

A COMPREHENSIVE OVERVIEW OF BRAZILIAN LEGISLATION ON CREDIT COOPERATIVES

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ABSTRACT: *The first Brazilian credit cooperative was founded in 1902 at Nova Petropolis, Rio Grande do Sul state, southern Brazil, and is still active. Since the 1960s, several laws, decrees, provisional measures, resolutions, and circulars have been issued by the Brazilian Federal Government to protect and regulate the cooperatives' activities within the country. A comprehensive research on current Brazilian legislation regarding credit cooperatives is presented in this article. In 2019, if credit cooperatives were compared to commercial banks, they would represent the fifth largest bank operating in Brazil. Key findings pointed out an excessive number of provisional measures and sometimes confusing or redundant laws. This work compiled all the legal provisions about the cooperatives, currently in force in the country. Therefore, this work is an essential contribution to the field of study, since it provides to researchers, practitioners, managers, academics, cooperatives leaders, representatives, among others, a complete and systematic set of laws in force in Brazil, regarding credit cooperatives. Discussion and future research complete the present work.*

KEYWORDS: credit cooperatives; legislation; Brazil

INTRODUCTION

This article presents a single case study on the Brazilian current credit cooperatives legislation, as unit of analysis (Yin, 1988). A comprehensive set of Laws, decrees, normative, and other legal pieces is provided. Practitioners, researchers, cooperative decision makers, among others, will be benefitted with the full set of legislation, regarding credit cooperatives in Brazil.

Credit cooperatives are sometimes called credit unions or financial cooperatives. In this work, we adopted the term credit cooperatives (cooperatives in turn also mentioned as coop, co-op, or cooperatives). Cooperatives are "autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise (International Co-operative Alliance - ICA, 2018a, p.1).

Past body of research indicates substantial activity in the sector, regarding (a) the evolution of Cooperative Societies (Dias, M., 2018); Agricultural cooperatives (Dias, M. & Craveiro, 2019; Dias, M.; Krein, Jeferson; Streh, Eder; Vilhena, João B., 2018; Dias, M. & Teles, 2018); Credit Cooperatives in Brazil (Dias, M. & Ramos, 2018).

According to the Brazilian Law on Cooperatives, Law 5.764/1971 (See Figure 2), Art. 4, Cooperatives are "societies of persons, with their legal form and nature, of a civil nature, not subject to bankruptcy, constituted to provide services to members" (Brasil, 1971, Art 4). They also

differ from other forms of associations, given the following characteristics: (i) voluntary adhesion, with an unlimited number of members; (ii) variability of share capital; (iii) limitation of the number of shares of capital for each associate (iv) non-availability of shares of capital to third parties; (v) uniqueness of vote; (vi) quorum for the operation and deliberation of the General Assembly based on the number of members and not on the capital; (vii) return of the net surplus of the year; (viii) indivisibility of Reserve funds and Educational and Social Technical Assistance; (ix) political neutrality and religious, racial and social indiscrimination; (x) provision of assistance to members; (xi) membership admission area limited to meeting, control, operations and service provision possibilities (Brasil, 1971, Art 4, items I to XI).

Credit cooperatives are also forbidden to use the expression "bank" (Brasil, 1971, Art. 5). Finally, cooperatives are structured according to the following: (a) singular cooperatives, with a minimum of 20 associates; (b) central or federations, with the minimum of three singular cooperatives, and (c) confederations, with the minimum of three central or federations of cooperatives (Brasil, 1971, Art. 6, items I to III). This structure has the purpose of enhancing the cooperatives' efforts in a scale of action (Brasil, 1971, Art. 9).

In Brazil, 6,887 cooperatives were registered in 2019. There are 989 were credit cooperatives (14 percent) of the total (OCB,2018). Also in 2019, cooperatives were responsible for 398,110 direct jobs. Out of these, 60,237 (approximately 15 percent) are employed in credit cooperatives, with 8,491,967 associates, (near 59.5 percent). Credit cooperatives had 14,267,283 associates in 2018 (OCB,2018), as shown in the following Figure 1:

| Activity | Co-operatives | Associates | Employees |
|---------------------|---------------|-------------------|----------------|
| Agricultural | 1.618 | 1.017.481 | 198.654 |
| Consumption | 179 | 2.585.182 | 12.629 |
| Credit | 929 | 8.941.967 | 60.237 |
| Educational | 270 | 53.403 | 3.367 |
| Special | 8 | 321 | 8 |
| Housing | 284 | 106.659 | 577 |
| Infraestructure | 135 | 1.006.450 | 5.692 |
| Mineral | 97 | 23.515 | 182 |
| Production | 239 | 5.777 | 2.960 |
| Health | 805 | 238.820 | 103.015 |
| Labor | 943 | 188.435 | 943 |
| Transportation | 1.357 | 98.713 | 9.835 |
| Tourism and Leisure | 23 | 760 | 11 |
| TOTAL | 6.887 | 14.267.483 | 398.110 |

Figure 1 Cooperatives in Brazil. Source: OCB, 2018.

