

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

**GOVERNMENT**

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**DECREE-LAW No. /2004**

**ON COOPERATIVES**

The importance of the cooperative sector as a form of ownership and of community intervention in the country's economic life is expressly recognized by the Constitution of the Republic.

Cooperative ideals have been divulged and have already found some expression in our country.

In fact, Timor-Leste had its great opportunity of disseminating cooperative ideals and of seeing the emergence of the first-ever production cooperatives soon after 20 May 1975.

Help yourself by working to help others was then an easily understood and internalised motto. Improving the living conditions of the cooperative's members as a way of helping develop the country was a clearly identified goal.

Great community involvement and participation were the ensuing result.

The values of human work and solidarity, and of accountability for the country's development then began to be assumed with naturalness.

The process of organizing rural economy into cooperatives was however abruptly interrupted when the country was invaded.

The process was subsequently re-launched by the occupying forces but with a distortion of the cooperative ideals in such a way that cooperatives would be used to prevent their associates' self-reliance. Cooperatives came to be an organized form of creating and strengthening the spirit of dependence of the community on subsidies and assistance granted by the occupying State, as a way of fostering alienation and buying social peace.

Now that independence has been restored, it is important to readopt the values of cooperativism as a form of economic organisation based on solidarity, individual and collective work, on the independence and development of its members, and on their well-being, as a way of contributing to the country's economic development.

The cooperative movement has already shown its enormous potential in our country in catalysing wills and mobilizing both individual and collective work.

There is a need to rescue cooperatives and allow for their development, emancipate them and make them a driving force for development rather than a sign of collective incapacity and immaturity or a factor of dependence on the State from whose citizenship we estrange ourselves.

This decree-law aims to help rekindle cooperative values in order to release energy to rebuild the country and the mentalities and values that have been deformed during the sombre period of military occupation.

Thus, pursuant to section 115.1(e) of the Constitution of the Republic, the Government enacts the following that shall have the force of law:

## **CHAPTER I General Provisions**

### **Article 1 Scope**

This decree-law establishes the set of norms that will regulate the formation, organisation and functioning of cooperatives as legal persons, as well as the winding-up and liquidation thereof.

### **Article 2 Definition**

1. Cooperatives are autonomous legal persons, which may freely raise varied amounts of capital with the aim of satisfying, for non-profit purposes, the economic, social or cultural needs and aspirations of their members, through cooperation and self-help among their members, in compliance with the cooperative principles.
2. While pursuing their goals, cooperatives may carry out operations with third parties, without prejudice to any limits as may have been set by specific laws in each cooperative branch.

### **Article 3 Cooperative principles**

The formation and operation of cooperatives shall abide by the following cooperative principles, which include the statement on the cooperative identity adopted by the International Co-operative Alliance:

- (a) ***Voluntary and open membership***- Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.
- (b) ***Democratic member control***- Cooperatives are democratic organisations managed by their members, who actively participate in the formulation of policies and in decision-making. Men and women performing functions, as elected representatives, are accountable to the universe of members who have elected them. In first-degree

cooperatives, members have an equal right to vote (one member, one vote), with other degree cooperatives being also organised in a democratic manner;

- (c) **Member economic participation** - Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible: benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership;
- (d) **Autonomy and independence**- Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy;
- (e) **Education, training and information**- Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives. They shall inform the general public, particularly young people and opinion leaders, about the nature and benefits of cooperation;
- (f) **Cooperation among cooperatives**- Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures;
- (g) **Concern for community**- Cooperatives work for the sustainable development of their communities through policies approved by their members.

#### **Article 4**

##### **Branches of the cooperative sector**

1. Without prejudice to others that may be established by law, the cooperative sector comprises the following branches:
  - (a) production and work;
  - (b) consumption;
  - (c) trade;
  - (d) agriculture;
  - (e) credit;
  - (f) housing and building;
  - (g) factory production;
  - (h) handicrafts;
  - (i) fisheries;
  - (j) culture;
  - (k) services;
  - (l) education;
  - (m) social solidarity.
2. The establishment of multisectoral cooperatives, which are characterised by the possibility of carrying out activities specific to various branches of the cooperative sector, is permitted and every cooperative shall state in its memorandum of association for which

branch it opts as a benchmark, with a view to classifying them as higher-degree cooperatives.

#### **Article 5**

##### **Types of cooperatives**

1. Cooperatives may be of first or higher degree.
2. First-degree cooperatives are those whose members are individuals or legal persons and higher-degree cooperatives are those comprised of unions, federations or confederations of cooperatives.

#### **Article 6**

##### **Public interest cooperatives**

1. The establishment of public interest cooperatives, characterised by the participation of the State or of other public legal entities, including, either jointly or separately, cooperatives and users of the goods and services produced by such cooperatives, is permitted.
2. This law applies to public interest cooperatives in all that does not conflict with specific legislation in this area.

#### **Article 7**

##### **Cooperative initiative**

1. Cooperatives may freely carry out any economic activity in accordance with the approved articles of association, insofar as such activity is in compliance with the law and the cooperative principles.
2. Access to and the exercise of activities that can be carried out by private enterprises or by other entities of similar nature, including any other private legal persons of a non-profit character, may not be denied, restricted or limited to cooperatives.
3. The norms regulating and ensuring the exercise of any activities carried out by enterprises or by other entities of the same nature, including any other private legal persons of a non-profit character, shall apply to cooperatives.
4. Administrative acts that are contrary to the provisions of the previous subarticles or to the principles enshrined therein shall be considered null and void.

#### **Article 8**

##### **Association of cooperatives with other legal persons**

1. Cooperatives may associate with other legal persons of a cooperative or other nature, provided that from such association does not result a loss of their autonomy.
2. In cooperatives resulting exclusively from the association of cooperatives, or of the latter with public legal persons, the voting system may be the one adopted by higher-degree cooperatives.
3. Legal persons resulting from the association of cooperatives with legal persons of a profit character may not adopt a cooperative form.

4. No cooperative shall:

- (a) allow third parties to enjoy, either directly or indirectly, the privileges and benefits that the law confers upon cooperatives;
- (b) form part of entities whose purposes are inconsistent with those of cooperatives;
- (c) carry out activities other than those provided for in the articles of association as approved by its members and recognised by the Government;
- (d) conduct economic operations with an exclusivity or monopoly status, to the detriment of its members and consumers;
- (e) admit to its corporate bodies, committees or boards any persons who are not its members.

### **Article 9 Subsidiary law**

In order to fill any lacunae in the present decree-law, those which cannot be filled by resorting to complementary legislation applicable to the various branches of the cooperative sector, the Law on Commercial Companies, notably the provisions applicable to joint stock companies, insofar as such provisions do not disregard the cooperative principles, may apply.

## **CHAPTER II Establishment**

### **Article 10 Mode of establishment**

1. First-degree cooperatives may be established through a specific instrument.
2. Subsidiary legislation applicable to the various branches of the cooperative sector may require a form of public deed for the establishment of cooperatives.

