

LEGAL COOPERATIVE FRAMEWORK ANALYSIS

Within the ICA-EU Alliance

NATIONAL REPORT OF ARGENTINA

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 ICA for the 2016-2020 period, the main goal is to strengthen the cooperative movement and its ability to promote the international development.

The legal framework analysis tries to improve the knowledge and evaluation of the cooperative law, with the goal of ensuring that legal regulations recognize the specificities of the cooperative model and the equality of conditions in the comparison with other forms of association. In the same way this analysis will be useful to the members of ICA as material to their defense and recommendations on the creation or improvement of legal frameworks, to document the implementation of laws and cooperation policies, and monitor its development.

In line with the established goals of the ICA-EU Project this report aims to provide a general knowledge of the Argentinian cooperative law and an evaluation of the degree of its ability to favor cooperatives development. In the same way, recommendations for the improvement of the law have been formulated to overcome some difficulties that cooperatives are currently facing.

The document has been prepared by Dante Cracogna, doctor in law and professor in the University of Buenos Aires, as independent expert. To elaborate it, the inputs of national organizations of cooperatives members of Cooperatives of the Americas have been considered.

The inputs from the expert and from the Argentinian member organizations of Cooperatives of the Americas were recollected through a questionnaire prepared by the International Cooperative Alliance and its regional offices. The questionnaire was sent in its entirety to all members in Argentina and they could decide whether to answer or not. The organizations that sent their inputs are the following: Instituto Movilizador de Fondos

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Cooperativos, Federación Argentina de Cooperativas de Consumo y Banco Credicoop.

II. National cooperative law of Argentina

i. General context

Argentinian cooperative legislation is included in the national law Nº 20.337 called Law of Cooperatives (LC) published on the Official Bulletin on 15 May 1973 (www.infoleg.gob.ar). It is necessary to clarify that, even though it is a country with federal political organization, as constitutional mandate the substantial law is national; hence, provinces cannot legislate on this subject. The LC is not part of the Civil and Commercial Code, although the latter recognizes cooperatives as private legal entities. As disposed by the LC (art. 118), cooperatives are additionally governed by the regulations on anonymous societies included in the General Law of Societies Nº 19.550, if they agree with its dispositions and with the nature of cooperatives. That way the gaps that the LC may present can be filled, while respecting the nature of cooperatives.

The LC is a general law, which governs all classes of cooperatives, whatever their specific goal may be. The are no special laws for some cooperatives but there are cooperatives that, for the activity they carry out, are subject to some special laws and regulations: the Law of Financial Entities for cooperative banks and financial cooperatives and the Law of Insurance Entities for insurance cooperatives are the most relevant cases, but also cooperatives of public services (provision of electricity, gas, telephone, water, etc.) are another examples of simultaneous application of the law proper of the mentioned services. In all these cases both regimes on cooperatives coincide, with the subsequent conflicts that may arise.

The National Constitution, although reformed in 1994, does not include dispositions for cooperatives. On the other hand, basically all constitutions of the provinces include some regulations referred to the recognition or promotion of cooperatives.

Due to the time it was sanctioned, the LC does not include references to the cooperative principles included in the Declaration of the Cooperative Identity adopted by ICA in 1995. Nevertheless, the Statement of Reasons states that the characterization of cooperatives "includes the integral formulation of the globally accepted principles of cooperative movement, as they were formulated by the International Cooperative Alliance in its XXIII Conference of 1996 in Vienna." These principles have not been reproduced literally, but their meaning is faithfully integrated in the art. 2º that provides the concept of cooperative



and states their characteristics.

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

The art. 2º of the LC defines cooperatives as "entities funded on their own effort and mutual help to organize and provide services" and highlights their characteristics in twelve sections. Some of these characteristics refer to the cooperative principles while others correspond to typical traits that the LC assigns to cooperatives.

As for the cooperative principles, although the LC is previous to the Declaration on the Cooperative Identity of ICA, it establishes that cooperatives do not pose a limit to the number of members nor to the social capital (sec. 2) and also that "they do not have as primary or secondary objective the advertising of political, religious ideas or ideas of nationality, region or race, nor do they impose conditions for the admission linked to them" (sec. 7), thus embracing the principle of open and voluntary association.

