. The site specializes in fashion items, such as clothing, bags, jewellery, footwear and personal care items, and checks the sellers to ensure the products are African made, of high quality and manufactured according to the standards of the Africa Made Product Association. MarketPlaceAfrica helps small and medium-sized enterprises launch an internet storefront with no startup costs, simplifies and reduces delivery costs, and lowers financial risk associated with overseas sales.

Source: <https://www.marketplaceafrica.com/>

Step 2: Accessing international e-payment systems

International e-payment

An important prerequisite to participate in cross-border e-commerce is the ability to make and receive international payments. However, many MSMEs in African countries do not have access to the most common international payment solutions.⁶⁰ By working together, small enterprises can choose from different alternatives to access such payment solutions. For instance, cooperatives or consortiums can establish a representative import entity in the target market.⁶¹ This entity, by virtue of being registered in the target market, can open a bank account in the country in which it is located. This, in turn, would open up access to international payment systems not available in the country of operation.

Associations can only play an informational or coordination role on available payment solutions. They cannot enter into legal agreements on behalf of members.

Box 4: Accessing payment tools by setting up a company in the United States

The US firm STRIPE proposes a simplified form of company registration in the United States. For a fee of several hundred dollars, it is possible to set up a US-registered company and access payment solutions in the United States. STRIPE does this by offering an online payment tool that can be integrated into e-commerce platforms. The benefit is that the entity can take international payments and access any e-commerce platform based in the United States, as well as many platforms globally.

This option is potentially very attractive – but may well still be expensive for individual small companies in developing countries. In addition, it requires an understanding of financial accounting and compliance requirements for the US market.

Source: www.stripe.com

Step 3: Setting up cross-border delivery

Logistics

Small enterprises must be able to access cost-efficient, effective logistics for cross-border delivery to engage and be competitive in extraterritorial e-commerce. Specifically, cross-border delivery includes four elements: fulfillment, shipping, customs and delivery.⁶²

MSMEs can significantly cut transportation costs by consolidating shipments. Rather than shipping out a parcel each time an order arrives, enterprises coordinate their shipments to common destinations.

A **cooperative** is particularly suitable for this type of collaboration as it allows members to share different types of logistics services, including warehousing in the target market. A **consortium** would also enable members to take advantage of shared logistics services, but it could not enter into sales arrangements and would therefore be restricted in how such arrangements could be set up. An **association** could help to negotiate better transport rates collectively on behalf of its members, but it is not well suited to running joint operations, and could not do so in foreign markets.

⁶⁰ Suominen, K. (2017), *op. cit.*, cited in World Economic Forum (2018), *op. cit.*

⁶¹ ITC (2015), *op. cit.*: 17.

⁶² ITC (2016), *op. cit.*: 31.

Box 5: Moroccan consortium evolves to support international e-business

In 2015, a group of small and medium-sized Moroccan enterprises that had been selling products through domestic e-commerce channels formed Made in Morocco, a marketplace run as a GIE. The consortium was initially formed to address two barriers the companies were facing in e-commerce: (i) shipping and packaging and (ii) marketing. The GIE created and promoted a common brand called Made in Morocco for online promotions and pop-up stores throughout Europe.

Once more than 50 companies had joined, Made in Morocco, registered as a GIE under Moroccan law, evolved to a cooperative structure required when the number of businesses in a GIE exceeds 50.

ITC helped Made in Morocco to establish a commercial presence in Europe, the United States and the United Arab Emirates. As a result, members were able to process credit card payments and repatriate earnings in a cost-effective and transparent manner. A joint agreement to outsource fulfilment operations to a service partner in France was set up, enabling consolidated shipments to arrive in Europe from Morocco and be broken down into smaller intra-European deliveries.

Source: Interview with El Amine Serhani (December 2018).

The table below summarizes the findings detailed in the section above.

Table 2 Benefits of collaborative models for different stages of the e-commerce process chain

		Association	Consortium/GIE	Cooperative
Step 1	Formalization	x/✓	x	✓
	Production	x/✓	x/✓	✓
	Online presence	✓	✓	✓
Step 2	International e-payment	x/✓	x	✓
Step 3	Logistics	x/✓	✓	✓
	Market access	✓	✓	✓
Step 4	After services	x/✓	✓	✓

In summary, the cooperative model can offer solutions to overcome barriers at all the stages in the e-commerce process chain. As long as the costs and requirements are acceptable to potential members, the cooperative model would appear offer the most to MSMEs wishing to join forces for international e-commerce.

Cooperatives also have the benefit of limited financial liability, reducing the risk of undertaking new projects. This means they may enable a group of small enterprises to explore innovative commercial and financial options to launch jointly operated e-commerce solutions.

Consortiums can help firms achieve better economies of scale, but are limited in the transactions they can carry out on behalf of members. The model would work well for companies collaborating on production and either engaging individually in their own commercial activities online or trusting promotion and distribution to an external partner.

Associations, like consortiums, are limited by their strictly not-for-profit status. Although they can facilitate establishing an online presence or name recognition and help MSMEs understand how to navigate the logistics and payment processes, they cannot easily operate an e-commerce platform on behalf of the members of the association.

This review also suggests that models may be best adapted to different stages in the business maturity of firms willing to collaborate. An association is a good place to start in grouping companies together for shared training and promotion, a consortium is beneficial when the firms are willing to work on joint sourcing and production, and a cooperative is useful for international business development.

CHAPTER 3: CREATING AND MANAGING COLLABORATIVE BUSINESS MODELS

Commercial law landscape in Africa

Having considered the benefits and implications of different business structures that can be used to facilitate e-commerce, this section provides guidance on how trade and investment support institutions can set up these structures⁶³.

The specific requirements to establish commercial or non-commercial entities can be found in commercial laws, which vary from country to country.⁶⁴ However, some common principles cut across national boundaries. As a result of colonial heritage, it is possible to identify two or three blocks of African countries (those belonging to common law, civil law and mixed jurisdictions) with similar laws and legal traditions.⁶⁵

This makes it possible to identify common legal frameworks for most of Africa, while remaining conscious of countries with different legal traditions.⁶⁶ For the purpose of this paper, we will study collaborative commercial models for African countries that follow the civil law system, mostly the French code; and African countries whose legal systems are based on English common law.⁶⁷

In Francophone Africa, the Organization for the Harmonization of African Business Laws (Organisation pour l'harmonisation en Afrique du droit des affaires, or OHADA) – which is strongly inspired by the French Civil Code – has harmonized business laws for its 17 West and Central African member states (see Figure 2).⁶⁸

This includes the adoption of a Uniform Act on Cooperatives (2010) that directly applies to OHADA member states. Given the degree of harmonization, this section will heavily draw from the OHADA framework.

Finally, and especially in the context of cooperatives, this section will also be guided by international principles and guidelines from the United Nations and International Labour Organization (ILO) that influenced the adoption of commercial laws in African countries.

⁶³ Nothing in this section should be considered as legal advice. Any entity interested in establishing a collaborative business model should seek independent legal advice.

⁶⁴ Other legal provisions may also have implications for collaborative business models. These include provisions related to taxation, labour, unfair competition and procurement, and the promotion of SMEs. Theron J. (2010). Cooperative policy and law in east and southern Africa: A review. International Labour Organization. Coop Africa Working Paper No. 18, p. 2.

⁶⁵ Mancuso, Salvatore (2007). Trends on the Harmonization of Contract Law in Africa. *Annual Survey of International & Comparative Law*, Vol. 13: Issue 1, Article 7, p. 163.

⁶⁶ African countries that have different legal traditions include Madagascar, Ethiopia, Eritrea and Mozambique.

⁶⁷ Eiselen, Sieg. (2015). Teaching transnational commercial law in the African context. *UW Austl. L. Rev.*, 40, 3, pp. 6–7. Belgian, Portuguese and Dutch law also influenced African countries' legal systems. For the purposes of this paper, however, we will focus only on commercial legal systems in Francophone countries derived mostly from the French code, and commercial systems in Anglophone countries derived predominantly from English common law.

⁶⁸ These countries are Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal and Togo.

Figure 2 Map of OHADA signatories



Formation, management and dissolution requirements

Association

Members can opt not to register their association. Indeed, registration adds costs and fees, and may involve dealing with additional bureaucracy, interference and potential corruption. However, registration enables the association to conduct transactions, open a bank account, receive membership fees and apply for grants, as well as to take legal action.⁶⁹ It is therefore advised to officially register the association.

A number of steps must be followed to set up an association. These are typically a variation of the following:

- Organize a general assembly meeting with the founding members of the association to set its objectives and review key elements for the eventual constitution;
- Prepare a constitution of the society or association;
- Appoint officials, such as the chair, secretary and treasurer;
- Provide copies of relevant forms and documents to the authorities, including minutes of the general assembly meeting; the draft constitution; details about the founding members; and information about the elected members;
- Provide a copy of the proposed physical address of the society.

No international or regional legal framework sets out key principles of business association laws. Thus, to understand formation, management and dissolution requirements, we would need to examine different laws at national level. For practical reasons, this paper analyses the requirements to establish an association in

⁶⁹ International Labour Organization (2006). *Managing Small Business Associations: Trainers' Manual*, p.75.

two representative countries: Kenya's Society Law, which is built on underlying English common law, and Senegal's approach to associations, which is built on underlying French Civil Code.

