

Towards a Legal Framework for Platform Cooperatives: Potential and Obstacles

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Morshed Mannan
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Introduction

1. In little over a decade, digital labor platforms such as Uber and Deliveroo have become household names. In contrast to traditional 'pipeline' businesses that sequentially create and transfer value to a single class of consumers, these 'platform' businesses seek to maximize value-creating interactions between outsourced workers and consumers to generate revenue. This is in part achieved through the technological architecture of the platform, which facilitates these interactions and supplies the governance conditions that allow these transactions to take place in a low-trust environment.¹ As such, platforms can be thought of as an assemblage of socio-technical and capitalist business practices.²
2. From the perspective of the companies operating these digital labor platforms, they enable workers to expand their incomes, enjoy greater work flexibility, and maximize value generated from under-utilized assets, while consumers are benefited through lower prices and a greater variety of services. However, for critics of 'platform capitalism', these benefits are chimeric, as worker flexibility has often meant precarious work and the increased utilization of assets has meant taking on more personal financial risks.³ Greater consumer choice has often meant the weakening of regulatory oversight and protections, exposing users to harassment and discrimination.⁴ There is also growing evidence of wider socio-economic consequences arising from the operation of these digital labor platforms and the business practices employed to maintain them, including the large-scale creation of digital profiles and personae of users to monitor the use of the platform and modulate demand and supply, the concentration of geographic and products markets through the acquisition of smaller competitors, and a concerted effort to shape local legislation and regulations to their benefit.⁵ This is done in service of the venture capital firms and/or well-heeled

¹ G. Parker, M. van Alstyne & S.P. Choudary, *Platform Revolution: How Networked Markets Are Transforming the Economy—and How to Make Them Work for You*, W.W. Norton, 2016, at 5.

² P. Langley & A. Leyshon, "Platform Capitalism: The Intermediation and Capitalization of Digital Economic Circulation", *Finance & Society*, Vol. 3(1), 2017, pp. 11-31, at 13.

³ N. van Doorn, "Platform labor: on the gendered and racialized exploitation of low-income service work in the 'on-demand' economy", *Information, Communication and Society*, Vol. 20(6), 2017, pp. 898-914; B. Dreyer et al., "Upsides and Downsides of the Sharing Economy: Collaborative Consumption Business Models' Stakeholder Value Impacts and Their Relationship to Context", *Technological Forecasting and Social Change*, Vol. 125, pp. 87-104, at 93-94, 97.

⁴ See, e.g., Y. Ge et al., "Racial Capitalism and Gender Discrimination in Transportation Network Companies", *National Bureau of Economic Research Working Paper Series*, No. 22776, 2016; AJ Ravenelle, *Hustle and Gig: Struggling and Surviving in the Sharing Economy*, University of California Press, 2019; A. Rosenblat, *Uberland: How Algorithms are Rewriting the Rules of Work*, University of California Press, 2018.

⁵ See, e.g. S.R. Miller, "Urban Data and the Platform City", In: S.R. Davidson, M. Finck & J.J. Infranca (eds) *The Cambridge Handbook of the Law of the Sharing Economy* (pp. 192-202), Cambridge

founders who own a large stake in these platform companies. In sum, despite the euphemism that this sector is based on sharing, it would be more accurate to say that it is based on taking. As one early commentator presciently argued, this economy effectively represents “neoliberalism on steroids”.⁶

3. The growth of financialization in response to the emergence of a new technology is not an entirely new phenomenon. In her *Technological Revolutions and Financial Capital*, Carlota Perez argues that every technological revolution is characterized by periods of ‘frenzy’, where there is an intensive investment in companies, leading to a decoupling of the market value and real value of businesses, and a polarization of rich and poor.⁷ This predates a financial bubble, which after bursting leads to appropriate technological regulation. The ‘platform cooperativism’ movement emerged in response to such a period of frenzy, as the modalities of regulating the platform economy are still being fleshed out. It has coalesced to build “alternatives to the dominant Silicon Valley model” of platform capitalism by seeking to recouple capital with the labor (in various forms) that is needed to produce new goods and services, and by serving the interests of those producing the latter, rather than the caprices of those who hold the former.⁸ What makes platform cooperativism distinct from the regulation of a certain sector, labor law reform initiatives and even other forms of collective action against online labor platforms, is that it focuses on aiding and promoting over the long-term, the constellation of actors that are building and operating cooperatives in the platform economy. For the adherents of this movement, the cooperative identity, values and principles, as articulated in the International Co-operative Alliance’s Statement on the Cooperative Identity (1995), and to an extent cooperative history,⁹ offers an inspirational model and salutary lessons for redressing the aforementioned inequities generated by platform capitalism. This is why, among different definitions of the term, an influential one defines platform cooperatives as “an enterprise that operates primarily through digital platforms for interaction or the exchange of goods and/or services and is structured in line with the International Cooperative Alliance Statement on the Cooperative Identity”.¹⁰
4. In 2014, Trebor Scholz and Nathan Schneider respectively published ‘Platform Cooperativism vs. the Sharing Economy’ and ‘Owning is the New Sharing’, two contributions which provided an early conceptual framework for platform cooperativism and showcased the cooperative alternatives that had begun to emerge at the time. In the years since, through conferences, publications and courses, there has been an effort to connect and mutually reinforce these new cooperative businesses appearing in different parts of the world, across different sectors of the platform

University Press, 2018, pp. 196-197; N. van Doorn & A. Badger, “Platform Capitalism’s Hidden Abode: Producing Data Assets in the Gig Economy”, *Antipode*, Vol. 52(5), pp. 1475-95, at 1475-1476; M. Tkacik, “Rescuing Restaurants: How to Protect Restaurants, Workers, and Communities from Predatory Delivery App Corporations”, *American Economic Liberties Project Working Paper Series on Corporate Power*, No. 7, 2020, at 10, 16-17; A. Tzur, “Uber Über Regulation? Regulatory Change Following the Emergence of New Technologies in the Taxi Market”, *Regulation & Governance*, Vol. 13(3), 2019, pp. 340-361.