The next section provides the methods and limitations of the present study.

METHODS AND LIMITATIONS

This research is qualitative, interpretive, based on a descriptive single case study, which unit of analysis is the Brazilian legislation on credit cooperatives (Yin, 1988). It is limited to the Brazilian cooperatives. Other countries are not investigated in the present study.

Brazilian legislation follows Resolution 193 ILO, which recognizes the activity worldwide (ILO, 2018).

This research is also limited to credit cooperatives, despite the existence of thirteen different types of cooperatives operating in Brazil: (a) credit, (b) consumption, (c) farming, (d) social, (e) infrastructure, (f) housing, (g) mineral, (h) production, (i) health, (j) labor, (k) transportation, (l) tourism & leisure, and (m) educational (OCB, 2018).

Credit cooperatives in Brazil abide by (i) Federal Constitution 1988; (ii) Provisional Measures; (iii) Laws; (iv) Decrees; (v) Complementary Law; (vi) Brazilian Civil Code (Law 10.406/2002); (vii) Resolutions, and (viii) circulars from Brazilian Central Bank and the Federal Accounting Council (Conselho Federal de Contabilidade – CFC). The next section presents the full set of legislation, regarding the credit cooperatives activities in Brazil.

BRAZILIAN LEGISLATION ON CREDIT COOPERATIVES

Brazilian Federal Constitution

Brazilian Federal Constitution 1988 encompassed the cooperatives in Brazil under the following articles, as depicted in Figure 2: Art.1, 3, 5, 146, 170, 174, and 192 (Brasil, 1988), as follows:

| Article | § | Subject |
|---------|---|--|
| 1 | | free initiative and work associations |
| 3 | | fundamentals of Republican activities |
| 5 | | recognition of cooperative societies |
| 146 | | cooperatives taxation (Reports to Complementar Law) |
| 170 | | cooperatives as economic activities |
| 174 | 2 | to support and encourage cooperativism and other forms of association. |
| 192 | | National financial system, including credit cooperatives |

Figure 2 Federal Constitution 1988 and cooperatives. Source: Brasil, 1988.

Constitutional Amendment, Complementary Laws and Provisional Measures

Brazilian legislative process is also structured as follows and compounds, according to Art. 59: (i) amendments to Constitution; (ii) complementary laws; (iii) ordinary laws; (iv) delegated laws; (v) provisional measures; (vi) legislative decrees; (vii) Resolutions (Brasil, 1988, Art. 59, items I to VII). In exceptional cases, given their relevance and urgency, the President of the Republic “may adopt provisional measures, with force of law, and must immediately submit them to the National Congress” (Brasil 1988, Art. 62).

Moreover, these exceptional cases cannot be issued on the following matters: (a) nationality, (b) citizenship, (c) political rights, (d) political parties, (e) criminal, and civil laws, (f) structure of Judiciary Power, (g) multiannual budget of the Union, (h) tax increase, among others (Brasil, 1988, Art. 62). The Provisional Measure will be appreciated by the National Congress and is valid for 60 days only (Brazil, 1988, Art. 62, item IV, § 7°).

From September 1998 to August 2001, the same Provisional Measure was re-issued 41 times, with no single modification, regarding the Program of Revitalization of Cooperatives of Agricultural Production - RECOOP, in turn authorizing the creation of the National Service of Learning Cooperativism – SESCOOP (See Figures 3 and 4).

In a period of approximately three years, the same MP was monthly revisited, re-issued, under different numbers, until 2001 through MP 2.168-40. Surprisingly, 18 years after MP 2.168-40 was issued, it is still active¹ (Brasil, 2001), despite Art. 62, § 3° anticipates their validity for 60 days: “(...MPs) will lose effectiveness, since the issue, if they are not converted into law within sixty days”.

