

FRAMEWORK LAW FOR THE COOPERATIVES IN LATIN AMERICA



ALIANZA COOPERATIVA INTERNACIONAL
INTERNATIONAL CO-OPERATIVE ALLIANCE
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PRESENTATION

Origin and rationale

In 1987 the Organization of Cooperatives of America (OCA,) decided to contribute to the development of cooperative laws in the Latin American countries through a Framework Law which would guide the updating of their corresponding laws.

For this purpose, it gathered a group of experts from different countries in the region who met during two seminars held in Santa Cruz de la Sierra and laid the foundations of the document, and then the coordinators drafted the document to submit it to the consultation of cooperative leaders and specialists on the topic. Finally, the *Framework Law on Cooperatives in Latin American* was approved by the assembly of OCA held in Bogotá in November 1988.

Thereafter, the Framework Law was widely disseminated and used to amend cooperative laws in numerous Latin American countries and stimulating at the same time the renewal of specialized studies and the advancement of cooperative law in general.

The need for updating

The time elapsed since the elaboration of the Framework Law and the profound changes experienced in the economic, social, and political context of Latin America and the rest of the world, led ICA-Americas to decide on the drafting of a new document that - using it as a basis - would continue fulfilling the original purposes.

It must be considered that in 1995 the International Cooperative Alliance (ICA) approved the *Statement on the Cooperative Identity* which contains an update of the cooperative principles, and that in recent years the United Nations and the International Labor Organization issued significant documents referring to cooperative law: *Guidelines aimed at creating a supportive environment for the development of cooperatives (Lineamientos orientados a la creación de un entorno favorable para el desarrollo cooperativo, A/Res. 56/114 of 19.12.01)* and the *Promotion of Cooperatives Recommendation, 2002 (Recommendation 193)*, respectively.

Besides this the resolution approved by the ICA at its General Assembly held in Seoul in October 2001 on *Cooperative policy and law* needs mentioning. It emphasizes the importance of adequate cooperative legislation for the creation and development of cooperative organizations.

To achieve this goal, a commission composed of experts from Central America and the Caribbean (Roxana Sánchez Boza), the Andean Region (Belisario Guarín Torres) and the Southern Cone (Dante Cracogna, who acted as the coordinator), who collaborated with the ILO Coop Branch Chief (Hagen Henry). This commission elaborated a draft that was submitted for discussion and consultation at the Cooperative Legislation Workshop and the First Meeting of Institutes for Cooperative Promotion, Development, Supervision and Credit held within the framework of the XV Regional Conference of ICA-Americas in Santo Domingo, Dominican Republic in October 2007. The document was then widely disseminated in order to have the opinions of the cooperative movement and that of experts on the continent.

Once this process was over, the commission finalised the draft document to submit it to the ICA-Americas Regional Board at its meeting held in Asuncion, Paraguay in February 2008. Finally the Regional Board gave the formal approval in its meeting held in San Jose, Costa Rica in July 2008. With this the draft work ended and the text was ready to be disseminated.

Objective, structure, and contents

The *Framework Law* is not intended to be a model to copy by the lawmakers of the Latin American countries. Its purpose is to provide orientation on key guidelines of the cooperative legislation as they derive from jurisprudence, academic studies, and the most recognized practice of comparative law.

It is about a general law referring to all types of cooperatives. Even though it contains certain specific provisions relating some of them, it is intended to provide regulatory provisions for any type of cooperative regardless of its purpose.

It does not include issues related to the tax treatment of cooperatives or other aspects linked to the development and promotion of cooperatives since these are issues that depend on the policies adopted by each country.


The Framework Law has 102 sections and is organized in 12 chapters; each deals with a specific topic, following a logical sequence that starts with general provisions and then deals with the incorporation, members, the capital structure, the corporate bodies, and the cooperative integration and, finally with the dissolution and liquidation. The final chapters deal with the government institutions in charge of monitoring and public policy on cooperative issues.

Due to legal techniques, each section and subsection is preceded by a heading indicating its contents and, in order to better understand it, each section is followed by a brief explanation.

Regarding the terminology, the most commonly used words were chosen, those which suit most adequately the nature of cooperatives distinguishing them from other legal entities. Moreover, an accessible language has been used, limiting the technical language to the strict minimum.



Carlos Palacino Antia
Presidente
ACI-Américas



Manuel Mariño
Director Regional
ACI-Américas

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FRAMEWORK LAW OF LATIN AMERICAN COOPERATIVES



FRAMEWORK LAW OF LATIN AMERICAN COOPERATIVES

CHAPTER I GENERAL PROVISIONS

Objective of the law

Section 1. The objective of this law is to provide cooperatives and the cooperative sector with a legal framework for their organization, operation, and regulation.

Justification

It is useful that the law specifies its objective reflecting not only the regulation of cooperatives but also that of the cooperative sector thus indicating that the law recognises the existence of such a sector.

Autonomy

Section 2. The Government guarantees the free development and the autonomy of cooperatives.

Justification

This section contains a fundamental definition for the topic of cooperative policy: the respect by government for the autonomy and the free development of cooperatives. This provision, which summarizes the spirit of the entire law, shall provide guidance to competent authorities lays the foundations for administrative and judicial proceedings in the event of a violation. This provision expressly embraces the 4th principle of the Statement on the Cooperative Identity approved by Congress on the occasion of the Centennial of the International Cooperative Alliance. It must be emphasised that the autonomy and independence of cooperatives has to be ensured not only with regard to the government, but also with regard to any other public or private organization.

Concept

Section 3. Cooperatives are autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

They are private legal entities in the social interest.

Justification

The section embraces the definition of cooperatives contained in the Statement on the Cooperative Identity approved by the International Cooperative Alliance and it refers to cooperatives having legal personality.

Principles

Section 4. The following principles shall be observed:

1. Voluntary and open membership;

2. Democratic member control;
3. Member economic participation;
4. Autonomy and independence;
5. Education, training, and information;
6. Cooperation among cooperatives;
7. Concern for the community.

These principles shall have the sense and the scope as universally recognised.

Justification

This section reproduces the synthesis of the cooperative principles as summarized in the titles of them and as contained in the Statement on the Cooperative Identity of the International Cooperative Alliance. Therefore, the Bill describes the cooperatives in accordance with their universally accepted characteristics and as they are also contained in Recommendation N° 193 of the International Labor Organization. It therefore takes into consideration instruments of other international organizations which together form the International Cooperative Law.

Features

Section 5. They shall meet the following features:

1. Unlimited and variable number of members;
2. Indefinite term;
3. Variable and unlimited capital;
4. Religious, racial, and political independence;
5. Member equal rights and obligations;
6. One vote per member independently of capital contribution;
7. Non distribution of social reserves.

Justification

As a complement to the previous section, this one contains the legal features of cooperatives. It reflects the most successful experiences from different countries. Some of these features explicitly reinforce the cooperative principles.

Applicable law

Section 6. Cooperatives shall be governed by the provisions contained herein, by their regulations, and the general Cooperative Law. Additionally, they shall be governed by the Common Law insofar as it is compatible with their nature.

Cooperative Law

Cooperative Law is the set of special rules, jurisprudence, doctrine, and practice based on the principles that determine and regulate the operations of cooperative organizations and their members.

Justification

The law deals with all kinds of cooperatives and cooperative organizations as long as their

nature is identical and independently of their specific purpose. There is an order of priority of the provisions governing cooperatives to ensure their regulation in strict accordance with their unique nature. Therefore, reference is made to the Cooperative Law, of which this special law forms a part. The Common Law may only apply by way of subsidiarity and as far as it is compatible with the nature of cooperatives. The second paragraph of the section provides a notion on Cooperative Law by stating its contents in order to identify those specific areas of the law which relate to cooperatives. This notion of Cooperative Law reaffirms the existence of such a specific legal branch and it fosters its development by guiding doctrine and jurisprudence.

Cooperative act

Section 7. Cooperative acts are acts performed between the cooperatives and their members or among cooperatives in compliance with their purpose. They are subject to Cooperative Law.

Justification

The “cooperative act” is a fundamental notion that has gained ground in the laws and doctrine in recent years. It differs from the commercial act and other legal acts. The concept is limited to acts performed between cooperatives and their members or among cooperatives in compliance with their purpose. However, there are other legal and doctrinal positions that provide the notion with a wider scope, including for instance operations with non members and even all the operations that cooperatives carry out to comply with their purpose and especially the also the articles of incorporation (statutes, regulations) with the understanding that this is the first cooperative act generative of all the others. Consequently, market transactions by the cooperatives in compliance with their purpose and linked to member activities and on their behalf do not cause any billing by the cooperative nor generate income or any financial advantage for the cooperatives themselves. The section clarifies that these acts are subject to the Cooperative Law, excluding the application of other legal concepts or regulations which do not relate to the nature of cooperatives. In any case, the relationship between the members and their cooperative is governed by the Cooperative Law. This is particularly important in the case of workers’ cooperatives as it avoids any doubts regarding the nature of this relationship.

