



## LEGAL COOPERATIVE FRAMEWORK ANALYSIS

### Within the ICA-EU Partnership

### NATIONAL REPORT FOR MEXICO

#### 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 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 Mexican 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.

This document regarding the situation of the Mexican cooperative legislation has been prepared by Mtro. Francisco Javier Salas Del Portal, who has work and study experience in the cooperative sector for more than 20 years. For its preparation, the contributions made by national organizations of cooperatives affiliated to Cooperatives of the Americas have been taken into consideration.

The contributions of the expert and of the Mexican member organizations of Cooperatives of the Americas were collected through the sending of a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Mexico and the response to it was voluntary.





## II. National Cooperative Legislation of Mexico

### i. General context

In Mexico, according to the constitutional framework, the cooperatives are regulated starting from their mention in the Political Constitution of the United Mexican States<sup>1</sup>, which establishes the obligation of the Mexican State to govern the full and sustainable national development through, among other things, the promotion of economic growth and employment that allows the exercise of the freedom and dignity of Mexicans. To comply with this, the State through the law will establish mechanisms for the organization and expansion of the economic activity of the social sector, among which are the cooperatives. To comply with the constitutional mandate, the Mexican legislators integrated the cooperatives (as an associative figure) into the General Law of Mercantile Corporations.<sup>2</sup>

Nevertheless, the legislator himself determined that the cooperatives would have their special law and published the so-called General Law of Cooperative Corporations<sup>3</sup> that represents their fundamental legal framework and which aims to regulate the constitution, organization, functioning and extinction of the cooperative corporations and the organisms in which they are freely grouped, as well as the rights of the partners.

Likewise, the General Law of Cooperative Corporations states that there will be 3 types of cooperative corporations: those of consumption, production and savings and loan. In the case of the latter, a particular law was published called "Law to regulate the activities of Cooperative Savings and Loan Corporations"<sup>4</sup> which aims to regulate the collection and placement of resources among their partners, as well as the powers of financial regulators.

We therefore have 3 relevant legal rules in cooperative matters:

Denomination	Release date	Last update
General Law of Mercantile Corporations	4/August/1934	14/June/2018
General Law of Cooperative Corporations	3/August/1994	19/January/2018
Law to regulate the activities of Cooperative Savings and Loan Corporations	13/August/2009	28/April/2014

<sup>1</sup> Article 25, eighth paragraph of the Political Constitution of the United Mexican States.

<sup>2</sup> Article 1, fracc. VI and 212 of the General Law of Mercantile Corporations, published in the Official Journal of the Federation on 4 August 1934. Last reform published on 14 June 2018.

<sup>3</sup> General Law of Cooperative Corporations, published in the Official Journal of the Federation on 3 August 1994. Last reform published on 19 January 2018.

<sup>4</sup> Law to regulate the activities of Cooperative Savings and Loan Corporations, published in the Official Journal of the Federation on 13 August 2009. Last reform published on 28 April 2014.



The main distinction between the "general law" of Cooperative Corporations and the "special law" of Cooperative Savings and Loan Corporations, is that the first rules the aspects of constitution and associative life of the cooperative (main partner and corporate aspects), while the second aims to regulate the special activity of fund raising, loans to its partners and the powers of the supervisory authorities.

It is important to note that the powers to legislate in cooperative matters belongs to the Union Congress<sup>5</sup>, which classifies Mexican Cooperative Law as Federal, however the constitutional mandate itself states that the basis for the concurrence of the powers of the Federal Entities will be established to legislate on the promotion and sustainable development of cooperative activities, so that each State of the Mexican Republic, including of course the City of Mexico, may legislate on cooperative matters but with the clear objective of determining within their territorial framework, the legal rules of promotion and development, but not of partnership aspects such as their constitution, governing bodies, social funds, economic regime, integration bodies, etc.

As an example of what is described in the paragraph above, we can mention the Cooperative Development Law of the Federal District (now Mexico City) whose purpose is to establish regulation and coordination of policies, programs and actions to promote the economic development of Mexico City through the cooperatives.

