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# Regulatory ‘Tactics’ in the Regulation of Primary SACCOS’ Credit Advancement in Tanzania: Shifting the Paradigm

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## Abstract

Regulatory ‘tactics’ in form of strategies, models, techniques, and approaches are devices towards regulatory goals and purposes. Regulation of Primary SACCOS’ Credit Advancement (PSCA) in Tanzania embraces some of the regulatory ‘tactics’. This learning-piece examine regulatory ‘tactics’ embodied in the regulation of PSCA in Tanzania. It also illustrates regulatory ‘tactics’ not embodied in the regulation of PSCA despite their key position in enabling regulators and the regulated to achieve their goals. According to the data gathered through library research, it is evident Better Regulation is a cross-cutting key regulatory ‘tactic’. Nevertheless, it is not embraced by the regulation of PSCA in Tanzania. This is a regulatory-mishap that demands rectification through amendment of relevant laws to reform regulatory ‘tactics’ by introducing Better Regulation. Introduction of Better Regulation is a paradigm shift as it redefines Self-Regulation, State Regulation, and Consolidated Regulation.

**Keywords:** Smart Regulation, Better Regulation, Regulatory Techniques, Regulatory Approaches, Regulatory Incentives.

## 1.0 Introduction

Regulation is the most appropriate tool for implementation of a policy. Implementation of regulation is possible with existence of strong chain that is formed from the earliest stage of regulation preparation to its implementation stage.<sup>2</sup> Strong chain is formed through appropriate theories of regulation and regulatory ‘tactics’. Regulatory ‘tactics’ range through regulatory strategies, regulatory models, regulatory techniques, and regulatory approaches. ‘Tactics’ in the regulation are construed as devices used to support both regulators and the regulated. For regulators to achieve regulatory goals and for the regulated to achieve purpose of their existence. This learning-piece navigates through strategies, models,

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<sup>2</sup> Mandelkern Group, Final Report on Better Regulation (2001).

techniques, and approaches as regulatory ‘tactics’ in the regulation of Primary SACCOS’ Credit Advancement (PSCA) in Tanzania. Accordingly, information herein is presented in the following order: Part 2.0 presents regulatory ‘tactics’ to which part 2.1 presents regulatory strategies; part 2.2 presents regulatory models; part 2.3 presents regulatory techniques; part 2.4 presents regulatory approaches; and part 3.0 concludes and recommend for improvements. The idea is to appreciate the worthiness of the regulation of PSCA in Tanzania.

## **2.0 Regulatory ‘Tactics’**

### **2.1 Regulatory Strategies**

Regulatory strategies as a regulatory ‘tactic’ stresses that, in order to achieve regulatory aim, goal, or objective, regulators must put in place a strategy. The strategy leads to the regulatory design/model that must use a technique which requires a certain approach to carry out regulatory function.<sup>3</sup> There are different regulatory strategies formed depending on regulatory goal, aim, or objective. For example, when regulators intend to promote growth, development and sustainability of businesses of the regulated, regulatory incentives such as tax exemptions can be used to achieve the purpose. Thus, strategies may take different forms such as command-and-control, incentives, or market harnessing.<sup>4</sup> Section 67 of the Cooperative Societies Act,<sup>5</sup> provides for an incentive of tax exemption (income tax, stamp duty, and value added tax) in favour of Primary SACCOS. Tax exemption reduces financial burden on part of Primary SACCOS.

### **2.2 Regulatory Models**

Models of regulation as regulatory ‘tactics’, are style of regulation employed by regulators towards achieving regulatory aims, goals, purposes, or objectives. There are several established models of regulation such as; Self-Regulation, State Regulation,<sup>6</sup> Smart Regulation, Co-Regulation, Consolidated Regulation, and Better Regulation. This study however, examines the last four (4) regulatory models.

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<sup>3</sup> Robert Baldwin and others, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press 2012).

<sup>4</sup> *ibid*

<sup>5</sup> No. 6 of 2013.

<sup>6</sup> For detailed information/knowledge about Self-Regulation and State Regulation see; Rosemary J. Mukama and others, ‘An Appraisal of Self-Regulation as an Alternative Regulatory Model for Primary SACCOS’ Credit Advancement in Tanzania’ (2020) 5 (1) BiLD Law Journal 117.

### 2.2.1 Smart Regulation

Smart Regulation refers to the new model of regulation that was developed out of growing new regulatory culture. Smart Regulation combines both Self-Regulation and Co-Regulation. It advocates for existence of multiple regulatory instruments such as regulatory models (command-and-control and soft law), and business information strategies, for an effective regulation.<sup>7</sup> It is argued that Smart Regulation is of great significance to answer questions that State Regulation and Self-Regulation failed to answer.<sup>8</sup> Smart Regulation operates under series of regulatory principles that includes: preference of complementary approaches; preference on less intervention of State Regulation; model of regulation that includes regulators, the regulated, and third parties; empowering third parties as surrogate regulators; and encourage business entities to go extra-mile beyond compliance within the ambit of the law to ensure sustainability.<sup>9</sup> Smart Regulation is not reflected in the existing regulation of PSCA in Tanzania. Although, Smart Regulation looks promising as it discourages dominance of State Regulation and regulatory monopolisation, it encourages multiplicity of regulators. The latter has already been established as a legal challenge to PSCA in Tanzania. On this basis, Smart Regulation is not an ideal model of regulation towards enabling Primary SACCOS to achieve their principal objects through credit advancement.

