



## LEGAL COOPERATIVE FRAMEWORK ANALYSIS

### Within the ICA-EU Partnership

### NATIONAL REPORT FOR PERU

#### I. Introduction

This report was produced within the investigation of the Legal Cooperative Framework Analysis initiated by the International Cooperative Alliance (ICA) and its regional offices. The investigation is carried out in the framework of an alliance signed between the European Union and the ICA for 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 recognize the specificities of the cooperative model and ensure equal conditions, compared to other forms of association. This analysis will also serve ICA members as input into their advocacy and recommendations regarding the creation or improvement of legal frameworks, to document the implementation of cooperative laws and policies, and to monitor their evolution.

In line with the objectives set out in the ICA-EU Project, this report aims to provide a general understanding of Peruvian cooperative legislation and an assessment of the degree of its ability to promote the development of cooperatives. Recommendations are also made for the improvement of legislation in order to overcome some difficulties that cooperatives are currently facing.

The document has been prepared by Carlos Torres Morales, master in business law, with doctoral studies and professor at the University of Lima, as an independent expert. In order to create this document, the contributions made by national cooperative organizations affiliated to Cooperatives of the Americas have been taken into account.

Contributions from the expert and Peruvian organizations 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 Peru and completing it was voluntary.





## II. National Cooperative Legislation of Perú

### i. General Context

There is no acknowledgement or promotion for the cooperative model at a constitutional level, as envisaged in the 1979 Constitution. Article 17 of the current Constitution of 1993 merely indicates that by law "... private education can be subsidized in any of its modalities, including the communal and cooperative modalities."

Peru has a General Cooperative Law (LGC, for its acronym in Spanish) which constitutes the main standard of application and regulation of all cooperatives in our country. This Law was promulgated by Legislative Decree No. 085 in May, 1981. Up until the date of this report, the LGC has been valid for more than 38 years, time during which it has undergone a series of modifications and repeals. There is no official text that has unified all the changes that would allow for a clear regulation and that provides legal certainty<sup>1</sup>. This Law coexists together with the "General Corporate Law" (LGS, for its acronym in Spanish), which regulates other collective ways of performing business, and while there have been attempts to incorporate cooperatives as a section of the LGS, they have failed and cooperatives have continued to be regulated under their special Law. The LGC was never regulated, however its own text provided for general regulations and special regulations for each type of cooperative.

By means of Law No. 29271 from October 22, 2008, the Ministry of Production was designated as the sector responsible for the promotion and enhancement of cooperatives, having to formulate, approve and carry out nationwide policies for the development and enhancement of cooperatives.

In 2011, a very important law was issued for the Cooperative Movement, Law No. 29683, as it recognized that cooperatives, due to their nature, perform "Cooperative Acts", defining such acts as internal, lacking profit, carried out by the cooperative with its partners, and in compliance with its social purpose. Based on this definition, the tax regime on Income Tax and General Sales Tax, applicable to these organizations was developed.

The special regulation that has been issued for three types of cooperatives, such as work and employment development cooperatives, temporary work cooperatives and savings and credit cooperatives, is worth mentioning separately. "**Work and employment development cooperatives**" and "**temporary work cooperatives**", which belong to the modality of "worker cooperatives" and which are characterized for being a source of work for their

---

<sup>1</sup> The last "Unique Ordered Text" of the LGC was approved by Supreme Decree No. 071-90-TR, published in the Official Journal "El Peruano" of January 07, 1991. However, from that date to the current time, nearly 50 provisions of the LGC have been amended or repealed.



worker-partners by emphasizing them to different user companies to provide certain services, have a special regulation as they are considered by the regulation as "labor intermediation companies". In this sense, Law No. 27626 and its Regulation (D.S. 003-2002-TR) get the nature of these organizations confused (self-management companies owned by the workers themselves), unduly equating them with commercial intermediation companies (*services*), giving its worker-partners the work treatment of dependent workers.