⁶ E. Morozov, “The ‘Sharing Economy’ Undermines Workers’ Rights”, *The Financial Times* (14 October 2013).

⁷ C. Perez, *Technological Revolutions and Financial Capital*, Edward Elgar, 2002, at 47-48, 50-52, 105-6.

⁸ T. Scholz & N. Schneider (eds.) *Ours to Hack and to Own: The Rise of Platform Cooperativism, A New Vision for the Future of Work and a Fairer Internet*, OR Books, 2016, at 11; *ibid*, at 76.

⁹ See, e.g., M. Schneiberg, “Movements as Political Conditions for Diffusion: Anti-Corporate Movements and the Spread of Cooperative Forms in American Capitalism”, *Organization Studies*, Vol. 34(5-6), pp. 653-682, at 659-60.

¹⁰ E. Mayo, “Digital Democracy? Options for the International Cooperative Alliance to Advance Platform Coops”, *International Co-operative Alliance Discussion Paper*, 2019, at 20. Available at: < https://www.uk.coop/sites/default/files/2020-11/annex_1_-_digital_democracy_discussion_paper_-_en.pdf> last accessed on 1 June 2021.

economy. These have included cooperatives active in ride-hailing, food delivery, on-demand cleaning, as well as music streaming, digital media and online news.¹¹ It is still early, but some of the material benefits of cooperatives can be seen through the higher income received by cleaners using Up&Go, the lower transaction fees charged by Eva.coop, and the control over their data and the platform's technological architecture in the case of both.¹² While a comprehensive database is still lacking, according to Scholz,¹³ there are now over 500 such platform cooperatives worldwide, across the economic sectors of asset sharing, local gig work, remote gig work, online markets, media and cultural services, financial services, agro-industry, data and software. These cooperatives can be categorized into worker, producer, multi-stakeholder, consumer, citizen, women, tenants and primary cooperative types.¹⁴ Thus, while several platform cooperatives are involved in digital labor markets, there are many that operate in other sectors of the platform and wider digital economy.

5. This development is encouraging, but as several scholars and practitioners have observed, law and policy reforms are required to support the further flourishing of platform cooperatives.¹⁵ This year presents a unique opportunity to further this reform agenda as the UN General Assembly has adopted a resolution on 18 December 2019 on Cooperatives in Social Development (A/RES/74/119), where it has both reminded governments of the need to revise cooperative laws to encourage the creation and growth of cooperatives and encouraged governments to promote access to information & communication technologies by introducing support programs. Among other things, this is to be done to close the digital gender divide and further women empowerment. The early experience of platform cooperatives such as Up&Go in New York City to the experiments with building digital platforms by the Self-Employed Women's Association in Gujarat shows that platform cooperatives can have a pivotal role in achieving these goals.¹⁶ However, there has been relatively limited research on how favorable laws and policies can support platform cooperatives, and thereby further the law reform agenda mentioned in the UN General Assembly Resolution. The remainder of this submission will be dedicated to considering the development of a

¹¹ The Internet of Ownership, "#PlatformCoop Directory", available online at: <<https://ioo.coop/directory/>> Last accessed on 3 June 2021.

¹² M. Haas, "'When Someone Hires Me, They Get the Boss Herself'", *The New York Times* (7 July 2020); M. Mannan, "Everything Old is New Again: Evaluating the Legal and Governance Structures of Shared-Services Platform Cooperatives", *Institute for the Cooperative Digital Economy Research Report*, The New School, 2020.

¹³ Ethan Zuckerman and Trebor Scholz, "Reimagining the Internet", *The Initiative for Digital Public Infrastructure at UMass Amherst* (20 January 2021), available online at: <<https://publicinfrastructure.org/podcast/11-trebor-scholz>> Last accessed on 1 June 2021.

¹⁴ M. Mannan and S. Pek, "Solidarity in the Sharing Economy: The Role of Platform Cooperatives at the Base of the Pyramid", in I. Qureshi et al. (eds.) *Sharing Economy at the Base of the Pyramid: Opportunities and Challenges*, Springer, 2021.

¹⁵ See, e.g., M. Mannan and N. Schneider, "Exit to Community: Strategies for Multi-Stakeholder Ownership in the Platform Economy", *Georgetown Law Technology Review*, Vol. 5(1), 2021, pp. 1-71; T. Scholz, D. O'Brien & J. Spicer, "Can Cooperatives Build Worker Power? Give Platform Co-ops a Seat at the Policy Table", *Public Seminar* (11 March 2021); N. Schneider, "Broad-Based Stakeholder Ownership in Journalism: Co-ops, ESOPs, Blockchains", *Media Industries*, Vol. 7(2), 2020, pp. 45-67; J. Pentzien, "Political and Legislative Drivers and Obstacles for Platform Cooperativism in the United States, Germany, and France" *Institute for the Cooperative Digital Economy Research Report*, The New School, 2020; N. Schneider, "Tech New Deal: Policies for Community-Owned Platforms", *OSF Preprint*, 2020, available online at: <https://osf.io/t7z2m/?view_only=c8ed9a48a9c04c509c890894d169b206> Last accessed on 1 June 2021.

¹⁶ Platform Cooperativism, "'We Are Poor but So Many': Self-Employed Women's Association of India and the Team of the Platform Co-Op Development Kit." P2P Foundation blog 13 September 2018), available online at: <<https://blog.p2pfoundation.net/we-are-poor-but-so-many-self-employed-womens-association-of-india-and-the-team-of-the-platform-co-op-development-kit/2018/09/13>> Last accessed on 1 June 2021.

conducive legal framework for platform cooperatives, bearing in mind the jurisdictional differences that exist.

