Co-operatives of the Americas
A Region of the International
Co-operative Alliance

ICA-EU Partnership
Legal Framework Analysis
Regional report: Americas

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I. INTRODUCTION

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organizations. The research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

- Provide 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 anónima lucrativa in Spanish; the société anonyme á 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.

This report has been prepared by Dante Cracogna, Doctor of Law and Professor at the University of Buenos Aires, as an independent expert, on the basis of national reports prepared by experts from each country in the region.

II. OVERVIEW OF COUNTRIES COVERED

This regional report covers twenty-three countries in the three sub-regions of the American continent. The following are all of them and the experts appointed by Cooperatives of the Americas who were responsible for preparing the respective national reports:

South America

Argentina: Dante Cracogna, professor at the University of Buenos Aires.

Bolivia: Marcelo Arrázola, professor at the Gabriel René Moreno Autonomous University.

Brazil: Eugenio Alves Soares, specialist in business law.

Chile: Juan Pablo Rivadeneira Amesti, prosecutor of the Coopeuch Financial Institution.

Colombia: Olga Lucía Velásquez, former congresswoman from Colombia.

Ecuador: Arturo David Mosquera Almeida, legal consultant of the Latin American Confederation of Savings and Loan Cooperatives

Paraguay: Francisco Valle Gómez, private legal advisor to various cooperatives.

Perú: Carlos Torres Morales, professor at the University of Lima.

Uruguay: Sergio Reyes Lavega, professor at the University of the Republic.

Central America and the Caribbean

Costa Rica: René Ramos Carmona, private litigant of the Navas & Navas Law Firm.

Curacao: Jo-Anne L.M. de Wind, founder of the JDW Lex Law Firm.

El Salvador: Rosa Nelis Parada, private Law consultant.

Guatemala: Luis Fernando Corzo Morales, private Law consultant.

Haiti: Marie Charles Bernadel, Militant Defender at the Delmas Peace Court.

Honduras: Fiorella Fernández, legal consultant of the Federation of Savings and Loan Cooperatives of Honduras Limited.

Jamaica: John Bassie, private Law consultant.

Panama: Gasparino Fuentes Troetsch, private Law consultant.

Puerto Rico: Rubén Colón Morales, professor at the University of Puerto Rico.

Dominican Republic: Jorge Eligio Méndez, professor at Pedro Henríquez Ureña National University.

St. Kitts: Dorwin Manzano, private Law consultant.

North America

Canada: Frank Lowery, private law consultant.

USA: Thomas Beckett, private law consultant and Doug O'Brien, President and CEO of NCBA - CLUSA.

Mexico: Francisco Salas del Portal, Comptroller Director of Caja Popular Mexicana.

For the preparation of the reports of the nations, the views of organizations affiliated with Cooperatives of the Americas, region of the International Cooperative Alliance, were taken into consideration, all of which were sent a questionnaire on the topics included in the reports. In those cases where no responses were received from affiliated organizations, the reports were completed by national experts who, in some countries, gathered information from those and other organizations to carry out their work.

Finally, it should be noted that the national reports which serve as the basis of this regional report were prepared mainly between the end of 2019 and mid 2020; therefore, the legal references correspond to the laws that were in force at that time.

III. REGIONAL COOPERATIVE LAW

I. Regional context

a) The statute of Mercosur cooperatives

There is no supranational cooperative legislation in the Americas region. Several sub-regional integration organizations exist, such as the Latin American Association for Integration (ALADI for its acronym in Spanish); the Common Market of the South (MERCOSUR for its acronym in Spanish) in the Southern Cone of the Continent; the Andean Integration System (SIA for its acronym in Spanish) located in the mountain range; the Central American Integration System (SICA for its acronym in Spanish); the Caribbean Community (CARICOM), NAFTA (the North American Free Trade Agreement) replaced by the Agreement between United States, Mexico and Canada (USMCA) and others, some of which even have a sub-regional parliament, but have in no case issued cooperative laws.

Despite this, it is worth mentioning the initiative to issue a Statute of Mercosur Cooperatives promoted by the Specialized Meeting of Cooperatives of that organization which was approved by the Mercosur Parliament in 2009 as a community norm. However, according to the Treaty of Asunción which gave rise to Mercosur, none of its bodies have the powers to issue supranational laws. The rules that they produce must be internalized in each of the State parties through decisions of the respective national parliaments. The Statute of the Mercosur Cooperatives has so far not obtained the sanction of all the parliaments of the State parties, and therefore did not make it mandatory.

In fact, the Statute of the Mercosur Cooperatives, unlike the Statute of the European Cooperative Society (EU Regulation 1435/2003), contains virtually no regulatory provisions for the organization and operation of cooperatives, but essentially regulates the establishment of transnational cooperatives within the sub-regional integration area. It establishes the collections that such cooperatives must make for their constitution and determines that they will be governed by the rules of the cooperative legislation of the country of their establishment and may be made up of associates from two or more countries or by cooperatives from two or more countries wishing to form a higher-grade entity.

b) The Framework Law Project for Latin American cooperatives

While it does not exist in the American continent, nor in any of its sub-regions, a common legislation of supranational scope may, on the other hand, be noted the existence of a guidance document that has exerted considerable influence over the cooperative legislation of Latin America, that is, the Spanish-speaking and Portuguese-speaking sub-region that extends from south of the Rio Bravo (boundary between Mexico and the United States) to Cape Horn at the southern end of the continent.

It is not a document emanating from government sources or from integration agencies but produced by the cooperative movement itself although finally, as will be seen later, recognized by the Latin American Parliament. It is the so-called Framework Law Project for Latin American Cooperatives promoted and developed by the Organization of Cooperatives of America (OCA for its acronym in Spanish), a continental cooperative integration entity founded in 1962. With the purpose to contribute to the progress of cooperative legislation in the countries of the continent, OCA decided to develop a document that would guide governments and cooperatives in the different countries based on cooperative principles and the best experiences that existed at the time.

