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Forms of Business Associations for Microfinance Entities in Tanzania

Introduction

The purpose of this paper is to highlight the major forms of Business Associations for Microfinance Entities in Tanzania. Microfinance sector is very important in Lawcastles' practice because of the reality that Tanzania is one of the poorest countries in the World. The level of poverty is very high in rural areas and the rural households comprise over 90% of the poor. It is now widely accepted by the Government and international donor such as the World Bank that, as part of poverty reduction strategy, formal microfinance institutions that encourages saving and provides access credit and other financial services should be strengthened in rural areas. In recognition of this, Lawcastles provides advisory services to microfinance entities.

In Tanzania, there are four different legal frameworks for establishment of microfinance entities. These legal frameworks are as follows:

(a) Financial institution

A microfinance entity can be established as a financial institution. A financial institution is defined under section 3 of the Banking and Financial Institutions Act, 2006 as an 'entity engaged in the business of banking but limited as to size, locations served, or permitted activities, as prescribed by the Bank or required by the terms and conditions of its licence'. A financial institution includes commercial banks, community banks and cooperative banks. Section 7(1) of the Banking and Financial Institutions Act, 2006 provides that 'The Bank may, upon application in pursuance of the provisions of this Act, grant license to undertake the banking business to an entity formally established in accordance with the Companies Act, Companies Decree (Zanzibar), Cooperative Societies Act, 1986 (Zanzibar) and Cooperative Societies Act, 2003'.

(b) Microfinance Company

A microfinance entity can be established in a form of microfinance company (MFC). Microfinance company is defined under section 3 of the Banking and Financial Institutions Act, 2006 as a 'financial institution incorporated as a company limited by shares formed to undertake banking business primarily with households, small holders farmers and micro-enterprises in rural or urban areas of Tanzanian mainland and Tanzania Zanzibar'. According to Regulation 9(1) of the Banking and Financial Institutions (Microfinance Companies and Micro credit Activities) Regulations, 2005, in order to be licensed by the Bank of Tanzania, a minimum core capital for a microfinance company must be Tshs 800 million in case of MFCs with nationwide branch network and Tshs 200 million in case of MFCs which do not have multiple branches. The prescribed minimum capital is intended to ensure that MFCs have the financial capacity to acquire the necessary infrastructure and technology, as well as to attract qualified personnel.

(c) Financial Cooperative

A microfinance entity can initially be established as a Financial Cooperative. Tanzania's cooperative structure has a four tier-structure: (a) primary cooperative societies (these are generally registered societies whose members are individual person or an association of such individual persons and any cooperative body other than a body registered under the Companies Act); (b) secondary society (these are registered cooperative societies whose membership is open only to primary societies); (c) Apex cooperative societies (these a registered cooperative societies whose membership of which is restricted to secondary societies and which is established to facilitate the operations of all primary and secondary societies); and (d) Federation (these are generally cooperative societies whose members are apexes specialized primary and secondary cooperative societies). Regulation 3 of the Banking and Financial Institutions (Financial Cooperatives Societies) Regulations, 2005 defines a 'Financial Cooperative Society' as a non banking institution whose primary activity is to furnish secured and unsecured loans to households, smallholder producer and small micro-enterprises of the rural and urban sectors.' Financial Cooperatives which must be licensed by the Bank of Tanzania are those engaged in accepting savings and deposits from their members for an amount that totals or is greater than Tshs 800 million.

(d) Non Governmental Organisations

The microfinance entity can be established as non-governmental organization (NGO). NGOs can be registered under four different legal frameworks. These are Societies Act; Trustees Incorporation Act; Companies Act; and Non Governmental Organizations Act.

(i) Society

A microfinance NGO can initially be established as a society. Section 1 of the Societies Act defines a "society" as any club, company, partnership or association of ten or more persons whatever its nature or object formed and maintained for the sole purpose of carrying on any lawful business. Every branch of a society is deemed to be a society if such branch consists of ten or more members. The Registrar of Societies can effect registration of a local society by entering in a register the particulars given in the application form and the date of such entry.

Once registered as a society, a new entity must apply for a certificate of compliance from the Registrar of Non Governmental Organizations.

(ii) Trust

A microfinance NGO can initially be established as a trust. Under section of 2 of the Trustees' Incorporation Act, a trustee or trustees appointed by a body or association of persons bound together by custom, religion, kinship or nationality, or established for any religious, educational, literary, scientific, social or charitable purpose, and any person or persons holding any property on trust for any religious, educational, literary,

scientific, social or charitable purpose, may apply to the Administrator-General for incorporation as a body corporate. If the Administrator-General considers such incorporation expedient, he may grant a certificate of incorporation, subject to such conditions or directions generally as he may think fit to insert in such certificate, and in particular, he may impose restrictions on the amount of land which such body corporate may hold, and the uses to which such land may be put. Upon the grant of a certificate the trustee or trustees will become a body corporate by the name described in the certificate, and will have- (a) perpetual succession and a common seal; (b) power to sue and be sued in such corporate name; (c) subject to the conditions and directions contained in the said certificate to hold and acquire, and, by instrument under such common seal, to transfer, convey, assign and demise, any land or any interest therein in such and the like manner, and subject to the like restrictions and provisions, as such trustee or trustees might, without such incorporation, hold or acquire, transfer, convey therein, assign or demise any land or any interest.

All conditions and directions inserted in any certificate of incorporation must be binding upon and performed or observed by the trustee or trustees as trusts of the body or association of persons or under the trust instrument or declaration of trust. The certificate of incorporation must, subject to compliance with the Land Registration Act, vest in such body corporate all movable and immovable property of whatever nature or tenure, belonging to or held by the trustee or trustees or by any other person or persons in trust for the body or association of persons or under the trust instrument or declaration of trust, and upon incorporation any person or persons in whose name or names any stocks, funds or securities must be standing in trust for the body or association of persons or under such trust instrument or declaration of trust. The stocks, funds or securities must be transferred into the name of such body corporate, and all covenants and conditions relating to any such immovable property enforceable by or against the trustee or trustees thereof before his or their incorporation must be enforceable to the same extent and by the same means by or against the body corporate.

Once registered, a trust must apply for a certificate of compliance from the Registrar of Non Governmental Organizations.

(iii) Company Limited by Guarantee

A microfinance NGO can initially be established as a company limited by guarantee. This can be done through registration of a company limited by guarantee under section 2(b) of the Companies Act. Normally, companies limited by guarantee are usually formed for charitable purposes. They usually raise their funds by subscription. Once registered as a company limited by guarantee, such company must apply for a certificate of compliance from the Registrar of Non Governmental Organizations.

(iv) Direct registration as NGO

A microfinance NGO can be registered directly in accordance with the procedure provided for under the Non Governmental Organizations Act. The application for registration can be submitted by one or more persons, being founder members, which

must be accompanied by: (a) a copy of the constitution of the Non Governmental Organization; (b) minutes containing full names and signature of founder members; (c) personal particulars of office bearer; (d) address and physical location of the head office of the Non Governmental Organization; (e) an application fee; and (f) any other particulars or information as may be required by the Registrar of Non Governmental Organizations.

Conclusion

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