



## LEGAL COOPERATIVE FRAMEWORK ANALYSIS

### Within the ICA-EU Partnership

### NATIONAL REPORT FOR CHILE

#### I. National Cooperative Legislation of Chile

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 ICA for the 2016-2020 period, the main goal is to strengthen the cooperative movement and its ability to promote the international development.

The legal framework analysis tries to improve the knowledge and evaluation of the cooperative law, with the goal of ensuring that legal regulations recognize the specificities of the cooperative model and the equality of conditions in the comparison with other forms of association. In the same way this analysis will be useful to the members of ICA as material to their defense and recommendations on the creation or improvement of legal frameworks, to document the implementation of laws and cooperation policies, and monitor its development.

In line with the established goals of the ICA-EU Project this report aims to provide a general knowledge of the Chilean cooperative law and an evaluation of the degree of its ability to favor cooperatives development. In the same way, recommendations for the improvement of the law have been formulated to overcome some difficulties that cooperatives are currently facing.

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The inputs from the expert and from the Chilean member organizations of Cooperatives of the Americas were recollected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Chile and they could decide whether to answer or not.





## i. General context

The Chilean cooperative legislation is contained in Decree with force of Law No. 5, found in the General Law on Cooperatives, published in the Official Journal dated February 17, 2004, in the Regulations of the General Law on Cooperatives, contained in Supreme Decree No. 101, published in the Official Journal dated January 25, 2007, norms issued by the Department of Cooperatives currently the Associative Division and Social Economy, under the Sub-secretary of Economy and Smaller Enterprises, the Ministry of Economy, Development and Tourism and, standards dictated by the Central Bank of Chile contained in Chapter III.C.2, its compendium of financial rules.

The Financial Market Commission, former Superintendence of Banks and Financial Institutions, regulates the actions related to the economic operations carried out by the Savings and Credit Cooperatives, which have assets that exceeds 400,000 Development Units, which are contained in their updated collection of norms.

The General Law on Cooperatives is not part of the Civil and Commercial Code, but the former acknowledges cooperatives as private legal persons. The General Law on Cooperatives (Art. 5) specifically establishes that cooperatives organized under this law will have legal personality.

The General Law on Cooperatives is a general law, which governs all kinds of cooperatives, whatever their specific purpose may be. Chapter I of the Law contains the provisions common to all kinds of cooperatives regarding: constitution, membership, management, administration, supervision, capital, surpluses, privileges, exemptions and sanctions. There are no special laws for specific cooperatives in particular but there are cooperatives that due to the activity they carry out are subject to certain laws and special regulatory norms. For example, Savings and Credit Cooperatives, whose assets exceed 400,000 (four hundred thousand) Development Units (approx. US\$ 15,000,000), are subject to the provisions of the General Law of Banks, found in Decree in force of Law No. 3 of 1997, especially enforcing norms under Title I, relating to the special functions and authority of the Commission for the Financial Market, Articles 64 and 67 – concerning penalties for not maintaining the required reserve and methodologies required by the Commission to ponder the risks of assets – among other provisions. Another prominent example of simultaneous application of legislation is the case of Electric Distribution Cooperatives and Drinking Water Cooperatives.

Chile's Political Constitution does not have any provision that expressly refers to Cooperatives, however, it assures everyone: i) the right to become associated without prior permission, in order to have the privilege of legal personality in accordance with the law (Art.



19 No. 15), ii) the right to carry out any economic activity that is not contrary to its moral values, public order or national security, respecting the legal norms that govern it.

## ii. Specific Elements of the Cooperative Law

### a) Definition and Objectives of Cooperatives

The General Law on Cooperatives, defining cooperatives in its first article, expressly contains some of the cooperative principles included in the declaration on cooperative identity adopted by the ICA in 1995.

