

## **Guidelines for the drafting of articles of incorporation**

### **Template of articles of incorporation for a cooperative society with a board of directors (SCOPCA)**

David Hiez, University du Luxembourg, [david.hiez@uni.lu](mailto:david.hiez@uni.lu)

Willy Tadjudje, University du Luxembourg, [willy.tadjudje@uni.lu](mailto:willy.tadjudje@uni.lu)

September 2012

Thanks to the financing provided by the University of Luxembourg, the templates of articles hereinabove were drafted by David Hiez, Professor of Private Law at the University of Luxembourg and Willy Tadjudje, PhD Student in Law at the same University. This document is usable freely, but any commercial use thereof is strictly prohibited: its authors reserve their rights to intent any action against those who would disregard this limit to the use of this document.

The authors travail cannot guarantee legal assistance to cooperative companies, nor to any other person as regards the implementation of these articles of association. However, they would gladly welcome any comments, which might be incorporated to an improved version, as the case may be.

[David.hiez@uni.lu](mailto:David.hiez@uni.lu)

[Willy.tadjudje@uni.lu](mailto:Willy.tadjudje@uni.lu)

Further to Article 17 of the UA, articles of association form the society agreement. Said articles are established by way of a deed under private seal or a notarial deed. As many originals as required for the purposes of the filing of one original at the registered seat and the implementation of the required formalities are issued. One original set of articles must be kept at the disposal of any shareholder at the registered seat of the society. Therefore, this is a paramount document for the incorporation and the management of the society.

Further to Article 390 of the UA, cooperative companies already existing in the OHADA area (...) *shall have their articles comply with the provisions of the present Uniform Act within two years of its entry into effect.* ». In light of such requirement, this document is for the attention of all cooperative companies already in existence in the OHADA area, and whose intention is to make the necessary amendments to their articles so as to be in perfect compliance with the new OHADA law . It is also meant for those eager to start up cooperative companies and willing to set up said companies in accordance with the new law. It is also addressed to structures similar to cooperative companies, such as the Cameroonian *GIC* or the *groupements* in Burkina Faso, and which contemplate to transform into cooperative companies.

Generally speaking, Article 18 of the UA lists all mandatory and suppletive mentions that belong in the articles of association of a cooperative society. However, this listing is deceiving. All provisions of the UA must be perused in order to spot every provision, not appearing in Article 18, which must be inserted in the articles. It follows that we will make a distinction depending on whether the society at stake is a *SCOPS* or a *SCOPCA*.

The present template is not to be reproduced exactly, and is more of a guideline where anyone interested can take inspiration. Since the UA has granted considerable contractual freedom to the members of the cooperative companies, it is up to them to elect between the options offered to them: their society, their call. The following is only an example of compliant articles, which may be adjusted and/or modified. Explications are provided where useful. For ease of reference, articles appear in normal typeface and explanations in italics. Where optional provisions (i.e. provisions which are not mandatory but may be inserted if the members wish so), they appear in bold typeface.

## **Template of articles of incorporation for a cooperative society with a board of directors (SCOPCA)**

*Further to Articles 18 and 276, as well as to specific provisions of the UA, articles of a SCOPCA may read as follows:*

### **Title 1: Society form, name, corporate purpose, registered seat and duration**

#### **Article 1: Society Form**

On ....., was created, between the undersigned persons<sup>1</sup>, 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 society is established under the form of a cooperative society with a board of directors.

#### **Article 2: Society Name**

The cooperative society elects the name (...), **whose acronym is (...)**.

*This article indicates the name of the society. Pursuant to Article 19 of the UA, every cooperative society bears a society name mentioned in its articles. Furthermore, the cooperative society may not elect the name of another society already registered with the Trade and Personal Property Credit Register or the Cooperative Companies Register.*

*The Society name shall appear on all deeds and documents issued by the cooperative society and addressed to third parties, notably letters, invoices, and miscellaneous announcements and publications. Such name shall follow or be followed immediately, in a readable fashion, by an indication on the form of the cooperative society, its address, its registered seat and its registration number with the Cooperative Companies Register.*

The name of the society may be amended in the conditions set forth for the amendment of the articles.