## ii. Specific Elements of the Cooperative Law

### a) Definition and Objectives of Cooperatives

The associative figure of the cooperative is described in the General Law of Cooperative Corporations as follows:

*"Article 2.- Cooperative corporation is a form of social organization composed of physical persons based on common interests and the principles of solidarity, self-effort and mutual assistance, with the purpose of satisfying individual and collective needs, through economic activities of production, distribution and consumption of goods and services."*

It is apparent from this description that the emphasis is on the associative figure, which during the development of the law itself is confirmed. This will be above what should be its main focus: the account of attributes, roles and functions of its Partners, the mechanisms of contribution of work, ideas and resources for the common purposes, the role, methods and

---

<sup>5</sup> Article 73, fracc. XXIX-N of the Political Constitution of the United Mexican States.



mechanisms of the State entities to promote the development and promotion of cooperatives, etc.

In this sense, having the emphasis of the associative figure, the legislative intention to integrate the figure within the General Law of Mercantile Corporations is understood, which merely describes a brief and vague concept, its administrative and surveillance bodies and the causes and mechanisms of dissolution and liquidation, that is, pure corporate aspects, reasons why there is no substantive differentiation with other figures contained in the mercantile law, except for equal participation and democratic control of the Partners in their capital and administration, respectively.

From its description we also conclude that in Mexico the partners can only be physical persons. A legislative initiative is currently being discussed that includes moral, legal or collective persons as potential partners; however, it is important to note that there are some savings and loan cooperatives that maintain moral people as partners, derived from the possibility granted to them by the Popular Savings and Loan Act, whose articles were repealed on August 13, 2009.

There are 3 types of cooperatives: consumption, production (also known as associated work, which are those that aim to provide jobs to their Partners and to carry out a joint organization of the production of goods and services for third parties) and savings and loan. The law in principle states that cooperatives will be constituted to provide among their members the products and services that it produces, however, in the case of consumer and production cooperatives, they are allowed to carry out transactions with people who are not partners, therefore the law does not limit the realization of mandatory activities of the partners for the cooperative or vice versa. The operation with persons outside the cooperative is not regulated in the General Law of Cooperative Corporations and, in any case, leaves it at the discretion of each company according to what it determines in its constitutive bases.

While it is true that the General Law of Cooperative Corporations highlights as its main object the integration of people to carry out community activities and meet their needs, it is also true that it does not develop any provision that promotes such a virtue, either individually or for the benefit of the community. The closest thing to this idea is the possibility of obtaining the distribution of the surpluses of the financial year or the realization of works of community benefit, provided that it is from the surpluses and if the assembly approves it, which includes the result of the operation with third parties outside of the cooperative, that is, in the case of cooperatives of consumption and production, the result of the operations that they realize with third parties who are not partners, accumulates to the economic-financial result and if





remnants or surpluses are determined, they are distributed in favor of the partners or the community in which they operate.

The economic activities in which a cooperative may participate is not restricted in its general law, however, according to the legal system in Mexico for financial activities in which the authorization of the State is required (authorization to operate as Bank, Insurance company, Stock exchange, etc.), the figure of the cooperative is not considered as an option. However, it should be noted that the Savings and Loan Cooperatives are members of the Mexican Financial System and for their operation and functioning also require the authorization, supervision and surveillance of the National Banking and Securities Commission.

The purpose of the General Law of Cooperative Corporations is not necessarily associated with the constitutional mandate, as it merely develops rules to accommodate a legal or associative figure, with deficiencies in its identity or nature, because it is classified as a Mercantile Corporation, so development, momentum and promotion would be expected to develop in public policies, which unfortunately remain at the discretion of the governing class and the particular interests of the federal entities.