Table 3 Requirements to set up an association in Kenya and Senegal

	Kenya Societies Act ⁷⁰	Sénégal Code des Obligations Civiles et Commerciales ⁷¹
Definition	'Any club, company partnership or other association of <u>ten or more persons</u> , <i>whatever its nature or object</i> , established in Kenya or having its headquarters or chief place of business in Kenya.'	The association is a contract by which <u>two or more</u> people pool together their activities and resources need, for a <i>specific purpose other than profit sharing</i> .
Registration	Application for registration (or exemption thereof) required within 28 days of formation	Associations must be registered. Only in certain circumstances can authorities refuse registration.
Dissolution	Members <u>may not dissolve</u> the association except with the prior written consent of the registrar, under certain conditions. Registrar is permitted to cancel the registration when satisfied/satisfied beyond reasonable doubt that the society has ceased to exist.	An association is dissolved by a <u>unanimous decision of its members</u> or in accordance with the provisions in the constitution. A decision by the tribunal can also dissolve the association when (i) the constitution is invalid; (ii) in the case of disagreement among the members; (iii) for serious violations or (iv) when the goal of the society is profit.
Contents of constitution	Name and object of society; persons who may become members, rates and subscription fees for membership; method of suspension or expulsion of members; titles of officers, trustees and auditors, method of their election; composition of committees; authority for and method of filling vacancies on committees; frequency of quorums for and dates of general meetings; custody and investment of funds and property of the society; purpose for which funds may be used and the prohibition of the distribution of funds among members; inspection of books; annual or periodical audit of accounts; formation of branches; manner of amendments; manner of dissolution.	Name and object of association, seat of its establishment, when the general assembly and the administrative council meet; names, addresses, nationalities and professions of its founding members. It further notes that the objective of association must be defined with sufficient precision.

⁷⁰ The Republic of Kenya, Laws of Kenya, Societies Act, Chapter 108.

⁷¹ Sénégal, Nouveau Code des Obligations Civiles et Commerciales.

Discrimination		It is generally prohibited to discriminate against potential new members on the basis of gender, race or religion.
Registration of members	Every registered society shall keep a register of members.	
Membership fee/goods/furniture/building		Associations that are registered can receive membership fees and obtain furniture, buildings or goods that are necessary for its operation.
Book of account	Every registered society shall keep accounting records.	Not specified
Inspection of accounts	A registered society shall make its accounting records and all documents available for inspection as provided for in the constitution.	
Meeting of societies	At least once a year, a registered society should hold a general meeting.	
Annual Returns	A registered society shall annually furnish the Registrar with the annual returns and other documents.	
Winding up societies/insolvency	For societies whose registration was cancelled or that otherwise ceased to exist, the minister may appoint a person to be the receiver of that society.	

The key differences between the two jurisdictions include requirements regarding the number of people necessary to start an association, dissolution requirements and elements that must form part of a member's constitution – with Kenya being markedly more prescriptive than Senegal. Moreover, Senegalese law specifies in the definition of an association that it cannot have a for-profit objective, whereas that is absent from the Kenyan definition.

Appendixes A and B provide guidance on how a constitution should look. Appendix A sets out some common elements that are typically part of the constitution of an association, but do not adhere to a specific jurisdiction. Appendix B contains a sample constitution for Senegal, and Appendix D for Kenya. Appendix C provides sample board meetings (for Senegal) that often must be filed to create the association.

Cooperative

Most of the cooperative laws in Africa reflect the principles and values set out in international legal frameworks concerning cooperatives. ILO Recommendation No. 193 on the Promotion of Cooperatives is the most recent and most authoritative international statement with respect to cooperatives.⁷² Another important source is the Statement on the Cooperative Identity adopted by the International Cooperative

⁷² Theron, *op. cit.*: 4.

Alliance.⁷³ The values and principles set out in ILO Recommendation No. 1993 are consistent with those set out by ICA. These are described in Table 4.

Table 4 International cooperative principles and values⁷⁴

Cooperative principles	Cooperative values
<ul style="list-style-type: none"> • Voluntary and open membership • Democratic member control • Member-economic participation • Autonomy and independence • Education, training & information • Cooperation among cooperatives • Concern for community 	<ul style="list-style-type: none"> • Self-help • Self-responsibility • Democracy • Equality • Equity • Solidarity

Most countries in Africa have adopted a cooperative legal framework that is based on these international principles and values. Variations exist in the cooperative laws of African countries – some explicitly define the principles and values in the law, others entrust them to the individual cooperative.⁷⁵

As noted above, OHADA member states have adopted a Uniform Act on Cooperatives that is binding and that replaces national cooperative laws. The OHADA Uniform Act on Cooperatives is mostly based on the universal principles and values on cooperatives. This is the only regional framework in Africa that provides a commercial law framework and, as such, will be the basis of the analysis that follows.

Forming a cooperative

Several formalities must be addressed when creating a cooperative. These typically include the contribution of resources by the founding members as well as external funds; the establishment of articles of association; the adoption of the draft articles of association by a meeting of the general assembly; and the registration of the cooperative at the Registry for Cooperatives.⁷⁶

Registration is the formality by which the cooperative comes into legal existence. In the registration process, individuals/entities intending to form the cooperative must present various documents, including the minutes of the general assembly meeting with signatures of all members and copies of the articles of association.⁷⁷ The precise steps to follow in this process will differ depending on the jurisdiction in which the cooperative is set up; the advice of local legal counsel should be sought in this formation process.⁷⁸

Operations and management

Policy is set for the cooperative during general meetings, in which all members have the right to participate. Each member has one vote, regardless of how many shares are held. The Uniform Act sets out requirements

⁷³ International Cooperative Alliance (1995). Statement on the Cooperative Identity; International Labour Organization (2014). Cooperatives in Africa: Success and Challenges. p. 8.

⁷⁴ *Ibid.* and ILO (2010). Cooperative policy and law in east and southern Africa: a review, p. 5.

⁷⁵ Theron, *op. cit.*: 19.

⁷⁶ ITC (2011). Guide Juridique de l'entrepreneur au Congo: Deux cents questions pratiques pour comprendre le nouveau droit, Section 2.1.

⁷⁷ ILO, Henry, H. (2005). *Op. cit.*: 23.

⁷⁸ ITC (2011). *Op. cit.*

on quorum and majority conditions that must be met in this regard. All resolutions must be documented in minutes.

Managing the cooperative entails bookkeeping obligations in accordance with the provisions of the Uniform Act and the Uniform Act on the Harmonization of Corporate Accounting. At the end of each fiscal year, the management committee or board of directors will draw up and adopt the financial statements in accordance with the provisions set out in the Uniform Act.

Rules vary on management bodies, but they commonly require a board of directors composed of a minimum of three and a maximum of 12 members. The articles of association of a cooperative define the process for the election of directors and their term in office.

Dissolution

The Uniform Act on Cooperatives identifies reasons for which a cooperative may be dissolved. Dissolution takes place when the term stipulated as the duration of the cooperative expires; by the fulfillment or extinction of purpose; by the cancellation of the society agreement; by a decision of members under conditions that were foreseen in the articles of association; by anticipated dissolution pronounced by the competent court, upon request of one or several members for a just motive, especially in the case of disagreement between partners; following a judgement ordering the liquidation of assets of the cooperative; for any other cause stipulated in the articles of association.

Numerous other reasons also constitute grounds for dissolution, but they are less common. These include the failure of the cooperative society to start operations within two years from its date of registration; its failure to carry out statutory activities for two consecutive years; its failure for at least two consecutive years to observe provisions of the Uniform Act requiring at least two annual meetings; its failure for one year to send necessary documents to the competent authorities under the Uniform Act; or the absence of an administrative or control body for at least three months. In other words, dissolution takes place when cooperatives don't comply with the provisions in the Uniform Act, when cooperatives are stillborn and when there are no board meetings.

Economic interest groups/consortiums

The OHADA Uniform Act on Commercial Companies and the economic interest group sets out provisions regarding the establishment and functioning of a GIE. This section is based on the OHADA framework.

Forming an economic interest group

OHADA defines an economic interest group as one 'whose sole purpose is to apply, for a fixed term, all necessary resources in order to facilitate or develop the economic activities of its members, to improve or increase the turnover of its activity'.⁷⁹ It further notes that the GIE or consortium shall not be formed for the purpose of realizing profit, and may be formed without initial capital.

An economic interest group is set up through a written contract between two or more people, for a defined period of time, to facilitate or develop the economic activity of its members. It must be registered. In creating a GIE, individuals/entities are free to decide on the setup and functioning of a company, provided that they do not deviate from the common provisions on commercial companies set out in the Uniform Act on Commercial Companies and the economic interest group.⁸⁰ For example, the contract may set out clauses on the acceptance or withdrawal of members.

⁷⁹ OHADA, Acte Uniforme Révisé relative au droit des sociétés commerciales et du groupement d'intérêt économique, Art. 869.

⁸⁰ OHADA, Acte Uniforme Portant Organisation et Harmonisation des Comptabilités des Entreprises, Section 9.

The contract shall contain information on the following:

- Name of the GIE
- Name, company name legal form, addresses and, where applicable, registration number at the registry of commerce and securities for each member of economic interest group
- Duration
- Purpose
- Address of the headquarters

For ease of reference, Appendix F contains a model contract that could be used as a template for businesses trying to set up a GIE within the context of the OHADA Uniform Commercial Act.

Operations and management

The economic interest group shall take decisions during the general meeting of members, according to the conditions defined in the contract. Where the contract is silent, decisions shall be taken unanimously. Under the contract, voting power can be distributed unequally among different members. Absent any such provision, each member shall have one vote.

One or more natural persons or legal entities shall manage the GIE. If the latter, the legal entity shall appoint a permanent representative who would be liable as if he/she were director in its name. Members can organize the management of the group and appoint directors.⁸¹

The management body must draw up annual accounts and submit them to the assembly meeting for approval after an official audit. The income statement is based on activities entrusted to the GIE, with the understanding that the purpose of the economic interest group is not making profits for itself.

