

COOPERATIVE LAW IN VENEZUELA

Draft chapter for the book “International Handbook of Cooperative Law”

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1. **SUMMARY.** 1. Introduction. - 2. Sources and characteristics of the general legislation. - 3. Definition and ends of cooperatives. - 4. Activity. - 5. Forms and modes of establishment. - 6. Membership. - 7. Financial aspects. - 8. Governance aspects. - 9. Registration and control. - 10. Transformation and conversion. - 11. Tax treatment. - 12. Cooperation among cooperatives. - 13. Conclusions. - *Essential bibliography.*

1. Introduction

1.1. Historical context

The first cooperative law in Venezuela was the Law of Cooperative Corporations of 1910, amended in 1917, which became part of the Code of Commerce in 1919 with slight variations in its form. A Presidential Decree about Development and Incorporation of Cooperative Corporations was issued in 1939, which was substituted by the Law of Cooperative Corporations in 1942. The General Law of Cooperative Associations was enacted in 1966, amended in 1975 and its regulation was issued the following year.

The legislation in force is the Special Law of Cooperative Associations of 2001, still pending specific regulations. Its purpose is to adapt the legislation to the new Constitution of 1999, which establishes regulations especially favorable for cooperatives, directing the State to promote and protect them.

1.2. Strengths

- a) It is the first that the law incorporates the concept of cooperative act in the country, applicable to relationships among cooperatives and their members in compliance with their corporate purpose and extending its scope to those acts performed with third parties, all of which become regulated by cooperative regulations.
- b) It acknowledges formally and expressly cooperative's autonomy, allowing them to develop any type of licit economic and social activity, under equality conditions regarding other enterprises, without any legal restrictions or otherwise.
- c) With evident pertinence it confers authority to judges vested with extended venue, such as municipal judges, to know about judicial actions and remedies regarding cooperative issues, regardless of the amounts, as well as to pursue procedural expeditiousness ordering the application of the short procedure foreseen in the Civil Procedural Law.

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1.3. Weaknesses of the Law

- a) Regretfully it does not refer to the situation of foreign and bi-national cooperatives, nor to international cooperative bodies.
- b) It does not include basic generic regulations regarding their legal representation, their legal representative appointed or the conditions under which it shall be subject, all of which refers to the by-laws, introducing potential uncertainty to those persons entering into agreements with the cooperative.
- c) It does not expressly establish the cooperative's responsibility, but that of its members, which can be limited liability or complementary – which are not defined and solely refers to terms of the by-laws, thus applying the common law, which affects all of the equity with respect to corporate liabilities.
- d) The cooperative's liability is severely decreased by the possibility of utilizing the legal reserve for “unforeseen events”; not liable of attachments and not subject to judicial actions during the so called “exceptional regime” and the administrative intervention up to one year each, to authorize the disposal of real property during said legal intervention, and the possibility of assuming liabilities as well as issuing liabilities without any limits or conditions.

1.4. Special features of the law

- a) It designs a unique, exclusive and obligatory form or type of cooperative, regardless of its purpose, dimension or degree of entrepreneurial development and number of members; a collective associate work enterprise; with an intensive participation of its members during the permanent collective management of its activity.
- b) The duration of the cooperative entity shall be fixed within the by-laws, living place to the possibility of predetermined and not only undetermined duration of cooperatives.

1.5. Difficulties of the Law

- a) The Law established the values upon which the cooperatives are based upon, as well as the principles governing them, which in a great extent they are the same universal cooperation principles defined by the ICA, although modified with respect to the economic equitable participation of the members, making it egalitarian.
- b) It authorizes the distribution of surplus proportionally to the shares and not only according to the sponsorship of the member to its cooperative, and allows voting forms different to “one person, one vote”.
- c) Apparently it excludes the management in its traditional way, being substituted by shared responsibilities and the collective execution of the actions by the directors.
- d) It definitely chooses associate work, over part or full-time work, as the unique, exclusive and excluding form of work in all types of cooperatives, regulated by labor legislation –not even considering complementary work- but solely taking into account the cooperative act.
- e) It establishes that the work “shall” be developed in a collaborative manner without economic compensation, with the right to participate, under the form of **corporate**

advanced payments, with respect to the surplus generated by all cooperative members.