This confusion can be explained by Constitutional Amendment 32, from September 11, 2001, which modified Art. 62 from the Federal Constitution, approving the “conversion bill altering the original text of the provisional measure, it will remain in full force until the project is sanctioned or vetoed” (Brasil, 2001b, Art. 62, § 12). In practice, if there were a project circulating through the Houses of the Legislative, but was not voted or vetoed, it is allowed to remain active.

Not surprisingly, MP 2.168-40, from August 24, 2001, was never re-edited, since the Constitutional Amendment 32 came into force in the very next month. As a consequence, what should be provisional and temporary became permanent. In practice, MP 2.168-40 is still valid, with the normative impact of a Law without being a Law approved by the Congress nor sanctioned by the president of the republic.

¹ For MP 2.168-40, consult Brasil (2001) Medida Provisória MP 2.168-40. Retrieved from http://www.planalto.gov.br/ccivil_03/MPV/2168-40.htm, on April 19, 2019

Figures 3 and 4 depict the 41 provisionary measures (*Medidas Provisórias* – MP), as follows:

| Provisional Measure | Publication | Subject |
|---------------------------------|--------------|--|
| Provisional Measure MP 1.715 | Sep 3, 1998 | Provides for the Program of Revitalization of Cooperatives of Agricultural Production - RECOOP, authorizes the creation of the National Service of Learning Cooperativism - SESCOOP Substituted by MP 1.715-1 until MP 2.168-40 |
| MP 1.715-1 | Oct 1, 1998 | Substituted by MP 1.715-2 |
| MP 1.715-2 | Oct 29, 1998 | Substituted by MP 1.715-3 |
| MP 1.715-3 | Nov 27, 1998 | Substituted by MP 1.781-4 |
| MP 1.781-4 | Dec 14, 1998 | Substituted by MP 1.781-5 |
| MP 1.781-5 | Jan 13, 1999 | Substituted by MP 1.781-6 |
| MP 1.781-6 | Fev 11, 1999 | Substituted by MP 1.781-7 |
| MP 1.781-7 | Mar 11, 1999 | Substituted by MP 1.781-8 |
| MP 1.781-8 | Apr 8, 1999 | Substituted by MP 1.781-9 |
| MP 1.781-9 | May 6, 1999 | Substituted by MP 1.781-10 |
| MP 1.781-10 | Jun 2, 1999 | Substituted by MP 1.781-11 |
| MP 1.898-11 | Jun 29, 1999 | Substituted by MP 1.898-12 |
| MP 1.898-12 | Jul 28, 1999 | Substituted by MP 1.898-13 |
| MP 1.898-13 | Aug 26, 1999 | Substituted by MP 1.898-14 |
| MP 1.898-14 | Sep 24, 1999 | Substituted by MP 1.898-15 |
| MP 1.898-15 | Oct 22, 1999 | Substituted by MP 1.898-16 |
| MP 1.898-16 | Nov 23, 1999 | Substituted by MP 1.961-17 |
| MP 1.961-17 | Dec 9, 1999 | Substituted by MP 1.961-18 |
| MP 1.961-18 | Jan 6, 2000 | Substituted by MP 1.961-19 |
| MP 1.961-19 | Feb 4, 2000 | Substituted by MP 1.961-20 |
| MP 1.961-20 | Mar 2, 2000 | Substituted by MP 1.961-21 |

Figure 3 Provisional Measures (MPs) on credit Cooperatives (from MP 1.715 to MP 1.961-20)

| Provisional Measure | Publication | Subject |
|---------------------|--------------|----------------------------|
| MP 1.961-21 | Mar 30, 2000 | Substituted by MP 1.961-22 |
| MP 1.961-22 | Apr 27, 2000 | Substituted by MP 1.961-23 |
| MP 1.961-23 | May 26, 2000 | Substituted by MP 1.961-24 |
| MP 1.961-24 | Jun 26, 2000 | Substituted by MP 1.961-25 |
| MP 1.961-25 | Jul 26, 2000 | Substituted by MP 1.961-26 |
| MP 1.961-26 | Aug 25, 2000 | Substituted by MP 1.961-27 |
| MP 1.961-27 | Sep 22, 2000 | Substituted by MP 1.961-28 |
| MP 1.961-28 | Oct 24, 2000 | Substituted by MP 1.961-29 |
| MP 1.961-29 | Nov 23, 2000 | Substituted by MP 1.961-30 |
| MP 1.961-30 | Dec 21, 2000 | Substituted by MP 2.085-31 |
| MP 2.085-31 | Dec 27, 2000 | Substituted by MP 2.085-32 |
| MP 2.085-32 | Jan 25, 2001 | Substituted by MP 2.085-33 |
| MP 2.085-33 | Feb 22, 2001 | Substituted by MP 2.085-34 |
| MP 2.085-34 | Mar 22, 2001 | Substituted by MP 2.085-35 |
| MP 2.085-35 | Apr 19, 2001 | Substituted by MP 2.085-36 |
| MP 2.085-36 | May 17, 2001 | Substituted by MP 2.085-37 |
| MP 2.085-37 | Jun 13, 2001 | Substituted by MP 2.168-38 |
| MP 2.168-38 | Jun 28, 2001 | Substituted by MP 2.168-39 |
| MP 2.168-38 | Jun 27, 2001 | Substituted by MP 2.168-40 |
| MP 2.168-40 | Aug 24, 2001 | Current |

