

## The social capital of cooperatives in Cuba: theoretical-critical analysis of its legal regime

### El capital social de las cooperativas en Cuba: análisis teórico-crítico de su régimen jurídico

### O capital social do cooperativismo em Cuba: análise teórico-crítica de seu regime jurídico

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#### ABSTRACT

In this paper, the legal regime of cooperatives in Cuba (definition, approval process, cooperative variants, ways of conflict resolution) and, especially, the cooperative social capital were critically evaluated, taking into account the current process of updating the economic and social model in which the country is immersed. As a result, in less than 10 years the national cooperative norms have changed more than once. In order to achieve the proposed objectives, the starting point was the theoretical review of the definition of cooperative social capital, its distinction from patrimony, as well as the particular functions it fulfills in a cooperative. These elements provided the research with the theoretical rudiments necessary to critically judge the national legal framework, taking the most advanced international doctrinal criteria. Starting from this theoretical basis, the national cooperative norms were analyzed in order to identify the particularities they have regarding social capital, taking into account the definition of



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this, its integration, the rights of the members, the delimitation of the patrimony and its destination in case of dissolution. Finally, some proposals were made to improve this legal framework, and the role of the statutes in regulating and specifying the gaps identified in the general legal norms, especially in the patrimony area, was demonstrated.

**Keywords:** social capital; contributions; patrimony; Cuban cooperativism

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## RESUMEN

En el presente trabajo, se valoró de manera crítica el régimen jurídico de las cooperativas en Cuba (definición, proceso de aprobación, variantes cooperativas, vías de solución de conflictos) y, en especial, el capital social cooperativo, tomando en cuenta para ello el actual proceso de actualización del modelo económico y social en que está inmerso el país. Lo anterior ha provocado que en menos de 10 años las normas cooperativas nacionales hayan variado más de una vez. En pos de lograr los objetivos propuestos, se partió de la revisión teórica de la definición de capital social cooperativo, su distinción del patrimonio, así como las particulares funciones que cumple en una cooperativa. Estos elementos dotaron a la investigación de los rudimentos teóricos necesarios para enjuiciar críticamente el marco jurídico nacional, tomando los criterios doctrinales internacionales más avanzados. Partiendo de esta base teórica, se analizaron las normas cooperativas nacionales a fin de identificar las particularidades que poseen en materia de capital social, tomando en cuenta para ello la definición de este, su integración, los derechos de los miembros, la delimitación del patrimonio y su destino en caso de disolución. Por último, se realizaron algunas propuestas tendentes al perfeccionamiento de dicho marco jurídico, además, quedó demostrado el papel que han de jugar los estatutos en aras de regular y precisar los vacíos que se identifican en las normas jurídicas generales, en especial en el entorno patrimonial.

**Palabras clave:** capital social; aportaciones; patrimonio; cooperativismo cubano

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## RESUMO

No presente trabalho, foram avaliados criticamente o regime jurídico das cooperativas em Cuba (definição, processo de aprovação, variantes cooperativas, formas de resolução de conflitos) e, principalmente, o capital social cooperativo, levando em consideração o atual processo de atualização do modelo econômico e social. em que o país está imerso. O anterior fez que em menos de 10 anos as normas cooperativas nacionais tenham variado mais de uma vez. Para atingir os objetivos propostos, partimos da revisão teórica da definição de capital social cooperativo, sua distinção do patrimônio, bem como das funções particulares que desempenha em uma cooperativa. Esses elementos forneceram à pesquisa os rudimentos teóricos necessários para julgar criticamente o arcabouço jurídico nacional, a partir dos mais avançados critérios doutrinários internacionais. A partir desta base teórica, foram analisadas as normas cooperativas nacionais de forma a identificar as particularidades que possuem ao nível do capital social, tendo em conta a sua definição, a sua integração, os direitos dos associados, a delimitação do patrimônio e o seu destino. em caso de dissolução. Por fim, foram apresentadas algumas propostas no sentido de melhorar o referido enquadramento legal, adicionalmente, foi demonstrado o papel que os estatutos devem desempenhar no sentido de regular e especificar as lacunas que se identificam nos regulamentos legais gerais, especialmente no âmbito patrimonial.

**Palavras-chave:** capital social; contribuições; patrimônio; cooperativismo cubano

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## INTRODUCTION

In order to be constituted, to operate and to be profitable, every cooperative -like any enterprise- needs economic resources in a minimum essential amount. There are different sources of financing to be used by them. However, the economic resources are obtained fundamentally by means of contributions from the aspirants or members. All of these are called cooperative social capital.

