



LEGAL COOPERATIVE FRAMEWORK ANALYSIS

Within the ICA-EU Partnership

NATIONAL REPORT FOR PANAMA

II. National Cooperative Legislation of Panama

i. General context

The national cooperative legislation is covered by Article 288 of the Political Constitution of the Republic of Panama.

The Law N°. 24 of July 21, 1980, which created the Panamanian Cooperative Autonomous Institute (IPACOOOP), published in the Official Gazette N°. 19,121 of July 28, 1980.

The Law N°. 12 of October 5, 1990, which establishes the teaching of cooperativism in the country's educational centers, published in the Official Gazette N°. 21,643 of October 12, 1990.

The Law N°. 17 of May 1, 1997, which establishes the special regime for cooperatives, published in the Official Gazette N°. 23,279 of May 5, 1997, known as the Cooperative Law.

The Executive Decree N°. 31 of November 6, 1981, on Youth Cooperatives, published in the Official Gazette N°. 19,458 of December 4, 1981.

The Executive Decree No. 137 of November 5, 2001, which regulates the Law N°. 17 of 1 May 1997, published in the Official Gazette N°. 24,428 of November 9, 2001.

The Executive Decree No. 33 of May 6, 2002, published in the Official Gazette N°. 24,547 of May 8, 2002; and

The Executive Decree No. 102 of September 26, 2002, amending Executive Decree 137 of November 5, 2001, published in the Official Gazette N°. 24,655 of October 8, 2002.

The constitutional article is in Title X of the Political Constitution, which refers to the national economy. This article imposes as a duty of the State the promotion and control of cooperatives, while leaving to the law the establishment of a special regime for their organization, operation, recognition and registration that will be free of charge.



ii. Specific Elements of the Cooperative Law

a) Definition and Objectives of Cooperatives

The Law 17 of May 1, 1997, hereinafter referred to as the CL, defines cooperatives as private associations made up of natural and legal persons, which constitute companies that, without pursuing for profit, aim to plan and carry out work or services activities of socio-economic benefit, aimed at the production, distribution and cooperative consumption of goods and services with the economic, intellectual and moral contribution of their partners. For the purposes of the Law, such cooperatives are hereinafter referred to as first-degree cooperative organizations. It should be understood that legal persons who may integrate or be part of a cooperative cannot have means for profit, although the CL allows them to partner with other legal persons, to carry out some specific activities, without distorting the purposes and convenience of the social object, provided that such association does not transfer tax benefits corresponding to cooperatives.

The CL regulates all cooperatives, regardless of the activity which they carry out and the authority that implements the Law, on a private basis, is the Panamanian Cooperative Autonomous Institute (IPACOOOP). That entity is also the control and sanctioning body; this without prejudice to the obligations of cooperatives, with specific regulations, according to their activity, such as health, social security and consumer protection, in consumer cooperatives; the provisions of the Transit Law in transport cooperatives and environmental protection in agricultural production cooperatives.

The economic development model of Panama, whose 75% of the population lives in the cities, which emphasizes services, placing them on industry and agriculture, which is in last place; has had an impact on the cooperative movement, whose greatest development has been aimed at enhancing savings and loan cooperatives.

According to the CL, the objective of the cooperatives is to plan and carry out work or socio-economic services activities, aimed at the production, distribution, cooperative consumption of goods and services, with the economic, intellectual and moral contribution of partners. The CL does not assign a precise purpose to cooperatives, but rather a general one.

The CL creates the possibility for cooperative partners to promote themselves, being part of the various governing bodies. The law does not require it, but it is common for cooperative



statutes to require partners to transact with them. Similarly, cooperatives are obliged to transact with their partners, called cooperative acts.

Cooperatives may transact with non-partners, whom they call customers, except those who provide subordinate personal services to them, who are considered workers.

Cooperatives cannot pursue objectives other than the promotion of their partners, as it would be not only unnatural, but also unlawful. Exceptionally, the CL brings to life youth cooperatives, which aim to complement education and serve as a link with the community.