### **Article 11 Meeting of founding members**

1. Those interested in the establishment of a cooperative shall hold a meeting of founding members, for whose chair they shall elect at least the chairperson, who shall convene and chair the required meetings until such a time as the incumbents of the cooperative bodies are inducted into office.
2. Each interested person shall have one vote only.
3. A cooperative is deemed to have been established only by those who voted in favour of its creation and of its articles of association.
4. For a cooperative to be considered to have been established the number of interested persons, who voted in favour of its creation and of its articles of association, shall not be less than 15, aged more than 17 years; with the number of persons who voted against being irrelevant.

## **Article 12**

### **Minutes**

1. The chair of the meeting of founding members shall draft minutes that must contain:
  - (a) the decision on the establishment of the cooperative and date of its establishment;
  - (b) the venue of the meeting;
  - (c) the name of the cooperative;
  - (d) the branch of the cooperative sector to which the cooperative belongs or for which it opts as a space of integration, in the case of a multisectoral cooperative;
  - (e) the object;
  - (f) the goods or rights, the work or services that the members invest in the cooperative;
  - (g) the incumbents of its corporate bodies for the first term of office;
  - (h) the identification of the founding members who approved the minutes.
2. The founding minutes shall be signed by those who have approved the creation of the cooperative.
3. The articles of association shall be annexed to the minutes and shall be signed by the founding members.
4. Five of the signatures to be apposed to the minutes and the articles of association are required to be certified by a notary public.

## **Article 13**

### **Establishment by public deed**

1. Where a public deed is required for the establishment of a cooperative it must contain:
  - (a) the name of the cooperative;
  - (b) the branch of the cooperative sector to which it belongs and for which it opts as a space of integration, in the case of a multisectoral cooperative;
  - (c) the incumbents of the cooperative bodies for the first mandate;
  - (d) the identification of all its founding members;
  - (e) the articles of association.
2. Amendments to the articles of association of a cooperative established by public deed shall take on that form only when such amendments alter the amount of minimum share capital or the object of the cooperative and, in either case, where the deliberative minutes have not been drafted by a notary public.

## **Article 14**

### **Name of the cooperative**

1. The adopted name shall always be followed by the expression “cooperative”, “union of cooperatives”, “federation of cooperatives”, “ confederation of cooperatives”, and also “limited liability”, or the abbreviations thereof, as the case may be.
2. The use of the word “cooperative” and of its abbreviation “coop.’ is exclusively reserved for cooperatives and its use by any other entity shall constitute a punishable offence, without prejudice to the corresponding civil liability.
3. Cooperatives are registered as legal persons with the National Directorate of Registries and Notarial Services, Ministry of Justice.

**Article 15**  
**Contents of the articles of association**

1. The articles of association must contain:

- (a) the name of the cooperative and the location of its registered office;
- (b) the branch of the cooperative sector to which it belongs or for which it opts as a space of integration, in the case of a multisectoral cooperative, as well as the purpose of its activity;
- (c) the duration of the cooperative, where it is not for an indefinite period of time;
- (d) the corporate bodies of the cooperative;
- (e) the initial amount of share capital, the amount of membership fees, where these are required, the amount of the capital securities, the minimum capital to be underwritten by each member and its paying-up modality.

2. The articles of association may also include:

- (a) conditions for membership, suspension, exclusion and dismissal of members, as well as their rights and duties;
- (b) sanctions and precautionary measures, as well as the general conditions under which they apply;
- (c) the duration of the term of office of the incumbents of its corporate bodies;
- (d) the rules for convening and operating the general meeting and, if any, of the meeting of delegates;
- (e) the rules for allocating surpluses, for creating new reserves and restoring inputs to those who withdraw as members;
- (f) the mode of liquidation of the cooperative and the mode of sharing its goods, in the event of winding up;
- (g) the procedure for amending the articles of association.

3. In the absence of a provision in the articles of association concerning the matters set forth in the previous subarticle, the norms set out in this decree-law shall apply.

**Article 16**  
**Acquisition of legal personality**

A cooperative shall acquire legal personality upon lodgement of its memorandum of association.

**Article 17**  
**Liability prior to registration**

1. Prior to lodgement of the memorandum of association of the cooperative, all those members who have performed acts on behalf of the cooperative or who have authorised such acts shall be jointly and unlimitedly liable.
2. The other members shall be liable up to the limit of the value of the capital securities that they have underwritten, in addition to the amounts they may have received as an apportionment of surpluses.

**CHAPTER III**  
**Share capital, membership fee and investment securities**

**Article 18**  
**Variability and minimal capital amount**

1. The share capital of cooperatives is variable and the articles of association of each cooperative may determine its initial minimal amount.
2. The initial amount of capital may not be less than US\$ 1,000 (one thousand American dollars), except where another minimum is determined by subsidiary legislation applicable to each of the branches of the cooperative sector.

**Article 19**  
**Minimal inputs to be underwritten by each member**

1. Minimal capital inputs to be underwritten by each member are determined by subsidiary legislation applicable to the various branches of the cooperative sector or by the articles of association.
2. The minimal input may not, however, be less than the equivalent to three capital securities.
3. The provisions of the preceding subarticles are not applicable to instalments of unlimited liability members.

**Article 20**  
**Capital securities**

1. Securities representing share capital of cooperatives are multiples of 5 and have a minimal nominal value of US\$ 5 (five American dollars).
2. Securities are nominative and shall contain the following references:
  - (a) the name of the cooperative;
  - (b) the registration number of the cooperative;
  - (c) the value;
  - (d) the date of issue;
  - (e) the sequential serial number;
  - (f) the signature of two of the managers;
  - (g) the name and signature of the holder.

**Article 21**  
**Paying-up of capital**

1. Underwritten capital may be paid up in cash, goods or rights, work or services.
2. The minimal inputs referred to in article 19 and those provided for in subsidiary legislation applicable to the various branches of the cooperative sector are paid up in cash in an amount corresponding to at least 50% of its value.
3. Underwritten capital shall be fully paid up within five years.
4. The underwriting of securities, to be paid up in cash, requires a minimum delivery of 10% of their value upon underwriting, and the articles of association may require a larger amount.
5. The underwriting of securities, to be paid up in goods or rights, work or services, requires that the modalities of payment be previously determined at a meeting of founding members or at a general meeting, under the proposal of the management.

**Article 22**  
**Underwriting of share capital upon admission**

Members of a cooperative are subject, upon admission, to the provisions of articles 19 to 21.