To accomplish this purpose, in 1986 OCA convened a group of experts from the different countries to carry out the task. Over the course of two years, meetings were held and drafts were made and submitted to consultations with cooperative organizations and academic entities to finally reach a text that was submitted to the continental OCA assembly held in Bogota, Colombia, in November 1988 where it obtained formal approval. From there it was widely disseminated in all countries through written publications, meetings and seminars that contributed to their knowledge and analysis.

Despite this being presented as a legal text with its corresponding exposure account of each article, the Framework Law Project was not conceived as a model law to be copied but as a guide to serve the objective of updating and improving cooperative legislation already existing in virtually every country on the continent. It is structured and drafted in an accessible manner and susceptical of being adapted to the needs of each country, on a solid doctrinal and legal basis.

Shortly after its approval it began to gain influence in the laws of cooperatives that were sanctioned in different countries, which is evident both in the adoption of different institutes and in the reception of concepts and provisions. This demonstrated the success and opportunity to develop the Project.

Nearly twenty years after the approval of the Project and the disappearance of OCA, the International Cooperative Alliance for the Americas (ICA Americas) which had emerged as a continental cooperative integration organization, understood that an update of the Framework Law Project was necessary. To this end, a process similar to that developed for the preparation of the original document was carried out through the action of a group of regional experts and the conduction of seminars and consultations, with the collaboration of the Head of the ILO's Cooperative Service.

The new version of the Project - approved by Cooperatives of the Americas in San Jose, Costa Rica, in July 2008 - took into account the Declaration on Cooperative Identity approved by the 1995 ICA Congress held in Manchester, guidelines for the creation of a favourable environment for the development of cooperatives, sanctioned by the United Nations in 2001 and ILO Recommendation No.193 on the promotion of cooperatives in 2002, in addition to the modern guidelines of the cooperative legislation of that era and the experience gained in the application of the previous version of the Project.

Subsequently, ICA Americas interested the Latin American Parliament in the adoption of the Framework Law Project. This Panama based body, integrated with representation of all the parliaments of the sub-region, has no powers to legislate, but rather issues recommendations addressed to national parliaments. After its study by the respective committees, Parliament approved the Project in 2012 and recommended it to the legislative bodies of the sub-region, bringing the ICA Americas initiative to national parliaments as well.

The Project's experience achieved its objectives by influencing the laws of various countries and was a reference of relevance to the progress of Latin American cooperative law.

II. Overview of national contexts

The American Continent is very diverse in geography and culture. The countries that make it up exhibit great diversity, although they can be grouped into two great cultural traditions: North America of mostly British heritage and Central and South America of Spanish and Portuguese heritage. The Caribbean, meanwhile, is a relatively heterogeneous group. Within this diversity there are states constitutionally organized in a unitary way and others with a federal structure.

As a result, cooperative laws follow different models both in their approach to the issue and in their territorial validity. Most countries have unitary political organization; consequently, their cooperative laws govern throughout the national territory. Others, meanwhile, have a federal structure, so there are laws of national scope and laws of a provincial or state nature, both coexisting. In accordance with the award of legislative competence under their respective constitutions, the federal countries with cooperative laws of different territorial scopes are Canada and the United States, while other federal countries have only national laws, as is the case in Mexico, Brazil and Argentina. The case of the United States exhibits a high degree of legislative atomization not only between the federal level and the fifty states but also for the various cooperative activities they regulate, including agricultural, savings and loan and electrification.

The evolution of continental cooperative legislation went through different stages from its origins at the end of the nineteenth century to the current time. In Latin American countries after the first laws, there was a remarkable post Second World War development until the 1960s but the maturity stage is reached in relatively recent times with the sanction of cooperative laws renewing the matter, especially from the First Continental Congress of Cooperative Law held in 1969. The oldest laws of the region are those of the Dominican Republic of 1964, Costa Rica of 1968, Brazil of 1971 and Argentina of 1973, although there are projects of reforms of various ones with different degrees of progress.

On the other hand, as a general rule, countries have a general law regulating all kinds of cooperatives, whatever their specific social object (credit, consumption, housing, commercialization, labor, etc.). However, there are countries that have, in addition to general law, one or more special laws dedicated to certain classes of cooperatives in particular, mainly savings and loan and labor (Costa Rica, Mexico, Brazil, Paraguay and Uruguay).

In some cases, there are also laws governing bodies responsible for cooperative policy or supervision of cooperatives (Costa Rica, Paraguay, Puerto Rico).

Currently the laws of cooperatives are autonomous; that is, they are not incorporated into a broader legal body such as the codes of different subject matters that exist in many countries. This autonomy is a remarkable feature of regional cooperative legislation that has been affirming the peculiar character of cooperatives as entities different from associations and societies in general, especially capital companies for profit. The process of gradual displacement of the regulation of cooperatives outside the codes can be clearly noted in some countries. Thus, for example, in Mexico, Argentina and Honduras, from the Commerce Code, in Costa Rica from the Labor Code and in Panama from the Agricultural Code, although in some cases, as in Curacao, it is currently in the Civil Code, as well as the regulation of other legal entities under private law.

Despite the autonomous nature of cooperative legislation, in many cases the supplementary application of other provisions is provided to complement that when it is insufficient or in situations not expressly provided for. The rules governing commercial companies, which are generally broader, which explains the referral; in other cases, reference is made to common law, that is to say, private law in general. However, it is clear that its application only takes place when cooperative legislation does not contain provisions governing the issue, that it is exclusively subsidiary, being representative the case of Argentina that makes the application of the supplementary rules subject to them being reconciled with the nature of the cooperatives.

