



## COOPERATIVE LEGAL FRAMEWORK ANALYSIS

### Within the ICA-EU Convention

### NATIONAL REPORT OF HONDURAS

#### I. Introduction

This report was produced within the Cooperative Legal Framework Analysis research initiated by the International Cooperative Alliance (ICA) and its regional offices. The research is carried out within the framework of an alliance signed between the European Union and the ICA for the 2016-2020 period, which aims to strengthen the cooperative movement and its capacity to promote international development.

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

In conformance with the objectives established in the ICA-EU Project, this report is aimed at providing general knowledge of Honduran cooperative legislation and an evaluation of the degree of their ability to promote the development of cooperatives. Likewise, recommendations are also made to improve legislation in order to overcome some difficulties currently faced by cooperatives.

The document has been prepared by Fiorella Fernández Guzmán, a lawyer in this space, Legal Advisor of the Federation of Savings and Loan Cooperatives of Honduras Limited (FACACH, for its acronym in Spanish) with more than six years providing legal services to



the eighty-five cooperatives affiliated with FACACH. In order to create this document, the contributions made by national cooperative organizations affiliated to Cooperatives of the Americas have been taken into account.

The contributions of the expert and the Honduran organizations members of Cooperatives of the Americas were compiled through the submission of a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Honduras and the response to it was voluntary.

## II. National Cooperative Legislation of Honduras

### i. General Context

The first cooperative regulation in Honduras originated in 1949, specifically Chapter VII of the Commerce Code, this section defined the nature of what cooperative corporations would become, acting under a corporate name according to the norms given for corporations, always followed by the words "limited cooperative corporation" or "supplemented cooperative corporation" or their respective acronyms in Spanish "S.C.L and S.C.S", of variable capital and divided into equal shares. In this Chapter of the Commerce Code, no mention is made of the Declaration on Cooperative Identity, such as cooperative principles and values because its declaration is a post-time event.

In addition there have been notions of the cooperative movement in other legal bodies such as in the Constitution of the Republic of Honduras of 1923 which includes the provision "It is the function of the State to promote the Cooperative Association"; and the 1950 Labor Code, which in Title VI, Chapter I of Social Organizations (art. 460) states, "The legal constitution of social organizations is declared of national interest, whether they be trade unions **or cooperatives** being one of the most effective means of contributing to the sustainability and economic development of the country and of the Honduran popular culture



and democracy", these notions together with the provisions of the Code of Commerce have come to lay the foundations of the current cooperative legislation in Honduras.

In 1987 the National Congress of Honduras enacts the first Law of Cooperatives of Honduras, approved by Decree No.65-87, it is because of this law that the cooperative movement in Honduras is autonomously standard and thus modifies the legal nature of these organizations: which does contemplate the values and principles of the Cooperative Identity; it should be noted that the enactment of the Cooperative Law does not expressly repeal the articles of the Code of Commerce that regulate the cooperative movement, but has caused them to be unused.

This Law of Cooperatives has undergone two reforms, one in 2013 by Decree No.174-2013 and a more recent one in 2019, by Decree No.149-2019, valid since January 11, 2020.

The Law of Cooperatives in Honduras is a general Law, which governs all cooperatives regardless of their class or field in which they perform.

## **ii. Specific Elements of the Cooperative Law**

### **a) Definition and Objectives of Cooperatives**

Article 6 of the Cooperatives Law defines cooperatives as "private organizations, voluntarily integrated by individuals, that are made up under this Law and inspired by their own effort and mutual aid, carry out socio-economic activities, in order to provide themselves and the community with goods and services for the satisfaction of collective and individual needs, through a jointly owned and democratically controlled company".

In addition, the definition of cooperative acts is established as those that are performed between cooperatives and their affiliates or by cooperatives among themselves, in compliance with their non-profit social objective and to promote the economic and social improvement of cooperatives, their human condition and individual and family training, for which the main motive will be service and not profit.



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The Law allows cooperatives to carry out operations with those unaffiliated, the surpluses from these operations should be destined preferably toward cooperative development programs. These programs are defined in the Regulation, among these are those that seek the quantitative and qualitative improvement of cooperative services, Strategic Plans, support of national and international integration bodies and the implementation of the Sixth Cooperative Principle.