**Article 23**  
**Transmission of capital securities**

1. Capital securities may only be transmitted through authorisation from the management or, where provided by the articles of association of the cooperative, from the general meeting, on condition that the acquirer or successor is already a member or, if eligible, applies for admission.
2. Transmission between living natural persons is done through endorsement of the security to be transmitted, signed by the transmitter, by the acquirer and by whoever binds the cooperative, and recorded in the register.
3. Transmission *mortis causa* is undertaken by production of a document attesting to one's capacity as an heir or legatee and is recorded, in the name of the holder, in a register and in the securities, which shall be signed by whomever binds the cooperative and by the heir or legatee.
4. Where a transmission *mortis causa* may not be undertaken, successors are entitled to receive the amount of the securities of the author of the succession, according to their nominal value, corrected against the quota of surpluses or losses and the non-obligatory reserves.

**Article 24**  
**Acquisition of own capital securities**

Cooperatives may only acquire securities representing own capital by a gratuitous title.

**Article 25**  
**Membership fee**

1. The articles of association of the cooperative may require the payment of a membership fee, payable in one sitting or in periodic instalments.
2. The amount of membership fees shall accrue to the benefit of the obligatory reserves, as set out in the articles of association, within the limits of the law.

**Article 26**  
**Investment securities**

1. Cooperatives may issue investment securities, by decision of the general meeting, which shall establish the goals and the conditions under which the management may use the proceeds therefrom.
2. Investment securities may be issued for the purposes of:
  - (a) granting the right to an annual remuneration, consisting of a fixed portion, calculated by applying to a fraction of the nominal value of each security a predetermined rate, calculated against the outputs, the turnover or any other element of the activity being carried out by the cooperative;
  - (b) conferring upon their holders the right to a reimbursement premium, either fixed or varying in accordance with the outputs realised by the cooperative;
  - (c) presenting interest rates and a reimbursement plan varying in accordance with the outputs;
  - (d) being convertible into capital securities, provided that the holder thereof meets the membership requirements as established by law in respect of producer or user members;
  - (e) presenting issuance premiums.
3. Investment securities issued under the terms of paragraph (a) of the previous subarticle are refundable only in the case of liquidation of the cooperative and only after all the creditors of the cooperative have been paid for or, where the cooperative so decides, at least five years have elapsed from the date such securities were paid up, under the conditions defined upon the issuance thereof.
4. Any investment securities may be underwritten by persons external to the cooperative, but its members have the right of preference over the underwriting of convertible investment securities.
5. Cooperatives may only acquire own investment securities by gratuitous title.
6. Investment securities of a cooperative are equated with bonds of a commercial company, insofar as investment securities are not regulated by this decree-law.

**Article 27**  
**Issuance of investment securities**

1. The general meeting that decides on the issuance of investment securities shall establish the interest rate and all other issuance conditions.
2. Investment securities are nominative and transmissible, under the terms established by law, and shall conform to the requirements provided under subarticle 20.2.

3. The general meeting shall decide whether underwriters of investment securities who are not members of the cooperative may attend it, but without the right to vote.
4. Cooperatives may not issue investment securities exceeding the amount of paid-up and available capital, under the terms of the previous approved balance sheet, in addition to the amount of capital increased and paid up after the date of closure of such balance sheet.
5. No issuance of investment securities may be decided upon until a previous issuance has been underwritten and paid up.

**Article 28**  
**Public underwriting of securities**

Issuance by public underwriting shall be preceded by an external auditing of the cooperative, without prejudice to the regime provided by law in respect of this modality of issuance.

**Article 29**  
**Special protection of interests of underwriters of investment securities**

1. The general meeting may decide that underwriters of securities gathered together for that purpose elect a representative within the cooperative with the right to attend auditing board meetings and be provided with all the information members of that body are entitled to receive.
2. Once the decision referred to in the previous subarticle is taken, the rights conferred by such decision may only be revoked with the express consent of all underwriters of investment securities.

**Articles 30**  
**Bonds**

1. Cooperatives may also issue bonds in accordance with the norms established by the Law on Commercial Companies in respect of bonds issued by joint stock companies, to the extent that the application of which does not call into question either the cooperative principles or the provisions of this decree-law.
2. No bonds convertible into shares or that confer the right to underwrite one or more shares shall be permitted.

**CHAPTER IV**  
**Members of cooperatives**

**Article 31**  
**Members**

1. Membership to a first-degree cooperative may include every person who, meeting the requirements and conditions provided for in this decree-law, in subsidiary legislation applicable to the relevant branch of the cooperative sector, and in the articles of association of the cooperative, applies to the management for admission.

2. A decision by the management on the admission application may be appealed against to the first subsequent general meeting.
3. Members of the cooperative and the candidate may appeal, with the latter being allowed to attend that general meeting and take part in the discussion of this item on the agenda, without the right to vote.

### **Article 32** **Minimal number**

1. A cooperative may have a variable and unlimited number of members, but such number may not be below fifteen in first-degree cooperatives or three in higher-degree cooperatives.
2. Subsidiary legislation concerning each branch may require a higher number of numbers as a minimum.

### **Article 33** **Rights of members**

1. Members have the right to:
  - (a) attend the general meeting, submitting proposals and discussing and voting the items on the agenda;
  - (b) elect and be elected for the corporate bodies of the cooperative;
  - (c) ask for information from the relevant corporate bodies of the cooperative and vet the bookkeeping and the accounts of the cooperative in periods of time and under the conditions as established by the articles of association, by the general meeting or by the management;
  - (d) ask for the call of the general meeting under the terms as defined by the articles of association and, where such meeting is not called, ask for a judicial call;
  - (e) resign.
2. Decisions by the management on matters set out in paragraph (c) of the previous subarticle may be appealed against to the general meeting.
3. The exercise of the rights provided for in paragraph (c) of the previous subarticle is limited, in credit cooperatives, by the observance of the rules relative to banking secrecy.

### **Article 34** **Duties of members**

1. Members shall abide by the cooperative principles, the law, the articles of association of the cooperative and by its rules of procedure.
2. Members shall also:
  - (a) attend general meetings;
  - (b) accept and hold corporate offices for which they have been elected, except where there are substantiated grounds for excuse;
  - (c) take part, in general, in activities being carried out by the cooperative and provide the work or service that is expected from him or her;

- (d) make the payments provided for in this law, in the articles of association and in the rules of procedure.

**Article 35**  
**Limit of liability**

Members' liability is limited to the amount of underwritten share capital, without prejudice to the articles of association of the cooperative determining that its members' liability is unlimited, or even limited in relation to some members and unlimited with regard to others.

**Article 36**  
**Resignation**

1. Members may resign under the conditions set out in the articles of association or, in the event that these are silent on the issue of resignation, at the end of the financial year, by giving a 30-day prior notice, without prejudice to his or her liability for the fulfilment of his or her obligations as a member of the cooperative.
- 2- The articles of association shall not revoke or restrict the right to resign and they may, however, establish rules and conditions for the exercise thereof.
3. The amount of capital securities paid up in accordance with their nominal value shall, within the deadline established by the articles of association or, on a subsidiary basis, within one year, be restored to any member who resigns.
4. The nominal value referred to in the previous subarticle shall be accrued on any interests to which the resigning member is entitled in relation to the previous financial year, on the quota of surpluses and non-obligatory reserve funds apportionable in proportion to his or her participation, or curtailed, where applicable, in proportion to any losses registered in the balance sheet pertaining to the financial year in the course of which the right to reimbursement came to exist.