Regarding the democratic control of members, the LC is categorical: it establishes that "only one vote is given to each member, whatever the amount of their capital share" (sec. 3), although it admits that in upper tier organization the vote may be proportional to the number of members, the volume of operations or both, avoiding discriminatory predominance of any of the member cooperatives (art. 85). All this expresses the second principle.

On economic participation, the LC prescribes that only an interest limited to the capital share can be paid, if the statute permits it (sec. 4), while the exceeding parts must be distributed proportionally to the operations realized by the members (sec. 6). On the other hand, the reserves cannot be distributed, even in case of dissolution (sec. 12).

There is no mention to the autonomy and independence principle, but its recognition comes from the definition of cooperative and from the political neutrality imposed by sec. 7.

For what concerns education, training and information (5º principle), sec. 8 establishes that cooperatives promote cooperative education and art. 42 demands 5% of the annual surplus to be invested in cooperative education.

Regarding the cooperation between cooperatives principle, sec. 9 establishes that cooperatives "foresee the cooperative integration" and Chapter IX of the LC (arts. 82 to 85) is devoted, precisely, to regulate the cooperative integration in its various forms. Regarding



the concern for community principle the LC does not include express regulations, but it can be determined from the general content.

The remaining sections of art. 2º of the LC include some specific characteristics assigned to cooperatives in the Argentinian law: variable capital; unlimited duration; minimum number of ten members, barring exceptions permitted by the authority of application; provision of services to non-members, under certain circumstances; limited responsibility of members.

The LC clearly differentiates cooperatives from companies with share capital since in these the vote is proportional to the invested capital and profits are distributed likewise; reserves can be distributed and the capital increases only thanks to the decision of the members. These companies have their own legal system and register.

The goal of these cooperatives is providing services to their members. Such goal is implemented through the operations that the members realize with the cooperative and which the law calls "cooperative acts" (art. 4º LC). The realization of these operations of the members with the cooperative is voluntary, barring the statute has established special requirements.

Nevertheless, the LC authorizes cooperatives to provide services to non-members under the conditions the authority of application has established, or rather the National Institute of Associativism and Social Economy (INAES), which has pronounced resolutions on the subject for cooperatives with different activities (consumption, public services, employment, housing, etc.). In all cases, though, the LC requires the surplus coming from the provision of services to non-members to be destined to a special reserve account that can be found within the net worth; such reserve cannot be distributed even in the case of cooperative dissolution.

The LC does not consider cooperatives of general interest. On the other hand, it does not forbid to cooperatives the realization of certain economic activities nor establishes a specific typology that determines the classes of cooperatives that can exist. However, other specific laws can exclude cooperatives of certain activities, as happens with labor risk insurers that can only be public limited companies.

b) Establishment, cooperative membership and governance

Cooperatives are legally constituted through the authorization to operate and the enrollment in the register of INAES, with which they acquire the characteristics of legal entities. To obtain this authorization and registration they must present the deed of constitution, signed



by all founders, that must include the statute, capital subscription and the naming of the constituents in the administration and audit bodies. The minimum number is ten members for all these cooperatives, with the exceptions permitted by INAES, and seven for upper tier organizations (federations and confederations). The reduction of the number of members below the minimum causes the dissolution if it occurs for longer than six months.

The LC widely establishes the open doors principle disposing that any natural and legal persons that presents all the requirements established by the statute that may, of course, vary according to the class of the cooperatives can be members. Usually, the statutes establish that the admission of new members has to be determined by the board of directors and may be subject to the conditions derived from the social goal, for example, when the cooperative fulfills its ability to provide services. The members are free to leave the cooperative according to the dispositions of the statute or, if there are none, at the end of the fiscal year giving notice thirty days in advance.

All members only have one vote in assemblies, independently from the amount of capital share that they may have. This principle is valid for any class of cooperatives, but in upper tier organizations the statute can establish a system with a vote proportional to the number of members of each cooperative or to the volume of operations that each of them realizes with the upper tier organization or a combination of both systems.