### 2.2.2 Co-Regulation

Co-Regulation is a process of involving both State Regulation and private financial entities in regulation of financial services.<sup>10</sup> In Co-Regulation state regulators operates in partnership with financial entities. The way it works is that, state regulators set objectives and delegate details of implementation to financial entities. Accordingly, regulatory validation of rules emanates from Self-Regulation. It should be borne in mind however that, Co-Regulation cannot be used to override State Regulation. The latter maintains supremacy and can regulate matters where Co-Regulation cannot.<sup>11</sup> In actuality, in Co-Regulation state regulators and financial entities do not have equal regulatory powers. Thus, elements of regulatory monopoly are present though they may not be in full display. Co-

<sup>7</sup> Neil Gunningham and Darren Sinclair, 'Smart Regulation' in Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (ANU Press 2017), 133.

<sup>8</sup> *ibid* 134.

<sup>9</sup> *ibid* 134 - 135.

<sup>10</sup> Olha O. Cherednychenko, 'Cooperative or Competitive? Private Regulators and Public Supervisors in the Post-Crisis European Financial Services Landscape' (2016) 35 *Policy and Society* 2, 103; *See also* Mandelkern (n 2) 17.

<sup>11</sup> *ibid*

Regulation is not reflected in the existing regulation of PSCA in Tanzania but due to its shortcomings, the absence cannot be felt.

### 2.2.3 Consolidated Regulation

Consolidated Regulation entails combining several laws and regulatory entities of a similar nature into one piece of legislation and a single-entity-regulator respectively. Consolidation of financial sector is not a new phenomenon. It is evidenced in various countries, such as Belgium, Finland, France, and Zambia, have partial Consolidated Regulation whereby financial sector of pension funds and insurance are consolidated to have a single unit of regulation. Other countries, such as Australia, Canada, Denmark, and Norway, adopted full Consolidated Regulation whereby financial sector of capital markets, insurance, and banking are regulated by a single regulator.<sup>12</sup> However, countries like United Republic of Tanzania, Republic of Kenya, Nigeria, United Kingdom, as well as United States of America, have not adopted Consolidated Regulation as financial sectors in these countries are separately regulated by various regulators.<sup>13</sup> *Mutuku* specifies arguments for and against Consolidated Regulation. Supporting side of Consolidated Regulation advances the following grounds:

Development of Financial Markets: Consolidated Regulation helps to improve financial markets, because multiple regulators fail to identify risks facing them and the entire regulatory sub-sector. Multiple regulators also fail to establish proper risk management mechanisms for preventing those risks. Consolidated Regulation however empowers the regulator to be able to identify, understand, and monitor risks across the sub-sectors and also be able to develop risk management mechanisms to prevent and eradicate those risks.<sup>14</sup>

Cost Reduction: It is argued that Consolidated Regulation can reduce costs and increase savings, because Consolidated Regulation maintains a single piece of legislation and a single regulator. Regulator maintains one stop point for services it delivers and therefore reduces costs of running their activities. Consolidated Regulation also reduces compliance costs to the regulated.<sup>15</sup>

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<sup>12</sup> Nzomo Mutuku, ‘Case for Consolidated Financial Sector Regulation in Kenya’ (2008) Retirement Benefits Authority (RBA): Research and Development Department.

<sup>13</sup> *ibid* 8.

<sup>14</sup> *ibid* 11.

<sup>15</sup> *ibid* 11 - 12.

Avoidance of Regulatory Arbitrage: Presence of multiplicity of regulators is a conducive environment for regulatory arbitrage. Regulatory arbitrage occurs when financial entities decide to register with sub-sectors that are considered weak and with inexpensive compliance cost. However, this can only multiply in absence of a clear category of financial products to belong in a certain sub-sector.<sup>16</sup> In Consolidated Regulation, motivation for arbitrage can be eliminated because it operates in a uniform standard to all sub-sectors.<sup>17</sup>

Strengthen Accountability: In Consolidated Regulation, the regulator is known as a sole responsible for regulation of financial sector. That being the case, at event of market failure or regulatory failure, it is held accountable. But in case of multiple regulators, blameworthiness may ensue between regulators when adverse events occurs.<sup>18</sup> Though even with as single regulator, problems may arise at event of having financial product that belongs to more than one sub-sector. For example mobile Electronic Fund Transfer (EFT) is a product of both financial sector and communication sector.<sup>19</sup> Or in this case, PSCA is a financial product of both cooperative sector and financial sector.