Regarding **Savings and Credit Cooperatives (COOPAC**, for its acronym in Spanish), these cooperatives are considered by the banking legislation as entities that operate legally "outside the financial system". They work only with their partners, and therefore cannot operate with "third parties" meaning that they cannot draw resources from the general public or provide credit options. COOPACs, in addition to the regulation generally provided to them by the LGC, have a special regulation recently modified by Law No. 30822, published in the Official Journal "El Peruano" on July 19, 2018, having entered into full force on January 1<sup>st</sup>, 2019. The main aspects of this new legislation are:

- The characteristics of COOPACs are established, differentiating them from the Companies within the Financial System.
- It is established that only COOPACs can carry out savings and credit operations with their members. Other types of cooperatives that wish to provide or continue to provide these services must conform to the "savings and credit" type, otherwise they will be closed.
- Rules of good cooperative governance (management positions, delegates, allowances, representation fees, renewal by thirds, no indefinite re-election, office term, among others) are established.
- The Deputy Superintendence of Cooperatives is created within the Superintendence of Banking and Insurance and Private Pension Fund Administrators (SBS, for its acronym in Spanish).
- COOPACs are classified at three levels according to their assets: level 1 (small), level 2 (medium) and level 3 (large), establishing a differentiated regulation and supervision according to the corresponding level.
- The Supervision regime carried out by the Deputy Superintendence is regulated directly for level 3 cooperatives and through technical collaborators such as FENACREP<sup>2</sup> for level 1 and 2 cooperatives.

---

<sup>2</sup> National Federation of Savings and Credit Cooperatives of Peru (FENACREP, for its acronym in Spanish): a private legal entity that integrates the savings and credit cooperatives of Peru that freely and voluntarily want to become affiliated.



## ii. Specific Elements of the Cooperative Law

### a) Definition and Objectives of Cooperatives

The LGC does not include a definition of cooperative. Thus, after declaring the promotion and protection of the cooperative movement a national necessity and public utility and ensuring the free development of the cooperative movement as well as the autonomy of cooperative organizations (Arts. 1 and 2), Art. 3 states that any cooperative organization *"must be constituted for non-profit and will seek through self-effort and mutual assistance from its members, their immediate service and the mediate of the community"*.

Article 5 of the LGC includes the 7 Cooperative Principles<sup>3</sup> cooperatives in Peru must consider:

- **Free Adhesion and Voluntary Withdrawal;** which provides cooperatives with "a variable number of members and variable and unlimited capital". It includes the parting of the members, exercising the right to separate or as a consequence of the application of the exclusion penalty.
- **Democratic Control;** characterized by "recognizing the equal rights and obligations of all partners, without discrimination"; "to grant all members the right to one vote per person, regardless of the amount of contributions"; the yearly renewal by thirds of members of governing bodies and non-re-election, unless permitted by the statute; the ban on granting powers to vote in assemblies.
- **Limitation of the maximum interest that could be acknowledged for contributions,** which implies the possibility of retributing the capital contributed by the partners with an interest that cannot be greater than that paid by banks for savings deposits.
- **Distribution of surpluses according to the participation of partners in common work or in proportion to their operations with the cooperative;** through which the member is given back the highest value paid for the service provided to them by the cooperative or the greatest value generated by their work is returned.
- **Encouragement of Cooperative Education;** basically, through the Education Committee (mandatory body).
- **Participation in the Process of Permanent Integration,** through the participation of the cooperative in federations and confederations, without prejudice to the use of other integration mechanisms of an associative nature.
- **Non-distribution of Cooperative Reserves;** by which members do not have individual rights to this equity account.

---

<sup>3</sup> Definition set by the ICA at the Vienna Congress in 1966.



The LGC also states that cooperatives must "maintain strict neutrality regarding topics on religious affiliation and party politics"; they must "be of an indefinite duration"; they may not "establish pacts with third parties to enable them to directly or indirectly participate in the prerogatives or benefits that the law grants cooperative organizations"; they cannot "belong to entities with a purpose that is not compatible with that of the Cooperative Sector"; they may not "grant advantages, preferences or other privileges to their promoters, founders or leaders"; they cannot "carry out activities other than those established in their statute"; or "carry out economic transactions that are of an exclusive or monopoly oriented nature"; they cannot "make up their assemblies, councils or committees with persons who are not members of the cooperative organization itself, or with workers of the cooperatives", except in the case of worker cooperatives (Art. 6 LGC).