Regarding national State, provinces, municipalities and their bodies, the LC admits three possibilities: that they use services of cooperatives without associating with them; that they either associate in the common conditions to the other members or that they associate convening with the cooperative the participation they will be granted in the administration and audit of its activities, provided that these agreements do not limit the autonomy of the cooperative. This last variable allows to face actions jointly through capital contributions, technology, concessions, etc.

The government structure of the cooperative mandatorily consists of three bodies: the assembly, the board of directors and the audit body the composition and functions of which are regulated by the LC. All bodies must be exclusively composed of members.

All members participate in the assembly with only one vote each. The assembly is the governing body and it decides on the subjects of greatest importance established by the LC or the statute. Usually it meets once a year to evaluate the report and the financial statements of the year and nominate the member of the board of directors and of the audit body, besides other matters that are included in the call. The assembly may also have extraordinary meetings at any time to deal with other matters on initiative of the



administration and audit bodies or of a certain number of members. The decisions of the assembly are mandatory for all members, but may be legally impugned if they oppose the law or the statute.

The board of directors is responsible for the administration of the cooperative. Its members must be nominated by the assembly in a number of at least three. The duration of the position cannot exceed three years, but they can be nominated again, barring the statute forbids it. It must meet at least once a month. It may nominate an executive committee composed by some of its members to deal with the management of ordinary matters and may nominate managers -employees not working as consultants- in charge of the executive functions of the administration. The president of the board of directors is the legal representative of the cooperative.

The private audit function is assigned to one or more members called *trustees*. If there were more than one, they have to be an odd number and work as deliberative body. They hold this position for three years and may be nominated again if the statute permits it. They have many faculties to control the legality of the administration and have to inform the assembly on the report and the evaluation presented by the board of directors. They can attend the meetings of the board of directors with the right to speak. They must exercise their functions without impeding the regularity of the administration.

Both the members of the board of directors and the *trustees* can be remunerated if decided by the assembly and are responsible for the unfulfillment of the obligations imposed by the law and the statute. Such responsibility may be legally demanded.

c) Cooperative financial structure and taxation

The LC does not establish a minimum capital for cooperatives in general, but it does establish other laws for some classes of cooperatives, as occurs with the Law of Financial Entities and the Law of Insurance Entities.

The capital is divided in shares and the statute determines the minimum quantity that has to be subscribed by each member and the mean of payment within the maximum period of five years established by the LC. The members may voluntarily contribute different amounts of capital, with no individual limitations, but the LC authorizes the statute to establish a formation and increase system for the capital that maintains the proportion with the volume of transactions realized by each member.

In the case of termination or dissolution of the cooperative the members have the right to be



reimbursed with the nominal value of their capital shares, taken out the losses that they would have to proportionally sustain. In order to avoid sudden reductions of the capital, the statute may limit the annual capital share reimburse to an amount of at least five percent of the total capital; the cases that may not be attended to with this percentage are paid back in the following years according to the date of the petition.

The LC considers distributable surpluses only those that arise from the difference between the cost and the price of the services provided to the members. The surpluses coming from services provided to non-members or that arise from operations not regarding the social goal (sale of fixed assets, for example) must be destined to un-distributable reserves.

Of the distributable surplus, 5% is destined to the legal reserve; 5% as incentive for the personnel; 5% for cooperative education; an amount to pay an interest on the capital shares, provided that the statute permits it, that cannot exceed for more than one point what the National Bank charges on discount operations. The remainder is distributed between the members proportionally to the transactions realized with the cooperative by each of them. This distribution is called by the LC "return" given that it is the reimbursement of what the cooperative evaluated to be a surplus in the cost of the services provided to the members.

Investing members are not admitted. All the members are users of the services of the cooperative and the retribution to the invested capital is the same for all of them. Cooperative may issue negotiable obligations in accordance with the law that regulates these documents and INAES admits the issue of cooperative title deeds of capitalization with predetermined amortization period and interest.

The transformation of cooperatives into other classes of organizations is not admitted. In case of dissolution, once the assets have been realized and the liability has been paid off, only the nominal value of their paid capital shares is returned to the members, taken out the losses if there were any. The remainder is destined to the State for the promotion of cooperatives.