Dissolution

The GIE shall be dissolved (i) when its term ends; (ii) when the purpose for which it was created has been realized or no longer exists; (iii) by a decision of its members under certain conditions; (iv) by a court decision for just cause; or (v) by the death of a natural person or dissolution of a legal entity member of the economic interest group, unless otherwise stipulated in the contract. Dissolution can also occur when a member becomes legally incapacitated, personally bankrupt or banned from leading, managing, administering or controlling a business.⁸²

A GIE may be transformed into a partnership or a private limited company without resulting in dissolution or the creation of a new legal entity.⁸³

⁸¹ OHADA, Acte Uniforme Révisé relative au droit des sociétés commerciales et du groupement d'intérêt économique, Art. 879.

⁸² *Ibid.*, Arts. 883-4.

⁸³ *Ibid.*, Art. 882.

CHAPTER 4: BARRIERS TO PARTICIPATION

Getting businesses to collaborate presents many challenges, but perhaps the greatest is the need to develop and maintain trust among members. Establishing trust depends on local cultural norms and the experiences that firms have had with such structures in the past. These challenges exist for traditional business alliances as well as collaborations designed to enable e-commerce. This section examines both, and focuses on cooperatives and associations (rather than consortiums).

Building trust

There are many traditional systems of cooperation, mutuality, reciprocity and solidarity in Africa, especially in the rural areas and the informal economy.⁸⁴ These groups are usually small and based on a common bond – geography (villages), social class, ethnicity, professional background and so on. Kenya's 'chamas' are an example of informal societies through which like-minded individuals come together and invest in businesses or other types of activities.⁸⁵

Given that Africa is home to such examples of collaboration, there should be a foundation for building collaborative business models. Indeed, informal groups often form the basis of associations or cooperatives.⁸⁶ But these traditional groups can also be restrictive if they are exclusive to specific individuals on discriminatory principle. Ethnicity is often used to limit entry into certain business activities.⁸⁷

As e-commerce is a very new activity to most African businesses, it implies a greater effort to build trust in any alliance of firms. Grouping companies that already know and work with one another is the best foundation for models demanding high levels of trust. For other firms, it may be best to propose models that initially offer only limited engagement and evolve over time into stronger alliances.

Associations

Cultural barriers

Small enterprises in Africa commonly operate in the informal economy. Where groups do exist, they are usually informal associations, based on implicit trust. These firms may be unable or unwilling to create formal associations because they do not want to pay taxes to what is often perceived as a very corrupt state.⁸⁸

The advent of the digital economy in some African countries may be helping firms grow even while they remain informal. Attiya Waris, a professor at the University of Kenya, notes that entrepreneurs and small enterprises are increasingly making and receiving payments using mobile money, which does not require registration.⁸⁹

'It was difficult getting individuals and groups to believe in the power of the association, but I saw the great benefits this united team could bring and that's what always kept me motivated.'

Grace Mbugua, Founder of Ubunifu

⁸⁴ *Ibid.*

⁸⁵ Attiya Waris. Interview by author (September 2018).

⁸⁶ *Ibid.*

⁸⁷ Fafchamp, M. (2001). Networks, Communities and Markets in Sub-Saharan Africa. *Journal of African Economics* 10(2), pp. 109–142. Cited in ITC (2015), *op. cit.*: 17.

⁸⁸ Attiya Waris. Interview by author (September 2018).

⁸⁹ *Ibid.*

For registered MSMEs, a key barrier to joining an association is low confidence in the joint project. Local businesses may be sceptical about joining such projects, having seen others fail in the past. Leaders with a clear and persuasive vision and sufficient social standing in the community are needed. Motivation to join a collaborative business model should be based on an understanding of its benefits and an evaluation of its costs and risks.

Practical challenges to maintaining a collaborative structure

Once the association has been established, several challenges typically threaten its continued existence and its effective functioning:⁹⁰

- **Disappointing results:** Members join the association to enhance earnings. If they see no direct link between the activities of the association and their goal of bigger profits, they may lose motivation and cease to participate.
- **Maintaining commitment of managers:** The managers of an association are drawn from among the participating small firms. They have competing interests and may prefer to allocate more time to running their own businesses, paying too little attention to the group.⁹¹
- **Short termism:** Members mobilized around specific problems may lose interest in the success of the collaboration and have little enthusiasm for long-term goals that appear risky.
- **Membership fees** can be a source of disagreement and poor discipline. Effort needs to be made to combat the issue of 'free riders' who benefit from the activities of the group but do not contribute to its funding. An equitable method of funding must be agreed – including some form of differentiation regarding the relative ability of a member to pay.
- **Personalization:** It is not atypical for an association to be personified by its leader and dependent on his/her management decisions. Consequently, it is vulnerable to failure should that leader exit.
- **Governance** principles must be established early in the life of a collaboration, understood by all members and respected.

Cooperatives

Lessons from history

The concept of cooperatives in Africa is sometimes misunderstood; for historical reasons, they may be perceived as being tools of the state.

After independence, cooperatives were usually subject to state management and control. They were used as vehicles through which to sell agricultural products to the state marketing board, and heavily politicized. Extensive government intervention reduced cooperative self-sufficiency and members' morale to participate, and weakened the financial base of the cooperative.⁹² The cooperative movement failed to deliver. A United Nations study noted that during this time, 'rural cooperatives [...] seldom achieved the development goals set out for them by economic and social planners'.⁹³

⁹⁰ ILO, Hossenmamode, Hakim. (1998). Small businesses and professional associations in Africa: an outlook for private sector consolidation, p. 14.

⁹¹ Grace Mbugua. Interview by author (May 2018).

⁹² Pollet, Ignace (2009). Cooperatives in Africa: The age of reconstruction – synthesis of a survey in nine African countries. (ILO), p. 29.

⁹³ *Ibid.*, p. 28.

'One thing we learned in setting up an e-commerce cooperative is that in the digital age, time and reactivity are more important than large capital. It is no longer about being the biggest fish, but also about being the fastest fish.'

Mohamed Es Fih, eSolutions Adviser, ITC

During the 1980s, when a neoliberal wave swept across Africa, cooperatives were liberalized. Many of them immediately collapsed. Left without a regulatory mechanism and receiving fewer subsidies, large numbers of cooperatives suffered corruption and mismanagement.⁹⁴

In subsequent decades, the cooperative movement responded to some of these challenges. Still, the term 'cooperative' retains a negative connotation today and, for many Africans, remains synonymous with state intervention.⁹⁵

Insufficient familiarity with cooperative principles can demotivate firms from joining or actively engaging in the activities of cooperatives.⁹⁶ To encourage MSMEs to set up a cooperative for the purposes of e-commerce, it is vital to explain clearly that this is a technical concept that refers to a collaborative business structure. These enterprises must also fully understand the benefits they could expect to gain from organizing in a cooperative.

Africa's long history with cooperatives has provided insights into what it takes for a cooperative to succeed. While there is a role for regulation, too much government control is counterproductive.⁹⁷

Practical challenges

Along with the complications stemming from Africa's history with cooperatives, several practical challenges must be addressed at business level. Some important issues include:

- **Cumbersome regulation:** It is usually more complicated to register a cooperative than an association. Regulatory frameworks can impede the formation of cooperatives, as some only allow individuals (rather than businesses) to be members or limit membership to one person per household, which may result in discrimination towards women.⁹⁸
- **Attitudes towards competition and risk:** Many MSMEs may refuse to join a cooperative with competitors and are reluctant to relinquish control or ownership of part of their business activities to a larger group.⁹⁹
- **Availability of management skills:** Running a cooperative requires a minimum of capability in financial management and commercial law, even if better-financed cooperatives can access the services of professional advisers.¹⁰⁰

Hurdles to creating e-commerce cooperatives

Cooperatives are still largely confined to just a few sectors: agricultural marketing and supply, savings and credit, and sometimes housing, fisheries and handicrafts¹⁰¹ The common element that brings members together is that cooperatives operate in a similar production sector. This could also be the basis on which to

⁹⁴ Wanyama, Fredrick. Cooperatives for African development: Lessons from experience, p. 10.

⁹⁵ See, for example, Pollet, *op. cit.*: 28–29.

⁹⁶ Food and Agriculture Organization of the United Nations (1994). The Development of Independent Cooperatives in Zambia. A Case Study. Chapter 5: Cooperative Shortcomings.

⁹⁷ Wanyama, *op. cit.*: 12.

⁹⁸ ILO (2013). The Informal Economy and Decent Work: A Policy Resource Guide supporting transitions to formality.

⁹⁹ Pedrick, Clare (2017). Spotlight on Africa: Professional management for agricultural cooperatives.

¹⁰⁰ Thaba S. and C. Mbohwa. (2015). The Nature, Role and Status of Cooperatives in South African Context. Proceedings of the World Congress on Engineering and Computer Science 2015 Vol II. WCECS 2015.

¹⁰¹ Food and Agriculture Organization of the United Nations. *Op. cit.*

build some e-commerce cooperatives – for instance, a grouping of firms active in handicrafts seeking to market their goods collectively through online channels.

However, for larger scale cooperatives that would necessitate more ambitious investments, collaboration across different sectors would be necessary. Sharing logistics facilities and payment solutions would be possible for firms operating in different sectors, but would entail greater efforts to build mutual understanding and trust.

For cooperatives to work in the context of e-commerce, they need to be professionally managed and capable of taking decisions with the agility and discipline required for digital commerce. Customer expectations are particularly demanding for e-commerce, and could not be subject to decision-making by committee.

An effective e-commerce cooperative would, for instance, have to delegate operation of an export management facility to a professional team or external partner.

RECOMMENDATIONS FOR COLLABORATIVE BUSINESS MODELS

By joining forces, African entrepreneurs and small businesses can share resources and undertake joint initiatives that enable them to overcome barriers to trade and competitiveness in e-commerce.

This has happened in only a few cases; associations, consortiums and cooperatives in Africa are most commonly limited to supply-side collaboration. Adding the ambition of marketing together, through digital channels, collaborative structures can create opportunities for new sources of international business.