Except for COOPACs, there is no norm prohibiting cooperatives from executing their social purpose by operating with "non-partner third parties". In these cases, it should be kept in mind that such operations would not qualify as "Cooperative Acts", but as "Commercial Acts" and shall therefore be subject to the general tax regime. Likewise, the benefits obtained as a result of these operations will become part of the Cooperative Reserve, which is non-distributable.

There is no particular type of cooperative in Peru designed specifically by the legislation for the pursuit of social, general or community interests.

As a general rule, any economic activity can be carried out in the modality of a cooperative. However, there are special laws that require the adoption of a particular legal form (limited type corporation), as is the case with banks.

## b) Establishment, Cooperative Membership and Government

The LGC, in Article 7, classifies cooperatives in two ways: by Social Structure and by Economic Activity. According to the Social Structure, the LGC divides the Cooperatives into two exclusionary "MODALITIES": "Users" or "Workers". User Cooperatives are intended to be a source of services for their members. In this case, the users of the service are the titleholders of the Cooperative, who participate in the management and in the economic outcome, with limited responsibility to its contribution. On the other hand, the purpose of Worker Cooperatives is to be a source of work for those who are simultaneously their partners and workers, so it is clear that under this modality, the workers are the titleholders of the Cooperative, they participate in the management and economic outcome with limited liability to its contribution.



Depending on the Economic Activity they carry out, the Law recognizes 19 "TYPES" of cooperatives, without prejudice to the subsequent recognition of new types.

Cooperatives in general, whether made up of users or workers do not require any authorization to conduct business. In this sense, Law No. 25879 (Art. 4) stated that *"cooperatives whatever their type or modality do not require authorization to carry out or perform acts and contracts permitted by national law"*. Without prejudice to what has been stated, depending on the specific activity they decide to carry out, they must obtain sectoral permits.

The establishment of a cooperative must be agreed upon in a founding general assembly, in which its statute is approved, its initial capital is subscribed, and the members of the governing bodies are elected. This act of constitution may be recorded by Public Deed or Private Contract, with signatures certified by a Notary or otherwise, by Justice of the Peace. As for the name, Article 11 par. 3 of the LGC states that the word "Cooperative" must be used, followed by the reference to its type (e.g. housing) and the distinctive name. The constitution of the cooperative does not require prior authorization and must be presented before the Registry of Legal Persons, for inscription. With the inscription, the cooperative acquires legal personality, having a patrimony that is autonomous to that of the members that make it up.

It should be noted that in the case of COOPACs it has been established that, in addition to their inscription under Public Registry, they must register in the National Registry of Savings and Credit Cooperatives not authorized to operate with the public, under the authority of the Deputy Superintendence of the SBS. Likewise, the statute and any change in the statute of this type of cooperatives requires the prior approval of the aforementioned Superintendence for its registration under Public Registry to proceed.

The LGC does not contemplate the minimum number of persons to form a cooperative. However, due to the existence of four mandatory governing bodies, the cooperative practice considers the necessary presence of no fewer than eleven people. Because a minimum number of members to form a cooperative has not been established, the consequences of the loss of the minimum number of members have not been regulated. In this sense, there is no direct regulated existence of irregular cooperatives. In any event, a cooperative that has a single partner and that the plurality has not been reconstituted within a maximum period of 6 months could be considered irregular, temporarily applying the norms of the General Law for Companies.



According to Article 17 of the LGC other cooperatives can be members of cooperatives as well as peasant or native communities, Public Sector entities and other non-profit legal entities. In addition, for-profit legal entities are allowed to be members of the cooperative considering they qualify as a "Small Business". In the case of natural persons, it is required that they have legal capacity and in the case of legal persons they are required to be constituted and registered in accordance with law and authorized by their statute or by their competent body, in order to be part of the Cooperative organization. In both cases, they must meet the requirements expected by the statute in order to join the cooperative (Art. 16, LGC). The entry of the new members does not require a modification of the constitutional deed or the statute. It is approved by the Board of Directors and annotated in the Membership Register which constitutes an internal register of the cooperative. The LGC (Art. 17, par. 3) expressly prohibits workers of a user cooperative from being members of the cooperative, "but they can make use of all the services of the cooperative under equal conditions with the partners".

