

LEGAL COOPERATIVE FRAMEWORK ANALYSIS

Within the ICA-EU Alliance

NATIONAL REPORT of PUERTO RICO

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 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 aim of ensuring that legal regulations recognize the specificities of the cooperative model and ensure equal conditions, compared to other forms of association. This analysis will also serve ICA members as input into their advocacy and recommendations regarding the creation or improvement of legal frameworks, to document the implementation of cooperative laws and policies, and to monitor their evolution.

In line with the objectives set out in the ICA-EU Project, this report aims to provide a general understanding of Puerto Rican cooperative legislation and an assessment of the degree of its ability to promote the development of cooperatives. Recommendations are also made for the improvement of legislation in order to overcome some difficulties that cooperatives are currently facing.

The document has been prepared by the independent expert, Rubén Colón Morales, who is a lawyer and professor of Cooperative Law and Public Policies of Cooperativism and Solidarity Economies at the University of Puerto Rico. In order to create this document, the contributions made by national cooperative organizations affiliated to Cooperatives of the Americas have been taken into account.

Contributions from the expert and Puerto Rican organizations members of Cooperatives of the Americas were collected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Puerto Rico and completing it was voluntary.



II. National cooperative law of Puerto Rico

i. General context

In the Constitution of Puerto Rico, there is no reference to cooperativism, nor to the principles of social justice and economic democracy that we associate with the recognition of a sector of the social and solidarity economy. Therefore, the rules on the regulation of cooperativism in PR are of legislative and administrative origin. It is divided into three main areas. First, we have a General Law of Cooperative Corporations (LGC for its acronym in spanish), Law 239 of September 1, 2004, which gathers the doctrinal foundations of cooperativism, establishes its basic operational structure and also harbors some special provisions.

Secondly, we have a set of special laws that allow for the organization of cooperatives to operate in especially regulated industries. Finally, there are a set of public policy provisions for the promotion and strengthening of cooperativism, such as the Commission for Cooperative Development (CDCOOP for its acronym in spanish), the Corporation for the Supervision and Insurance of Cooperatives (COSSEC for its acronym in spanish), the Institute of Cooperativism of the University of Puerto Rico (IC-UPR for its acronym in spanish) and the Investment and Cooperative Development Fund (FIDECOOP for its acronym in spanish). All these laws are of general application in the territory of Puerto Rico.

ii. Specific elements of the cooperative law
a) Definition and objectives of cooperatives.

The LGC contains a general part establishing the applicable doctrinal framework on cooperative law, philosophical principles, operational characteristics and organizational structure of cooperatives. The LGC recognizes the susceptibility of any type of economic entrepreneurship that is not governed by a particular industry of being organized cooperatively; known as **cooperativism of diverse types** (CTD for its acronym in spanish). In addition, it provides that its regulations shall apply subsidiarily to all cooperatives organized under other laws; even those governed by special legislation.

The LGC recognizes the autonomy and independence of cooperatives from the State and provides *that cooperatives shall enjoy all the powers and prerogatives that the law grants to other legal persons and that no restrictions shall be established that are discriminatory or additional requirements for them*". As protection of the cooperative identity, it is established that they shall be governed by the cooperative law, and those other rules compatible with their nature. The law defines "*cooperative acts"* as those performed between cooperatives and their partners, or by cooperatives with each other, or with the State, in compliance with their social objective; all of which will be considered as governed by cooperative law.



Under the LGC, cooperatives are defined as private legal persons of social interest, founded on solidarity and self-effort to carry out economic-social activities in order to satisfy individual and collective needs, without the intention of profit and who must operate in accordance with the 7 cooperative principles. Thus, the legislator, by expressly incorporating within the LGC a reference to such axioms, recognizes that regulation as a source of law. The LGC does not require cooperatives to operate perfectly mutually, allowing them to extend services to non-partners.

The LGC details the operational characteristics with which cooperatives must be consistent: (a) indefinite term of duration; (b) variability and unlimited capital; (c) political party independence; (d) equal rights and obligations between partners; (e) recognition of one vote to each member; (f) irrepartibility of social reserves; (g) not deny admission to any person for discriminatory reasons; (h) non-profit purposes, and (i) promote economic and social development through common effort. Thus, the legislation draws a figure whose structuring and operation clearly differs from the type of legal entities based on the tenure and primacy of capital.

b) Establishment, cooperative membership and government.