Detracting side of Consolidated Regulation advances the following arguments:

Reduces Effectiveness: Regulatory effectiveness is reduced because as single regulator faces the danger of becoming bureaucratic. Further, due to combining sub-sectors, there may exist conflicting regulatory objectives hence cause imbalance.<sup>20</sup> In addition to that, effectiveness is undermined if unique characteristics of each sub-sector are not recognised in supervision of the financial sector.<sup>21</sup>

Loss of Focus: Managers in Consolidated Regulation may fail to understand specific features of each sub-sector forming the financial sector. Because, in Consolidated Regulation, operations may become so broad and therefore causes difficulties for managers to fully comprehend and operate it successfully.<sup>22</sup> Apart from that, in Consolidated Regulation, there is a danger of the pre-merger regulator to dominate other regulators

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<sup>16</sup> ibid 12.

<sup>17</sup> ibid

<sup>18</sup> ibid

<sup>19</sup> ibid 12 - 13.

<sup>20</sup> ibid 13.

<sup>21</sup> ibid

<sup>22</sup> ibid

of the sub-sector usually banking sub-sector dominates others and therefore the focus of the entire financial sector may be lost.<sup>23</sup>

Regulatory Monopolisation: A single regulator may easily result into regulatory monopolisation. This may give rise to inefficiency that comes with monopolies, because there will be an absence of competition from other regulators.<sup>24</sup> Regulatory monopolisation also may mislead the regulated and financial consumers into thinking that, all financial sub-sectors have similar financial risks.<sup>25</sup>

Complexity of Integration: Consolidated Regulation give rise to legal issues, staffing issues, culture issues, and system issues. All of which may slow down productive regulatory activities of sub-sectors and eventually the financial sector.<sup>26</sup>

Lack of Confidence: There is a danger of the regulated and financial consumer not to have confidence in the whole financial sector because, when a single sub-sector fail to deliver, the consolidated regulator may end up being accused of poor supervision. This would have been prevented if regulatory regime is broaden.<sup>27</sup>

#### **2.2.4 Better Regulation**

Better Regulation is about ensuring that regulation is only employed when appropriate and the regulation used is of high-quality.<sup>28</sup> Better Regulation to be successful, it needs a support of high-level and cross-governmental political support such as executive and regulatory authorities. It is also must be underpinned by appropriate administrative and organisational structures. And it shall employ effective regulatory tools and principles for successful regulation.

Effective regulatory tools in Better Regulation includes; Regulatory Impact Assessment (RIA), simplification, consolidation, consultation, and promotion of a social change.<sup>29</sup> These tools of regulation are believed to prevent bureaucratic and regulatory burden in order to promote and

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<sup>23</sup> ibid

<sup>24</sup> ibid 13 - 14.

<sup>25</sup> ibid 14.

<sup>26</sup> ibid 14 - 15.

<sup>27</sup> ibid 15.

<sup>28</sup> Mandelkern (n 2).

<sup>29</sup> ibid

enhance Better Regulation programme.<sup>30</sup> For example, RIA is important for creating conducive and effective regulation for financial markets. RIA advocates for evidence-based policy making, and a well-structured framework for handling policy problems.<sup>31</sup> Consultation tool instruct regulators to consult the regulated before passing a policy or regulation that would affect the regulated and their undertakings.<sup>32</sup> Consultation entails open governance and transparency. Through effective consultation, regulators can avoid delays, controversies that may hinder regulatory progress.<sup>33</sup>

Simplification of regulation on the other hand, helps to have regulation that is well understood by both regulators and the regulated. Simplification aimed at: maintaining the existing rules while simplifying them into effective, easy to understand, and enhance compliance; and regulation that positively impacts the regulated and other business entities.<sup>34</sup> In addition to that, access to regulation as an effective regulatory tool affords the regulated the right to access and understand regulation. Thus, regulation needs clarity and coherence that is enhanced through consolidation.<sup>35</sup>

Better Regulation demands regulatory purposes to be appropriate for promotion and successfulness. Consolidated structure is of great significance to be considered but effective regulatory structure depends on circumstances of each case.<sup>36</sup> It is argued however that, there is no evidence establishing that Better Regulation has a better economic result. Thus, it is recommended that, choice of regulatory tools should be made in accordance to governance properties other than economic results.<sup>37</sup> In addition to effective regulatory tools, there are mainly seven (7) principles for Better Regulation. These are argued to include: necessity principle that implies that, before implementation of government policy is effected, government regulators must first assess the necessity of introducing new regulation for implementation of the policy;<sup>38</sup> proportionality principle of which any effective regulation must strike a

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<sup>30</sup> *ibid*

<sup>31</sup> *ibid* 19 – 26; *See also* Gotz Konzendorf and others, *Milestones on the Way to Better Regulation* (2005).