The Cuban cooperative environment, integrated until 2012 by three types of cooperatives, only in the agro livestock sector, namely the Credit and Service

Cooperatives (CCS in Spanish), which emerged in the 1960s, the Agro livestock Production Cooperatives (CPA in Spanish), created in 1976 and the Basic Units of Cooperative Production (UBPC in Spanish), established in 1993, have been expanded with the enactment of rules authorizing the formation of cooperatives in sectors other than agriculture in 2012. Recently, these latter norms have been repealed by a legal framework that updates and perfects the preceding legal regime, Decree Law 366 of 2019 of the Council of State of Non-Agricultural Cooperatives (2019).

Derived from this context, any analysis of cooperatives in Cuba and of the institutions that characterize their legal framework must be carried out in a general manner, which, although it implies the examination of the legal norms for one or another type of cooperatives, should not focus on a special type of cooperatives.

The disparity of the legal regime for one or another cooperative has meant that most of the institutions that are established have an asystemic regulation, such is the case of the social capital and the contributions that comprise it.

The above, together with the scarcity of theoretical-legal studies on this topic in Cuba (Rodríguez Musa, 2017) make it necessary to analyze those elements that explain and delimit cooperative social capital. It is also vital to determine the place of social capital within the cooperative patrimony and its influence on the economic and social management of the entity.

It is appropriate to verify the contributions that make up the capital; these may be made in cash, goods, rights and/or labor. This does not cause too much difficulty or, at least, it is reduced in the case of monetary contributions, but it is not the same when the contribution is other than money. In this case, the question is much more complex and becomes even more serious when one takes into consideration the existing gaps, both in the normative order and at the theoretical level.

From this context, the general objective of this article is to critically evaluate the legal regime of cooperatives in Cuba and, especially, the cooperative social capital, taking into account the current process of updating the economic and social model in which the country is immersed.

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## MATERIALS AND METHODS

The study is essentially theoretical. It focuses, fundamentally, on the figure of cooperative social capital, its most important theoretical-doctrinal elements (definition, integration and functions), as well as the very new regulation it has received in Cuba. The methods and techniques used respond to the Legal Research Methodology.

The legal-doctrinal method was used, which allowed an adequate theoretical and doctrinal approach to the social capital, the contributions to it and the cooperative patrimony, which ensures that the research is endowed with a deep theoretical-conceptual basis. This method guaranteed the theoretical approach to the figure of the social capital in cooperatives, which individualizes it from the social capital as a commercial figure, as well as from the patrimony of which it is a part. This method favored the analysis of the functions of cooperative social capital, which, although they correspond to a large extent with those of social capital, acquire a different connotation in this field.

After the application of this method, the legal-analytical method was used. This was used in the analysis of foreign and national legal-cooperative norms. Based on the theoretical and doctrinal knowledge of the cooperative social capital institution, it was necessary to verify its treatment in the legal norms; this made it possible to critically judge them.

The legal-cooperative norms recently approved in Cuba, both for agro livestock and non-agro livestock cooperatives, receive special attention in this analysis. However, the norms that precede them are also analyzed, as well as foreign norms that also recognize the issues analyzed in the work.

The bibliographic materials used include books by foreign and national authors that represent an obligatory source on the topics addressed, as well as articles published in scientific journals of similar relevance. In addition, the norms that represent the general legal support of the issues addressed and contribute to the assessments issued are also included.

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## RESULTS AND DISCUSSION

### Cooperative social capital: definition and integration

The study on capital reveals some confusion about its definition. It is an institution of particular economic, accounting, financial, social and legal relevance, the latter being the one that concerns us.

Regarding the definition of social capital and, in particular, of cooperative social capital, different doctrinal positions have been established, mostly based on Commercial law.

In the latter field, "the social capital is an abstract mathematical magnitude that must be fixed in the statutes" (Izquierdo Montoro, 1971). However, it is necessary to clarify that the social capital is not really a mere and abstract mathematical expression, since it represents goods and/or rights of a certain, determinable existence. In the specific case of cooperatives, it is characterized by its variable and unlimited nature. This is in contrast to the immutable nature of commercial social capital.

The General Law of Cooperative Societies of June 4, 2001, in Mexico, stipulates in Article 49 that "the capital of cooperative societies shall be made up of the contributions of the members...". (See Art. Art. General Law of Cooperative Societies, 2001).

The cooperative social capital must be considered as part of the patrimony as an own fund since it is at the service of the cooperative enterprise, it fulfills together with the rest of the patrimony the functions that it assumes. That is to say, the capital is the species within the patrimony genus, it is part of it. However, they are distinguished from each other, especially due to their integration and the form of variability.