**Article 37**  
**Exclusion**

1. Members may be excluded by decision of the general meeting.
2. Exclusion has to be grounded in a serious and negligent breach of this decree-law, of subsidiary legislation applicable to the relevant branch of the cooperative sector, of the articles of association of the cooperative or of its rules of procedure.
3. Exclusion shall be preceded by a written report containing an indication of the offence(s) committed, the classification thereof, the evidence adduced, the plea of the accused and the proposal for application of the exclusion measure.
4. The report provided for in the previous subarticle does not apply where the grounds for exclusion consists in delay in the payment of charges, as established in the articles of association. However, a prior notice, to be sent to the registered domicile of the offender and stating the deadline within which his or her situation must be regularised, is obligatory.
5. Nullity may not be remedied if arisen from:
  - (a) failure to hear the accused;
  - (b) insufficient individualisation of the offences imputed to the accused;

- (c) failure to refer to the provisions of the law, of the articles of association or of the regulations that have been breached;
  - (d) omission of any action essential for unravelling the truth;
  - (e) the proposal for exclusion to be written down in the report shall be well-founded and notified in writing to the accused at least seven days before the holding of the general meeting at which the proposal shall be decided upon.
6. Exclusion shall be decided upon within one year from the date on which any of the members of the management became acquainted with the fact leading to it.
7. A decision on exclusion taken by the general meeting may be appealed against to the courts.
8. The final part of subarticle 37.1 above and the provisions of subarticles 3 and 4 of the previous article shall apply to any member excluded from the cooperative.

### **Article 38**

#### **Other sanctions**

1. Without prejudice to other sanctions provided for in the articles of association or in the rules of procedure, the following sanctions may be applied to members:
- (a) recorded reprimand;
  - (b) fine;
  - (c) temporary suspension of rights;
  - (d) forfeiture of term of office.
2. The application of any sanction shall always be preceded by a report, under the terms established by the previous article.
3. The application of the sanctions referred to in paragraphs (a), (b) and (c) of subarticle 1 above is the responsibility of the management, and such sanctions may be appealed against to the general meeting, which shall decide upon the forfeiture of the term of office.

## **CHAPTER V**

### **Bodies of a cooperative**

#### **SECTION I**

#### **General principles**

### **Article 39**

#### **Corporate bodies**

1. The bodies of a cooperative comprise:
- (a) the general meeting;
  - (b) the management;
  - (c) the auditing board.
2. The articles of association may also provide for other bodies, as well as empower the general meeting or the management to set up ad hoc committees of a limited duration, with the aim of carrying out specific tasks.
3. Where the bodies of a cooperative are jointly referred to in this decree-law by using terms that imply that they are comprised of a limited number of members, it is to be

understood that such a reference is not extensive to the general meeting as a whole, but just to its chair.

**Article 40**  
**Election of members for corporate bodies**

1. Members of corporate bodies are elected from among the cooperative members for a 4-year period, where a shorter period is not provided for in the articles of association.
2. In the event of vacancy in office, the member designated to fill the vacancy shall only hold the office until the end of the ongoing term of office.
3. The articles of association may restrict the number of consecutive terms of office for the chair of the general meeting, the management, the auditing board or any other body provided for therein.

**Article 41**  
**Forfeiture of term of office**

The grounds for forfeiture of a term of office are as follows:

- (a) fraudulent bankruptcy;
- (b) conviction for crimes against the public sector or against the cooperative and social sector, namely, for the embezzlement of assets from the cooperative and social sector or for damaging management in an economic unit of the sector.

**Article 42**  
**Incompatibilities**

1. A person may not be simultaneously a member of the chair of the general meeting, of the management, of the auditing board or of other elective bodies provided for in the articles of association.
2. Spouses or people living together in a *de facto* relationship may not be elected for the same corporate body having more than fifteen members or be simultaneously members of the management and of the auditing board.

**Article 43**  
**Operation of corporate bodies**

1. The chairperson of each body of the cooperative shall have a casting vote.
2. No corporate body of the cooperative, with the exception of the general meeting, may operate unless at least half of its positions have been filled. Any existing vacancies shall otherwise be filled within one month, without prejudice to such positions being occupied by substituting members, where such members are provided for in the articles of association.
3. Decisions by the elective bodies of the cooperative are taken by a simple majority with more than a half of its members in attendance.

4. Voting in elections for the corporate bodies of the cooperative or on matters personally concerning members shall be conducted by secret ballot, and subsidiary legislation applicable to the diverse branches of the cooperative sector or the articles of association may provide for other cases where this kind of ballot is obligatory.
5. Minutes of the meetings of any body of the cooperative, to be signed by the person acting as chairperson, shall always be taken.
6. Where the articles of association are silent on the issue, the general meeting may determine the remuneration for the members of the bodies of the cooperative.
7. The articles of association may determine the obligation to provide a guarantee by the members of the board of directors and managers.

## **SECTION II**

### **General meeting**

#### **Article 44**

#### **Definition, composition and decisions of the general meeting**

1. The general meeting is the supreme body of the cooperative, and its decisions, taken under the terms established by law or its articles of association, are binding on all other bodies of the cooperative and all their members.
2. No member, in the full exercise of his or her rights, may be impeded from attending the general meeting.
3. The articles of association of the cooperative may provide for general meetings of delegates, who are elected under the terms established by article 54 of this decree-law.

#### **Article 45**

#### **Ordinary and extraordinary sessions of the general meeting**

1. The general meeting shall meet ordinarily and extraordinarily.
2. An ordinary general meeting shall be convened twice a year, one not later than the 30<sup>th</sup> of September, for review and voting on the matters referred to in paragraphs (b) and (c) of article 49 of this decree-law, and the other not later than the 30<sup>th</sup> of June, for review and voting on the matters referred to in paragraph (d) of the same article.
3. Notwithstanding any provision of the subsidiary legislation for each cooperative branch or of the articles of association to the contrary, an extraordinary general meeting shall be held when convened by its chairperson, on his or her own initiative, or at the request of the management or of the auditing board, or at the request of at least 5% of the members of the cooperative, not fewer than four.

#### **Article 46**

#### **Chair of the general meeting**

1. The chair of the general meeting is composed of a chairperson and of a deputy chairperson, where the articles of association do not stipulate a higher number of members.
2. The chairperson is responsible for:
  - (a) convening the general meeting;
  - (b) chairing the general meeting and direct its proceedings;

- (c) verifying the eligibility conditions of candidates for the bodies of the cooperative;
  - (d) install the members elected for the bodies of the cooperative.
3. In his or her absences or inability to act, the chairperson is substituted by the deputy chairperson.
  4. In the absence of any of the members of the chair of the general meeting, the latter shall elect the respective substitutes, from among the members present, who shall cease their functions at the end of the meeting.
  5. Failure to convene a general meeting where the chairperson is required to do so amounts to his or her removal as the chairperson of the general meeting.
  6. Failure to attend at least three consecutive sessions or six interpolated sessions, without good excuse, amounts to the removal of any of the members.