The association of cooperatives with persons of other legal status is permitted, provided that the purpose of service is not undermined or that the Law is not violated.

With regard to cooperative principles, Article 7 of the Law determines that in order for cooperatives to be recognized as such, they must fulfill a number of conditions, including: voluntary and open accession; democratic management by their affiliates, autonomy and independence, education, training and information, community interest, environmental protection, equity and equal rights and obligations of the cooperatives.

When the Law on Cooperatives of Honduras (Decree 174-2013) was reformed in 2013, transitional article 11 mandates the adjustment of the regulations to the Law on Cooperatives, so article 8 of the Regulations of this Law establishes how these principles should be undertaken: Open and voluntary membership; cooperatives are voluntary organizations, open to all those willing to use their services and accept the responsibilities that come with membership without discrimination of gender, race, social class, political or religious standing, which already properly define each of the Cooperative Principles.

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

Cooperatives are legally constituted by registering their constitutive document granting legal status through the National Register of Cooperatives under the National Supervisory Council of Cooperatives (CONSUCOOP, for its acronym in Spanish). Prior to the establishment of a cooperative, interested parties should seek advice from the promotion or integration body to



which, by their activity they can subsequently join, and once having received such advice, proceed to summon in writing all interested parties for the Constitutional Assembly which is constituted with a number of no less than twelve cooperative members for first-degree cooperatives, and in the case of second-degree cooperatives with twenty cooperative members.

In addition, the proposal for the Statute must be accompanied by proof or a document that certifies before the social membership of the cooperative, designation of the governing bodies (Board of Directors and Surveillance Board), also proof or document that certifies having received a basic seminar on cooperativism. This can be provided by the Cooperative Training Institute (IFC, for its acronym in Spanish) or by any integration body. Furthermore, it is defined that the reduction of the minimum number of affiliates required by the one-year term, will result in the liquidation of the cooperative.

Cooperatives operate with an unlimited number of cooperative members, variable economic resources, and indefinite duration. Entry requirements are not defined in the Law and are dependent on the field of operation and the type of cooperative, and are defined in the statutes, for example "closed" cooperatives (constituted within companies) only admit affiliates who are employees of said company, in the same manner when they stop working for the company, these affiliates often times are forced to leave the cooperative.

Each affiliate has one vote within the Assemblies, regardless of the value of their contributions. However, cooperatives that have more than three thousand (3,000) members, will hold their General Assembly by appointing delegates, each elected delegate will represent a number of no less than ten (10) and no more than fifty (50) members present in the Assembly, noting that the main office, as well as its regional offices, subsidiaries and service counters are represented according to the number of affiliates that belong to each of them.



Cooperatives must hold at least one Ordinary General Assembly on an annual basis to deal with specific matters already defined in the Law, among these, to know the Financial Statements, elect or dismiss members of the Board of Directors or Supervisory Board, approve the Annual Operational Plan and Budget. Extraordinary meetings can also be held to discuss other matters already established in the Law such as amending Statutes, or the disposal of cooperative-owned property when it exceeds ten per cent (10%) of assets. In both cases the agreements of the Assemblies can be challenged in the first instance before the National Supervisory Council of Cooperatives as a Supervisory entity of the Honduran cooperative movement, in second instance before the Administrative Litigation Court.

The Directorate, Administration, Surveillance and internal control of Cooperatives is guided under the principles of good Cooperative Governance and is in charge of a General Assembly that is the supreme authority of the cooperative and expresses the collective will of the cooperative, a Board of Directors, composed of an odd number never less than five, plus another member with an alternate position. The latest reform to the Cooperatives Law extends another period of re-election, meaning they can be elected for up to three consecutive periods, with the exception that to be re-elected in the third period, they must have the vote of two thirds of the members or delegates present in the Assembly.

The Board of Directors meets regularly once a month and extraordinarily as many times as it deems necessary, likewise, they may also appoint an Executive Committee composed of members of the Board of Directors to deal with matters whose management the Board of Directors and other Support Committees are not necessarily aware of. Cooperatives must have a general manager, whose functions are already defined under the Law. The legal representation of the cooperative rests with the Chairman of the Board of Directors, who in turn can delegate this representation as determined for in the Statute.