That legal provision states that; "for the purposes of this law, cooperative associations are those which, in accordance with the principle of mutual aid, are intended to improve the living conditions of their members and have the following fundamental characteristics: a) members have equal rights and obligations, a single vote per person and their entry and withdrawal is voluntary, b) they must proportionally distribute the surplus corresponding to operations with its partners, c) must maintain political and religious neutrality, develop cooperative education activities and seek to establish federation and inter-cooperative relationships among each other, d) should aim for inclusion, as well as value diversity and promote equal rights among their partners.

In regard to cooperative principles, the general law contains some of them expressly in its first article.

There, we find the principle of "Autonomy and Independence", by pointing out in the definition of cooperatives contained in the first article that – cooperatives are associations that in accordance with the principle of mutual aid are intended to improve the living conditions of its members -.

The second principle found in the definition of cooperatives is "Democratic control by their members", in light of the fact that one of the fundamental characteristics of these institutions, as the definition points out, - is that the partners have equal rights and obligations, a single vote per person and their entry and withdrawal is voluntary.

And the third principle found in the definition previously mentioned is "Economic participation of its members", given that the definition expressly states within the fundamental characteristics of cooperatives - that they must distribute the surplus corresponding to operations with their partners proportionally -. The law also indicates the



fate of the favorable balance of the financial year, which it determines as residual, (Art.38), setting its priority, as first place, it must be used to handle accumulated losses, if any; after that, it must be used for the establishment and increase of the reserve funds, in the event that they are mandatory or for the constitution and increase of voluntary reserves and the payment of interest to the capital in accordance with the Statute. Finally, the balance, if any, will be referred to as a surplus and be distributed in cash among the members or result in an emission of participation fees.

The fourth principle included in the definition of cooperative is "Education, training and information". The definition determines it as one of its fundamental characteristics by mentioning that - there must be political and religious neutrality, develop cooperative education activities and federative and inter-cooperative relations should be established among each other.

Other cooperative principles, such as "Cooperation between cooperatives" are found disseminated within the general law of cooperatives, for example, the law contains a complete chapter (Chapter III) on how Confederations, Federations and Auxiliary Institutes of Cooperatives are constituted.

The general law of cooperatives clearly differentiates cooperatives from capital-based enterprises in that here, the votes are proportional to the capital contributed and the profits are distributed in this same manner, reserves are distributable and capital increases only by decision of the partners. These businesses in Chile have their own legal regime, which is contained in Law No. 18.046 and in the Regulations of Anonymous Companies, contained in Decree No. 587.

The purpose of cooperatives as in other foreign legislations is to provide services to their partners. Their purpose can be any activity and will be subject to the provisions of the general law of cooperatives and their regulations. The operations of the cooperative, shall be subject, as is applicable, to the regulation and control established by special laws governing the economic activity that constitutes its purpose.

Chilean legislation (General Law on Cooperatives - Chapter II-) contains special provisions concerning the various types of cooperatives. This chapter takes into account cooperatives in the following areas: work, agriculture, field, fishery, service; which includes school cooperatives, and cooperatives that supply and distribute electricity and drinking water, housing, savings and credit, and consumption.

The law defines each of these cooperatives as follows:







- **Agricultural and Field (Peasant) Cooperatives**, are those which are engaged in buying and selling, distributing, producing and transforming goods, products and services, related to the forestry and agro-industrial activity, in order to achieve a higher return. They work preferably in a rural environment and lean toward the social, economic and cultural development of its partners.
- **Fishing Cooperatives** are those engaged in the production, purchase, sale, distribution, processing of goods, products and services related to the exploitation of seafood products and activities that pursue the improvement of the living conditions of those who carry out said activities.
- **Service Cooperatives** aim to distribute goods and provide services of all kinds, preferably to its members, with the purpose of improving their environmental and economic conditions and meeting their family, social, occupational or cultural needs. The law includes school cooperatives and cooperatives that supply and distribute electric power and drinking water among these cooperatives.
- **Housing Cooperatives** aim to meet the housing and community needs of their partners and provide the services inherent to that objective.
- **Savings and Credit Cooperatives** are the service cooperatives that have the sole and exclusive purpose of providing financial intermediation services for the benefit of their members.
- **Consumer Cooperatives** aim to provide members and their families with articles and goods for personal or domestic use, in order to improve their economic conditions.