Obviously, cooperative legislation does not exclude the application of the legal provisions governing the activity they carry out (credit, consumption, housing, commercialization, labor, etc.), in addition to the general rules on competition, dependent work, taxes, etc., except for those issues that specifically enter the orbit of cooperative legislation. In essence, it fundamentally governs the constitution, the organization, the functioning and dissolution of cooperatives, whereas the other aspects are governed by general legislation as is the case with the other private legal persons. Consequently, this circumstance usually results in conflicts and problems when the cooperative's activity is nuanced by its very nature, although common rules apply to all kinds of subjects, as is often the case with savings and loan cooperatives.

Cooperative laws are often respectful of cooperative principles. Indeed, following the Declaration on Cooperative Identity adopted by the ICA in 1995 and ILO Recommendation No. 193 on the Promotion of Cooperatives, several include the principles contained there, in some cases in textual form, as is the case with the legislation of Uruguay and Bolivia. But even in cases where they are not expressly mentioned, they are incorporated into different provisions throughout the legal text. In particular, free entry and exit and are welcomed; democratic government; political and religious neutrality; the return of surpluses in proportion to the use of services and cooperative education.

The national constitutions of the Continent usually contain recognition of the social function of cooperatives and provide for their promotion with varied scopes. However, countries exist with important cooperative development whose constitutions say nothing about cooperatives, as is the case, for example, of Canada, United States, Argentina, Puerto Rico and Uruguay. Particularly noteworthy are the cases of Bolivia, whose constitution includes twelve provisions relating to cooperatives, and Brazil whose 1988 constitution refers to cooperatives in seven provisions, including the recognition of the cooperative act to which it requires assigning tax treatment appropriate to its nature. There are also significant cases of Colombia, Ecuador and Costa Rica in terms of the constitutional recognition of cooperatives, although in the first two they are linked to the social economy in general.

Finally, it should be noted that not in all countries that constitutionally recognize cooperatives, such recognition results in practical effects on them.

IV. SPECIFIC ELEMENTS OF COOPERATIVE LEGISLATION

I. Definition and objectives of cooperatives

a) Definition

The treatment of the definition of cooperative by national laws is very disparate. Indeed, some do not define it in any way as others provide a very general concept or merely state the characteristics that are their own, finally others adopt the definition of the Declaration on Cooperative Identity. In the first case is the legislation of the United States and Curacao that is confined to establishing that a cooperative is an entity that registers as such and leaves its regulation freed to the statutes, and examples of the last case are the Uruguayan and Bolivian law that hosts in practically textual form the definition of the ICA. In the middle of both extremes is the legislation of the rest of the countries with various characteristics.

Notwithstanding what has been pointed out - that is to say that there is or is no definition of cooperative - a common feature of legislation is to establish as a requirement for cooperatives a number of qualities which they must have. They are, basically, cooperative principles, even if they are not called that way, namely: free entry and exit; one vote per associate; political and religious neutrality and surplus sharing in proportion to the use of services. To these characteristics are added others belonging to each legislation: liability regime; minimum number of associates; duration, usually unlimited; unlimited capital; etc. The word "cooperative" is also often required in the social denomination and, correlatively, non-cooperative entities are prohibited from using it.

From the definition, where available, and of the characteristics that laws impose on cooperatives, their differences arise with capital companies. Basically, its status as open entities, with unlimited number of associates; also unlimited capital; equal voting rights per associate and not on the basis of the capital contributed; distribution of surpluses according to the transactions carried out and not in proportion to the capital and, in most countries, non-distribution of reserves and disinterested destiny of the surplus assets of the liquidation as well as the subjection to differentiated legal regimes. In a matter such as the difference between cooperatives and commercial societies in general as well as associations becomes apparent.

b) Objectives

The objective or, in general, the purpose of the cooperative is not usually stated in the laws of cooperatives, even if their specific activities are mentioned: credit, consumption, housing, labor, etc. But, in short, the generic objective is the provision of services to its partners, as some laws expressly determine, thus promoting their improvement or economic promotion. This provision of services is done by carrying out its activities with the associates, which in many legislations is specifically classified as "cooperative acts".

The cooperative act consists of the activity that the cooperative carries out with its partners in the fulfillment of its social object, whatever this may be (consumption, credit, housing, commercialization, labor, etc.). This cooperative act is characterized by its purpose of service, exempt from profit, so it differs from the commercial acts by which capital companies carry out similar activities for profit. Cooperative acts are subject to cooperative legislation and to what the statutes of the cooperative determine.

The notion of the cooperative act, present in legal theory since the 1950s decade, received a major boost at the First Continental Congress of Cooperative Law held in Venezuela in 1969. It was originally introduced into the Brazilian law of 1971, followed by the Argentine law of 1973 and from there it was received by numerous laws, especially from the Framework Law for cooperatives of Latin America elaborated in 1988: cases of Mexico, Puerto Rico, Colombia, Paraguay, Panama, Honduras, Peru, Uruguay and Bolivia. It should be noted that some legislations assign broader scopes to the notion, also covering acts carried out by cooperatives with third parties for the realization of their social object.

Cooperatives are often authorized to provide services also to non-associated third parties, sometimes with certain limitations. In such cases it is common for the law to prescribe that the surpluses produced by such transactions be allocated to a non-distributable reserve account, even in the event of dissolution, on the grounds that these are results that have not been produced by the operation with the partners (cooperative acts). This is the case in Argentina and Guatemala, as well as in Brazil, where such surpluses are allocated to the Education and Social Assistance Fund and in Honduras, where they are engaged in cooperative development. However, some legislations, such as that of Chile, the Dominican Republic and Bolivia, admits its distribution between the partners in that they are considered to be the ones who provide the capital and organization necessary to provide such services and absorb losses in the event that it occurs. In Uruguay, a reserve must be constituted with 10% of these surpluses, whereas in Curacao, the fate of the surplus is decided by each cooperative, as is often the case in the state laws of the United States.