The Important Role of a Conducive Legal Framework

The Difficulty in Defining Platform Cooperatives

6. It is important to note that platform cooperatives still lack a statutory definition and—as indicated in paragraph 4—the term is used to describe a wide variety of cooperative types operating across a multitude of sectors in the platform and digital economies. Moreover, platform cooperative is a term that is used to describe any enterprise that adheres to the ICA Statement on the Cooperative Identity—irrespective of whether it adopts the legal form that exists for cooperatives within a given jurisdiction. The reason for this is that general or sectoral cooperative laws may not be conducive to the formation of platform cooperatives and, as a consequence, an alternative legal form has to be used which provides the necessary ease and flexibility. These legal forms have included the limited liability company (LLC) in the United States and the private company limited by guarantee in the United Kingdom, as well as non-profit forms such as the association in France and Brazil. This ease and flexibility are not only due to the straightforward requirements and procedures for registering and governing the business entity, but also, for instance, due to the possibility of experimenting between being a nonprofit or a for-profit cooperative (e.g., with association de préfiguration in France). This organizational diversity will only increase as more ‘community owned’ platforms emerge that are owned by trusts or are controlled using blockchain-based governance tokens.
7. This poses a dilemma for the global cooperative sector in general, and cooperative lawyers in particular, as there has long been an effort to strengthen the distinct cooperative identity and combat the ‘corporatization’ of cooperatives. The presence of venture capital and high capital demands of the platform and digital economies has meant that any startup in this space, regardless of motivation, is vulnerable to corporate acquisition, being squeezed out of the market by a competitor or the lure of corporatization. There are two paths that the global cooperative sector could pursue in view of this, what I would describe as the restrictive path and the enabling path. The restrictive path would be to dismiss a large number of these participatory enterprises as not being cooperatives and, where available, using sanctions under cooperative law to punish those enterprises for using the cooperative marque without formation as a cooperative. The enabling path, instead, would acknowledge that a lot of these enterprises are early-stage businesses that are finding their feet in hyper-competitive markets, where sound and creative cooperative business advice may be in short supply. It would recognize the need for, and support, an increase in progressive cooperative federations (e.g., Co-operatives UK) and startup cooperative incubators (e.g., UnFound, Start.Coop) to help ease these enterprises towards the use of the cooperative legal form and implement the ICA’s Statement on the Co-operative Identity. Instead of punitive measures, these organizations can help evaluate whether these enterprises have the intention of becoming cooperatives—or not. After all, the platform cooperativism movement itself is interested in avoiding ‘co-op whitewashing’ and wishes to encourage bottom-up collaboration.¹⁷ The enabling path would also involve appreciation of the fact that platform cooperatives comprise a heterogeneous mix of cooperative types across several sectors, and that laws and policies that facilitate the former may ultimately benefit a wider range of cooperatives beyond those in the platform economy. The author would encourage following the enabling path, with the view that this would show that the cooperative sector is open to ‘new’ economic activities, while still adhering to certain foundational values and principles.

¹⁷ T. Scholz & I. Calzada, “Data Cooperatives for Pandemic Times”, *Public Seminar* (19 April 2021).

With this clarification being made, it is possible to turn to platform cooperatives that have adopted the cooperative legal form.

A Diversity of Cooperatives within the Platform Economy

8. The most commonly discussed platform cooperatives are those where the primary economic activity of the cooperative is carried out through a digital platform. A ride-hailing cooperative is an example of this as the smartphone application that is used to request and accept rides and make payments has an integral role in the functioning of the cooperative. However, there are other cooperatives enterprises that may fall within the platform cooperativism movement but with different characteristics and purposes. There are freelancers' cooperatives which help their members by providing accounting and payroll services, as well as acting as a "third-party payer and employer, a workers' representative, a temporary work agency, a legal advisor, and a loan provider",¹⁸ thereby giving otherwise precariously positioned self-employed workers a degree of security when working for corporate digital labor platforms. An example of this is the SMart cooperative in Belgium which, for a period, had an arrangement with Deliveroo to standardize payments and grant worker protections to SMart members who worked for Deliveroo.¹⁹ There are also long-standing cooperatives that have built digital platforms as an add-on to their existing economic activities and can carry out their economic activities even without an online platform. This would include, for instance, taxi cooperatives that use a digital platform as a supplement to their radio dispatch system. Some have argued that these should be distinguished as 'cooperative-run platforms'.²⁰ Thirdly, there are secondary cooperatives which act as 'shared-services cooperatives' for their cooperative members, by enabling them to pool costs and share resources. An example of such a shared-services cooperative is The Mobility Factory SCE, which brings together a number of European electric car-sharing cooperatives and a federation of citizens' energy cooperatives, to *inter alia* pool the costs of developing an online platform.²¹ Finally, concerns regarding the uses and abuses of (personal) data have led to a growing interest in 'data cooperatives', which are not platforms but are "member-owned data management systems" that seek to limit access to, or reclaim community control over, (personal) data, which may otherwise be extracted by platform companies and others.²² An example of such a data cooperative is polypoly SCE, which allows members to co-own the polyPod, a tool that gives members access to a private server to store, analyze, correct, control and license their data. The legal and policy support required by each group of cooperatives varies accordingly. It is thus worthwhile considering illustrative examples of conducive legislation and policies in turn.
9. South Korea's *Framework Act on Cooperatives, 2012* offers an example of legislation that has lowered the threshold and simplified the requirements for forming and governing freelancers' cooperatives. This has included reducing the number of members required to form a cooperative to five (5), removing mandatory requirements to join federations, not requiring external audits, limiting the involvement of public authorities in the affairs of the cooperative, and enabling businesses that were created before the enactment of the Framework Act with similar

¹⁸ J. Drahokoupil & A. Piasna, "Work in the Platform Economy: Deliveroo riders in Belgium and the SMart arrangement", *ETUI Working Paper*, No. 2019.01, 2019, at 7.

¹⁹ *ibid*, at 8.

²⁰ M. Mannan and S. Pek, "Solidarity in the Sharing Economy: The Role of Platform Cooperatives at the Base of the Pyramid", in I. Qureshi et al. (eds.) *Sharing Economy at the Base of the Pyramid: Opportunities and Challenges*, Springer, 2021.