Another vital element is to recognize the necessary correspondence between cooperative social capital and social purpose; the former has an instrumental character, since it must be sufficient to guarantee the cooperative activity and not become a formal figure. In this sense, the so-called minimum capital is usually recognized. This allows this correspondence to be met and acts as a limit to the variability of the capital.

Therefore, it can be argued that the cooperative social capital constitutes the amount resulting from the sum of the contributions of the members, either at the time of its incorporation or subsequently, either by the incorporation of new members or as a consequence of capital increase agreements. This is part of the patrimony as its own resource and contributes to the realization of the corporate purpose.

The cooperative social capital is made up of contributions. These can be made up of various goods and rights, provided that they fulfill the functions that the capital assumes, in principle, be determinable and have an economic value. These can be classified from two different points of view: on the one hand, as monetary or non-monetary contributions and, on the other hand, as obligatory or voluntary contributions. In the first case, the distinction is due to the object, and in the second, to their necessity.

As the name indicates, monetary contributions are those that are made in cash and involve fewer problems in their integration, since money is a measure of value in itself and consequently does not need to be valued.

A good part of the cooperative rules only limit themselves to recognize these contributions without stating whether they can be accepted in national currency (see Art. Law 27/1999, of July 16, 1999, on Cooperatives, 1999) or also in foreign currency. However, this is a matter of special interest, since if they are accepted in foreign currency, it is necessary to make the corresponding conversion to the currency in which the cooperative operates.

For the integration of this contribution, the means of payment admitted in law may be used, although the general recipe is that of cash disbursement because it is the easiest means of verification of the disbursement of the contribution and, therefore, of its amount.

On the other hand, contributions in goods and rights (non-monetary) are, by exclusion, those other than money, although they must express a monetary value.

In essence, any asset or right may be contributable under this category, provided that it can be economically valued. This last component constitutes an element of extreme complexity, since certainty must be sought as to the real value of the contribution so

that the cooperative, the contributing member and even the third party creditors who hold the capital apart from its guarantee are not affected.

In all non-monetary contributions, an important, essential and complex matter is the delimitation of its real economic value. For this purpose, the intervention of third parties may be requested to accredit the same, in addition to the approval by the General Assembly, so that it enjoys legal certainty and does not remain a simple agreement between the member and the representative or administrator of the cooperative. This process becomes even more confusing when the object to be valued is a right and not an asset.

At least two systems of valuation of non-cash contributions are recognized; one based on trust among members (...) without the need to request an official report or, alternatively, this report will have to be requested before making a decision on the value assigned (Fajardo García, 2016).

The Framework Law for Latin American Cooperatives provides that the valuation must be made by simple conventional agreement between the member and the cooperative (See Art. 34, 2009), however, such agreement, in our opinion, is not sufficient to establish a certain value of such contributions, since it is in the presence of goods and rights which valuation is complex, especially when there is no technical knowledge in economic and accounting matters, for example.

The individual and collective will can and must be combined with this intervention; this will happen when, after the valuation process, the General Assembly ratifies this matter or instead approves the development of a new one.

According to the second criterion, voluntary contributions are contributions to the social capital that the member can optionally make. They represent a complementary system of financing of the cooperative that allows increasing the entity's own funds, subject to the risk derived from the enterprise activity it carries out (García Müller, 2017). In these, the will of the subject allows the cooperative to raise resources without requiring new mandatory contributions, even if it does not need them to subsist.



In opposition, mandatory contributions are those that are established in the statutes or the law, being identified at the time the cooperative is constituted when the members must disburse the minimum amount required to form the social capital or subsequently with the incorporation of new members or the requirement of new contributions (Mesa Tejada et al., 2018, p. 120).

### **Distinction of social capital from cooperative patrimony**

In a purely economic sense, the notion of patrimony is equivalent to the goods owned by a person at a given time. From a legal point of view (...), the patrimony is a set of active and passive legal relations belonging to a person that has an economic value (Díez Picazo & Gullón, 2004).

Therefore, from a legal point of view, patrimony is the set of goods, rights and obligations of an economic nature, which belong to a natural or legal person and which are destined to fulfill certain purposes.

From the above, it can be concluded that the elements that comprise it are:

#### a) Active. Patrimony rights

The patrimony is made up of rights, the patrimonial rights, i.e., those that form the legal relationships of economic content and therefore have a value in money.

Rights that do not have economic content (personality rights, family rights) are not part of the patrimony; but their violation may give rise to economic reparation.