<sup>32</sup> Mandelkern (n 2) 26 – 32.

<sup>33</sup> *ibid*

<sup>34</sup> *ibid* 32 - 40.

<sup>35</sup> *ibid* 40 - 46.

<sup>36</sup> *ibid* 46 - 53.

<sup>37</sup> Claudio Maria Radaelli, *Towards Better Research on Better Regulation*. Paper Presented at the Advanced Colloquium on Better Regulation Centre for Regulatory Governance, University of Exeter on 25 – 26 January 2007.

<sup>38</sup> Mandelkern (n 2) 9.

balance between the advantages it offers and constraints it causes;<sup>39</sup> subsidiarity principle which is a principle that operates in two fold that is vertical subsidiarity and horizontal subsidiarity. Vertical subsidiarity is concerned with distribution of powers in different levels within the government.<sup>40</sup>

Horizontal subsidiarity deals with human beings as social and economic powers. Its concern is for the government to serve better its individual and organisations to the benefits of the general interest. Further, horizontal subsidiarity entails that governments do not have monopolisation powers over its citizens.<sup>41</sup> That includes powers to form policies and enacting laws in exclusion of its citizens because citizens have equal right and position to participate in policy making and regulation formulation and enactment.<sup>42</sup> In addition to that, horizontal subsidiarity supplements relationships between institutions and social entities to the extent of granting preference to lower levels and legitimising actions of higher levels.<sup>43</sup> Therefore, as a whole, principle of subsidiarity intends to ensure that regulatory decisions are taken at a level proximity to the regulated and that the decisions are justified with accordance to regulatory aims, goals, objectives, and purposes.<sup>44</sup>

Transparency principle that entails that, drafting regulation should not be confined into public regulators alone but should also involve the regulated through consultations and other forms of participation. This enables regulators to come up with not only an effective regulation but also of a needed high-quality;<sup>45</sup> accountability principle that requires regulators to be concerned to the applicability of regulation;<sup>46</sup> accessibility principle that entails that, it is essential for the regulation to be implemented properly so that to have a room to be accessed by the regulated that were intended to be regulated by it; and simplicity principle whereby it advocates for regulation that is simple to understand and to put into use so that the regulated can enjoy rights granted to them and be accountable to the regulatory duties accorded to them. ‘Regulation should be as detailed as

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<sup>39</sup> *ibid*

<sup>40</sup> Fabrizio Cafaggi and Simona Rodriguez, ‘Self-Regulation in Italy’ (2007) European University Institute: New Modes of Governance Project No. CITI-CT-2004-506392.

<sup>41</sup> *ibid*

<sup>42</sup> *ibid*

<sup>43</sup> *ibid* 8.

<sup>44</sup> Mandelkern (n 2) 9.

<sup>45</sup> *ibid* 10.

<sup>46</sup> *ibid*



necessary and as simple as possible'.<sup>47</sup> Simplicity of regulation has another advantage of becoming a major source of savings.<sup>48</sup> Better Regulation is an ideal regulatory model but it is not reflected in the existing regulation of PSCA in Tanzania. Better Regulation is an ideal regulatory model because it embraces both Self-Regulation and State Regulation. But, unlike Self-Regulation and State Regulation, Better Regulation has far better approaches, principles, and regulatory tools for an effective legal and regulatory framework.

Better Regulation is a paradigm shift as it redefines Self-Regulation and State Regulation through which Self-Regulation complements State Regulation. Better Regulation also embraces Consolidated Regulation but unlike Consolidated Regulation that advocates for regulatory monopolisation. Better Regulation advocates for inclusion in both regulation and the making of regulations. It modifies traditional Consolidated Regulation that insists on regulatory monopoly where governments solely enjoy powers to regulate and make regulations. Instead Better Regulation embraces Consolidated Regulation that allows powers to regulate and make regulations to be shared by both regulators and the regulated for better results. Advantages of Better Regulation places it as a key and cross-cutting regulatory 'tactic' in a form of regulatory model capable of supplementing and bridging theories of regulation and the remaining regulatory 'tactics'. It follows therefore, a suggestion that Tanzania needs Better Regulation as a regulatory model for a successful regulation of PSCA that can enable growth, development, and sustainability of Primary SACCOS, and above all enable Primary SACCOS to fully achieve their principal objects.

### 2.3 Regulatory Techniques

Regulatory techniques are methods and skills that legislature put into practice when designing a legislation. The techniques are applied in order to achieve a certain regulatory purpose(s). In broader sense, regulatory techniques are designed to achieve social functions. They intend to answer the very important regulatory question that is 'how can the law help to discharge social functions?'.<sup>49</sup> Regulatory techniques as put forward by *Summers*<sup>50</sup> are as follows:

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<sup>47</sup> *ibid*

<sup>48</sup> *ibid*

<sup>49</sup> Robert S. Summers, 'The Technique Element in Law' (1971) 59 *Cornell Law Faculty Publications* 1192, 733; *See also* Hans Kelsen, 'The Law as a Specific Social Technique' (1941) 9 *The University of Chicago Law Review* 1.