The CL in Article 12 provides that cooperatives may carry out all kinds of lawful activities. However, there are some mercantile activities that are governed by their own laws that ban cooperatives with these activities; we could mention some of them: Insurance, Banking, Trusts and other activities that have their own entity that authorize their operation and audit.

There appears to be a contradiction between Article 12 which does allow cooperatives to engage in all kinds of lawful activities, and Article 9 of the CL in numeral 4, which prohibits cooperatives from carrying out activities other than those listed in their statutes and legally authorized ones.

Article 7 of the CL contains the seven cooperative principles, not as a mere enunciation, but rather as an obligation to comply with them. These principles are identifiers of cooperatives, so that in the absence of any of them in the actions of cooperatives, they would no longer comply with one of the cooperative principles, somehow subtracting the identity of the cooperatives.

Article 8 of the CL points out the seven (7) characteristics of cooperatives, namely "Unlimitation and variability of the number of partners, indefinite duration, variability and unlimiting of equity capital, religious, racial and political-partisan independence, equal rights and obligations between partners, recognition of a single vote each partner, regardless of their contributions, irrepressibility of social reserves."

The principles of cooperative identity of the ICA are explicitly mentioned in the CL, specifically in Article 7, with the aim of cooperatives sticking to those principles. Because the CL is a special law, cooperative law should be applied privately in terms of interpretation in the case of cooperative affairs, understanding that cooperative principles are part of the doctrine.



In accordance with the constitutional rule, the CL creates the special regime for cooperative regulation and integration as the foundation of the national economy, while establishing the purposes of increasing the wealth and benefit of the inhabitants of the country, facilitating the implementation and practice of the doctrine and principles of cooperativism, promote the development of cooperative law as a special branch of the legal system, contribute to the strengthening of solidarity, which is one of the fundamental principles that guide the cooperative movement.

b) Establishment, Cooperative Membership and Government

The second paragraph of Article 19 of the CL creates, within the Panamanian Cooperative Autonomous Institute (IPACOOOP), the Registry of Cooperatives in which cooperatives are registered so that they can have legal existence. This Registry is responsible for issuing certifications on the existence and legal representation of cooperatives.

The main requirements to be met for the establishment of a cooperative, in accordance with Article 15 of the CL are:

1.- "Five copies of the duly signed act of incorporation and the list of founders. 2.- Original full text of the statute, with four copies. 3.- Certification of cooperative education, granted by IPACOOOP to the founders, with an intensity of not less than twenty hours. 4.- Study of economic and social feasibility. 5.- Certification of the financial entity on the number of accounts and amount of the corresponding deposits, at least twenty-five percent (25%) of the contributions subscribed by the founders."

Article 14 of the CL in the final paragraph provides that the minimum of founders to form a cooperative is twenty (20) partners; that figure may be lower, provided that it is authorized by the auditing entity, in other words, IPACOOOP. This law provides that in cases where the number of partners is reduced, to less than the legal minimum, the cooperative is dissolved, if it is decided at least, by two thirds (2/3) of the partners of the assembly and the liquidation is carried out.

The admission of new partners requires that they meet the requirements and conditions demanded by the corresponding statute. In addition to being accepted by the Board of Directors, as indicated in Article 26, numeral 2 of the CL.



The CL does not regulate the admission of third parties; therefore they do not admit them.

Article 13 of the CL considers third parties as customers of cooperatives by providing that: "Cooperatives may provide services to third parties, but such services may not be performed on more favorable terms than those provided to partners thus undermining the services to these." This is the only standard the CL dedicates to third parties; it follows that the third party cannot be assimilated to the partners of cooperatives.

As for the freedom of partners to withdraw from cooperatives, there is no provision to prevent it. Article 31 of the CL provides, among others, the reason for resignation, with the formality that it must be in writing and filed with the Board of Directors. In the event of withdrawal for any reason, the partner is entitled to have his/her contributions reimbursed, unless he/she has unpaid debts; in these cases, they shall be deducted, as provided for in Article 33 of the CL.

The CL does not consider any impediment that limits the withdrawal of a partner; however, the statute could establish measures to prevent them from freely withdrawing from the cooperative.