### **Article 47**

#### **Convening the general meeting**

1. The general meeting is convened by its chairperson, with at least a 15-day notice.
2. The convening notice, which shall contain the agenda of the general meeting, including the date, time and the venue of such meeting, shall be published in a daily newspaper in the district, administrative region or Autonomous Region where the cooperative has its registered office or, in the absence of such a newspaper, in any other publication in the district, administrative region or Autonomous Region, with a periodicity not exceeding a fortnight.
3. Where the provision of the previous subarticle cannot be observed, the convening notice shall be published in a daily newspaper in the district or administrative region closest to the locality where the registered office of the cooperative is situated, or in a daily or weekly newspaper with nationwide circulation.
4. The periodicals provided for in the previous subarticles become optional where the convening notice is sent to all members by registered mail or hand-delivered against receipt, dispatch or delivery, which is obligatory in any cooperative with a membership below 100.
5. The convening notice shall always be affixed on the premises of the registered office or any other form of representation of the cooperative.
6. The convening notice of the extraordinary general meeting shall be served within 15 days after the request or application provided for in subarticle 45.3 has been made, and such meeting shall be held within 30 days from the date of receipt of the request or application.

### **Article 48**

#### **Quorum**

1. The general meeting shall be held at the time set in the convening notice where more than one half of the members with the right to vote or their duly credentialed representatives are in attendance.
2. Where, at the time set for the meeting, the number of those in attendance is lower than that provided for in the preceding subarticle and the articles of association do not provide otherwise, the meeting shall be held one hour later with the number of members in attendance.

3. In the case that the call for the general meeting is made in an extraordinary session at the request of the members, the meeting shall not be held unless three quarters of those who made the request are in attendance.

### **Article 49**

#### **Competence of the general meeting**

It is the exclusive competence of the general meeting:

- (a) to elect and remove members of the corporate bodies from office;
- (b) to review and vote the annual management report and the accounts pertaining to the financial year, as well as the opinion issued by the auditing board;
- (c) to review the legal certification of accounts, if any;
- (d) to review and vote the budget and the business plan for the following financial year;
- (e) to fix interest rates payable to the members of the cooperative;
- (f) to approve the mode of distribution of surpluses;
- (g) to amend the articles of association and approve and amend the rules of procedure;
- (h) to approve the merger or demerger of the cooperative;
- (i) to approve the voluntary winding-up;
- (j) to approve the affiliation of the cooperative to unions, federations and confederations;
- (k) to decide upon the exclusion of members and the forfeiture of their term of office in corporate bodies, and to also function as an instance of appeals, either with regard to the admission or rejection of new members or in relation to any sanctions imposed by the management;
- (l) to determine the remuneration for the members of the corporate bodies of the cooperative, where the articles of association do not provide otherwise;
- (m) to decide upon the exercise of the right to civil or criminal action, under the terms established by article 68;
- (n) to review and vote on matters specifically provided for in this decree-law, in subsidiary legislation applicable to the relevant branch of the cooperative sector or in the articles of association.

### **Article 50**

#### **Decisions**

Any decision on matters that are not on the agenda attached to the convening notice are null and void, except where all members of the cooperative, either present or duly represented and in the full exercise of their rights, unanimously agree upon the inclusion of such matters into the agenda or where such a decision concerns the matter set forth in subarticle 68.1, as provided by subarticle 68.3.

### **Article 51**

#### **Voting**

1. Every member has the right to vote at the general meeting of a first-degree cooperative, irrespective of the amount of his or her participation in its share capital.

2. A qualified majority of at least two-thirds of the votes is required for the approval of the matters specified in paragraphs (g), (h), (i), (j) and (n) of article 49 of this decree-law or any other matters in which respect the articles of association provide for a qualified majority.
3. In the case of paragraph (i) of article 49, winding-up shall not take place where at least the minimum number of members referred to in article 32 express their willingness to ensure the permanence of the cooperative, irrespective of the number of votes against.

**Article 52**  
**Vote by correspondence**

Vote by correspondence is permitted on condition that the vote intention is expressly indicated in respect of the item(s) on the agenda and the member's signature is legalised in conformity with the law.

**Article 53**  
**Vote by representation**

1. Vote by representation is permitted, and the mandate, which may only be conferred upon another member or a major family member of the principal living under the same roof as the latter, shall be stated in a written document to be addressed to the chairperson of the general meeting, bearing the signature of the principal recognised under the terms established by the law.
2. Each member of the cooperative may not represent more than one co-member, except where the articles of association allow for a higher number.

**Article 54**  
**Sectoral meetings**

1. The articles of association may provide for the holding of sectoral meetings, as the cooperative deems it convenient, either on grounds of its activities or by reason of its geographic area.
2. The number of delegates to the general meeting, to be elected at each sectoral meeting, is determined on the basis of the number of members.
3. The number of delegates to the general meeting, to be elected at each sectoral meeting, shall be assessed by the management every year, under the terms of the previous subarticle.
4. Articles 44 to 53 shall, with the necessary adaptations, apply to sectoral meetings.

**SECTION III**  
**The management**

**Article 55**  
**Composition of the management**

1. The management of the cooperative is composed of:

- (a) in cooperatives with over 20 members, a chairperson and two representative members, one of whom shall be the substitute for the chairperson in his or her inability to act or absences, where there is no a deputy chairperson;
  - (b) in cooperatives having up to 20 members, a chairperson, who shall designate a substitute in his or her absences or inability to act.
2. The articles of association may enlarge the composition of the management, while ensuring an odd number of its members.

### **Article 56**

#### **Competence of the management**

The management is the administrative and representative body of the cooperative, and shall be responsible for:

- (a) preparing the annual management and accounts report, as well as the business plan and budget for the following year, and submitting such documents to the auditing board for review and approval;
- (b) executing the annual business plan;
- (c) attending to requests made by the auditing board and the chartered accountant, or by the firm of chartered accountants, on matters that fall under their respective competence;
- (d) deciding upon the admission of new members and the application of sanctions provided for in this decree-law, in subsidiary legislation applicable to the various branches of the cooperative sector and in the articles of association, within the limits of its competence;
- (e) enforcing the law, the articles of association, the rules of procedure and the decisions of the corporate bodies of the cooperative;
- (f) hiring and managing the staff needed to carry out the activities of the cooperative;
- (g) representing the cooperative in court and elsewhere;
- (h) doing bookkeeping under the terms established by the law;
- (i) to perform such acts as required for the defence of the interests of the cooperative and its members, as well as for the safeguard of the cooperative principles, in all that does not impinge upon the competence of other corporate bodies.