Every country already has the potential to do this. It would depend on very similar structures in most of Africa. Yet, a lack of awareness and understanding appears to be holding back more companies from working together in formalized structures. It is therefore recommended to promote awareness, engage in support programmes and actively share what works between local enterprises and institutions.

Foster awareness

Initiatives to improve access to e-commerce should not be limited to hard and soft infrastructure, such as digital connectivity, payments and the transportation of goods. Although these are the most common barriers cited – and deserving of attention – they can all be ameliorated to various degrees by firms working together.

Policymakers and institutions are encouraged to study models for business collaboration in their countries and promote greater use of these structures so small firms can work together on e-commerce.

Create an enabling environment

The legal environment to create associations, consortiums and cooperatives is well established and, in West Africa, is generally consistent across most countries in the region. More could be done to simplify procedures of registration, preferably supported by local institutions to advise on completing the administrative steps.

Governments may also want to explore different ways to incentivize collaborative structures and, at a minimum, ensure that their tax laws don't discourage the creation of such structures. A fiscal incentive could be cost-neutral to government if it encouraged greater business formalization and, ultimately, led to more firms paying tax.

Set up pilot programmes and workshops

The best way to raise awareness is probably one where local enterprises see the success of peers working in collaborative structures. For this reason, it is recommended to set up various pilot groupings, learn lessons and make other firms aware of the outcome. The best place to start may be with existing associations that have a positive history of working together. Their degree of formality could be increased (by registration or conversion to more sophisticated models such as cooperatives) and joint initiatives undertaken to access e-commerce.

Along with one or more pilot groups, workshops could be organized with other enterprises to explain the advantages and the process for creating their own collaborative structure. These workshops must be jurisdiction specific, because regulatory frameworks governing collaborative business models differ between countries.

Trainers should be familiar with the legal models of the countries where they are training, to ensure that they give MSMEs the technical tools to set up appropriate business structures. When possible, the training should include testimonials from peers who are active in cross-border e-commerce through associations, consortiums or cooperatives.

Support subsidized infrastructure, services

Institutional partners may want to consider supporting subsidized infrastructure or services as an additional incentive for firms to formalize and work together. For instance, shared warehousing premises could be made available at low or no cost for firms to build packaging and transport consolidation centers. To avoid problems of anti-competitiveness, the articles of the business structure should permit other local enterprises to join and benefit from the subsidy.

Share best practices

There are many lessons to be learned in successfully setting up a business collaboration. Most of these are more convincingly explained by entrepreneurs to other entrepreneurs. Experienced business people can relate stories of how trust is built and maintained – a factor that is fundamental to the success of these collaborations.

In addition to testimonials offered during training, case studies should be documented in a style accessible to entrepreneurs and made available online. Peer-to-peer exchange should be encouraged and facilitated through online and offline networks.

APPENDICES

None of the templates provided in these appendices should be relied upon when establishing collaborative business models. They are provided as guidance to provide inspiration to individuals who are in the process of establishing their organizations. They do not constitute legal advice.

Appendix A: Suggested elements for a constitution of a small business association¹⁰²

1. Establishment and objectives

- Name of the association
- Place and date of establishment
- Physical address
- Postal address
- Type of business activity
- Mission and core objectives

2. Members and conditions of membership

- List of founding members
- Membership is open to ...
- The one-time registration fee for each member is...
- The (monthly, semi-annual) membership dues are...
- Optionally, one can include a gradual system of membership dues depending on their size.
- Membership shall cease when:
 - A member submits a formal resignation letter that is accepted by majority vote of the general assembly;
 - A member fails to attend three consecutive sessions of the general assembly without good reason;
 - Proven and document actions contrary to the spirit of the constitution and rules are found and expulsion is approved by two-thirds majority of the general assembly.
- New members may be admitted by majority vote by the general assembly, acting upon a proposal from the executive committee.

3. Organization

- The association governing bodies are the general assembly of members, the executive committee, the audit committee and (depending on the size of the association) the general management.
- The general assembly of members is the supreme body of the business association and adopts its rules and regulations. It meets at least once a year to:
 - Examine the activities and finances of the previous year;
 - Evaluate the current strategy of the association and decide on the future strategy;
 - Decide how to allocate the organization's resources and benefits;
 - Approve the work plan and budget for the period ahead;
 - Decide on the appointment of the main staff;

¹⁰² This annex largely relies on ILO (2006), Managing Small Business Associations: Trainers' Manual, pp. 76–78.

- Elect the members of the executive and audit committee.
- The executive committee is in charge of the management of the business association:
 - It meets regularly;
 - It is responsible for the efficient management of activities (but can delegate responsibilities to the general management);
 - It usually comprises a president or chairperson, a vice chairperson, a treasurer, a secretary and other members;
 - It has the power to decide and set up/disband specialist components of the association, for example by establishing committees or taskforces;
 - The chairperson of the executive committee represents the business association between meetings and leads the executive committee. He/she is the legal representative of the association and, as such, shall sign acts and resolutions, contract obligations with third parties and have powers of co-signature on the association's bank account.
- The audit committee (or internal auditors or trustees):
 - Is elected by the general assembly;
 - Supervises the functioning of the business association to ensure that the executive committee runs the association in accordance with the decisions of the general assembly;
 - Is required to verify that a financial audit is carried out every year, either by the committee itself or by a professional accountant.
- The general management (optional, depending on the size and development stage of the association):
 - Consists of the general manager and other association staff members;
 - The general manager shall be responsible for putting the directives of the executive board into practice.

4. Association specific provisions

- For group enterprises, one can include provisions on share capital: surplus, equipment and liability.

5. Dissolution

- The grounds for dissolving the association shall be those provided for by the laws in force.
- In the event of dissolution, the chairperson of the executive committee shall urgently call a special session of the general assembly to appoint the liquidator.

6. Disputes

- The competent court for any dispute that cannot be settled in the general assembly shall be the court of(jurisdiction).

Appendix B: Sample constitution of an association in Senegal¹⁰³

ASSOCIATION " (...) "

ARTICLE 1:

Il est fondé entre les adhérents aux présents statut une association sénégalaise, apolitique, non confessionnelle et sans but lucratif, régie par la législation sénégalaise, et ayant pour titre: (...).

ARTICLE 2:

Cette association a pour but:

- de (...)
- de (...)
- de (...)

ainsi que toute activité pouvant se rattacher directement ou indirectement à l'objet de l'association.

ARTICLE 3:

Le siège social est fixé à Dakar, (...)

Il pourra être transféré en tout autre endroit de la République du Sénégal par simple décision du Conseil d'Administration.

ARTICLE 4:

La durée de l'association est illimitée

ARTICLE 5:

L'association se compose de:

- membres d'honneur;
- membres bienfaiteurs;
- membres actifs.

ARTICLE 6:

La qualité de membre d'honneur, bienfaiteur ou actif est conférée par le bureau au cours de l'une de ses réunions.

Tout membre du bureau peut user d'un droit de veto pour s'opposer à l'admission d'un nouveau membre.

ARTICLE 7:

- Sont membres d'honneur les personnes qui ont rendu des services signalés à l'association. Ils sont dispensés de cotisations.
- Sont membres bienfaiteurs les personnes qui versent une cotisation conséquente dont le montant est fixé chaque année par l'assemblée générale.
- Sont membres actifs les personnes qui versent une cotisation annuelle fixée chaque année par l'assemblée générale.

¹⁰³ This template is taken from Dossier Constitutif d'une Association sans but Lucratif. Available at <http://biennaledakar.org/2014/IMG/pdf/association-sans-but-lucratif.pdf>

ARTICLE 8:

Les qualités de membres d'honneurs et de membres fondateurs sont inaliénables, sauf décès ou démission.

ARTICLE 9:

Les qualités de membre actif se perdent par :

- démission;
- décès;
- radiation prononcée par le comité directeur pour non-paiement du droit d'entrée ou de la cotisation, ou pour motif grave, notamment pour conduite portant matériellement ou moralement préjudice à l'association, l'intéressé ayant été invité par lettre recommandée à se présenter devant le bureau pour fournir une explication.

ARTICLE 10:

Les ressources de l'Association se composent:

- des cotisations versées par les membres;
- des subventions de l'état et ses démembrements;
- du prix des prestations fournies par l'association;
- des autres ressources autorisées par la loi.

ARTICLE 11:

L'association est administrée par un comité directeur composé de trois à onze membres élus pour trois années par l'assemblée générale.

Ce comité directeur est renouvelable par tiers chaque année et ses membres sont rééligibles. Le conseil d'administration élit chaque année parmi ses membres, au scrutin secret, un bureau composé de :

- un président,
 - s'il y a lieu, un vice-président,
 - un secrétaire,
 - s'il y a lieu, un secrétaire adjoint,
 - un trésorier,
 - s'il y a lieu un trésorier-adjoint,
- et s'il y a lieu, un directeur technique.

ARTICLE 12:

Le comité directeur se réunit au moins une fois par trimestre et toutes les fois qu'il est convoqué par le président ou sur la demande du quart au moins de ses membres. Les décisions sont prises à la majorité des voix. En cas d'égalité, la voix du président est prépondérante.

ARTICLE 13 : ASSEMBLÉE GÉNÉRALE ORDINAIRE

L'assemblée générale ordinaire est composée de l'ensemble des membres actifs. Les membres d'honneur et les membres bienfaiteurs peuvent y assister mais ne peuvent prendre part aux votes.

L'assemblée générale ordinaire se réunit chaque année au mois de juin. Quinze jours au moins avant la date fixée par le comité directeur, les membres de

l'association sont convoqués par les soins du secrétaire.

L'ordre du jour est indiqué sur les convocations.