The CL in Article 25 provides that the following can partner with cooperatives:

1. Natural persons with legal capacity and, through the parent or guardian, minors who have turned 10 years of age.
2. Non-profit public legal persons and other cooperatives.
3. In youth, school or communal cooperatives, primary or secondary school pupils without age limit.

Cooperatives allow all persons who have the legal capacity to hire, provided that they meet the requirements and conditions demanded by the corresponding statute.

Once the interested party meets the legal and statutory requirements, he/she submits to the approval of the Board of Directors.

Cooperatives may only provide services to third parties such as savers, borrowers or customers. The surpluses resulting from operations with them are part of the other surpluses and after the reserves have been made, the remainder only benefit cooperatives or partners, as determined by the respective general assemblies.



Third parties are free to give up what might be called a commercial bond, as they cannot have the status of cooperative partners, which is why, nothing corresponds to them in terms of surpluses resulting from operations that the cooperatives have with third parties, who only take advantage of the partners.

With regards to the recognition of one vote to each partner, this is established in Article 8, numeral 6 of the CL; however, the same law in Article 29 allows partners to vote in assemblies for two or more candidates for election positions on the basis of equality. The CL prevents, what the law of corporations permits, in the sense that the shareholder has as many votes as shares he/she holds.

The CL in the second paragraph of Article 16 refers to positive administrative silence, in the sense that if sixty days have elapsed and IPACOOOP has not ruled on any instance aimed at the recognition of legal persons, the cooperative can ask for his/her inscription and it will be considered fully registered in the Registry of Cooperatives.

Article 35 of the CL provides that the cooperative Regime shall be democratic and shall be exercised by the following governing bodies:

- 1.- The Assembly
- 2.- The Board of Directors
- 3.- The Supervisory Board

They will collaborate with the role of government, the education committee, the credit committee and others appointed by the Board of Directors.

THE ASSEMBLY. - Article 36 of the CL states that: "The assembly is the maximum authority of the cooperative and its decisions are of mandatory compliance for the governing bodies and for the partners, present or absent, provided that they had been adopted in accordance with the Law, the Statute and the Regulations. The assembly is composed of the skilled partners or the delegates appointed by them.

For the purposes of this article, the skilled partners are those inscribed in the cooperative registry and who do not have their rights suspended."

The previous law envisaged the assembly with all partners, this made meetings difficult, since it was extremely difficult to make up the quorum (half plus one), especially those cooperatives with numerous partnerships. The current Law facilitated the holding of assemblies, by providing in Article 41 that: "Where the number of partners exceeds two hundred, or they reside in distant places, the assembly may be constituted by delegates elected



under the procedure provided for in the statute. Where the cooperative has more than two thousand five hundred partners, the assembly shall be carried out mandatorily by delegates.

Each delegate shall represent a number not less than twenty or greater than one hundred, in accordance with the procedure prescribed in the statute. The maximum of the delegate assembly will be one thousand."

BOARD OF DIRECTORS. - Article 45 of the CL provides that: "The Board of Directors, the body responsible for the permanent administration of the cooperative, shall set general policies for the fulfilment of the social object and will ensure the implementation of the plans agreed by the assembly.

Their powers shall be determined in the statute, without prejudice to those established by law. The implied powers considered of this body, which are not expressly reserved by law and statute to the assembly and which are necessary for the performance of the activities, in compliance with the social object."

The number of principal associates who make up the Board of Directors must be odd, it is up to the statute to determine the same, not less than five or more than nine.

The CL grants the cooperative's legal representation to the chairman of the Board of Directors.

SUPERVISORY BOARD. - Article 55 of the CL provides that: "The supervisory board is the inspector body of the socio-economic and accounting activity of the cooperative, it shall ensure strict compliance with the law and its regulations, the statute and decisions of the assembly.

It shall exercise its powers in such a way as not to interfere with the functions and activities of the other bodies."

The supervisory board is composed of three partners chosen by the assembly and the CL grants the board a type of veto to the agreements of the Board of Directors, when it considers that they are harmful to the interests of the cooperative.

