



## LEGAL COOPERATIVE FRAMEWORK ANALYSIS

### Within the ICA-EU Convention

### NATIONAL REPORT FOR COLOMBIA

#### I. Introduction:

The national report from Colombia that provided a response to the questionnaire was carried out under a thorough analysis of national legislation that encompasses the cooperative system in the country. This report has been carried out by national expert Olga Lucía Velásquez whom, throughout the years has accumulated experience and has worked for the cooperative and solidarity sectors in the country. As a member of Congress, she promoted mechanisms that favored the sector from a legislative platform.

This report was written based on the research from Legal Cooperative Framework Analysis initiated by the International Cooperative Alliance (ICA) and its regional offices. Research is carried out within the framework of an alliance signed between the European Union and ICA for the 2016-2020 period, which aims to strengthen the cooperative movement and its ability to promote international development.

The legal framework analysis seeks to improve the knowledge and evaluation of the cooperative legislation, with a goal to ensure that legislative regulation acknowledge the specificities of the cooperative model and ensure equal conditions compared with other forms of association. Likewise, this analysis will help ICA members as input in their defence and recommendations regarding the creation or improvement of legal frameworks, to document the implementation of cooperative laws and policies, and to monitor their evolution.

This analysis, reflected in the report, covered 4 stages of methodological procedure, as follows: 1) Compilation of national legislation from its general scope with the National Political Constitution of Colombia, the laws, decree-laws and regulations, 2) a compendium was made of the most prominent studies and written works that have been carried out about the cooperative movement and solidarity economy until present day, 3) a total of 4 sessions were carried out, working with the experts at COONFECOP to create the report with the inputs previously identified and with the reports made by the partners that sent replies to the questions of parts II and III of the questionnaire; and 4) once the preparation was completed, the responses were discussed with COONFECOP and its technical team looking to





harmonize the answers with the needs identified by the sector and those involved, as well as with the ICA's clear objective regarding this project.

In order to carry out a participatory analysis, a questionnaire was sent out prepared by the International Cooperative Alliance. This questionnaire was sent to all the member organizations of Cooperatives of the Americas in Colombia. Responses to this questionnaire from member organizations were voluntary, responses were received from the following organizations: Banco Cooperativo CoopCentral (*Cooperative Bank*), CODEMA Cooperativa del Magisterio (*Teacher's Bureau Cooperative*), La Equidad Seguros (*Equity Insurance*), Confederación de Cooperativas de Colombia (*Cooperatives Confederation of Colombia*) (CONFECOOP, for its acronym in Spanish), Asociación Colombiana de Cooperativas (*Colombian Association of Cooperatives*) (ASCOOP, for its acronym in Spanish), Grupo Empresarial Cooperativo-Coomeva (*Cooperative Business Group-Coomeva*). Their responses were analyzed, and it was found that organizations were knowledgeable regarding historical and current regulations, as well as the trials and challenges the sector faces today.

It is important to note that the practice of self-review, challenges and perspectives of the cooperative sector in Colombia performed, is positively converted into updated input that allows clear visualization of barriers, difficulties and benefits that the system currently offers within the country.

The following objectives were identified under the guidance and scheme proposed by the experts at ICA, who developed the questionnaire:

### **General Objective**

Analyze the existing regulatory and normative framework in Colombia for the cooperative sector and its impact on the country.

### **Specific Objectives:**

1. Identify existing barriers that do not allow the growth and strengthening of the cooperative sector in Colombia.
2. Establish the conceptual definitions that exist in the Colombian legislation for the cooperative ecosystem.
3. Identify the vision of the actors who make up the cooperative ecosystem in Colombia before current legislation.





## II. National Cooperative Legislation: Colombia

### i. General Context

The normative framework presented in the questionnaire's response has been taken from the principle of the regulative hierarchy of the Colombian State and its relevance to the cooperative ecosystem in the country. Current regulations, lead toward the principles, foundations and rights established within the National Constitution of 1991, however, the normative framework has a multidisciplinary regulation that precedes the new Constitutional Charter, Law 79 from 1988 by means of which the cooperative legislation is updated and which to date remains active and is the legal basis of the cooperative movement.

After the creation of the Constitutional Charter from 1991, the country recognized the entirety of the actors that converge in the ecosystem of a solidarity economy, as such, Law 454 from 1998 is established. This is the legal framework that updates and modifies some concepts and scopes within Law 79 from 1988 but does NOT repeal it, leaving it to stand firmly and with full autonomy for the cooperative movement.

Cooperatives in Colombia are regulated in the national legislation and have been framed within fundamental principles of the State reflected both in the constitutional objectives, as well as laws and regulatory decrees that have allowed the creation, coordination and monitoring of cooperatives in the country. However, this regulation is not adjusted to the constant and innovative changes that the sector demands and does not provide legal flexibility which sometimes obstructs the ability of cooperatives within the Colombian society to take action.