Legislations in general, do not require associates to operate with the cooperative. On the other hand, it must provide its services as long as there are no special circumstances to prevent it. However, there may be statutes that force partners to use cooperative services, which is not a common occurrence.

c) Activities

While cooperative laws do not set limitations on the activities that can be carried out by cooperatives, such limitations are usually established in the laws governing certain activities. The most common case is insurance, since in most countries cooperatives are prohibited from this activity - reserved for stock companies - even though in some countries there are important insurance cooperatives with a high degree of development that successfully compete with capital companies, as is the case of Colombia, Puerto Rico, Argentina, United States and Canada. Financial legislation also often restricts cooperatives' access to banking activity and sometimes trusts (Panama and Canada) and pension funds (Uruguay).

The liability of the associates is limited to the value of their capital contributions, except for a few countries where an additional liability established in the statute is allowed, as in the cases of Panama and Uruguay, in which it can be established that it reaches a multiple of the capital contributed, or that of unlimited liability as allowed by the laws of Haiti and Curacao.

The experiences of cooperatives called "social" that exist in several European countries are only incipient in the region. They are legally recognized in Uruguay and Brazil, although there are legislative projects in other countries.

Finally, laws in general do not allow the transformation of cooperatives into other forms of legal organization, which is explainable both to avoid the appropriation of non-distributable reserves and by the affirmation of the different nature of cooperatives and commercial societies. In such cases, to form a new company, the cooperative must be dissolved and liquidated by assigning the reserves to the destination provided for by law, and then form the new entity. A unique case is Curacao, which allows the transformation into other types of societies.

II. Constitution, associates and government

a) Constitution

The legal constitution of cooperatives takes place through two different systems: authorization and registration. The first means that, once the legally established requirements have been met, a determined State body grants recognition to the cooperative to function as a legal entity. The second, on the other hand, means that for its legal recognition it is sufficient that the cooperative, having complied with the established requirements, makes a public deed or private document that is registered in a particular organism for that purpose, without any required official authorization.

Most countries have established the authorization system, with different variants, including in some cases the obligation to submit together with the foundation act and statute, a feasibility study, as is the case in Panama, Guatemala and Costa Rica or for the founders to accredit training, as is the case in Panama, Jamaica and Bolivia. A few countries have adopted the registration procedure; Brazil did so after the 1988 Constitution, Peru, Colombia, Chile, Uruguay, Mexico and Curacao. The system of incorporation in the United States has a great variety according to the states.

The authorization, or registration where applicable, is usually carried out by specialized cooperative agencies as is the case in Bolivia, Paraguay, Argentina, Ecuador, Dominican Republic, El Salvador, Guatemala, Honduras, Haiti and Panama or a body common to other organizations, such as Chile, Curacao, Mexico, Peru, Colombia, Puerto Rico and Uruguay. St. Kitts & Nevis and Jamaica, meanwhile, have a Cooperative Registrar.

As unique cases, it is worth noting the legislation of the Dominican Republic that provides for a pre-foundational status of the cooperative dedicated to the training and preparation of its partners, while Colombian law provides for the existence of pre-cooperatives.

b) Associates

As for the minimum number of partners, there is a notable diversity in the legislations. There is usually a number for cooperatives in general and another or others for cooperatives of certain activities: lower for labor cooperatives and superior for savings and loan cooperatives. Thus, in St. Kitts & Nevis, there must be 15 in general and 100 for savings and loan cooperatives; in Puerto Rico 8 in general and 5 for labor cooperatives; Colombia 20 in general and 10 for labor cooperatives; in Paraguay 20 in general and 6 for labor cooperatives; in Brazil 20 in general and 7 for labor cooperatives; in Mexico 5 in general and 25 for savings and loan cooperatives; in Bolivia, Argentina and Jamaica, 10; in Uruguay 5 in general, 6 for housing cooperatives and 50 for savings and loan cooperatives; in Haiti 21; in Guatemala 20; in El Salvador and the Dominican Republic 15; in Costa Rica 20 in general and 12 for labor cooperatives; in Chile, 5 and in Canada the lowest number is established: 3 associates. In Ecuador, its fixation is at the discretion of the respective Ministry. There is usually a lower number requirement for higher grade cooperatives, except in the case of Honduras where the minimum for first grade cooperatives is 12, whereas for second grade cooperatives it is 20. In Curacao the law does not set a minimum number of associates. When there is a minimum number, the decrease in associates below it is cause of dissolution if it is not recomposed within a certain time frame.

There are laws that limit the association to human persons (Mexico) while others prohibit the association of legal persons of lucrative purpose (Puerto Rico, Paraguay, Panama and El Salvador).

Usually, the admission of new associates once the cooperative has been constituted corresponds to the administrative body. In certain cases, an appeal to the assembly is authorized in the event of a decision of refusal.

In Puerto Rico, the law admits that labor cooperatives have collaborating partners, that is, not to use the cooperative's services but to associate to support their development. In turn, the laws of Mexico and Argentina allow the participation of the State in public service concessionaire cooperatives.

The right to withdrawal by resignation is generally recognized, even if in some cases their communication is required with a determined advance notice. Withdrawal involves the refund of the capital contributed by the associate, at face value minus any losses that may exist, but it is usually authorized that the cooperative delay its refund for a certain period according to its financial situation.

The use of cooperative services and voting constitute fundamental rights of the associates. The latter is always exercised by reason of one vote per associate in first grade cooperatives, regardless of the amount of capital contributed and the volume of operations carried out, except in Jamaican commercialization cooperatives and Curacao where there may be multiple votes.

c) Government

The internal organization of the cooperative is commonly composed of three bodies, namely: the assembly, the administration board or board of directors and the supervisory board, each of which has a specific function assigned by law.

There are several countries in which the legislation foresees the existence of additional bodies, such as the credit committee in the cooperatives of that activity or the education commission; this is the case in Peru, Panama, Paraguay and Costa Rica. On the other hand, there are also cases in which it is mandatory to have an electoral commission responsible for supervising the election of the members of the other social bodies; this is established by the laws of Paraguay, Peru and Uruguay. In turn, Bolivia's law establishes a disciplinary tribunal, specifically responsible for that matter. Without prejudice to the necessary bodies, the statute can normally provide for the existence of others.