Non-member business

Section 8. For social reasons or when necessary to better develop their economic activity, and as long as their autonomy is not compromised and in line with their objective, cooperatives may provide services to non members, and such services shall not offer more favourable conditions than those offered to members. The net surplus derived from such operations shall be destined to cooperative education or a special reserve or to both, in accordance with provisions contained in the bylaws or as decided by the General Assembly.

Justification

This section clarifies that cooperatives have the right to provide services to non members for social reasons and it indicates the use to be made of the net surpluses derived from such operations. Services provided to non members at more favourable conditions than those offered to members would make new membership less attractive. The surpluses resulting from

such operations cannot be distributed, but shall be allocated to a reserve or to cooperative education, in accordance with provisions contained in the bylaws or as decided by the General Assembly. It must be pointed out that some are of the opinion that cooperatives should not provide any services to non members, and that some suggest differentiating in this respect between the different types of cooperatives. But, in general, there is consensus that non member business should be allowed.

Types

Section 9. According to their nature, cooperatives may be workers' cooperatives, consumer or users' cooperatives, or mixed ones, and they may either have a single purpose or be a multi-purpose entity.

Justification

This section is not intended to classify cooperatives; this is rather a task for the doctrine than of the law. Its purpose is to include within the scope of the law cooperatives which provide their members with employment as well as cooperatives which render different services to consumers, specialized single service or multiple services.

Activities

Section 10. Cooperatives may exercise any legal activity on an equal footing with other private law entities or with governmental entities which provide public services.

Justification

This section is to prevent discrimination against cooperatives by allowing them the exercise of any activity on an equal footing with other private law entities and with government entities providing public services. This is to lift irritating discriminatory barriers to certain economic activities for cooperatives.

Denomination

Section 11. The corporate name shall include the word "cooperative" with the addition of the word or the abbreviation thereof which indicates its liability. It shall indicate the nature of the main activity or contain the words "multiple services," as the case may.

Prohibition

The use of the name "cooperative" is prohibited for entities not established in accordance with this law.

Justification

The rules of this section aim at protecting the public trust by prescribing the use of the word "cooperative" and the mention of the respective liability in the corporate name. The corporate name shall also indicate the nature of the main activity of the cooperative to avoid the use of names that might be confusing regarding the nature and objective, and the section prohibits the undue use of the name "cooperative" by entities which do not fall under this law.

Association with other legal persons

Section 12. Cooperatives may associate with other entities of a different legal type as long as this serves their objective and does not distort the purpose of rendering service nor transfer their tax benefits.

Justification

In order for cooperatives to develop their activities without any restrictions and expand their work in line with the present demands, they are empowered to associate with entities of a different legal nature. The imposed restrictions are to avoid the distortion of their service purpose and the transfer of possible tax benefits. This puts them in a position to fully and properly develop and participate in the market.

Transformation

Section 13. Cooperatives may transform themselves into entities of another legal nature. Any decision to the contrary is nil and void and entails the personal liability of those who made it. entities of another legal nature is expressly prohibited, with the understanding that

Justification

The transformation of cooperatives into an entity of another legal nature is expressly prohibited with the understanding that the cooperative nature is special and does not allow for changes that would alter it. Moreover, the remainder of the assets after liquidation has a special destination in accordance with this law. Therefore, if another entity is to be formed, the cooperative must first be dissolved and liquidated so that the new entity.

CHAPTER II INCORPORATION

Constitutive General Assembly

Section 14. The constitution of a cooperative shall be decided by a meeting which shall approve the bylaws, at which shares shall be subscribed, and at which the members of the Board of Directors and the Supervisory Council shall be elected. The minimum number of founding members shall be ..., with the exception of workers' cooperatives which can be constituted by ... members.

Escision

Cooperatives can also be constituted as a result of the division of an already existing cooperative into one or several new cooperatives amongst which assets and liabilities will be distributed. Third-party rights shall be protected.

Justification

The constitution of a cooperative shall take place during a meeting which is to approve the bylaws and elect the authorities. It is clear that the founding meeting is an act of free will of the participants pursuant to the essence of cooperatives. The minimum number of members varies from country to country. This is why the section left the number open, explaining that due to their specifics the number should be lower in workers' cooperatives.

While divisions are not frequent, it is a way to constitute new cooperatives.

Formalization

Section 15. The constitution shall be duly formalized through a public or private document with authenticated signatures by indicating the amount of share subscriptions by the founding members of which at least ten percent must be paid up.

Justification

The formalization expressing the will to establish a cooperative can be by public or by private document. In the later case the signatures shall be authenticated to ensure the seriousness of the act. For the same reason at least ten percent of the sum of the subscribed shares must be paid up.

Contents of the bylaws

Section 16. Notwithstanding further requirements of this law the bylaws shall contain the following provisions:

1. Denomination and domicile;
2. Specification of the objective;
3. Liability;
4. Minimum capital, if any;

5. Organization and functions of the General Assembly, the Board of Directors and the Supervisory Council;
6. Capital structure: value of the shares, distribution of surplus, and creation of reserves and permanent funds;
7. Disciplinary regime, grounds and procedure to sanction and exclude members and procedures for dispute settlements;
8. Member admission and withdrawal criteria and rights and obligations of members;
9. Rules on cooperative integration;
10. Procedure for amendment of the bylaws, for dissolution and liquidation.

Justification

The section stipulates the minimum contents of the bylaws to ensure that members and third parties know the key aspects related to the constitution and operation of the cooperative.

Formalities

Section 17. A copy of the document of the constitution, a transcription of the bylaws and a certification of the paid up capital shall be submitted to the authorities in charge of the Cooperative Registry – after verification of compliance with legal requirements – which shall register the cooperative within sixty days, after which the corresponding certification shall be issued, and a communication thereof shall be sent to the authority in charge of cooperatives. Before the registration, the Cooperative Registry may require a feasibility study conducted by a higher-level cooperative organization.

Justification

This section provides for the legal incorporation of cooperatives by registration and it only requires the submission of the constitution document and a certification of the paid-up capital and it allows for a maximum of sixty days for the registration with the Cooperative Registry. Upon registration, the registration authority shall issue a certification to the concerned cooperative and shall inform the authority in charge of cooperatives for reasons of monitoring. Each country shall designate the authority in charge of the Cooperative Registry, allowing for easy access and considering that the authority to register may also be delegated to an organisation within the cooperative movement. If the authorities in charge of the Registry are not established within the stipulated term, the regulations governing its operation shall apply.

Legal incorporation

Section 18. Cooperatives are deemed as legally established upon registration with the Cooperative Registry which meets at the same time publication requirements.

Justification

The simple registration with the Cooperative Registry confers legal personality. It meets at the same time the publication requirement and no other formality is necessary. This serves to simplify and speed up the constitution of cooperatives and to overcome delays and bureaucratic burdens.

Cooperatives under the process of creation

Section 19. Acts and signatures on behalf of the cooperative before its legal incorporation, except those necessary to obtain the registration from the Cooperative Registry shall hold those executing or signing jointly and severally liable. After registration, such acts may be validated if the first General Assembly ratifies them.

Justification

The general principle of joint and several liability of those acting on behalf of the cooperative before its legal incorporation applies, except for acts which are necessary for the registration. Once the cooperative is registered, such acts may be ratified by the General Assembly, upon which the joint and several liability ceases.

Amendment of the bylaws. Regulations

Section 20. The registration of amendments to the bylaws and of regulations that are not for the mere internal administration shall follow the same procedure as the one used for the registration of cooperatives. They shall come into force as of the registration with the Cooperative Registry.

Justification

The amendment of bylaws shall be carried out by following the same procedure as the one used for the registration of the constitution of cooperatives. The same procedure applies for the approval of regulations that are not intended for the mere internal administration or the organization of offices. In both cases, the text comes into force upon registration with the Cooperative Registry so as to meet the publicity requirement. The term "regulation," is used for those rules of the cooperatives which regulate their relationship with the members, whereas "reglementations" are rules established by competent official authorities.

CHAPTER III MEMBERS

Membership criteria

Section 21. Members may be natural persons with full legal capacity and juridical persons able to use the services of the cooperative and who meet the requirements set forth in the bylaws. Admission is open but may be subject to conditions derived from the objective of the cooperative without however discriminating on whatever grounds.

