

LEGAL FRAMEWORK ANALYSIS

within the ICA – EU Partnership

National Report - Lebanon

I- Introduction

The Legal Framework Analysis (LFA) has three main objectives:

- General knowledge of the national cooperative legislation and of its main characteristics and contents , with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organizations, notably the for-profit shareholder corporation (the *sociedad anonima lucrativa* in Spanish; the *societe anonyme a but lucratif* in French).
- To evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore “cooperative friendly” or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).
- To provide recommendations for eventual renewal of the legal frameworks in place in order to understand what changes in the current legislation would be necessary to improve its degree of “cooperative friendliness”, which is to say, to make the legislation more favorable to cooperatives, also in consideration of their specific identity.

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Focus was made on the Lebanese legislation for cooperatives as it is enforced on all types of cooperatives. The cooperative sector in Lebanon has been supported by the State since the nineteen sixties. Several laws were promulgated; part of them are basic while others are complimentary and supportive to the Cooperative Sector.

In the 1960s the policy of the Lebanese government focused on supporting the middle class in order to confront the negative aspects of the free economic system adopted in Lebanon. This was implemented by developing and sustaining small and medium cooperative enterprises, which cover all kinds of economic activities in the purpose of improving the economic and social situation of the cooperatives’ members.



In fact, the cooperative sector witnessed an important breakthrough especially after the promulgation of the executive decree for cooperatives in 1972 and the establishing of the Ministry of Housing and Cooperatives in 1973.

The Lebanese economic and social sectors were affected by the civil war, which broke out in 1975 and lasted until 1990.

The war led to the migration and immigration from the villages where active and successful cooperatives were established, which resulted in the breakdown of many of these cooperatives.

As a result, and after the year 1990, the mentality of members changed from one of hard working to a depending and passive one, and the policy of the government encouraged this new trend. The donors also played a role in this sense by providing financial aid to many cooperatives in order to implement projects without following up on their implementation nor on their sustainability.

After the civil war ended, all government efforts focused on supporting the tourism, as well as the trade and service sectors to the detriment of the agricultural and cooperative sectors, which led to the weakening of the cooperative sector.

As a result of this policy, the Ministry of Housing and Cooperatives was cancelled by a law and the Directorate General of Cooperatives was annexed to the Ministry of Agriculture. In consequence, what remained of the support to the cooperative sector went mainly to the agricultural cooperatives at the expense of the other types of cooperative such as the ones in consumption, cultural and environmental sectors.

The latter cooperatives lack private laws which help them in enhancing and strengthening their existence and future survival.

II- National Cooperative Law: Lebanon

i. General Context

Cooperatives in Lebanon are regulated by three separate acts: The law of the cooperative associations decree number 17199/1964 which was last amended in 1983. The executive decree for cooperative associations number 2989 enacted on 17/3/1972 was last amended on 21/6/1977. In addition, other complementary decrees were issued related to the regulation to the support and help given by the state to the cooperative associations.

While the Lebanese Constitution does not explicitly mention the cooperatives, the target of cooperatives is mentioned specifically: “social justice as a right and social and economic development as a pillar of unity and stability of the state”.

Cooperative associations are considered an important tool in achieving social justice through diminishing the social and economic gap between classes of society; they are also considered a tool for economic and social development. Hence, we can consider that the Lebanese constitution mentioned the cooperatives implicitly and in an indirect way.

The seven principles of cooperation are implicitly referred to in the Lebanese law, while in defining a cooperative they mention “general principles of cooperation” explicitly.

The Lebanese law and the executive decree for cooperatives have incorporated these principles, which is clearly mentioned in many provisions of the law. However, there are exceptions to some of the principles due to the specificity and national sovereignty, especially concerning the principle of autonomy and independence of the cooperatives.

In this context, the government plays an important role in controlling the cooperatives’ financial and administrative activities with the purpose of safeguarding public funds, minority members’ rights and guaranteeing the creditors’ rights.

The principles of cooperation are incorporated in the following examples:

- Open membership (article 12 decree number 2989/72)
- Democratic member control (articles 21 decree number 17199/64 and articles 53 – 54- 55-... Decree number 2989/72)
- Member financial participation (article 2/d and 9/1... decree number 2989/72)
- Autonomy and independence of the cooperative (article 7 decree number 17199/64...)
- Education, training and information (Decree 8355- 10/07/1974...)
- Cooperation among cooperatives (articles 62- 63 decree number 17199/64...)
- Concern for community (article 33/2-b decree number 17199/64)

<i>Regulation</i>	<i>Particular Sector</i>	<i>Particular Elements</i>	<i>Link to full text</i>
Decree 17199, 18/8/1964	All types		
Executive decree 2989 17/3/1972	All types		
Decree 9569 19/12/2012	All types	Procedures for financial aid	
Decree 8355 10/07/1974	All types	Organization of training	
Budget Law	All types	For promotion of fairs for marketing	

ii. Specific elements of the co-operative law

a) Definition and objectives of cooperatives

The decree number 17199/64 article 1 has defined a cooperative as “any non-profit association composed of persons, having a variable capital, established according to the provisions of the present law whose objectives is the improvement of the socio-economic conditions of its members by joining their efforts according to the general principles of cooperation.”