#### **Article 3: Corporate Purpose**

The cooperative society (...)’s purpose is to... **collect and resale rice in the villages of ... anything that may improve rice-growing and the agrarian conditions in said area.**

In that aim, it may, in particular, pursue the following endeavors: **stocking of rice, negotiation of a wholesale, provision of agrarians training or advice, as well as any**

---

<sup>1</sup> The undersigned persons are the initiators, or, more accurately, all those who partake in the general meeting in itself. The signature or the fingerprint of each of them must appear at the end of the articles of association.

**other activity useful to the pursuit of its corporate purpose.**

Striving for the satisfaction of the economic, but also social and cultural aspiration 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.

*The above is what the UA calls the nature and the field of activity of the cooperative..*

*Where the activity of the cooperative society is regulated, such activity must comply with the particular rules it is subject to.*

**Article 4: Duration and Registered Seat**

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

The duration of the COOPCA is set at 99 years of its registration with the Register of cooperative companies, except in case of prorogation or anticipated dissolution.

*Setting the registered seat is important, for said registered seat is meant to be the legal centre of the cooperative society. Meetings may be held elsewhere but the registered seat is a landmark for everyone, whether they be members or third parties. For instance, the corporate documents available to the members are preserved at the registered seat (for instance Arts. 17, 238). The registered seat must be expressed in the form of an address or a sufficiently precise geographical indication (several cooperative companies issue a location map inserted as an annex to the articles, which appears to satisfy the current requirements of Article 22 of the UA.*

**Article 5: Common Bond of The Cooperative**

All the members of the cooperative **are women of the ... area having the occupation of...**

*The “common bond” clause is one of the mandatory provisions to be inserted in the articles (listed in Article 18 UA), as per Article 18(5) UA. Likewise, the UA infers consequences from the « common bond » clause, for example as to the exclusion of members, which justifies, in our opinion, its insertion in the articles of association..*

*The common bond is defined at Article 9 of the Uniform Act as the element or the objective criterion which members have in common and on the basis of which they assemble. It may, in particular, pertain to an occupation, a common purpose, activity or legal form.*

**Article 6: Compliance With The Cooperative Principles**

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

- Voluntary, open to all adherence;
- Power being democratically exercised between the members;
- Economic participation from the members;
- Autonomy and independence;
- Education, training and information;
- Cooperation between cooperative organizations;
- Voluntary commitment towards the community.

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

*These provisions are required as per Article 18, although their normative interest is debatable. However, they possess some pedagogical value as numerous members might become aware of this principle only through the articles, during internal training sessions.*

## **Title 2: Relations Between The Member And The Cooperative Society**

### **Article 7: Procedure And Conditions Of Adherence**

Adherence to the cooperative society (...) is decided upon by the board of directors, confirmed by the next general meeting.

**The directors resolve on candidacies validly addressed to them. A candidacy is valid when it includes the candidate's complete identity and address, its signature or fingerprint, as well as his wish to become a member of the cooperative society.**

**The board resolves, in the normal voting conditions, within two months of the receipt of the candidacy.** Its decision is effective as of the day of its receipt but may at any rate never be posterior to a three-month delay from the receipt of the candidacy by the cooperative.

*In order to resolve on the admission, two options are available, depending on whether the cooperative is open-end or closed-end. In the former case, control is rather formal, whereas it is akin to an opportunity control in the latter.*

**1. Any candidacy complying with the legal and regulatory requirement shall be accepted by the board of directors.**

**2. For the purposes of its decision, the board of directors and the general meeting take into account, in particular:**

**The candidates' majority, their morality and their enjoyments of civil and political rights;**

**Their residence in the geographical division of the registered seat;**

**Their not belonging to another cooperative society having the same purpose in the same geographical division;**

**Their sharing of the common bond uniting the members;**

**Their subscribing to the share capital and paying up at least one share;**

**Their undertaking to comply by the present articles, the code of conduct as well as all decisions validly adopted by the corporate organs of the cooperative.**

*The choice between the two options on the modalities of acceptance arise from the differences that may exist between cooperative companies, some being open to anyone, others being more restrictive and less than eager to welcome too many members. Such difference may derive from the founders' political choice; it can also stem from more objective considerations: a urban procurement cooperative will, in all likelihood, be open-end, while a cooperative made up of weavers may be more closed-end for its success demands a good relationship between its members.*

On any acceptance of a candidate the board of directors 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. The document legally evidences its holder's capacity as member.