CREDIT COMMITTEE. - The CL attributes the credit committee with the role of collaborator of government activity. Cooperatives that make loans to their partners must have



a credit committee composed of three partners appointed or elected in the manner established by the statute.

The partners of the Board of Directors, the Supervisory Board and the Credit Committee respond to the assembly for violations of the law, statute or regulations, without prejudice to criminal and civil proceedings, unless they have not participated in the meeting that adopted the resolution or that there is proof on the record of its vote against. This responsibility is established by the CL in Articles 49, 53 and 58.

c) Cooperative Financial Structure and Taxes

The law does not establish a minimum equity capital to establish a cooperative, reserving that requirement to what is provided for by the statute. What the rule and the statute does is to require that each partner contribute to establish the equity capital, through permanent minimum periodic contributions, called contributions, which are only returned in the event of resignation or expulsion, unless the partner has obligations with the cooperative, which must be met. The same is true if the cooperative dissolves.

Nothing in the law prevents a partner from making greater contributions, than the required minimum and the statute or regulation can link the transactions, so that the partner must obligatorily allocate a portion of the loan to increase his/her contributions.

According to Article 70 of the CL, annual balance sheet surpluses, after discounting of general expenses and provisions, are distributed by assembly agreement, following order and priority, starting at least ten per cent (10%) for the assets reserve, the nine point five per cent (9.5%) for the social welfare fund, ten per cent (10%) for the education fund; half percent (0.5%) integration fund and five percent (5%) to constitute in IPACOOOP, the special annual fund for cooperative development and promotion; the sum indicated by the statute or assembly for specific purposes, the interest accrued by the contributions and return to partners, in proportion to the operations they have concluded with the cooperative. According to the law, the assembly may agree to the capitalization of the interests and surpluses corresponding to the partners.

The law obliges the assembly to establish the assets reserve, which will be increased annually, at least ten percent (10%) of the net surpluses obtained.



Cooperatives may distribute surpluses to their partners, through the payment of interest on contributions and on the volume of transactions they carry out with the cooperative (cooperative acts).

The CL establishes the cooperative yields, indicating that cooperatives can distribute surpluses and sponsorship, on contributions and on the transactions they carry out with cooperatives, called cooperative events.

Article 80 of the CL provides that "cooperatives may issue investment certificates and other fixed-term, redeemable securities issued to strengthen the assets of cooperatives. This product will be intended for the fulfillment of specific objectives.

The issuance of these investment certificates and other securities must be approved by assembly and previously authorized by IPACOOOP."

IPACOOOP, mandated by Law 24 of 1980, is the state body responsible for overseeing cooperatives. In the cases of issuance of investment certificates and other securities, cooperatives must support the feasibility of issuing such instruments before the auditing entity.

In the event of dissolution, the assets and capital of the cooperative, by provision of Article 93 of the CL, shall be used in accordance with the following order of priority:

- 1- Settlement expense.
- 2- Wages and social benefits corresponding up to the time of liquidation.
- 3- The value of investment certificates and other securities.
- 4- Cancellation of the obligations incurred with its creditors.
- 5- Return, to the partners, of the value of their contributions or the proportional share that corresponds to them, in case the social assets are not sufficient.
- 6- Distribute among the partners their contributions and unpaid surpluses.
- 7- Deliver the final balance, if any, to IPACOOOP.

Cooperatives cannot become another type of commercial organization, as these are two associations for completely different purposes and objectives.

In the event that a cooperative intends to become a commercial organization, it must first be dissolved or settled in accordance with the priority referred to in Article 93 of the CL and then form the commercial organization.



Cooperatives in our country are not subject to external controls by the State, understood by external controls, those that may impose changes in the annual plans of the Assembly, limit the number of partners that cooperatives may have, establish the maximum capital they may have or determine which persons should be in charge of government bodies.

Since receiving its legal entity, the cooperative enjoys autonomy, only subject to public control, through IPACOOOP, which ensures that cooperatives comply with the requirements of the constitution, operation, compliance with its social objectives, dissolution and liquidation, to comply with legal and statutory rules, as well as to impose sanctions on it, in case the legal rules are violated.