The assembly is the governing body, to which the decision is reserved on the most important matters, such as the reform of the statute, consideration of the annual balance sheet and the report of the administrative body, the election and removal of members of the other bodies and the dissolution of the cooperative. Two classes of assemblies are established: one ordinary annual dealing with the management of the exercise and the election of the members of the board of directors and surveillance and another extraordinary that meets at any time to consider other issues. The assemblies is where democratic governance is basically manifested through the individual vote of associates that, in many cases, is allowed to be exercised by power granted to another associate. It should be noted that Jamaican law accepts that in commercialization cooperatives voting may be proportional to the volume of the product marketed by each associate. It is also often accepted that the assembly is composed of delegates elected by associates in accordance with the guidelines set out in the statute, which is particularly important in cooperatives with large numbers of associates or based in distant places.

The Board of Administration or Board of Directors is the body responsible for the administration of the cooperative composed of a certain number of associates elected by the assembly with a limited duration between one and four years and can, in general, be re-elected. There are laws that allow the establishment of an executive committee made up of some of the members of the board of directors for the attention of ordinary matters (Argentina, Honduras). Meanwhile, others establish the existence of a manager as part of the administrative function and even as legal representative of the cooperative; this happens in Chile, Ecuador, Costa Rica and Puerto Rico, a country where it is called the chief executive.

Internal inspection or surveillance is carried out by a body that some legislations allow it to be one-person under the name of trustee (Uruguay, Argentina) but which is generally plural in composition and is called a surveillance board. Its members are elected by the assembly for a limited duration. This body is responsible for monitoring compliance with the law and statute, informing the assembly on this regard. The Boards of directors and surveillance boards should generally meet once a month and keep records.

As a singular case, it should be mentioned that in Curacao the existence of a monitoring board in not mandatory and that they allow social bodies to be made up of non-associates. In the United States, the existence of social bodies is generally freed to the provisions of the statutes of each cooperative.

Finally, there are laws that prescribe the honorary nature of the performance of the members of the social bodies, as is the case in Puerto Rico, Honduras and Haiti, where only compensation for expenses can be assigned.

III. Cooperative financial structure and taxation

a) Financial structure

While all cooperatives have capital contributed by associates, in general, the legislation does not require a determined minimum capital, except in the case of credit and insurance cooperatives, where it is usually the same as that required of capital companies.

The associates contribute at the founding act or at the time of joining the cooperative a certain sum established in the respective statute as capital. From then on, their contribution may be increased voluntarily, either through new individual subscriptions or by the capitalization of interest and returns resulting from the annual balance sheet. The processing of the initial capital provided by each associate and that corresponding to subsequent additional contributions is the same. Some legislations limits the maximum capital that each associate can contribute: in Chile no more than 20% in general and in savings and loan cooperatives no more than 10% and in Honduras no more than 30%.

Some laws such as the ones of Argentina and Uruguay, expressly admit that the formation of each partner's capital is carried out in proportion to the use of the social services, but this must be established by the respective statute. This capitalization system has proven to be very useful because it allows to maintain the capital figure according to the needs of the cooperative's activity.

When the associate withdraws from the cooperative, he/she is entitled to a refund of the amount of capital he or she has contributed. The same is true in case of dissolution, once the cooperative's debts have been paid. Normally cooperative laws determine that reserves are non-distributable, so associates cannot take hold of them in the event of withdrawal or dissolution as they are only given the face value of their contribution. However, in the case of Chile, the distribution of pro rata reserves of capital contributions is admitted.

The proportion of surpluses used for reserve formation is variable, but there is generally an obligatory percentage of between 5% and 20% -which in Ecuador rises to 50%- a reserve called legal; also, additional reserves called voluntary are authorized. The reserves safeguard the integrity of capital and are used to wipe losses. In some cases, they are obliged to keep them liquid through prompt investments, sometimes subject to authorization from the official cooperative supervisory body.

Apart from the constitution of reserves, the surpluses that the annual balance sheet yields are mainly allocated to its distribution among the partners in proportion to the operation they have made with the cooperative; that is, to the same extent that they contributed to form such surpluses, from there it usually is called "return" because it is a refund of what was overpaid or charged less, depending on the activity of the cooperative. This is a typical feature of cooperatives that clearly differentiates them from capital companies.

Another destination for surpluses is remuneration for capital provided by the associates which, in all cases, consists of a limited interest; safe to say that it never absorbs the entire surplus. The legislations usually admit that a limited interest or none is paid and each cooperative decides with respect this.

There are also cases where the surplus is allocated - partially - to other purposes such as cooperative education, benefit for workers or works of general interest (Argentina, Uruguay, Paraguay, Brazil, Bolivia).

Finally, in Ecuador the law does not provide for the distribution of surpluses in the form of interest or return.

An issue diversely covered by the legislations is the destination that is awarded to surpluses that come from services provided to non-associated third parties and those arising from operations outside the cooperative's specific social object (i.e. the sale of a fixed asset). In such cases the solutions range from targeting them to a non-distributable reserve (Argentina, Peru), to the possibility of distributing them among the associates (Chile).

With regard to financing, in addition to ordinary sources, some legislations allow cooperatives to issue debt securities or financial instruments subscribed by the associates or third parties, such as investment certificates provided for in the Panama law. But few cases recognize the existence of investment or non-user associates (as in Canada). In Uruguay, the law admits the issuance of subordinated shares or interest shares. It is worth saying that, in general, external financing is circumscribed to banking institutions and commercial credit.

b) Taxation

With regard to taxes there is a wide variety of situations, arising from both the difference in national tax systems and the different treatment accorded to cooperatives. On the other hand, although in some cases the tax regime of cooperatives is in the cooperative legislation itself, in most cases the issue is included in general tax laws, making it a dispersed and complex regime.