Cooperative principles are explicit in Law 454 from 1998, where Article 4 points out the following: ...Principles of a Solidarity Economy. The following are principles of a Solidarity Economy: 1. To be good, its work and mechanisms of cooperation have precedence over the means of production. 2. Spirit of solidarity, cooperation, participation and mutual help. 3. An administration that is democratic, participatory, self-managing and entrepreneurial. 4. Voluntary, responsible and open adhesion. 5. Associative and solidary properties of the means of production. 6. Economic participation of members, in justice and equity. 7. Training and information for its members, on a permanent, timely and progressive basis. 8. Autonomy, self-determination, and self-government. 9. Community Service. 10. Integration with other organizations in the same sector. 11. Promotion of an ecological culture.

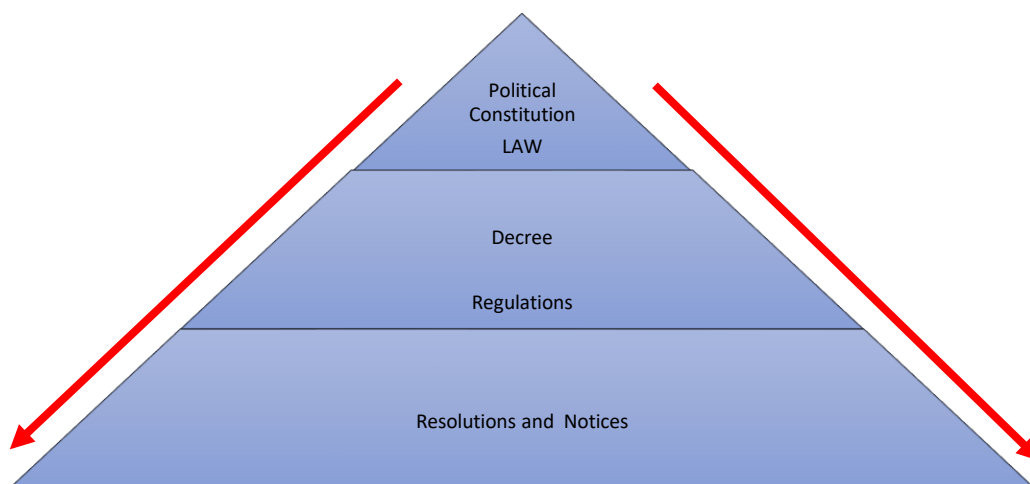
This way, the National Legislation of Colombia is synchronized in a welcoming manner with the guiding principles of the cooperative movement and are presented as a fundamental basis



of the ins and outs of the ecosystem such as fundamental principles of any organization that meets the requirements.

Furthermore, in order to present a brief regulatory context, it is important to understand that the Colombian judicial regulation has an intrinsic but not explicit normative hierarchy that is found within the Political Constitution. Without a doubt, the constitutional norms occupy the prevailing place within the other existing norms being the source of validity of those that follow it in hierarchical scale. That is to say, those of an inferior category must emphasize and be in synchrony and harmony with those that are superior. Thus, it can be inferred that there is a regulatory system, where a judicial order converges in a synchronized way which is consistent with each one of the regulations with the superior to the inferior<sup>1</sup>. In the same way the hierarchy prevails with an order of the branches of government (legislative, executive and judicial) together with land-use planning, both established in the Constitutional Charter.

### Graph 1. Colombian Normative Order.



<sup>1</sup> Central idea taken from the Constitutional Sentence C-037/00 of the Constitutional Court of Colombia. See in: <http://www.corteconstitucional.gov.co/relatoria/2000/C-037-00.htm>.



## Normative Summary:

<ul style="list-style-type: none"> <li>• <a href="#"><u>Law 79 from 1988</u></a></li> </ul>	<p>By which the cooperative legislation is updated-Art. 1: The purpose of this law is to equip the cooperative sector with a framework conducive to its development as a fundamental part of the national economy.</p>
<p><b>NOTE</b></p>	<p>Law 79 from 1988 is regulated by the following Decree-Laws, which extend and establish particularities regarding the norm</p>
<ul style="list-style-type: none"> <li>• <a href="#"><u>Decree-Law 1480 from 1989: Mutual Associations</u></a></li> </ul>	<p>By which the nature, characteristics, constitution, internal regimes, of liability sanctions are determined, and measures are dictated for the promotion of mutual associations.</p>
<ul style="list-style-type: none"> <li>• <a href="#"><u>Decree-Law 1481 from 1989: Employee Funds</u></a></li> </ul>	<p>By which the nature, characteristics, constitution, internal regimes, for liability and sanctions are determined, and measures are dictated for the promotion of employee funds.</p>
<ul style="list-style-type: none"> <li>• <a href="#"><u>Decree-Law 1482 from 1989: Public Administration Services Companies</u></a></li> </ul>	<p>By which the nature, characteristics, constitution, internal regimes, of responsibility and sanctions are determined and measures are dictated for the promotion of service companies in the forms of cooperative public administrations.</p>
<ul style="list-style-type: none"> <li>• <a href="#"><u>Political Constitution of 1991</u></a></li> </ul>	<p>Articles: 1, 2, 25, 58, 60, 64, 333 and 363.</p>
<ul style="list-style-type: none"> <li>• <a href="#"><u>Law 454 from 1998</u></a></li> </ul>	<p>By which the conceptual framework that regulates the solidarity economy is determined, the National Administrative Department of Cooperatives is transformed into the National Administrative Department of the Solidarity Economy, the Superintendence of Solidarity Economy is created, the Guarantee Fund for Financial Savings and Credit Cooperatives is created, rules on the financial activity of cooperative entities are dictated and other provisions are issued</p>