²¹ M. Mannan, "Everything Old is New Again: Evaluating the Legal and Governance Structures of Shared-Services Platform Cooperatives", *Institute for the Cooperative Digital Economy Research Report*, The New School, 2020.

²² T. Scholz & I. Calzada, "Data Cooperatives for Pandemic Times", *Public Seminar* (19 April 2021).

purposes as a cooperative to convert into one.²³ Instead, it promotes the use of social cooperatives, which would carry out their main business activity to achieve benefits for local communities or disadvantaged groups, as well as cooperation with both domestic and foreign cooperatives.²⁴ According to Jang, as a consequence of this new legislation, within 30 months of its enactment, 7,132 cooperatives were registered, a large segment of which are freelancers' cooperatives in the cultural and tech industries.²⁵ Similarly, Japan's recently promulgated *Worker Cooperatives Act, 2020* will offer various categories of workers—including domestic and elderly care workers—the use of a legal form specifically designed for worker cooperatives when it comes into force. This new Act has a number of cutting-edge features, including the adoption of a 'principle-based approach', where a worker cooperative is authorized as soon as the conditions of the legislation are met instead of the time of government approval, requiring only four (4) members for formation, and the creation of an employment relationship between the worker-member and the representative director (with attendant labor & social security protections). Moreover, the legislation embeds the achievement of UN Sustainable Development Goals and the ICA's seven cooperative principles in the operation of worker cooperatives by making their ultimate purpose "the realization of sustainable and vibrant communities".²⁶ It is noteworthy that despite such worker cooperatives being able to engage in all economic activities, the only exception to this is the carrying out of "worker dispatching business". This exception refers to temporary staffing, rather than on-demand or task-based freelance work carried out for multiple clients.²⁷

10. Cooperative-run platforms can encounter fresh challenges as a consequence of operating a digital labor platform and creating a triangular relationship between a member, cooperative and the member's client. This can include being considered an unregistered temporary staffing agency by default, with ensuing penalties should such an arrangement be maintained. France's *Law on Social and Solidarity Economy of 31 July 2014* (Loi no. 2014-856) provides a possible solution to this by creating a legal framework for intermittent workers (e.g., session musicians) to become 'employee entrepreneurs' in *Coopérative d'Activités et d'Emploi* (Cooperative of Activities and Employment, CAE), whereby they sign a contract to be employees of the cooperative while retaining autonomy in finding their own clients and pursuing a variety of economic activities. In exchange for the employment protections they receive through this status, these employee entrepreneurs contribute 10-15% of their gain to the cooperative and commit to either becoming a full member within three years of signing the contract or leaving to begin an independent business.²⁸ As Martinelli notes, such facilitative legislation for intermittent workers to join cooperatives is rare.²⁹
11. In contrast, it is common for national cooperative laws to provide for cooperative federations and secondary or tertiary cooperatives. However, they rarely account for transnational cooperatives, comprising members resident in multiple jurisdictions. This presents an obstacle for platform cooperatives as, by the very nature of their activities, they can include members in several countries. The European Cooperative

²³ J. Jang, "Republic of Korea", In: D. Cracogna et al. (eds) *International Handbook of Cooperative Law* (pp. 653-665), Springer, 2013.

²⁴ *ibid.*

²⁵ J. Jang, "The Emergence of Freelancer Cooperatives in South Korea", *Annals of Public and Cooperative Economies*, Vol. 88(1), 2017, pp. 75-89.

²⁶ O. Nakano, "Worker Cooperative Act in Japan", *Online Roundtable on Worker Cooperative Legislation Experiences from Japan*, International Co-operative Alliance-Asia Pacific, 3 March 2021.

²⁷ Japan Staffing Services Association, "Prohibited matters in temporary staffing services", available online at: < https://www.jassa.or.jp/english/law_system/index_3.html>. Last accessed on 1 June 2021.

²⁸ F. Martinelli, "Innovative Cooperation's Model in Europe: A Solution to the Growing Uncertainty in the World of Work", ILPC, Buenos Aires, 21 March 2018.

²⁹ *ibid.*

Society (SCE), formed by Regulation (EC) No. 1435/2003 of 22 July 2003, is an exception to this as it provides a legal framework for the creation of a transnational secondary (or primary) cooperative that would be recognized equally in all the Member States of the European Economic Area. In spite of the existence of this framework, there are a very low number of SCEs till now. It would therefore be worthwhile evaluating whether SCEs are able to meet the needs of the cooperative sector, including platform cooperatives, and what lessons can be learned for the creation of transnational secondary cooperatives in other parts of the world.

12. Among this variety of cooperatives in the platform and digital economies, it is perhaps data cooperatives that have generated the most interest among persons outside of the cooperative movement due to widespread concerns about the erosion of individual privacy. Along with a budding stream of research on the subject,³⁰ the European Commission has recently published a Proposal for a Regulation on European data governance (Data Governance Act) which includes data cooperatives. If the primary purpose of data cooperatives is to enable users (i.e., data subjects) to regain control over their data, gain clearer insight into how it is used, and voluntarily pool the data for mutual benefit, then this proposal seeks to enable the collective exercise of these rights.³¹ As a data sharing service, data cooperatives have a role in enabling data subjects to exercise their individual rights under the General Data Protection Regulation (GDPR),³² make more informed choices prior to consenting to data use, and exchange views on the terms and conditions that corporations attach to data use.³³ The proposal seeks to impose fiduciary duties on data cooperatives that offer services to natural persons and sets out notification requirements and conditions for offering such data sharing services. Moreover, any legal entity “constituted to meet objectives of general interest”, which can include certain types of not-for-profit cooperatives, is permitted to register as a data altruism organization that, with the consent of members, can use their data for altruistic purposes (e.g., public health).³⁴ As this is a proposal for a regulation—a type of EU law that is binding in its entirety on all EEA Member States—it is urgent for the cooperative movement to analyze whether this description and application of the cooperative form is compatible with the definition, values and principles set out in the ICA Statement on the Cooperative Identity. If not, recommendations should be developed to improve the regulation. If it is, then consideration should be given to how the cooperative sector can support the inclusion of data cooperatives in data protection legislation in other jurisdictions so as to further the exercise of personal data rights and enable collective action by data subjects in their capacity as cooperative members. Having considered the varieties of cooperatives that have emerged in the platform and digital economies, it is possible to turn to more general legal, administrative and policy issues, which if addressed could benefit a wide spectrum of cooperatives.