<sup>50</sup> *Summers* (n 49) 736.

### 2.3.1 Grievance-Remedial Technique

This technique accompanies advantages such as it describes counteractive complaints, it specifies remedies, it administers dispute resolution procedure, it administers claims procedure, and it provides for an enforcement of remedial awards.<sup>51</sup> For example, Section 100 (3) of the Cooperative Societies Act,<sup>52</sup> empowers Registrar of Societies to cancel registration of Primary SACCOS. Registrar of Societies may exercise this power based on grounds such as the Primary SACCOS violated Section 47 of the Bank of Tanzania Act.<sup>53</sup> Section 100 (3) of the Cooperative Societies Act,<sup>54</sup> reads as follows:

The Registrar shall cancel the registration of any savings and credit societies that fail to comply with the requirements to present audited accounts as required by Section 47 of the Bank of Tanzania Act, unless sufficient evidence is given to the effect that, any such savings and credit societies have established a technical and financial assistance linkage with professionally managed financial services institution or program.

Section 47 of the Bank of Tanzania Act,<sup>55</sup> reads as follows:

Notwithstanding any provision to the contrary contained in any written law, the Bank [of Tanzania] shall have power to access to any oral and documented information, including information in computers, books, minutes, accounts, cash securities, documents, voucher as well as any other things in the possession or custody or under the control of a bank or financial institution or its affiliate, which relate to the business of such bank or financial institution. The Bank [of Tanzania] may carry out, at such times as it may consider necessary, an examination of any bank or financial institution in accordance with the provisions of the Banking and Financial Institutions Act, 2006.

The remedial grievance that is established and defined in the foregoing provisions of the law entails that Primary SACCOS has an obligation to present audited accounts to the BoT. Failure of which entitles the Registrar of Societies a remedy to cancel the registration of a concerned Primary SACCOS. Moreover, the law entitles the aggrieved party (Primary SACCOS) to a specific remedy connected to the cancellation of registration. Section 101 (1) of the Cooperative Societies Act,<sup>56</sup> specifies

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<sup>51</sup> *ibid*

<sup>52</sup> No. 6 of 2013.

<sup>53</sup> No. 4 of 2006.

<sup>54</sup> No. 6 of 2013.

<sup>55</sup> No. 4 of 2006.

<sup>56</sup> No. 6 of 2013.

that Primary SACCOS or any of its member may challenge the Registrar of Societies' decision by way of appeal against the cancellation. Nonetheless, to enjoy the appeal remedy, Primary SACCOS or any of its members must first adhere to the laid down procedure for resolving disputes and claims to the established remedies.

Accordingly, Primary SACCOS or any of its members must lodge an appeal to challenge the decision to the Minister responsible for cooperatives within thirty (30) days from the date of the order cancelling the registration pursuant to Section 101 (1) of the Cooperative Societies Act.<sup>57</sup> Failure of which, the order takes effect upon expiration of thirty (30) days as per Section 101 (2) of the Cooperative Societies Act.<sup>58</sup> Where an appeal is presented within the prescribed time, its effect is not only put on hold the operation of cancellation order but also compels the Minister to determine the appeal pursuant to Section 101 (3) and (4) of the Cooperative Societies Act.<sup>59</sup> Decision of the Minister on the matter comes as a remedial award in form of a confirmation or a cancellation of the order as per Section 101 (4) of the Cooperative Societies Act.<sup>60</sup> Whichever the case, decision of the Minister is enforceable on parties as per Section 101 (4) of the Cooperative Societies Act.<sup>61</sup> Rationale of grievance-remedial technique is to provide regulators and the regulated with civil means to accomplish regulatory aims and purposes.

### 2.3.2 Penal Technique

Penal technique assist legislature to provide for prohibition of all anti-social behaviours. The technique also assists legislature to maintain police force and other law enforcement organs to enforce the expressed prohibitions. Apart from that, police force and other established law enforcement organs have a duty to detect violation of the prohibitions, administer processes for carrying out remedial against the committed prohibitions, and operates a correctional system.<sup>62</sup> A penal technique applies criminal procedure to deal with prohibited behaviours of the regulated. For example, Section 126 (1) (b) of Cooperative Societies Act<sup>63</sup> prohibits Primary SACCOS to wilfully make false returns or furnishes false information. Contrary of which results into conviction and

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<sup>57</sup> *ibid*

<sup>58</sup> *ibid*

<sup>59</sup> *ibid*

<sup>60</sup> *ibid*

<sup>61</sup> *ibid*

<sup>62</sup> Summers (n 49) 736 - 737.