Each of the cooperatives mentioned above has special norms within the law of cooperatives regarding its members, contributions, assets, auditing body, among others.

Some of these cooperatives may conduct operations with non-partners, for example, the law in service cooperatives states that they should preferably operate with partners, however, they are not prohibited from conducting operations with non-partners. Another example is savings and credit cooperatives that can receive deposits from their partners and third parties.

## b) Cooperative Members

In regard to cooperative members, except in cases specially determined by law, the number of members of a cooperative shall be unlimited, starting at a number of five. In the event that the number of members is reduced to a number less than the minimum indicated, a period of six months is granted to complete the requirement. In case of failure to achieve this, the cooperative will be dissolved by the sole ministry of the law, the directors or the manager must publish the dissolution in the Official Journal, within sixty days of the expiration of the



six months period mentioned previously, in addition to recording the dissolution in the margin of the inscription in the corresponding Commercial Register, within the same period.

Legal persons under public and private law are allowed to be members of cooperatives. Cooperative members may belong to two or more entities of the same nature, unless prohibited by statute.

If compatible with the nature of the purpose of the cooperative, the statutes shall authorize the heirs of a deceased member to continue as members of the cooperative as an undivided community and shall appoint a common solicitor to represent them.

The acquisition, use and loss of membership status and mutual benefits, shall be governed by the statutes of each cooperative and the regulations of the law shall be supplementary to the statutory provisions.

Cooperatives may temporarily suspend the entry of members, if their resources are insufficient to serve them, yet they may not limit the entry of members for political, religious or social reasons, without detriment to the right of the Board of Directors to qualify the entry of members.

The law limits the percentage of capital that a member can have in the cooperative, establishing that no member may own more than 20% of the capital, except in the case of savings and credit cooperatives, where 10% is the maximum allowed.

Persons who obtain membership status in a cooperative respond with their contributions to the obligations undertaken by the cooperative prior to their entry, any stipulation to the contrary is void.

Persons who have lost membership by resignation or exclusion and heirs of a deceased member will be entitled to a refund of the updated amount of their share (capital) fees. Such reimbursement will be dependent on the fact that at the end of the preceding fiscal year, capital contributions have been presented for a sum equivalent at least to the amount of returns required by these concepts and will be made in the chronological order of the applications received. Without prejudice to the foregoing, if the loss of membership is due to exclusion, the period for the reimbursement of participation fees may not exceed six months, unless the cause of exclusion is based on the failure of the member to fulfil his pecuniary, economic or contractual obligations to the cooperative.



### c) **Establishment, Cooperative Membership and Government**

Cooperatives in Chile are constituted by a certificate of the General Constitutive Meeting which must state the name, profession or activity, address and identity card of the natural persons attending its constitution, and the name or denomination, the unique tax role and address of legal persons. It must also include the agreement of the attendees to constitute the cooperative, the approval of the social statute that will govern it and the full draft. (Art. 1 of the Regulations of the General Law on Cooperatives).

The minutes of the General Constitutive Meeting must be reduced to public deed and an extract must be authorized by the Notary who authorized the public deed must be registered in the Real Estate Conservator Trade Registry corresponding to the address of the cooperative and, to be published only once in the Official Journal.

Such extract shall state, at least the name, address and duration of the cooperative, the declaration of its purpose, the number of members who attended its constitution, the subscribed and paid capital, the name and address of the notary under whom the minute was reduced to public deed, and the date of the deed.

The recording and publication mentioned above must be made within sixty days of the date of the reduction to public deed of the minute of the General Constitutive Meeting.

The minute of the General Constitutive Meeting - which must be reduced to public deed - shall state the name, profession or activity, address and national identity number of the partners attending the constitution. It must also include the approval of the statutes and their complete text.