## ii. Specific Elements of the Cooperative Law





## a) Definition and Cooperative Objectives

According to the aforementioned, the existence of Law 79 from 1988, allows a transversal and clear understanding of the definition that is understood in Colombia, it regulates and manifests what the cooperative movement is in the country: Article 4. A Cooperative is a non-profit associative company, in which the workers or the users, depending on the case, are simultaneously the contributors and the managers of the company, created with the objective of producing or distributing goods or services jointly and efficiently to meet the needs of their members and the community in general.

It is presumed that an associative company is a non-profit when it complies with the following requirements: 1. Establishes the non-distributable nature of social reserves and in case of liquidation, that of remaining assets. 2. To allocate its surplus to providing services of a social nature, to the growth of its reserves and funds, and to reinstate it to its members in proportion to the use of services or participation in the work of the company, without prejudice to amortize the contributions and keep them in their real value.

### Differences between associated work cooperatives and business corporations

TYPE	COOPERATIVES	BUSINESS CORPORATION
<b>Economic Regime</b>	Equity constituted by individual social contributions in cash or in kind	Equity constituted in contributions of capital represented in shares or social dues depending on the type of association
<b>Limit for the acquisition of contributions</b>	The individual contribution limit reaches 10% for a member and up to 49% for a legal entity	The individual contribution limit reaches 99%, depending on the type of business
<b>Responsibility of the administration</b>	It is administered by members	Partners freely appoint their administrators
<b>Tax Regime</b>	Special tax regime	Income tax is paid
<b>Participation in decisions</b>	One vote for each associate regardless of the contribution amount	Votes are given in terms of capital
<b>Distribution of Earnings</b>	These are a surplus and are applied according to the cooperative regime	These are profits, they are distributed according to the capital



<b>Access to Society</b>	Entering and exiting is voluntary	It is private and depends on the contributions of capital
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The types of cooperatives per economic activity are established in Law 79 from 1988. In regard to specific norms, there are regulations regarding worker cooperatives. The following types are found:

<p><b>Insurance Cooperatives</b></p>	<p><u>Law 79 from 1988</u>, in its articles:</p> <p>ARTICLE 72. Cooperative entities providing insurance services must be specialized and shall mainly fulfil an insurance activity in the interest of their own members and of the community linked to them.</p> <p>Without prejudice to the provisions of Article 56 of this Law, when provision and solidarity services mentioned in Article 65 of this law require a technical basis that assimilate to insurance, they must be contracted with cooperative entities specialized in this field, or with other legally established insurance entities. The entities that currently provide the services may continue to do so unless, required by the corresponding State agency, they do not demonstrate their technical and economic competence.</p> <p>ARTICLE 73. The contributions and technical reserves of the cooperative insurance entities shall be allocated to the goods and deposits necessary for an effective operation and investments in institutions of the cooperative sector or the public sector, always looking after the necessary safety, liquidity, and profitability. ARTICLE 74. Cooperative insurance entities, in accordance with the cooperative philosophy shall not in principle be subject to the intermediation of insurance agencies, agents or brokers. However, the statutes may determine otherwise.</p>
<p><b>Transport Cooperatives</b></p>	<p><u>Law 79 from 1988</u>,</p> <p>ARTICLE 75. Transportation cooperatives, belong separately or jointly to service users, workers or associated owners for the production and delivery of said service.</p>
<p><b>Agriculture and Livestock, Agro-industrial, Fish and</b></p>	<p><u>Law 79 from 1988</u>, in its articles:</p> <p>ARTICLE 84. Agriculture and livestock, agro-industrial, fish and mining cooperatives can belong to workers or owners of both modalities and the provisions of article 71 of this Law shall apply for their constitution.</p>



