



LEGAL COOPERATIVE FRAMEWORK ANALYSIS

Within the ICA-EU Partnership

NATIONAL REPORT FOR BOLIVIA

I. Introduction

This report was written as a result of the research of the Analysis of Cooperative Legal Frameworks research initiated by the International Cooperative Alliance (ICA) and its regional offices. The research is carried out within the framework of a signed partnership between the European Union and the ICA during the 2016-2020 period, which aims to strengthen the cooperative movement and its capacity to promote international development.

The analysis of the legal framework seeks to improve the knowledge and evaluation of cooperative legislation, with the aim of ensuring that legal regulations acknowledge the specificities of the cooperative model and ensure a level playing field compared to other forms of association. This analysis will also serve ICA members as inputs for their advocacy and recommendations on the creation or improvement of legal frameworks, to document the implementation of cooperation laws and policies, and to monitor their evolution.

In accordance with the objectives set out in the ICA-EU Project, this report looks to provide a general understanding of Bolivian cooperative legislation and an assessment of the degree of its ability to promote the development of cooperatives. Likewise, some recommendations are also made for the improvement of legislation in order to overcome some difficulties currently faced by cooperatives.

The document has been prepared by Marcelo Arrazola Weise, Ph.D in Law and Professor at the Autonomous Public University of Santa Cruz de la Sierra, as an independent expert. Contributions made by national cooperative organizations affiliated to Cooperatives of the Americas have been taken into account to create this document.

Contributions from the expert as well as Bolivian organizations that are members of Cooperatives of the Americas were collected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Bolivia and the option to answer it was voluntary.





II. National Cooperative Legislation of Bolivia

i. General Context

The Bolivian cooperative legislation is contained in national law No. 356 called the General Law on Cooperatives (LGC, for its acronym in Spanish) published in the Official Journal of Bolivia on April 11, 2013 and the Regulations of the General Law of Cooperatives put into effect by Decree No. 1995 of May 13, 2014. It should be clarified that, although it is a decentralized country with autonomy, by constitutional mandate on the basis of the residual clause, substantive and adjective legislation on cooperative matters falls within the competence of the central level of the State; providing, as exclusive competence of the central level of the State, basic services policies, that is, that this level of government in this area has legislative, regulatory and executive authority, being able to transfer and delegate the latter two. The purpose of the LGC is to regulate the constitution, organization, operation, supervision, auditing, promotion and protection of the Cooperative System.

In Article 23, the LGC classifies cooperatives into: 1. Cooperatives from the Production sector (mining, artisanal, industrial, agricultural and other emerging social needs); 2. Services sector (housing, savings and credit, consumption, education, transport, tourism, health, marketing to support cooperative activity and other emerging social needs); 3. Public Services sector (telecommunications, electricity, water and sewerage and other emerging social needs); the LGC is a general law, there are no special laws for certain cooperatives in particular but there are cooperatives, that because of the activity they develop, are subject to certain laws, special regulatory rules and supervisory authorities: the Law on Financial Services for Open and Corporate Savings and Credit Unions, Law on Mining and Metallurgy for mining cooperatives. Thus, public service cooperatives are prominent examples of simultaneous application of the legislation itself with those of the services in question. In all of these cases, both regimes converge on cooperatives, with the consequent conflicts that usually arise.

The Political Constitution of the Plurinational State, adopted by referendum on January 25, 2009 and which came into effect on February 7 of the same year, recognizes a plural economic model, being constituted by community, state, private and social cooperative economic organizations, acknowledging and protecting cooperatives as forms of work based on solidarity and cooperation, not for profit, having to mainly promote cooperative organizations in productive activities.



In Article 6, the LGC lists and develops the cooperative principles (solidarity, equality, reciprocity, equity in distribution, social and non-profit purpose) of its partners. In its second paragraph, it also considers those of the international cooperative movement (open and voluntary entry, democratic management, economic participation from its members, autonomy and independence, education, training and information, supportive integration between cooperatives and interest in the community as a whole); as well as values of mutual aid, complementarity, honesty, transparency, accountability and equitable participation.