Cooperative self-control is recorded in the law and in the respective statutes. Thus, the CL provides that inspection and supervisory functions do not, for any reason, entail the power of co-management or intervention in the legal autonomy of cooperatives.

The principle of cooperation between cooperatives is considered in numeral 6 of Article 7 and Article 103 of the CL. There is no provision in national law that develops this principle, although cooperation between cooperatives materializes in practice.

In Panama, there are no secondary cooperatives in the CL or in practice. The CL in Article 95 provides for vertical integration; in this sense allows first-grade cooperatives to be integrated into national federations and they in turn into confederations. Article 95 states that cooperatives, referred to as first-grade, may be integrated into federations, called second-grade, and these, in turn, in confederations, called third-grade. This integration seeks to promote the organization and development of the same activity; represent and defend the interests of its partners, provide its affiliates with technical assistance and general advice; realize activities for common use and to promote and develop education programs.

Although its existence is unusual, cooperatives and federations, with the prior authorization of IPACOOOP, may join to create insurance organizations or other activities and offer these services, which will be governed in their technical aspects, in accordance with the generally accepted norms.

The CL contemplates cooperation between cooperatives, from the point of view of vertical integration, referred to in Article 103 of the CL, promoting the integration of first-grade cooperatives, in second-grade national federations and in confederations of third-grade. The



federations shall consist of no less than three first-grade cooperatives and only one federation may exist for every type of cooperative. Its main objectives will be to promote the organization and development of cooperatives of the same activity, provide technical assistance and advice to its affiliates; represent the interests of its associates; promote and develop cooperative education programs and carry out activities for the common use of goods and services.

Cooperatives are subject to the general tax regime; but it recognizes the provisions of the CL that grant tax exemptions to cooperatives. Thus, in Chapter 1, Article 106, the CL provides that without prejudice to the special exemptions established by the CL and other laws, cooperative associations are exempt from all national taxes, including income tax, to the point that they are not required to file annual income tax returns, because their activities are not for profit, as recognized by the fiscal authorities and confirmed by Article 116 of the CL by providing that by their nature they are not subject to the payment of the income tax. Cooperatives are also exempt from all contributions, charges, duties, fees and tariffs of any kind or denomination, on all documentation and processes of incorporation, recognition and functioning of cooperatives, as well as legal proceedings, whether plaintiffs or defendants, on the payment of sealed paper, notarial, stamps, registration and annotation of documents, importation of machinery, equipment, spare parts, supplies and other equipment intended for their activities. National taxes on goods reserved for the development of cooperative activities are also exempt.

The CL also waives the payment of taxes to partners for interest and other profits arising from invested capital, their deposits and securities invested by partners and third parties.

III. Degree of Ease of National Legislation for Cooperatives

In Panama there are no legal barriers to the development of cooperatives, except in the tax legislation, which regard cooperatives as taxable subjects, although it is fair to acknowledge that there is a broad exemption on income and other items, already set out in this report, but these exemptions do not reach the consumption tax (ITBMS), or the real estate transfer tax. Nor are cooperatives exempt from municipal taxes (construction, signs, etc.).

It should be mentioned that laws protecting against terrorism and the prevention of money laundering, which is an initiative of international agencies, have put a lot of pressure on savings and loan cooperatives in Panama, because of the requirement of periodic reporting,



the omission of which, although involuntary, results in disproportionate sanctions on cooperatives.

While cooperative legislation needs improvement, we must recognize that it is a good norm, although its compliance leaves much to be desired.

Of the legislation we can highlight the autonomy enjoyed by cooperatives, to the extent that in cases of controversies in which a cooperative is involved, the applicable exclusive legislation is the cooperative, its regulations, the statutes, the internal regulations and in general, by cooperative law and doctrine.

The promotion of cooperatives is a public function, consigned in the Political Constitution and in Law 24 of 1980, which created the Panamanian Cooperative Autonomous Institute.