In addition, it should be noted that taxes are usually established by different jurisdictions within each country, in other words they are national and local or municipal in scope, to which the states or provinces are added in the case of countries with a federal political organization. This is why it is a complicated and difficult system to cover in its entirety, for which the reference in this report is limited to the main taxes, basically income tax, also called to profits according to the countries.

On income tax, it is noted that, in general, the nature of the cooperative is not recognized since while surpluses resulting from the economic activity of cooperatives are often excluded from this tax, such treatment is classified as an exemption, that is to say as a preferential treatment or concession of favor, but not as recognition of the absence of the taxable fact (Uruguay, St. Kitts & Nevis, Puerto Rico, Panama, Jamaica, El Salvador, Dominican Republic, Costa Rica, Bolivia, Argentina and Ecuador, in this last country subject to surpluses being reinvested and except in savings and loan cooperatives and in Mexico consumer and savings and loan cooperatives).

In some cases the exemption is limited exclusively to surpluses arising from operations with associates (so called cooperative acts) as is the case in Peru, Paraguay, Guatemala, Chile and Brazil. In other countries, on the other hand, they are taxed the same as societies (Haiti, Curacao, Canada) and in some they pay a substitute tax, as is the case in Honduras and Colombia. In other words, the cooperative is generally considered to be taxed by this tax, but the legislation grants it an exemption, obviously revocable. In addition, the exemption is often subject to compliance with burdened bureaucratic requirements that make it difficult to obtain. This applies to both total and partial exemptions.

In terms of value added tax, there are no differences in treatment with the rest of the subjects because by the objective nature of this assessment, cooperatives are reached. The other taxes, which are widely variable by country, the situation of cooperatives is diverse according to the more or less favorable policy towards them that may exist which is, in turn, changing over time. This diversity is accentuated by local taxes (provincial or municipal) in which there is a notable difference between countries and even within the same country.

Broadly speaking, cooperatives, particularly in Latin American countries, have been gradually but sustainably losing the promotional treatment they used to enjoy in tax matters.

IV. Other specific characteristics

a) State oversight

In most countries there are public bodies responsible for the supervision of cooperatives in general, without prejudice to the specific supervision to which they are subject due to their activity, especially in the case of credit and insurance. Supervisory bodies are often also responsible for granting authorization to operate cooperatives, approving statutes and their modifications, and keeping the corresponding register. In some cases they also carry out activities to promote cooperatives (Paraguay, Argentina, Panamá). Finally, in other cases the supervisory, registration and promotion functions are carried out by different organisms as is the case of Uruguay, Guatemala, Colombia and Puerto Rico.

These organisms are usually established in the same general law governing cooperatives, which gives them as a specific function to monitor compliance with cooperative laws and regulations, for which they must send them information on their balance sheets and assemblies and can be inspected. In case of non-compliance with legal rules these agencies may apply sanctions that are usually judicially actionable. In some cases the supervisory functions are usually carried out by the same bodies that supervise other legal entities, usually through a special section (Uruguay).

In 1963 the state agency of cooperatives of the Dominican Republic was created with participation of representatives of the cooperatives together with government officials and the following year the same happened in Costa Rica. Since then, it has been common for the legislations of other countries, especially Latin American, to adopt the same idea by organizing a governing body composed of government officials and representatives of cooperatives in different proportions. Representatives of cooperatives are usually elected directly by their organizations or by the State on a request from them. Finally, it should be noted that in some countries there is no specific cooperative oversight body, as is the case in Peru, Mexico, Curacao, Brazil and the U.S.

There are a few laws, such as Argentina, Honduras and St. Kitts & Nevis, which require cooperatives to have independent audits but in no case are they relieved of state oversight. There are also exceptional cases of delegation of state control to cooperative organizations (case that occurs with credit cooperatives in Peru).

b) Cooperation between cooperatives

Cooperation between cooperatives, commonly called cooperative integration at the Latin American level, is present in virtually all the legislations of the region but with different characteristics and scopes. The legislative technique in this area is usually expressed in the following ways: a) including the mention of integration between the principles that characterize cooperatives (case of Colombia); b) establishing a repertoire of modalities or forms by which integration materializes: second grade federations or cooperatives; confederations; merger or incorporation; association between cooperatives; collaboration contracts, etc. (this is the case in Peru and Argentina, whose laws contain two chapters relating to integration) and c) legislation that includes both aspects.

In several cases, including Paraguay, it distinguishes between integration for economic purposes through the establishment of organizations, generally called central ones, whose purpose is to provide services or manage common activities of the member cooperatives, and the establishment of federations or unions that carry out representative or defense activities of the associated cooperatives, in addition to fulfilling training and technical assistance functions. In some countries, the latter two activities are usually carried out by entities called auxiliary organisms which, unlike the previous ones, do not take the legal form of cooperatives but associations. In Mexico, as in Peru and Argentina, integration is supported through other legally recognized associative figures, such as collaboration contracts.

A fairly widespread feature is to recognize a differentiated number of votes in so-called higher grade organizations (federations and confederations), usually depending on the number of associates (Bolivia case) but in some cases also in proportion to the volume of operations carried out with the organization (in Argentina the vote may be proportional to both indicators). Another differential feature is usually the requirement of fewer associates to form these organizations in relation to the number of associates required to form a first grade cooperative. Thus, in El Salvador, there must be 10 cooperatives to form a federation, whereas to form cooperatives in general 15 associates are necessary and in Panama 3 and 20, respectively. The case of Honduras is an exception, which requires a minimum of 20 for federations and 12 for cooperatives. Moreover, the regime of integration organizations is not different from that of cooperatives in general.

Laws often establish guidelines for organizing forms of integration at different levels: second or third grade and even fourth or fifth grade, as in Brazil with the Organization of Brazilian Cooperatives and in Bolivia with the Confederation of Cooperatives of Bolivia, respectively, differentiating organizations that carry out economic activities from those that provide advisory and education services, in addition to fulfilling representative functions. In addition, certain cases establish guidelines for organization of territorial scope (regional, departmental, state, etc.), while in others, sectoral or activity patterns are determined.