The law, also requires the same formalities as for the constitution of the cooperative for statute reforms, merger, division, transformation, or dissolution of cooperatives. In these cases, in the corresponding summary it will be necessary to refer to the specific content of the agreement, in addition to expressing the name of the cooperative, the name and address of the notary under whom the minutes were reduced to public deed and the date of said deed.

The deed of incorporation that omits the requirements mentioned above is void, a penalty is also established in the event that the statutes of the cooperatives omit the registered name, the specific purpose(s) that it will pursue and the initial capital subscribed and paid, all without prejudice to conciliation according to the law.



The declaration of invalidity shall have no retroactive effect and applies to situations occurring from the moment the resolution is enforceable. Once nullity of the cooperative is declared, it will enter into liquidation, maintaining the legal personality for said purpose.

The structure of the cooperative's government consists of four bodies: the general board of partners, the board of directors, the manager and the supervisory board.

The general meeting of members involves all partners with a single vote each, both in terms of the election of persons, and the proposals that are made.

The General Meeting of Partners is the supreme authority of the cooperative, there, the most relevant issues must be addressed, fixed in the law or in the social statutes of the institution, and will be constituted by the meeting of the partners who are duly recorded in the social register and the agreements it adopts, subject to the laws, regulations and statutory provisions, and will be mandatory for all its members.

The law authorizes members to appear at or attend general meetings with the right to voice and vote by granting powers, which may be granted by a simple power of attorney. Notwithstanding the aforementioned, the statute of the cooperative may determine that attendance at the general meeting must be personal and that a mandate to attend is not accepted under any circumstance.

A ban is established for member representatives of the Board of Directors, the Supervisory Board, the Manager and workers of the Cooperative.

Proxies are required to be members of the cooperative, with the exception of the partner's spouse or child, or their administrators or workers, in which case the power granted must be authorized before a notary.

The power that can be granted to a member is also limited, not being able to represent more than 5% of the members present or represented in a general assembly.

Delegates must be elected before the general meeting of partners in local assemblies, which will be attended by members personally or be represented, as set out in the statutes.

The statutes determine the norms under which the Board of Directors shall resolve the assignment of the members to the different local assemblies, the norms on which they need to be based, at least, on territorial criteria.







Local assemblies must be cited under the same rules and procedures established for general meetings and must be held within twenty-five days of the date on which the general meeting is held to which the delegates must attend.

The composition, representation and responsibility of the delegates must be determined in the statutes, failing that, it should be understood that the delegates will represent the members of their respective local assemblies before the general meeting of members, in proportion to the number members who make up the assembly that elected them.

Matters covered in the general meeting of partners include:

- The review of the condition of the cooperative and the reports of the supervisory board and external auditors and the approval or rejection of the report, balance sheet, statements and financial demonstrations submitted by the managers or liquidators of the cooperative.
- The distribution of surpluses or remnants for each financial year.
- The election or revocation of the members of the Board of Directors, the liquidators and the supervisory board.
- The election or revocation of the administrative manager and the account auditor, in the case of cooperatives with twenty members or less.
- The dissolution of the cooperative.
- The transformation, merger or division of the cooperative.
- The reform of its statutes.
- The approval of contributions of goods not consisting of money and estimation of its value.
- The modification of the social purpose.
- The modification of the form of integration of the cooperative's bodies and their authority.
- The increase in share capital, if it is mandatory for the members to meet their subscription and payment of the respective capital contributions.
- The establishment of the corresponding remuneration, participation or assignments in cash or in kind, to the members of the Board of Directors, Supervisory Board, or any other Partner Committee established in the statutes.

The law regulates the formality of summons to the general meeting and states that these must be carried out by means of a notice to be published through social communications media, with a notice of not more than fifteen days or less than five days from the date on which the respective meeting will be held. In addition, a summons must be sent to each member, by regular mail or electronic mail, to the address or email address that they have registered with the cooperative, at least fifteen days before the date of the respective meeting.