<sup>63</sup> No. 6 of 2013.

punishment of a fine of not less than five million Tanzania shillings (TZS 5,000,000/=). For Primary SACCOS’ members or any individual connected to the crime, will also be convicted and punished with either a fine of not less than five million Tanzania shillings (TZS 5,000,000/=) or imprisonment to a term of not less than two years or both. Further, in addition to a fine or imprisonment or both, the court of law may order a compensation or confiscation against the convict as per Section 126 (2) of Cooperative Societies Act.<sup>64</sup>

Penal technique is further applicable in shielding regulators from criminal liability resulting from discharging their duties in good faith and due diligence because, effectiveness of regulators to serve is also created from good working environment. This is a kind of regulatory environment whereby, regulators are protected against prosecution fears, and are showered with independence and autonomy. For example, Section 135 of the Cooperative Societies Act<sup>65</sup> provides for immunity of regulators. Immunity against criminal liability extends to any matter done exercising or purporting to exercise any regulatory functions pursuant to the Cooperative Societies Act,<sup>66</sup> and subsidiary legislation made thereunder provided such matter was done in good faith. Generally, penal technique assist in creating regulatory framework that is functioning towards achieving regulatory aims and purposes.

### **2.3.3 Administrative-Regulatory Technique**

Administrative-Regulatory Technique is designed to mainly operate preventatively before any sort of damage is done. Under this technique, regulator takes precautionary steps to guarantee compliance of the regulated to established regulatory standards and best practices so that to prevent any sort of market failure. In order to prevent financial market failure and also to protect depositors, Regulation 21 of the Microfinance (Savings and Credit Cooperative Societies) Regulations,<sup>67</sup> empowers the Tanzania Cooperative Development Commission (TCDC) or the Bank of Tanzania (BoT) as the case may be, to require Primary SACCOS to build a reserve fund. This regulatory technique is cultured to regulate wholesome activities of the regulated other than prohibiting anti-social behaviours altogether.<sup>68</sup> Further, this technique establishes tools for making sure that preventative measures are into play. These includes; licensing, cease-and-

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<sup>64</sup> *ibid*

<sup>65</sup> *ibid*

<sup>66</sup> *ibid*

<sup>67</sup> G.N. No. 675 of 2019.

<sup>68</sup> Summers (n 49) 737 - 739.

desist letters, and warning letters. For example, Regulation 69 (1) of the Microfinance (Savings and Credit Cooperative Societies) Regulations<sup>69</sup> empowers the TCDC or the BoT as the case may be, to issue cease-and-desist-order against Primary SACCOS. The order intends to direct Primary SACCOS to address unsafe and unsound practices that have not been sufficiently and efficiently dealt with through other supervisory actions.

The TCDC or the BoT may issue cease-and-desist order only when Primary SACCOS has engaged or continues to engage in any unsafe business practice, or has violated or continues to violate laid down rules and regulations, or has failed or continue to fail to comply with the Supervisory Memorandum of Understanding as per Regulation 69 (2) (a) – (c) of the Microfinance (Savings and Credit Cooperative Societies) Regulations.<sup>70</sup> This technique assist legislature to establish mechanisms for regulators to adopt regulatory standards and communicate the same to the regulated to ensure compliance. Given the prerequisite information and knowledge about regulatory standards and best practices, the regulated may be able to guide themselves towards accomplishing the regulatory purpose(s). In addition to that, through this technique, regulators are empowered to take intervention actions against non-compliance even before the damage is done consequent to non-compliance.<sup>71</sup>

### 2.3.4 Public-Benefit-Conferral Technique

Public-Benefit-Conferral Technique helps to develop a regulatory regime that conferring various substantive benefits to individuals and groups. Benefits inferred includes benefits such as; education, training, welfare payments, and tax exemptions.<sup>72</sup> Section 8 (2) (b) (v) of the Cooperative Societies Act,<sup>73</sup> imposes a duty to the TCDC to educate and train Primary SACCOS about cooperatives movement. This duty benefits Primary SACCOS for the purpose of promoting development and sustainability of their activities. Further, Section 23 of the Cooperative Societies Act<sup>74</sup> provides principal objects of Primary SACCOS to achieve for the benefits of their members. Primary SACCOS must strive to raise the living standard of their members. Alternatively, members will benefit from those efforts. In addition to that, Cooperative Principles and Values require

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<sup>69</sup> G.N. No. 675 of 2019.

<sup>70</sup> *ibid*

<sup>71</sup> Summers (n 49) 737 - 739.

<sup>72</sup> *ibid* 739.

<sup>73</sup> No. 6 of 2013.