### **Article 57**

#### **Managerial meetings**

1. The management shall hold an ordinary meeting a month, convened by its chairperson.
2. The management shall hold an extraordinary meeting when convened by its chairperson, on his or her own initiative or at the request of the majority of its members.
3. The management may take decisions only where more than half of its full members are in attendance.
4. Substituting members may, where the articles of association provide for the existence thereof, attend and participate in managerial meetings, without the right to vote.

**Article 58**  
**Mode of binding a cooperative**

Where the articles are silent on the mode of binding, the cooperative shall be bound by joint signatures of two management members, where the management is collegial, except in respect of routine matters, where the signature of either member shall suffice.

**Article 59**  
**Powers of representation and management**

The management may delegate powers of representation and administration for the performance of certain categories of act to any of its members, managers or other agents.

**SECTION IV**  
**Auditing board**

**Article 60**  
**Composition**

1. In cooperatives with over 25 members, the auditing board is composed of one chairperson and two representative members;
2. In cooperatives with up to 25 members, the auditing board is composed of only one member;
3. The articles of the association may enlarge the composition of the auditing board, while ensuring an odd number of its members, and may also provide for the existence of substituting members.

**Article 61**  
**Competence**

1. The auditing board is the controlling and auditing body of the cooperative and is responsible for:
  - (a) vetting, whenever deemed convenient, the bookkeeping and all documentation of the cooperative
  - (b) verifying, when deemed necessary, the cash balance and any existing securities and values of any kind, and preparing minutes thereon;
  - (c) preparing a report on the auditing action taken in the course of the year and issue an opinion on the management reports and the accounts pertaining to the financial year, and the business plan and budget for the following year, in view of the opinion by the chartered account, in the cases of subarticle 60.3 above;
  - (d) asking for the extraordinary convening of the general meeting, under the terms established by subarticle 45.3;
  - (e) verifying compliance with the articles of association and the law.

**Article 62**  
**Meetings**

1. The auditing board shall meet ordinarily at least once every quarter and extraordinarily when and as convened by its chairperson, on his or her own initiative or at the request of the majority of its members.
2. Members of the auditing board may attend, in their own right, managerial meetings.
3. Substituting members of the auditing board may, when the existence thereof is provided for in the articles of association, attend and participate in auditing board meetings, without the right to vote.

**Article 63**  
**Quorum**

The auditing board may only take decisions with more than half of its members in attendance.

**SECTION V**  
**On the liability of the corporate bodies**

**Article 64**  
**Prohibitions imposed on directors, managers and other agents  
and auditing board members**

Directors, managers and agents, including auditing board members, may not negotiate with the cooperative for their own account, either directly or through a third person, or personally carry out any activity competing with that of the cooperative, except, in the latter case, through authorisation given by the general meeting.

**Article 65**  
**Liability of directors, managers and other agents**

1. Directors, managers or other agents are jointly and severally liable in case of breach of the law, the articles of association, the rules of procedure or of a decision of the general meeting or in case of failure to faithfully fulfil their mandate, notably:
  - (a) perform, in the name of the cooperative, acts extraneous to its object or interests or allow such acts to be performed;
  - (b) pay or have undue amounts paid by the cooperative;
  - (c) fail to charge credits resulting in the lapse of such credits;
  - (d) allocate fictitious surpluses or in breach of this decree-law, subsidiary legislation applicable to the various branches of the cooperative sector or the articles of association;

- (e) use his or her respective mandate, with or without the use of goods or credits owned by the cooperative, for his or her own or other natural or legal persons' benefit.
2. The delegation of competencies of the management to one or more managers or other agents does not exonerate directors from liability, except as provided for in article 67 of this decree-law.
  3. Managers are liable, under the same terms as the directors, to the cooperative and third parties for the performance of their functions.

**Article 66**  
**Liability of auditing board members**

Auditing board members are liable to the cooperative, under the terms of article 65, whenever they have not in a timely manner opposed any of the acts performed by the directors or managers as specified in the aforesaid article, except as provided for in article 67.

**Article 67**  
**Right of action against directors, managers and other agents  
and auditing board members**

1. The exercise, in the name of the cooperative, of the right of civil or criminal action against directors, managers, other agents or auditing board members shall be approved at the general meeting.
2. The cooperative shall be represented in the action by the management or by the members who have, to that effect, been elected by the general meeting.
3. A decision by the general meeting may be taken in a session convened to review the management and accounts report of the financial year, even though such a proposal is not on the agenda.

**CHAPTER VI**  
**Reserves and allocation of surpluses**

**Article 68**  
**Legal reserve**

1. The creation of a legal reserve intended to cover any losses that might be incurred during the course of the financial year is obligatory.
2. Accrued to the benefit of this reserve, in accordance with a proportion to be determined by the articles of association or, where the latter are silent on the issue, by the general meeting, in a percentage not below 5% of the seed capital, shall be:
  - (a) admission fees;
  - (b) annual net surpluses
2. Such reversals cease to be obligatory by the time the reserve reaches an amount equal to the maximum share capital obtained by the cooperative.
3. Where the losses incurred during the financial year are above the amount of the legal reserve, the balance may, by decision of the general meeting, be required from the members

proportionately to the operations carried out by each one of them, and the legal reserve shall thus be restored to its previous amount.

### **Article 69** **Reserve fund for cooperative education and training**

1. The formation of a reserve fund for cooperative education and the cultural and technical training of members and employees of the cooperative and the community.
2. Accrued to the benefit of this reserve fund, in the form set forth in subarticle 68.2 above, shall be:
  - (a) the portion of admission fees that is not earmarked for the legal reserve;
  - (b) the part of the annual net surpluses from the operations with members as established by the articles of association or by the general meeting, in a percentage not below 1%;
  - (c) donations and grants especially intended for the reserve fund;
  - (d) annual net surpluses from operations with third parties, which are not earmarked for other reserve funds.
3. The forms of application of this reserve fund shall be determined by the general meeting.
4. The management shall include a training plan in the annual business plan for the application of such reserve fund.
5. By decision of the general meeting, the management of the cooperative may allocate, in whole or in part, the amount of such reserve fund to a higher-degree cooperative, on condition that the latter pursues the object of the reserve fund in question and has a business plan in which the former gets involved.
6. By decision of the general meeting, the totality or a portion of such reserve fund may also be earmarked for education and training projects jointly or separately involving the cooperative in question, and:
  - (a) one or more public legal persons;
  - (b) one or more private legal persons of a non-profit character;
  - (c) another or more cooperatives.

### **Article 70** **Other reserve funds**

1. Subsidiary legislation applicable to the various branches of the cooperative sector, or the articles of association, may provide for the creation of other reserve funds and, in this case, determine their mode of creation, application and liquidation.
2. The general meeting may also decide upon the creation of other reserve funds, in compliance with the provision of the final part of the previous subarticle.