The LC does not include dispositions on taxation nor is there a specific law that establishes the taxation system of cooperatives. So that its fiscal treatment is dispersed in the various laws that make up the general taxation system. On the other hand, due to the federal organization of the country, there are national and provincial taxes that vary from one jurisdiction to another. Therefore, the taxation system of cooperatives is very complex, and for this we will only refer to the most important taxes.

Regarding taxes on income -called income tax- cooperatives are exempt for express legal



dispositions, but the members must pay taxes on interests and reimbursements they receive from them, barring in consumers' cooperatives. Needless to say that this is the other way around of what happens with companies with share capital that pay income taxes, while their shareholder do not. This may be considered as the fundamental difference in the taxation subject referred to cooperatives.

Regarding wealth tax, cooperatives are subject to a special property tax that levies the difference between assets and liability according to the corresponding law. This is a tax that is only employed for cooperatives and has as legal purpose, in part, the cooperative education and promotion.

The value added tax, for its objective nature, makes no distinction for cooperatives; they have to pay this tax as all other taxpayers depending on the activity they realize. In the same way, they must pay the tax on debts and credits on bank accounts.

The previous taxes are national. Regarding provincial taxes, as stated above, the situation varies from one jurisdiction to another. In general, they have to pay taxes on properties and vehicles. Also, on the operations they realize, regardless the outcome, as the other taxpayers; but with the aggravation that this tax levies the operations of the cooperative with its members and also those that the cooperative realizes afterwards with third parties; which can imply double taxation. In the same way they usually are subject to the encumbrance on documents that express certain operations.

d) Other specific features

All cooperatives are subject to state supervision through INAES, the same entity that is in charge of giving them the recognition as legal entities. INAES may realize such audit through agreements with the entities that provinces have designated for this function. Furthermore, depending on the activity they realize, cooperatives may be subject to the control of other public entities, such as the Central Bank and National Insurance Superintendence. INAES disposes of wide audit faculties that include the application of fines, but the annulment of resolutions or the displacement of cooperative bodies in case of a violation of the law or of the statute are reserved to a judicial decision. Fines applied by INAES, as well as resolutions related to the authorization to operate and with the approval of changes to the statute, are appealable before a court of law.

INAES also oversees functions of promotion of cooperatives expressly responsible by the LC that establishes that this entity "has as main goal to coincide with its promotion and



development" (art. 105), even providing financial support. It is managed by a board formed by representatives of the cooperative movement.

It is not expected that INAES can delegate its self-regulation to cooperatives, but the LC requires them to permanently count on an external audit service under the care of a certified public accountant. This service may be provided by cooperative upper tier organizations or entities constituted to this end. Audit reports must be at least quarterly and be transcribed in a special book. The assembly must be informed on the annual report.

Besides including the cooperation between cooperatives as one of the defining characteristics of cooperatives, the LC regulates this subject in a special chapter. It provides a wide catalog of choices so that cooperatives may implement this principle according to their needs: they may associate to achieve their objectives; they may merge if they have common or complementary goals; they may realize one or more common operations, establishing which will be the representative and will assume responsibility in front of third parties; they may constitute cooperative upper tier organizations that are regulated by regulations of the LC.

The formation of upper tier cooperatives (federations or confederations) may be realized to fulfill economic or representative functions, with a minimum of seven members. In these cases the statute must establish the representative and voting system that may be either identical to that of primary cooperatives (one member, one vote) or proportional to the number of members of each federate cooperative or the volume of operations realized with the upper tier entity or a combination of these systems, but always with the requirement of fixing a minimum and a maximum value to ensure the participation of all of them and prevent the discriminatory predominance of any of them. This disposition, that may only be applied to upper tier cooperatives, constitutes a clarification of the democratic government system.

In the same way, for the realizations of joint economic activities cooperatives may either form companies with share capital or execute associative contracts regulated by the Civil and Commercial Code.

The LC does not impose the compulsory existence of representative organizations nor subject their existence to a specific number or field. Cooperatives are free to constitute and belong or not to them.



III. Easiness of national law for cooperatives

In this chapter the opinions formulated by three Argentinian member organizations of ICA have been considered. They are, in general, coinciding between them and the author's.