Le président, assisté des membres du comité directeur, préside l'assemblée et expose la situation morale de l'association.

Le trésorier rend compte de sa gestion et soumet le bilan à l'approbation de l'assemblée. Il est procédé, après épuisement de l'ordre du jour, au remplacement au scrutin secret des membres du comité directeur sortants.

Ne devront être traitées, lors de l'assemblée générale, que les questions soumises à l'ordre du jour.

ARTICLE 14 : ASSEMBLÉE GÉNÉRALE EXTRAORDINAIRE

Sur sa propre initiative, ou sur la demande de la moitié plus un des membres actifs, le président peut convoquer une assemblée générale extraordinaire, suivant les formalités prévues par l'article 13.

ARTICLE 15 : RÈGLEMENT INTÉRIEUR

Un règlement intérieur peut-être établi par le comité directeur qui le fait alors approuver par l'assemblée générale.

Ce règlement éventuel est destiné à fixer les divers points non prévus par les statuts, notamment ceux qui ont trait à l'administration interne de l'association.

ARTICLE 16 : DISSOLUTION

En cas de dissolution prononcée par les deux tiers au moins des membres présents à l'assemblée générale, un ou plusieurs liquidateurs sont nommés par celle-ci et l'actif, s'il y a lieu, est dévolu conformément à la loi.

Le secrétaire général

Le président

Appendix C: Sample minutes of the general assembly in Senegal¹⁰⁴

ASSOCIATION " (...) "

PROCÈS VERBAL DE L'ASSEMBLÉE GÉNÉRALE CONSTITUTIVE

Le (...) 20XX, à quinze heures, les membres fondateurs de l'association (...) se sont réunis à Dakar afin de procéder à l'assemblée générale constitutive. La liste des présents, qui ont donc qualité de membres fondateurs, est jointe en annexe. Monsieur (...) accepte de prendre la présidence de la réunion tandis que monsieur (...) est chargé du secrétariat.

Après une brève présentation des buts et perspectives de l'association, plusieurs résolutions sont proposées au vote des membres fondateurs présents.

PREMIÈRE RÉOLUTION : Adoption des statuts

Après lecture du projet de statuts, le Président met aux voix leur adoption. L'adoption des statuts est votée à l'unanimité.

DEUXIÈME RÉOLUTION : Election du comité directeur

Conformément aux possibilités laissées par les statuts au choix de l'assemblée générale, il est décidé à l'unanimité des voix d'élire un comité directeur de six personnes. Après appel de candidatures, les membres du comité directeur élus à l'unanimité sont:
-(...)

TROISIÈME RÉOLUTION : Election du bureau

Après discussion entre les membres nouvellement élus du comité directeur il est décidé à l'unanimité de la composition du bureau de la manière suivante:

- Président: Monsieur XX
- Secrétaire général: Monsieur YY
- Secrétaire général adjoint: Madame ZZ
- Trésorier: Monsieur II
- Trésorier adjoint: Monsieur GG

Par ailleurs, Monsieur HH, membre du comité directeur, est chargé des relations extérieures.

QUATRIÈME RÉOLUTION: Président d'honneur

Au regard de l'intérêt manifeste vis à vis des activités et projets de l'association et des multiples formes de soutien manifestées par lui, l'assemblée générale à l'unanimité des voix désigne en qualité de président d'honneur son excellence, Monsieur KK

CINQUIÈME RÉOLUTION: Règlement intérieur

L'assemblée générale, à l'unanimité confie au président ou à son délégué le soin de procéder à l'élaboration d'un règlement Intérieur.

SIXIÈME RÉOLUTION : Démarches administratives

L'assemblée générale, à l'unanimité, confie au président ou à son délégué le soin de

¹⁰⁴ This template is taken from : Dossier Constitutif d'une Association sans but Lucratif, Available from: <http://biennaledakar.org/2014/IMG/pdf/association-sans-but-lucratif.pdf>.

procéder aux diverses formalités administratives nécessaires pour donner une existence légale à l'association.

Plus rien n'étant à l'ordre du jour, la séance est levée à seize heures trente.
Et ont signé le présent procès-verbal:

Le président

Le secrétaire-général

LISTE DES MEMBRES FONDATEURS DE L'ASSOCIATION

PRÉNOM NOM DATE DE NAISS LIEU DE NAISS NATIONALITÉ

LISTE DES MEMBRES FONDATEURS DE L'ASSOCIATION

PROFESSION ADRESSE

ASSOCIATION (...)
22 RUE DE
DAKAR

Appendix D: Sample constitution of an association in Kenya¹⁰⁵

1. NAME

The name of the society shall be (...) (In this constitution referred to as ‘the society’).

2. OBJECTS

(a)

(b)

(c) etc.

NOTES: the objects should be as concise as possible, consistent with clear definition; if the Society has non-political objects, this should be stated; if it is intended that the Society should form branches, it should be so stated as one of the objects.

3. MEMBERSHIP

(a) Any over the age of 18 years shall be eligible for membership of the society and shall, subject to the approval of the committee, become a member on payment of an entrance fee of Shs.

(b) Every member shall pay a monthly subscription of Shs. not later than the 15th day of each month.

(c) Any member desiring to resign from the society shall submit his resignation to the secretary, which shall take effect from the date of receipt by the secretary of such notice.

(d) Any member may be expelled from membership if the committee so recommends and if a general meeting of the society shall resolve by a two-thirds majority of the members present that such a member should be expelled on the grounds that his conduct has adversely affected the reputation or dignity of the society, or that he has contravened any of the provisions of the constitution of the society. The committee shall have power to suspend a member from his membership until the next general meeting of the society following such suspension but notwithstanding such suspension a member whose expulsion is proposed shall have the right to address the general meeting at which his expulsions to be considered.

(e) Any person who resigns or is removed from membership shall not be entitled to a refund of his subscription or any part thereof or any moneys contributed by him at any time.

(f) Any member who falls into arrears with his monthly subscription for more than six months shall automatically cease to be a member of the society and his name shall be struck off the register of members. The committee may, however, at its discretion, reinstate such member on payment of the total amount of subscription outstanding.

4. OFFICE BEARERS

(a) The office bearers of the society shall be :

(i) The chairman

¹⁰⁵ This is taken from Biz Brokers Kenya, Free Business Registration Forms. ‘Sample Constitution for a Society in Kenya.’ Available at <http://www.bizbrokerskenya.com/Forms.html>

- (ii) The vice-chairman
- (iii) The secretary
- (iv) The assistant secretary
- (v) The treasurer
- (vi) The assistant treasurer

all of whom shall be fully paid-up members of the society and shall be elected at the annual general meeting to be held in each year (see also rule 6 (b) below).

(b) All office bearers shall hold office from the date of election until the succeeding annual general meeting subject to the conditions contained in sub-paragraphs (c) and (d) of this rule but shall be eligible for re-election.

(c) Any office bearer who ceases to be a member of the Society shall automatically cease to be an office bearer thereof.

(d) Office bearers may be removed from office in the same way as is laid down for the expulsion of members in rule 3 (d) and vacancies thus created shall be filled by persons elected at the general meeting resolving the expulsion.

5. DUTIES OF OFFICE BEARERS

(a) Chairperson - the chairperson shall, unless prevented by illness or other sufficient cause, preside over all meetings of the committee and at all general meetings.

(b) Vice-chairperson - the vice-chairman shall perform any duties of the chairperson in his/her absence.

(c) Secretary - the secretary shall deal with all the correspondence of the society under the general supervision of the committee. In cases of urgent matters where the committee cannot be consulted, he/she shall consult the chairperson or if he is not available, the vice-chairperson. The decisions reached shall be subject to ratification or otherwise at the next committee meeting. He/she shall issue notices convening all meetings of the committee and all general meetings of the society and shall be responsible for keeping minutes of all such meetings and for the preservation of all records of proceedings of the society and of the committee.

(d) Assistant secretary - in the absence of the secretary, the assistant secretary shall perform all the duties of the secretary and such other duties as shall be assigned to him/her by the secretary or committee whether the secretary is present or not.

(e) Treasurer - the treasurer shall receive and shall also disburse, under the directions of the committee, all moneys belonging to the society and shall issue receipts for all moneys received by him/her and preserve vouchers for all moneys paid by him/her. The treasurer is responsible to the committee and to the members that proper books of account of all moneys received and paid by the society are written up, preserved and available for inspection.

(f) Assistant treasurer - the assistant treasurer shall perform such duties as may be specifically assigned to him/her by the treasurer or by the committee, and in the absence of the treasurer shall perform the duties of the treasurer.

6. THE COMMITTEE

(a) The committee shall consist of all the office bearers of the society and other members elected at the annual general meeting in each year; such committee members shall hold office until the following annual general meeting. The committee shall meet at such times and places as it shall resolve but shall meet not less than once in any three months.

NOTE : Where it is the intention of the society to form branches, it may well be that some provision should be made for them to be represented on this committee. In which case the election of these representatives should be by the committee of the branch concerned.

(b) Any casual vacancies for members of the committee caused by death or resignation shall be filled by the committee until the next annual general meeting of the society. Vacancies caused by the removal of committee members from office will be dealt with as shown in rule 4 (d).

7. DUTIES OF THE COMMITTEE

(a) The committee shall be responsible for the management of the Society and for that purpose may give directions to the office bearers as to the manner in which, within the law, they shall perform their duties. The committee shall have power to appoint such subcommittees as it may deem desirable to make reports to the committee upon which such action shall be taken as seems to the committee desirable.

(b) All moneys disbursed on behalf of the society shall be authorized by the committee except as specified in rule 12 (d).

(c) The quorum for meetings of the committee shall be not less thanmembers.

8. GENERAL MEETINGS

(a) There shall be two classes of general meetings - annual general meetings and special general meetings.