To incorporate new cooperatives in Puerto Rico, the presentation as constituent documents of the articles of incorporation is required, and a general regulation before the CDCOOP, the agency responsible for the promotion of cooperativism. The CDCOOP will have 45 days to analyze documents. If they approve them, they must submit them to the State Department (DE for its acronym in spanish) to register the cooperative as a legal entity. If they deny them, they must notify to state their reasons. After 45 days without acting, the promoters of the cooperative can go directly to the DE to ask for their registration. After registering, the cooperative acquires its own legal identity.

The LGC requires a minimum of 8 partners to organize cooperatives, except for work and electrical ones that require only 5. Partnership is accessed through participation in the act of incorporation, or by admission by its Board. There are no special legal requirements beyond having full legal capacity. In the case of legal entities, they can only be partners of cooperatives for non-profit entities.[1] Obviously, due to the nature of cooperatives, the status of partner will ultimately depend on the objective condition of being able to be a user of its services, even if

[1] This restriction presents problems in the creation of some types of cooperatives in which those who are associated are independent production or commercial units organized as entities for profit.



that requirement does not expressly arise from the law. Having met such requirements, any person has the right to be a partner according to the principle of free and voluntary adhesion. However, the law allows that in the exercise of the right to free association, cooperatives can establish special eligibility requirements for associative affinities that are regularly known as **semi-open.** Any admission is conditioned on its evaluation by the Board, who may refuse it if they understand that it may affect the achievement of the purposes of the cooperative.

On the rights of partners, the law granting them equal voting rights on the basis of the principle of one partner one vote, regardless of the capital contributed; prohibiting even voting by proxy. It also consigns the right of access to information and recognizes the usual rights of participation in the democratic processes of government of the cooperative, including nominating, being nominated and being elected to representative positions; and also regulates the separation processes, having the cooperative to conform to the causes laid out in the statute. The LGC also sets out the obligations of the partners, including fully complying with any contract or obligation of the partner; comply with the agreements of the Assembly and its Board; to hold the positions for that elected, and to look after the interests of their cooperative.

Regarding its governance structure, the LGC states that cooperatives must maintain four governance bodies: the Partner Assembly, the Board of Directors, the Supervisory Committee and the position of Chief Executive. The first three can only be occupied by partners. Cooperatives may have other working committees, but it cannot do without these four bodies, among which the legislator decided to distribute different competences and powers of action specific to each body on the management of the company. Thus, by law design, our cooperatives operate under a system of distribution of powers, and of weights and balances between their different bodies of governance, contrary to the governance of corporate entities.

On the Assembly, the LGC defines it as a meeting to which all partners or delegates are convened in compliance with their social obligations, to deliberate and make decisions on the matters assigned by law to that body, having the necessary *quorum.* A set of partners is not recognized as an Assembly, regardless of the requirement that they be gathered in the same space and time; therefore, it is not provided that assembly decisions can occur, by consultation or referendum. Although the Assembly is recognized as the *highest authority of any cooperative*, whose decisions *are obligatory for the Board of Directors, the committees and all partners, present or absent;* such determinations require to be adopted within its scope of authority. So much so, that the law expressly excludes from *the authority of the assembly the decision-making delegated* to the Board.



Assemblies may be ordinary or extraordinary. The former must be held annually, in order to receive reports from governing bodies, to elect representatives to these bodies. Extraordinary assemblies can be celebrated at any time. Each Assembly requires a *quorum* of 10% of the partners, but it is allowed to constitute a *quorum* with only those present, in case of a second call.

As for the Boards, these are collegiate bodies whose decisions are made by a majority in meetings that have the regulatory *quorum*. The law does not provide for remote meetings. They must be made up of an odd number of between 3 and 11 members who will hold their positions by terms of 1 to 3 years, for a maximum of 3 consecutive terms of 3 years. After that, a 2-year interruption period must occur. To safeguard the continuity of operations, a staggered method of elections is established in such a way that no more than 1/3 part of the terms expire simultaneously in a single year. The law states that it will be the sole responsibility of the Board to define and adopt the institutional policies of the cooperative, as well as the rules and general guidelines regarding its operation for which the *management will be responsible for its implementation.* The Board shall be responsible for dealing with any matters relating to the admission or separation of members, convening assemblies, recommending to the Assembly the capitalization or distribution of left overs and ensuring that any person who manages securities is covered by a bond. In addition, it has the power to hire accountants to intervene in the accounts of the cooperative, authorize the hiring of other professionals, and to appoint and supervise the Chief Executive. Under the LGC, the Boards may establish the auxiliary committees that they deem appropriate, and are not required to maintain education committees.