Audits are carried out by the Surveillance Board; however, and in accordance with the Regulations of the Law, other organisms and auditing mechanisms, substitutes,





supplementary or auxiliary bodies of that Board may be included in the Statutes, and at least one mandatory annual audit of its operations must also be carried out.

The Surveillance Board is composed of the number of members established by the Statute and one more member who will have the status of alternate, in odd number not less than three (3) nor greater than seven (7). They shall remain three (3) years in their duties and may be elected consecutively for three periods and under the same condition as the Board of Directors for the third period. They may attend the sessions with the Board of Directors with a voice, but without a vote and have joint responsibility with the Board of Directors when there is omission or negligence in the compliance of their duties.

Members of the Board of Directors and Surveillance Board do not receive salary for their services, however, when the cooperative's economic situation permits, it may compensate, provide allowances, per diems or expenses set by the Board of Directors in a special regulation.

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

The Assets of the Cooperatives are variable and are made up of the contributions of the cooperative members that form the social assets of the cooperative, as well as with the surpluses, capital returns and accumulated reserves. Cooperative Law does not establish a minimum capital for the constitution of cooperatives, and share capital is divided into contributions. Each cooperative defines in its statute the minimum annual amount of contributions to be paid by each affiliate, they may constitute the value they want in contributions, regardless of whether it exceeds the minimum established, however, the Law prohibits cooperative members from making contributions greater than thirty percent (30%) of the total contributions subscribed by all members of the Cooperative.

In case of dissolution or resignation of the cooperative, the members have the right to have their contributions returned, however, if necessary to guarantee the social economic stability



of the Cooperative and in accordance with its Statute, the Cooperative may cancel the contributions of the retired cooperative member all at once or in partial disbursements within a period no greater than eighteen (18) months. As long as the sums due are not paid out, the affiliates must be considered as creditors of the Cooperative and may not intervene in the Assemblies or governing bodies for which they have been elected or in the social operations of the cooperative.

The balances resulting from its operations at the end of each fiscal year are considered surpluses. In the distribution of surpluses at least ten percent (10%) will be used to form the legal reserve, which is accumulated annually, not distributable and which will serve to cover losses in accordance with the liquidity of the cooperative and in the percentages established by the Regulations of the Law. The legal reserve fund will be invested in bonds or other securities of easy convertibility, issued by federations of cooperatives, banking institutions or the state; the formation of special funds such as capital and equity requirements, reserves for risk assets and others established by the Board of Directors; distributions between cooperative members according to the sponsorship made with the cooperative, in relation to the amount of interest paid on the loans received; after constituting the legal reserve, required by CONSUCOOP and special reserves approved by the General Assembly.

The General Assembly may agree to the total or partial capitalization of the distributed and unpaid surpluses, provided that the cooperative has the resources to guarantee its sustainability.

Thirty (30) working days before the holding of the Ordinary General Assembly, the Board of Directors must bring to the attention of the National Supervisory Council of Cooperatives (CONSUCOOP) the surplus distribution project, who may object to it if it determines that the cooperative has an unstable financial situation.

The Law allows cooperatives to issue certificates of participation or bonds, these operations must be authorized by CONSUCOOP and should be used for the development of specific



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projects such as to expand the coverage of services; and, improve the cooperative's liquidity. Under no circumstances can the proceeds of the certificates of participation or bonds be used for regular expenditure.

According to the level of integration, the Law defines that cooperatives will be of first grade, when they are composed of natural or legal persons, not for profit, and must start their denomination with the word "cooperative", and of second grade when it is made up of first grade cooperatives and of the same main activity, initiating their social denomination with the word "federation".

First grade cooperatives are required to belong to a federation according to their main activity and of third grade when it is composed of second grade cooperatives, starting its social denomination with the word "confederation" and there will only be one in the country. Roles of federations and the Honduran Confederation of Cooperatives include the representation and defense of the interests of its affiliates, as well as representation before government authorities and international agencies, technical and training assistance and the channeling of financial resources being either their own or from institutions that are public or private, or national or foreign.

The transformation of cooperatives into another type of organization is not allowed, however, commercial companies can become cooperatives by action and participation of their workers, in this case, under the same rights and obligations as cooperatives being formed.