Where the general meeting refutes the decision of the board of directors, this refusal makes the member retroactively lose his/her capacity as a member but has no effect on the actions this member might have taken with the cooperative between the acceptance date and the date he was rejected by the general meeting; these actions are deemed as taken with a third party.

**Becoming a member is also subject to the payment of an adherence fee set at .... CFA Francs. Such fee is not refundable.**

*The adherence fee is sought to recover the expenses related to administrative proceedings.*

### **Article 8: Rights And Obligations Of The Members**

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

The undertake to participate in the common effort in view of the fulfillment of the purpose of the cooperative, notably by entertaining economic relations therewith.

Upon joining the cooperative, the relevant member undertakes to participate to the economic activities of the cooperative for a duration of ... **starting on the day of the adherence. 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 towards the society may:

- Peruse the society 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, members' register, annual minutes and inventories, investigation and control reports...
- Partake in and vote at the general meetings, subject to the rule « one person, one vote ».
- Apply to any executive position and be elected to the cooperative's organs, subject to the rules on maximum numbers of mandates ;
- Use the services and premises of the cooperative society in compliance with its corporate purpose.

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

*This rule, while cohesive with the cooperative ideal, does not appear expressly in the UA. It must be indirectly construed from the content of Article 13 (c) mentioning an obligation of faithfulness for the member; therefore, non-compliance may trigger an exclusion.*

Members shall contribute to the losses to the extent of (X times) the value of their shares.

**After leaving the society, they remain responsible for debts which arose during the time of their membership for five years after the end thereof.**

*Article 11, last paragraph states the principle of the survival of the obligation to contribute to the society's debts for the leaving members without further precisions, allowing the articles to set forth the details. We propose a duration of five years as a reasonable balance between the protection of the cooperative's credit and the liberation of the former member. Such duration may be lengthened or shortened, but not deleted.*

### **Article 9: Sanctions Of Non-Execution, Penalty Provisions**

**Non-compliance with an 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.**

*In cooperatives where every member's commitment is paramount, penalty provisions may be a useful pressure mechanism. It is only meaningful, however, where it can be effectively*

*implemented..*

### **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 are to be considered depending on whether the member has entered into a service agreement with the cooperative. The cooperative must choose between a contract with limited or unlimited duration, and therefore insert either of the two provisions below.*

**1<sup>st</sup> option: Any member regularly 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 (or for a duration of ... years). 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. The board of directors acknowledges in written form the member's departure. Except in case of *force majeure* as considered by the board of directors, any departure during the adherence agreements triggers a penalty whose amount is determined in the code of conduct.**

**2<sup>eme</sup> option:** Any member may freely leave the cooperative. Said member may notify their decision to the board of directors in written form.

Departure is effective as of one month after the receipt of the notice by the board of directors.

### **Article 12: Exclusion**

The cooperative may exclude a member for any of the below 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 the shares ;
- On-compliance, for the member, with the obligations towards the society, in particular with obligations of loyalty and faithfulness.

The exclusion is resolved upon by the board of directors during a session in which the concerned member may represent his explanations. The decision is expressed in a specially motivated resolution, and communicated in written form to the excluded member within ten days. It is effective as of said date, unless the decision sets a later date.

The member may, , within two months of the receipt of the decision of exclusion to challenge it before the shareholders, which will resolve thereupon during its next meeting. This challenge suspends the decision of the board.

If the general meeting of the shareholders sustains the action of the excluded member, the decision made by the board of directors is of no effect. If the general meeting of the shareholders rejects the action of the excluded member, the decision of the board of directors yields its full effect.