Gender equality

In any case cooperatives shall offer the same membership possibilities and recognize identical rights and obligations for all members without any gender distinctions.

Supporting members

May also be members cooperative organizations of whatever level, non profit organizations, national and international supporting agencies, and the Government, even if they do not use the services of the cooperative but if they join in order to support the business development of the cooperative.

Members who join the cooperative in order to support its business development may have up to thirty percent of the votes of the General Assembly and, if stipulated in the bylaws, they may constitute up to one third of the members of the Board of Directors or of the Supervisory Council. In no case shall their votes constitute the basis for decisions.

Employees

If the nature of the cooperative allows it, employees may be members, but they are not able to vote on issues related to their status in the General Assembly, nor may they be part of other bodies. They shall enjoy the same treatment granted by law to employees performing the same activity.

Justification

In accordance with the open door principle admission to membership is open both for natural and for juridical persons in accordance with the bylaws and with the understanding that there shall not be any restrictions concerning the growth of these entities. The only possible restriction might derive from the objective because the cooperative should not be forced to admit members if its ability to provide services were thereby hampered (typical such cases are housing cooperatives, workers' cooperatives, some agricultural cooperatives, etc.).

Gender equality is a key characteristic of the doctrine and universal practice of cooperatives. Therefore, there shall be identical admission possibilities and the same treatment for members independently of their sex.

As a means to contribute to the business development of the cooperative, other cooperatives

of whatever level, non profit organizations, national and international support agencies, and the Government are allowed to become members, so that cooperatives may receive capital contributions to complement their assets and avoid becoming indebted. As long as the bylaws allow it, and to a limited extent, these members may be members of the corporate bodies. But, they shall not be able to adopt decisions by themselves.

It is stipulated that as long as the nature of the cooperative allows it, employees may be members, thus fostering a greater membership and participation of the personnel in the cooperative. But they are not allowed to intervene in issues related to their status, and they cannot be part of corporate bodies so as to avoid any conflicts of interest. This must not prevent them from enjoying the same treatment as stipulated by labor laws for workers performing the same activity.

Admission

Section 22. The status of member is acquired through the participation in the constitution of the cooperative or upon request by the interested person by resolution of the General Assembly or the Board of Directors.

Justification

The section specifies the two types of admission to the cooperative: as part of constitution process or later. In the latter case, the competent body to decide about admissions shall be the General Assembly or the Board of Directors, as stipulated in the bylaws, and this body shall obviously subject the decision to the regulation contained in the previous section and the principles and qualifications of cooperatives.

Liability

Section 23. The economic liability of the members towards the cooperative and third parties shall be determined by the bylaws and shall be equal for all. It may be unlimited, limited by the value of the shares or supplementary. In the latter case the respective additional amount shall be fixed.

Justification

The section allows for different types of liability of the members which may be stipulated in the bylaws, and must be the same for all members. Members cannot have different liabilities.

Obligations

Section 24. Notwithstanding further obligations stipulated by this law and the bylaws the members have the following obligations:

1. Comply with personal and financial obligations in accordance with the law, the bylaws, and the regulations;
2. Perform the tasks for which they were elected;
3. Comply with the resolutions by the General Assembly and the Board of Directors;
4. Refrain from performing acts or committing omissions which affect the economic stability or the social prestige of the cooperative.

The bylaws may establish the obligation of remaining as a member during a reasonable period of time and the obligation to use the services of the cooperative.

Justification

The obligations of the members shall be stipulated in the bylaws, but the law establishes some fundamental obligations and it indicates certain obligations that can be established by the bylaws in view of ensuring the development of the cooperative.

Rights

Section 25. Notwithstanding further rights established by this law and the bylaws the members have the following rights:

1. Participate with the right to speak and vote in the General Assembly on an equal footing with their fellow members;
2. Be elected to perform tasks in the Board of Directors, the Supervisory Council, and the ancillary committees;
3. Use the services in accordance with the bylaws;
4. Request information on the situation of the cooperative from the Board of Directors or the Supervisory Council;
5. File a complaint for breaching the law, the bylaws or the regulations before the Supervisory Council.

Justification

Like the obligations of the members, their rights shall also stipulated in the bylaws, but the law determines the most important rights, particularly as far as the democratic nature of the cooperative is concerned.

Loss of member status

Section 26. The member status terminates in the following cases:

1. Upon death of the natural person member or the end of a juridical person member;
2. Resignation submitted to and accepted by the Board of Directors;
3. Loss of membership criteria set forth in the bylaws;
4. Exclusion.

Justification

The section stipulates the causes for the loss of member status. It is important to note that both membership criteria and exclusion criteria must be dealt with in the bylaws since they affect fundamental aspects of the relationships between the members and the cooperative.

Resignation

Section 27. A member may terminate his/her relationship with the cooperative at any time before dissolution of the latter by submitting his/her decision in writing in accordance with the provisions contained in the bylaws, which shall stipulate the timeframe within which the Board of Directors must decide.

Justification

The free exit is the correlate of the free and voluntary adherence in accordance with the nature of the cooperative, but the exercise of this right shall be carried out pursuant to the provisions contained in the bylaws, which shall also stipulate a timeframe within which the Board of Directors must take a decision concerning the resignation.

Exclusion. Suspension

Section 28. The free exit is the correlate of the free and voluntary adherence in accordance with the nature of the cooperative, but the exercise of this right shall be carried out pursuant to the provisions contained in the bylaws, which shall also stipulate a timeframe within which the Board of Directors must take a decision concerning the resignation.

Procedure. Appeals

The bylaws shall establish the procedure to adopt a suspension or exclusion and the effects of appeals.

Justification

The right of a member to defend himself/herself by letting the exclusion or suspension resolution by the Board of Directors be appealed before the General Assembly after an unsuccessful request for reconsideration, is safeguarded in such a way that in the last instance to decide is the highest body of the cooperative. To ensure a due procedure, the bylaws shall stipulate the procedure and the effects of appeals.

Reimbursement of shares

Section 29. The bylaws may limit the annual reimbursement of shares as a result of resignation or exclusion to an amount not higher than percent of the capital according to the last approved balance sheet. The cases that cannot be covered with such percentage shall be covered in future fiscal years by seniority. In no case must the refund reduce the capital under the minimum limit established by the bylaws, if any.

Suspension

If required by the situation of the cooperative, the General Assembly may decide to suspend the reimbursement of capital for a period not exceeding fiscal years.

Justification

To avoid untimely or massive withdrawals of capital threatening the financial stability of the cooperative, the bylaws may establish a maximum percentage of capital for the reimbursement of shares in any one fiscal year. The cases exceeding this percentage shall be covered in future fiscal years by seniority. The refund must not affect the minimum capital, if such is stipulated in the bylaws. Moreover, to ensure the development of the cooperative, the General Assembly may suspend the refund of capital for a given number of fiscal years if necessary.

Pending share reimbursements

Section 30. Pending share reimbursements shall receive an interest equivalent to fifty percent of the current bank rate or the official interest rate.

Justification

Pending share reimbursement become a liability to be settled with an appropriate interest rate. Such rate shall be compensatory for the former member awaiting his/her reimbursement without entailing an excessive economic effort by the cooperative.

Account settlement

Section 31. No definite settlement in favour of the member shall be carried out if the debts of the member with the cooperative are not previously discounted.

Reimbursement amount

In the event of withdrawal for any cause, the members shall only have the right to a reimbursement of the nominal value of the paid-up shares, from which their proportional participation in the bearing of losses will be deduced and notwithstanding revaluations, if any.

Justification

The principle of clearing is applied thus avoiding reciprocal complaints when a member withdraws for any reason. In accordance with the nature of the reserves as indivisible and with the disinterested destination of the remainder after liquidation, members shall only have the right to the reimbursement of the nominal value of their shares diminished by eventual losses upon withdrawal from the cooperative for whatever reason. This provision shall not affect the eventual revaluation of the capital.

Conflict resolution

Section 32. Conflicts between the cooperatives and their members shall be subject to the mediation and/or arbitration process as stipulated in the bylaws. If it the bylaws do not provide for such procedures, or when mediation failed, they can be taken to the court of

Justification

The section provides for the possibility of attempting the resolution of conflicts between the cooperatives and their members within the cooperative context in a fast, economic, and, as much as possible, non adversarial way. However, access to a court of law is open in the event that the bylaws do not provide for these methods or where their application failed. The law shall determine the competent judges.