There are no incentives for cooperatives in public procurement or in other laws.

The last cooperative legislation in Panama is around 20 years old and at that time you could say that it was legislation that "Is more in favor of cooperatives than against"; but globalization brought with it major changes in the way trade unfolds, which now has more competitive demands, while the promotion of cooperatives has lost momentum, which must be rescued.

Colombian Law 79 of 1988 could serve as an inspiration to Law 17 of 1997, CL of Panama. This law, while it is truly extensive, contains a number of rules, which in our concept must be included in all cooperative legislation namely: 1. - "Rationalization of all economic activities. 2. - Regulation of rates, fees, costs and prices, in favor of the community and especially of the popular classes." It also establishes the requirements for a cooperative corporation to be considered non-profit. We should highlight the rule that gives partners the "right to know the status of the liquidation of the cooperative."

Of particular importance is the creation of an advisory body and consultant to the national government on the issues of cooperativism.



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

1. - A body composed of public sector partners and cooperative partners should be established by law to advise the national government in the setting of cooperative policies.
2. -The Panamanian Cooperative Autonomous Institute must implement plans, which promote the constitution of youth cooperatives, as a means of maintaining generational relief towards cooperative solidarity.
3. - It should be promoted to raise to constitutional rank, a title that includes the most important rules governing cooperatives and that includes, the protection of the assets of cooperatives and partners, against seizures and embargoes, except those given in guarantee of credit and food obligations.
4. - It should be promoted that the control of cooperatives should be prohibited by officials different from IPACOOOP, which is strengthened economically and administratively by IPACOOOP, to efficiently fulfill the functions of monitoring, promoting and integrating cooperatives.
5. - Establish fatal terms for IPACOOOP to decide the procedures for the registration of statutes, regulations, meeting minutes and any other act that must be registered. Failure to comply with the terms that will be legal, will be understood as approval of the requested act.
6. - To provide in the law that any dispute between cooperatives or between one of these and any partner, is addressed in an arbitration court or in an alternative dispute resolution center, in a private manner.
7. - At this time an attempt is made to subject the Political Constitution to reforms; conjuncture that can be used to record in the fundamental law, that the supervision, control, sanctions, suspension and liquidation of a cooperative can only be carried out by the Panamanian Cooperative Autonomous Institute. Given the fact that constitutional changes are more difficult to achieve, the law must be amended to indicate, on a private basis, that the functions we propose can only be carried out by the Panamanian Cooperative Autonomous Institute.
8. - In Panama, cooperativism has focused on savings and loans, although it would be more beneficial for cooperatives, that by law, incentives were established for consumer, service, housing and agricultural production cooperatives, which have a strong impact on the quality of life of partners.



V. Conclusions

For our country, the study of the Latin American cooperative legal framework at this moment has proved very beneficial, because it is on the national agenda, the need to introduce reforms to the National Constitution; public clamor that has materialized in a draft reform, prepared by a group of experts, which has already been approved by the Executive Body and delivered it to the National Assembly, for dissemination, consultation and approval, previous to the national referendum. The opportunity will be seized, using cooperative organizations as a means, to bring to the National Assembly our recommendations aimed at benefiting cooperatives.

For several years now, the need to reform the CL has been discussed in our country, in order to adapt it to the dramatic changes in the economic and social field, which have occurred in the present century. The study promoted by the ICA will also be of great use, to incorporate it as working documents, to produce a bill that updates cooperative legislation.

Panama City. November 2019.

Lic. Gasparino Fuentes Troetsch

The legal frameworks analysis is a tool developed under the ICA-EU Partnership #coops4dev. It is an overview of the national legal frameworks at the time of writing. The views expressed within are not necessarily those of the ICA, nor does a reference to any specific content constitute an explicit endorsement or recommendation by the ICA.



Cooperativas de las Américas
Región de la Alianza Cooperativa
Internacional



Co-financiado
por la
Unión Europea

"This document has been produced with the financial assistance of the European Union. The content of this document is the sole responsibility of the International Cooperative Alliance, and in no way can it be considered to reflect the views of the European Union." 14