- f) It does not contemplate deductions for outstanding debts and liabilities of retired members in favor of the cooperative, nor the automatic compensation of their liabilities with the liquid and payable assets, which seriously affects the corporate equity as well as the rights of the corporate creditors, and deteriorates cooperative credibility in the market.
- g) The enjoyment of the State's promotion mechanisms is subject to the fact that the Authority of Application certifies the cooperative character of the entity, fact which is solely and exclusively grounded in not employing wage-earners and not distributing surplus obtained through activities with third parties.

1.6. Perspectives of amendments

An amendment bill is underway (2012) which seeks to transform cooperatives in development instruments of the so called socialist productive model in the country, engaged and subject to the decisions made by the government regarding communal economy and, furthermore, subject to supervision and control of any instance of the People's Power.

2. Sources and characteristics of the general legislation

2.1. Sources

The law precisely fixes the legal regulation's application order as follows: the Constitution; the Law, its Regulations and the measures issued within the framework of the authority of the Application Authority; the by-laws, the regulations and internal provisions; cooperative law; common law, to the extent it is compatible with the cooperative nature and principles; and general law principles.

2.2. Characteristics

- a) It is a very flexible law regarding the organization, structure, and internal operation, and at the same time restrictive, in the sense that it does not regulate numerous important juridical institutions and it refers a substantial portion of the regulation to the Regulations of the Law and to the discretion of the Application Authority.
- b) It is statist, granting excessive powers to Public Administration, and punitive, because before preventing, it sanctions cooperatives in an excessive manner.
- c) It does not allow self-control to the cooperative sector, treating it as an auxiliary body depending on the State regarding cooperative control.
- d) It grants the State extensive development functions to cooperatives, and establishes a broad public mechanism for controlling and sanctioning, which contradicts the autonomy granted in the written law.

3. Definition and ends of cooperatives

- 3.1. The Law provides a definition of cooperative which, nevertheless, it is not able to differentiate it from other associative forms and it stops away from that universally accepted by the International Cooperative Alliance (ICA).
- 3.2. It acknowledges as a cooperative end the corporate interest and the collective benefit, without any privileges for any of its members; and as purpose, not only the economic activities, but also corporate and cultural activities, common to those persons that unite in a voluntary and equitable manner in what is known as “cooperative agreement”.

4. Activity

The Law guarantees the right to develop any kind of licit economic or corporate activity, under equitable conditions with the other companies, whether public or privates, without establishing legal or other restrictions in connection with the purpose of their activity. In such sense, cooperatives may:

- a) Represent micro entrepreneur associative units, able to enter into trusts or funding agreements to grant credits for its users.
- b) Perform inshore fishing, rural or inshore fish farming activities and exploitation of essential fishing resources.
- c) Carry out agricultural activities of mechanization, collection, transport, transformation and marketing of agricultural products, common utilization of waters, irrigation systems management and land reclamation/restoration, organization and consolidation of communities. Likewise, to develop production and commercialization activities under collective organization systems in special sustainable development zones.
- d) To act as collective massive participation entities for the enjoyment of **tourism** benefits as well as of communitarian recreation.

However, cooperatives' actions are restricted in different fields; namely, they cannot act as banks or financial institutions, such as insurance companies, private investor corporations under the concessions regime, nor as developers of free trade zones. Regarding the mining sector; they cannot carry out mine exploration or exploitation (with the exception of small-scale mining in the form of mining commonwealths) since all these activities are reserved “exclusively” to mercantile corporations.

There are no regulations regarding operations external to the purpose, about acquisition of other companies nor about converting mercantile corporations into associate work cooperatives.