<p><b>Mining Cooperatives</b></p>	<p><b>ARTICLE 85.</b> Agriculture and livestock cooperatives may exploit their activities by means of the collective or individual development of the land and the goods linked to it, within the broadest contractual conception, and even being able to hold trust contracts with members or third parties.</p>
<p><b>Specialized Cooperatives</b></p>	<p><u><b>Law 79 from 1988,</b></u> <b>ARTICLE 62.</b> Specialized cooperatives are organized to meet a specific need, corresponding to a single branch of economic, social or cultural activity. These cooperatives may offer services other than those established in their social object, by means of the signing of agreements with other cooperative entities.</p>
<p><b>Multi-active Cooperatives</b></p>	<p><u><b>Law 79 from 1988,</b></u> <b>ARTICLE 63.</b> Multi-active cooperatives are organized to meet various needs, through the concurrence of services in a single legal entity. The services must be organized in independent sections, according to the characteristics of each specialized type of cooperative.</p>
<p><b>Integral Cooperatives</b></p>	<p><u><b>Law 79 from 1988,</b></u> <b>ARTICLE 64.</b> Integral cooperatives shall be those which, in developing their social object, carry out two or more related and complementary activities among each other in production, distribution, consumption and provision of services.</p>
<p><b>Consumer Cooperatives</b></p>	<p><u><b>Law 79 of 1988,</b></u> <b>ARTICLE 66.</b> In specialized consumer cooperatives, relation shall be open to all persons who can make use of their services and who accept the responsibilities inherent to the association. <b>ARTICLE 67.</b> The goods or products mentioned in the second subsection of Article 233 of the Penal Code, in reference to cooperatives, exclusively corresponds to basic need supplies, articles or products obtained from consumption cooperatives.</p>
<p><b>Education Cooperatives</b></p>	<p><u><b>Law 79 from 1988,</b></u> <b>ARTICLE 68.</b> Education cooperatives will belong to users or workers and will be able to provide the different levels or degrees of education, including higher education. The people receiving this education will be the very members, if they meet the conditions in Article 21 of this Law, or the parents or guardians. Those cooperatives associating education workers will be considered as associated work.</p>





	<p><b>ARTICLE 91.</b> The school savings activities, consumption, supply and other complementary services will have an educational purpose and will be carried out through cooperative workshops, whose operation will be regulated by the Ministry of National Education of Cooperatives.</p>
<p><b>Housing Cooperatives (Art. 76 to 83)</b></p>	<p><b>Law 79 from 1988,</b> (Established from Art. 76 to 83) <b>ARTICLE 76.</b> Housing cooperatives that aim to organize and develop cooperative housing complexes, and in which the members are simultaneously contributors and users of the housing complex, may limit the association to the number of housing units included in the program.</p>
<p><b>Concerning the employment of young people</b></p>	<p><b>Law 1780 from 2016:</b> Through which employment and youth entrepreneurship are promoted, measures are generated to overcome barriers to access the labor market and other provisions are dictated. <b>ARTICLE 27. Cooperative and Solidarity Economic and Financial Education within the Educational System.</b> To advance in the national purpose for children and youth to receive economic and financial education, in all educational institutions, public and private, a culture of solidarity, and cooperation will be encouraged in all educational cycles, as well as the development of the cooperative business model and the solidarity economy, as an alternative to associativity and cooperative and supportive entrepreneurship to generate income, and the adequate valuation of the economy. <b>PARAGRAPH.</b> The experiences of school cooperatives will be supported, as a form of cooperative entrepreneurship and in support of the educational process in curricular areas.</p>



**Note:** In general, when normativity regulates the development of an economic activity, which can be provided by the cooperative legal entity, there are legal provisions that must be observed.

For example:

<p><b>Health Cooperatives</b></p> <p>Cooperatives of this kind are not established in Law 79 from 1988</p>	<p><b>Law 100 from 1993.</b> For which the integral social security system is created, and other provisions are dictated</p> <p><b>ARTICLE 181.</b> Types of Health Promoting Entities. The National Superintendence of Health may authorize a Health Promoting Entity as such, provided that they comply with the requirements established in Article 180, to the following entities: Paragraphs G and H:</p> <p>g. Non-governmental organizations and the social-solidarity sector that are established for that purpose, especially solidarity health companies and those of the indigenous communities; h. Private, solidarity or public entities that are created with the specific purpose of functioning as a Health Promoting Entity.</p>
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Likewise, there are norms that regulate various economic activities, and which are mandatory by any legal type of company that wants to provide them, for example: Tax statute, norms for the provision of private security, statutory of public services, public contracting, rural development, transportation services, among others.

### b) Establishment, Cooperative Membership and Government

The constitution of a cooperative, according to Law 79 from 1988, is made by a constitution assembly, in which the statutes will be approved, and the administration and surveillance bodies will be appointed, depending on priority. The Board of Directors designated will appoint the legal representative of the entity, who shall be responsible for processing the acknowledgement of the legal status. The minutes of the constitution assembly will be signed by the founding members, noting their legal identification document and the value of the initial contributions. The minimum number of founders shall be twenty, excluding the exceptions established in special norms (10 for associated work, agricultural and mining cooperatives and 5 for pre-cooperatives).

Likewise, just as the creation of new cooperatives is allowed, Law 79 from 1988 allows its dissolution. Article 107 determines the alternative as follows: Article 107. Cooperatives shall be dissolved for any of the following reasons:



1. A voluntary agreement among members, 2. By reduction of members to less than the minimum number required for its constitution, provided that this situation is prolonged for more than six months, 3. Inability to fulfill the social objective for which it was created, 4. By merger or incorporation into another cooperative, 5. Because of the initiation of an arrangement with creditors, and 6. Because the means used for the fulfillment of their purposes or because the activities they develop are against the law, good practices or the spirit of the cooperative movement.