The notice of summons shall contain the date, time and place to be held, the nature of the meeting and a reference to the matters to be dealt with therein and the procedure for submitting the powers to attend and vote on behalf of a partner, if applicable.

General meetings shall be constituted at first summons, unless the statutes establish higher majorities, with the personal or represented attendance of the absolute majority of voting members and, by second summons, with those attending.

The Board of Directors is responsible for the higher administration of social business and judicially and extrajudicially represents the cooperative for the fulfillment of the social purpose, without prejudice to the representation that falls onto the manager.

The law determines the possibility for the Board of Directors to delegate part of its powers to the manager or to one or more advisors or officials from the cooperative and may also delegate them to other people for specific purposes.

Cooperatives with twenty or fewer members may omit the appointment of a board of directors and may instead appoint an administrative manager, who shall be given the powers conferred by law on the Board of Directors. These cooperatives are also not obligated to choose a supervisory board, in which case they must appoint a main account auditor and an alternate who shall have the powers conferred by law on the supervisory board.

The law establishes a gender norm, noting that the collegiate bodies of cooperatives (board of directors and supervisory board) must ensure that all partners are represented. To this end, and provided that the registration of candidates permits, the percentage represented by each gender among the partners should be reflected proportionately in the respective collegiate body. The social statute of each cooperative must establish the weighting mechanism that complies with this norm.

The gender norm referred to in the preceding paragraph, as drafted, has been difficult to implement and in particular to establish the weighting mechanism in the statutes of cooperatives.

This norm has been recently applied and each cooperative has incorporated it in its statutes in accordance with the weighting mechanism it has considered most appropriate, in view of the fact that there is no instruction regarding its implementation from the reporting body. Hopefully, the regulation of the cooperative general law that has not yet been dictated controls the application of this new norm.





The Manager is the enforcer of the agreements and orders of the Board of Directors. The Manager will legally represent the cooperative and its powers and duties shall be fixed in the statutes, without this obstructing, in any event, actively and passively exercising the powers laid down in Article 8 of the Code of Civil Procedure.

The regulations of the general law of cooperatives indicate the role of the Board of Surveillance. This group is responsible for examining the accounting, its supporting documentation, inventories, balance sheets and the other statements and financial material that the management or administration of the cooperative prepares and issue a report on them, which must be presented to the Board of Directors and, in any event, to the general meeting of partners. Likewise, it is also given the task of investigating and reporting any written complaint that it rightly receives from the partners as well as irregularities that, by any means, come to their knowledge.

The Board of Directors does not have the authority to accept or reject the reports of the Supervisory Board, without prejudice to taking note of the comments that it makes and taking the measures it deems necessary for properly running the cooperative.

Both the members of the Board of Directors and the Supervisory Board may be remunerated by decision of the general meeting of partners or, by the Board of Delegates.

#### **d) Cooperative Financial Structure and Taxes**

In Chile, the capital of cooperatives is variable and unlimited, starting from the minimum established by the social statutes and is formed with the sums paid by the members for the subscription of their participation fees. Bylaws must set the amount of minimum contributions that members must make in order to join or maintain their status as members.

The initial capital must be paid within the time limit determined by the social statutes and the capital increases must be paid in the form or within the time limit agreed upon by the general meeting of members.

Once the period determined by the statutes or agreed on by the competent body has expired, without having known the subscribed capital or the increase in capital, as appropriate, it will be reduced to the amount actually paid.

On the other hand, the assets of cooperatives consist of the capital contributions made by the partners, the legal and voluntary reserves and the existing surpluses or losses at the end of the accounting period.



The participation of the members regarding assets is expressed in share quotas, the value of which is the sum of the value of their capital contributions and voluntary reserves, minus the existing losses, divided by the total share quotas issued at the end of the period.

The legal reserve is not considered within the value of the participation quotas, given that it is considered as non-distributable by the law for the duration of the cooperative, and it can only be used to cover the losses that occur in the cooperative.