Moreover, the General Law of Cooperative Corporations does not in my view respect the principles of cooperative identity set out in the declaration of the International Cooperative Alliance, on the grounds that Article 6 seeks to describe and adapt those principles in a particular statement, more associated with the duties and rights of the Partners that make up the cooperative, rather than promoting the spirit and philosophy of cooperation as a way of sharing common interests and solutions:

Law of Cooperative Corporations Principles.	ICA Cooperatives Principles.
1. Freedom of association and voluntary withdrawal of members;	1. Voluntary and open association;
2. Democratic administration;	2. Democratic control of members;
3. Limitation of interest on some contributions from members if so pacted;	3. Economic participation of partners;
4. Distribution of returns in proportion to partner participation;	4. Autonomy and independence;
5. Promotion of cooperative education and education in the solidarity economy;	5. Education, training and information;



6. Participation in cooperative integration;	6. Cooperation between cooperatives;
7. Respect for the individual right of partners to belong to any political party or religious association;	7. Concern for the community.
8. Promotion of ecological culture.	

The principles described in the General Law of Cooperative Corporations are not specifically developed in the form of attitudes or skills that their Partners must observe and contribute for the benefit of the cooperative collective; however, there are some aspects that may even be contrary to them:

- a) The liberty of association and withdrawal of partners in the case of the Savings and Loan Cooperatives, when they are indicated in the Law to regulate the activities of the Savings and Loan Cooperative Corporations, that cooperatives may restrict the payment of their social contribution when they fail to comply, is the level of enforceable capitalization or when it is a massive withdrawal of partners.
- b) There is no additional provision to the limitation of interests to the contributions of partners, nor to democratic control over the resources provided and everything limited to the social pact defined in its constitutive bases.
- c) The promotion of cooperative education is designated as a principle, however, the fund for this purpose is optional for the society.
- d) Similarly, integration bodies are described in higher grades (Federations, Unions, Confederation, Superior Council), however, the association to these levels of integration is voluntary.
- e) Finally, the principles of respect for political, religious and ecological beliefs seem to be mentioned casually and anecdotally or generated by passing trends or fads in the legislatures that integrated them, because as in other cases, no positive norm is mentioned again that generates consequences to the norms in this general law.

With regards to the regulation of the "cooperative act", the General Law of Cooperative Corporations is limited to pointing out in its article 5 that "cooperative acts are those related to the organization and internal functioning of cooperative corporations", and does not refer to it in the rest of the law. In my view this is one of the main deficiencies of the Mexican cooperative legislation, on the grounds that the cooperative act should not only refer to the organization and internal functioning but on the contrary, must take advantage of its description to regulate the effects and consequences it will have with its environment, that is, in more strongly defining the cooperative act, must also define its effects, applicable



legislation, authorities and competent courts, that will allow the cooperative corporations and persons who, that without, or being part of them, but who maintain a transitional or permanent legal relationship or in fact, to have the legal certainty of the consequences of law they assume.

The definition and scope of the cooperative act will enable it to be distinguished from other acts of a different nature, which, among other things, will give clarity and transparency to the definition of public policies for their promotion and development, since by definition, public policies should be generated on the basis of the legal and regulatory framework that allows their oversight and certainty in the application of public resources, which is granted when such a legal framework has clarity in its scope and consequences. In the current case of the cooperative sector in Mexico, there is no clarity in the law and its application with respect to public sector entities that are linked to cooperatives, the disputes arising from the performance of a cooperative do not have their competence defined on the matter, etc.

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

The constitution of a cooperative corporation will have the formality of being in writing, before a public federative (notary public, public agent, district judge, trial judge in the same matter of common jurisdiction, municipal president, secretary, municipal delegate or holder of the political-administrative entities of Mexico City). Since it is stated with this formality, the cooperative has legal personality and its acts are objectionable to third parties from its registration in the Public Register of Commerce. Similarly, for the savings and loan cooperatives there is a mandatory "Register" that is in charge of the savings protection fund (A trust fund called the "Auxiliary Supervision Fund of Cooperative Savings and Loan Corporations and of protection to their Owners"), whose intention is to keep in force cooperatives that carry out operations, are authorized and maintain adequate levels of financial health for certainty and legal and property security of its partners and the general public.

Cooperatives must be constituted with at least 5 (consumption and production) or 25 (for Savings and Loan) partners. Consumption and production cooperatives do not require a minimum capital; however, savings and loan require a minimum equity capital and to maintain a capitalization index because of the risks to which they are exposed in their operations. If cooperatives do not maintain the minimum number of partners required, they will fall into a state of dissolution and liquidation.



