



LEGAL COOPERATIVE FRAMEWORK ANALYSIS

Within the ICA-EU Alliance

NATIONAL REPORT OF CURAÇAO

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 Curaçao's 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.

The document has been prepared by Jo-Anne de Wind, Master of Laws in Dutch Law and Netherlands Antillean Law, an attorney at law in Curaçao, as independent expert. To elaborate it, the inputs of the sole member of Cooperatives of the Americas in Curaçao as well as several cooperatives, that are indirect members of the International Cooperative Alliance have been considered.

The inputs from the expert and from the sole member of Cooperatives of the Americas in Curaçao were recollected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to the sole member in Curaçao and it could decide whether to answer or not.



II. National cooperative law of Curaçao

i. General context

The first Curaçao cooperatives regulation dates back to 1920. The National Ordinance regarding cooperative was published on February 13, 1920 and entered into force on March 19, 1920. Several amendments have since been made. Effective as of March 1, 2004 the laws regarding all private legal entities, including the cooperatives have been modernized and included into Book 2 of the Civil Code. Book 2 of the Civil Code was last updated and published on the 15th of December 2011 in the Official Gazette of the year 2011 number 66. Pursuant to the Official Gazette of the year 2011 number 69 this national ordinance became effective as of January 1, 2012.

Curaçao does not have special laws on specific types of cooperatives. Book 2 of the Civil Code provides a general framework but depending on the specific areas of business of a cooperative other laws, i.e. tax laws, may also be applicable. It is worth mentioning that the ICA Principles of cooperative identity are not explicitly nor implicitly stated in Book 2 of the Civil Code. However, Book 2 of the Civil Code grants till some extent great freedom to each cooperative regarding its internal structure through its articles of incorporation and its bylaws.

The national constitution of Curaçao does not include specific provisions for cooperatives nor reference is made to cooperatives.

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

In accordance with article 90 paragraph 1 of Book 2 of the Civil Code a cooperative is defined as a legal entity incorporated through a notarial deed as a cooperative. Pursuant to its articles of incorporation a cooperative must have the purpose (objective) to provide for certain material needs of its members on the basis of agreements, other than insurance agreements, concluded with those members in the course of its business, which it conducts or causes to be conducted for this reason for the benefit of its members. In the name of the cooperative the word cooperative or an abbreviation thereof must be included. The law does not state which specific activities the cooperatives can carry nor does the law include a classification of cooperatives.

A cooperative may distribute profits among its members in accordance with article 91 juncto article 70 of Book 2 of the Civil Code.

Although Book 2 of the Civil Code does not include the obligation to include the general cooperative principles, the law provides a general framework in which i.e. the seven ICA



principles may be included in the articles of incorporation or bylaws of the cooperatives and thus become binding for the cooperatives and its members.

Limited liability companies are incorporated with the goal to make profits and the main goal of a cooperative is to provide services to its members. In addition thereto, the rights of the shareholders in a limited liability company are connected to the type of shares they hold i.e. pursuant to the articles of incorporation of a limited liability company there could be holders of shares with only voting rights and holders of shares with only dividend rights, whereby the rights in a cooperative are connected to the members.

b) Establishment, cooperative membership and governance

Pursuant to article 91 of Book 2 of the Civil Code the provisions for associations as stipulated in Book 2 of the Civil Code are also applicable on cooperatives provided that the specific provisions for cooperatives do not state otherwise.

In accordance with article 71 of Book 2 of the Civil Code of Curaçao cooperatives are incorporated through a notarial deed whereby the articles of incorporation must include the following:

- the name of the cooperative and the place in Curaçao where it has its seat;
- the purpose (objective) of the cooperative;
- the obligations of the members towards the cooperative, or the way in which such obligations may be imposed;
- the method of convening the general meeting;
- the method for the appointment and dismissal of the directors of the cooperative; and
- how the surplus of the cooperative must be used in case of a dissolution of the cooperative, or how that surplus use will be determined.

There is not a minimal capital requirement for incorporating a cooperative nor a minimum capital required from each member. The law states that a cooperative has members, however it does not stipulate a minimum number of members. The articles of incorporation may stipulate qualifications that natural persons and/or legal persons should have to apply for a membership.