*The modalities and procedure of exclusion are freely determinable, as Article 12 grants full freedom to the articles, except as to the rights of the excluded member. We have essentially repeated the exclusion cases mentioned by the UA. Nevertheless, we have not accepted the*

*competence of the general meeting stated in the UA: the process is burdensome and it seems more sensible to use the shareholders as an appellate court..*

Within ten days of the decision made by the general meeting of the shareholders and confirming or quashing the decision to exclude, the cooperative notifies the member of a written notice of exclusion which shall specify the reasons thereof. This exclusion is effective as of the date mentioned in the exclusion notice but at the latest thirty days after its receipt.

### **Article 13: Right To Reimbursement In Case Of Departure**

Within a year of the date of effect of the loss of membership, following an exclusion or a departures, the cooperative shall reimburse the shares held by the relevant member **at their nominal value**.

*The UA does not specify the value of the shares. Typically, nominal value is used but could be detrimental in certain cases, in particular because the members are not financially rewarded by the success of the cooperative, to which they have. Considering the risks inherent in electing the real value, not only because of the distortions to the cooperative principles but also due to the conflicts that may arise and of the costs stemming from the research of solutions, we altogether recommend using the nominal value. In light of the practice, it would appear that such reimbursement would be an innovation in itself. Richer, or better structured cooperative may obviously choose another solution.*

When the board of directors considers that the reimbursement of shares might jeopardise the financial health of the society, the board of directors might set the reimbursement delay at two years, by way of a motivate decision, appealable before the competent jurisdiction.

The cooperative shall also reimburse to the member all loans, including interest thereon as the case may be, 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** after end of their membership. They also remain responsible for their debts towards the society.

### **Article 14: Demise Or Illness**

In case of death **or occurrence of an illness (or injury) which does not allow its victim to continue to fulfill its obligation** one or several heirs to the dead **or one or several assigns or the illness- (or injury-) stricken** members may be admitted in the cooperative in its stead, provided that they share the same common bond.

The qualifying candidate shall then address its request to the board of directors in written form, which board must then resolve on the acceptance case within three month of the receipt of the request; silence shall be tantamount to acceptance. Any refusal may only be justified by objective reasons or a serious motive.

The acceptance or refusal decision must be addressed to every interested heir **or assign (as the case may be)** by any means leaving a written track.

*The UA only consider the hypothesis of a demise, but we think the clause may be extended to cases such as : work accident requiring a leave for injury on duty, serious illness, ...*

### **Article 15: Non-Adhering Users**

The cooperative may take actions in view of the fulfillment of its purpose with non-members. However, such operations may not account for more than **30%** of the cooperative's activities.

The income generated through activities with these third parties 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 the heir of a demised member.

*Article 18-18° of the UA demands that the scope of the activities with the non-members be specified in the articles, considering the safeguarding of the autonomy of the cooperative.*

*In order to promote cooperation, we propose a simplified adherence mechanism for the non-member users, without any automaticity, which could be baneful for the society..*

*Please be reminded that the non-member users may not partake in the management or in the administration of the society and may not solicit loans, nor distribution of patronage refunds on the surpluses.*

## **Title 3: Organization And Functioning:**

### **Article 16: Society Organs**

The organs of the cooperative are the general meeting, the board of directors and the supervisory board.

### **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 to 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 and each proxy is valid for one meeting only.**

*Voting through proxy is not imperative, we recommend consecrating it. The conditions thereof are likewise freely determinable.*

### **Article 18: Section Meetings**

If a cooperative has had more than 500 members since the end of a society year, the following provisions apply.

The general meeting shall follow section meetings, deliberating separately on the same agenda.