The LGT, when referring to partners, differentiates them as associates [Translator's note: the word *members* is used in the male and female forms not applicable in English], for the purposes of this work we will identify them generically as members.

ii. Specific Elements of the Cooperative Law

a) Definition and Objectives of Cooperatives

Article 4 of the LGC defines cooperatives as a "non-profit association, of natural and/or legal persons who voluntarily associate, constituting cooperatives, founded on solidarity and cooperation, to meet their needs in regards to production and service, with autonomous and democratic structure and functioning" and subsequently states that the model is integrated into the plural economy. Its promotion and protection are of State interest in order to contribute to participative democracy and the development of social justice.

The LGC in Article 24, paragraph II, classifies the cooperative movement as: 1. First-Level Cooperatives, for base cooperatives; 2. Second-Level Cooperatives, for Cooperative Associations (*centrales*) according to the characteristics of each economic sector; 3. Third-Level Cooperatives, according to the characteristics of each economic and institutional sector, are: a) Regional Federation, b) Departmental Federation; 4. Fourth-Level Cooperatives, constituted by national federations for economic sectors and 5. Fifth-Level Cooperatives, which would be the National Confederation of Cooperatives of Bolivia – CONCOBOL, (for its acronym in Spanish).

First-level Cooperatives have an unlimited number of members and under no circumstances may be less than ten (10) (Art.28); Cooperatives from second to fifth levels, in order to be constituted, must have a minimum of three (3) members (Art.31 par. II).



In regard to democratic control by members, the LGC is categorical: it determines as a right that "each member has the right to a single vote in decision-making and under no circumstance may be represented by third parties through a power or other document" (Art. 37 par. I subsection. 1), although it allows for higher-level organizations to have a weighted vote and/or proportional to the number of members they represent, provided that they are equitable and democratic (Art. 91).

Regarding the economic participation of the members, the LGC determines the right to receive the share, the corresponding amount of earning surpluses (Art. 37 par. I subsection 3), surpluses regulated by Article 47, stating: "These are the resources resulting from the activities of the cooperatives, once all costs, taxes, funds and reserves have been deducted. In application of the principle of equitable distribution, they may be distributed among members on the basis of the services used or participation at work." On the other hand, the remnants, in the event of dissolution and liquidation, once the debts have been paid and the updated face value of the contribution certificate has been returned, will be given to the associated cooperative of the higher degree or otherwise to another cooperative (Art. 74).

The principle of autonomy and independence is recognized in Article 6 paragraph II subsection 4, recognizing it as mutual aid organizations, with management autonomy, regardless of forms of financing; this last consideration is necessary if we take into account that the LGC authorizes the State to financially support the cooperative system.

In the area of education, training and information, the obligation to constitute non-distributable funds is established, taking into account Article 42 subsection 2 the provision of the Education Fund by allocating five per cent (5%) of the result from the annual financial statements.

On the principle of cooperation between cooperatives, the LGC assigns Chapter IX, from Article 81 to 96, which determines the union of cooperatives to be part of the cooperative system and to be represented at the regional, departmental, national and international levels.

On the principle of awareness in the community, the LGC allocates five per cent (5%) of the results from the annual financial statements.

The LGC clearly differentiates cooperatives from capital based companies, as there, the vote is proportionate to the capital contributed and the profits are distributed accordingly, the





reserves are distributable, and capital only increases by decision of the partners. These companies have their own legal regime and registration.

The objective of cooperatives is to provide services to their members. This objective is implemented through the operations that the members carry out with the cooperative and which the law calls "cooperative acts" (Art. 9 LGC). Carrying out operations for the members through the cooperative is characterized for being voluntary, equitable, equal, supplementary, reciprocal, non-profit and supportive.

The Plurinational Constitutional Court firmly holds the jurisprudential line of activating the Constitutional Protection Action when the rights of emerging members of the cooperative act are violated, respecting the principle of subsidiarity. It should be noted that, under the mandate of the Political Constitution of the State, constitutional sentencings are binding and mandatory.

b) Establishment, Cooperative Membership and Government

Cooperatives are legally constituted by authorization to operate and the inscription in the State Registry of cooperatives led by the Cooperative Auditing and Control Authorities (AFCOOP, for its acronym in Spanish), thereby acquiring the status of legal persons. In order to obtain authorization and registration, the constitutional record must be presented from the organizing committee, summons of the General Assembly for its constitution, documents approved by the Constitutional General Assembly: deed of constitution, organic statute, social-economic study, record of election of the members of the Board of Directors and Surveillance, opening economic balance sheet, listing of affiliated members, social fund listing and application for membership to the cooperative of an immediate higher degree; basic course certificate of cooperation issued by the Ministry of Labour, Employment and Social Security and others that may be established within the framework of the corresponding sectoral regulations.