Board members must be partners in compliance with their obligations that have not been convicted of a serious felony (except in the case of confinement cooperatives), nor previously separated as members of another cooperative; and that they are not in a conflict of interest position with it. They are required to be eligible to be covered by a fidelity bond and, within their first year, to approve the required cooperative training courses. In case of vacancies, the remaining members select the replacement who will hold office on an interim basis until the next assembly.

The third governing body is the Supervisory Committee, whose main function is to *monitor the economic and social activity of the cooperative and ensure that the Board of Directors complies with the law, clauses, the regulations and resolutions of assemblies.* For this, it has the power to carry out internal and external interventions in the examination of the accounts and operations that it deems appropriate for the best interests of the cooperative. Thus, they have the right to receive and analize the auditors' reports; review the Board's minutes books, overseeing that they are properly kept; oversee the sufficiency of insurance and bonds; and know the course of the



legal actions. The Committee shall report to the Board on the outcome of its reviews, and a report on the work done to the Assembly, which it should previously discuss with the Board. The Committee should exercise *its powers in order not to impede the functions and activities of the other bodies*. The Committees shall consist of no less than 3 members, to which similar conditions apply to that of directors; and that a person who during the previous year has served as a director may not be a member.

Finally, we have the figure of the Chief Executive. In this regard, we share the view of García Müller[2] that in those jurisdictions in which the legislator decides to require the existence of the position of executive, and assigns him/her particular functions; that position is a cooperative governing body. That is the case in Puerto Rico. Where the law assigns it particular functions of its office; although it also allows it to receive additional delegations by the Board, which it must exercise subject to the authority of the Board. It is a position with eminently operational and administrative functions that is appointed by written contract by the Board, which will exercise supervisory functions over its compliance, and may even remove it. Among the functions of the Chief Executive, the LGC provides for the implementation of the policies adopted by the cooperative, to exercise its representation in relation to commerce and contractually; represent her as patron, and ensure the smooth running of her business and the efficiency of management and financial procedures.

All such governance bodies, except for the Chief Executive, participate in the cooperative government as a service to the community as volunteer leaders; a principle that applies equally to any cooperatives organized in Puerto Rico, under any other special law. As such, they can only receive reimbursement of allowances, and expenses actually incurred as part of their efforts, as authorized in the internal regulations of the cooperative. However, the degree of responsibility required is substantial, as they are imposed a fiduciary duty that includes duties of diligence, loyalty, to care as a good parent of the cooperative's assets and operations, confidentiality, and avoidance of situations of conflicts of interest.

c) Cooperative financial structure and taxation.

The LGC provides for operations, financial structure, capital structure, reserves, tax treatment, preferences in state procurement and others.

[2] García Müller, Alberto; Ⅰnstitutions of Cooperative Law and Solidarity Economy, Spanish Academic Editorial, Germany; (2012), Volume I, p. 256.



On the contribution responsibility of cooperatives, they enjoy preferential tax treatment over any other types of business structures. The general principle is that virtually all types of tax contributions to the State and municipalities will be exempt. The LGC provides that except for sales and use tax (IVU for its acronym in spanish), cooperatives, their subsidiaries or affiliates, as well as income from all their activities or operations, all their capital assets, reserve and left over assets; shall be exempt from any kind of taxation on income, property, arbitrator, patent, or any other contribution imposed or, which in the future is imposed by the State or any political subdivision thereof. Likewise exempt, is the income derived from its operations, including all shares and securities issued.

It should be noted that the general contribution exemption is an integral part of the cooperative enterprise model in Puerto Rico; to the extent that the statute provides that cooperatives shall be exempt from taxes, including those legislated thereafter. Therefore, tax protection applies to them in reverse as to how it applies in relation to other legal subjects, to which if tax law does not exclude them, it will be interpreted as including them in the legislated tax. In the case of cooperatives we would have to conclude that they are exempt, unless they are specifically included by tax statute. In the case of any other cooperative that is not organized under Law 239, its enabling laws incorporate by reference the public policy of tax exemptions contained in the general statute. In exchange for the exemptions granted, they are required to contribute part of their net economies to the promotion of cooperativism, through contributions for the support of the League and FIDECOOP.

Another important public policy for the promotion of cooperativism is the flexibility granted with respect to the laws governing procurement processes with the State. The law establishes preferential treatment to them in contracts with state and municipal governments, including the possibility of bypassing auction requirements.