### **Article 71** **Unlikely distribution**

No obligatory reserve, or any reserve resulting from surpluses from operations with third parties, is liable to any kind of distribution between members.

**Article 72**  
**Distribution of surpluses**

1. Annual net surpluses, with the exception of those from operations carried out with third parties, which are left from any payments of interest on capital securities and from the reserves for the various funds, may be returned to the members.
2. Surpluses shall not be distributed between members nor shall free reserve funds be created until any losses from previous financial years have been offset or before the legal reserve has been restored to its previous amount where such reserve has been used for offsetting such losses.
3. Where interest is paid on capital securities, the overall amount may not be in excess of 30% of the annual net outputs.

**CHAPTER VII**  
**Merger or demerger of cooperatives**

**Article 73**  
**Forms of merging cooperatives**

1. The merger of cooperatives may occur by integration or by incorporation.
2. Merger by integration occurs where two or more cooperatives simultaneously lose their legal personality into a new cooperative, which will assume the totality of the rights and obligations of the merged cooperatives.
3. Merger by incorporation occurs when one or more cooperatives become, concurrently with the lapse of their legal personality, an integral part of another cooperative, which will assume the totality of the rights and obligations of the incorporated cooperatives.
4. A higher-degree cooperatives into which one or more cooperatives have been integrated or have a relevant connection with it may judicially apply for merger by incorporation into a third one, which shall assume all their rights and obligations, where any of the following circumstances occurs:
  - (a) non-existence or disruption of their corporate bodies, as well as inability to elect incumbents to such bodies;
  - (b) the carrying out of activities extraneous to the objectives of the cooperative;
  - (c) inefficiency of a blatant and deliberate nature on the part of their management.

**Article 74**  
**Demerger of cooperatives**

1. The demerger of a cooperative occurs whenever there is a split between its members and assets, with the consequent creation of one or more new cooperatives.
2. Demerger shall be full or partial, depending on whether the original cooperative is dissolved or not.

3. The provision of subarticle 73.4 shall apply to the demerger of cooperatives.

#### **Article 75**

#### **Protection of members and third parties in cases of merger or demerger**

1. Merger or demerger shall follow the procedural steps required for the formation of cooperatives under the terms established by this decree-law, with the necessary adaptations.
2. Registration of merger or demerger shall have a provisional nature for a 90-day period counted from the date of publication in the Official Gazette, which shall be done within the same deadline counted from the date of provisional registration.
3. During the period of provisional registration, members who have not participated in the general meeting in which the decision was taken or who have recorded in the minutes their vote against such a decision, as well as creditors of the cooperative, may oppose the merger or demerger in writing.
4. Provisional registration shall only be converted into a definitive registration if it is proved that the credits of the opponents have been duly paid.
5. The merger or demerger of cooperatives is governed respectively by articles 101 and the subsequent ones and article 122 and the subsequent ones of the Law on Commercial Companies insofar as they do not conflict with the provisions of the subarticles above.

### **CHAPTER VIII**

#### **Winding up, liquidation and transformation**

#### **Article 76**

#### **Winding up**

1. Cooperatives shall be wound up on the following grounds:
  - (c) accomplishment of the object or impossibility to overcome an obstacle to its accomplishment;
  - (d) expiry of the deadline, where they have been formed on a temporary basis;
  - (e) occurrence of any other cause for dissolution as provided for in the articles of association;
  - (f) reduction in the number of members, below the minimum established by law, for a period of time exceeding 90 days, provided that such reduction is not temporary or occasional;
  - (g) merger by integration or by incorporation or full demerger;
  - (h) decision of the general meeting;
  - (i) final court decision declaring the bankruptcy of the cooperative;
  - (j) final court decision attesting that the operation of the cooperative is not in compliance with the cooperative principles, that the real object of the cooperative does not coincide with the object set out in the articles of association, that the cooperative systematically uses illicit means for the accomplishment of its object or even resorts to the form of cooperative to unduly obtain legal benefits.

2. The winding up of a cooperative decided upon in a general meeting does not require to be recorded in a public deed, but shall be published in the Official Gazette.

#### **Article 77**

#### **Liquidation and distribution process**

1. The winding up of a cooperative, for whatever reason, implies the appointment of a liquidation committee charged with the process of liquidating its assets.
2. The general meeting that decides upon the winding up shall elect the liquidation committee and confer upon the latter the powers required to proceed with the liquidation of the cooperative, within the set deadline.
3. The liquidation process provided for in the general law is applicable, with the necessary adaptations, to the cases of winding up referred to in paragraphs (a) to (e) and paragraph (h) of the previous article.
4. The general rules of bankruptcy procedure and recovery of companies are applicable, with the necessary adaptations, to the case of winding up referred to in paragraph (i) of the previous article.
5. Once liquidation is totally completed, the liquidation committee shall submit the accounts to the general meeting or to the court, as the case may be, and shall prepare, in the form of a chart, a balance-sharing proposal, under the terms established by the article below.
6. The last general meeting or the court shall, as the case may be, designate a person as the depositary of the books, papers and documents of the cooperative, which shall be kept for a 5-year period.

#### **Article 78**

#### **Disposal of assets in liquidation**

1. Once the expenses arising from the very liquidation process have been settled, the balance assessed in that process shall be used on a priority basis for:
  - (a) paying salaries and allowances due to the employees of the cooperative;
  - (b) paying the outstanding debts of the cooperative, including the redemption of investment securities;
  - (c) redeeming capital securities.
2. An amount of the legal reserve, established under the terms of article 69, which has not been earmarked to cover possible losses incurred during the financial year and is not likely to be used otherwise, may be transferred for the same purpose to the new cooperative entity that might be formed as a result of the merger or demerger of the cooperative in liquidation.
3. Where no cooperative entity succeeds to the cooperative in liquidation, the application of the balance of the obligatory reserve shall accrue to the benefit of another cooperative, preferably based in the same municipality, to be determined by a federation or confederation representative of the main activity of the cooperative.
4. The provisions of subarticles 2 and 3 above are applicable, on matters of liquidation, and in the absence of any relevant provision in the articles of association, to any reserves formed under the terms of article 70 of this decree-law.

**Article 79**  
**Nullity of transformation**

The transformation of a cooperative into any type of commercial company, including any acts that seek to thwart or circumvent this legal prohibition, shall be null and void.

**CHAPTER IX**  
**Unions, federations and confederations of cooperatives**

**Article 80**  
**Unions, federations and confederations of cooperatives**

1. A union, federation or confederation of cooperatives acquires legal personality upon filing of its memorandum of association, without prejudice to maintaining the legal personality of each of the structures that comprise it, and the provisions applicable to first-degree cooperatives shall apply to it in all that is not specifically regulated by this Chapter.
2. A union, federation or confederation may be constituted only by public deed.
3. Notwithstanding the fact that federations and confederations must meet the necessary requirements to be recognised as representatives of the area of the cooperative sector that corresponds to each of them, every higher-degree cooperative structure legitimately represents the entities that it comprises.