The LGC broadly establishes the open doors principle by determining that all natural or legal persons who meet the requirements settled by law and the statute can be associated, which can obviously vary according to the types of cooperatives. There are no other requirements for admission. Members are free to withdraw from the cooperative by written resignation, unless there is a process of liquidation and the return of the certificate of contribution will





be in accordance with the provisions of the statute, establishing a maximum lawful period of one hundred and eighty (180) calendar days.

All members have a single vote in the assemblies, regardless of the number of membership quotas provided. This principle applies to all kinds of first-level cooperatives, but in higher-level organizations the statute can establish a voting system proportional to the number of members each cooperative has or the volume of operations they each carry out with the higher organization.

The LGC does not restrict the possibility of using the services of cooperatives without being members, i.e. acting as users. The income generated from users is part of the cooperative's assets as a result of its activities and is considered when determining the perceived surplus to be distributed among partners.

The structure of the cooperative's management consists of four mandatory bodies: the assembly, the board of directors as an executive body, the supervisory board as a surveillance body and the disciplinary or honor court, being able to create the committees established in the organic statute or determined by the general assembly, whose composition and functions are expressly regulated in their organic status. All organs must be composed exclusively by an odd number of members.

All associates participate in the Assembly in person with a single vote of the same value. It is the highest governing body and it is up to it to decide on the most important matters established by the LGC or the statute. The Assembly meets ordinarily once a year to consider the annual report of councils, management and committees, as well as financial statements, upon previous determination by the Supervisory Board; consider and decide on the policies, plans, programs and projects presented by the Board of Directors, consider and approve the operations and budget plan, as well as elect and remove the members of the Board of Directors, Surveillance, Disciplinary or Honor Court and committees; determine the fate of perceived surplus, deliberate and resolve the proposals of the Board of Directors, Supervisory Board and committees; to know and approve the assessment of the contribution certificates, approve the assignments for the directors, in addition to the other matters included in the summons. The Assembly can also have extraordinary meetings at any time to deal with other matters on the initiative of the administrative and supervisory bodies or a certain number of associates, that are not reserved for the ordinary assembly. Decisions





determined during assemblies are mandatory for all members, but may be appealed by administrative and judicial means, if they are contrary to the law or statute.

The Board of Directors is responsible for the administration of the cooperative. Its members must be associates elected by the general assembly in odd numbers, which will be defined in its organic statute or regulation of election if it exists.

The term of office shall be determined in the Organic Statute, which cannot exceed three years, but allows for reelection once on a consecutive basis, or a maximum of six years in public services or on a broad corporate base, when partial renewal is adopted without the possibility of consecutive reelection, with their duties and rights defined in the Organic Statute. The President of the Board of Directors is the legal representative of the Cooperative.

The function of control and supervision of the economic-financial, legal and operational management is carried out by the Supervisory Board. Its members must be partners elected by the general assembly in odd numbers, which will be defined in its Organic Statute or elections regulations. The term of office shall be determined in the Organic Statute and may not exceed three years, but may be up for reelection once on a consecutive basis, and a maximum of six years for public services or a broad corporate base, when partial renewal is adopted, without the possibility of consecutive reelection. Their duties and rights shall be defined in the Organic Statute. This council issues general reports and rules on the activities or decisions made by the Board of Directors, to later be considered during the general assembly. They must exercise their duties making sure not to hinder the regularity of the administration.

Both members of the Board of Directors and the Supervisory Board can be compensated by decision of the assembly and are jointly liable for the breach of the obligations imposed by the law and statute. Such liability may be considered legally. They may be removed from their position by decision of the assembly, prior an informative summary.

c) Cooperative Financial Structure and Taxes

The LGC does not establish a minimum capital for cooperatives in general, but other special laws do for some types of cooperatives, as is the case with the Financial Services Law.