Within the national normative the national democratic principles are determined, these are found in Law 79 from 1988. The norm allows, by means of the statute of each cooperative that the associative link be defined according to Article 19, in which the autonomy of the cooperatives is exposed in the third numeral: Numeral 3. Rights and duties of members; conditions for its administration, withdrawal and exclusion and determination of the competent body for its decision.

In regard to the vote and with the intention to establish the true democratic spirit, Law 79 from 1988 in Article 33 determines: In general assemblies each member shall have only one vote, with the exception established in Article 96 of this Law. Members or delegates summoned shall not be able to delegate their representation in any case and for any effect. The legal persons associated with the cooperative shall participate in the assemblies thereof, through their legal representative or the person they appoint. Votes cannot be delegated.

Article 96 states that: The cooperative bodies of a second and third grade shall establish in the statutes the voting regime and representation proportional to the number of members, to the volume of operations with the entity, or a combination of these factors, setting a minimum and a maximum that ensures the participation of its members and avoid the discriminatory dominance of any one member.

The national legislation foresees by Decree 1798 from 1998, that all cooperatives and actors who are part of the solidarity economy register their activities in a mandatory way for their supervision, control and follow-up, Article 1, establishes: ...Registration and certification of entities of the solidarity economy. Chambers of commerce shall continue to practice the function of recording acts, books and documents from which the law requires this formality and of certification of existence and legal representation of the entities of the solidarity economy discussed in the second paragraph of Article 6 in Law 454 from 1998, until the Superintendence of the Solidarity Economy is organized.

Regarding the admission of new members or "third parties" the statute of each cooperative defines the associative link according to Law 79 from 1988, Article 19, in which the autonomy of cooperatives is determined under numeral three: Rights and duties of members;





conditions regarding its administration, withdrawal and exclusion and determination of the competent body for its decision. Article 22 states that: The condition as member of a cooperative is acquired 1, by the founders, as of the date of the constitution assembly and 2, for those who enter later as of the date they are accepted by the competent body.

Therefore, the link of third parties depends on the statutes of each cooperative. If the cooperative is considered open relation, anyone who complies with the requirements stated in the statute can enter. If it is considered closed relation, only people who comply with the parameters of that closed link can enter. For example: A milk producing cooperative. Only those who certify their condition as milk producers can enter.

The normative of Law 79 from 1988, states that any member is at liberty to withdraw whenever they wish, the only requirement is to formalize the withdrawal request in writing. As for the return of contributions, this procedure is determined by the statutes of the cooperative and its regulations.

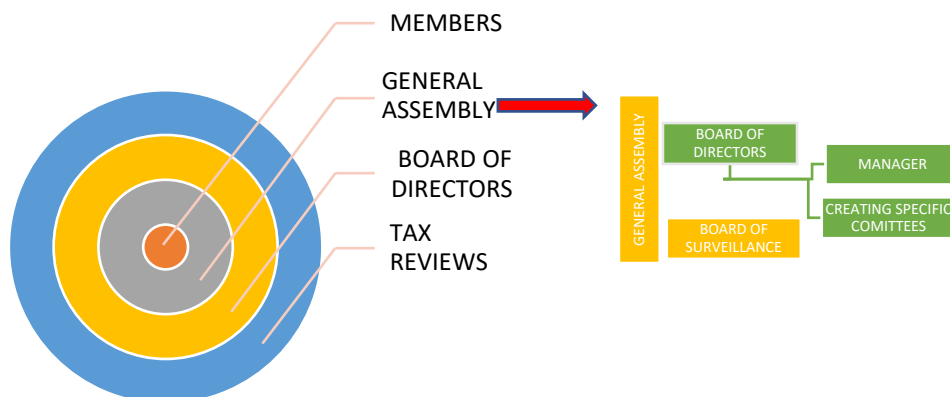
The structure and organization of cooperatives are established in the following way:



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## COOPERATIVE ADMINISTRATION AND GOVERNANCE BODIES



**Members:** Cooperatives exist primarily to meet the needs of its members according to certain values and principles that define them as unique organizations.

**Assembly:** It serves as the maximum expression of cooperative democracy, it is necessary to award it the most important decisions in the life of the cooperative and the election of bodies in charge of administration and supervision. In this way it is preserved for the whole of the members to decide on matters of greater institutional and business-related relevance preventing conflicts and the existence of grey or indefinite areas regarding the corresponding attributions, especially for the board of directors.

**Board of Directors:** The first condition for the board of directors to fulfil their role is to be genuinely representative of the members, which means that all members of the cooperative feel encouraged to postulate to participate in this entity, considering said participation a service to others and a personal honor.

**Vote:** During general assemblies each member will be assigned a single vote, apart from the exception established in Article 96 of this Law. Members or delegates summoned may not delegate their representation under any circumstance or for any purpose. The legal persons associated with the cooperative shall participate in the assemblies thereof, through their legal representative or the person they appoint. It cannot be delegated. Article 96. The cooperative bodies of second and third grade shall establish in the statutes the voting regime and a representation that is proportional to the number of members, to the volume of operations with the entity, or a combination of these factors, setting a minimum and a maximum that



ensures the participation of its members and avoids the discriminatory dominance of any member.