**Article 81**  
**Unions of cooperatives**

1. A union of cooperatives results from grouping at least two first-degree cooperatives.
2. Unions pursue goals of an economic, social, cultural, and technical assistance nature.

**Article 82**  
**Right to vote**

1. The articles of association may assign to each of the member cooperatives a certain number of votes, either based on the number of its members or any other objective criterion that, in conformity with the democratic principle, gets the approval of the majority of the members of the union.
2. The number of votes is assessed on an annual basis by the general meeting gathered to approve the management report and the accounts of the previous financial year.

**Article 83**  
**Union bodies**

1. Union bodies include:

- (a) the general meeting, which is comprised of the managements or delegates from affiliated cooperatives and the articles of association may determine that only one of the representatives may take the floor and vote, and its chair shall be elected from among the members of affiliated cooperatives for a term of office equal to that of the other corporate bodies;
- (b) the management, which is comprised of individuals who are members of affiliated cooperatives, taking into account the provision of article 55 to the extent of its applicability;
- (c) the auditing board, which is comprised of individuals who are members of affiliated cooperatives, taking into account the provision of article 60 to the extent of its applicability, especially subarticle 60.3.

2. Where the number of members of the general meeting is not sufficient to fill the positions of the corporate bodies, there shall be only one collegial body, the meeting of cooperatives, composed of all union members, which shall take decisions by a simple majority, taking into consideration the number of votes assigned to each member, under the terms established by the previous article.

#### **Article 84** **Federations of cooperatives**

1. A federations results from grouping cooperatives, or simultaneously cooperatives and unions, belonging to the same branch of the cooperative sector.
2. Subsidiary legislation may provide for the establishment of a federation within the same branch of the cooperative sector, under the terms established by the previous subarticle, resulting from grouping members engaged in the same economic activity.
3. A federation of cooperatives may only represent the respective branch of the cooperative sector where it produces proof of having as members more than 50% of the first-degree cooperatives definitively registered in the branch corresponding to the object of the federation.
4. With a view to their development or in the case of interrelation between their goals:
  - (a) two or more federations from different branches may be merged into a single federation;
  - (b) a first-degree cooperative from a different branch may join a federation, provided that the latter accepts it;
  - (c) a union comprised of cooperatives belonging to a different branch may join a federation, provided that the latter accepts it.
5. The provisions of articles 82 to 84 of this decree-law are applicable to federations of cooperatives, with the necessary adaptations.
6. The purpose of a federation is to represent, coordinate and provide services, and may carry out any activity permitted by law and in tune with the cooperative principles.

**Article 85**  
**Confederations of cooperatives**

1. A confederation of cooperatives results from grouping, at the national level, higher-degree cooperatives and may, on an exceptional basis, group first-degree cooperatives, with these producing proof that they are composed of at least 50% of definitively registered federations from the branch or branches corresponding to the object of the confederation.
2. The provisions of articles 82 to 84 of this decree-law are applicable, with the necessary adaptations, to confederations of cooperatives.
3. The purpose of a confederation is to represent, coordinate and provide services, and may carry out any activity permitted by law and consistent with the cooperative principles.
4. The corporate bodies of a confederation are those provided for first-degree cooperatives, and the chair of the general meeting, the management and the auditing board shall be composed of individuals who are members of the cooperative structures that comprise the confederation.

**CHAPTER X**  
**Final and transitional provisions**

**Article 86**  
**Winding up of cooperatives**

The Ministry of Development and Environment shall apply to the competent court, through the Public Prosecution Service, for the winding up of any cooperative that:

- (a) while doing business, does not respect the cooperative principles;
- (b) carries out any activity that does not coincide with the object set out in its articles of association;
- (c) systematically uses illicit means for realising its object;
- (d) resorts to the form of cooperative to unduly achieve legal benefits.

**Article 87**  
**Rules of procedure**

1. The rules of procedure of a cooperative bind its members, where the existence of such rules of procedure are provided for in the articles of association.
2. The rules of procedure do not bind the members unless these have been proposed by the management for discussion and approval by a general meeting expressly convened to that end.
3. The rules of procedure in force upon the entry into force of this decree-law shall have legal force equal to that of those to be drafted under the terms established by the previous subarticles.
4. The rules of procedure in force may be reviewed within 180 days from the date of entry into force of this decree-law on the initiative of the management, the auditing board, the chair of the general meeting or of a minimum of 5% of the members of the cooperative.

## **Article 88**

### **Application of this decree-law to existing cooperatives**

1. Stipulations of the articles of association governing cooperatives constituted under previous legislation, and that are not permitted by this decree-law, are considered to have been automatically repealed and superseded by the provisions hereof, without prejudice to any amendments as may be decided upon by the members.
2. Cooperatives have the obligation to update their share capital within five years, under the terms established by this decree-law.
3. The Ministry of Development and Environment shall, through the representative of the Public Prosecution Service, apply to the competent court at its own discretion or at the request of any of the parties concerned for the winding up of any cooperative that has not registered its updated share capital within the deadline provided for in the previous subarticle.
4. Pending the determination of another amount under the terms established by subarticle 18.2, the minimum amount of US\$ 250 (two hundred and fifty American dollars) for cooperatives in branches such as factory production, handicrafts, culture and services shall remain unchanged.
5. Where subsidiary legislation determines a minimum amount of share capital different from the one stipulated in subarticle 18.2 of this decree-law, the deadline referred to in subarticle 88.2 above starts to be counted from the date of publication of the relevant subsidiary legislation.

## **Article 89**

### **Tax and financial benefits**

The tax and financial benefits, provided for cooperatives, shall be the object of autonomous legislation.

## **Article 90**

### **Offences**

1. Breach of the provision of subarticle 14.2 constitutes an offence carrying a fine of not less than US\$ 10,000 nor more than US\$ 50,000.
2. Action in connection with an offence and the application of the respective fine are the responsibility of the Ministry of Development and Environment.
3. Proceeds from fines shall be allocated as follows:
  - (a) 30% to a support fund for cooperatives, which shall be created by law;
  - (b) 70% to the State.
4. Failure to pay a fine results in the garnishment of assets considered sufficient to pay the debt, in addition to any amounts payable for retaining fees, legal interest and court costs, in which case the payment notice shall be a document valid to commence an execution process.

## **Article 91**

### **Repeal of the previous legislation**

The Cooperative Code, previously in force, as well as all legislation in force that conflicts with the provisions of this decree-law, is hereby repealed.

**Article 92**  
**Entry into force**

This decree-law enters into force one month after its publication in the Official Gazette.

Approved by Council of Ministers on 26 August, 2004

The Prime Minister

[Signed]  
(Mari Bim Amude Alkatiri)

The Minister of Development and Environment

[Signed]  
(Mari Bim Amude Alkatiri)

Promulgated on 1 October, 2004

To be published.

The President of the Republic

[Signed]  
(Kay Rala Xanana Gusmão)