On the other hand, LGC sought to generally exempt cooperatives from attacks on their operations based on anti-monopoly laws. For this, it provides that cooperatives will not be regarded as a conspiracy to restrict business, nor that they have been organized to reduce competition or set prices arbitrarily.[3]

[3] Nevertheless, in Puerto Rico, U.S. laws have supremacy over their own; reason for why the LGC can't exempt cooperative companies operating in Puerto Rico from compliance with federal trade regulation laws that apply to them. And the LGC does not recognize that the existing exceptions to the application of federal antitrust laws to cooperatives are only in the context of agricultural production cooperatives, and subject to various conditions established to prevent abuse of the figure, under legislation known as the *Capper-Volster Act.*



On the financing structure of cooperatives, the LGC provides that the capital of cooperatives shall be composed of the sum of the contributions of the partners, the preferred shares, the accumulated and undistributed net economies, the capital obligations, the donations and the reserves and permanent funds. No minimum capital is established, but its clauses should indicate the initial capital of the cooperative, and the regulation should indicate the minimum and maximum sums that the partners must contribute, and on the conditions for their withdrawal. Finally, it should be noted that the law provides for protection in favour of the financial stability of cooperatives, by providing that *the contributions of the partners and the corresponding interests, capitalized or not, will have the quality of unseizable goods, except, by the cooperative itself.*

Net economies are defined as the favorable outcome of operations during the fiscal year, after expenses and depreciations are deducted. From such net economies, the funds destined for reserves are separated. As we know, the principle of free and voluntary adhesion of the partners presents a problem of capital variability of cooperatives in connection with their contributions; for this reason, cooperative laws regularly require the establishment of reserves as mechanisms to preserve their financial stability. The LGC requires the establishment of 3 types of reserves, namely: a social reserve, the reserve for services and the legal reserves; without this being an obstacle to the establishment of all those other voluntary reserves which, in the exercise of the principle of democratic control by the partners.

As for the social reserve, to it must enter at least 10% of the net economies, until the cumulative amount is equal to 30% of the value on the books of its tangible assets. The funds held therein shall be un-distributable in nature, therefore the partners shall not be entitled to claim or receive part of them, under any circumstances. Such accumulated funds may only be spent for emergency reasons, the determination of which requires the prior authorization of the Board, the Supervisory Committee, and COSSEC. For its part, the reserve for services is established for the purpose of solving cooperative education expenses, and for community services. It must be nurtured with no less than 10% of the net economies. Finally, legal reserves are all those reserves that are required by law for the type of activities to which cooperatives in particular are engaged, if any.

Once the reserves are separated, cooperatives can distribute their left overs or capitalize them If it is determined to distribute left overs, distributions must be made on the basis of dividends by sponsorship and by shares, a determination that falls within the Assembly. With regards to the sponsorship, it is provided that the market price (of items consumed), time spent, the weight or quantity (of products contributed) or any other reasonable measure may be used to calculate the value of the sponsorship. This, in line with the cooperative principle of the partners' economic



participation incorporated into the law, which provides that the cooperative shall determine the allocation of surpluses to the partners in proportion to *its transactions with the cooperative.* As for the return on capital, contrary to the laws of other countries, in Puerto Rico the law does not establish a fixed maximum amount, nor does it provide specific parameters for determining it. However, it does provide that it is a *limited compensation on the subscribed capital*.[4] If the cooperative finishes with negative net economies, these must be discounted from the capital of the partners, by distributing such losses among the issued shares. The law does not expressly prohibit that the social reserve be affected in such cases, although it does not authorize it either; therefore it will depend on whether the legislated requisite of emergency status condition is met.

With regards to investments, it is provided that they should be made preferably in cooperative bodies, but also allows them in government instruments and in securities of any organization whose activities are related by affinity.

The LGC provides for the voluntary liquidation of cooperatives and for their involuntary dissolution by the State. Regarding the voluntary, they will require the affirmative vote of 2/3 of the partners present at a cited assembly for that purpose (except those of joint housing). Regarding the involuntary, this is a COSSEC authority. In the event of liquidation, the LGC establishes the order in which the assets will be distributed, and provides that, if part *of the social reserves remain, these may not be distributed among the partners, and shall be allocated or form part of the economies of the federation of the sector, or in lieu of the League of Cooperatives.*

Prior to any involuntary liquidation order, the cooperative may be subject to a union by the CDCOOP. The purpose of the union is to rehabilitate cooperatives, and once this objective is fulfilled, the control will be returned to its partners. If it could not be rehabilitated, then liquidation would proceed; process that will culminate in the cancellation of the certificate of incorporation at the State Department. Legal procedures on unions and liquidation are detailed in the law.