The equity capital is integrated by the contributions made by the partners and its responsibility to the obligations to third parties may be: Supplemented or Limited, whose regime must be integrated into the business name for the purposes of advertising to third parties. The supplemented responsibility means that the partners respond with their own pro rata assets for social operations, up to the amount determined in the constitutive charter. And limited liability means they respond up to the amount of their contributions to the equity capital.

The general law does not regulate the aspects related to the admission of partners and merely points out the power of the General Assembly of Partners for admission, exclusion and voluntary separation, so the requirements and procedures for this purpose are determined on the constitutive bases of each cooperative.

The law determines that the supreme body of the cooperative is the General Assembly, which is composed of its partners and whose decisions are taken by a majority of votes, each of them corresponding to 1 vote, regardless of the amount of contributions it makes.

In principle, voting is exercised in a personal manner, however, if the constitutive bases allow, it can be exercised through a letter of power granted before two witnesses, and the representation in any case must fall upon a co-associate, without the latter being able to represent more than two partners.

From the General Assembly, 2 relevant bodies of internal government emerge, which is the Board of Directors and the Supervisory Board whose powers are:

- a) Board of Directors - Manage the business of the cooperative, be the executive body of the General Assembly, determine the objectives and strategies for the fulfillment of its social purpose and exercise the legal representation of the same, and
- b) Supervisory Board - It shall be the body responsible for supervising the internal functioning of the cooperative, as well as the fulfilment of its statutes and other applicable regulations.

They may have the committees and commissions that their constitutive bases contemplate or that the General Assembly names. Without prejudice to the foregoing, in the case of savings and loan cooperatives, the following committees shall be required:

1. Credit Committee or its equivalent;
2. Risk Committee;
3. Communication and Control Committee;
4. Director or General Manager, and
5. Internal auditor.





Partnership of the board of directors, supervisory board or general director of the cooperative is not required, so the possibility of having independent directors is at the discretion of the cooperative to determine it in its constitutive bases, so if determined by the corporation, both councils could be composed of non-partner third parties. The control and administration of the corporation is guaranteed with the non-delegable powers ordered by the General Law of Cooperative Corporations in favor of the Board of Directors and the evaluation of its management corresponds to the General Assembly of Partners (in the case of the Board of Directors and Supervisory Board) and the Board of Directors (in the case of the Director General), whose penalties for non-compliance will be the dismissal of the members of the respective body, the exercise and execution of the bonds constituted to ensure the management of the resources, the sanctions imposed and established in the constitutive bases or the criminal and administrative bases before the competent courts, which the General Assembly or the Board of Directors determine in the case of sanctions on the Director or General Manager.

### c) Cooperative Financial Structure and Taxes

The cooperative corporations of production and consumption do not require a minimum equity capital required by the Law, which corresponds to the Assembly to establish it in its constitutive bases.

For the case of the savings and loan cooperatives, a minimum equity capital is required according to the following:

Prudential level	Number of total assets	Minimum capital
Level I	Equal to or less than 10 million UDIS <sup>6</sup>	100,000 UDIS
Level II	Over 10 million and equal to or less than 50 million UDIS	500,000 UDIS
Level III	Over 50 million and equal to or less than 250 million UDIS	4'000,000 UDIS
Level IV	Over 250 million UDIS	22'500,000 UDIS

<sup>6</sup> UDIS: investment units, the value of which is determined by Banco de México and published in the Official Journal of the Federation. Value at 27 August 2019: 6.29 Mexican Pesos.



The equity of the cooperatives will be integrated with the contributions of the partners and with the yields that the General Assembly agrees are allocated to increase it. Contributions may be made in cash, legal goods or work. The appraisal of non-cash contributions shall be made in accordance with the procedure determined by its constitutive bases or at the time of the member's entry by agreement between him/herself and the board of directors, with the approval of the General Assembly accordingly. Each member must provide at least the value of a certificate. The subscription of surplus or voluntary certificates can be agreed to, for which the interest indicated by the board of directors will be perceived. In case of exclusion or separation, the contributions made will be returned to the partner, provided that there are no pending settlement operations with the cooperative or, where appropriate, may be withheld in the case of the savings and loans, if it does not comply with the minimum equity requirements.