The registry of members is obligatory and refusal to do so shall generate fines. The absence of updated accounting records pursuant to generally accepted accounting principles shall subject to pecuniary sanctions, and information systems shall be created for decision-making; minutes of meetings and internal organizational instances are also obligatory, subject to an adequate filing and registration. Non-observance of the latter shall also generate the application of fines.

The by-laws shall determine the economic exercise of the cooperative. The Law provides that the general assembly shall take the decisions relating to financial and corporate balance sheets, with which the concept of “corporate balance” shall be accepted.

Any type and size of cooperative shall be subject to a complex and costly integral revision, performed by individuals registered with a special registry of the Application Authority, whose results shall be delivered to the latter and to the integration body, and shall be made available to the members before the assembly. Failure to do so shall give place to fines. The assembly shall have the power of approving the plans as well as the Budget.

5. Forms and modes of establishment

- 5.1. The Law does not establish provisions regarding initial associative forms which forthwith could give place, after an educational and capitalization process, to regular cooperatives. It solely establishes the joint and several liabilities of those who acted on behalf of the cooperative prior to its incorporation, excepting the acts necessary for the process of registration, and without determining its cessation within the incorporating act, without mentioning any responsibility of those individuals who acted in their capacity as “initial members”.
- 5.2. The Law foresees only one form of incorporation act, which is the formal meeting act of the founders, wherein the by-laws are adopted, the shares are subscribed, the directors are elected and those responsible for the registration are appointed, all of which is attested to in the Minutes that will be submitted to the Office of Public Records of the location, and in the absence of objection it shall register the cooperative, so that the same may be considered organized and having legal personality.

6. Membership

- 6.1. Can be members of cooperatives: natural persons: workers, farmers, consumers and primary users of goods and services; teenagers without required authorization by a representative, in the conditions established in the statute, and employees of cooperatives and nonprofit legal entities of civil nature, thereby eliminating the possibility for public figures, especially municipalities and other public entities of development to participate as partners of cooperatives, all those with application to the internal body provided in the statute, with appeal before the General Assembly.
- 6.2. From the legal context is inferred the existence of two types of partners: the non workers partners, i.e., users, consumers or primary suppliers of goods and services provided by the cooperative; and the employee associates, who were awarded a regimen of preference over the former, particularly in terms of social protection.
- 6.3. The Law provides a fairly detailed regime of rights and obligations of associates referring to the statute, the fixing of others. Imposes as an obligation to participate in the work, which is very difficult to meet in large cooperative users,

consumers and suppliers. Does not establish mechanisms to ensure compliance with the right to information.

- 6.4.** Defines the grounds of associate status loss and differs to the statute those of exclusion. Does not condition the exercise of the right of withdrawal, and lacks of withdrawal right as autonomous causal of cease, if case of significant partnership transformations. Grants to the General Assembly and conciliation systems of the cooperative movement the appeal against exclusion, excluding relevant resources before the bodies of justice administration.

7. Financial aspects

- 7.1.** Endows the cooperative with a variable capital and unlimited, even though allows the statute to establish a minimum capital, whose amount does not fixes. Reserves the term as "cooperative" incorporated under the law, prohibiting the homonymy.
- 7.2.** The economic resources are constituted by contributions of associates, reinvestment of surpluses accumulated in funds and reserves, as well as any other free of charge contribution, aimed at increasing equity, to be used at the donor's will, of indivisible nature provided that they are oriented to fulfill the corporate purpose.
- 7.3.** Enables the issuance of debentures and the assumption of liabilities by third parties and associates, which must be replaced over time by contributions from associates and with the surpluses. It provides the granting of loans from associates to the cooperative, redeemable within time frames.
- 7.4.** Contributions must come mainly from partners in cash, in kind or by conventionally valued personal work, in the manner and time specified by the statute, and they have individual character. The statute should set the formation mechanisms and capital increase in proportion to the use, work, actual production or potential of goods and services and from the surpluses generated by associates, but not in proportion or relationship with the accumulated social assets.
- 7.5.** Does not foreseen contributions to capital by third parties, nor even from other entities of the Social Economy. Enables to revalue assets and contributions, but just in the case of membership status loss and for the sole purpose of reinstatement.
- 7.6.** Makes compulsory the issuance of certificates representing nominal contributions to the establishment of the initial capital, rotating capital, or other

forms of investment, none of which is defined or characterized, leaving to the statute such rules governing each type, its interest and limits. Does not specifies whether they can be transferable and unattachable, nor under what conditions or requirements.