The structure of the cooperative mandatorily consists of two bodies: the general meeting and the board of directors.

Within the cooperative the general meeting is conferred with all powers insofar that these powers have not been granted by law or the articles of incorporation to other bodies of the cooperative.



The articles of incorporation may include a provision that states that non-members may also be appointed as directors, provided that the non-member directors are less than half of the total number of the directors. Furthermore, the articles of incorporation of the cooperative may also stipulate that there is a supervisory board of directors.

The notarial deed including the articles of incorporation may be written in the language chosen by the incorporators. After incorporation, the civil law notary files a registration with the Chamber of Commerce. Upon the registration the cooperative is included in the Registry of the Chamber of Commerce and the cooperative is from that moment responsible for its good standing, thus inform the Chamber of Commerce timely of all the changes within its board of directors and -in the event there is a board of supervisory directors- of the changes within the board of supervisory directors.

Unless the articles of incorporation provide otherwise, the board of directors decides on the admission of a new member, in the event that the board of directors refuses to admit a new member, the general meeting may still decide to admit the involved natural person or legal person as a member.

In accordance with article 90 of Book 2 of the Civil Code, the articles of incorporation of a cooperative may allow the cooperative to conclude the same kind of agreements with non-members as it concludes with its members; in the event of the latter the cooperative may not do so to such extent that the agreements with its members are only of minor importance. The law does not stipulate what should happen with surpluses that arise from the provision of services to non-members, therefore the cooperatives are free to deal with those surpluses in accordance with their articles of incorporation or bylaws.

Article 81 of Book 2 of the Civil Code stipulates that all members have each one vote. However, this article also further states that the articles of incorporation may state that more votes may be granted to certain members. In addition thereto the articles of incorporation may also stipulate that persons belonging to other bodies of the cooperative and who are not member of the cooperative may also be granted a vote but those votes may not be more than half of the votes of all the members. The law does not stipulate how the cooperative should handle multiple votes or votes granted to non-members, it is therefore up to the articles of incorporation of the cooperative to stipulate such voting process.

In accordance with article 82 of Book 2 of the Civil Code the articles of incorporation may stipulate that the general meeting shall consist of delegates elected by and from the members. The method of election and the number of delegates should also be stipulated by the articles of incorporation. Each member must directly or indirectly be able to participate in the election of the delegates.

The board of directors is responsible for the administration of the cooperative. Annually, within eight months after the end of the financial year, except when this period has been



extended with at the most six months by the general meeting due to special circumstances, the board of directors prepares the financial statements, including a balance sheet, profit and loss account and an explanation on these documents. The financial statement should be signed by all the directors and if in place by the supervisory directors, when the signature of one or more of them is missing, this shall be reported, and the reason should be mentioned as well. The financial statement is then presented to the general meeting for approval. The articles of incorporation may include a provision that states that some or all financial items may be amended by or pursuant to the request of the general meeting.

In accordance with our Civil Code the board of directors convenes a general meeting as often as it believes that this is appropriate, or when it is obliged to do so by virtue of the law or the articles of incorporation. The articles of incorporation may delegate this power to others than the board of directors. In addition thereto, whenever a number of members or delegates of the cooperative consisting of at least one tenth of votes of the general meeting or a smaller number of such members or delegates as provided for by the articles of incorporation, requests the board of directors in writing to convene a general meeting, the board of directors is obliged to convene such a general meeting within four weeks after the request was presented.

A cooperative may in its articles of incorporation subject a resignation by its members to certain conditions, provided that these conditions are in conformity with its purpose and that the possibility to resign from membership is maintained. In the event such condition goes beyond of what it is necessary, such condition shall be deemed not valid (article 92 of Book 2 of the Civil Code). Book 2 of the Civil Code does not stipulate that a member of a cooperative pursuant to its resignation should receive a compensation, however the cooperative is free to make any arrangements regarding whether or not a member should receive a compensation pursuant to its resignation.