When Decree 65-87 was reformed, it excluded the regulation regarding tax matters from the Law on Cooperatives, leaving cooperatives subject to the general tax regime. However, after this reform took place, and after negotiations with the government, cooperatives were exempt from the payment of income tax and collaterals through special decrees, in exchange for several requirements such as the payment of a "Social Contribution of the Cooperative Sector" created by Decree 52-2015 and reformed that same year by Decree 92-2015. This contribution is equivalent to fifteen per cent (15%) of the gross surplus generated in the





previous immediate fiscal period, being understood in this case as a gross surplus that comes from the difference in total income minus the ordinary and necessary expenses in the generation of income of the period, including, the legal reserves, funds, donations and others established by CONSUCOOP.

Cooperatives are also exempt from the payment of another tax on operations of financial institutions, however, as these exemptions are subject to compliance with requirements, they are obligated to regularly manage them before the Ministry of Finance and the Revenue Management Service.

With regards to Sales Tax, cooperatives do not have any benefits so they are subject to the same tax regime as other taxpayers.

Regarding municipal taxes, cooperatives do not have special distinctions, and they are taxed on their properties, vehicle registration and volume of operations.

They are also subject to a tax on the transfer of goods and the use of cooperative stamps in all contracts they issue, as well as on requests they file before the CONSUCOOP.

Despite the aforementioned, cooperative members individually enjoy a five per cent (5%) income tax credit of the annual average of the savings and contributions that they have had in the cooperative, this credit however cannot exceed the limit established by the Income Tax Law for savings accounts in Honduran banks.

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

Cooperatives at the national level are subject to supervision by the National Supervisory Council of Cooperatives (CONSUCOOP) which is an autonomous decentralized institution of the State, that has its own assets that is responsible for the enforcement of cooperative legislation and in turn is the authority on cooperative entities that are governed by the Law of Cooperatives of Honduras.





As a supervisory body for the cooperative sector, CONSUCOOP must review, verify, control, monitor and audit cooperatives, and it is also must apply sanctions on violators of the Cooperatives Law and its Regulations, including compliance with the Special Law Against Money Laundering, for which it must issue special guidelines, according to the size of the organization, structure, resources and complexity of the operations of the Cooperatives. Sanctions described in the Law include: warnings; fines based on the seriousness of the fault, suspension of rights, temporary or permanent disqualification of directors belonging to the Board of Directors, Surveillance Board, General Manager and Internal Auditor; temporary intervention of the cooperative, removal of members of the Board of Directors and Surveillance Board, as well as referral of files to the Public Prosecutor's Office to establish responsibilities in corresponding cases.

The CONSUCOOP, is structured by, a Board of Directors, an Executive Management, and it is also responsible for the National Register of Cooperatives. Section 100 of the Cooperatives Law defines the formation of the CONSUCOOP Board of Directors, which is composed of the President of the Honduran Confederation of Cooperatives, or his representative, who chairs that Board, the Secretary of State in the Office of Economic Development or his representative, the Secretary of State in the Finance Office or his representative, the Secretary of State in the Office of Education or his representative; the Secretary of State in the Office of Agriculture and Livestock or his designate; the Technical and International Cooperation Secretary and six (6) representatives of the cooperative movement from the different sectors, elected for three years within the General Assembly of the Honduran Confederation of Cooperatives.

In order to exercise the supervisory function, CONSUCOOP has two areas or superintendencies, as specialized technical bodies in the field. The Superintendency of Savings and Loan Cooperatives is responsible for overseeing savings and loan cooperatives with assets greater than one million U.S. dollars (\$1,000,000.00) and the Superintendency of





other Subsectors for production, service subsectors and savings and loan cooperatives with assets below one million U.S. dollars (\$1,000,000.00), integration agencies and cooperative foundations.

The Cooperatives Law establishes the authority of the Superintendencies, including the exercise of economic, financial, social, legal and risk management control and supervision as often as it deems necessary; to issue general and specific norms and resolutions, establish prudent norms in accordance with current legislation, order the adoption and implementation of regularization plans containing actions, procedures, responsibilities and implementation dates to address the financial and administrative deficiencies found.