7.7. The Law directs deducting the 1% of total operations regarding non divisible funds; from the remainder, must be deducted the costs, expenses, depreciation and provisions, to determine the surplus. To these, must be deducted the corporate advances and the minimum 30% as emergency funds, education and social protection. As cooperatives; are characterized by low profitability, the surplus to be distributed among non-workers associates are minimal or, if the costs and expenses are slightly lower, equal or exceed the revenue, which increases the loss.

7.8. Funds and reserves constitute the non divisible equity of cooperatives and therefore, cannot be distributed among the associates in any capacity whatsoever, or increase their individual contributions.

7.9. The remaining surplus may be intended upon the General Assembly decision; for distribution among the associates by "equal" parts in proportion to the sponsorship, or according to the "contributions".

8. Governance aspects

8.1. Organizational structure

- a) The Law establishes an organizational great flexibility, which in itself is an important step, to leave to the discretion of associates according to their specific conditions, the design of the cooperative structure, thereby exceeding rigid organizational molds to be uniformly applied to all. However, is left without indicative regulation and, or extra internal organization of the cooperative. With this makes difficult a successful implementation and formation of social will, and breaks the proper balance between efficiency and democracy.
- b) Design very carefully the powers of the governing body (General assembly or general meeting of associates) which is mainly considered as a body of "coordination" allows its call by a percentage of associates, does not regulate the different types of assemblies or formalities and procedures that affect the proper validity of its deliberations, referring it to the statutes, as well as determining the modalities for decision making in a democratic manner, allowing consensus, voting or mixed, without expressly limiting voting by person : "one man, one vote".

- c) Allows replacing the governing body by other agencies for coordination of administrative processes, assessment, control, education and other activities deemed necessary.
- d) Dismantle the permanent internal control system, since it does not establishes specific rules on the matter, and instead, refer them to the integration organizations to which the Law allows to coordinate the development of systems audits, monitoring and control.
- e) Do not provide the independent operation of an internal conciliation and arbitration body, since it refers it to the direct authority of the general assembly and, above all, local systems, regional or national that were established by integration bodies.

8.2. Directors

- a) All matters relating to the election of directors, - nominal and removal; is left to the decision of the general assembly, even though establishes as right and duty of associates to be elected and hold office in the same, fixes a duration of 3 years and allows re-election for a period.
- b) On their responsibility, it seems that chooses not for individual responsibility but "shared responsibilities", which would suggest that there is a joint responsibility of all associates. At the same time, develops an administrative responsibility system that is concentered in fines that may impose by the implementing authority, in case of irregularities committed by directors.

8.3. Workers

- a) Refers to the Statute everything related to the working system; declares the non-employment dependence of workers of all kinds of cooperatives and the non-wage of their salaries, to which considers as corporate advances. Subtract from judicial bodies; such knowledge of disputes arising from the associates-workers with the cooperative, and submits it in mandatory manner Statute refers to everything on the system working; declares the non-dependence of workers of all types of cooperative and non-pay their salaries, which considers corporate advances. Subtract of judicial knowledge of disputes arising from or the associates-workers with the cooperative, and submits a mandatory and un-appealable to the conciliation and arbitration systems of the cooperative movement.
- b) Allows employees only with exceptionally nature, in temporary jobs that cannot be made by the associates, for up to six months, with the right to seek their income as associates, in which case the employment relationship ceases.

- c) The refusal to the wage labor is such, ordering the contracting of the same with other cooperatives, companies of participative social economy and even with other legal entities, when they are not in a position to do so for themselves. And punishes with suspension of certification as a cooperative and fines, the permanent hiring of employees.