[4] Our view in this regard is that the reasonableness of such compensation will depend on two main factors: i) the price of money (if the cooperative had to borrow those amounts on the financial market), and the interest applicable to deposit accounts (if the partners deposited these in banking institutions). Among those 2 values, we understand that we would be within the parameters of which would be a limited capital interest, without a speculative investment for profit.



d) Other specific features

The LGC has a subchapter on cooperative integration, which provides for the conversion of existing cooperatives into new cooperative entities through merger or consolidation processes. Cooperatives cannot be transformed into for-profit entities, but for-profit entities may become cooperatives. Other ways to promote cooperative integration and cooperation is the possibility of voluntarily partnering in second grade or superior grade cooperatives, central station, federations, and with the League of Cooperatives of Puerto Rico.

For **superior grade cooperatives,** it is provided that by resolution of 2/3 of the directors, cooperatives may form cooperatives of second level or superior grade, to partner with each other and related by affinity organizations. The Law does not provide special dispositions relating to second grade or superior grade cooperatives, and is therefore a very poorly defined figure. The statute lacks specific provisions for its organization, different from those provided for first grade cooperatives organized by natural persons. Nor does it provide alternatives for their governance in recognition of the fact that there will be no perfect identity between partnership and the person who will exercise the rights in assemblies. For **Central Stations** it is established that they are legal persons established to provide different support services to member cooperatives. For **Federations,** we know that they are not entities with legal identity, but are associations constituted between cooperatives of the same type, to obtain a common representation and support.

A significant element that the LGC provides for the promotion and integration of cooperativism in Puerto Rico is the creation of the **League of Cooperatives.** It is a third grade associative entity that groups first grade cooperatives as long as no superior grade associative structure exists, all superior grade cooperatives, federations and central stations. Its main functions are: (i) to exercise the official representation of the movement; (ii) carry out functions to promote, integrate and defend their interests; (iii) promote cultural and commercial exchange relations; and, iv) conduct research into the movement's common problems to promote its development. To make monetary contributions provided by law to solve the operations of the League is mandatory for all cooperatives in Puerto Rico, even if they are not required to actively participate in it.

Finally, the LGC provides for the organization of different types of cooperatives, such as those of labor, those of providers of health services, of joint housing, of housing owners, and those of energy.

Labor Cooperatives (CT for its acronym in spanish)

CTs are regulated within the LGC which is a conceptualized law for governing consumer cooperatives; for which many of its provisions do not suit their regulatory needs. CTs are defined as cooperatives that group a minimum of 5 natural persons who contribute work and capital to



develop a business activity that produces common goods and services for third parties, in which the majority of the share capital is owned by the workers, who must own, not less than 55% of it, and no partner can individually own more than 45%. It provides that the purpose of the CTs is the common execution of *productive, service or professional tasks* to procure sources of work, in which partners direct all activities and receive the benefits.

The law does not establish conditions to limit the recruitment of non-partner workers in CTs, allowing their use to cover up instances of exploitation of the work of others. On the other hand, the law does not expressly exempt CTs from the application of labor laws regarding their partners, which limits and creates uncertainty in their operations. A novel element is that the law incorporates the figure of Collaborators, who are natural persons or legal public entities or for non-profit who contribute social capital to the cooperative in quantities that cannot exceed 45%. The limitation to the non-collaborator legal entity for profit, presents a limitation to the use of the figure for the acquisition of companies by its workers, through financing arrangements with its former owners.

Joint Housing Cooperatives (CVM for its acronym in spanish).

Law 239 in article 35 regulates the Joint Housing Cooperatives. It is established that the CVM is organized in order *to provide adequate housing for* ***families of scarce and medium resources,*** *ensure a quiet and safe community environment, educate partners and residents on the principles of self-management, responsibility and social coexistence and evolve this type of cooperative housing alternative to increase the effectiveness with which these tasks are achieved;* prohibiting the condition of partners to legal persons of any kind. The CVMs are intended to provide housing units to the family composition of their partners of limited economic resources, in a democratically self-managed community. This is achieved through a system in which the ownership of the properties remains the common property of the cooperative, who cedes possession of the different individual housing units to the family compositions of the partners. In consideration of this enjoyment, partners pay modest occupancy fees, significantly lower than market prices for equivalent units. Under this system, housing units cannot be disposed of or taxed by partners, but may be transferred in conjunction with membership to other adult components of the same household. This guarantees the right to a secure or stable roof for families, even on occasions when membership rights are affected as a result of changes or ruptures in family composition, the advent of disabilities or in cases of generational relief. This possibility of temporarily delegating or permanently transferring partnership to any adult member of the family composition is what gives it the name of joint housing, since the law designates as "joint partners" those adult members of the partners' family compositions.