*These provisions are valid only where there are more than 500 members. They are never mandatory and should be contemplated beforehand. It is also conceivable to have the articles allow for the possibility thereof and enable the general meeting to make the decision, for the following meetings.*

Section meetings elect delegates themselves convened in a general meeting. The division of members by section shall be made by the board of directors further to the geographical

area (or any other criterion), though no section meeting may exceed (...) members.  
*For instance, the number of delegates may be one for every ten members.*

**At the general meeting, each delegate shall be entitled to one vote.**

*This rule is the most cohesive with the principle « one person, one vote ».*

## **Article 19: Ordinary General Meeting: Convening, Quorum, Majority and Competences**

### **1- Convening:**

The member meeting is convened by the chairman of the board of directors or, if not able to attend, by any other director appointed by the board of directors.

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. In such case, they shall establish the agenda and communicate the reasons of the convening in a report read to the meeting. The ordinary annual general meeting is held within six month of the end of the accounting year.

Furthermore, a general meeting is held whenever necessary and wherever one-quarter of the shareholders so requires. Such written request is signed by each requesting person and addressed by either of them to the chairman of the board of directors ; and specifies the points which shall appear on the meeting's agenda.

Any project of a general meeting's agenda must be perfectly clear so as to enable members to require the addition of a resolution to said agenda.

The convening notice shall indicate:

- The name of the cooperative ;
- The amount of the share capital ;
- The address of the registered seat ;
- The registration number with the Register of Cooperative Companies ;
- The date and time of the meeting ;
- The place where the meeting is to be held ;
- The nature, ordinary or extraordinary, of the meeting;
- The agenda of the meeting.

Where the general meeting is held pursuant to a request from the supervisory board, the umbrella organization or the members, the chairman of the board of directors convenes it with the agenda indicated by the requesting persons. The Chairman of the board shall insert any resolution whose insertion to the agenda of the general meeting is requested by half of the members ten days before the meeting.

Where the agenda of the general meeting includes the presentation of candidates to a directorial position, their identity, professional references and professional activities during the last five years shall be mentioned.

### **2- Competences:**

The ordinary general meeting may take all decisions not expressly attributed to extraordinary general meetings.

In particular, it may:

- resolve on the synthetic financial statements of the society year ;

- decide on the allocation if the result;
- appoint the members of the board of directors as well as the statutory auditor, as the case may be ;
- approve, or refuse to approve, the agreements entered into between administrators and the cooperative;
- appoint the member of the supervisory board.

### **3- Organization of the meeting:**

The ordinary general meeting is held at least once a year, within six months of the end of the society year.

The meeting is chaired by the Chairman of the board of directors.

If not available to attend, the meeting elects the chairman of the session among present directors.

The chairman of the session is assisted by two scrutineers, who must be members of the cooperative, and a secretary.

Scrutineers are elected by a simple majority of the present members.

The secretary is appointed by the meeting to establish the minutes of the discussions. He or she may be chosen among the staff employed by the cooperative.

On each meeting, an attendance sheet is held, signed by present members upon arrival in the meeting, and certified as accurate and genuine by the scrutineers, under their responsibility.

### **4- Quorum and majorities**

When first convened, the general meeting may validly deliberate only if half of the members of the cooperative society are present; when convened for a second time, presence of one-quarter of these members is sufficient.

*When the cooperative has more than one thousand members, the quorum falls to one-third on first convening and one-tenth on second convening.*

Resolutions of the ordinary general meeting are taken with a majority of the valid votes, it being given that ballots left blank or null are not deemed valid.

Members of the board of directors are elected or dismissed individually under normal majority conditions. Where the number of candidates having gained a majority of votes exceeds that of available positions, those candidates having earned the most votes shall be appointed.

Then, the general meeting elects among its members, and under the same conditions, the chairman of the board of directors.

In principle, hand votes are to be used. At the request of any member and regarding the election or dismissal of any member of the board of directors, the is organized so as to guarantee secrecy, for instance, by secret ballot or by black and white balls vote.

### **5- Minutes**

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.

The minutes are signed by the members of the bureau and kept at the registered seat, together with the attendance list and annexes.

### **§§Article 20: Agreements Between The Cooperative And One Of Its Executives, Members or Employees**

During the general meeting, any agreement between the cooperative society and a member or employee must be submitted for approval according to the usual form of voting.