Digitalization of Formation

13. At a time when the process of registering a business, such as a private limited liability company, has become digitized in several jurisdictions, it is necessary to ask whether cooperatives have received the same treatment. While this issue is important when a cooperative has a local membership, it gains greater urgency when some or all of the

³⁰ See, e.g., M. Micheli et al., “Emerging Models of Data Governance in the Age of Datafication”, *Big Data & Society*, Vol. 7(2), 2020, pp. 1-15.

³¹ Recital 24, Proposal for a Regulation on European data governance (Data Governance Act), COM(2020) 767 final, Brussels, 25.11.2020

³² Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5.2016, p.1).

³³ Article 9(1)(c), Proposal for a Regulation on European data governance (Data Governance Act), COM(2020) 767 final, Brussels, 25.11.2020

³⁴ Article 16, *ibid.*

founders of a cooperative are based outside of the jurisdiction where the cooperative is constituted. As cooperative laws, regulations and bureaucratic procedures can differ substantially across jurisdictions, the ease of forming a cooperative—along with some of the other factors discussed below—may influence where a cooperative is constituted. Points to consider when determining whether an administrative process has been digitized include the availability of an online, searchable, central registry of cooperatives, and an online system for completing every step of cooperative registration. This could be supplemented by, for example, the recognition of electronic signatures for registration and holding that a local registered address is sufficient to validly form a cooperative in a given jurisdiction.

Accommodating Global Governance

14. As shown above, the variety of platform cooperatives that have emerged till now include both locally operating cooperatives and global cooperatives. As cooperative law is often drafted with local operations in mind, global operation and governance presents unique challenges. The first challenge is nationality restrictions or residence requirements for the membership or directorship of a cooperative. An example of the latter can be found in British Columbia's *Cooperative Associations Act, 1999*, which requires "that a majority of the directors of the association must be individuals ordinarily resident in Canada" and "one of the directors of association must be an individual ordinarily resident in British Columbia".³⁵ While this requirement may be easy to comply with for a local cooperative, it has presented difficulties for platform cooperatives such as Stocksy, as this stock photographers' cooperative has over 1000 members across more than 65 countries, with many potential directors not being Canadian residents. In other words, complying with this requirement would ignore the views and nominations of members in favor of a seemingly arbitrary statutory requirement. This could be addressed by removing nationality restrictions and residence requirements on the membership and directorship of cooperatives, as it is possible to appoint a local legal representative to act on behalf of the cooperative if it is necessary. A corollary to this would be either removing mandatory requirements to specify the geographic scope of a cooperative's activities or permitting the geographic scope to extend beyond the boundaries of a single country.³⁶ This would need to be supported with ancillary regulations, such as the enabling of potential foreign members to legally purchase cooperative shares in their jurisdiction, which may discourage the acquisition of equities in foreign businesses.
15. Platform cooperatives have a considerable disparity of scale and membership size. This ranges from platform-mediated courier cooperatives with 3 worker-members to Stocksy with its 1000+ members. They vary between single-stakeholder cooperatives and multi-stakeholder cooperatives with several classes of membership, including investor members. It is therefore understandable that each will have differing governance needs. Hence, while cooperative law may provide default rules, such as 'one member, one vote' and the delegation of management to a representative board, it should also be able to accommodate variations to these governance rules. This could range from consensus-based decision-making (e.g., holacracy, sociocracy), in which several decisions are subject to deliberation, to voting systems that depart from the 'one member, one vote' rule so as to recognize novel ways in which members contribute non-capital value to a cooperative (e.g., building reputation through labor), which may be needed to address the apathy that sets in large, transnational cooperatives.³⁷ During the COVID-19 pandemic, carrying out governance activities

³⁵ Section 72(1)(a)-(b), *Cooperative Associations Act, 1999* [British Columbia].

³⁶ See, e.g., A.A. Boakye, "Ghana National Report", ICA-EU Partnership: Cooperative Legal Framework Analysis, International Co-operative Alliance, 2018, at 11.

³⁷ M. Mannan, "Fostering Worker Cooperatives with Blockchain Technology: Lessons from the Colony Project", *Erasmus Law Review*, Vol. 11(3), 2018, pp. 190-203.

remotely became a public health necessity. Meetings of cooperative boards and even general assemblies had to be conducted through video conferencing. On the one hand, this may have prevented the sociality that is typically associated with in-person meetings, on the other, it saved cooperative members time and money to attend meetings. The dilemma this posed, in some cases, was whether the decisions and votes cast were valid, given that such procedures may previously have required physical presence and paper-based voting. The appointment of proxies may also not have been explicitly permitted by the law. In view of the changed circumstances, as well as the needs of platform cooperatives, it would be desirable to legally permit virtual board meetings and assemblies as well as the implementation of a reliable system for proxying members and carrying out voting. This has happened, for instance, in Brazil where Law No. 14.030 of 2020 permits cooperatives to host virtual members' meetings and vote in general assemblies online.³⁸ Moreover, as several platform cooperatives have worker-members or have multiple classes of membership, a country which wishes to encourage such cooperatives should assess whether their legal framework inhibits the creation of worker- and multi-stakeholder cooperatives. There may be an absence of legislation specifically for worker cooperatives, as was the case with Japan till recently, or a lack of a bespoke framework for multi-stakeholder cooperatives, as is the case in most jurisdictions. While the presence of a general cooperative legislation may allow for the creation of multi-stakeholder cooperatives without specific enabling legislation, there may be a lack of business knowledge and practical guidance on how such cooperatives can be formed and governed so as to reconcile the occasionally competing interests of stakeholders in service of a cooperative's overarching purpose(s). Where the issue of having multiple membership classes becomes most contentious is when deciding to include external, non-member investors.