CHAPTER IV COMPOSITION OF CAPITAL

Assets

Section 33. The equity of cooperatives through which they achieve their objective is composed of:

1. Member shares;
2. Reserves and permanent funds;
3. Support monies, donations or subsidies of an equity capital nature.

Justification

The section determines the equity of the cooperatives which serve to achieve their objective. First, member shares which are the initial and most significant resources according to the cooperative principles, then the reserves and permanent funds generated through economic activities, and finally third-party resources in the form of support monies, donations, and subsidies as long as they have an equity capital nature, that is, they are not intended to be used for a specific purpose.

Shares

Section 34. The shares cannot be divided and have all the same value. They shall be paid as financial contributions or in kind or in the form of work, and they shall be valued in the way and within the term stipulated in the bylaws through agreement.

Justification

The total amount of shares subscribed and paid-up by the members constitutes the capital of the cooperative. The shares cannot be divided and they all have the same value, according to the bylaws. They can be paid in money and in kind or in the form of work, and in the latter cases they shall be valued by mutual consent between the member and the cooperative. The bylaws shall determine the way to pay up the shares.

Amortized shares

Section 35. Shares paid up by the members can be acquired by the cooperative through a charge to a reserve especially created for such purpose as long as this does not affect the equity capital and the financing of the cooperative

Justification

The cooperative may acquire the shares once paid up by the members as long as it is done through a charge to a reserve especially created for such purpose. This system shall be used without any discrimination and without affecting the growth of the equity capital and the satisfaction of the financial needs of the cooperative.

Variable and unlimited capital

Section 36. The share capital shall be variable and unlimited. The bylaws may however fix a minimum amount. The share capital is part of the equity.

Justification

In accordance with the principles and qualifications defined in the first sections, the share capital is essentially variable and unlimited. However, the bylaws may establish a minimum capital which serves as a guarantee for third parties that during the life of the cooperative, this capital shall not be reduced below such amount. It is clear that the share capital is part of the equity capital and its withdrawal shall be subject to the restrictions stipulated by the law and the bylaws, and to the risk of the business management.

Proportional share contributions

Section 37. The bylaws may establish a procedure so that members subscribe and pay share contributions in proportion to the actual or potential use of cooperative services as long as each of the members has at least one share.

Justification

The experience in different countries has shown that a practical and fair capital contribution system can be established in accordance with the estimation of services that are effectively or potentially required by each cooperative member. The bylaws shall establish the respective procedures.

Certificates

Section 38. The cooperative may issue share certificates or other nominative documents representing one or more shares.

Transfer

These certificates may be assigned among members if approved by the Board of Directors and as long as each involved member complies with the requirements contained in the bylaws with regard to share contributions. If the assignee were not a member, he/she shall have to join the cooperative prior to the assignment.

Justification

Certificates represent the paid-up share contributions by members and shall always be nominative. In certain cases, particularly where there is a large membership or a large amount of money, share contribution books or other documents substituting for the certificates may be used for the same purpose.

The assignment of certificates among members is free as long as there is compliance with statutory requirements, but if there is a third-party assignment - taking into account the personal nature of the member status - there must be prior affiliation to the cooperative. The assignment must be approved by the Board of Directors.

Revaluation

Section 39. Cooperatives may reevaluate their assets in accordance with applicable regulations, which shall determine the destination of the resulting balance.

Justification

The inflationary effects have led to the need for corrective actions in several countries in order to adjust the value of the assets to currency variations to show a more realistic picture of the balance statements. Regarding the destination of the resulting balance of the higher value assigned to non monetary assets, cooperatives shall comply with special applicable regulations. In this matter convincing arguments may be found for either solution: capitalization - by distributing it among members proportionally to their share contribution by seniority, creation of indivisible reserves or both in different proportions. Losses shall in any event be previously covered.

Limited interest payments on share contributions

Section 40. The bylaws shall determine whether the share contributions shall bear any interest, which shall not be higher than the current bank interest rate or the official interest rate.

Justification

In accordance with the principle of limited interest, the bylaws must determine whether share contributions shall bear interests or not. In any event, the rate shall not be higher than the current bank interest rate or the official interest rate.

Reserves

Section 41. With the express approval by the General Assembly and notwithstanding the establishment of legal reserves, cooperatives may create and increase special reserves by transferring surplus monies to these reserves in order to protect and consolidate the equity capital.

Justification

Special reserves to consolidate the cooperative equity capital may be created as long as they are fuelled by surplus monies and are expressly approved by the General Assembly. These reserves do not substitute for the legal reserves.

Special funds

Section 42. In order to provide resources with a specific destination for the provision of assistance, social welfare, or research, cooperatives may create and increase special funds based on voluntary or mandatory member contributions or based on annual surplus transfers in accordance with the bylaws.

When the resources of the special funds could not be used, they shall be deemed as equity capital.

Justification

For the provision of assistance services, there cooperatives are empowered to create and increase special funds derived from voluntary or mandatory member contributions or from annual surpluses, in accordance with the bylaws. This underlines the social character of cooperatives in line with their guiding principles.

Support monies, donations or subsidies

Section 43. Cooperatives may receive from public or private persons all kinds of support money, donations or subsidies aimed at increasing the equity capital or to be used in accordance with the will of the donor. In both cases, these resources must be applied to the fulfilment of the objective of the cooperative.

Justification

Cooperatives are authorized to receive subsidies, donations or support monies from a third party to increase their equity capital or to be used in accordance with the will of the donor. In every case, such resources must be used in compliance with the objective of the cooperative, thus ensuring the independence of the cooperative and the consistency of the donations with its respective specific purpose.

Indivisibility of reserves and other resources

Section 44. Reserves, special funds, as well as support monies, donations and subsidies of an equity capital nature are indivisible. These cannot be distributed among the members, nor do they increase individual share contributions.

Justification

Consistent with the previous section, any support monies, donations, and subsidies of an equity capital nature, as well as reserves and permanent funds, represent the indivisible cooperative equity capital that cannot be distributed among the members, nor can they increase their share contributions. This way member enrichment which is not based on member activities in the cooperative is avoided in accordance with the cooperative principles.

Third-party resources

Section 45. Notwithstanding legislation on financial activities cooperatives may contract any kind of liability and issue obligations to be subscribed by members or non members in accordance with applicable regulations.

Justification

For cooperatives to not encounter barriers to the development of their activities, they are allowed to assume any kind of liability that another legal person can. They are also expressly authorized to issue obligations to be subscribed by their members or by non members in accordance with applicable regulation. Thus, the financing possibilities to be used by cooperatives are enhanced.

Accounting

Section 46. Cooperatives shall abide by the legal accounting rules and they shall keep the necessary accounting books.

Justification

Cooperatives are bound by the legal accounting rules and they must keep the necessary accounting books. Because of changing accounting techniques and the variety of cooperative

activities, which might require the keeping of different kinds of registers, the number of rules pertaining to this issue is kept low.

Fiscal year

Section 47. The fiscal year shall be annual and shall close on the date stipulated in the bylaws.

Justification

The fiscal year shall be annual and shall close on the date stipulated in the bylaws. Due to practical reasons, there is not a common date for all cooperatives thus allowing them to choose the most suitable date for them.

Annual report and accounting statements

Section 48. At the closing of the fiscal year, the Board of Directors shall draft an annual report on the management, which shall be submitted to the General Assembly together with the accounting statements and the balance sheet showing the performance of the cooperative in the social field and accompanied by reports by the Supervisory Council and the auditor.

Justification

At the closing of the fiscal year, a balance sheet shall be prepared, together with other accounting statements. The Board of Directors shall draft an annual report on the management during the period. The Supervisory Council shall issue a report on the tasks it performed and the auditor shall prepare an opinion on the accounting statements. All these documents shall be reviewed by the general meeting. In this way, one of the most important conditions of a democratic government is complied with by submitting the performance of the different corporate bodies for consideration by the General Assembly. In accordance with the economic and social nature of the cooperative, a social balance shall also be drawn up. This is already being done by some.

Surplus

Section 49. The surplus to distribute is the surplus resulting from the difference between the cost and the price of services rendered to members.

Destination

The General Assembly shall determine the destination of the distributable surplus in accordance with the following guidelines:

1. Ten percent, at least, for the legal reserve;
2. Ten percent, at least, for cooperative education and training;
3. Ten percent, at least, for assistance and solidarity actions in favour of the members and the institutions or people linked with the cooperative;
4. The amounts to create other special reserves and to pay interest on share contributions, if so decided;

5. The rest shall be distributed among the members in proportion to the operations or the work carried out with the cooperative.

The surplus not derived from the difference between the cost and price of services rendered to the members shall be allocated to a special reserve.