#### b) Pasive

The patrimony constitutes a universality, therefore, the debts are part of it and can even be transmitted to the heirs in the case of the natural person; this is the criterion that we share.

### c) Goods

There is no doubt that the goods owned by a person are part of his patrimony, as well as the rights that weigh on them. It does not matter what their nature is, tangible or intangible, movable or immovable, etc.

However, the cooperative patrimony has no theoretical characteristics of its own. It is governed by the same rules of the patrimony as a general legal category; consequently, every cooperative has a patrimony and responds with everything, for the obligations it incurs in the activity it develops. This does not mean that the elements that integrate it are exactly the same as those possessed by any natural person.

The patrimony is naturally variable. The initial patrimony of the cooperative is formed, essentially, with the contribution of the members, with the goods received from the State or other persons, as well as those received as a result of bank credits. After the cooperative has started its economic activity, it varies according to the results of its mission. The patrimony increases if the cooperative activity is successful (cooperative funds), and decreases if the opposite happens.

Patrimony fulfills two essential functions within a cooperative:

1. Instrumental. The patrimony, goods and rights that comprise it contribute to the development of the cooperative's corporate purpose
2. Liability. With the goods and economic rights of the patrimony, the cooperative must face the payment of the contracted debts (Strictly speaking with the net patrimony, which is the result of subtracting the liabilities from the goods)

Therefore, and after examining the notion of patrimony, it is clear that social capital is not the same as patrimony.

The first element has to do with the extension and scope of both institutions, since, as explained above, capital is made up only of the contributions of the members, while patrimony is a much broader concept; these contributions (social capital) are only one of the components.

The concept of social capital must be distinguished from patrimony. The difference is qualitative and quantitative. Qualitative because the social capital is formed by the sum of the contributions of the partners and, consequently, by a set of goods. Quantitative, because regardless of the aspect under which it is considered, the capital is only a component of the patrimony.

For example, reserves and funds constitute a part of the social patrimony that enlarges and complements the capital, but, unlike the capital, they are not contributed by the members, but originate from the results obtained in the cooperative management. The funds are securities in active numbers, with delimited purposes, but excluded from distribution to the members. The difference between the concepts of fund and reserve lies in the fact that the former are essentially destined to be used or employed during the fiscal year and the reserves are not, but only at the moment when the condition established in the law or in the bylaws is fulfilled.

Another difference lies in the fact that the patrimony fulfills to a greater extent the functions that are also fulfilled by the social capital. Such is the case of the guarantee function, since in order to determine the solvency of the cooperative - or of any other collective entity - it is not only the figure of the social capital that should be taken into account; what really informs the economic situation of the entity, or at least to a greater extent, is the patrimony.

### **Functions of cooperative social capital**

The functions that the social capital fulfills in the cooperatives differ substantially from the one that it fulfills in the mercantile societies and more specifically in the mercantile societies of capitalist base. This is due to the fact that in cooperatives it has an instrumental purpose, it is at the service of the individual and not the other way around.

The three classic functions of social capital in a capitalist society are:

- Instrumental or corporate and financial organization function
- Warranty function
- Operating business function

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In a business partnership, capital is used to determine the extent of the shareholder's interest in the company. The partner exercises his political and economic rights in proportion to his share in the capital.

In cooperatives, as opposed to the above, in general, it does not have an organizational function, since each member has one vote regardless of the social parts he/she has integrated, and the principle of *one member, one vote* applies. As noted above, this element contributes to differentiate them from capitalist entities, where, as a general rule, the participation of the partners will depend, in essence, on the contributions to the collective social capital. Note that this is only one of the differences between cooperatives and commercial companies, but not the only one.

In cooperatives, all members have identical rights, although there is a fairly recent trend that introduces the so-called plural vote (Law 27/1999, of July 16, 1999, on Cooperatives), which is calculated according to the volume of operations or activity carried out by the member with the entity or according to its sponsorship: work days completed, products delivered to the company for their commercialization, consumer goods acquired or time of dedication to the company. The authors do not agree with this figure, since it distorts the identity of the cooperative and contributes to its commercialization.

The second function is that of guarantee. The doctrine assigns a singular importance to the guarantee function of the social capital, attributing to it even the very *raison d'être* of the social capital.

The guarantee function is materialized externally to the cooperative since its significance is configured in the relationship with third party creditors, since the capital provides stability and security to the cooperative in its relations with outsiders. The latter find in the social capital a figure that contributes to ensure the satisfaction of their credit. It is pertinent to emphasize that the capital contributes to reinforce this guarantee, since the patrimony as a whole fulfills this function.