(b) (i) The annual general meeting shall be held not later than in each year. Notice in writing of such annual general meetings, accompanied by the annual statement of account (see rule 11 (b)) and the agenda for the meeting shall be sent to all members not less than 21 days before the date of the meetings and, where practicable, by press advertisement not less than 14 days before the date of the meetings.

(ii) The agenda for any annual general meeting shall consist of the following:

(a) Confirmation of the minutes of the previous annual general meeting.

(b) Consideration of the accounts.

(c) Election of office bearers and the committee members (and trustees where necessary in accordance with rule 10 (c)).

(d) Appointment of auditors in accordance with rule 11 (a).

(e) Such other matters as the committee may decide or as to which notice shall have been given in writing by a members or members to the secretary at least four weeks before the date of the meeting.

(f) Any other business with the approval of the chairperson.

(c) A special general meeting may be called for any specific purpose by the committee. Notice in writing of such meeting shall be send to all members not less than seven days before the date thereof and, where practicable, by press advertisement not less than seven days before the date of such meeting.

(d) A special general meeting may also be requisitioned for a specific purpose by order in writing to the secretary of not less than members and such meetings shall be held within 21 days of the date of the requisition. The notice for such meeting shall be as shown in rule 8 (c) and no matter shall be discussed other than that stated in the requisition.

(e) Quorum for general meetings shall be not less than of the registered members of the society.

9. PROCEDURE AT MEETINGS

- (a) At all meetings of the society, the chairperson, or in his/her absence, the vice-chair, or in the absence of both these officers, a member selected by the meeting shall take the chair.
- (b) The chairperson may, at his/her discretion, limit the number of persons permitted to speak in favour of and against any motion.
- (c) Resolutions shall be decided by simple voting by a show of hands. In the case of equality of votes, the chairperson shall have a second or casting vote.

10. TRUSTEES

- (a) All land, buildings and other immovable property and all investments and securities which shall be acquired by the society shall be vested in the names of not less than trustees who shall be members of the society and shall be appointed at an annual general meeting for a period of three years. On retirement such trustees shall be eligible for re-election. A general meeting shall have the power to remove any of the trustees and all vacancies occurring by removal, resignation or death, shall be filled at the same or next general meeting.
- (b) The trustees shall pay all income received from property vested in the trustees to the treasurer. Any expenditure in respect of such property which in the opinion of the trustees is necessary or desirable shall be reported by the trustees to the committee which shall authorize expenditure of such moneys as it thinks fit.

11. AUDITOR

- (a) An auditor shall be appointed for the following year by the annual general meeting. All the society's accounts, records and documents shall be opened to the inspection of the auditor at any time. The treasurer shall produce an account of his receipts and payments and a statement of assets and liabilities made up to a date which shall not be less than six weeks and not more than three months before the date of the annual general meeting. The auditor shall examine such annual accounts and statements and either clarify that they are correct, duly vouched and in accordance with the law or report to the society in what respect they are found to be incorrect, unvouched or not in accordance with the law.
- (b) A copy of the auditor's report on the accounts and statements together with such accounts and statements shall be furnished to all members at the same time as the notice convening the annual general meeting is sent out. An auditor may be paid such honorarium for his duties as may be resolved by the annual general meeting appointing him.
- (c) No auditor shall be an office bearer or a member of the committee of the society.

12. FUNDS

- (a) The funds of the society may only be used for the following purposes :
(....)

NOTE: These purposes should be as concise as possible and must be consistent with the objects of rule 2.

- (b) All moneys and funds shall be received by and paid to the Treasurer and shall be deposited by him in the name of the Society in any bank or banks approved by the committee.
- (c) No payments shall be made out of the bank account without a resolution of the committee authorizing such payment and all cheques on such bank account shall be signed by the treasurer or the assistant treasurer and two other office bearers of the society who shall be appointed by the committee.
- (d) A sum not exceeding Shs. 100 may be kept by the treasurer for petty disbursements of which proper account shall be kept.

(e) The committee shall have power to suspend any office bearer who it has reasonable cause to believe is not properly accounting for any of the funds or property of the society and shall have power to appoint another person in his place. Such suspension shall be reported to a general meeting to be convened on a date not later than two months from the date of such suspension and the general meeting shall have full power to decide what further action should be taken in the matter.

(f) The financial year of the society shall be from 1 January to 31 December.

13. BRANCHES

Branches of the society may be formed with the approval of the committee and the registrar of societies and they will adopt the same constitution as that of the headquarters with the following exceptions:

(a) The aims and objects will not include the formation of branches.

(b) Amendments to the constitution can only be made by the headquarters of the society in accordance with the provisions of rule 14.

(c) The provisions of rule 15 shall apply to branches but, in addition, branches will not be dissolved without consultation with their headquarters.

NOTE: This rule should only be included in the constitution of the society if it wishes to form branches. See also note (iii) to rule 2 above.

(b) All such branches are required to be registered under the Societies Act, 1968, in exactly the same way as the headquarters.

14. AMENDMENTS TO THE CONSTITUTION

Amendments to the constitution of the society must be approved by at least a two-thirds majority of members at a general meeting of the society. They cannot, however, be implemented without the prior consent in writing of the registrar, obtained upon application to him made in writing and signed by three of the office bearers.

NOTE: The last sentence of this rule should not be included if the society is applying for exemption from registration.

15. DISSOLUTION

(a) The society shall not be dissolved except by a resolution passed at a general meeting of members by a vote of two-thirds of the members present. The quorum at the meeting shall be as shown in rule 8 (e). If no quorum is obtained, the proposal to dissolve the society shall be submitted to a further general meeting which shall be held one month later. Notice of this meeting shall be given to all members of the society at least 14 days before the date of the meeting. The quorum for this second meeting shall be the number of members present.

(b) Provided, however, that no dissolution shall be effected without prior permission in writing of the registrar, obtained upon application to him made in writing and signed by three of the office bearers.

(c) When the dissolution of the society has been approved by the registrar, no further action shall be taken by the committee or any office bearer of the society in connection with the aims of the society other than to get in and liquidate for cash all the assets of the society. Subject to the payment of all the debts of the society, the balance thereof shall be distributed in such other manner as may be resolved by the meeting at which the resolution for dissolution is passed.

16. INSPECTION OF ACCOUNTS AND LIST OF MEMBERS

The books of account and all documents relating thereto and a list of members of the society shall be available for inspection at the registered office of the society by any officer or member of the society on giving not less than seven days' notice in writing to the society. (This rule applies to registered societies only).

Appendix E: Annotated guidelines to drafting articles of association for simplified cooperatives under the Uniform Act on Cooperatives¹⁰⁶

This annotated guideline heavily relies upon the work done by David Hiez and Willy Tadjudje from Luxembourg University (2012). Under the Uniform Act, members have considerable freedom to determine the provisions of the cooperative. Thus, this template is not meant to constitute legal advice and to be reproduced in its exact form, but rather, serves as guidance for anyone interested in establishing a cooperative within the OHADA framework. This guideline may be adjusted or modified.¹⁰⁷

This guide provides explanations of options in red italics. Where provisions are optional, they appear in normal italics.

Title 1:

Article 1: Society form

On..., was created, between the undersigned persons and those who will join at a later stage, a cooperative society governed by the provisions of the OHADA Uniform Act on law applicable to cooperative companies. This cooperative is established under the form of a simplified cooperative society.

Article 2: Society name

The cooperative society elects the name (...), *whose acronym is (...)*, and which will be followed by SCOOP.

Article 3: Corporate Purpose

The cooperative society (...)'s purpose is to (...). In its aim, it may, in particular, pursue the following endeavors (...). Striving for the satisfaction of the economic, but also social and cultural aspirations of its members, the cooperative society may take any other action cohesive with the accomplishment of its corporate purpose, including the betterment of its community.

Article 4: Duration and registered seat

The registered seat of the (...) is located at address, city, country.

The duration of the SCOOPS is set at 99 years of its registration, with the Register of Cooperative Companies, except in case of prorogation or anticipated dissolution.

Article 5: Common 'bond' of the cooperative

All the members of the cooperative are (...).

This clause is mandatory, and defined as the element or the objective criteria which members have in common and on the basis of which they assemble.

Article 6: Compliance with principles of the cooperative

¹⁰⁶ This guideline is based on the work of David Hiez, a law professor at the University of Luxembourg, and Willy Tadjudje, a doctoral student at the University of Luxembourg (2012). Guidelines for the drafting of articles of incorporation: Template of articles of incorporation for a simplified cooperative society (SCOPS). It appears to have been translated from French, and the language is not always reliable. Available at http://www.recma.org/sites/default/files/templates_of_articles_of_incorporation_scoops.pdf

¹⁰⁷ *Ibid.*

The cooperative society is organized and run, and will engage in its activities further to the universally recognized cooperative principles, namely:

- Voluntary and open membership
- Democratic member control
- Member economic participation
- Autonomy and independence
- Education, training and information
- Cooperation between cooperative organizations
- Concern for community

Any discrimination based on gender, or ethnic, religious or political affiliation is forbidden.

These provisions are required under Article 18.

Title 2: Relation between the member and the cooperative society

Article 7: Procedures and conditions of adherence

Adherence to the cooperative society is decided upon by management committee, confirmed by the next general meeting. Its decision is effective as of the day of its receipt but may never be later than three-months after receipt of the candidacy.

On acceptance of a candidate, the chairman of the management committee shall issue an adherence document listing all elements of information appearing on the candidacy deed, signed by the member or bearing his/her fingerprint. This document shall include the member's undertaking to comply with all relevant legal, regulatory, and statutory provisions relevant to the cooperative.

Two options are available to resolve on admission, depending on whether the cooperative is open-ended (option 1) or closed (option 2).

Option 1: Any candidacy complying with the legal requirements shall be accepted by the management committee.