<sup>74</sup> *ibid*

Primary SACCOS to be organisations that works for communities’ welfare as per Section 3 (2) (h) of the Cooperative Societies Act.<sup>75</sup>

### **2.3.5 Private-Arrangement Technique**

Private-arrangement technique assist legislature to formulate regulatory framework that recognises private affairs. These affairs need to have their own grievance-remedial provisions and mechanisms to be dealt with privately.<sup>76</sup> For example, Regulation 130 (1) of the Savings and Credit Cooperative Societies Regulations,<sup>77</sup> provide for dispute and complaints settlement procedures concerning business of Primary SACCOS. The procedures intend to serve between members of Primary SACCOS and Primary SACCOS or between Primary SACCOS and another Primary SACCOS or between Primary SACCOS and another SACCOS. The procedures established are applicable alternatively at first instance in either negotiation or reconciliation.

Private-arrangement technique aimed at protecting privacy of financial players in the market. It may have further advantages such as dispute may be disposed of at speed, loss may be minimal as the principle of the winner takes all do not apply, and it maintains confidentiality. More than that, it may help parties to a dispute avoid enmity. In financial services, time and friendship serve a great deal in building sustainability and growth. It is needless to say that, regulatory techniques may assist legislature to come up with prudential regulation that may enable sustainability and growth of financial services.

## **2.4 Regulatory Approaches**

Regulation takes different forms or perspectives towards achieving a regulatory goal, purpose, or aim. There are mainly four (4) approaches to regulation namely; principle-based approach, rule-based approach, market-friendly-based approach, and management-based approach.

### **2.4.1 Principle-Based Approach**

This approach is associated with open-ended standards because it allows the content of regulation to be specified in generality by legislature. Thereafter, the standard is further elaborated and clarified by public

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<sup>75</sup> *ibid*

<sup>76</sup> Summers (n 49) 741.

<sup>77</sup> G.N. No. 115 of 2016.

regulators and private actors.<sup>78</sup> The regulatory goal under this approach warrant regulatory authorities to ensure accountability and creating a sense of responsibility of individuals or entities when carrying out their regulatory functions.<sup>79</sup> For example, Section 11 (3) (a) – (d) of the Microfinance Act,<sup>80</sup> provides for some of the criteria for transformation of Primary SACCOS and leave a room to the Minister for Finance and Planning to add any other relevant criteria in the regulations. Another example is that of Regulation 28 of the Microfinance (Savings and Credit Cooperative Societies) Regulations.<sup>81</sup> The Regulation provide for every Primary SACCOS to prepare lending policy by interpreting general matters in the lending policy. Principle-based approach allows regulations to embrace practicability and high-quality-regulation as a result of being made by persons with practical experience in the financial market concerned.

### 2.4.2 Rule-Based Approach

Generally, a rule is an established standard or custom commanding an action of the regulated.<sup>82</sup> Regulation is designed under rule-based approach in order to cure market crisis at national and international levels.<sup>83</sup> For example Section 3 (2) (g) of the Cooperative Societies Act<sup>84</sup> sets a rule for Primary SACCOS to work through local, national, and international structures in order to strengthen cooperative movement. It is believed a strong cooperative movement in the country carries with it an advantage for Primary SACCOS to effectively serve their members.

### 2.4.3 Market-Friendly-Based Approach

Market-friendly-based approach is itself made by multiple regulatory approaches such as complementary approach, proactive approach, and evolutionary approach. Complementary approach comprises with soft laws and Self-Regulation such as contractual agreements while proactive approach comprises with economic incentives such as information, education, and advocacy. On the other hand, evolutionary approach

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<sup>78</sup> Cherednychenko (n 10).

<sup>79</sup> Ihsan Ugur Delikanli, *The Results of Regulatory Paradox from the Perspective of Auditors*. Banking Regulation and Supervision Agency.

<sup>80</sup> No. 10 of 2018.

<sup>81</sup> G.N No. 675 of 2019.

<sup>82</sup> Bryan A. Garner, *Black's Law Dictionary* (Thompson Reuters 2009).

<sup>83</sup> Delikanli (n 79).

<sup>84</sup> No. 6 of 2013.

comprises with torts, rights, liability, and Co-Regulation.<sup>85</sup> It cannot be confidently argued that regulation of PSCA in Tanzania embodies this regulatory approach.

#### 2.4.4 Management-Based Approach

Management-based approach is also known as meta-based approach.<sup>86</sup> It is an interplay regulatory approach between public and private regulators.<sup>87</sup> It is a kind of approach that advocates for public regulators’ reliance to financial institutions’ regulators for an appropriate and practical regulatory system. And ensure that the established regulatory system is effective. Regulatory system is made by oversight mechanisms, internal control and management, and monitoring mechanisms. In presence of the effective regulatory system, financial entities can contribute to the accomplishment of regulatory goals pursued by public regulators.<sup>88</sup> Ordinarily, regulatory approaches find nest in models of regulation. For example principle-based and rule-based approaches are more likely to settle in State Regulation, market-friendly based approach in Self-Regulation, while management-based approach resonates more with Co-Regulation. As Co-Regulation is not embodied in the regulation of PSCA in Tanzania, it is safe to assert the regulation does not embrace this regulatory approach.