Before paying the interest on share contributions and the return on the use of services, any necessary amount shall be allocated to pay the interest on contributions made by support members based on the interest rate set by the General Assembly.

Justification

First, the section defines the distributable surplus and then it stipulates what decisions shall be made by the General Assembly on the destination of such surplus in accordance with the guidelines given in the section. These guidelines take into account the cooperative principles and the nature of these entities. The percentages are merely indicative so that each national law may fix more appropriate percentages. The section clarifies that surplus, which is not derived from the difference between the cost and the price of the services rendered to the members, cannot be distributed. The surplus not strictly derived from operations which are related to the objective of the cooperative shall be allocated to a special reserve. Moreover, there is a priority for the payment of interests on contributions by support members and set by the General Assembly.



CHAPTER V MANAGEMENT

General Assembly

Section 50. The General Assembly is the highest authority of the cooperative and its decisions are mandatory for the Board of Directors, the Supervisory Council and all the members, present or absent, as long as they were taken in accordance with the law, the bylaws and the regulations.

Justification

The General Assembly is established as the highest authority and its decisions bind the other bodies and all the members if taken in accordance with the law, the bylaws, and the regulations.

Ordinary General Assembly

Section 51. The General Assembly shall hold a regular session within three months after the closing of the fiscal year to discuss the topics foreseen in the notice of the meeting and which shall include the annual report, the accounting statements, and the election of the members of the Board of Directors and of the Supervisory Council.

Extraordinary General Assembly

The General Assembly can be held in a special session whenever necessary and deal with any issues within its jurisdiction and included in the notice of the meeting

Justification

According to the general criterion, there are two kinds of General Assemblies. The ordinary General Assembly shall be held within three months of the closing of the fiscal year to review the annual report and accounting statements and elect the members of other corporate bodies if necessary, and to deal with issues included in the agenda. The extraordinary General Assembly shall deal with any topic included in the notice of meeting and can be held at any time.

Notice of General Assembly

Section 52. The ordinary General Assembly shall be called by the Board of Directors or the Supervisory Council if the former failed to call it within the legal deadline. The extraordinary General Assembly shall be held as decided by the Board of Directors or when asked for by the Supervisory Council by not less than ten percent of the members, unless the bylaws establish a lower percentage. Moreover, this General Assembly may also be called by the Supervisory Council if the Board of Directors responded negatively to its request or that of the members. In the last instance and if necessary to secure the development of the cooperative, the General Assembly may be called by the higher-level cooperative of which the cooperative is a member or by the enforcement authority.

Justification

The General Assembly shall be called first by the Board of Directors. If the Board of Directors does not act, it shall be called by the Supervisory Council. The right of the members - not less than ten percent, except if the bylaws stipulate a lower percentage - to request an extraordinary General Assembly to facilitate their participation in the government of the entity is recognized. Moreover, if it is necessary to regulate the operations of the cooperative, the higher-level cooperative to which it is affiliated or the enforcement authority, may call the General Assembly. This is understood as an extreme solution under exceptional circumstances when the statutory mechanisms of a cooperative do not operate.

Form

Section 53. In every case, the notice of the General Assembly shall be properly communicated to the members at least fifteen days in advance as stipulated in the bylaws, and it shall include the agenda. The same advance notice is to be served to the higher-level cooperative and to the enforcement authority.

Minutes and documents

Within thirty days of holding the General Assembly, a copy of the minutes and related documents shall be submitted to the higher-level cooperative and to the enforcement authority.

Agenda

The deliberations on topics which were not included in the agenda are invalid, except if they are a direct consequence of a topic contained in the agenda.

Justification

The notice of General Assembly shall be properly disseminated so that members are aware of it, but its form shall be consistent with provisions contained in the bylaws. The notice of the General Assembly shall include the agenda to avoid surprises in the deliberations. Therefore, deliberations of topics which were not included in the agenda, except if they are a direct consequence of a topic mentioned therein, are nil and void. This provision is to guarantee the regularity of the General Assembly. The notice of meeting shall be communicated to the higher-level cooperative and the enforcement authority so that they can attend or, at least, be informed about the institutional operations of the cooperative. This is also why copies of the minutes and related documents shall be submitted to them.

General Assembly of delegates

Section 54. If the number of members exceeds or if they live far apart from one another, the General Assembly may be constituted by delegates elected in accordance with the procedures stipulated in the bylaws and the regulations.

Justification

This section deals with the difficulties to hold General Assemblies when cooperatives have a

large membership or when these live in places away from the headquarters of the entity. Under that assumption, delegate General Assemblies may be held and the respective procedure shall be stipulated in the bylaws and the regulations.

Quorum

Section 55. The General Assembly shall be validly held if more than half of the members or the delegates attend. If after one hour there is no quorum, it may be held with any number of attendees.

Justification

The quorum is established at more than half of the members. However, for practical reasons, the General Assembly may be validly held with any number of attendees if after one hour of the time for which the meeting had been called the quorum is not given. This is to avoid paralysing the General Assembly.

Majority

Section 56. Resolutions shall be adopted by an absolute majority of votes, except the issues for which this law or the bylaws require a larger number. Two thirds of the votes are required to decide a merger or incorporation, a division, dissolution or an amendment of the bylaws.

Voting by proxy

Voting by proxy in the General Assembly of members is possible if authorized by the bylaws, in which case the representation may only be conferred upon another member, who shall not be able to represent more than two. This possibility does not apply to General Assemblies of delegates.

Justification

As a general rule, decisions require the absolute majority of votes, except when the law or the bylaws require a larger number. Due to their special importance a special majority of two thirds is required for decisions regarding mergers, divisions, dissolution, and amendment of bylaws. The second part of the section regulates voting by proxy insofar as provided for by the bylaws and in a way which avoids concentration of votes. The rule applies only to the General Assembly of members and not to that of delegates.

Competence

Section 57. Notwithstanding other matters as stipulated by this law or the bylaws, the General Assembly decides exclusively the following:

1. Approve and amend the bylaws and its regulations;
2. Establish the general policies of the cooperative and approve the general budget if so stipulated by the bylaws;
3. Elect and remove members of the Board of Directors, the Supervisory Council and the auditing group;

4. Fix the compensation of members of the Board of Directors and the Supervisory Council, if any;
5. Resolve about the annual report and accounting statements after having been informed through the reports by the Supervisory Council and the auditor, if any;
6. Decide about surplus distribution;
7. Resolve about the issuance of general obligations;
8. Decide about liability actions to be taken against members of the Board of Directors and of the Supervisory Council;
9. Decide about the association with public or private entities having a different legal nature;
10. Resolve about the division, merger, incorporation or dissolution of the cooperative.

Justification

The section deals with issues that are expressly reserved for the competence of the General Assembly and that cannot be dealt with by any other corporate body. Other matters assigned to the General Assembly by law and provided for by the bylaws must be added to this list. Obviously, the rationale of this regulation is related to the significance of the subject matters contained therein, and which need be solved by the highest body of the corporate will

Participation of the members of the Board of Directors and the Supervisory Council

Section 58. The members of the Board of Directors and of the Supervisory Council may participate in the General Assemblies but shall not be able to vote on issues related to their performance nor may they represent other members.

Participation of managers, auditors, and advisors

Managers, advisors and auditors shall have the right to speak and, if they are members, they shall observe the limitations set forth in the previous paragraph.

Justification

The right to vote of the members of the Board of Directors and of the Supervisory Council is excluded in cases relating to their performance. They are also banned from representing other members in order to avoid possible manipulations of decisions that compromise their responsibility. This also applies to managers, advisors, and auditors if they are members.

Appeal against decisions by the General Assembly

Section 59. Complaints challenging the decisions of the General Assembly shall be filed with ordinary courts of law within the competence of

Justification

Access to a court of law is open to challenge the decisions by the General Assembly, thus ensuring a proper control of the regularity and lawfulness of the decisions by an independent body while reducing the possibility to interfere by governmental administrative bodies. The law shall determine which judges shall be competent to decide such cases.

CHAPTER VI ADMINISTRATION

Body

Section 60. The Board of Directors is the body in charge of the permanent administration of the cooperative.

Powers

Notwithstanding the powers attributed by law, its powers shall be determined by the bylaws. The implicit powers of this body shall include those which are not expressly attributed to the General Assembly by the law or the bylaws and those which are necessary to perform activities in pursuit of the objective of the cooperative.

Justification

The section defines the administrative body and its powers. Areas of possible conflict are dealt with by stipulating that besides the powers vested upon by the law and the bylaws, it has the powers which are necessary to fulfil the objective, as also those which the law or the bylaws do not expressly assign to the General Assembly.