Option 2: For purposes of its decision, the management committee and the general meeting take into account, in particular, the candidate's majority, morality, civil and political rights, geographic area, membership of other organization.

Article 8: Rights, obligations and liability of members

The members shall have the same rights and obligations, regardless of their share in capital.

Upon joining the cooperative, the relevant member undertakes to participate in the economic activities of the cooperative for a duration of ... *starting on the day of joining the cooperative. At the end of his undertaking, the member may leave the cooperative with six months' notice. In case of lack of termination within the required period, the undertaking is continued by tacit renewal for a duration of ... years.*

Any member in compliance with the society may:

- Peruse the society's documents, in the conditions and within the limits set forth by the Uniform Act, at the registered seat of the society: articles of association, code of conduct, member's register, annual minutes etc.
- Partake in and vote at general meetings (subject to the one person, one vote rule)
- Apply to any executive position and be elected to the cooperative's organs (subject to the rules on maximum number of mandates)
- Use the services and premises of the cooperative society in compliance with its corporate purpose.

If the member is committed towards other cooperatives, they shall, in principle, either have a different corporate purpose or be located in a different territory.

This rule does not expressly appear in the Uniform Act, but is indirectly construed from the content of Article 13 (c) regarding the obligation of faithfulness of the member.

Members shall contribute to the losses to the extent of ... times the value of their shares. After leaving the society, the member remains responsible for debts which arose during the time of their membership for five years after the end thereof.

Article 11 does not provide much detail about the principle concerning the survival of the obligation to contribute to the society's debt. Here, we propose five years to balance the protection of the cooperative's credit and the liberation of the member.

Article 9: Sanctions of non-execution, penalty provisions

Non-compliance with a member's obligations, as defined in the code of conduct, shall result in the payment of said member of a penalty equal to twice the value of the defaulted obligation. Said sanction does not affect the other rights of the cooperative in connection with the default.

Penalty provisions are only useful where there exists an effective compliance mechanism

Article 10: Loss of membership

Loss of membership results from exclusion, death or the end of the conditions that had made the adherence possible.

Article 11: Departure

Two options can be considered here, depending on whether the member has entered into a service agreement with the cooperative:

Option 1: Any member regulatory registered with the cooperative may depart at the end of the adhering period, set at years. Absent such departure, his adherence is continued by tacit renewal for the same duration. When leaving at the end of the adherence agreement, the member must notify the cooperative in written form and comply with a six months' notice.

Option 2: Any member may freely leave the cooperative. Said member may notify his/her decision to the management committee in written form. Departure is effective as of one month after receipt of notice by the board.

Article 12: Exclusion

The cooperative may exclude a member for any of the following reasons:

- Non-compliance with statutory obligations, and in particular, lack of transactions with the society for the fulfillment of its corporate purpose;
- Non-payment of shares;
- Non-compliance of the obligations of loyalty and faithfulness.

Under Article 12, exclusion is freely determinable. This clause should also contain the provisions regarding the process of exclusion (resolved by management committee) and the right of the member to challenge the decision.

Article 13: Right to reimbursement in case of departure

Within a year of the date of effect of the loss of membership, the cooperative shall reimburse the shares held by the relevant member at their *nominal value*. When the management committee considers that the reimbursement of shares might jeopardize the financial health of the society, the board of directors might delay the reimbursement of shares by two years, appealable before the competent jurisdiction.

The cooperative shall also reimburse to the members all loans, including interest, and other amounts to which the member is entitled. However, the cooperative shall not be obliged to pay to the member, before the maturity date, the balance of any fixed-rate loan granted to it and whose maturity has not expired.

The leaving member shall have no right on the reserves. After leaving the society, members remain responsible for debts which arose before their departure or exclusion for *five years* from the termination of their membership. They also remain responsible for their debts towards the society.

Article 14: Demise or illness

In the case of death *or occurrence or injury which does not allow the member to continue to fulfill its obligations*, one or several heirs to the death or assigns to the illness-stricken victim may be admitted to the cooperative instead, provided that they share the same common bond.

The candidate shall address its request to the management committee in written form, which the board must resolve within three months. Silence would be tantamount to acceptance. Any refusal may only be justified by objective reason or serious motive.

Article 15: Non-adhering users

The cooperative may take actions in view of fulfilment of its purpose with non-members. Those activities may not account for more than 30% of the cooperative's activities. The income generated through activities with non-members may not be included in the calculation of any patronage refunds or interest on shares; but is necessarily allotted to the legal reserve. After three consecutive years of interacting with the society, the non-member user may petition for its adhesion to the cooperative in the same conditions as his/her heir.

Title 3: Organisation and Functioning

Article 16: Society Organs

The organs of the cooperative are the general meeting, the management committee and the supervisory committee.

Article 17: General Meeting

The general meeting is made up of all members holding shares at the date of its convening. The general meeting is the supreme deliberating organ of the society. Its decisions, if validly adopted, are applicable to all, including those absent. Any member may partake in the deliberations of the general meeting. All members are entitled to one vote, regardless of their shareholding in the society. Participation in the general meetings is personal. However, members unable to attend may vote by means of a proxy granted to a fellow member. *No members may be granted more than two proxies.*

Article 18: Section Meetings

If the cooperative has had more than 500 members since the end of a society's year, the following provisions apply: the general meeting shall follow section meetings, deliberating separately on the same agenda.

Section meetings elect delegates in a general meeting. The division of members by section shall be made by the management committee further to the geographical area, though no section meeting may exceed ... members.

Article 19: Ordinary general meeting: Convening, quorum, majority and competences

Convening: the member meeting is convened by the chairperson of the management committee or, if not able to attend, by any person appointed for such purpose. If no such action is taken, it may be convened by the supervisory board or by an umbrella organization, two months after the shareholders have unsuccessfully required the board of directors to convene the meeting.

The ordinary annual general meeting is held whenever necessary and wherever one-quarter of the shareholder so requires.

For any general meeting, members shall be convened at least 15 days before the meeting, by registered letter with delivery receipt, posters, orally, or any other appropriate means of communication. The convening note shall specify: the name of the cooperative; the address of the registered seat; the registration number; the date and time of the meeting; the location of the meeting; the nature (ordinary or extraordinary) of the meeting, and the agenda of the meeting. Where the general meeting is held pursuant to a request from the members, the chairperson of the management committee convenes it with the agenda indicated by the requesting persons.

Resolutions of the ordinary general meeting are taken with a majority of the present or represented members. Members of the management committee are dismissed by a majority of the two-third of the present or represented members. Then, the general meeting elects among its members, under the same conditions, the chairperson of the board of directors.

Minutes of the deliberations shall be drafted. These minutes shall indicate the time and place of the meeting, how such meeting was convened, the agenda, the composition of the bureau for the session, the quorum, the text of the resolution submitted to the meeting's voting and the result of the voting for each resolution, the documents and reports presented to the meeting and a summary of the debates.

Article 20: Agreements between the cooperative and one of its executive members

During the general meeting, the chairperson of the management committee presents a report on the agreements entered into between any executive or member. Such report lists the agreements subject to the meeting's approval as well as their terms. Agreements not approved by the general meeting yield, however, full effect, but the concerned member of the committee or cooperator shall suffer individually or jointly, as the case may be, the consequences of the agreement which will cause damages to the cooperative.

The directors and employees, or their spouse, parents or descendants, may not obtain loans from the cooperative society in any way whatsoever, nor be granted an overdraft, on their current account or otherwise, nor obtain guarantees from it regarding their undertaking towards third parties.

Article 21: Extraordinary general meeting

The extraordinary general meeting is convened to take particularly serious decisions, such as: amendments to the articles; transfer of the registered seat abroad; mergers, spinoffs and partial contributions assets; anticipated dissolution or prorogation of the duration of the society; liquidation, where the law demands it.

The extraordinary general meeting is convened in the same way as the ordinary meeting, and may validly deliberate only when one-third of the members are present or represented. The extraordinary general meeting votes with a majority of two-third of the valid votes, except where the law is stricter, for instance, in the case of a transfer of the registered seat to another country, or an increase in members' commitments. In these instances, the decision must be unanimous.

Article 22: Management Committee

The cooperative is managed by a management committee, comprising *three* members elected for *three years, and whose mandate is renewable*. If the number of members reaches one hundred for two consecutive years, the number of manages can be five, as needed.

On first appointment, at least one member is elected for one year, and another for two years. At the end of the mandates, they are renewed for three years, so that the management committee is never entirely renewed.

Any member regularly registered, faithful to the cooperative and able to read and write in French and English shall be eligible.

Members of the management committee may resign at all times but resignation is effective only three months after a notice thereof being sent to the chairman or to all members.

The management committee meets at least every two months and as much as needed. Minutes of the meeting must be drafted and archived in accordance to the provisions of the Uniform Act, and include at least the adopted resolutions.

Article 23: Powers and liability of the members of the management committee

The chairperson of the management committee is the cooperative's legal representative, and signs all acts in the name of the cooperative subject to the authorization of the management committee, except for usual management actions.

The chairperson chairs all meetings of the management committee and all general meetings. If unavailable, he will be replaced by any member of the management committee, or if the latter is unavailable, by one of the members of the cooperative.

Towards third parties, the management committee is vested with the broadest powers to act, in all circumstances, in the name of the cooperative society. Towards members of the cooperative, the management committee may take any management decisions in the interest of the cooperative.

The chairman and other members of the management committee are liable towards the society or third parties, for violating the provisions applicable to the cooperative's board of directors and for mismanagement.

Article 24: Supervisory board

The supervisory board is the cooperative's controlling organ. Its mission is to verify, or to have verified, at all times, the executive's management.

The supervisory board is comprised of three members elected for three years, whose mandate is renewable.

The number of supervisory board members may range from three to five. In practice, only very large cooperatives need five board members.