Figure 4 Provisional Measures (MPs) on credit Cooperatives (from MP 1.961-21 to MP 2.168-40)

Brazilian Laws on credit cooperatives

Cooperative legislation in Brazil appeared in the middle of the Military government period (1964-1985). First, the Brazilian Federal government created the monetary, banking and credit policy through Law no 4.594 in 1964 (Brasil, 1964). Second, institutionalized the rural credit through

Law no 4.829 in 1965 (Brasil, 1965). Later, the Cooperative Law no 5.764 was finally issued on December 16, 1971, and established the primary legislation on Cooperatives in Brazil. Figure 5 depicts the Laws currently in force:

| Normative | Publication | Subject |
|---------------------------------------|--------------|---|
| Law nº 4.594 | Dec 31, 1964 | Creates Monetary, Banking and Credit Policy and Institutions, creates the National Monetary Council |
| Law nº 4.829 | Nov 05, 1965 | Institutionalizes rural credit |
| Law nº 5.764 | Dec 16, 1971 | National Cooperative Policy and establishes the legal regime of cooperative societies in Brazil |
| Brazilian Federal Constitution | Oct 05, 1988 | Article 5, which recognizes the activity, (c) Article 146, which establishes the co-operatives taxation, (d) Article 174, issuing the co-operatives regulation and normalization, and (e) Article 192, which regulates the national financial system |
| Law no 8.394 | Nov 18, 1994 | Provide Public Register of Mercantile Companies and Related Activities and provides other measures (including cooperatives registering) |
| Decree 3.017 | Apr 06, 1999 | Approves the Regulation of the National Service of Learning of Cooperativism - SESCOOP |
| Provisional Measure MP 2.168-40 | Aug 24, 2001 | Provides for the Program of Revitalization of Cooperatives of Agricultural Production - RECOOP, authorizes the creation of the National Service of Learning Cooperativism - SESCOOP. |
| Law no 10,406 Brazilian Civil Code | Jan 10, 2002 | Chapter VII, articles 1093, 1094, 1095, and 1096 establishes the Cooperative Societies, its limits and scope |
| Complementary Law nº 130 | Apr 17, 2009 | Law of Credit Cooperatives Complementary Law - National Cooperative Credit System and repeals provisions of Laws 4,595, December 31, 1964 and 5,764, December 16, 1971 |
| Law nº 12.690 | Jul 19, 2012 | Provides for the organization and operation of Labor Cooperatives; establishes the National Program for the Promotion of Labor Cooperatives - PRONACOOP; and repeals the sole paragraph of art. 442 of the Consolidation of Labor Laws - CLT, approved by Decree-Law No. 5,452, dated May 1, 1943 |
| Decree 8.163 | Dec 20, 2013 | Establishes the National Program of Support to Associativism and Social Cooperativism - Pronacoop Social. |

Figure 5 Brazilian Laws on credit cooperatives

Provisional Measure MP 2.168-40, as mentioned earlier, established the RECOOP and SESCOOP (Brasil, 2001). In 1999, Decree 3.017 approved the regulation for the SESCOOP (Brasil, 1999). In 2002, the Brazilian Civil Code, through Law no 10.406 defined cooperatives civil scope and

limits (Brasil, 2002). Law 12.690 from 2012 and Decree 8.163 from 2013 established the National Program of Support to Associativism and Social Cooperativism - Pronacoop Social (See Figure 5).