The taxation aspects, which are not included in the law of cooperatives but in the taxation laws, do not recognize the nature of cooperatives and usually treat them similarly to for-profit companies. This happens both on a national and on a provincial level. Regarding the income tax they are exempt, but it is estimated that it would appropriate to consider them as not liable for such tax.

The National Constitution does not mention cooperatives, but in some provinces the constitution of which recognizes their solidary and economic and social promotional aspects, expressing support for them, the governments usually do not comply with these dispositions.

There are no dispositions that favor cooperatives about public purchases.

The LC has 45 years of service and it is considered to be satisfactory for the cooperative movement that until now has not expressed the need for its reform, although there are some aspects that should be updated. On the other hand, the recent Civil and Commercial Code recognizes cooperatives as subject of legislation different from companies and associations.

Express legal recognition that cooperatives may realize any class of activities in the same conditions of other companies is missing.

The procedures for the legal recognition and approval of statutes of cooperatives are remarkably extensive.

There usually are conflicts between cooperative law and the law for consumer's defense that is intended to be applied to the relationship between the cooperative and its members as if it was a relationship based on supplier/consumer faced up interests instead of an associative relationship. The member is not recognized to be the owner of the cooperative and to participate in its management, besides using its services. This forced application of the consumer's defense law leads to consider the cooperative as a common commercial company and the member as an external third party, instead of considering it as a real organization for the defense of its own consumers.

A similar situation occurs between the cooperative law and administrative law regulations about public services. In the same way, there usually is confusion between cooperative law and labor law which integrates the relationship of the labor cooperative and its members

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with an economically dependent work contract.

Another conflict case usually happens between treasury inspecting entities of certain activities (as the Central Bank) and the controlling authority of the Law of Cooperatives, motivated by the missing recognition of the peculiar nature of cooperatives. On the other hand, the Central Bank is reluctant to admit the role of cooperatives in the financial activity.

Although a general concurrence exists regarding the merit of the specific law of cooperatives, the combination of other applicable laws, rules and regulations leads to the conclusion that, even with some differentiating aspects in the opinions, the categorization that best reflects the support level of the law in general to cooperatives may be synthesized stating that "is more against than in favor of cooperatives".

IV. Recommendations for the improvement of the national legal framework

- Express recognition of the cooperative difference in the law referred to diverse services avoiding the equal treatment when objective differences exist with for-profit companies.
- Simplification and acceleration of administrative procedures for the legal constitution and statute reforms of cooperatives.
- Establishment of a simplified accounting system for small cooperatives.
- Modernization of the social entities meeting system allowing distance meetings and accounting recording and certificates of contributions through digital means.
- Recognition of cooperatives as not subject to the income tax instead of exempt, since this treatment only implies a legal concession.
- Recognition of the cooperative act as the core idea for the treatment of cooperatives on fiscal subject.
- Keeping in mind their special characteristics, establishment of a specific system for worker and credit cooperatives, in subjection to the general dispositions of the Law of Cooperatives.
- Grant representation to cooperatives of entities related to their different activities.
- Ensure cooperative education to be included in the different levels of teaching with

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adaptation to the various characteristics of each of them.

- In a future constitutional reform, include the recognition and support of the cooperative movement as a way to ensure public policies appropriate to its nature and ensure, with a clear indication of responsibilities, its effective fulfillment.
- Maintain a permanent and organic relationship with the Parliament to have an impact in any laws that may affect cooperatives and ensure the existence of committees and parliament entities linked to the representative organizations of cooperatives.

V. Conclusions

It is necessary to highlight that the answers of the member entities of ICA have been limited, but coinciding, in general, between them and with the expert's opinion, and for this reason their inclusion in the report has not faced any problems. Besides, the different declarations and documents recently produced by the cooperative movement have also been taken into account, whether they are generic or referred to specific fields.

On the other hand, the devising of the report has coincided with the parliament process of the yearly budget law of the national public administration which includes disturbing dispositions related to the taxation of cooperatives, which highlights the importance of relying on these investigations and on the orientation leading to an adequate and opportune incidence work. The information on this subject that reflects the situation and experience of other countries, both in the region and worldwide, is considered very opportune.

Buenos Aires, October 2018.

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