According to Algorta Morales and Amorín, strictly speaking, this function is not such, since the real backing for creditors is the social patrimony (Amorín et al., 2010). This is partially correct; the cooperative patrimony as a whole is the highest expression of

guarantee for third parties, it is the sample of the total economic management. However, it is not incorrect to argue that the capital also has this function, once it is established by the bylaws, the limit indicated cannot be reduced, so it will also serve this purpose, even if it is to a lesser degree than the patrimony, it contributes to guarantee this function.

In this order, Cracogna considers that the cooperative's own capital must be treated in accordance with its nature as a risk contribution made by the members to provide it with an patrimony capable of enabling its economic and financial development (Cracogna, 2015). Serving as a guarantee is part of the economic development of the capital within the cooperative.

Thirdly, the cooperative social capital is used for the fulfillment of the corporate purpose. It fulfills the economic function of financing social activities. The instrumental function represents the collective purpose of the capital, which is to serve all the members and not only the contributor, as is the case of the organizational function or the guarantee function, since in both cases they refer to functions whose effects are essentially confined to the member.

The entrepreneurial function of the social capital, as working capital or all the contributions of the members at the time of incorporation, invested for the development of an entrepreneurial activity, can be fully assumed by the social capital of the cooperative.

There must be a correlation between social capital and enterprise purpose, so that the former is sufficient to enable the achievement of the latter.

In this very sense and according to Pastor Sempere, the entrepreneurial function of the social capital is fully assumable by the social capital of the cooperative (Pastor Sempere, 2006, p. 433). In opposition to this, Brunetti is of the opinion that the persons of association type, among which this author includes the cooperative, do not need to constitute a patrimony so that they can exist and function (Brunetti, 1960). This last criterion with which we disagree, since, although the cooperative has a different legal nature, it needs economic resources to fulfill its purposes. In addition, as a legal entity, one of the requirements it must meet is to have its own goods.

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## **Legal regime of cooperative social capital in Cuba: critical analysis and proposals for its perfection**

Cooperatives in Cuba are relatively recent, since their exponential development occurred after the revolutionary triumph of 1959.

Despite the development during the revolutionary period up to 2012, cooperatives in Cuba were only present in the agricultural sector. The cooperative movement up to that time was made up of Agro livestock Production Cooperatives (CPA), Credit and Service Cooperatives (CCS) and Basic Units of Cooperative Production (UBPC). These, although with different forms of organization and operation, were only linked to the agricultural sector; this greatly limited the usefulness of cooperatives in general.

After the 6th Congress of the Communist Party of Cuba (PCC), with the approval of the Social Economic Policy Guidelines, the bases for updating the Cuban economic model were established. One of the significant changes introduced with the approval of the guidelines is the extension of the cooperative model to sectors other than agriculture, taking advantage of the benefits offered by these organizations.

The political will materialized from the legal point of view, with the approval on November 15, 2012 of Decree-Law No. 305 "Non-Agro livestock Cooperatives" and its complementary rules.

The extension of cooperativism to non-agro livestock spheres of production and services constitutes one of the greatest challenges of the process of updating the Cuban economic model (...), due to the necessary overcoming of the deficiencies expressed for years, in the cooperatives of the agro livestock sector, the discordance between the being and the should be of cooperatives as a superior form of organization and collective management for the production of goods or the provision of services in a society in transition to socialism (Campos Pérez & León García, 2017). However, (...) "with the recently initiated process of updating the national socioeconomic system, progress is made (...) and new perspectives are opened to ponder the role of cooperatives in the economic development and consolidation of the country's social conquests" (Rodríguez Musa & Hernández Aguilar, 2015).

These norms marked a rebirth of cooperativism in Cuba, since they protected the constitution of cooperatives in key sectors such as construction, transportation, recovery of raw materials, etc. However, this legal framework was not free of mistakes and questions. These can be systematized as follows:

- Inconsistency with the Constitution of the Republic of Cuba in force at that time, since it only recognized the right of small farmers to form cooperatives, establishing, in addition, only the agrarian cooperative as a form of property
- The cooperative is recognized as an organization without defining its particular legal nature
- Complex and lengthy process for the approval of a non-agricultural cooperative, requiring the intervention of administrative bodies at the national level, which discourages aspiring cooperative members. Despite the fact that during this period the process is being carried out on an experimental basis, this process is not justified, especially when the aim is to link the cooperatives with the territory where they are located
- Priority was given to the transformation of state-owned companies into cooperatives, known as induced cooperativism in some cases, without prior sensitization and education, which limited the principle of voluntariness
- Inconsistencies in the legal-economic regime of cooperatives, which are mainly expressed in the conception of initial working capital and cooperative funds
- Limited means of conflict resolution, especially the intervention of judicial bodies