Ownership Housing Cooperatives (CVT for its acronym in spanish)

With the approval of the LGC, a new cooperative housing regime based on private ownership of the apartments was incorporated. It deals with a regime in which partners would own their individual housing units, but in which such proprietary right would be subordinated to their admission as part of the cooperative community; which manages everything related to the administration of the common elements (such as a council of owners under the condominium law), but also everything related to the rules of social coexistence. The law provides that in the CVTs, *the condition of membership will be an indispensable requirement to own a housing unit*, in a regime under which each *owner recognizes that the exercise of his right of ownership is subject to rules of healthy coexistence and respect for the right of others.* Thus, the particular thing about this regime with respect to horizontal property ownership is that it provides to regulate the conduct of the partners in its residential community and also incorporates elements that are called **procommunal,** which refers to those housing units whose ownership is acquired and made use of by the cooperative legal entity.

Health Service Provider Cooperatives (CPSS for its acronym in spanish)

Law 228 of December 17, 2015 adds to the LGC Articles 20A.1 to 20A.12, to establish the CPSS; those that are defined as cooperatives composed of health service providers, for the purpose of jointly marketing, negotiating or providing health care services and/or purchasing materials for the sale or provision of services. Therefore, Law 228 seeks to adapt the operation of CPSS to create a regulatory framework for these to negotiate conditions with health service organizations and with third-party administrators.

Energy Cooperatives

Law No. 258 of December 14, 2018 creates the legal framework for Energy Cooperatives (CE for its acronym in spanish) within the LGC. The CEs are defined as those organized in order to meet the individual and common needs of electricity services of its partners and communities, through power generation, transmission and distribution systems, in accordance with the Regulations of the Energy Negotiation. According to the exposition of the law, it pursues to decentralize the country's energy model controlled by a public legal monopoly, supporting the development and integration of solar communities and micro-community networks, among others. The CEs can generate, distribute and sell energy to meet its partners' electricity service needs and can also sell energy to other consumers. Despite being cooperatives organized under the LGC, to the extent of the generation and distribution of energy, it is a specially regulated industry, the law provides that the CEs will not be under the jurisdiction of the COSSEC; but under Energy Negotiation of Puerto Rico (NEPR for its acronym in spanish)



Other Cooperatives Established Under the Laws of its Industry

Savings and Loan Cooperatives

Savings and loan cooperatives (CAC for its acronym in spanish) are governed by Law No. 255 of October 28, 2002 and constitute the main cooperative sector in Puerto Rico. The CACs are created to offer deposit services in savings and shares, and to facilitate loan opportunities to their users, under the cooperative model. CACs are not required to restrict their services exclusively to their partners, being able to provide services to non-partners. In order to provide commercial loans, they are required to have certified commercial credit officers. For years they were prohibited from granting loans to for-profit legal entities, which are now limited to small and medium-sized commercial corporations, controlled by natural persons who are cooperative partners, in the case of projects, economic sectors or activities of high public interest or with the potential to generate new jobs.

With regards to its incorporation, start of operations and governance structure, we must point out that it is a scheme that practically traces all the particulars contained in the LGC, described above, with the difference that to incorporate a CAC, 5 people are required, and after 6 months, they are required to have at least 35 non-family partners. The documentation is processed before the COSSEC, which will have determine if they are necessary and suitable for the population they will serve and will not unduly affect existing ones.

CACs are required to maintain on-duty education committees, with the obligation to implement their education policy. Due to their particular nature they are also required to maintain a credit committee responsible for evaluating the loan applications of the partners. The requirement for the maintenance of Youth Committees was also incorporated. Therefore in the CACs we will find Auxiliary Education, Credit and Youth Committees to the Board.