*Where the cooperative society with a board of directors runs a bank or a financial establishment, or have its principal activities in the field of savings and credit, such restriction does not apply to usual operations with normal terms.*

The directors and employees, or their spouses, parents or descendants and other interpositioned persons, 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.

Such prohibition may not apply to legal persons that are members of the board of directors.

*Where the cooperative society with a board of directors runs a bank or a financial establishment, or have its principal activities in the field of savings and credit, such restriction does not apply to usual operations with normal terms.*

### **§§Article 21: Extraordinary General Meeting**

The extraordinary general meeting is convened to take particularly serious decisions for the cooperative, in particular:

- Amendments to the articles ;
- Mergers, spin-offs, and changes of form;
- Transfer of the registered seat abroad ;
- anticipated dissolution or prorogation of the duration of the society.

The extraordinary general meeting may validly deliberate only when two-third of the members are present or represented or, upon a second convening, half of them. If, then, the meeting is not quorate yet, a third meeting is convened, for which no quorum shall be needed.

The extraordinary general meeting votes with a majority of two-third of the valid votes, it being given that blank ballots are not deemed to be valid.

In case of a transfer of the registered seat to another country, the decision shall be unanimously taken by present or represented members.

### **§§Article 22: Board of directors**

The board of directors is vested with the broadest powers to act, in all circumstances, in the name of the cooperative society.

#### **1- Composition:**

The board of directors comprises .... members referred to as directors.

*This number shall be at least three and at most twelve. It may be fixed or consist in a range.*

*We advise to appoint at least five directors ; the maximum number should consider the size of the society and the complexity of its operations.*

Directors may be natural or legal persons.

When a legal person is appointed, it shall, on its appointment, designate a permanent representative by any means leaving a written track addressed to the society.

Although this permanent representative is not personally a representative of the society, he/she shall be considered as such as regards the conditions and obligations and the same civil and criminal liabilities to which he/she shall be subject. The permanent representative exercises his/her mandate for the duration of the appointment of the legal entity represented.

## **2- Election, mandate and responsibility:**

Directors are elected by the general meeting and need themselves to be members. The members shall resolve by a simple majority.

Directors are elected for a duration of *three years*, renewable.

Any member regularly registered on the members' register, faithful to its cooperative, able to read and write in French or English, and entertaining regular activities with the cooperative shall be eligible. Candidacies may be addressed until the day of the general meeting.

Directors are liable towards the society or third parties, for their breaches to the legislative and regulatory rules applicable to the cooperative companies with a board of directors, for their violations to the provisions of these articles and for their mismanagement.

## **3- Competences:**

The board of directors shall be in charge, notably, of:

- specify the goals of the cooperative and the orientation to be given to its management ;
- set the accounts of every member;
- ensure the compliance with the cooperative principles in terms of management of the cooperative and allocation of results ;
- establish the member's training and education programme ;
- survey the chairman's good management ;
- establish the moral and financial report of the cooperative ....

## **4- End of the directors' mandate:**

The mandates of the directors expires with their resignation, dismissal, death, loss of membership or expiration of their mandate, in case of non-renewal.

Any resignation is effective only three months after a notice thereof being sent to the chairman or to all members.

Directors may be dismissed by the general meeting, in particular in case of averred mismanagement, of non-compliance with the cooperative principles or with legal and statutory provisions, or in case of a prejudice caused to the cooperative society.

## **5- Vacancy of directorial positions:**

In case of resignation, dismissal, demise, departure or exclusion of one or several directors, their positions are declared vacant.

The board of directors may also declare a post vacant when a director does not attend three consecutive meetings of the board of directors.

If the number of directors falls below the threshold set by the articles, the board of directors shall, within three months of the occurrence of the vacancy, co-opt new

directors so as to fill the board. The resolutions taken in the meantime remain valid, subject to the approval of the shareholders during the next general meeting.

If the number of directors falls below the threshold set by the law, the remaining directors shall immediately convene the ordinary general meeting so as to fill the board.

#### **6- Convening and organization of meetings:**

The board of directors is convened by its chairman. The board of directors may allow the convening notice to be issued electronically. The convening notice includes the agenda and occurs at least one week before the meeting.