The rights and obligations of the members are established in the statute (Art. 19), stating that the responsibility of the members of a cooperative is limited to the amount of the contributions they subscribe (Art. 20). Members can freely opt out of continuing to be part of the cooperative. However, the cooperative may defer acceptance of the resignation if the cooperative's financial economic situation does not allow it, or the member resigning has debts payable to the cooperative. In addition, the LGC allows only a maximum of 10% of the share capital to be reduced year after year, thereby deferring resignations that exceed that limit.

Every Cooperative in Peru must have five basic bodies: General Assembly, Board of Directors, Supervisory Council, Electoral Committee and Education Committee.

The **General Assembly** is the supreme authority of the cooperative. Its authority is determined in Article 27 of the LGC and are generally identical to that of a General Board of Shareholders, in the case of public limited companies or a Member's Assembly, in the case of Civil Associations. In principle it is composed of all the members of the cooperative, however, the LGC has established in Article 28 that in the case of primary cooperatives with more than 1,000 members, the functions of the general assembly will be exercised by the "General Assembly of Delegates", consisting of delegates elected under the immediate and exclusive leadership of the electoral committee, by personal, universal, compulsory and secret suffrage. The General Assembly of Delegates replaces the General Assembly of Members in all its duties, i.e. henceforth, only Delegates will be summoned to make up the "General Assembly".



In the Assembly, each member or delegate has only one vote, regardless of the capital contributed, which cannot be modified by the Statute. Also, the LGC does not allow the acknowledgement of "additional votes" from any partner for any reason<sup>4</sup>. Finally, the Law prohibits the casting of "votes for power" during assemblies and elections (Art. 28).

**Board of Directors:** this is the body responsible for the administrative functioning of the cooperative, as determined in Article 30 of the LGC. Some of the main responsibilities determined by the LGC include: to lead the administration of the cooperative and to oversee the operation of management; elect and remove the manager; authorize the granting of powers; approve, reform and interpret internal regulations, approve the Cooperative's annual plans and budgets; summon the General Assembly, establish its agenda and annual elections.

**Supervisory Council:** this is the auditing body of the cooperative which must act without interfering with or suspending the functions or activities of the audited bodies. The LGC determines in Article 31 the authority held by the Supervisory Council which are summarized in the "*legality control*" (overseeing that all acts involving the cooperative are legal, i.e. that they do not violate the current law) "*accuracy control*" (informing the assembly about the accuracy of everything that is subject to its awareness) and "*security control*" (on the assets and rights of the cooperative).

**Electoral Committee:** is a permanent body responsible for conducting all electoral processes. Since the Law requires annual renewal of the members of councils and committees in proportions not less than one third of the respective total ("Renewed by One Third"), the legislature considered it appropriate for this body to have a vocation of permanence and to not be transitional or temporary.

**Education Committee:** this is the body responsible for implementing the principle of "Cooperative Education"; by disseminating among the partners the most appropriate information and training them to make decisions that will enable the achievement of the cooperative efficiency.

All the bodies mentioned above are collegiate bodies, so they need to be composed of more than one person. The LGC does not establish a minimum or maximum number of titleholders or alternates, leaving this to be determined in the Statute. Likewise, all its members must be partners of the cooperative, not being able to appoint non-member third parties.

---

<sup>4</sup> Only in the case of Cooperative Associations (*Centrales*) (cooperatives of cooperatives) and the Confederation, Article 65, par. 2 allows the "one man, one vote" rule to vary by establishing that delegates can exercise the right to vote in proportion to the number of members of the organization that they represent."





Finally, the **Manager** is the highest-level executive officer of the cooperative, with immediate responsibility before the Board of Directors (Art. 35). Its main responsibilities are: to carry out the administrative and judicial representation of the cooperative; to subscribe, along with the leader or official determine the internal rules, the contracts, security titles and withdrawals of funds; implement programs in accordance with plans approved by the Board of Directors; implement the agreements of the General Assembly and the Board of Directors; appoint workers and other cooperative collaborators and remove them as well in accordance with the law.

The governing and managerial roles cannot be delegated and are in addition revocable (Art. 33, par. 2); they must be renewed annually in proportions not less than one third of the respective total (Art. 33 par. 4); managers may not hold temporary positions in the cooperative itself (unless it is a worker cooperative), but may receive "allowances" for the sessions they hold (Art. 33.5). Incompatibilities to carry out the manager's tasks in cooperatives are set out in Article 33, par. 3 of the LGC. All cooperative bodies (assembly, councils and committees) must be made up exclusively of members.