9. Registration and control

- 9.1. The Enforcement Authority called National Superintendence of Cooperatives (Sunacoop) is a decentralized agency of third ministerial level, headed by a Superintendent of free appointment and removal. It has an advisory body (non-binding) composed by equal number state-cooperative sector, called Cooperative Council that provides support and advice.
- 9.2. It undergoes Cooperatives to a double Control Authority by the state: by Sunacoop because of their nature, and in terms of the specific activities carried out by the competent authorities in the matter.
- 9.3. Sunacoop had lost the power to centralize the coordination of promotional activities engaged by state agencies towards cooperatives, activity that is the responsibility of each state agency, which will have to do with the integration organizations. Therefore, each state entity exercises on its own policies, programs and promotion plans and cooperative development deemed appropriate.
- 9.4. Sunacoop is endowed with an extraordinary set of powers or authority over the cooperatives, whose total activities are subject to them, and they are; wider exercise control and supervision over the cooperatives of main character and not subsidiary, by choice of Sunacoop, allows itself to intervene the internal life of cooperatives in case of serious and imminent risk, by completely replacing their autonomy during execution; power to adopt the measures necessary to fulfill their duties within their competence, and others, such as organizing services information, coordinating public control policies, issuing union certifications, request before the judge to dissolve the union, closing down of establishments which misused the name as cooperative.
- 9.5. The power given to Sunacoop is such, that has been endowed with exceptional powers, including judicial, such as suspending the exceptional system at the request of interested parties; suspending decisions of internal bodies when considering that are illegal; authorize the disposal of real property of cooperatives in case of intervention, among others.

The powers to punish by Sunacoop are subject to the reliable verification of the grounds of limitation, and they are: fines on individuals and corporations (without differentiating those that correspond to one or the other) penetrated on the grounds provided by Law, which established amount is absolutely disproportionate, even of confiscatory character, we might say, regarding the economic capacity of most part of cooperatives and discretionary, since the law only sets a maximum limit; grant and suspend the certification as cooperative , and consequently those benefits relating, and request dissolution of the entity.

- 9.6. Sets the penalizing procedure exhaustively in a whole chapter, matter that is part of the ordinary law of the administrative process and that in fact amends, which curtails the right of due process.
- 9.7. Precautionary excessive powers granted to Sunacoop, such as ordering the suspension of activities and allegedly infringing of acts and provisional, left the punished party to the apparent helplessness, even when the challenged terms are reduced drastically.

10. Transformation and conversion

- 10.1. The law does not limit, restrict or condition the conversion of cooperatives in other legal forms, with or without profit, so there is no an adequate safeguard of accumulated collective resources, benefits and public preferences obtained and tax granted exemptions to the entity as it was cooperative. The procedure is set out in the statute, requiring decision of the 75% of the members present at the meeting that decides to constitute a cause of dissolution without liquidation.
- 10.2. The amendment of the statute must be approved by at least 75% of the members present at the meeting with the special quorum there given, whose resulting minutes statutes are recorded within the following 15 working days, when it becomes effective. A Certification of members who approved it is required, which obviously complicates and slows badly the needed amendments.
- 10.3. Just neither as the conversion is not limited, conditional nor restricts the merger, spin-off or segregation to or with other legal forms. The procedure and dissolving effect and non liquidation is equal to the conversion. Faced with an obvious gap on the legal situations in these processes, it is clear that it applies the supplementary rules of corporate law.
- 10.4. Enumerates the grounds for dissolution and distinguish them as adopted by the General Assembly, and those not coming from such body, as well as the effects it produces. Establishes two incorporation mechanisms of the liquidation

committee: without the participation of the judge in the first case, and under his direction in the others.

10.5. As Pre-settlement or liquidation measures establishes two assumptions of the so called exceptional regime: first, by decision of the integration body who directs it, where the cooperative run serious and imminent threat for its existence, or to correct serious violations, the second, when the cooperatives defaulting payments for lack of means, by judge's decision. Establishes the procedure and resources that can be exercised against its implementation. It lasts one year, during which the cooperative cannot be subject to seizure or other legal action.