Seven years after its entry into force, the previous legal framework has been repealed and the following legal provisions have been enacted in its place:

Decree Law No. 366 "On Non-Agro livestock Cooperatives" (DL), Decree No. 356 "Regulation of Agro livestock Cooperatives" (D), Resolution No. 36 of the Minister of Finance and Prices on the tax, financial and accounting price treatment of non-agro livestock cooperatives, Resolution No. 362 of the Minister of Finance and Prices, regarding the payment of Personal Income Tax of hired workers (Decree 356 of 2019 Regulation of Non-Agro livestock Cooperatives, 2019).

This recently approved legal framework updates the general non-agro livestock cooperative-legal norms in Cuba, however, there are still some issues that do not fall within its scope. This is due, to a large extent, to the lack of a general cooperative norm that delimits the basic elements of cooperatives, regardless of their typology (agricultural or not).

In the current stage that cooperatives are going through in Cuba, the political will to favor a process for their expansion into other spheres of the national economy, in addition to agriculture and livestock, prevails. However, as a result of the limitations of the legal-institutional platform (...), difficulties are arising that could substantially distort the resizing of the sector.... (Rodríguez Musa, 2017, p. 111). These limitations are expressed from the legal point of view in the asystematic conception of the design and regulation of cooperatives.

The issue of cooperative social capital does not escape from this problem, since the general asystematicity of the national cooperative system itself affects the figure, as well as many others.

In the following, the logic of the Cuban legal system is followed, delimiting the main particularities (strengths and weaknesses) of the Cuban regulation on cooperative social capital, as well as some proposals for its improvement.

Following this dynamic, the aforementioned Decree-Law conceptualizes what is meant by a non-agro livestock cooperative in Cuba and defines it as an "organization with economic and social purposes, which is voluntarily constituted on the basis of the contribution of goods and rights and is supported by the work of its members" (Art. 2.1). From this general provision, the possibility of contributing goods and rights is recognized, which is appropriate since, as analyzed, both elements can fulfill the purposes that the capital and the patrimony must fulfill.

Another element to be highlighted is the recognition that cooperatives are sustained by the work of their members, which is a mandatory element. Whether it takes the form of a requirement or does not include work as a type of contribution, the Cuban non-agro livestock cooperative takes the form of a worker cooperative (Art. 5 DL).



Cooperatives in this area can be organized in three different ways; they can be formed from the monetary contributions of individuals who voluntarily decide to associate with each other, where the members can organize a collective patrimony or even retain individual ownership of all the goods, although managing them jointly. They can also be formed from the state patrimony or be organized in a mixed manner, i.e., combining some of the above forms. Although the contributions of the partners could be made in any type, it is not less certain that such formula has been thought for those that start from the collective or individual interest and not in the induced ones, where the economic resources come essentially from the State.

Regarding the issue of the economic regime and especially social capital, the cooperative norms for sectors other than agriculture and livestock establish the obligation to have an initial working capital (strictly speaking, initial social capital) in order to be constituted.

The contributions that make up the capital may be made in cash (monetary contributions) and in other goods and services (Art. 42 DL). In the case of the former, it is not specified in which currency they would be accepted. In addition, it is stated that only money may be contributed at the initial moment of incorporation of the cooperative (Art. 44.5 DL).

In this very sense, the rule was intended to prevent the existence of mere investor members or the existence of privileges or supremacy for those persons with a greater economic contribution. It is worth remembering that in cooperatives, capital has an instrumental purpose, it is at the service of the individual. However, in our opinion, such limitation is not adequate, since it may be more advantageous for the cooperatives, in certain cases, to resort to new mandatory or voluntary monetary contributions and not to appeal exclusively to other sources of financing (bank loans), with the demand for the corresponding interest, to cite just one example. This does not detract from the importance and necessity of credit as a source of financing for cooperatives. It is a matter of seeking other alternatives to strengthen their patrimony.

Another issue of particular importance is the property or premises where the cooperative is to operate. This is one of the requirements at the time of requesting authorization,

and ownership must be proven (Art. 13d DL) and (Art. 2.1e D). There may be different ownership assumptions in such cases, although the most common ones are: the ownership of the property belongs to the State, the ownership belongs to one of the aspiring members and the latter intends to contribute it to the cooperative or intends to give it on gratuitous bailment, lease or other contract in favor of the cooperative.