With regards to the establishment of equity funds, the law seems to have a contradiction, since on the one hand it establishes the provision of funds as an option or possibility<sup>7</sup> and on the other hand, points to the obligation to set up the Reserve Fund with the contribution of between 10 and 20% of the remnants of each financial year. For which it refers to the equity prevision, the contribution shall be determined by the General Assembly and the cooperative education fund, if established, shall be with the contribution of at least 1% of the net monthly surpluses.

For the purpose of paying dividends or profits, the General Law on Cooperative Corporations makes no special mention and merely states that cooperatives, in their constitutive bases, should note that the distribution of the yields will be in proportion to the participation of the partners, however the law does not distinguish or define what it refers to as "*Distribution of yields in proportion to the participation of the partners*" (with the exception of consumer cooperatives), so it would be left to the judgement of the corporations to define it in their constitutive bases, although the most common practice is the allocation according to their contribution to the equity capital. However, with regards to consumption cooperatives, the law expressly states that the distribution of surpluses will be based on the acquisitions made of their own goods during the fiscal year. Moreover, that stated in the above paragraphs is confirmed, in the sense that for the determination of yields (remnants or operating surpluses), they are even integrated by transactions with non-partner third parties and that they are accumulated for the distribution to those that are part of the equity capital.

---

<sup>7</sup> Article 53 of the General Law of Cooperative Corporations: "Cooperative Corporations can constitute the following equity funds: I.- Reserve; II.- Social Prevision, and III.- Cooperative Education."



As part of the contributions that members can make to the cooperative, there are surplus or voluntary certificates, which serve as means of financing for special projects of the cooperatives and that can receive the payment of interest agreed to by the board of directors. Cooperatives may also issue contribution certificates for risk capital for a specified period of time. Contributions to the equity capital are limited for the partners of the cooperative, so in the circumstance that some type of cooperative (consumption and production) can carry out legal acts with third party non-partners, such as the distribution and disposal of its products, does not include the possibility of them making contributions or financing to the equity capital.

In the case of dissolution and liquidation of cooperatives, even if the General Law of Cooperative Corporations is not express, the General Law of Mercantile Corporations applies in a supplementary way, so it is for the General Assembly of Partners to submit its determination; however, such determination must be submitted to the jurisdictional courts for it to take effect and the appointed liquidators must submit the settlement draft for approval. In the event that a cooperative is to be transformed into another type of corporation, it must be liquidated in advance.

The tax treatment for cooperative corporations, in general, is the same as for any other legal figure, with the exception of those of consumption and savings and loan, which are taxed under a special Income Tax regime, as a moral person for non-profit purposes and therefore are not contributors to such tax on yields or annual remnants. These provisions do not apply to production cooperatives.

This legal criteria is recognized for the production cooperatives in the treatment of the Income Tax, through the following Jurisprudence:

*"Income. Article 85-a of the Law of the relative Income, by granting an option to calculate the tax to production cooperative corporations, does not violate the principle of tax fairness (legislation in force from 1 January 2006).*

This article, by establishing an option for production cooperative corporations constituted only by members of physical persons, to calculate the income tax by applying the provisions of Section I of Chapter II of Title IV of the Law on the subject - regime of physical persons with business and professional activities - and to allow them to defer the entire tax up to the tax year in which they distribute to their partners the taxable profit that corresponds to them and not to make provisional payments of the tax, does not violate the principle of tax fairness contained in section IV of article 31 of the Political Constitution of the Mexican States, because there is an objective basis that justifies the difference in treatment between the  
aforementioned



cooperatives and the other mercantile corporations. This means that the Cooperatives will have the opportunity to defer the entire Income Tax, up to the fiscal year in which they distribute the corresponding profit, provided that they distribute it within 2 years following the date on which it was determined. The Production Cooperative Corporations that do not distribute yields to their partners, may only invest such resources in goods that in turn generate more jobs or cooperative partners.<sup>8</sup>

This is the case, since the legal nature of production cooperative corporations is diverse from that of eminently capitalist mercantile corporations, since the former are of a social nature, that is, they are governed by the principles of solidarity, self-effort and mutual assistance, with the purpose of meeting individual and collective needs through the realization of economic activities of production and distribution of goods and services; whereas the latter do not have these social characteristics.