In the event of liquidation of the cooperative, once any losses have been absorbed, the debts have been paid and each partner has been reimbursed the updated value of their participation quotas, the legal reserves and any other resulting surpluses will be distributed proportionally among partners for their participation fees.

Share quotas are nominative, and their transfer and surrender must be approved by the Board of Directors. The law prohibits the creation of organization and privileged share quotas.

In the case of savings and credit cooperatives and open housing cooperatives, the initial capital required by law for the former is 3,000 Development Units (approx. US\$ 113,000) and 6,000 Development Units for the latter (approx. US\$ 226,000), which is the minimum of assets required of each of them.

The liability of cooperative members will be limited to the amount of their share quotas.

The Board of Directors may accept the partial reduction or withdrawal of the contributions made by the members, without losing the status as such and in accordance with the norms established by the social statutes.

Regarding the result of the financial year, the law states that the favorable balance of the financial year, which is called the residual, will be used to absorb the accumulated losses, if any. Having done this, it will be dedicated to the establishment of reserve funds - which may be legal reserve funds or voluntary reserve funds - and to the payment of interest to capital, in accordance with statutes. The balance, if any, will be referred to as a surplus and distributed in cash among the members or result in an emission of share quotas.

The surpluses from cooperative operations with partners are distributed on prorata and those from third-party operations are distributed on prorata for the share quotas.

Two reserve funds are established by law, the first is a provision fund that is constituted with 2% of the residual, which will be used only for the repayment of share quotas, in exceptional cases determined by the general board of partners. The second is called the legal reserve fund







and is constituted with the equivalent of 18% of the residual of the commercial year, which must be used to cover the losses that occur and is not distributable for the duration of the term of the cooperative.

Savings and credit cooperatives supervised by the Financial Market Commission, are excluded from constituting a legal reserve (those with a net worth of more than 400,000 Development Units) (approx. US\$ 15,000,000) worker cooperatives, field (peasant), fishery and those that jointly meet the following requirements:

- Assets greater than 200,000 Development Units. (approx. US\$ 7,500,000)
- That the result of the division between its equity and total liability is equal to or greater than 2.

In the case of open housing cooperatives, they must constitute at least 70% of the residual value generated as a reserve fund that cannot be distributed until its dissolution and subsequent liquidation.

This legal reserve is increased with the interest obtained through capital and surpluses distributed by the general assembly that have not been withdrawn by the members, within the five-year period from the date on which their payment has been agreed upon.

In the area of taxation, cooperatives and auxiliary companies of cooperatives are governed by the provisions of Article 17 of the Income Tax Law (DL 824).

The part of the residual that corresponds to transactions carried out with non-members will be subject to first category income tax, at a rate of 27%. The portion of the residual corresponding to transactions carried out with persons who are members of the cooperative is exempt from the first category tax.

The interest received by members from capital contributions is taxed with the supplementary or additional overall tax.

The cooperative law establishes a series of tax exemptions, which are listed below:

- 50% of all contributions, taxes and other tax levies in favor of the Treasury. However, Cooperatives are subject to the Value Added Tax (VAT).
- Of all the taxes referred to in Decree Law No. 3.475 of 1980, which levy legal acts, conventions and other actions which it states, in all acts relating to the establishment of cooperatives, registration, internal operations and legal proceedings.
- Fifty per cent of all contributions, duties, taxes and municipal patents, except those relating to the processing or expounding of alcoholic beverages and tobacco.



- Cooperative members do not pay the first-category income tax law for the higher value of their participation fees.

#### e) **Other Specific Characteristics**

In Chile all cooperatives are subject to the supervision of the Association Division from the Undersecretary of Economy and Smaller Enterprises, which has a department from the Ministry of Economy, Development and Tourism, with the exception of savings and credit cooperatives with an estate exceeding 400,000, Development Units (approx. US\$ 15,000,000), whose dependence on the corporate part corresponds to the division mentioned above and in regard to the operations they carry out in compliance with their purpose, and are supervised by the Financial Ministry Commission under the Ministry of Finance.