Composition

Section 61. The Board of Directors shall be composed of an odd number of members, not less than three, as set forth in the bylaws.

Features and incompatibilities

The bylaws shall determine the features and incompatibilities for the position of director with equal conditions and opportunities for the nomination of men and women. The spouses and relatives of the members of the Supervisory Council and Managers related up to the second degree of consanguinity or affinity may not be directors in the same or the following fiscal year.

Justification

The number of directors shall be set in the bylaws. They shall be members like any other members of the cooperative bodies. The minimum number is related to the collegial character of the body and the requirement of an odd number is to facilitate the adoption of decisions. The bylaws shall fix the feature and incompatibility requirements and it shall stipulate an equal gender treatment, but there is a limitation regarding the degree of kinship.

Election

Section 62. The members of the Board of Directors shall be elected by the General Assembly together with the substitute members and they shall remain in their positions for a term not longer than three fiscal years. The bylaws shall determine the election procedure and determine whether or not they may stand for re-election.

Substitute members

Substitute members shall replace the incumbents in the event of their resignation, revocation, absence or death in accordance with the bylaws, and they can be called by the Board of Directors to hold take the position.

Justification

The periodic renewal is a requirement of democratic government. However, the bylaws may authorize the re-election. They shall also establish the procedure to be followed by the General Assembly for the election of the members of the Board of Directors. The requirement of substitute members is to avoid difficulties in the functioning of the Board or the necessity to call a new General Assembly to deal with the lack of directors. The bylaws shall determine the substitution mechanism.

Revocation

Section 63. The General Assembly may revoke at any time the appointment of the members of the Board of Directors as long as this issue was included in the agenda or is a direct consequence of another item on the agenda. In the latter case, a majority of two thirds of the votes is required.

Justification

The same body that designates the Board of Directors may revoke it at any time since it is a matter of trust. However, to ensure the regularity of the operations of the cooperative and prevent any abuses, the revocation must have been expressly included in the agenda or have been a direct consequence of another item on the agenda. In this latter case a special majority shall be necessary to reflect the significance of the action taken.

Functioning rules

Section 64. The bylaws shall establish the functioning rules for the Board of Directors, which shall meet at least once a month and prepare minutes that shall be signed by all attendees. The quorum shall be more than one half of the members.

Justification

The functioning rules of the Board of Directors are set forth in the bylaws. However, the law sets guidelines regarding the frequency of meetings, minutes, and quorum. Regarding the latter, a formula to avoid any doubts is "more than half"; instead of "half plus one."

Representation

Section 65. The legal representation of the cooperative rests upon the Board of Directors, which can be delegated to one or more members or managers, as set forth in the bylaws.

Justification

The legal representation rests upon the Board. However, for practical reasons, the representa-

tion may be delegated on one or more members of the Board or Managers in accordance with the bylaws. The application of this rule shall facilitate third-party relations thus ensuring legal certainty of transactions and defining internal responsibilities.

Liability of Board members

Section 66. The members of the Board of Directors shall be held liable for any breach of the law, the bylaws, and the regulations. They can only be saved harmless if they have not participated in the meeting that adopted the resolution or by recording in the minutes their vote against the resolution.

Justification

Board members shall be held liable for breaching the law, the bylaws, and the regulations, assuming that the negative result of the management would not have been produced had the management been in line with these rules. It is also excluded if they opposed the respective resolution or if they did not participate in the meeting that adopted the resolution.

Executive Committee

Section 67. The bylaws or the regulations may establish an Executive Committee composed of some members of the Board of Directors which shall be in charge of the regular operations of the cooperative. This institution does not modify the obligations and liabilities of the members of the Board of Directors.

Justification

Administration needs might require the creation of an Executive Committee in charge of regular operations. This body, which experience has found suitable, may only be established by the bylaws or the regulations and is exclusively composed of members of the Board of Directors. This body helps resolving common issues between board meetings during which the board shall be informed about its activities.

Additional committees

Section 68. The Board of Directors may designate permanent or temporary committees composed of members of the Board or ordinary members of the cooperative and define their duties. In any event, an education committee shall be formed.

Justification

Besides the Executive Committee mentioned in the previous section, the Board of Directors may designate other committees which it deems necessary, either permanent or temporary and they shall be composed of directors or ordinary members thus improving the participation and ensuring the proper level of competence to deal with specific issues. The importance of education, included in the principles set forth by the law, requires the compulsory establishment of a specific committee in charge of this topic.

Compensation

Section 69. By decision of the General Assembly, the personal work performed by the members of the Board of Directors may be compensated. This compensation may be paid in addition to any work-related expenses.

Justification

The growing need for a dedication of the board members to administrative tasks requires the possibility of compensating their work so that cooperatives can resort to their collaboration. However, for the remuneration to become effective, it shall be decided by the General Assembly, which shall evaluate the effort, dedication, and responsibilities when estimating the respective amounts to be paid.

Managers

Section 70. The Board of Directors can designate managers, in charge of the executive function and who can be the legal representatives if so stipulated in the bylaws. They shall report to the Board of Directors, who can remove them at any time pursuant labor laws.

Justification

General experience proves to the nomination of managers and the law mentions this as an option. Considering their executive function, they report to the Board of Directors, which shall designate and remove them freely in accordance with the labor law because they are employees and not bodies of the entity.

Liability of managers

Section 71. Managers shall be held liable towards the cooperative for damages resulting from non compliance with their obligations, negligence, fraud, breach of trust, and the exercise of competitive activities. They shall also be held liable towards the members and third parties on the same grounds. They may be asked to provide guarantees for their performance.

Liability of directors

The appointment of managers does not modify the liability of the members of the Board of Directors.

Justification

The section specifies the liability of managers resulting from non compliance with their obligations, negligence, fraud, breach of trust, and engagement in competitive activities in order to clarify that their status as subordinate employees does not exempt them from liability. It also clarifies that the appointment of managers does not modify the liability of the board members.

Appeal against Board resolutions

Section 72. The decisions by the Board of Directors may be appealed by the members using internal review mechanisms and, if necessary, a legal action can be brought against the decision of the General Assembly in a court of law.

Justification

Internal mechanisms to review decisions of the Board of Directors must have been exhausted before the decision of the General Assembly may be appealed against in a competent court of law.

CHAPTER VII SUPERVISION

Body

Section 73. The monitoring of the cooperative shall be performed by the Supervisory Council, notwithstanding the powers of auditors and the supervision conferred upon the enforcement authority.

Powers

It shall be in charge of overseeing the activities of the cooperatives and ensure that the Board of Directors complies with the law, the bylaws, and regulations and the resolutions adopted by the General Assembly. It shall exercise its powers without hindering other bodies in the fulfilment of their duties and activities.

Justification

A collegial body of members shall be in charge of monitoring the activities, and its duties shall be performed without prejudice to the duties of auditors and the government oversight which together set the frame for the monitoring. The powers of the monitoring body include the oversight of the activities of the cooperative to evaluate their compliance with the law, the bylaws, and regulations. Such wide powers must be exercised in a way not to hinder the performance of the duties by other bodies of the cooperative. Its good performance is fundamental for the efficiency of the entity.

Scope of duties

Section 74. Its powers are limited to the right to observe, specifying in each case the provisions that it deems to have been infringed upon. It shall leave proof of its observations or requirements and, upon prior request to the Board of Directors, it may call a General Assembly whenever it thinks necessary and inform the higher-level cooperative and the enforcement authority.

Justification

The performance of the monitoring duty shall not interfere with the administration. When the Supervisory Council considers that there are irregularities, it shall provide proof of its observations and, if the Board of Directors does not satisfy a corresponding request, it may call a General Assembly by informing the higher-level cooperative and the enforcement authority for the corresponding purposes.

Composition

Section 75. The Supervisory Council shall be composed of an odd number of members not lower than three, in accordance with the bylaws and with equal status and opportunities to nominate men and women. In cooperatives with less than members, the Supervisory Council shall be unipersonal.

Justification

For the same reasons as in the case of the Board of Directors the number of members shall be determined by the bylaws, but it shall be an odd number and not lower than three. They shall be members and gender equality conditions will be respected. In the event of cooperatives with a reduced number of members, the Supervisory Council can be unipersonal.

Election

Section 76. The members of the Supervisory Council shall be elected by the General Assembly for a term not longer than three fiscal years. The bylaws shall establish the election procedure and determine whether they may be re-elected or not.

Justification

The tenure of members of the Supervisory Council shall be the same as for the members of the Board of Directors in accordance with the bylaws, which shall also determine the procedure for their election by the General Assembly and whether they may be re-elected or not.