On the other hand, and rightly so, it is established that the acts of disposition of goods and rights that make up the patrimony (including the social capital) require the approval of the General Assembly (Art. 45 DL). This is reinforced in patrimonial matters with the fact that, upon the loss of the status of the member, the assembly will determine whether or not the return of the initial monetary contribution and the conditions for its realization (Art. 25g D), however, no reference is made to who decides the destination of the other contributions that can be made and which are different from the money. This is an element that may be delimited in the bylaws of the particular cooperative, in order to avoid possible conflicts. The inclusion of this element is justified by the fact that "the bylaws have a mandatory and an optional part. Normally the law establishes the obligation to incorporate certain provisions in the bylaws, in addition to others of an optional nature. With this, it leaves a great freedom to determine the rights and obligations of the members under the reservation of not contradicting the essential principles of the law and the mandatory provisions that may be imposed by the standard statute, if there is one and it has the character of mandatory" (García Müller, 2017).

Finally, it is necessary to point out that the rules of reference do not establish as a mandatory cause of extinction the loss of the social capital, contrary to the case if the bylaws provide for it as established in Art. 58a DL. The non-inclusion of such a situation as a cause of extinction is in line with the non-requirement of a minimum capital, the non-existence of the latter presupposes the former.

In an extinction process, the liquidation committee, constituted for this purpose, must, among other matters, return the monetary contribution of each member or the proportional part thereof in the event that the liquidity is not sufficient (Art. 72e D). It should be noted that, as in the case of the functions of the general assembly, the regulation regulates what concerns the monetary contribution, without providing for

what happens in other cases, therefore, it will also be necessary to refer to the regulation of the bylaws.

With respect to social capital for this type of cooperatives, it would be appropriate, for the purpose of perfecting their legal regime and after its analysis, to include the following proposals:

- To conceive work as an independent requirement to be fulfilled by the member, different from his contributions to the capital. This would be in line with the typology of this type of cooperatives (worker cooperatives) contributing to materialize the functions of social capital
- To expressly regulate for all cooperative variants that aspiring members may contribute money, goods or rights, thus contributing to the operation and strengthening of the cooperatives' goods, as well as favoring the individual commitment to work collectively
- To recognize the figure of a legal or statutory minimum capital, which would contribute to ensure the functions of the social capital, especially that of guarantee
- To include the possibility of making monetary contributions once the cooperative has been constituted, since this leads to the strengthening of cooperative goods, which does not affect the identity and social rights of cooperatives
- Need to achieve harmony between the national legal-cooperative provisions and the rules that regulate the goods subject to special regime (e.g. real estate), in order to guarantee their due coherence
- Possibility of incorporating in the corporate bylaws those matters (in this case of a patrimonial nature) that the law has not provided for, or has done so in a defective manner, in order to avoid possible social conflicts and conflicts

Finally, it can be argued that, although the national non-agro livestock cooperative regulations start from the recognition of the figure of initial working capital, which in essence corresponds to the institution of cooperative social capital, it lacks basic assumptions regarding the latter. In this sense, it includes bank loans as part of the capital, which confuses it with the cooperative patrimony. Likewise, the functions and

characteristics of the social capital are not conceived in an orderly manner, which affects the effectiveness of the figure.

Although contribution is initially conceived as a special juridical act, it is subsequently confused with other acts transferring ownership. This results in a lack of systematized recognition of the characteristics of the contribution and its effects.

With regard to non-agro livestock cooperativism and as it happened with its legal framework, the rules regulating this phenomenon have also been updated in 2019 for agro livestock cooperatives.

The new regulatory framework is integrated by Decree-Law No. 365 "On Agro livestock Cooperatives" (DLAg)(2018) and Decree 354 Regulation of the Decree-Law on Agro livestock Cooperatives (DAg)(2018). Such norms totally repealed Law No. 95 "On Agro livestock Production, Credit and Service Cooperatives", of November 2, 2002; Decree-Law No. 142 "On Basic Cooperative Production Units", of September 20, 1993; Agreement No. 5454, of May 17, 2005, which approved the General Regulations of Agro livestock Production Cooperatives and Credit and Service Cooperatives; Agreement No. 7271, of July 19, 2012 on Basic Units of Cooperative Production, both of the Executive Committee of the Council of Ministers and Resolution No. 574, of August 13, 2012, of the Ministry of Agriculture, which approved the General Regulations of the Basic Units of Cooperative Production.

The current legal provisions represent a step forward in Cuban cooperative regulation, as they regulate in a single legal body the three types of Cuban agro livestock cooperatives.