Improving Access to Capital

16. As with any business, access to capital is a significant concern for platform cooperatives. If a cooperative alternative to Uber is being developed in a market where Uber is already active, it is done with the knowledge that the presence of the deep pockets of venture capital allows the corporate platform to run at a loss for a longer period of time and offer inducements to lure away drivers from competitors. This requires the cooperative to make a strong case for why an alternative ownership model is needed and underscore the financial and non-financial benefits it offers members. It also requires the founders of the cooperative to accept that they will be unpaid/underpaid for much of their work and the budget for developing a digital platform will be limited. This can create substantial financial pressure for the cooperative, especially in the early stages when it has to spend on advertising to attract consumers, provide discounts and ensure that workers are paid promptly.³⁹ While technical assistance grants are important for the education and mentoring of prospective platform cooperative entrepreneurs, as Schneider points out, this needs to be supplemented with access to adequate and steady sources of capital.⁴⁰
17. One option is to permit the inclusion of 'investor members' in the cooperative, whose main contribution is that of capital. Such a class of member may be included in the bylaws of the cooperative if the applicable legislation does not prohibit it. (In Ghana,

³⁸ Ed., "Sanccionada lei que amplia prazo para assembleias de empresas e cooperativas", *Senado Noticias* (29 July 2020).

³⁹ See, e.g., M. Mannan, "Everything Old is New Again: Evaluating the Legal and Governance Structures of Shared-Services Platform Cooperatives", *Institute for the Cooperative Digital Economy Research Report*, The New School, 2020.

⁴⁰ N. Schneider, "Tech New Deal: Policies for Community-Owned Platforms", *OSF Preprint*, 2020, available online at: <https://osf.io/t7z2m/?view_only=c8ed9a48a9c04c509c890894d169b206> last accessed on 1 June 2021.

for instance, investor members are prohibited).⁴¹ Instead of outright prohibition, other jurisdictions may take a variety of approaches to investor membership. On the one hand, jurisdictions may place strict conditions on the distribution of returns on capital investment (i.e., dividends), interest rates, and the voting rights such members can have. This can be seen in France, for instance, where cooperative shares can only be remunerated with limited interest and investor members have their voting rights capped at one-third of the total in a members' meeting (49% if the investors are cooperatives themselves).⁴² In workers' cooperatives, non-cooperators such as investor members can only have one-third of board seats.⁴³ On the other hand, a jurisdiction may permit certain types of cooperatives to distribute returns on capital investment and enable investor members to have more extensive rights to vote in general assemblies, be elected to the board and even enjoy veto power over certain decisions.⁴⁴ This sort of legal framework can be seen in certain US states like Colorado and Vermont, which have adopted the *Uniform Limited Cooperative Association Act (ULCAA), 2007* so as to create limited cooperative associations. The experience with including investor members has varied considerably, with such members being largely absent in France's cooperative sector,⁴⁵ but showing interest in start-up limited cooperative associations in Colorado, owing to the availability of new revenue-based financing models that offer a "return of up to a multiple of 1-5x the original investment, or a fixed percentage of profit for a fixed duration of time".⁴⁶ The example of platform cooperatives such as Savvy Cooperative, which incorporated under this limited cooperative association statute, show that it is possible to raise venture capital from investors without conceding governance rights, so long as the business has steady revenue to repay the investors and the VC fund aligns with the values of the cooperative.⁴⁷ Hence, the commentary on investor membership shows that there is an overarching concern about diluting the distinctive identity of cooperatives as businesses owned by their patrons, while some with experience in the tech startup sector also pointing out the need for innovation in cooperative equity financing, so as to compete with cash-rich corporate startups where VCs hold equity positions and board seats.

18. The 'Community Share' model piloted in the UK for over a decade may offer a welcome compromise that involves finding community investor members, rather than a well-intentioned, value-aligned VC fund. In short, in a community share offer, investors commit up to 100,000 GBP (30,000 GBP for individuals) in share capital in a cooperative, which they may withdraw subject to the conditions set by the cooperative (e.g., a notice period). Investor members are entitled to vote on a one member, one vote basis, rather than on the basis of their capital contribution, and they are entitled

⁴¹ A.A. Boakye, "Ghana National Report", ICA-EU Partnership: Cooperative Legal Framework Analysis, International Co-operative Alliance, 2018, at 20.

⁴² D. Hiez, "France", In: G. Fajardo et al. (eds) Principles of European Cooperative Law: Principles, Commentaries and National Reports (pp. 163-252), Intersentia, 2017, at 181, 228.

⁴³ *ibid*, 200.

⁴⁴ National Conference of Commissioners of Uniform State Laws, "Uniform Limited Cooperative Association Act (2007) (Last Amended 2013)", Annual Conference of the National Conference of Commissioners of Uniform State Laws, 2015, at 8-9; M. Lund, "Solidarity as a Business Model: A Multi-Stakeholder Cooperatives Manual", Cooperative Development Center at Kent State University, n.d., at 55.

⁴⁵ D. Hiez, "France", In: G. Fajardo et al. (eds) Principles of European Cooperative Law: Principles, Commentaries and National Reports (pp. 163-252), Intersentia, 2017, at 198.

⁴⁶ J. Wiener, "Limited Cooperative Associations and Early Stage Financing", *Jason Wiener p.c.* (8 June 2018).