With regards to the other governing bodies, the structure is similar to that established in the LGC, although there are some minimal variations in the distribution of powers. For example, while under the LGC it is the assemblies that determine the distribution of left overs, in the CACs the legislator ordered that it be the Board. In the case of vacancies, the procedure varies somewhat, as the internally appointed substitute is required to be submitted first for ratification by the Assembly, before the nominations are opened. As for the number of members on the Board, it is required to be between 7 and 15, to which the same rules of staggered choice and term limits of the LGC will apply. In the case of supervisory committees, they are granted powers as conflict mediators. As for everything else, its functions are the same as under the LGC.

As far as the business dimension of the CACs is concerned, they have to be cooperatives operating in a regulated industry. Therefore, their operations have to comply with the rules and regulations that according to the law is established by the regulatory and auditing agency, COSSEC, which provides particular rules for the maintenance of capital reserves, and regulates those instruments in which the CACs will be allowed to invest their assets in different



proportions, based on the level of risk offered by each type of investment instrument and limiting their capital investments.

Insurance Cooperatives (Cooperative Insurers)

Cooperative insurers (AC for its acronym in spanish) are cooperatives organized to provide insurance services. Because the industry that is governed by the Insurance Code and is audited by the Office of the Commissioner of Insurance (OCS for its acronym in spanish), it is that office that authorizes its constitutive documents and amendments. According to the Code, the ACs that are defined as cooperatives whose purpose is to *promote the general well-being of the community through the development of insurance contracts that satisfy the risk protection needs of their partners, sponsors, and the general public, in harmony with the cooperative philosophy;* for which it will *educate and divulge on the need and benefit of insurance and allocate funds for cooperative education purposes.* They can be organized as first or second grade entities.

The law does not require the ACs to be perfectly mutualist entities. However, it requires them to operate in the interest of the partners and policy holders; on the principles of equal rights and obligations among their partners; including the principle of one partner, one vote. As for their distributions, they may accredit interest on capital on the basis of a maximum interest determined by the CSO, and the left overs on the basis of sponsorship.

On the other hand, ACs are required to establish a governance structure similar to that established for other cooperatives on the basis of a Partners Assembly and a Board of Directors, with the difference that the law does not require the establishment of a Supervisory Committee or a Chief Executive. In ACs, the functions equivalent to a supervisory committee are performed by a committee composed of persons from the Board itself known as the Audit Committee. Administrative functions are performed by different executive officers delegated by the Board. Regarding directors, they will be between 5 to 13 elected in the Assembly. The terms and staggering will be the same as discussed under the LGC, and the causes of disqualification are also similar.

Cooperative Bank of Puerto Rico (BCPR for its acronym in spanish)

The Cooperative Bank of Puerto Rico (BCPR), was created by Law No. 88 of June 21, 1966. The law provides that the BCPR will fulfill the purpose of bringing together the financial resources of cooperative organizations and their partners, and channeling them for their own benefit, by providing services that support their efforts and promoting cooperativism. It is created as a second grade entity.

Youth Cooperatives

The legislator passed Law No. 220 of 2002 on Youth Cooperatives (CJ for its acronym in spanish), to serve as *a laboratory in which young people learn to develop respect for others, their self-esteem and their capacity to make decisions,* sowing *the seed of cooperativism in whom will one day take the reins of the country.* The law defines a CJ as the organization of **youth under the age of 25** in a public or private school, community or university institution.



Its purpose is to develop educational and socio-economic activities that satisfy the needs of the school or residential community in a way that provides youth with cooperative experiences. In the CJs we find 2 figures that do not exist in other types of cooperatives, which are the **Sponsoring Entities** and the **Counselors.** The first are schools, colleges, and community organizations that sponsor them, and Counselors are adults who support them such as parents, teachers, or cooperative community leaders.

On the subject of its finances, its provisions are also similar to those of the LGC, with the variant that the third reserve, will be a *Reserve for donations to the sponsoring entity*, which will nurture 30% from its net economies.

III. Easiness of national law for cooperatives

Public policy in PR seeks to promote cooperativism. However, due to the automatic and other tax benefits mentioned above, the processes of incorporating these are not so simple. To balance both interests, a whole range of institutional supports have been created for the establishment and promotion of cooperatives. Let's see.

Commission for Cooperative Development (CDCOOP for its acronym in spanish)

On August 10, 2008, Law No. 247 was approved, which creates the CDCOOP and dissolved the Cooperative Development Administration (AFC for its acronym in spanish) whose functions, faculties and powers are transferred to the CDCOOP. The Office of the Cooperative Inspector (OIC for its acronym in spanish) that monitored the CTDs was also eliminated, and those responsibilities were transferred to COSSEC, with the exception that, because they are not cooperatives under their industry, it must exercise their functions by recognizing them with a greater degree of autonomy.