Brazilian Central Bank Resolutions on credit cooperatives

Brazilian Central Bank is responsible for issuing resolutions that discipline the credit cooperatives activities in Brazil through resolutions no 3.106, from 2003, 3.502, from 2010, 4.434 from 2015 and Circular 3.547, from 2012, as depicted in the following Figure 6, as follows:

| Brazilian Central Bank | Publication | Subject |
|------------------------|---------------|---|
| Resolution 3.106 | Jun 25, 2003 | Authorization for operation and statutory changes, as well as for the cancellation of the authorization for the operation of credit cooperatives (substituted by Resolution 4.434). |
| Resolution 3.502 | Jul 26, 2010 | Provides for the procedures to be followed by credit cooperatives to investigate claims (substituted by Resolution 4.434). |
| Circular 3.547 | Apr 11, 2012 | Clarifies about provisions of Resolution No. 3.859, of May 27, 2010, which provides for the constitution and operation of credit cooperatives |
| Resolution 4.434 | Aug, 05, 2015 | Provides for the constitution, authorization for operation, operation, statutory changes and cancellation of authorization for operation of credit cooperatives (current) |

Figure 6 Brazilian Central Bank Resolutions on Credit Cooperatives

Resolution 4.434/2015 created a new classification on credit cooperatives, according to their performance, and risk of exposure, namely:

- (i) *full credit cooperatives*, which are authorized to carry out all operations pertaining to credit cooperatives;
- (ii) *traditional credit cooperatives* that are authorized to carry out only operations currently permitted under the simplified prudential regime (resolution 4,194 / 13), and are prohibited from carrying out transactions subject to exchange variation, at the price of commodities or shares, or in instruments financial instruments, among others;
- (iii) *capital and loan credit cooperatives*, which are subject to the same limitations as traditional credit cooperatives and are not yet authorized to raise funds or deposits, and thus have as main source of funds for the performance of their activities equity integrated by its members. In general, capital and loan credit cooperatives will include entities with an organizational and financial structure with simplified standards (BACEN, 2015).

CFC Resolutions on credit cooperatives

Federal Accounting Council (*Conselho Federal de Contabilidade – CFC*), issued resolutions 920 from 2001, and 1.103 from 2005 over the accounting standards and procedures for credit

cooperatives and valuation, data storage and financial statement frameworks, respectively, as depicted in the following Figure 7:

| Resolution CFC | Publication | Subject |
|----------------|-------------|---|
| 920 | 2001 | Brazilian Accounting Standard for Co-operative Entities (NBC T 10.8) |
| 1.013 | 2005 | procedures for valuation, data storage, and Financial Statements frameworks |

Figure 7 CFC Resolutions on credit cooperatives

DISCUSSION

Credit cooperatives in Brazil are extensively protected by the legal instruments, issued by Federal Government and Institutions, like the Central Bank for instance, as aforementioned.

Despite its comprehensiveness, some Laws are confusing or redundant, such as the Provisional Measures, re-edited 41 times, and the last one in force for more than 18 years, through the Constitutional Amendment 32, from September 11, 2001 (Brasil, 2001b). MPs should be temporary and by far and almost two decades overdue. However, it is still in force, until it is voted by the Brazilian Congress, which has been two-thirds renewed with the General Elections 2018. Will the new congressmen vote a new Law on RECOOP and SESCOOP? Apparently, there is no schedule for voting, since there are more urgent issues to be voted.

Decree 3017 from 1999 is also confusing, because it Approves the Regulation of the National Service of Learning of Cooperativism – SESCOOP. Similar to MP 2.168-40.

Since credit cooperatives are expanding their activities in Brazil, currently present operating in all the 27 states plus the Federal District, implying in approximately BRL 44 billion financial transactions in 2018 (BACEN, 2018), the subject is relevant to the Brazilian economy.

Also, out of the 5,570 municipalities in Brazil, almost ten percent are served exclusively by credit cooperatives (OCB, 2018), since small towns are not unusual for conventional banks. The credit cooperatives are, sometimes, the only possibility available of financial transaction in these municipalities.

Brazilian Central Bank has issued essential resolutions to the sector, such as Resolution 4.434/2015 (BACEN, 2015), which also encompasses the compliance system to credit cooperatives, a critical regulatory standard to the credit cooperatives.

This research contributed to the field of research combining all the available current legislation on Brazilian Credit cooperatives in one single study, usually investigated in separate. Therefore, in this sense, this study is helpful to credit cooperative managers, decision makers, practitioners,

lawyers, academics, among others, because it consolidates a vast and comprehensive panorama on the subject under investigation.

For future research, it is encouraged the visitation on the credit cooperative Laws, especially the confusing Provisional Measure 2.168-40 from 2001, still active, and the impact of the legislation on the Brazilian economy in general, and particularly on the credit cooperative sector.

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