⁴⁷ Colorado University-Boulder Media Enterprise Design Lab, "When Co-ops and Venture Capital Meet", Webinar organized by the Media Enterprise Design Lab at Colorado University-Boulder and Zebras Unite (28 April 2020), available online at: <<https://archive.org/details/coops-venture-capital-meet>> Last accessed on 1 June 2021.

to limited interest on their share capital.⁴⁸ There has already been a proposal for extending this model of financing to platform cooperatives, in the form of 'mutual shares' which will additionally entitle non-investor members to dividends based on their transactions with the cooperative—which they would be encouraged to reinvest in the cooperative.⁴⁹ The social care platform, Equal Care Co-op, that seeks to improve the minimum wage of workers in the care industry, conducted a pioneer community share offer in 2019 and raised over 410,000 GBP with the support of 173 investor members.⁵⁰ These investor members are provided with two board seats, voting rights that are capped at 10% of the total vote share and 3% interest on their share capital contributions from July 2022.⁵¹ This is a subject that is still understudied, but the growing number of cooperatives that have begun raising capital from investor members provides the conditions for conducting a comparative study of how these cooperatives have been financed by external investors. These forms of financing impose varying conditions on the cooperative, and hence their impact on their identities as cooperatives differ. Such a study could include both financing that confers voting rights on investor members as well as those that preclude governance rights. Through consultations with platform cooperative founders, lawyers and potential investors, the relative advantages and disadvantages of debt and equity financing of such enterprises could be assessed. The study could also learn more about the motivations of external investors, as they may range from the making of impact investments to an interest in the intellectual property of the cooperative. The carrying out of such a study should be encouraged in the report, so as to develop recommendations on how the tensions between trying new financing models and restraining investor membership can be resolved.

Furthering the Cooperative Identity

19. There are three important guardrails that would limit the bounds of the involvement of external investors, while acting to preserve the cooperative identity. To underscore how mutuality, rather than the distribution of a profit, is at the core of the cooperative identity, in countries such as France, Spain and Italy, it is mandatory to allocate a portion of the cooperative's surplus to an indivisible reserve fund—to help preserve the cooperative's commercial viability and longevity—while in Spain and Italy it is additionally required to allocate funds to *inter alia* the promotion of cooperatives.⁵² To further emphasize the difference of cooperative membership from corporate share ownership, a cooperative statute (in the case of e.g., France, Italy and Spain) or the bylaws (in the case of e.g., the United Kingdom) of a cooperative must/may provide for any residual assets to be distributed in a disinterested manner at the time of dissolution—to other cooperatives, cooperative federations, charitable organizations

⁴⁸ Community Shares Unit and Locality, *The Community Shares Handbook*, last updated on 5 November 2020, available online at: < https://www.uk.coop/sites/default/files/2020-11/community_shares_handbook.pdf> last accessed on 1 June 2021.

⁴⁹ S. Borkin, "Platform Co-operatives—Solving the Capital Conundrum", Nesta & Co-operatives UK, 2019, at 28.

⁵⁰ Ethex, "Equal Care Co-op Share Offer Closes", *Ethex News* (14 August 2019), available online at: < https://web.archive.org/web/20200927041838/https://www.ethex.org.uk/equal-care-co-op-share-offer-closes_2540.html> Last accessed on 1 June 2021.

⁵¹ Equal Care Co-op, "Community Share Offer", 2019, available online at: < <https://www.equalcare.coop/files/Equal%20Care%20Community%20Share%20Offer.pdf>> Last accessed on 1 June 2021.

⁵² A. Fici, "Italy", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 347-408), Intersentia, 2017, at 368; G. Fajardo, "Spain", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 517-624), Intersentia, 2017, at 565; D. Hiez, "France", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 163-252), Intersentia, 2017, at 223-24.

or social and solidarity enterprises.⁵³ Thirdly, and relatedly, cooperative law may impose a requirement that in the event of a conversion of a cooperative into another legal form, its residual assets after the payment of certain debts (e.g., paid-up capital, outstanding dividends) should be distributed in a disinterested manner, as is the case with certain cooperatives in Italy and Spain.⁵⁴ This is intended to prevent the demutualization of cooperatives as part of a corporate 'takeover' of a cooperatives. While these features do not exist in all jurisdictions, it is possible to include provisions to this effect in a cooperative's rules as a way of preempting efforts at acquiring platform cooperatives and should be encouraged by the report.

Legal and Policy Reforms beyond Cooperative Law

20. Finally, the fostering of platform cooperatives will require more than reforms in cooperative law. An interest in promoting platform cooperatives in certain sectors (e.g., renewable energy), or the inclusion of women or disadvantaged persons, merits the granting of special subsidies/grants or preferential procurement policies in favor of platform cooperatives that satisfy these requirements. Such grants are available for community-led renewable energy schemes in Germany and the United Kingdom,⁵⁵ and the city of Preston famously implemented a preferential public procurement program led by local "anchor institutions", that include social value requirements, which has operated to the benefit of local suppliers.⁵⁶ This could be complemented by loans programs that are targeted towards social and technical innovation, including software development for platform cooperatives. In terms of tax policy, incentives will be required for the formation, or conversion into, cooperatives, as exists for worker cooperatives in the United States.⁵⁷ Tax relief can be offered for subscription of cooperative shares, as is available in the United Kingdom, or tax deductions can be created to encourage cooperative transactions and for cooperatives to invest in other cooperatives, as has existed till recently in Bangladesh.⁵⁸ This may not only benefit platform cooperatives, but the cooperative sector as a whole.

⁵³ A. Fici, "Italy", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 347-408), Intersentia, 2017, at 380; G. Fajardo, "Spain", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 517-624), Intersentia, 2017, at 588; D. Hiez, "France", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 163-252), Intersentia, 2017, at 229; I. Snaith, "United Kingdom", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 625-718), Intersentia, 2017, at 689.

⁵⁴ A. Fici, "Italy", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 347-408), Intersentia, 2017, at 393; G. Fajardo, "Spain", In: G. Fajardo et al. (eds) *Principles of European Cooperative Law: Principles, Commentaries and National Reports* (pp. 517-624), Intersentia, 2017, at 606.

⁵⁵ A. Wierling et al., "Statistical Evidence on the Role of Energy Cooperatives for the Energy Transition in European Countries", *Sustainability*, Vol. 10, 3339, pp. 1-25, at 12, 18.

⁵⁶ M. O'Neill, "The Road to Socialism is the A59: The Preston Model." *Renewal (London, England)*, Vol. 24(2) (Jun 22, 2016); CLES and Preston City Council, *How We Built Community Wealth in Preston* (Manchester: Centre for Local Economic Strategies, 2019), at 15-17.