The Association Division also has the role of promoting the cooperative sector, through the promotion of programs destined toward the development of management and business capacity in cooperatives; to dictate rules that contribute to the improvement of the functioning of cooperatives and keep a record of existing cooperatives.

In addition, it is responsible for developing statistics for the cooperative sector and disseminating the information available, regarding the functioning of cooperatives; administratively interpret, by means of general resolutions, the special legislation governing cooperatives, their regulations and the other rules applicable to them and, absolving the specific consultations made by cooperatives or their partners on these matters; advising public bodies related to the field; promoting the development of programs and activities aimed at improving the business management of cooperatives; issuing standards and accounting and administrative instructions to improve the functioning of cooperatives, among others.

The law regulates the formation of cooperatives of higher degree - confederations, federations and auxiliary institutes – Cooperative federations will be constituted by three or more cooperatives. The confederations shall be constituted by three or more federations and auxiliary institutes shall be constituted by seven or more legal persons under public law, cooperatives or other legal persons that do not pursue profit.

Federations, confederations and auxiliary institutes are considered by law as cooperatives for all legal and regulatory purposes, in all cases where such associations develop economic activities at the service of their partner entities or third parties.



Federations and confederations are responsible for looking after the interests and complementing and facilitating the fulfilment of the objectives of cooperatives, cooperating with their work and carrying out any activity of production of goods or the provision of services noted in its statutes, for that purpose.

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

For cooperatives, compliance with the national legislation that governs them is not difficult to apply, however, the normative does not have a degree of complexity, its terms are commonly used and the auditing body within its range of authority, when necessary, has interpreted the norms and given the appropriate instructions.

The tax aspects are not contained in the law of cooperatives, the law establishes the privileges and some exemptions in the matter of taxes that benefit cooperatives.

Also, cooperatives are handled in an article independent from the text of income tax law DL 824 (Art. 17).

The Political Constitution of the Republic of Chile does not mention cooperatives.

There are no particular laws or legal provisions that favor cooperatives in the area of public procurement.

In the matter of consumer protection, there are certain conflicts between the law of cooperatives and the consumer rights protection law, since, there is confusion with the partners who have a status of cooperative owner and at the same time a status of consumer. This leads to consider the cooperative as a common commercial company and the member or partner as a third party outside of it.

This same confusion between owner and third party occurs between the cooperative law and the insolvency and re-entrepreneurship (*reemprendimiento*) law when a member requests insolvency proceeding for the liquidation of assets for an unpaid obligation incurred with a cooperative.

There is an asymmetry between what cooperatives and corporations can do, i.e. there are certain activities that can only be carried out by corporations and which are unavailable for cooperatives, especially for savings and credit cooperatives such as, they cannot constitute and conduct the activities of insurance companies and banks.



#### IV Recommendations for the Improvement of the National Legal Framework

- Avoid the unfair treatment that exists between cooperatives and corporations.
- To incorporate and recognize in the Political Constitution of the Republic the social function fulfilled by cooperatives.
- Provide greater swiftness to the dictation of norms complementary to the law. For example, the regulation of the cooperative law, is still in the process of dictation, having transcribed more than 3 years since the law was amended and dictation of a new regulation was ordered.
- Certain adjustments must be made to the current cooperative law, to simplify certain rules contained therein, for example, the gender norm, the norm on capital return from savings and credit cooperatives, among others.
- Regulate partner-consumer disputes found in the Consumer Rights Protection Law.
- Regulate disputes produced in the law of insolvency and re-entrepreneurship when a partner requests an insolvency proceeding for the liquidation of their assets for an unpaid obligation incurred with a cooperative.

#### V Conclusions

It should be noted that the National Congress is discussing a reform of the national tax system at the time this report was being drafted, which will review all exemptions and privileges that certain business entities are entitled to. Likewise, the executive branch is currently analyzing the dictation of a new Political Constitution of the Republic, an opportunity in which the cooperative sector will request the incorporation of the social purpose of cooperatives.

Santiago, Chile. December 2019.

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