Prior to such reform, cooperative public policy was established by the government, without the participation of representatives of cooperativism. This, according to the legislator, created a problem of *excessive government intervention and a predominance of the audit function to the detriment of the autonomy that characterizes cooperative companies.* For this reason, self-regulatory measures were included related to the incorporation of representatives of cooperativism into the administrative regulatory and establishment of public policy bodies. Therefore, all aspects of the public policies of the cooperative sector which were previously concentrated in the AFC, were transferred to the CDCOOP, which will be governed by a Board of Directors composed equally of representatives of the government sector and the different sectors of cooperativism, establishing a principle of co-governance. On the other hand, the audit functions of the AFC and the OIC were transferred to COSSEC, until then a regulatory agent of

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the savings and loan cooperativism, and which had already agreed to be governed by a joint Board. Incorporating a system of co-governance, as well as subjecting the audit bodies to those of promotion, is central to the revision of the public policy that occurred with Law 247.

Corporation for the Supervision and Insurance of Cooperatives

(COSSEC for its acronym in spanish)

Law No. 114 of August 17, 2001 creates COSSEC which has direct regulatory and control jurisdiction over the CACs and more generally over the CTDs. Its Board is composed of the same number of government and cooperative representatives, and a representative of the public interest. It handles the insurance of CACs.

Investment and Cooperative Development Fund

(FIDECOOP for its acronym in spanish)

FIDECOOP is a private non-profit corporation created by mandate of Law 198 of August 18, 2002, as a fund for the promotion of cooperativism. It is financed by the imposition of a special contribution to cooperatives, whose contributions are paired annually by the Government, up to a maximum of contribution by the cooperatives of $25,000,000. FIDECOOP also incorporates the concept of co-governance and has the co-participation of cooperatives and the State, in its Board.

Institute of Cooperativism of the University of Puerto Rico

(IC-UPR for its acronym in spanish)

The Institute of Cooperativism, is a permanent cooperative education center created by Resolution No. 95 of the PR Legislature, which provides cooperative education at the university level within undergraduate and masters programs. In addition, it provides continuing education to volunteer officials and leaders and has an incubation program. The IC-UPR by law has a chair on the CDCOOP Board of Directors.



IV. Recommendations for the improvement of the national legal framework.

In accordance with our analysis of the cooperative legal framework in PR and our professional experience we propose the following recommendations:

• Facilitate the incorporation processes, providing so that the initial qualification of a cooperative, can be channeled through more agile entities in its actions (such as the League of Cooperatives or FIDECOOP (for its acronym in spanish); rather than limiting that aspect to CDCOOP.

• Improve the definition of key concepts such as the "Cooperative Act", the "Cooperative Law", the "Limited Interest to Capital", among others mentioned.

• Define with more specificity the regulations applicable to cooperatives of superior grade.

• Review the absolute prohibition on for-profit legal entities being able to be members of cooperative ventures, in areas where individual partner ventures are generally structured by this route.

• Modernize the meetings regime of the governing bodies to allow them by electronic means, and the possibilities of consultations by referendum.

• The promotion of CTs requires a special law, in view of their particular characteristics, outside the regulations designed for consumer cooperatives.

• Privilege mechanisms for the resolution of disputes within cooperatives through processes less adversarial than those of adjudication of complaints before administrative agencies.

• Review the model of state support for cooperativism through a centralized agency, and promote legislation that allows municipalities to participate more actively in the recognition, promotion, support and control of cooperativism.

• Establish more integrated and comprehensive mechanisms for cooperative promotion and education among cooperative partners and the general population, rather than emphasizing on the education of volunteer leaders and management.

• Establish a broad regulatory framework on the Social and Solidarity Economy that locates cooperativism within the context of legislation related to the promotion of an economy different than the capitalist one, and not as a marginal business sector within a predominantly capitalist economy and dependent on foreign investment.

• Seek to elevate to constitutional status the recognition and support of cooperativism as an instrument to promote indigenous economic development, on the basis of democratic equality and distributive justice.



V. Conclusions.

Puerto Rico has extensive legislation that allows the organization of different types of cooperative ventures, and contains the necessary support instruments for the promotion and strengthening of the sector; which, not withstanding, is not exempt to being able to be improved according to the recommendations made in the study.

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