Regarding the cooperative social capital, it is necessary to begin by pointing out that such rules do not expressly recognize such institution, however, when they regulate the cooperative patrimony, they establish issues that refer to the social capital and not to the patrimony.

Agro livestock cooperatives "are constituted on the basis of the contribution of goods and work of their members, have legal personality, their own patrimony, ..." (Art. 2.3 DLAg). (Art. 2.3 DLAg). The above reinforces the importance of the contributions of the

cooperative members, but introduces some confusion in relation to them, namely the fact that goods and work can be contributed, but it does not delimit in what condition.

In the case of the legal framework under analysis, it recognizes as a requirement to be a member "to be able to perform productive or service tasks" or, in other words, to work (Art. 45c DLAG). It would seem that, correctly, work is recognized as a requirement and not as an asset contribution, however, in that same article, another requirement is included that establishes the obligation to "contribute goods or work to the agricultural cooperative" (Art. 45d DLAG), therefore, the confusion is maintained because, when is work a requirement and when is it an asset contribution.

From the review of such legal norms, the following elements stand out with respect to social capital:

- Exclusion of the contribution of rights to the social capital even though they have patrimonial content. This severely restricts contributions to the social capital and collective management itself
- Indivisibility of the patrimony, since it cannot be subject to division or distribution among the cooperative members, except in the termination processes in which it is appropriate (Art. 8e DLAG). The foregoing, with a markedly absolute character, limits the right of reimbursement by the cooperative members who leave the cooperative, of the contributions made. This does not attack the social function of property in Cuba, nor the social and collective nature of cooperative property
- The General Assembly is the body in charge of approving any act of disposition of the goods owned by the cooperative, excluding land and other goods that have a special regime or specific regulations to be subject to any act of transfer of ownership (Art. 11 DLAG), such as tractors, houses and livestock
- In the case of the CPA, the contributing partner is entitled to the payment of amortization for the goods contributed, which does not constitute a price as in a purchase and sale contract, since the contribution is a legal act different from the latter. This is corroborated in the case of the UBPC and the CPA, with the fact that the goods acquired by purchase and sale or any other title are recognized as goods other than contributions. The rights of the contributors are transferred to the heirs or in case of cancellation

- The goods to be contributed must be valued in accordance with the officially established rates. This valuation must be included in the incorporation dossier (Art. 4.2 DAg)
- In the event of dissolution, the goods resulting from the liquidation are used, among other things, to pay outstanding repayments to the contributors; land and other agro livestock goods are not returned to the contributor

On the other hand, the law recognizes the three types of agricultural cooperatives existing in the country: Agro livestock Production Cooperatives (CPA), Basic Units of Cooperative Production (UBPC) and Credit and Service Cooperatives (CCS). However, despite the fact that these cooperatives are grouped in a single regulatory body, their regulation continues to be diverse, which is due to the unequal nature of such cooperatives. The diversity is accentuated with respect to goods and, in particular, social capital.

The following are the main proposals to contribute to the improvement of the legal regime of social capital for agricultural and livestock cooperatives:

- Recognition, as proposed for non-agro livestock cooperatives, of labor as an independent requirement and not as a contribution to cooperative social capital
- To incorporate as contributions to the social capital the rights of economic content, since they can be valued economically and contribute to the fulfillment of the functions of the social capital
- Recognition of the indivisible nature of the cooperative patrimony only in part, in order to include the possibility in certain cases of reimbursement of the social contributions to the member who contributed them. This without affecting the nature and purpose of the goods contributed and the economic stability of the cooperative
- Recognition of the special nature of the legal act of contribution in order to distinguish it from other legal acts, especially purchase and sale

In closing, it can be said that, in general, Cuban legal regulations on agro livestock cooperatives lack the basic assumptions and referents of the cooperative social capital and the contributions that make it up. This causes that this institution is not expressly

recognized, as well as its confusion with the patrimony, which therefore affects the characters, principles and functions that sustain it. Likewise, the specialty of the act of contribution is not recognized as compared to other legal acts, such as the purchase and sale, and its typology is only configured around the goods. Likewise, the effects that it produces are not systematized, which contributes to the lack of motivation of the subjects to contribute economically to a Cuban agro livestock cooperative.

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**Conflict of interest:**

Authors declare not to have any conflict of interest.

**Authors' contribution:**

Yulier Campos Pérez designed the study, analyzed the data and prepared the draft. Was involved in the collection, analysis and interpretation of the data. The author reviewed the writing of the manuscript and approved the version finally submitted.



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