"This document has been produced with the financial assistance of the European Union. The content of this document is the sole responsibility of the International Cooperative Alliance, and cannot in any way be considered to reflect the views of the European Union."



Capital is divided into contribution certificates equal in value and the statute determines its value, as well as the adjustment and revaluation process, achieving the status of partner with a single contribution certificate. The method of its payment is established by the Organic Statute.

In case of losing member status or dissolution and subsequent liquidation of the cooperative, the members are entitled to the refund of the face value of the contribution certificate paid, proportionally deducting the losses that they should bear. The returns procedure is regulated in the Organic Statute, and must be carried out within a maximum period of one hundred and eighty (180) calendar days, foreseeing to avoid sharp reductions in capital and jeopardizing the continuity of the operation of the cooperative, and that the assembly postpones or limits the reimbursement of the contribution certificates to be returned on the basis of the seniority of the request.

The LGC considers perceived surplus that which results from all activities, once all costs, taxes, funds and reserves have been deducted; considering the principle of equity in distribution. It is mandatory to destine a minimum of 10% for the legal reserve, 5% for education fund, 5% for social welfare fund and support for the community from the distributable surplus, as well as that which is determined by the Organic Statute. The rest is distributed among the partners in proportion to the transactions made with the cooperative for each of them, if determined by the assembly of members.

Investor members are not allowed. All members are users of the cooperative's services and the retribution to the capital contributed is the same for everyone. Cooperatives may not issue negotiable obligations in accordance with the law governing these instruments and the certificates of contribution are not commercial documents, nor may they circulate on the stock market. The State is obligated to promote and strengthen the development of the cooperative sector.

Transforming cooperatives into another type of organization is not allowed. In the event of dissolution and liquidation, once the assets have been determined and the liabilities dealt with, only the nominal value of the contribution certificates is returned to the partners, when the asset is insufficient to guarantee the full return, it will refund the fee that is proportionally appropriate. The remnants shall be given to the cooperative of higher degree to which it is associated or failing that, to another cooperative of that place, and destined for education and cooperative advancement.





The LGC does not contain tax provisions, nor is there a specific law establishing the tax regime for cooperatives. Thus, their tax treatment is dispersed in the different laws that make up the general tax regime.

In terms of income tax – known as corporate profit tax - cooperatives are exempt by expressed legal provision, with public and private companies, even single-person companies, being subject to this tax.

Value-added tax and transaction tax, by its objective nature, makes no distinction for cooperatives; that is, they must pay taxes like other taxpayers according to the activity they perform. Likewise, they must pay tax on debits and credits for bank accounts.

The taxes mentioned are national. As for those of autonomous territorial entities, according to their level of competence, the situation varies from jurisdiction to jurisdiction, which does not imply double taxation. In general, they must pay municipal tax for real estate and vehicles.

d) Other Specific Characteristics

All cooperatives are subject to state supervision through AFSCOOP, i.e. the same entity responsible for granting recognition as legal persons. AFSCOOP is an autonomous entity that is under the jurisdiction of the Ministry of Labor, Employment and Social Security, with jurisdiction and competence throughout the State. AFSCOOP has extensive regulatory, supervision and auditing authority which includes the application of sanctions and may intervene when there is evidence of a lack of governability or when the economic-financial situation jeopardizes its operation. The sanctions applied by AFSCOOP, as well as decisions related to the authorization to operate and the approval of statute reforms, are actionable through the administrative route. Once this route is exhausted an appeal may be presented before the Supreme Court of Justice, with a Contentious Administrative Appeal.

The Ministry of Labour, Employment and Social Security will have the authority to promote, strengthen and establish policies differentiated by sector, it is also in charge of promoting cooperatives and others expressly commissioned by the LGC and its D.R.

AFSCOOP is not expected to delegate self-governance to cooperatives, but the rules governing the cooperative system allow them to have a split internal audit. However,



external auditing at the end of the annual term is mandatory, or when required by AFSCOOP or the sectoral authority.