10.6. Regarding the settlement, it has the powers of the liquidation committee: developing the draft settlement, making the asset and settle the liability and deliver the non distributable funds. Sets the priority of payment of liabilities and for an inexcusable neglect, not including outstanding obligations with associates-workers who are left in last place, and to who can only be delivered the value of contributions (not revalued) and obligations. Determines the discontinuance of legal personality.

11. Tax treatment

Declares the exemption of all types of direct national taxes, fees, special charges and registration fees, according to the provisions of each tax Law and the regulations of the Law, subject to certification of the case. Gives to local authorities the decision on the tax treatment to cooperatives in their respective jurisdictions.

The Land Act Law considers possible the exemption from tax on undeveloped land as a way to stimulate new ways of production organization, which may be collective cooperative of agricultural production.

12. Cooperation among cooperatives

12.1. General considerations

- a) The Law establishes three integration systems: the normal integration that is given between cooperatives and can be: temporarily for certain actions by corporate transformations, and by setting up cooperatives and integration organizations; between cooperatives and the social economy entities for specific projects and actions, and by incorporating with them nonprofit legal entities of civil nature, and community integration.
- b) Establishes the purpose of integration the joint of economic processes of obtaining and delivery of goods and services with other entities of the social

economy, coordination of actions among cooperatives and with entities of the social economy, and generates social transformation processes. The Law also transfers authority to integration agencies to coordinate cooperative promotion activities undertaken by the State with the cooperative sector.

- c) Gives the purpose to exercise as representatives of their affiliates; coordination of their policies and plans of conciliation and arbitration systems, audits, statistics and education. In addition to develop technical, educational, economic, social and cultural activities.
- d) Unfortunately the law does not regulate a fundamental aspect of national cooperativism such as social the protection services that integration organizations provide to members of cooperatives.
- e) Do not establish any particular type of integration organizations besides unions and cooperatives and those of second or more degrees, local, regional or national, with what can be adopted by the organization of any type of integration body by the cooperative law. Foreseen the entering into international agreements and contracts for specific projects and activities, partnerships and the establishment of integration organizations.
- f) However, the law does not grant to integration agencies any type of attribution with respect to the sanctions applicable to cooperatives by the implementing authority.
- g) Allows the establishment of entrepreneurial concentration forms through alliances, agreements and contracts with other legal entities, understood, with profit purposes, provided that it does not detract from their goals or corporate purpose, as well as with the public sector, the one with the Social Participatory Economic and the and private, to develop co-managed working methods or self-managed. However, nothing explicit about the surpluses generated by these routes, which could constitute a mechanism to overlap the collective destiny of the surplus generated in procurement operations with third parties.
- h) Do not provides the establishment of any type of companies with legal entities of another kind, not even for extraordinary reasons, which calls into question the economic viability of the sector in certain circumstances.

12.2. Attributions of integration organizations or bodies

- a) Establishment of conciliation and arbitration systems of mandatory compliance, to resolve disputes among associates or employees and their unions.
- b) development of auditing mechanisms, monitoring and control systems as well as communication, information and statistics systems, for social protection of its members, educational training and accreditation.
- c) To cooperate in the correction of irregularities detected by the enforcement authority; participate in the liquidation committee led by the judge and in the selection of the Cooperative Council members, and analyze the report to justify the intervention of cooperatives and executed, as the case may be, by agreement with the same.

13. Conclusions

In our point of view, what the law designs is a socioeconomic small entity confined to develop in secondary activities of the national economy life, dependent and tributary from the private commercial enterprise of "equal" nature of its members, and with constrained autonomy by an exaggerated state control.

In the reality, does not regulates a true cooperative enterprise by international standards, but rather, a collective organization of associated work not suitable for the associated suppliers, consumers or users of goods and services integrated into service cooperatives, nor for management of cutting edge socioeconomic activities.

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