In accordance with article 95 of Book 2 of the Civil Code the cooperative is not allowed to amend the contracts between the cooperative and its members in the course of its business, unless the cooperative has reserved this right explicitly in the to be changed contract itself. A reference in the to be changed contract to the legal person's articles of incorporation, by-laws, standard terms and conditions or similar documents, is not sufficient.

A cooperative may be converted into another legal entity, for example a cooperative can be converted into a public limited liability company, provided it complies with all the conversion requirements as stipulated by the law.

As stated earlier the articles of incorporation must also include how the surplus of the cooperative must be used in case of a dissolution of the cooperative, or how that surplus use will be determined.



Currently there is not a national supervisory body solely for cooperatives. However, depending on the specific areas of business of a cooperative it may fall under one or more inspection departments of the government, for example the Inspection Department for Public Health.

c) Cooperative financial structure and taxation

In accordance with paragraph 1 of article 92 of Book 2 of the Civil Code the articles of incorporation may stipulate that those who were a member of the cooperative at the moment of its dissolution or were member less than one year prior to that moment, are towards the legal person liable for a deficit in accordance with the criteria set for that purpose in the articles of incorporation.

In the event that a cooperative has been dissolved as a result of its insolvency after it was declared bankrupt, the period of one year is not calculated from the day of the dissolution, but from the day of the declaration of bankruptcy. The articles of incorporation may provide for a liability period of more than one year.

Pursuant to paragraph 2 of article 92 of Book 2 of the Civil Code in the event that the articles of incorporation do not include a criteria to determine the liability of the members, all members shall be liable for equal parts.

Furthermore, paragraph 3 of article 92 of Book 2 of the Civil Code stipulates that when it is not possible to recover a deficit from one or more members or former members in accordance with their liability, then the other members or former members shall be liable for the unrecovered part, each in proportion to his share of liability. The liable members and former members must immediately pay their share in the estimated deficit, as well as an increase of 50% thereof or of such lesser amount as the liquidators regard sufficient for a provisional coverage of the additional recovery costs and of the shares of those who may not pay their part of the deficit.

Furthermore, paragraph 1 of article 93 of Book 2 of the Civil Code stipulates that when the articles of incorporation includes a provision as stated in paragraph 1 of article 92 of Book 2 of the Civil Code the amount of which the members and former members are liable for may also be limited.

However, in the event that the articles of incorporation do not include a provision as stated in paragraph 1 of article 92 of Book 2 of the Civil Code then the members and former members are not obligated to make payments to settle the deficit.

Book 2 of the Civil Code does not include dispositions on taxation nor is there a specific law that establishes the taxation system specifically for only cooperatives. The fiscal treatment is dispersed in various fiscal laws. Therefore, it depends on the specific case of



each cooperative which fiscal laws are applicable and if a tax exemption may be applied for. For example, if a cooperative sells goods the applicable sales tax must be levied. Depending on the type of goods the sales tax is 0%, 6%, 7% or 9%. In accordance with article 1 of the Profit Tax Law cooperatives are subject to profit tax. The current percentage of profit tax is 22%. This percentage is the same for the public limited liability companies.

Book 2 of the Civil Code provides a general framework and it grants up to a certain extent freedom to structure private legal entities in accordance with the wishes of its incorporators or through amendments of the articles of incorporation. In line therewith Book 2 of the Civil Code is silent on several subjects and gives thus freedom to the cooperatives to stipulate in their articles of incorporation or bylaws among others:

- If a minimum capital contribution is required or not from its members;
- If members can make additional voluntary capital contributions and whether or not there is a limit;
- If interest on capital contributions shall be paid by members, and if yes, whether or not there is a limit;
- Stipulates how the surpluses arising from the annual balance shall be distributed;
- Stipulates whether mandatory or voluntary reserves should be established; and
- Stipulates whether the yearly financial statements shall be audited and by whom.

d) Other specific features

In the event a cooperative has as its objective to render assistance to its members in savings and to extend loans it is qualified as a credit institution. As a result thereof, it has to comply amongst others with the National Ordinance on the Supervision of Banking and Credit Institutions. In line therewith it falls under the supervision of the Central Bank of Curaçao and Sint Maarten (hereinafter the Central Bank). The supervision of credit institutions of the Central Bank is aimed primarily at promoting the stability, integrity, efficiency, safety, and soundness of the financial system of the countries Curaçao and Sint Maarten and safeguarding the interest of the depositors and other creditors of the credit institutions.