The LGC states that the members of the boards and committees are respectively and jointly responsible for the decisions of these bodies. The members of the councils and committees who expressly retain their vote during the act of the corresponding decision are exempt from liability, making sure to record it in the corresponding minutes and/or by notarized letter.

### c) Cooperative Financial Structure and Taxes

The LGC has not established a "minimum" share capital in order to form a Cooperative of any kind, so it will depend on the contributions made by the founding partners<sup>5</sup>.

Articles 38 to 51 of the LGC regulate the financial aspect, stating first that the capital of cooperatives is made up of the contributions made by the partners. As a result of the principle of free adhesion and voluntary withdrawal, cooperatives have variable and unlimited capital, which means that such an equity account is constantly increased and reduced without the need to adopt special agreements or carry out registration procedures to publicize the amount of the new capital. As a measure of protection or stability for cooperatives, the LGC determines that the reduction in capital may not exceed 10% of the capital per year.

---

<sup>5</sup> For Work and Employment Development Cooperatives and Temporary Work Cooperatives, Law 27626 has established a minimum share capital of 45 UIT (approx. US\$ 52,273).



The LGC allows the contributions that the members make to be paid in cash, movable or immovable property and even with services, although the latter type of contribution has not been frequent in our cooperatives. Contributions have the following characteristics: they are always the same, that is, they have the same face value and provide the same rights and obligations on the partner; they are nominative, they are issued under the name of a specific person (they cannot be made out to "to the bearer"); they are indivisible, they cannot be fractioned below the unit; they are transferable, and may be surrendered to other people, in the manner determined by the statute of the Cooperative; and they cannot acquire greater value than the nominal value or be traded on the market. Contributions may be represented by "*Certificates of Contribution*", which can represent one or more contributions; may earn interest, which may not be greater than that granted by banks for savings deposits. Contributions must be returned to face value plus the interest that would have been established, when the member is separated from the Cooperative or said Cooperative is dissolved (Art. 24 and 55 LGC).

In the case of user cooperatives that facilitate the acquisition of goods or services for their partners (consumption, savings and credit, housing, education, etc.), the cooperative surplus becomes a savings for the partner, because the cooperative ends up returning or reintegrating the excess paid by the member for the good or service. In the case of user cooperatives that facilitate the placement of the partners' products (e.g. agricultural), the cooperative surplus is a type of income for the partner, as it comes from the placement of the partner's products on the market. Finally, in worker cooperatives the cooperative surplus is also a type of income for the partner, as it comes from the difference between the payment made to the partner and the income made by the cooperative as a result of the partner's work.

Finally, within the economic regime, it is worth noting the existence of the Cooperative Reserve which is created and increased – as we have already pointed out – with no less than 20% of the annual remnant. There is no individual ownership over the Cooperative Reserve, but rather it constitutes a collective or social resource, since it belongs to the cooperative and its non-distributable nature prevents members or their heirs from being able to claim any participation in the Reserve. Furthermore, in cases where there is a dissolution and liquidation of the cooperative or in which it is transformed into a non-cooperative society, will the distribution of the Cooperative Reserve take place as it must be transferred to the Federation, Confederation or the State.

The Cooperative Reserve (Art. 42) is automatically increased with the profits that the cooperative obtains as a "capital gain" or with "income from operations other than its statutory object"; it is also increased by some of the asset revaluations, with donations, bequests and subsidies received by the cooperative (unless expressly granted for specific expenses) and by



other resources determined by the General Assembly. In the case of user cooperatives, the profits generated from transactions with non-members automatically integrate this equity account<sup>6</sup>. The Cooperative Reserve is intended to cover losses or other unforeseen contingencies, so as long as this does not occur, this resource can be used anywhere in the asset.

Cooperatives may be transformed or merged without prior approval, but if they do so with other non-cooperative forms, they must have previously transferred their Cooperative Reserve to the Federation to which they belong, failing that, to the National Confederation of Cooperatives and if it does not exist, to the State. This must be established under the responsibility of the Board of Directors and the Supervisory Board; without this requirement it will not be possible to obtain the registry of the transformation or merger.