The supervisory board meets as often as needed, and at least once before the annual general meeting and before any extraordinary general meeting. It may access every cooperative's document and convene to its meeting any member of the board of directors or any other person. The supervisory board may convene the general meeting, which shall resolve on the required actions to be taken.

The supervisory board's decision are taken by a simple majority of its members.

Title 4: Financial resources

Article 25: Share capital – shares

The cooperative ... has a share capital set, at time of incorporation, at ... CFA Francs. *The share capital may not fall below half of that amount.* There is no maximum amount.

Each share has a value of ...francs. No member may hold more than *a fifth* of the cooperative's shares. The shares are nominate, individual, non-negotiable and cannot be seized. They are freely transferrable between members but require approval by the board of directors before they can be transferred to a third party.

Transfers are made at nominal value of the shares. The shares may be remunerated in the form of an interest at a rate that does not exceed the discount rate of the central bank of the member state. The interest may be paid only if the cooperative has made a profit that year.

Only fully paid shares may yield interest. There may be no gratuity or subsidy.

The annual general meeting, on the recommendation of the management committee and in light of the year's results, decides on whether interests will be paid and what the rate is, within statutory limits. When a profit is made but the meeting decides against paying interest, it must have a reason for that.

Article 26: Investment shares

On the recommendation of the management committee, the general meeting may decide to issue investment shares, whose value is twice that of the activity shares mentioned above. The owners of the investment shares shall be guaranteed to earn interest at least one point above that earned by the owners of activity shares, within the limits set by the law as to maximal interest considerations.

Article 27: Contributions

Each member shall make a contribution to the cooperative to acquire the quality of the shareholder. Any subscription shall be immediately paid in-full. On the subscription of the first shares, the management committee may allow distressed candidates to pay up their shares in part. Any member shall pay up 25% of the amount of the shares subscribed immediately, and the remaining amount within *three* years.

Article 28: Contributions in cash

Contributions in cash shall be paid in compliance with Article 29 below. Any unpaid amount shall be paid within three years in the terms set forth by the management committee. The annex includes a list of contributors in cash and the following information: identity, amount of contribution, number and value of the shares received in consideration of the contribution. If the payment of the shares is late, the amounts owed to the society yield interest at the legal rate, starting on the day when the payment should have occurred, with no prejudice to the existence of damage.

Contributions in cash, when made on the occasion of a collective capital increase, may be realized by compensation with a liquid, certain and payable receivable against the cooperative.

Article 29: contributions in kind

Contributions in kind consist of the transfer to the society of rights on goods, whether movable or immovable, corporal or incorporeal. These assets must be useful for the fulfilment of the corporate purpose, and may not consist of food supplies or other goods of daily use. Contributions in kind shall be paid up in full on the issuance of the related shares. The contributing member evaluates contributions in kind in agreement with the cooperative's management committee. For contributions in kind whose value exceeds 500,000 CFA francs, the evaluation must be made by an umbrella organization, and in absence thereof, a contribution auditor must be appointed at the contributor's expenses, unless the management committee accepts to pay the related fees.

The present articles include the evaluation of the contributions in kind made at the incorporation of the cooperative. Said evaluation is reported in the annex to the present articles as contributions made to the cooperative at incorporation. The annexed document indicates the identity of the contributors in kind, the nature and the evaluation of their contributions, the number and value of the shares received in consideration of the contribution, the regime of the contributed assets if their value exceeds that of needed contribution.

Article 30: Reserves

The cooperative has three reserves: two being mandatory and one optional. The mandatory reserves are the general reserve and the reserve for the education and publicity of the principles and techniques of cooperation. The aim of the optional reserve is freely determinable.

The general reserve and the reserve for the education and publicity to the principles and techniques of the cooperation must receive 20% of the available profit until they reach the highest amount of the share capital since incorporation. After this limit is reached, they receive at least ... of the available profit.

The optional reserve receives at most 20% of the available profit.

The resigning or excluded members may not receive any part of the general reserve and the reserve for the education and publicity to the principles and techniques of cooperation. Furthermore, reserves, even those optional, may not be distributed to the members.

Article 31: Patronage refunds

In case of an available profit, the general meeting allocates to the members, in proportion of their activities with the cooperative, 20% of the net operating surplus as a patronage refund, allocated in a way determined by the management committee. No amount stemming from activities with third parties may be discounted. Patronage refunds are paid within three months of the general meeting's decision. They may be paid, upon approval by the general meeting, in the form of investment shares.

Title 5: Final and miscellaneous provisions

Article 32: Bookkeeping

The accounting year is identical to the calendar year and runs from 1 January to 31 December. The bookkeeping is held according to the OHADA accounting provisions further to Article 2 of the OHADA Uniform Act concerning the organization and harmonization of commercial bookkeeping.

Article 33: Cooperative integration

In order to represent and defend its interests, the cooperative may join unions, federations or confederations of cooperative companies according to the terms of conditions set forth in the Uniform Act. The decision to join an umbrella organization is made by the general meeting. The cooperative shall join the umbrella organization at the lowest level possible, unless doing so at a higher level is more appropriate.

Article 34: Liquidation and dissolution

The cooperative is dissolved when one of the causes arise that are set out in the Uniform Act.

Liquidation may be settled amicably by the members, provided that the extraordinary general meeting so desires, in the usual voting conditions. The extraordinary general meeting appoints a liquidator among the members or the persons appointed by the umbrella organization. It may decide to indemnify the liquidator in light of the circumstances, given the importance of the work done and the expenses incurred.

The liquidator is vested with all powers necessary for the execution of the mission, in particular paying off debts, acting in justice so as to have receivables paid, searching debtors, etc. The liquidator may also be granted a special mandate for the sale of the cooperative's assets.

The extraordinary general meeting determines the cooperative(s), or the entities working for the promotion of the cooperative principles, that shall benefit from the surplus assets on liquidation, if any. The liquidator shall be in charge of implementing that decision. After the completion, the extraordinary general meeting resolves on the discharge to be granted to the liquidator, closes the liquidation and appoints among its members the person in charge of the last publicity requirements set forth by the law.

Disputes between the liquidator and the members as to the liquidation are resolved by the umbrella organization, whose decision may be challenged before the competent courts.

Annexes

These annexes are part of the articles and shall have the same legal value.

List and signature of the founders

Name of the founders	Personal address	Signature or fingerprint

List of contributors in kind

List of contributors in cash

Location.....date....

Appendix F: Model contract to form an economic interest group under OHADA¹⁰⁸

The undersigned ,
Name and Surname / Date and Place of Birth / Address / Occupation

Have thus established the statutes of a GROUPING OF ECONOMIC INTEREST that they propose to constitute.

ARTICLE 1- FORM

It is formed between the undersigned, a GROUPING OF ECONOMIC INTEREST that will be governed by the laws in force and by the present statutes.

ARTICLE 2- OBJECT

The object of the ECONOMIC INTEREST
(...)

ARTICLE 3- SOCIAL DENOMINATION

The name of the group is (...)

In all acts and documents emanating from the economic interest grouping, this name must always be mentioned followed by the words 'economic interest group' governed by the OHADA Uniform Act relating to commercial company law and the economic interest grouping.

ARTICLE 4 - REGISTERED OFFICE

The head office of the group is established at (...)

It may be transferred to any other place in the same city or region or in any other place in Senegal by virtue of a deliberation of the general assembly of the members.

ARTICLE 5 - DURATION

The duration of the economic grouping is fixed at 99 years as of the day of its final constitution except the cases of dissolution envisaged in articles 883 and following of the Uniform Act OHADA relating to the law of the commercial companies and the economic interest grouping.

ARTICLE 6 - CONTRIBUTIONS

Contributions (when stipulated by the parties, as they are not indispensable) can take all forms (in capital, in kind and in industry), they do not determine the majority or the distribution of votes within the groupement.

ARTICLE 7 - SOCIAL CAPITAL

Social capital : NEANT

ARTICLE 8 - RIGHTS AND OBLIGATIONS OF MEMBERS

The members of the economic interest group are liable for the debts of the latter on their own assets. They are solidary, unless otherwise agreed, with third parties. The contributions do not determine the majority or the distribution of votes within the groupement.

ARTICLE 9 - ADMINISTRATION OF THE ECONOMIC INTEREST GROUP

¹⁰⁸ Statut d'un groupement d'intérêt économique - eRegulations Sénégal. Available at <https://senegal.eregulations.org/media/statutgie/docx>.

The group is administered by one or more natural or legal persons. The assembly of members can therefore freely organize the powers and conditions of dismissal. However, in the relations with the thirds, a director is engaged by any act entering in the object of this one.

ARTICLE 10 - ADMISSION AND WITHDRAWAL OF MEMBERS

The groupement during its existence, can accept new members in the conditions fixed by the constituting contract, any member of the groupement can withdraw under the conditions envisaged in the contract, provided that it executed its obligations.

Article 11- COLLECTIVE DECISIONS OF THE GROUP

- The group's collective decisions are taken by the general assembly. The general meeting of the members of the economic interest group is entitled to take any decision including early dissolution or extension in the conditions determined by the contract.
- The latter may provide that all or some of the decisions will be taken under the conditions of quorum and majority that he fixes.
- In the silence of the contract, decisions are taken unanimously.
- The contract may also award each member of the Economic Interest Group a different number of votes than the others. Otherwise, each member has one vote.

ARTICLE 12 - DISSOLUTION OF THE GROUP

The grouping is dissolved in the cases provided for in Articles 883 et seq. Of the OHADA Uniform Act relating to commercial company law and the economic interest grouping.
The dissolution of the economic interest group entails its liquidation.

After payment of the debts, the excess of assets is distributed among the members in the conditions provided for by the contract, failing which the distribution is made in equal parts.

Signature of GIE members

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