The Cooperative System is under state guardianship of the Ministry of Labor, Employment and Social Security through the Cooperative Auditing and Control Authority – AFSCOOP, which has an Executive Director General appointed by the President of the State. Cooperative sectors or the relatives of the managers until the fourth degree of consanguinity and second degree of affinity cannot be part of this process, at any state level.

The LGC includes cooperation between cooperatives as one of the characteristics of cooperatives, regulation on this matter is found in a special chapter. There is a wide repertoire of possibilities so that cooperatives can implement this principle according to their own needs: to associate with each other for the fulfillment of their purposes by forming cooperative associations; merge when there are common or complementary objectives; carry out one or more joint operations, establishing which will be the representative and will assume responsibility before third parties; as well as form higher-level cooperative organizations governed by the provisions of the LGC.

The formation of higher degree cooperatives (federations or confederations) can be carried out to perform economic or representative functions, with a minimum of three associates, establishing the weighted and/or proportional vote according to the number of partners, alternative mechanisms can be established, provided that they are equitable and democratic.

In addition, options for conciliation and arbitration may be created within the framework of the Arbitration and Conciliation Act to resolve disputes between members.

The LGC enforces the mandatory existence of representative organizations by establishing that the registration granted implies its automatic entry at the immediate higher level according to the organizational structure of the cooperative movement.

III. Degree of Ease of National Legislation for Cooperatives

This chapter took into account the opinion of the member organizations of the ICA in Bolivia. In general, it is consistent with those of the author.

To obtain approval of resolutions or regulations, there is exaggerated bureaucracy that, compared to a private company, makes obtaining legal status more complicated. (The



Political Constitution of the State, Laws and Regulations to the Law, are good, except that they do not contemplate associated work cooperatives).

The State's Political Constitution considers the cooperative sector in 12 articles. There, it promotes the purchase and participation of the cooperative sector, even in sectors where the state closes participation to the particular private sector. Likewise, the law and regulation are very favorable in their drafting, lacking only processes of practical applicability. For the promotion of cooperatives, there is even a state body, which is the Directorate of Public Policy and Cooperative Development. It is important to note that the drafting of the Law on Cooperatives of Bolivia, had the direct participation of the cooperative sectors, who developed proposals in all its articles.

Bolivian legislation is very much in favor of cooperatives

When asked: What foreign legislation do you think could be a source of inspiration for your national legislation, and why? The answer was the Argentinian and Spanish legislations, because they look at the sector of Associated Work Cooperatives, which are an important sector of the cooperative model, but needs to be considered in Bolivia, in addition to considering many particular aspects especially within the labor legislation.

IV. Recommendations for the Improvement of the National Legal Framework

The creation of a specific legislation for the sector of associated work cooperatives is necessary.

Special legislation on administrative procedures, where operational practice is contemplated in order to shorten the response times from the state to the sector's processes, as well as the training of the population and the state within the model, as there are many different points of view of the people who apply the sector standards, most of which do not have much expertise or experience of the functioning of the model, making its development and growth more complicated.

The insertion of tax incentives, the sector does not differ from others in this aspect, and even has double taxes in some cases, such as the sectoral regulation rate, in which the sector pays double the rates, compared to the private sectors and state-owned enterprises, affecting competitiveness.



The different cooperatives are monitored and controlled by the sectoral authority according to the market and by the AFSCOOP, i.e. they respond to two sectoral regulatory authorities, who by legal mandate are financed with the contributions of the audited entities, therefore there is a double rate of sectoral regulation, a situation that does not occur in the private sector that carries out similar activities as the cooperative, which only contributes to its sectoral entity according to the activity it performs.

Legislation incorporating Associated Work Cooperatives is required.

The legislative body needs to comply with the LGC's third transitional provision, in order to have a differentiated tax treatment.

It is important that cooperatives that also have sectoral legislation do not lose their essence.

V. Conclusions

It should be noted that we only have the responses of one ICA member, which is generally consistent with the expert's opinion, so its integration into the report has not had setbacks. In any event, the different declarations and documents drawn up by the cooperative movement in recent times have also been taken into account, whether they are general in nature or referenced particularly to certain sectors.

Santa Cruz, Bolivia. October 2019.

Marcelo Arrazola Weise