This definition shows the importance of joint efforts of the members of a cooperative which distinguishes it from other legal types of business organizations, those organizations that depend on money investment and the commercial notions and practices, such as the competition in the machinery and human resources.

This distinction has the following legal effects:

- 1- The value of the share is fixed in a cooperative.
- 2- One member one vote regardless of the number of shares owned by the member of the cooperative.
- 3- A member cannot own more than one fifth of the shares.
- 4- No profit distribution, instead, the net surplus is distributed depending on member transactions with the cooperative.

In achieving the ultimate purpose of the cooperative sector in improving the national economy through supporting the middle class which is a dynamic element in the economic sectors through small and medium enterprises, the main goal of a cooperative is the socio - economic improving of its members as mentioned explicitly in article 1 of the cooperative law. This goal is achieved in three ways:

- 1- Direct benefit through lower cooperative price (deduced from the feasibility study required by law as a prerequisite for establishing a cooperative, in addition to article 16 of the bylaws template that states the cost of services for members is different from that of non-members.
- 2- A maximum of 6% interest on the shares for the sole purpose of stabilizing the value of the shares and not for investment purposes.
- 3- Distribution of net surplus according to the transaction between each member with the cooperative.

To reach these results every cooperative has to execute a feasible project to meet its objectives through it, related to their specific needs, as mentioned in article 3 of the bylaw;

for example, expand the sales of the members' products, promote the productivity and reduce the cost of production etc.

However, this does not prevent non-members from dealing with cooperatives under the following strict conditions:

- a- Depending on the potential or capacity of the project to deal with more persons.
- b- On condition that the time period does not exceed the time set by the board members.
- c- Priority must be given to the members over the non-members in all the different operations run by the cooperative.
- d- The non-members must pay in cash all the transactions provided by the cooperative. The cost of service for non- members has to be less than that of the members.

The income resulting from dealing with non- members is transferred to the reserve budget of the cooperative to use it in developing the cooperative enterprise.

It is forbidden by law to distribute this income to the members of the cooperative.

b) Establishment, cooperative membership and governance

A cooperative is established under a decision taken by the director general of cooperatives and is then registered in a specific register at the General Directorate of Cooperatives. The cooperative is established according to specific legal conditions one of which is that there be ten members having the same activity in the same geographic area, and once there's proof of an economic feasibility study and once the capital has been provided by the members.

Steps of establishment:

- Registration of a request at the local office of the directorate general of cooperatives, b
- Preparation of the feasibility study.
- Once the study is approved, the project of a bylaw will be prepared.
- Decision of establishment is taken and sent to be published officially.
- Approval of the bylaw by the Director General of Cooperatives.
- Registration of the cooperative.

Just as membership is open to anyone that fits the conditions set by law, members are free to leave at their own ease.

If a candidate is rejected from joining, he/she has the option to express his/her opposition to the general assembly through the General Directorate of Cooperatives, to ensure the incorporation of the first principle of cooperation concerning the open-door membership.

Regardless of the shares owned, each member has one vote and no member can own more than one fifth of the number of shares.

The member deals with the cooperative as a consumer, or worker or provider, according to the provisions of the by-law. Any breach to these provisions will expose the member to a fine and in case of repetition the Board may put an end to the membership (expel the member) (article 8 of the bylaw).

There are three different entities that run the cooperatives each having its own duties as specified in the law. These entities are the General Assembly, the Board of directors and the Control Committee.

Through the General Assembly, the members exercise control over the Board of directors and they may take any decision as permitted by law such as:

- Modification or approval of the business plan.
- Approval of the annual budget.
- Election of the member board of directors and the control committee.
- Setting the conditions to sell and swap the immovable properties of the cooperative.

The board of directors is the executive committee of the cooperative and has some operational decisions as the following examples:

- Represents the cooperative at court and the private and public institutions.
- Accepts loans, funds and grants.
- Agrees and approves the transfer of shares among members.

This board is elected by the General Assembly for 2 or 3 years and is composed of three, five or seven members depending on the provisions of the bylaw.

The Control Committee has legal duties as follow:

- Preapproval on contracts, which are signed between the cooperative and one of the members of the board of directors.
- Suing the member of board of directors according to the decisions of the general assembly.
- Exceptional convocation of the board of directors.