There is no legal impediment for cooperatives to issue obligations (bonds, trade papers), using the Securities Market for this purpose. Moreover, the LGC envisages authorizing, on a proposal from the Board of Directors, the issuance of obligations as an attribution of the General Assembly. Without prejudice to this, this will only turn third parties into "lenders", but it will not give them member status or provide a part in the share capital. Any contribution to the share capital must come from partners.

If the dissolution of the cooperative is agreed upon, its liquidation must be settled, for which the asset is used to cancel the liabilities. The resources resulting from the liquidation shall be allocated, to the extent possible and in the following order, to:

- Cover settlement costs.
- Credit members: i) the value of their contributions paid or their corresponding proportional share in the event that the assets are insufficient; and ii) the interest on their contributions paid and the unpaid surpluses.
- The final net balance, if available, shall be transferred for cooperative education purposes to: i) the national federation of the type to which the liquidated cooperative corresponds; ii) in the absence of a federation, to the National Confederation of Cooperatives of Peru and failing that, to the State (Art. 55 LGC).

The tax Regime was finally stipulated by means of Law No. 29683, published on May 13<sup>th</sup>, 2011 in the Official Journal "El Peruano", after more than 20 years of administrative and judicial controversies. This Law, of an interpretative nature, recognized that cooperatives perform Cooperative Acts and that as a result, the Income Tax (IR, for its acronym in Spanish)

---

<sup>6</sup> Thus, the LGC envisages that any "benefit" that **does not** come from a "Cooperative Act" is integrated into the Cooperative Reserve in order to prevent a personal, lucrative benefit.



and the General Sales Tax (IGV, for its acronym in Spanish) are not applicable to such acts, as they are internal acts and without lucrative purpose. As a result, Cooperatives are not affected by Income Tax due to income from partner operations (cooperative acts) and, when they earn revenue from third-party operations (acts of trade), only these revenues are affected by Income Tax. Similarly, transactions with partners (cooperative acts) do not qualify as transactions subject to the IGV.

Likewise, by means of Law 29717 issued in June 2011, it was established that the Temporary Tax on Net Assets (which taxes the assets of companies that are third-category income generators) would not apply to 100% of the cooperative's assets but on the portion affected by the generation of "income" from transactions with third parties (non-partners).

Finally, by means of Law No. 29972, published in the Official Journal "El Peruano" of December 22, 2012, a Special Tax Regime (based on exception) was established only applicable to agricultural cooperatives, in turn having the non-application of Law No. 29683 (Law of the Cooperative Act), for this type of cooperatives.

In summary, two regimes currently coexist regarding Income Tax and General Sales Tax: Law No. 29683, which is of a permanent nature and applies to all cooperatives except agricultural cooperatives, and Law 29972 applicable only to agricultural cooperatives on a temporary basis (10 years).

Outside these special tax rules, cooperatives are affected by the various taxes that are part of the "National Tax System" (Selective Consumption Tax; Tax on Financial Transactions; Social contributions; Tariff Duties; Property Tax; Excise (Alcabala) Tax; Vehicular Estate Tax).

#### **d) Other Specific Characteristics**

Except for COOPAC<sup>7</sup>, cooperatives do not have a state regulatory, supervisory and sanctioning entity.

Cooperative self-governance is promoted by law. In particular, by means of D.S. 04-91-TR published in the Official Journal "El Peruano" on January 25<sup>th</sup>, 1991, the Cooperative Self-Governance Regulation was approved. It determines that the General Assembly is the body

---

<sup>7</sup> As of January 01, 2019 COOPACs, are under the regulation, supervision and sanction of the Superintendence of Banking and Insurance (SBS, for its acronym in Spanish). However, it is envisaged that during the first 6 years of its validity, the SBS will be able to carry out its work of overseeing cooperatives with the support of cooperative integration organizations, such as the FENACREP.



responsible for overseeing the effectiveness of the cooperative enterprise, while the Board of Administrators is responsible for overseeing the efficiency of the cooperative enterprise. The Supervisory Board must monitor the legality of the cooperative's actions, the veracity of the information provided to the partners, the authorities and the community in general and the security of the cooperative's assets. Finally, it states that the Education Committee should disseminate among the partners the most appropriate information and provide training in decision-making to achieve cooperative effectiveness.