Application of other rules

Section 77. The provisions relating to the revocation, functioning, replacement, liability, and compensation of the Board of Directors apply also to the Supervisory Council.

Justification

For reasons of brevity and to avoid repetition, the rules related to the Board of Directors concerning revocation, functioning, replacements, liability, and compensation are also applicable to the Supervisory Council since they obey the same rationale.

Audit

Section 78. Cooperatives shall be subject to a permanent external audit service led by a chartered public accountant. Cooperatives may be exempted from this obligation by the enforcement authority when their economic situation, activity, or geographical location justifies it.

Appointment and tenure

The auditing team shall be appointed annually by the General Assembly.

Audit by cooperatives

The audit service may be provided by a cooperative or an ancillary specialized body, with the assistance of a certified professional.

Justification

Experience has shown the appropriateness of a permanent audit service, which shall be mandatory, unless the enforcement authority exempts cooperatives from this obligation on

the grounds of justifiable circumstances. The service shall be provided by chartered public accountants to ensure technical qualifications and the legal liability level necessary to perform their duties. The General Assembly shall have the power to appoint the audit team independently from the administration and for a one-year term to facilitate its renewal based on its performance. Moreover, cooperatives or specialized ancillary bodies may provide this service as long as assisted by a certified professional. Some countries have valuable experiences to exemplify this.



CHAPTER VIII INTEGRATION

Association among cooperatives

Section 79. Cooperatives may enter into associations among them to exchange services, enter into joint venture and cooperation agreements, complement activities, fulfil their objectives more properly, and to implement the principle of cooperative integration.

Justification

The association among cooperatives of any type or activity is contemplated as the first and essential way of integration aimed at developing their respective objectives.

Fusion

Section 80. When two or more cooperatives fuse, they dissolve without liquidation losing their legal personality. The new cooperative shall be incorporated by taking over the assets and liabilities of the dissolved cooperatives.

Justification

Fusion is an advanced form of integration that entails the dissolution of merging cooperatives and the birth of a new cooperative that shall take over their assets. It is predictable that in a competitive economic environment, the demand for concentrations will increase the number of mergers.

Absorption

Section 81. Merger by absorption is given when one cooperative takes over one more cooperatives retaining its legal personality, while the absorbed cooperatives lose their's. Their assets and liabilities shall be transferred to the absorbing cooperative.

Third-party rights

Both in a fusion and an absorption, third-party rights shall be protected.

Justification

The absorption contemplated in this section is a form of merger. As in the previous case, third party rights shall be protected to avoid damages.

Registration

Section 82. Fusions and absorptions shall be registered with the Cooperative Registry.

Justification

As in the case of the formation of a cooperative, a fusion merger and an absorption shall be registered with the Cooperative Registry thus meeting the publicity requirement.

Higher-level cooperatives

Section 83. By a resolution of their respective General Assemblies, cooperatives may form second or higher level cooperatives or adhere to them. These higher level organisations shall be governed by this law with the amendments necessary to conform to their nature. They shall have a minimum of members.

Justification

This section provides for federative integration, which is widely known in different countries, by stipulating that higher-level cooperatives (federations or confederations) shall be subject to the provisions contained in this law as amended to match their nature. The minimum number of members shall depend on the characteristics of each country. Considering the significance of the decision, the adherence to a higher-level cooperative shall be decided by the General Assembly.

Activity

Section 84. Second or higher level cooperatives are organized to provide services to their members, and they may perform, pursuant to the provisions contained in this law and their respective bylaws, technical, economic, social, and cultural activities and represent the cooperative movement.

Supervision and registration

By delegation by the enforcement authority, higher-level cooperatives which represent the cooperative movement may have a supervisory function. They may also be in charge of the registration if empowered by the authority in charge of the Cooperative Registry.

Justification

A wide range of activities for higher-level cooperatives are contemplated in this section, within the limits of the bylaws though. A significant function is the representation of the cooperative movement in its different manifestations. The section provides explicitly the possibility that higher-level representative cooperatives may perform supervisory tasks and registration duties if so authorized by the respective authorities.

Representation and vote

Section 85. Higher level cooperatives may establish in their bylaws a representation and voting system proportional to the number of members of the affiliated cooperatives or in proportion to the use of the services they make. In this case, the bylaws shall establish a minimum number of votes, which shall ensure the participation of all affiliated cooperatives and a maximum number of votes which shall avoid the predominance of one of them.

Justification

The cooperative principle allow for the establishment of a representation and voting system based on the number of members the affiliated cooperatives have or their use of the services. Therefore, higher-level cooperatives may base their decisions on the number of members of each affiliated cooperative or their participation in the entity's activities. This system may only be established by the bylaws thus ensuring an adequate participation of all affiliated cooperatives and avoiding the predominance of one of them.

CHAPTER IX DISSOLUTION AND LIQUIDATION

Causes of dissolution

Section 86. Cooperatives shall be dissolved by:

1. A decision of the General Assembly;
2. A decrease in the number of members under the legal minimum number for a term longer than six months;
3. Fusion or absorption;
4. A decrease of the capital under the minimum level stipulated in the bylaws for a term longer than six months;
5. Declaration of bankruptcy;
6. Final decision by a court of law;
7. For other causes stipulated in other applicable legal provisions and relating to the activities of the cooperative.

Justification

The causes of dissolution are spelled out in this law, additional cases being a declaration of bankruptcy, a decision by a court of law, or those specified in legal rules applicable to certain activities, like in the case of banks, insurance and others over which the State has special control.

Effects of the dissolution

Section 87. Immediately after the dissolution the liquidation process starts, except in the case of fusions or absorptions. The cooperative shall preserve its legal personality for this purpose only. The liquidators shall communicate the dissolution to the authority in charge of the Cooperative Registry and to the enforcement authority.

Justification

The dissolution immediately leads to the liquidation process, and the cooperative preserves its legal personality only to this end. The communication of the dissolution for the purpose of registration by the Cooperative Registry meets the publicity requirements.

Liquidation body

Section 88. The Board of Directors shall be in charge of the liquidation, except otherwise stipulated in the bylaws or in case of any impediment or impossibility to act, in which case the General Assembly shall designate a liquidation commission and, if the General Assembly fails to do so, the enforcement authority. The Supervisory Council monitors the liquidation process.

Justification

The Board of Directors shall also be in charge of the liquidation, except in the case of stipulations to the contrary in the bylaws or impediments. During the liquidation process the Supervisory Council shall continue acting in its capacity.

Powers

Section 89. The liquidation body shall exercise the legal representation of the cooperative. It shall realize the assets and deal with liabilities by using the denomination of the cooperative with the addition "in liquidation."

Justification

As in any other liquidation, the duty of the liquidation body shall be to realize the assets and pay off debts by representing of the cooperative using its denomination and adding the words "in liquidation."

Remainder after liquidation

Section 90. The remainder after having paid off the debts and refunded the paid-up share contributions at their nominal value shall be given to the higher-level cooperative it is affiliated to or, otherwise, to another cooperative in the proximity with the objective of it being used for education and cooperative development.

Justification

Members shall only receive the nominal value of their paid-up share contributions and only to the extent the remainder suffices after having paid off the debts. If there were still monies left, it shall be given to another entity in the same movement for educational and cooperative development purposes. This is to ensure that the reserve fund not be distributed and that the cooperative development shall be promoted beyond the extinction of a single entity.

CHAPTER X SPECIAL PROVISIONS FOR SOME TYPES OF COOPERATIVES

Cooperatives of associated work (workers' cooperatives)

Section 91. Cooperatives of associated work are those where the members get together in order to meet their need to work through the production of goods or the provision of services directly through the cooperative, which shall be the owner or holder of the means of production, with technical and business autonomy and without acting as a labor intermediary. The admission of members shall be limited by the existence of a position.

Non application of labor law

Labor relations and compensation systems shall be governed by the bylaws or special regulations approved by the General Assembly and shall not be subject to labor laws applicable to salaried dependent workers. However, they shall observe the law on social security and the protection against labor hazards, thus guaranteeing the members a decent job.

Justification

The definition of a cooperative of associated work is based on the idea of a labor service for members, and cooperative may perform economic activities that makes it possible, specifying that the activities performed for such activity are directly organized by the cooperative with technical and business autonomy and without being a labor intermediary; this is to avoid the undue use of these cooperatives by employers who substitute the labor relationship for an apparent cooperative link. The admission of new members to such cooperatives depends on the existence of a position so that they can work as described.