Hence, the mentioned cooperatives must receive a different treatment for purposes of the Income Tax, because it would be contrary to their purpose to equate them with other corporations, because although their aim is the marketing of goods and services in order to obtain the greatest possible profit, this is through a social economic activity - not necessarily mercantile - which must be understood as a means and not an end, to properly fulfill its social non-capitalist objective, within a common corporation regime and within the framework of the cooperative principles of mutuality, justice, solidarity, etc., which confirms its eminently social character unlike mercantile corporations whose profit motive pursues to increase the capital provided by each of the partners. In addition, the explanatory statement relating to Section 85-A of the Income Tax Law warns that the intention of the legislator to establish a different tax regime for this type of corporations was at all times to incentivize this type of organization, especially since the issue was the subject of an international recommendation.

From the transcribed Jurisprudence I highlight the axiological interpretation and scope that the Supreme Court of Justice in Mexico gives to the legal norms that regulate cooperative corporations, the circumstance of which must be taken advantage of to influence the public policies ordered by the Law itself. Except for this exception, tax obligations to cooperatives have the same treatment as for any other taxpayer, such as: enroll in the Federal Taxpayer Registry, actualization of economic activities and obligations, suspension of activities, opening and closing of establishments, issue and obtain tax receipts, have electronic accounting and registration of transactions, present annual, monthly and informative tax

---

<sup>8</sup> Article 194, fracc. I of the Income Tax Law 2019.





returns, calculate and report withholdings made (IT,VAT, among other federal, state and municipal), operations with third parties, customers and suppliers, etc.

#### d) Other Specific Characteristics

The General Law of Cooperative Corporations provides for the figure of cooperatives of state participation, which are those in which the State at any of its levels, grants in concession or administration goods or services to cooperative corporations. In these cases, and according to the type of concession or administration of goods, as indicated by the respective laws on tax matters, cooperatives will be subject to audits and regulation corresponding to the management of public resources that may be granted.

On the other hand, with regards to the savings and loan cooperatives, for their operation and functioning, the authorization of the National Banking and Securities Commission (CNBV) is required, which will also exercise the supervisory function, with the focus of ensuring that these cooperatives comply with the applicable legal and regulatory framework. In addition, the savings and loan cooperatives are subject to the supervision and surveillance of the Bank of Mexico (Banxico) and the National Commission for the Defense and Protection of Financial Services Users (CONDUSEF).

With the exceptions indicated in the two preceding paragraphs, the remaining consumption and production cooperatives are not subject to a special regime of supervision and control by any entity of the Mexican State.

The principle of integration is regulated by the figures of Integration organisms referred to in the General Law of Cooperative Corporations. Production and consumption cooperatives may be freely grouped into federations, unions or in any other associative figure with legal recognition. The difference between federations and unions is that the former may group cooperative corporations from the same branch of economic activity, while the latter may group corporations from different branches of economic activity. In turn, the federations and unions may be grouped into national confederations. The integrative entity of the cooperative movement in Mexico shall be the Superior Council of Cooperativism and, as indicated by the law, shall be constituted with national confederations and with the institutions or entities of technical assistance to cooperation.

In all cases, membership of such integration entities is voluntary. This mechanism of integration and grouping of cooperatives into superior level cooperatives certainly favors the design of scale economies, sectoral representation, self-regulation mechanisms, etc., but it is essential that there be a legal incentive for it to be potentialized.



The ultimate purpose of the integration entities, as stated in Article 86 of the General Law of Cooperative Corporations, will be: to design and implement strategies for the integration of their productive activities and processes, with the aim of:

1. Access the benefits of scale economies;
2. Lower costs;
3. Influence prices;
4. Structure production and marketing chains;
5. Create production and marketing units, and
6. Commonly carry out any act of trade, technological development or any activity that promotes a greater productive and competitive capacity of the cooperative entities themselves.