The Central Bank's supervision entails mainly the licensing of financially sound institutions and the performance of ongoing supervision using a risk-based-approach through both on-site and off-site supervision with emphasis on monitoring the liquidity and solvency of the credit institutions. Furthermore, the Central Bank monitors, among other things, compliance by the credit institutions with regulations on the detection and deterrence of money laundering and terrorist financing and regulations on the disclosure of information to the public.



III. Easiness of national law for cooperatives

Contrary to certain countries there is not one specific law that regulates everything regarding cooperatives, including for example the taxation aspects.

As stated previously, Book 2 of the Civil Code provides a general framework and it grants up to a certain extent freedom to the incorporators to structure cooperatives in line with their wishes or through the amendment of the articles of incorporation pursuant to the resolution of the general meeting. Depending on the specific areas of business of the cooperative it should also comply with other national ordinances, like for example the abovementioned National Ordinance on the Supervision of Banking and Credit Institutions.

The cooperatives are treated similarly to other legal entities for profit tax. The cooperatives especially the credit unions have been requesting for several years already to receive an exempt for profit tax. It is not clear at this moment if and by when this exemption will be granted. It should be mentioned though that for the members of the cooperatives it is however possible to receive an exempt for the income tax for the received dividend from the cooperatives.

After government consultation with cooperatives, it may be concluded that the cooperatives would prefer for Curaçao to have one single national ordinance that regulates all that there is regarding cooperatives, including the principles of cooperatives. Pursuant to these requests the government has included in its cooperative policy that it shall look further into this matter and implement where possible the necessary changes.

It is worth mentioning that the Ministry for Economic Development has recently developed a cooperative policy for Curaçao. The policy is the result of a consultation process, which was initiated in May 2019. That process led by the Ministry for Economic Development involved several ministries as well as stakeholders; information used in the policy was among others gathered through several workshops and a democratic dialogue.

IV. Recommendations for the improvement of the national legal framework

The following recommendations are also inspired by the consultations that were held with the cooperatives, non-members of ICA:

- Prepare a bundle of national ordinances with all the most relevant (provisions of) the national ordinances for cooperatives in order to make these laws, as soon as possible more accessible for the cooperatives and promote the understanding of these national ordinances within the cooperatives.
- Create a policy or amendment of the National Ordinance on the Supervision of Banking and Credit Institutions with regard to the supervision of the Central Bank



on cooperatives, in order to ensure that where possible the credit unions in practice are treated (more) differently from the commercial banks by the Central Bank.

- Support the emergence of new cooperatives in different sectors.
- Take as soon as possible a decision -whether pro or contra- regarding the amendment of the Profit Tax Law to include an exemption for cooperatives from Profit Tax Law.
- Promote corporate governance within the cooperatives and provide education and training to pre-formation cooperatives and cooperatives in general on the importance of complying with the cooperative legislative provisions.
- Introduce a structure of knowledge and know-how based on the philosophy of cooperatives, at all levels of education on the island starting from primary school.

V. Conclusion

Some countries have a law in which everything with regard to cooperatives is regulated. This is not the case in Curaçao, we do not have one single specific law that regulates everything regarding cooperatives, including for example the taxation aspects, but we do have provisions in Book 2 of the Civil Code regarding cooperatives. If you are looking for the same extensive provisions as in some other countries, you will not find all provisions either. However, we do have a legal system in which much can be arranged within the cooperatives.

Book 2 of the Civil Code provides a general framework for cooperatives, within this general framework much freedom is granted to the incorporators to structure cooperatives in line with their wishes or after incorporation through the amendment of the articles of incorporation pursuant to the resolution of the general meeting. Therefore, it is up to the incorporators and after incorporation up to the general meeting to shape the cooperative to their wishes within the framework of our laws.

Curaçao, July 27 2020

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