In summary, it should be noted that the regime of cooperative integration is much varied depending on the different countries, with a greater or lesser degree of detail. In the area of representation at the national level, legislation usually establishes mandatory structures, in which a single organization has been awarded representation of all cooperatives. This is the case in Peru, Mexico, Brazil, Puerto Rico, Honduras and Bolivia -in this latter country the legal regime of integration is quite complex- but, in general, integration is a matter of free decision of cooperatives.

On the other hand, in some countries the national representative organization is supported by mandatory contributions from all cooperatives, as is the case in Costa Rica with the National Council of Cooperatives and in Puerto Rico with the League of Cooperatives. On the other hand, in Uruguay - where integration is totally free – cooperatives can deduct from their compulsory contribution to the National Institute of Cooperatives the contributions they make to higher grade cooperatives.

V. DEGREE OF SUPPORT OF COOPERATIVE LEGISLATION IN THE REGION

The content of this chapter reflects the thinking of the authors of the national reports and the organizations that responded to the questionnaire formulated by Cooperatives of the Americas. The authors note that their and the organizations' conclusions were coincidental, although they highlight in some cases the lack of response from affiliated organizations.

It should be noted that while the questions had some degree of detail, the experts' responses are quite broad in nature and do not promptly observe the questionnaire. This chapter has been elaborated following this line.

On the other hand, it should be noted that there are opinions that concern not only cooperative legislation but also other laws that have a significant impact on cooperatives, such as tax legislation and rules on financial activity in general that also apply to cooperatives.

First, it has been stated that the constitutional provisions establishing the recognition and promotion of cooperatives do not always have effective implementation. It is worth saying that constitutional declarations and mandates are often not adequately accepted at the lower regulatory levels (laws, decrees, etc.) and in the action of the officials responsible for enforcing them, concludes that the mere constitutional mention is not sufficient to produce practical effects.

In the same line it is stated that in some cases there are legal rules that provide for the promotion of cooperatives but that the areas of government responsible for their implementation often do not work accordingly, in many cases enforcing requirements that are not provided for in those rules and that undermine their purpose.

One of the most commonly identified problems is the complicated and time-consuming process required for the legal constitution of cooperatives. Despite statements of support for cooperatives, the requirements for obtaining their legal recognition are often excessive and bureaucratic, which discourages those who are committed to achieving the legal personality of the cooperative, necessary to carry out its activities. By contrast, there are cases where capital companies can obtain their legal recognition in a much lesser time and with fewer demands.

The prohibition on certain activities, usually reserved for shareholder corporations, is another aspect that limits the development of cooperatives. Such limitations are usually not provided for in the laws of cooperatives but in those governing such activities in particular, so there is a conflict between the breadth of activities permitted by cooperative law and the restrictions imposed by other laws that overlap it. This situation favors capital companies in loss to cooperatives and creates the image that cooperatives do not have adequate capacity to face certain activities, which is disproved by the experience of some countries.

A matter of concern in several countries is the control regime imposed on cooperatives engaged in certain activities, especially financial ones. It is noted that financial control authorities require savings and loan cooperatives to meet performance requirements that are not in line with their nature, stressing that it is not a question of circumventing supervision but of adapting it to standards and conditions appropriate to the characteristics of cooperatives. The problem reaches special importance as there are several countries in the region where savings and loan cooperatives make up the main cooperative sector.

The tax issue is another of those that raises concerns in many countries in the region since cooperatives are given treatment that, in general, does not take into account the peculiar nature of cooperatives. It is noted that even in cases where they enjoy special treatment they are granted as liberality or favor, in other words, as an exemption that depends on the will of the legislator, and is not based on the recognition of the characteristics of cooperatives, which is particularly evident in the case of income tax or to profit. Therefore, the exemption is subject to being limited or eliminated at any time.

The general opinion of the experts ranges from a graduation that considers that the legislation is in favor of cooperatives or only limited in favor of them, although in several cases it is thought to be more against it than in favor of them. However, it should be noted that the latter judgment is based not so much on the specific legislation of cooperatives as on other laws applicable to cooperatives.

VI. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE LEGAL FRAMEWORK IN THE REGION

The recommendations made in the national reports are multiple and varied. Therefore, this chapter has sought to bring them together around those aspects that achieved greater coincidence by seeking, in any event, to highlight the fundamental issues raised.

As will be easy to observe, the recommendations are aimed -basically - at resolving the difficulties and problems of both cooperative legislation and other laws affecting the performance of cooperatives that were identified in the previous chapter.

In a number of cases, it has been pointed out that it would be appropriate to ensure that the national constitution made an express recognition of cooperatives and that it should provide for the promotion of cooperatives. In this manner, legislators should adopt laws aimed in this sense and state agencies should also perform their action taking into account this constitutional directive. For their part, judges would have a defined pattern for the resolution of conflicts related to the activity of cooperatives.

Updating cooperative legislation is a fairly repeated request, which is understandable given the seniority it has in several countries in the region.

The treatment of cooperatives on an equal footing with capital companies in terms of the activities they can carry out is another measure that is proposed as necessary to avoid the limitations that cooperatives often encounter in addressing companies that meet the needs of their associates.

Numerous reports call for the improvement of the legal constitution process of cooperatives by reducing bureaucratic requirements - including reducing the minimum number of associates - and simplifying the respective procedures. It is noted that the time taken by the processes of constitution and approval of statute reforms is often excessive.

A repeated proposition is that legislation recognizes the cooperative act as a peculiar form of action by cooperatives in fulfilling their respective social object. Such recognition would entail admitting the specific nature of cooperatives, clearly differentiating them from capital companies since cooperative acts have a defined purpose of service, without profit. Moreover, recognition of the cooperative act should result in the cooperative being governed by the cooperative legislation and the respective statutes and only in the alternative by other rules.