### 3.0 Conclusion and Recommendations

It has been submitted herein above that, regulation is an important tool or instrument towards sustainability and development of financial markets. Regulation of these capabilities must be of high-quality. For that, it must be comprehensive that covers all regulatory areas and do not give a room to regulatory gaps. Often regulators resort to different regulatory ‘tactics’ in form of strategies, models, techniques, and approaches in order to achieve the intended regulatory aim, goal, purpose, or objective. Nevertheless, Better Regulation is not embodied in the regulation of PSCA in Tanzania despite it being a key and cross-cutting regulatory ‘tactic’ for an effective regulation. This learning-piece therefore recommends to the Government of the United Republic of Tanzania particularly the Executive and the Legislature to cause an amendment of relevant laws in order to accommodate Better Regulation. Relevant laws recommended for

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<sup>85</sup> Ubena John, *How to Regulate Information and Communications Technology?: A Jurisprudential Inquiry into Legislative and Regulatory Techniques* (Jure AB, 2015).

<sup>86</sup> Cherednychenko (n 10) 110.

<sup>87</sup> *ibid*

<sup>88</sup> *ibid*



amendment includes the Constitution of the United Republic of Tanzania,<sup>89</sup> the Office of the Attorney General (Discharge of Duties) Act,<sup>90</sup> and Parliamentary Standing Orders.<sup>91</sup>

Amendment shall be directed to provide for Better Regulation (regulatory tools and principles) in procedure for enactment or amendment of laws in Tanzania. Article 98 (1) of the Constitution is recommended to be amended by adding Paragraph (c) that provides for inclusion of Better Regulation in drafting process of Government Bills. Section 12 (1) of the Office of the Attorney General (Discharge of Duties) Act is recommended to be amended by removing the phrase ‘exercise exclusive mandate’ and replace with ‘apply Better Regulation’. Order 88 (10) of Parliamentary Standing Orders is recommended to be amended to the effect that, the Government Bill shall not be passed unless the National Assembly satisfied that, Better Regulation was employed in legislative process. Better Regulation as regulatory model is advantageous to not only Primary SACCOS for enabling introduction of effective laws but also other entities to which other good laws applicable to them will be enacted.

## REFERENCES

### Legal Instruments

- Bank of Tanzania Act, No. 4 of 2006.
- Constitution of the United Republic of Tanzania 1977.
- Cooperative Societies Act, No. 6 of 2013.
- Microfinance Act, No. 10 of 2018.
- Microfinance (Savings and Credit Cooperative Societies) Regulations, G.N. No. 675 of 2019.
- Office of the Attorney General (Discharging of Duties) Act [Cap. 268 RE 2019].
- Parliamentary Standing Orders 2016.
- Savings and Credit Cooperative Societies Regulations, G.N. No. 115 of 2016.

### Publications

- Baldwin R and others, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press 2012).

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<sup>89</sup> 1977.

<sup>90</sup> [Cap. 268 RE 2019].

<sup>91</sup> 2016.

- Cafaggi F and Rodriguez S, ‘Self-Regulation in Italy’ (2007) European University Institute: New Modes of Governance Project No. CITI-CT-2004-506392.
- Cherednychenko O. O, ‘Cooperative or Competitive? Private Regulators and Public Supervisors in the Post-Crisis European Financial Services Landscape’ (2016) 35 Policy and Society 2.
- Delikanli I. U. The Results of Regulatory Paradox from the Perspective of Auditors. Banking Regulation and Supervision Agency.
- Garner B. A., *Black’s Law Dictionary* (Thompson Reuters 2009).
- Gunningham N and Sinclair D, ‘Smart Regulation’ in Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (ANU Press 2017).
- John U, *How to Regulate Information and Communications Technology?: A Jurisprudential Inquiry into Legislative and Regulatory Techniques* ( Jure AB, 2015).
- Kelsen H, ‘The Law as a Specific Social Technique’ (1941) 9 The University of Chicago Law Review 1.
- Konzendorf G, et al., *Milestones on the Way to Better Regulation* (2005).
- Mandelkern Group, *Final Report on Better Regulation* (2001).
- Mukama R J and others, et al, ‘An Appraisal of Self-Regulation as an Alternative Regulatory Model for Primary SACCOS’ Credit Advancement in Tanzania’ (2020) 5 BiLD Law Journal 1.
- Mutuku N, ‘Case for Consolidated Financial Sector Regulation in Kenya’ (2008) Retirement Benefits Authority (RBA): Research and Development Department.
- Radaelli C M, *Towards Better Research on Better Regulation*. Paper Presented at the Advanced Colloquium on Better Regulation Centre for Regulatory Governance, University of Exeter on 25 – 26 January 2007.
- Summers R S, ‘The Technique Element in Law’ (1971) 59 Cornell Law Faculty Publications 1192.