The section also states that the organization of work and the compensation system should be provided for in the bylaws or the regulations approved by the General Assembly to prevent the Board of Directors from adopting decisions on topics that, given their importance, must be taken by the highest decision making body. This provision excludes the relation of members with the cooperative from being governed by labor law which regulates dependent salaried work, without prejudice, however to obligations concerning social security and protection against labor hazards and the obligation to guarantee a decent job.

Anyway, it should be pointed out that in some countries there is recognition for the members of cooperatives of work standards related to remuneration, work conditions, working hours, breaks, etc., quite similarly to the conditions applied to dependent workers.

Cooperative banks, savings and credit cooperatives, and insurance cooperatives

Section 92. Cooperatives whose purpose it is to provide banking, savings and loans, or insurance services shall be specialized and be subject to the legal provisions regulating

financial and insurance activities while having to comply with the provisions of this law and without affecting their cooperative nature, principles, and characteristics.

Justification

In accordance with the fundamental principles of financial and insurance activities, this section establishes that cooperative entities that develop banking, savings and loans, and insurance activities shall be specialized and be subject to the law governing financial and insurance activities, while they have to comply with the regulations of the cooperative law and while they have to preserve their cooperative nature, principles, and characteristics in order to not only differentiate the entity performing the activity, but to also affirm its sense so that it can be understood as a cooperative act.

Housing cooperatives

Section 93. Cooperatives which intend to build, maintain, or manage housing, housing complexes or condominiums shall limit the admission of members to the number of solutions they have.

Types

These cooperatives shall be composed of individual or collective owners of housing units. In the latter case, the cooperative shall be the owner of the real property, and the members shall have the right to use them in accordance with the regulations and they can only establish liens aimed at guaranteeing loans for the purchase of land and the construction of a housing complex with the qualified majority of the General Assembly as stipulated by the bylaws.

Justification

The purpose of this section is, on the one hand, to limit the admission of members to the number of housing solutions that the cooperative can generate and, on the other hand, this section stipulates that the housing units shall be owned by individual owners or collectively, in which case there shall be regulations for the use of the housing units, and in this event there can be real property liens only to ensure loans for the purchase and construction of housing solutions.

School and youth cooperatives

Section 94. School and youth cooperatives which are composed of minors shall be governed by provisions dictated by the respective educational authority in accordance with the principles contained in this law.

Justification

This type of cooperative has shown its value as a training instrument for children and young people; that is why it is expressly recognized in this law. But, since their members are minors and are linked to educational centres, they shall be governed by the provisions dictated by the respective educational authority in accordance with the principles contained in this law.

Cooperatives established abroad

Section 95. Cooperatives established abroad may operate in the national territory if they were legally established in the country of origin and if they observe the cooperative principles contained in this law. The registration with the Cooperative Registry shall be based on the principle of reciprocity with the country of origin.

Regional integration agreements

Binational or multinational cooperatives within the framework of regional economic integration agreements in accordance with the principles of reciprocity of the other countries that are parties to the agreement and specific applicable rules are recognised.

Justification

The internationalization of the cooperative movement by authorising operations by cooperatives established abroad is recognised. They shall observe the universal cooperative principles and their registration is done on the basis of reciprocity. Special reference is made regarding cooperatives established within the framework of regional economic integration agreements in accordance with specific rules.

CHAPTER XI ENFORCEMENT AUTHORITY

Authority

Section 96. The enforcement authority of the cooperative law shall be

Justification

Each country shall have only one official body in charge of enforcing the cooperative law. The administrative organization shall determine their level, location, and name.

Funciones

Section 97. The enforcement authority shall be in charge of cooperative oversight notwithstanding other duties conferred by this law.

Coordination with other authorities

The oversight shall be exercised without prejudice to the duties of other official bodies regarding specific activities of different types of cooperatives with which they shall be coordinated. The oversight by these other authorities shall be in accordance with the nature of the cooperatives themselves.

Justification

This rule states that the public oversight by the enforcement authority does not prevent the oversight by other competent authorities, as is usually the case with banking and insurance entities. There shall be coordination among such authorities to avoid interference that might have an impact on cooperatives; this is also underlined by requiring that such oversight shall take into consideration the peculiar nature of cooperatives.

Powers

Section 98. Notwithstanding further powers, the oversight includes:

1. Request the submission of documentation and investigation into the cooperatives;
2. Attend General Assembly;
3. Request a competent court of law to suspend any resolution by a corporate body if it infringes the law, the bylaws, or the regulations;
4. Request a competent court of law to intervene if the existence of the cooperative is at threat;
5. Request a competent court of law to dissolve and liquidate a cooperative if it violated the law in such a serious manner that it needs to be terminated;
6. Coordinate its tasks with other authorities responsible for the activities of cooperatives;
7. Prevention of the undue use of the word "cooperative," which shall be subject to fines of up to on the offenders and may lead to the closure of the establishment until such behaviour stops;

8. In general, ensure the strict compliance with the applicable legal provisions in a way that does not hinder the normal functioning of the cooperatives.

Delegated supervision

The oversight duties may be performed by delegating them to higher-level cooperatives or ancillary specialised bodies of the cooperative movement.

Justification

A list of duties of public oversight is given, making it clear that they are not exclusive of others stipulated by law. It shall be pointed out that it is possible to perform oversight duties by delegating them to entities from the cooperative movement. This rule is based on favourable experiences which contribute to self-control and cooperative integration.

Sanctions

Sections 99. In the event of breaching this law and other applicable rules, the enforcement authority may impose the following sanctions on cooperatives or the responsible members of the Board of Directors, the Supervisory Council and managers:

1. Reprimand;
2. Warning;
3. A fine of up to

Procedure

Sanctions shall be applied upon prior preliminary hearing where the right to defence shall be ensured and where they shall be classified based on the record of the defendant, their social and economic significance, and the damage caused, if any.

Justification

The sanctioning powers are strict and subject to the procedure requirements that ensure the right to defence. The accountable persons can be both cooperatives or natural or legal persons who have been held liable for breaching the law. There is a classification of sanctions according to the circumstances of each case.

Appeals

Section 100. Administrative and legal appeal procedure provided for by the laws in force may be used against the decisions of the enforcement authority imposing sanctions.

Justification

To ensure the objectivity and impartiality in the enforcement of sanctions, administrative and legal appeal procedures may be used against such decisions.

CHAPTER XII NATIONAL COOPERATIVE INSTITUTE

Location and competence

Section 101. The National Cooperative Institute shall operate in and shall be in charge of designing and implementing the national policies on cooperatives.

Duties

It shall perform the following duties, notwithstanding others stipulated by the law:

1. Promote the development of the cooperative movement and provide technical assistance to cooperatives by coordinating its activities with higher-level cooperatives;
2. Coordinate the implementation of national policies on cooperatives with other official competent authorities;
3. Organize a statistical and information service related to cooperatives;
4. Conduct studies and research on areas within its competence;
5. Manage its budget and grant subsidies and loans to cooperatives;
6. Decide, within the framework of its competence, on any actions necessary for the fulfilment of its duties.

Justification

There shall be a single national body in charge of designing and implementing policies on cooperatives, which should be located in the president's office or the ministry of planning or another one in charge of coordinating the different areas of public administration, with a view to ensure an effective fulfilment of its duties. To be coherent in its actions, this body shall coordinate its activities with the higher-level cooperatives and other competent official bodies related to cooperatives.

Management

Section 102. The National Cooperative Institute shall be run by a Board of Directors composed of a chairman, four government representatives and four representatives from the cooperative movement.

Designation

The president shall be designated by the President of the country; official representatives shall be designated by the ministries directly related to cooperative activities and those of the cooperative movement shall be designated upon proposal by the latter. This needs to be in compliance with the applicable regulation, which shall also stipulate the term of the tenure and operating rules of this body.

Justification

The designation of the president of the Institute by the President of the country is aimed at establishing a hierarchy of the body and the cooperative participation in the Board of Directors relies on positive experience gained with this formula in different countries. On the other

hand, the collegial management allows a more proper treatment of cooperative issues as representatives from the different ministries involved participate. It is clear that in any event, the representatives of the cooperative movement shall be designated based on the proposals made by their entities to ensure a genuine representation.

ATTACHMENT

The Consultative Council of the ICA-Americas considered it appropriate to include the following attachment related to the administration of cooperatives:

“The organizational forms and structures as well as the coordination of the cooperatives shall be set forth in the bylaws and shall be flexible and open to the process of change and adapted to the cultural values and member needs by fostering their full and permanent participation in a way that responsibilities are shared and actions are collectively implemented.

Cooperatives shall decide about their organizational structure in accordance with their economic, social, and educational objectives and by fostering the participation, evaluation, and permanent control and the greatest possible access to information.”



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