In several cases, it advocates the elimination of restrictions for entry as associates of legal persons in general, including those for profit, as many small and medium-sized companies, some of a family nature, which under these limitations cannot access to use the services of cooperatives.

A specific regulation for cooperatives with a small number of partners and a small volume of operations is considered necessary in order not to impose on them the same requirements as other cooperatives in terms of social bodies, accounting and registrations, information regime, etc. Simplification is mainly claimed in accounting and ledgers.

Public control or supervision of cooperatives is another aspect that requires modification in order to achieve their simplification, particularly in the case of certain cooperatives such as savings and loan. It is considered imperative that public control does not devastate the autonomy of cooperatives and that it be exercised with respect for the nature of these entities. Emphasis is placed on legislation providing for and avoiding conflicts that often occur between the various government agencies responsible for the comptroller of cooperatives.

Remote meetings are a necessity that today's circumstances become imperative in order to gain efficiency and reduce costs, thus enabling more effective management. The necessary regulation of this matter must provide for appropriate technical solutions and respect the demands of democratic government.

As for the capitalization regime of cooperatives, it should be noted that only in two cases has the need to provide for new methods been identified.

Conflict resolution in the field of cooperatives is a matter of concern as it usually involves significant costs as well as prolonged duration and deterioration of the image of these entities. For this reason, it is proposed that alternative means of dispute settlement, such as mediation and arbitration, be used through appropriate regulation that provides for its procedure within cooperative organizations.

There are countries where specific legislation is called for on labor cooperatives, entities whose dissemination in recent times was notable to the heat of employment problems and which often raises conflicts with labor law.

It points out the existence of the difficulties that often exist with consumer protection legislation, which advises to adequately regulate the scope of application of cooperative legislation so that it is not conflicted by it.

A generalized recommendation is to have a clear and adequate tax system for cooperatives that grants them treatment according to their nature. While tax regimes differ by country, there is a coincidence that cooperative operations with their partners - cooperative acts - have notable differences with the operations of capital companies with their clients and, therefore, the result they produce must have different tax treatment. This different treatment should not be considered as an advantage or exemption granted to cooperatives but rather the consequence of the diverse nature of operations originating surpluses. On the other hand, it is also emphasized that because of the beneficial consequences for the community resulting from the activity of cooperatives, they must be considered differently with those related to other economic organizations.

Finally, there is a coincidence in the reports to sustain the convenience that cooperative education should be introduced at different levels of education with a view to fostering a spirit of solidarity in the general population while providing them with tools capable of materializing that spirit in a practical and effective way through cooperative action. The aspiration for cooperative training - or at least information - of university professionals is generally expressed.

VII. CONCLUSIONS

It is clear from the national reports that there has been a gradual advance in the legislative autonomy of cooperatives in the region. Indeed, from the first legal provisions incorporated in some codes of commerce towards the end of the nineteenth century, there was a strong tendency towards laws specifically dedicated to regulating cooperatives separately and independently of those governing capital companies. This trend became self-fueled and produced spillover effects between countries until it prevailed in all the countries of the region in such a way that today it is practically singular.

Some reasons that explain this trend in recent decades are the Continental Congresses of Cooperative Law that had a high impact on the progress of regional cooperative law from the first, held in Venezuela in 1969, and the elaboration of the Framework Law Project for Latin American cooperatives that took place at the initiative of the Organization of Cooperatives of America (OCA for its acronym in Spanish) in 1988, updated twenty years later by the International Cooperative Alliance for the Americas in 2008 and approved by the Latin American Parliament in 2012. On the other hand, as these influences took effect, their impact on the new laws was enhanced.

The regional legislative technique in this area has uniformly consisted of the sanctioning of a general law for all types of cooperatives and, in some cases, special laws for cooperatives of certain activities. The only different case was Uruguay that until 2008 it did not have general law but special laws for the different classes of cooperatives. That country currently has a general law that in different chapters regulates different cooperatives, while in other countries the law formulates a classification of cooperatives according to their activities. However, in general, the experience exceeds the rigidity of the classifications to respond to different needs within the framework of the regulations of the general law and only when there are particular reasons that advise another temperament, special laws are issued. The latter is mainly the case with the savings and loan cooperatives that make up the most important sector within all cooperatives in a few countries in the region.

Fidelity to cooperative principles is a prevailing feature in regional legislation. The laws prior to the 1995 Declaration on Cooperative Identity that remain - and there are several - hold fidelity to the principles previously proclaimed by the ICA, which does not substantially change the situation. Except for some isolated case, such as Curacao and the United States, the laws impose, with some slight variation, the observation of the principles not only through their incorporation as characteristics of cooperatives but through specific provisions.

The incorporation of recognition of the cooperative act is a feature that has been significantly extended in regional legislation to the point of being able to assert that it practically constitutes the unifying and defining element of cooperative nature compared to the other forms of organization of collective subjects of law and, in particular, of lucrative capital companies. This notion of the cooperative act has motivated interesting doctrinal developments and relevant jurisprudence, especially in some countries such as Brazil and Argentina.

The presence of cooperatives in national constitutions is quite widespread in the countries of the region, although it can be found that it does not frequently produce the favorable effects that would be expected on the legislation applicable to cooperatives. And even where legislation establishes measures to promote cooperatives, these are not always effectively implemented. So the study of legislation alone is not sufficient to know the reality of its impact on experience. In addition, it is worth mentioning that some constitutions link cooperatives with other entities of the social economy, as in the cases of Colombia and Ecuador, a trend that is expected to be accentuated in the future.

Although there are various organizations and integration treaties between countries on the Continent, no progress has been made on legislation that enables the creation of transnational cooperatives. The only initiative that exists so far is the Statute of Mercosur Cooperatives which, however, has not come to obtain the necessary approval from the States parties.

DANTE CRACOGNA.

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