It is the responsibility of the administrators of cooperatives, employee funds and mutuals to respond in solidarity and without limit to the damages due to willful misconduct or fault brought upon the society, the partners or third parties. The above applies under the same legal provisions<sup>2</sup> as for commercial companies stipulated in the trade code<sup>3</sup>.

### c) Cooperative Financial Structure and Taxes

Every cooperative must have minimal social contributions which cannot be reduced during the life of the cooperative and these must be determined in the statute. It is possible to establish diverse contributions according to the type of cooperative and the economic capacity of the members. The percentages and regularity of the contributions will be established within the statutes. Regarding the subscribed capital, the contribution is considered venture capital, when the member withdraws, in principle, the total amount of the contribution is handed over. To this end, as mentioned in Article 19, Numeral 10 in Law 79 from 1988, the Statute of the Cooperative shall establish the procedure for said return or the transfer of said contributions.

Cooperatives are subject to the tax regime, on equal conditions, just as any other trading company. In terms of income and complimentary services, they are subject to a special tax regime contained in Law 1819 from 2016, Article 142: Cooperatives, their associations, unions, central leagues, higher-level institutions of a financial nature, mutualist associations, auxiliary institutions of cooperatives, cooperative confederations, provided in the cooperative legislation, monitored by a superintendence or control agency; belong to the Special Tax Regime and are taxed on their net or surplus profits at the special single rate of twenty percent (20%). The tax shall be taken entirely from the Education and Solidarity Fund under Article 54 in Law 79 from 1988. Cooperatives shall calculate this net or surplus benefit in accordance with the law and the current cooperative regulations. Legal reserves to which

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<sup>2</sup> ARTICLE 200. ADMINISTRATORS' RESPONSIBILITY. Administrators will respond with solidarity and without limit to the damages caused to the company, the partners or third parties by misconduct or fault.

Not liable to said responsibility are those who have not been aware of the action or omission or have voted against, provided it is not executed. In cases of non-fulfilment or where the limits of its functions are exceeded, or there is violation of the law or of the statutes, fault of the Administrator shall be presumed. In the same way, responsibility will be presumed when the administrators have proposed or executed the decision on distribution of profits in contravention of the provisions of article 151 of the Code of Commerce and other regulations on the matter. In these cases, the administrator will answer for the sums not handed out or distributed in excess and for the damages that take place. NOTE: Cooperative banks, financial cooperatives, and savings and credit cooperatives are required by law to have a code of good cooperative governance and a code of ethics.

<sup>3</sup> See: – [DECREE 410 OF 1971](#). "By which the Code of Commerce is issued".



these entities are obligated cannot not be registered as an expense for the determination of the net profit or surplus.

On the other hand, it is possible to establish various contributions on behalf of the members according to the type of cooperative, and the economic capacity of its members. The percentages and regularity of the contributions will be established within the statutes. In the same way, the contribution can be linked, especially in production and marketing cooperatives.

Law 79 from 1988, establishes the following regarding redistribution and returns:

Article 49. The social contributions of the members will be directly affected from their origin in favor of the cooperative as a guarantee of the obligations contracted with said cooperative. Said contributions may not be taxed by titleholders in favor of third parties, they will be unseizable and may only be assigned to other members in the cases and in the way determined by the statutes and regulations.

Article 54. If from the practice there were a surplus, it shall be applied as follows: Twenty percent (20%) minimum to create and maintain a reserve for the protection of social contributions; twenty percent (20%) minimum for the education fund and ten percent (10%) minimum for a solidarity fund.

The remainder may be applied, in whole or in part, as determined by the statutes or the General Assembly, in the following manner: 1. Allocating it to the revaluation of contributions, taking into account the alterations in their real value, 2. Allocating it to common services and social security, 3. Returning it to the members in connection with the use of the services or participation in work, 4. Allocating it to a fund for amortization of contributions belonging the members.

Article 56. Cooperatives may, by decision of the General Assembly, create other reserves and funds for specific purposes. They can also anticipate in their budgets and register in their accounting, progressive increments of the reserves and funds charging the annual financial year.

On the other hand, the same regulation establishes that regarding corporate returns: the capital of the cooperative is strengthened, as stated in the Law: Article 10. Cooperatives will preferentially provide their services to member staff. However, in accordance with its statutes they can be extended to non-affiliated public, always taking into account social interest or collective welfare. In such cases, the surpluses obtained will be brought to a social fund not susceptible to distribution.



Investor partners are NOT allowed by the regulations because, that would no longer be within the spirit of the cooperative movement determined in the current legal normative. Moreover, financial and savings and credit cooperatives may issue financial instruments, only those that are determined to do so by their function.

#### d) Other Specific Characteristics

Regarding public or state controls, there is a supervision and control system by the Colombian State. As a general rule, the Superintendence of the Solidarity Economy is in charge of this role. Its functions are described in Law 454 from 1998 in Article 36. In the case of specialized economic activities, supervision is carried out by the superintendence related to said activity. (Health, Surveillance and private security, financial, public services and transportation).