The LGC regulates in Title III (Arts. 57 to 65) Cooperative Integration, the promotion of which is reflected as a cooperative principle. Cooperative integration organizations recognized by the Law are: Cooperative Associations (*Centrales*), National Federations of Cooperatives and the National Confederation of Cooperatives of Peru.

Likewise, in addition to the vertical integration established by Law, cooperative organizations in turn generate their own horizontal integration through associative contracts of business collaboration such as joint ventures, consortia and partnership in participation.

### III. Degree of Ease of National Legislation for Cooperatives

In general, we consider that legislation has not been helping to consolidate cooperatives in Peru. In this sense, it is urgent to provide the Cooperative Sector with a modern and comprehensive legislation that provides legal certainty so that it can be developed without contingencies.

Cooperatives have commonly been relegated in national regulations. In general, standards expressly include "... *any legal form regulated by the General Law of Corporations*", leaving out cooperatives because they are regulated by a special norm. Not having a Unique Ordered Text from the LGC that gathers, within a single document, the rules that remain in force and those that have been modified in these 38 years of validity makes it difficult to develop cooperatives. As a result, there are even authorities that make observations regarding certain acts carried out by cooperatives taking cover under repealed norms.

Having two tax regimes currently in place also hinders the development of cooperatives. One that is of a permanent nature applicable to all cooperatives, except agricultural cooperatives and another of a temporary nature, applicable only to agricultural cooperatives. It also hinders the development of cooperatives for whom the Ministry of Economy and Finance does not yet accept the differences between cooperative societies and commercial entities, sustained by the Cooperative Act, to the extent of not having regulated the Cooperative Act Law enacted in 2011. The existence of a norm which continues to consider the cooperative as an



employer and considers worker-partners as dependent workers, also hinders the development of worker cooperatives. Cooperative development is also hindered because there is no recognition or promotion of the model at a constitutional level, so that from this, the lower-level legislation can be issued in compliance with the general premises embodied in the Constitution. In this sense, the Brazilian Constitution could serve as inspiration to the Peruvian legislator primarily in the support and encouragement from the State towards the cooperative movement (Art. 174.2) and the requirement that the law provide an *"adequate tax regime for the cooperative act practiced by cooperative societies"* (Art. 146c).

The best practices in terms of the promotion of the cooperative model by the Peruvian State have come mainly from two sectors: from the Ministry of Production (an entity from the Executive Branch in charge of the Promotion and Enhancement of Cooperatives) and from the Ministry of Agriculture. These Ministries have been strongly promoting the dissemination and adoption of the cooperative model as an associative mechanism to empower micro and small entrepreneurs.

#### IV. Recommendations

- Obtain constitutional recognition which, based on the promotion and enhancement of the cooperative model, highlights the difference between cooperatives and commercial enterprises under the safeguard of the cooperative act.
- Create a new General Law on Cooperatives, as the current law already has been in effect for more than 38 years. During this period, the General Corporate Law was fully amended on 3 occasions.
- Regulate the General Law on Cooperatives in order to avoid a supplementary application of other laws, which causes legal uncertainty because its enforcement or lack thereof, depends on the official in charge.
- Issue special regulations depending on the types of cooperatives that exist, as the activities they carry out require different regulations.
- Unify tax regimes according to the Cooperative Act. Different regimes cannot coexist.
- Train registrars and other public officials on cooperative matters.
- Encourage that the study of the cooperative model be incorporated into basic and university education.



## V. Conclusions

The general perception is that the regulation has not helped to consolidate the development of the cooperative model. Modern standards are required for a development without contingencies and with legal certainty. An initial and important step has been taken with the modernization of the legislation applicable to savings and credit cooperatives pending the modernization or provision of a new General Law on Cooperatives.

It is important to emphasize, however, the effort that the State has been making to inform about the benefits of the cooperative movement as an enhancer of micro and small businesses. In a country like ours, where 97% of business units qualify as micro or small businesses, association through the cooperative model is a real alternative that is accessible to the population.

Lima, Peru. October 2019

**Carlos Torres Morales**