Some of the functions of the National Supervisory Council of Cooperatives defined in the Law include: to maintain the statistical information of the Cooperative Movement up-to-date, agree on the nullities of assemblies or agenda items when the procedure established in the Law is not carried out; to issue rules ensuring compliance and execution of the principles of good Cooperative Governance, to issue general and particular resolutions, and to establish prudential rules in accordance with current legislation, in order to implement risk-based supervision of cooperatives.

Likewise, it is entitled to provide, by founded resolution, the intervention of cooperatives, in accordance with the procedure established in the Law and its Regulations; authorize the voluntary and coercive dissolution and liquidation of cooperatives. The rulings issued by CONSUCOOP can be challenged in accordance with the Administrative Procedure Law, which determines compliance to this Law by the bodies and entities of the Public Administration, when they declare, recognize or limit the rights of individuals, in this case it can make use of the Review, Replacement and Appeals Recourse, in order to exhaust the administrative route and access the judicial route.



The Law of Cooperatives of Honduras does not acknowledge self-control by cooperatives, it determines that they must carry out at least one annual audit of their operations, through an External Audit according to the procedures authorized by CONSUCOOP.

For the performance of their duties, supplementary or auxiliary audit entities depend on the Surveillance Board who has the competence to select them to be contracted by the Board of Directors.

The Board of Directors cannot in any way impede the functioning of the Complementary or Auxiliary Audit Agencies and has no power to separate, suspend or dismiss its members without the authorization of the Surveillance Board or the General Assembly.

The Principle of Cooperation between cooperatives is specifically defined in the Regulations of the Cooperatives Law, establishing that cooperatives serve their members more effectively and strengthen the cooperative movement by working together through local, national, regional, and international structures. Likewise, it is established that the funds of the Cooperative Development Program can be used for the implementation of the sixth principle.

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

In Honduras there are no specific legal barriers or obstacles for the development of cooperatives, on the contrary, the promotion and protection of the cooperative movement is declared as a national need and of public interest. It is considered an effective system for the economic and social development of the nation, respect for human dignity, fostering the opening of participation platforms for youth and women under equal opportunity, strengthening of democracy, realization of social justice, defense of values, human rights and environmental protection.

The State guarantees the free development of the cooperative movement and the autonomy of cooperatives as private entities. The cooperative movement is a special sector, with its own personality within the economy and national society. The Cooperatives Law grants self-



representation to cooperatives in State agencies linked to the national economy and development.

Within the Cooperatives Law or other laws there is no incentive to contract with the State, therefore cooperatives are under equal conditions as other bidders.

#### **IV. Recommendations to Improve the National Legal Framework**

For proper supervision of cooperatives, they must be segmented according to their size, volume of assets and other conditions, although the Law classifies cooperatives according to their main activity, there are other factors that must be considered for regulatory purposes. Since the Law is of general application and for closed and small cooperatives it is almost impossible to adapt their operation to the operational requirements imposed by the Cooperative Sector Supervisory Entity.

Although the current regulation requires that the members of the Board of Directors and the Surveillance Board, prior to being elected in their positions, obtain training in basic topics regarding the cooperative movement, it is necessary to reinforce these aspects in order for the different managements to become aware of their role as management entities within the cooperative and not as an operational part of the cooperative.

The definition of Financial Intermediation of Savings and Loan Cooperatives should be revised in order to define it appropriately and in accordance with cooperative principles, to avoid the banking supervision models foreign to cooperativism.

The creation of regulations for the sector should be sensitized for itself and not lean towards the regulations applicable to the banking sector.



## V. Conclusions

In Honduras, the questions submitted by members of the ICA were not answered, so it was not possible to integrate them into the report, and therefore was done taking into account only published legislation.

While there are no legal barriers for the creation of cooperatives, the training process described in the “Basic Cooperativism Seminar” Law is onerous, making it difficult for cooperatives in training to cover this cost. This situation may lead to the establishment of other companies in the social sector of the economy whose requirements do not represent such high costs.

Despite having some tax benefits, the non-profit objective of cooperatives, as well as the socio-economic activities, which they carry out in order to loan not only for their own benefit, are therefore not fully recognized, consequently, they are forced to meet tax obligations by the tax administration.

The technical and specialized strengthening of the National Supervisory Council of Cooperatives should be promoted as the supervisory entity of the Honduran cooperative movement.

Tegucigalpa, Honduras. July, 2020.

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