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

There are no legal barriers or impediments arising from regulation, since even the General Law of Cooperative Corporations itself establishes a chapter related to the "support for cooperative corporations", which mandates, among other things:

1. Cooperative entities should collaborate in the economic and social plans carried out by the entities of the Mexican State and that directly benefit or promote cooperative development.
2. The entities of the Mexican State in their different fields will support schools, institutes and agencies specialized in cooperative education that the national cooperative movement establishes.
3. In the economic or financial programs of the federal, state and municipal governments that affect the Mexican cooperative activity, the opinion, as the case may be, of the federations, unions, national confederations and the superior council shall be taken into account of cooperativism.
4. The Ministry of Finance and Public Credit shall, in agreement with the Superior Council of Cooperativism, with confederations, federations and unions, constitute the guarantee funds of federal origin that will support cooperative corporations in their access to credit, by providing guarantees that cover the risk of investment projects.

In other words, it is noted that the Law already establishes some mechanisms, but the problem is in the execution and enforcement of the legal postulate, as well as in the sanctions for its non-compliance by becoming an imperfect norm, which establishes duties and obligations, but does not impose consequences for non-compliance.



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

1. To allow the association of moral or collective persons, will allow an expansion in the productive activities of cooperatives and will be fundamental for the development of productive projects and of financing in the operations of savings and loan.
2. Define useful mechanism for forced integration to federations, unions and confederations. The useful mechanisms to which I refer are those that allow a real provision of the functions of superior level cooperatives, such as: delegated supervision, tax and regulatory benefits in the case of generating joint venture partnership projects between cooperatives, conciliation and arbitration, accompaniment and issuance of an opinion of origin for the granting of public services, authorization to operate as a savings and loan cooperative of a cooperative, etc.
3. Allow the operation of financial activities or services that are currently reserved for financial groups with a mercantilist approach.
4. Establish the responsibility of an entity of the Mexican State to have the cooperative registry, to keep the register updated to allow the integration, control and development of proposals, as well as the dialogue with the different entities of the public sector.
5. In the case of resolving governance disputes in the cooperatives, the binding alternative solution mechanism should be established, and in charge of the integration entities.
6. Clearly define the concept of "cooperative act", as well as its scope, consequences and the jurisdiction of the courts and entities of the State responsible for its implementation.
7. To replicate in its case the experience of Mexico City regarding the publication of a Law of Cooperative Development, but of federal application and binding for the State entities.
8. Establish mandatory mechanisms to comply with what is currently mandated by the General Law of Cooperative Corporations.

#### V. Conclusions

We can conclude that the cooperative legislation in Mexico is too general, which could be taken advantage of by anyone to use the figure as a means of developing initiatives and productive activities, however, criticism of the outdated General Law of Cooperative Corporations is unanimous and what is required is a modification that includes and specifies in the permit any legal economic activity, establishing the necessary provisions so that public policies and legislation allow the operation of cooperatives of insurance, health, energy, association of moral persons ( legal persons), definition and nature of the cooperative act (as opposed to the commercial or mercantile act), among others.



It is also essential that development plans and public policies integrate activities, regulation, budget and conditions that favor the development and promotion of cooperatives, not only to comply with the constitutional and legal mandate, but to incorporate the country into the great international development and expansion of the cooperative movement. From today the public administration entities can generate these conditions to materialize, since the interpretation of the current legal framework allows it, but it is desirable that an important legislative modification reaffirms it, establishing positive and punishable legal norms for its application, in this way avoiding that compliance is left to discretion, whim, political needs or of social groups, etc.

The integration of a suitable legal framework not only allows clarity in the role played by public administration entities, to realize the constitutional principles of expansion and development of cooperatives in the framework of national development, but also grants all actors in the administration, operation and benefits of cooperatives, security and legal certainty essential to encourage individuals to use this figure as a means that provides multiple benefits in its constitution, administration, control and decision making.

León, Mexico. November 2019.

**Francisco Javier Salas Del Portal.**