The board meets as often as needed and at least once a trimester. However ; directors accounting for at least one-third of the board may convene it, by indicating the agenda of the meeting, provided that the board has not met for more than two trimesters.

Sessions are chaired by the chairman of the board.

If the chairman and, as the case may be, the vice-chairman, are not available to attend, the meeting elects the chairman of the session among present directors.

The board may validly deliberate only if all of its members have been validly convened and if at least two members are present.

Decisions are adopted by a simple majority of the present or represented votes. In case of a tied vote, the vote of the chairman shall prevail.

Any director may only be granted one proxy per session.

The board of directors may only deliberate on the points mentioned at the agenda, unless all of its members are present and accept to add another point. In emergency, another point may be added..

The deliberations are transcribed in the form of minutes. The minutes mention the date and place of the meeting and mention the names of the directors present, represented, and absent and not represented.

They also mention the presence or absence of the persons convened to the meeting or having attended all or part thereof.

#### **§§Article 23: Chairman of the board of directors**

The chairman of the board chairs the meetings of the board of directors and the general meetings. The chairman ensures they proceed well and that the members are informed appropriately.

The chairman represents the society towards third parties and signs all agreements necessary to the functioning of the society. Only extraordinary acts or those of an amount above **one million CFA Francs** must be approved beforehand by the board of directors. The chairman is competent to hire or dismiss employees, except the manager, who may be hired or dismissed only after the board of directors has given its approval.

The chairman of the board of directors shall be elected by the general meeting among directors. As the case may be, a vice-president may also be elected, in the same conditions as the president. Both the president and the vice-president must be natural persons.

The duration of the chairman's mandate shall be three years, renewable.

#### **§§Article 24: Manager**

Further to the uniform act on cooperatives, the board of directors may appoint a person

responsible for the management of the society, referred to as a director. The board determines the duration of the management's mandate and his/her remuneration. The supervisory board is notified by the board of directors of the appointment.

The manager may receive from the chairman a general mandate for all usual operation, but may not take any action towards the members. Towards third parties, the chairman's countersignature is required for any act in an amount exceeding **500,000** CFA Francs.

The board of directors may grant any special mandate to the manager and may define the scope thereof.

The board of directors shall determine, through the employment contract between the cooperative society and the manager, his/her duration of mandate, remuneration, and scope of competencies.

The manager attends the meetings of the board of directors, with a consultative vote.

### **§§Article 25: Supervisory Board**

The supervisory board is the cooperative's controlling organ. Its mission is to verify, or to have verified, at all times, the executives' management. Upon its request, one of its members may passively attend the meetings of the board of directors.

It meets as often as needed or upon a request from two of its members and at any case at least once before the annual general meeting, to which it communicates a report on the functioning of the cooperative. It also meets before any extraordinary general meeting and issues a report on the resolutions submitted thereto.

The supervisory board comprises *three* members elected by the general meeting among its members for a mandate of *three* years.

*The number of supervisory board members may range from three to five. Quantity is not tantamount to quality, but they need to be dynamic and eager to enlighten the members. Only very large cooperative or particular cases may need five members.*

The supervisory board may access every society document and convene to its meeting every member of the board of directors as well as any person it deems useful. It may demand to be communicated any document needed for its mission and require the help of an umbrella organization's representative.

The supervisory board may convene the general meeting, which shall resolve on the required actions to be taken.

The supervisory board members' resolutions are approved by a simple majority.

### **§§Article 26: No remuneration for elected positions**

Directors and members of the supervisory board are not remunerated. They may however petition for the reimbursement of the expenses occurred in the scope of their functions, within a limit set annually by the general meeting.

*These provisions add nothing to those of the UA but serve a pedagogic interest.*

## **Title 4: Financial resources**

### **Article 27: Share capital - Shares**

The cooperative ... has a share capital set, at its incorporation, at ... CFA Francs. **The share capital may not be reduced below half of that amount.** There is no maximal amount.