In addition to the three entities, the board of directors can, if it deems necessary, appoint a director for the cooperative. This director can either be a member or a non-member of the cooperative.

His/her duty is to execute what is delegated to him from the board of directors, he is also personally responsible of any mistake committed during the execution of his duties especially in case he abused his prerogatives.

These different entities work under the control of the General Directorate of Cooperatives in its role as the responsible entity of the cooperative and mutual funds sector.

Cooperative financial structure and taxation

The financial structure of a cooperative is unique and somehow complicated.

During the establishment of a cooperative, each member must contribute to the capital.

After the establishment and at the end of the fiscal year, the net surplus is exclusively distributed far from trade notions and instruments, as follows:

- 1- The surplus stemming from transactions with non-members is placed in the reserve.
- 2- Whereas 25 % of the surplus stemming from transactions with the members of limited liability cooperatives, goes to the reserve; and 50 % of surplus stemming from transactions with members of unlimited liability cooperatives goes to the reserve. The remaining surplus will be distributed as follows:
 - a- A maximum of 25% of the surplus is paid to the members as interest on their shares. (article 33/2/j from the decree 17199/64 mentions “interest” to preserve the value of the share paid by the members, it’s never taken as money investment.)
 - b- A maximum of 5% of the surplus is used in social and cultural activities. (It is for the benefit of the community with no restrictions, as an embodiment of the seventh principle of cooperation.)
 - c- Whatever remains of the surplus is distributed among the members in proportion to their transactions with the cooperative.

After the dissolution and liquidation of a cooperative, the debts are paid to the creditors and the residual assets is taken by the Directorate General of Cooperatives to be redistributed in the establishment of a new cooperative in the same region or is given as aid to a union of cooperatives.

There is no specific tax regime for the cooperatives in Lebanon, but the Lebanese law provides tax exemption on income for cooperatives, in addition to an exclusive list of tax and fee exemptions. On the other hand, members of the cooperatives are not exempted from income tax; however, the cooperative itself is exempted hence any reserve belonging to the cooperative is exempted.

c) Other specific features

The General Directorate of Cooperatives exerts an external control on the cooperatives in order to protect the member's rights and public funds. The reason behind the state control is that the government helps the cooperatives financially, and therefore needs to make sure the funds are spent correctly.

The Lebanese law incorporates the principle of cooperating among cooperatives in two ways:

- By encouraging the establishment of united cooperatives and union of cooperatives. By united cooperatives, we mean those cooperatives that are united through the same objectives, whereas the union of cooperatives are those cooperatives with different objectives but in the same geographical region.
- This is also shown by forbidding the establishment of cooperatives with the same objectives in the same geographical area which implies that the law encourages the cooperation between cooperatives and the complementary between cooperatives.

III- Degree of “cooperative friendliness” of the national legislation

Theoretically speaking, the legislation is very much cooperative friendly because to begin with, the provisions of the law have incorporated the principles of cooperation.

There are, however, some exceptions to these principles, but the real challenge is whether the people in charge of applying the law, are well aware of the laws and of the real notion of the cooperation principle.

In addition to this, comes the support of state through tax exemptions and financial aid both in cash and in kind, training, and supporting fairs to open access to markets.

Practically, the law is not totally enforced, but is in the process of being enforced, and the support of the state is not properly channeled.

On a different level, incorporating gender equality will help make the laws more cooperative friendly.

IV- Recommendations for the improvement of the national legal framework

Monitoring the enforcement of the rules is necessary in order to see if any changes are needed to the Lebanese legislation on cooperatives.

However, the following minor amendments are necessary:

- The value of the share.
- Means of notification to attend the general assembly.
- Incorporating gender equality.
- The bureaucratic procedures that are time consuming need revision.
- Finally, issuing specific laws to each kind of cooperative, rather than changing the current law, can help improve the legislation as well.

V- Conclusions

The ultimate challenge is in enforcing the law of cooperatives. Another big challenge is in convincing the people to work together as a group and in joining their efforts in order to improve their socio-economic conditions.

In addition, eliminating the idea of continuous financial support is essential and this should be substituted by self-dependency to ensure sustainability of the cooperative enterprise.

In my opinion, the cooperative sector should be broader than the Ministry of Agriculture it should have an entity by itself to focus on all types of cooperation and issue specific laws to enhance and improve the cooperative activities and make it more friendly.

Given the importance of the cooperation sector and its impact on the economy, and since the support of the cooperative sector targeted to improve the conditions of the lower and middle classes; and because the latter classes need more support than just their small economic projects, it would have been better to keep the sector under the Ministry of Housing and Cooperatives, since the Ministry of Agriculture focuses on narrower things.