On the other hand, regarding cooperation between cooperatives according to Article 5 in Law 79 under numerals 5 and 10: Article 5. All cooperatives must meet the following characteristics:

5. To economically and socially integrate the cooperative sector.

10. To promote integration with other organizations of a popular nature whose objective is to promote the integral development of humans.

### III. Degree of ease of national legislation for cooperatives

The contributions of ASCOOP, CODEMA, COOPCENRAL and Equidad Seguros (*Equity Insurance*), as well as that of CONFECOOP, were crucial to identify the barriers that, to this date and according to current legislation and the interpretation that is made from the political standpoint in the country, and they are the following:

- Cooperative financial activity: In practice they are not able to pay the monthly pension because they are monopolized by the banking system. Law 700 from 2001.
  - Commercial companies are exempt from paying the parafiscality. Law 1819 from 2016.
  - They cannot receive temporary liquidity surpluses from public entities, these are directed toward traditional banks.
  - Limitations of a certain kind of public procurement for cooperatives. Law 80 from 1993.
  - In certain cases cannot participate in public biddings
  - "Political" barriers due to reputational risk of interrelation with work cooperatives.
- The cooperative movement is associated with the trade union movement as it is part





of the workers, these movements in the country, due to historical aspects, mark the movements or associations generated by workers.

- Certain loans that promote public banks do not grant loans or access to them, for cooperatives since in most cases the aforementioned public loans or funds do not stipulate associative contracts when carried out under an arrangement of a solidarity debt for the total amount of members
- The minimum number to create a cooperative is 20 members, contrary to Anonymous Simplified Corporations, which can only be created with one person.
- There is an uneven regulatory treatment, in some cases, between commercial financial entities (banks, finance companies) and financial and savings and credit cooperatives authorized by law to provide financial services, because some regulations only allow said services to be provided by entities supervised by the Financial Superintendence of Colombia, thus excluding cooperatives monitored by the Supersolidaria (Superintendence of the Solidarity Economy)
- NOTE: From the year 2000 to date Confecoop has pointed out that there have been about 15 legal and regulatory changes that restrict real participation in several segments of the market<sup>4</sup>.

Some economic activities can only be provided by companies that are regulated by the Code of Commerce. Bearing in mind that cooperatives have a different legal regime, they are automatically excluded to move forward in this type of activities. Example: Transportation, health and private security (property care).

Law 79 from 1988 is the best innovative and inclusive advancement for the cooperative movement which at the time of its creation had a visionary approach that has allowed the development of the cooperative movement in the country, however, this law needs certain modifications and adjustments that reflect the national dynamics and the areas in which cooperatives can interact effectively and efficiently within the country.

**The following are some good practices included and promoted in the Colombian legislation:**

- The Constitutional Framework that indicates the State's duty to promote, protect and strengthen the associative and solidary forms of property.
- The declaration, by legal mandate, of the cooperative model as public interest.

<sup>4</sup> See in: [http://confecoop.coop/wp-content/uploads/2018/08/Politica\\_P\\_para\\_promover\\_el\\_cooperativismo.pdf?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=comunicoop\\_2251\\_una\\_politica\\_publica\\_para\\_el\\_cooperativismo\\_es\\_garantizarle\\_al\\_pais\\_mayor\\_inclusion\\_y\\_menos\\_desigualdad\\_confecoop&utm\\_term=2018-08-22](http://confecoop.coop/wp-content/uploads/2018/08/Politica_P_para_promover_el_cooperativismo.pdf?utm_source=newsletter&utm_medium=email&utm_campaign=comunicoop_2251_una_politica_publica_para_el_cooperativismo_es_garantizarle_al_pais_mayor_inclusion_y_menos_desigualdad_confecoop&utm_term=2018-08-22). Consulted: November 29, 2019.



- The existence of rules of prudential regulation
- The promotion of Codes of Good Cooperative Governance - Codes of ethics for financial and credit and savings cooperatives (binding)
- The development of risk management regulations
- The existence of deposit insurance
- The obligation for cooperatives to use a system to report statistical, accounting and financial information before the State.
- The existence of a social control board or committee within the cooperatives.

The promotion of cooperatives has been done but its function and execution have a low impact. There are no incentives within the legislation, but there are social and political programs in the Colombian State that promote them.

As for members and reports from participating cooperatives, it has been identified that existing national legislation has more barriers than benefits, i.e. it turns out to be more against the cooperative movement in the country than in its favor. This is due, in part, to the lack of a strong institution with coherent functions and current practices that strengthen the cooperative movement within the country and that is under a relevant structure in decision making, for example, one that exists under the outline of the Presidency of the Republic.

#### IV. Recommendations to Improve the National Legal Framework

There have been institutional changes for the sector that need to be generated as soon as possible. Institutional strengthening must be an immediate priority, where the entity that carries out the promotion and implementation of public policy in the sector is dependent on the Presidency of the Republic. The creation of an affiliated department that can generate incidence is necessary, one that can carry out inter-institutional coordination to benefit the sector, that generates technical guidelines for the strengthening of the ecosystem and that has its own budget to promote the cooperative movement, the development of studies and technical documents to create policy guidelines, projects and programs that would benefit the ecosystem.