Each share has a value of **1,000** CFA Francs.

No member may hold more than *a fifth* of the cooperative's shares.

The shares are nominative, individual, non negotiable, non-seizable and transferable only limitedly. They are freely transferable between members and, if to a third party, after the approval of the board of directors.

The transfer is made at the nominal value of the shares. The shares may not be pledged.

They may be remunerated in the form of an interest which may not exceed the patronage refund rate of the Central Bank of the member State. This interest may be paid only if profit has been made during the society year.

Only fully paid-up shares may yield interest.

Its basis excludes any gratuity or subsidy.

*This means that the computation of net profit, for the payment of dividends, may not include surplus nor subsidies insofar as they do not aim to enrich the members.*

The annual general meeting, on the recommendation of the board of directors and in light of the year's results, decides on whether interest will be paid, and, as the case may be, sets its rate within statutory limits.

When a profit is available, the meeting may not resolve to pay no interest without a specially-motivated resolution.

#### **Article 28: Investment Shares**

**On the recommendation of the board of directors, the general meeting may decide to issue investment shares, whose value is twice that of the activity shares mentioned hereinabove.**

**The owners of 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 29: Contributions**

Each member shall make a contribution to the society to acquire the quality of shareholder, and subscribe to shares in proportion with their activities with the cooperative. Said proportion is set by the board of directors.

Any subscription shall be immediately paid-up in full.

However, on the subscription to the first shares, the management committee may allow distressed candidates to paid up their shares in part only. Any member shall, at any rate,, pay up 25% of the amount of the shares subscribed immediately and any remaining amount within **three** years.

#### **Article 30: Contributions In Cash**

Contributions in cash shall be paid up in compliance with Article 29 above.

Any unpaid amount shall be paid within *three* years in the terms set forth by the board of directors.

In annex, the articles include the list of contributors in cash and the following information thereon: 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 damages as the case may be.

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 31: Contribution in kind**

Contributions in kind consist in the transfer to the society of rights on goods, whether movable or immovable, corporal or incorporeal. These assets must be useful for the fulfillment of the corporate purpose, and may not consist in 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 evaluation of the contribution shall be made by a contribution auditor, under the supervision of the umbrella organization. The expenses related to the evaluation are due by the contributor, unless the board of directors decide otherwise.**

The contributor's consent must be mentioned on the minutes where the value given to the assets contributed differs from that set by the contribution auditor or the umbrella organization.

Members and directors are jointly liable towards third parties of the value set for the contribution, for a duration of five years.

The present articles include the evaluation of the contributions in kind made at the incorporation of the society. Said evaluation is reported on an annex to the present articles as to contributions made after the 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 the needed contribution.

### **Article 32: 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 to 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 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 **10%** 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 on dissolution.

### **Article 33: 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 board of directors.

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 34: Bookkeeping**

The accounting year is identical to the civil year and runs from the first of January to the thirty-first of December of each year.

The bookkeeping is held according to the OHADA accounting plan further to Article 2 of the OHADA Uniform Act organizing and uniformizing undertakings' accounting systems.

### **Article 35: 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 and conditions set forth by the UA. 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 one at a higher level is closer of its social bond.

### **Article 36: Dissolution and liquidation**

The cooperative ends in the cases set forth by the AU.

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 to that aim 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, and resolve on the ways the liquidator may obtain help as the case may be. .

The liquidator is vested with all powers necessary for the execution of the mission, in particular paying of debts, acting in justice so as to have receivables paid, searching debtors, and any other useful deeds. He might 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 principle, 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 decisions 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 and address of the founders	Personal address	Signature or finger print

**First members (natural persons) of the Board of directors**

Name (last and first)	Address	Profession	Nationality	Signature

**First members (legal persons) of the Board of directors**

Society name	Legal form	Share capital	Name (last and first) of the representative	Signature of the permanent representative

**Signature of the members of the supervisory board**

- 1-
- 2-

**Attendance list (to be annexed to the present articles)**

- 1-
- 2-

**List of contributors in kind**

**List of contributors in cash**

Done in ..... on .....