⁵⁷ L. Phillips, "Tax Advantages of Selling to a Worker Cooperative", *Jason Wiener p.c.* (4 September 2018).

⁵⁸ The Equal Care Co-op community share prospectus indicated the availability of such relief. See *supra* note 51, at 43; HM Revenue & Customs, "Guidance: Tax relief for investors using venture capital schemes" (last updated 25 January 2019), available online at: < <https://www.gov.uk/guidance/venture-capital-schemes-tax-relief-for-investors> > Last accessed on 1 June 2021; M. Mannan, "National Report for Bangladesh", ICA-EU Partnership: Cooperative Legal Framework Analysis, International Co-operative Alliance, 2020, at 32.

Conclusion: Towards A Cornucopia of Cooperatives in the Platform Economy

21. This submission has provided a brief overview of platform capitalism and the emergence of the platform cooperativism movement as one of the responses to the depredations of platform capitalism. It then turned towards considering how favorable laws and policies can strengthen and encourage the growth of early-stage cooperatives in the platform economy, by reflecting on illustrative examples of such cooperatives and instructive examples of conducive laws and policies. Recommendations based on this analysis are provided above and summarized in the following sub-section. In sum, it is the view of this author that platform cooperatives will have a crucial role in the 'new social contract' of the post-Covid 19 era, in addressing issues ranging from precarious working conditions to bridging the digital gender divide to creating a more competitive and just digital economy. However, for a cornucopia of cooperatives to flourish in the platform economy, facilitative legislation, policies and administrative procedures will be essential.

Summary of Recommendations for Report

- Easing Formation of Cooperatives in the Platform Economy
 - ⇒ Reduce the minimum number of members required to form a cooperative, particularly for worker cooperatives and multi-stakeholder cooperatives [para 9].
 - ⇒ Promulgate enabling legislation for worker and multi-stakeholder cooperatives where absent. Among other things, this should encourage a 'principle-based approach', where such cooperatives are authorized as soon as the conditions of the legislation are met instead of the time of government approval. It should also encourage making the ICA's Statement on the Co-operative Identity and the UN Sustainable Development Goals the touchstone for assessing the nature of a cooperative, should either be absent in local legislation [para 9].
 - ⇒ Create employment statuses that are suited to the needs of those who work in the platform economy and the realities of platform work. This could include an intermediate status that confers employment protections on cooperative members, while allowing the member to find their own clients (e.g., with employee entrepreneurs) [para 10].
 - ⇒ Install an online infrastructure for registering and finding information on the cooperative, which would minimize the need for personal, physical presence [para 13].
- Enabling Local and Global Governance of Platform Cooperatives
 - ⇒ Remove nationality or residency requirements for being a member or director of a platform cooperative [para 14].
 - ⇒ Remove mandatory requirements to specify the geographic scope of cooperative activities, or alternatively, permitting the specification of a territory beyond national boundaries [para 14].
 - ⇒ Permit consensus-based governance and decision-making [para 15].
 - ⇒ Permit a variation of the 'one member, one vote' rule, if the alternative can enable novel ways of recognizing non-financial transactions and value created by members [para 15].
 - ⇒ Enable platform cooperatives to host virtual assemblies, virtual board meetings and for members to cast votes online [para 15].
- Financial Support of Platform Cooperatives
 - ⇒ Introduce grants and subsidies that promote platform cooperatives in sectors or the economic inclusion of women or disadvantaged persons [para 20].
 - ⇒ Introduce loan programs that will facilitate social and technical innovation, including the development of software for platform cooperatives [para 20].

- ⇒ Implement preferential public procurement policies, which include social value requirements, such as a vendor or supplier being a cooperative [para 20].
- ⇒ Provide tax benefits for forming, or converting into, a cooperative, subscribing to cooperative share capital, and engaging in cooperative transactions [para 20].
- ⇒ Encourage financing strategies that are able to balance the need of cooperatives to raise sufficient capital for their business, while also preventing non-members to gain control of the cooperative. The 'Community Shares' model is one of the options worth exploring in more jurisdictions [para 18].
- Preventing Corporatization and Demutualization
 - ⇒ Support and fund progressive cooperative federations and startup cooperative incubators to help ease these enterprises towards the use of the cooperative legal form and implement the ICA's Statement on the Co-operative Identity [para 7].
 - ⇒ Support legislation that will require cooperatives to: maintain indivisible reserves and distribute residual assets in a disinterested manner in the event of dissolution or conversion (if unavailable). Encourage cooperatives to voluntarily impose these constraints while such legislation is being considered [para 19].
- Commissioning Studies on Platform Cooperatives
 - ⇒ Assess the strengths and weaknesses of a legal framework for creating worker- and multi-stakeholder cooperatives in a given jurisdiction, bearing in mind that they are the type of cooperative forms most often adopted by platform cooperatives [para 15].
 - ⇒ Analyze the prospects and challenges of forming transnational primary and secondary cooperatives, and the role legislation can have in facilitating their creation [para 11].
 - ⇒ Evaluate whether data cooperatives comport with the ICA's Statement on the Co-operative Identity and if the cooperative sector should have a role in championing their creation [para 12].
 - ⇒ Assess the potential and obstacles to various forms of voting and non-voting investor membership in platform cooperatives [para 18].

Biography of the Author: Morshed Mannan, LL.M (Adv.) is a Research Associate on Blockchain Governance at the Robert Schuman Centre for Advanced Studies at the European University Institute, in Florence. He is also finalizing a doctoral dissertation on the emergence of democratic firms in the platform economy at Leiden Law School, Leiden University. Mannan is a Research Affiliate of the Institute for the Cooperative Digital Economy at The New School and has consulted for the International Co-operative Alliance-Asia Pacific and the National Cooperative Business Association CLUSA International on topics of cooperative law. He has previously worked as a lawyer in Bangladesh and has been called to the Bar of England & Wales and admitted to the Bar of Bangladesh.