Members, the President of Confescoop and the expert, through the course of dialogue determined a need to build a public policy that promotes the cooperative movement in Colombia based on the following criteria:

1. State Policy. The involvement of presidential programs, as well as ministries, administrative departments and executing agencies, among them, those of a governmental financial nature.



2. Accepted, adapted and developed at the national, regional and local levels.
3. Multi-disciplinary. Integrating multidimensional components of development (gender, youth, environment, inclusion, reduction of inequality, among others). That is to say that there is emphasis on all other public policies. For ex: gender policy, reintegration policy, land restitution policy, SMEs financing policy, educational policy, etc.
4. Integral. It must embrace the different fields of society, due to the nature of the cooperative model: social, economic, cultural and environmental
5. Medium and long term. It must transcend governmental terms and development plans.

With the proposal generated by members, in alignment with the previous multidisciplinary criteria for the construction of public policy, it must include:

1. A legal framework and a public institutionality that provides legal certainty and adequate controls to the development of the cooperative social-corporate activity, according to their special nature.
2. Adequate stimuli for the cooperative social-corporate activity from the different governmental agencies, which allows the consolidation of the portfolio of products and services offered by these organizations.
3. An adequate level of knowledge about the cooperative social-corporate model, so that Colombians understand this way of doing business, whose purpose is to improve people's quality of life.
4. Incorporate public policy guidelines into the National Development Plan to promote and strengthen the associative and solidarity forms of property, in such a way that its multidisciplinary application is clear.
5. Issue a CONPES document to materialize the public policy guidelines contained in the National Development Plan, in order to ensure the allocation of resources, responsibility for actions and compliance verification mechanisms.
6. Promote the definition of public policies for the promotion, encouragement and strengthening of cooperatives in the departmental and municipal development plans.
7. Advance in the promotion of a culture of solidarity, cooperation and mutual help to build citizenship, generate trust within society, stimulate social changes and overcome polarization.
8. Regulate Article 27 of Law 1780 from 2016, so that young Colombians can acquire the necessary knowledge to connect, in a conscious and voluntary manner, to cooperative and solidarity initiatives, as a tool to achieve a higher level of wellbeing.



9. Allow the creation of cooperatives with a minimum number of five (5) members, except for savings and credit and financial cooperatives.
10. Revise and adjust the necessary procedures for the creation of cooperatives in order to minimize the burdens related to entrepreneurial cooperative business.
11. Create a Fund for Cooperative Promotion and Development, as a parafiscal mechanism, administered by the guild, in order to promote the creation, operation, technical assistance and consolidation of cooperatives.
12. Promote the state procurement programs (municipal and departmental) that support cooperatives, with mechanisms such as preferences or points in favor of cooperative production in public biddings.
13. Issue or adapt laws that favor the cooperative model, for which the current legal frameworks should be taken as reference for SMEs (Pymes, for its acronym in Spanish) and MSMEs (Mipymes, for its acronym in Spanish), entrepreneurship, youth and gender, among others.
14. Adjust the legislation to allow cooperatives to have as partners micro and small businesses for profit, provided that said association is suitable for the fulfillment of the social goal of the cooperative and that it does not undermine its purpose of service, nor the non-profit nature of their activities.

## V. Conclusions

A measurement compounded of variables that can be evaluated annually to analyse the characteristics of the sector is considered necessary, for example: New cooperatives in Colombia, number of affiliates, type of affiliates, economic sectors and sample of the ecosystem, services offered and provided, among others, can help to better visualize the applicability of the regulation and growth of the ecosystem.

Complementary to this measurement, it is important to generate a closer bond to each of the partners in the country. It could be very useful to conduct discussion workshops and guided surveys in order to obtain a greater outlook of the views and perspectives of the sector in the country. These measures would certainly help the methodology and other phases of the project.

Advance towards the modernization of the normative, recognizing the nature of the sector as an inclusion factor, productive transformation and social change, that guarantees security and legal stability, taking Resolution 56/114 from the UN General Assembly of 2001 and Recommendation No. 193 of 2002 of the ILO as reference regarding the Promotion of Cooperatives.



Maintain the special tax regime for cooperatives, as it was before Law 1819 from 2016, that is to say, an income tax exemption regime. Management of 20% of the cooperative surplus made autonomously by the cooperatives themselves to apply to formal education slots and programs.

In the event that the tax reform decreases the rate of income tax for commercial enterprises, proportionately revise the rate or percentage that the cooperatives will have within the context of their own tax regime.

Address the parafiscal burden of cooperatives equal to that of other types of enterprises, in virtue of their contribution to the formalization and creation of jobs.

Remove access barriers or regulatory or administrative obstacles that restrict the participation of cooperatives in various areas of productive development or the provision of goods and services in conditions similar to those of other economic actors.

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