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CREDIT CO-OPERATIVES LAW 13/1989 OF 26 MAY 1989 (BOE OF 31 MAY)

Article 129.2 of the Spanish Constitution ordains that government authorities shall promote co-operative societies by means of adequate legislation. This mandate has been fulfilled with respect to co-operatives in general by the General Law on Cooperatives 3/1987, enacted on 2 April, which, however, in its sixth transitional provision provides that until the new legal rules regulating credit co-operatives are established, credit co-operatives will continue being governed by the legislation in force prior to the effective date of that Law, with the particularities laid down in the same.

The Spanish government has prepared a Law on Credit Co-operatives that fulfils the mandate laid down in article 129.2 of the Constitution in relation to promoting this type of co-operative society to the fullest extent possible under the powers vested in the state.

As is known, Spanish state legislation is considered supplementary to the legislation of the regional governments to which there have been devolved full legislative powers for co-operatives. A nuance is introduced into this general rule, in the specific case of credit co-operatives inasmuch as credit co-operatives registered in the Bank of Spain special register are granted, under Legislative Royal Decree 1298/1986, of 28 June, adapting legal rules on credit entities to European Economic Community law, status as credit institutions, as are private banks, savings banks and official credit institutions.

These nuances derive from the fact that article 149.1.11 of the Constitution mandates exclusive state jurisdiction for establishing the basis of regulations concerning credit and banking. Consequently, this Law establishes the basis with respect to credit co-operatives, but also includes other provisions not considered basic for the purpose of giving supplementary rules to be applied in default of regional legislation, although those provisions are expressly related to the second final provision in accordance with the most recent requirements of constitutional case-law.

In conclusion, this Law is not intended to offer a complete and exhaustive regulation of all aspects of credit co-operatives, but only to establish the basis for the legal framework governing those co-operatives as credit institutions,

as a responsibility that rests with the state under article 149.1.11 of the Constitution.

This statute is structured into twelve articles, one additional provision, two transitional provisions, two final provisions and a repealing provision.

The text begins by laying down the general principles, in which credit cooperatives are defined and given status as credit institutions with supplementary application of the legislation on co-operatives. It is stipulated that there shall be no limit on the number of members of such co-operatives and the liability of members for the debts of the co-operative is limited to the value of their contributions. The legal regime applicable to these co-operatives is also specified, along with the particularities regarding their names.

Consistent with their status as credit institutions, as mentioned above, credit co-operatives are allowed to carry on the same operations as credit institutions, although with priority attention to the financial needs of their members.

The Law then refers to the formation and functioning of these co-operatives, inspired by the principles of agile processing and equal treatment with all other credit institutions for their registration in public registers, both in the Bank of Spain register and in the Companies Registry, as well as in the register of co-operatives.

This statute also establishes the requirements which must be met by members of these institutions and the events in which delegation of votes is admissible. As a consequence of their status as credit institutions, the method for calculating their profit or loss is regulated and rules are established for distributing profits, seeking to satisfy co-operative principles and guarantee the solvency of these institutions and hence their liabilities to third parties.

Article nine deals with the organisational bodies, distinguishing between the general assembly, governing board and management and specifying the respective powers of each and their rules of operation. The regional governments are allowed to establish other rules of a different nature for the governing board and management, provided they comply with the basic provisions established by the Spanish state.

Lastly, the Law refers to mergers and split-ups, accounting and disciplinary rules.

These provisions aim to guarantee the solvency of credit co-operatives, avoid abusive actions harmful to co-operatives and assure they function perfectly within the financial system in which they are included.

The second final provision is intended to ensure compliance with the most recent constitutional case-law regarding the need for clear statutory specification of which provisions are considered basic and which are not.

1 ARTICLES

1.1 Article one. Status

1 Credit co-operatives are companies incorporated in accordance with this Law with the corporate object of serving the financial needs of their members and of third parties by means of pursuing the activities proper to credit institutions.

2 Credit co-operatives have their own legal personality.

3 The number of members is unlimited and their liability for the co-operative's debts is limited to the value of their contributions.

1.2 Article two. Legal framework

Credit co-operatives shall be governed by this Law and the provisions implementing the same, without prejudice, in relation to the latter, to such provisions as may be approved by the regional governments in the discharge of the functions delegated thereto for these matters. They shall also be subject to the provisions that generally regulate the activities of credit institutions. On a supplementary basis, they shall be subject to the legislation on co-operatives.

1.3 Article three. Denomination

1 The term *Cooperativa de Crédito* or its abbreviation *Coop. de Crédito* may only be used by the undertakings defined in this Law and shall necessarily be included in their name.

2 No credit co-operative may adopt a name identical to that of another pre-existing company, whether a credit institution or of another kind.

Nor shall credit co-operatives adopt ambiguous or misleading names liable to induce confusion in relation to their scope of operations or corporate objects or with another type of credit institution.

3 Only credit co-operatives whose principal object consists in providing financial services in rural areas may use, jointly with or separately from the name credit co-operative, the expression *Caja Rural* (rural savings banks)

The "Banco de Crédito Agrícola, S.A." and rural savings banks or any other credit co-operatives that belong to the Grupo Asociado de Crédito Agrícola-Cajas Rurales Asociadas may use, jointly or separately and for so long as they belong to that group, the expression *Crédito Agrícola*.

4 No public register shall register undertakings not subject to this Law which seek to use any of the names provided for in this article, nor register any acts to which such undertakings are party. Where such registration has been made nonetheless, it shall be immediately cancelled, ex officio or at the request of the interested party.

1.4 Article four. Operations

1 Credit co-operatives may carry on all types of lending, deposit-taking and services permitted to other credit institutions, with priority attention to the financial needs of their members.

2 In any case, a credit cooperative's total lending operations with third parties may not exceed or be equal to 50% of the total resources of the institution.

The aforesaid percentage shall not include operations by credit co-operatives with the members of the associated cooperatives, operations of placement of treasury surpluses in the interbank market or the acquisition of any securities or fixed income financial assets which may be acquired for the coverage of legal ratios or the placement of treasury surpluses. In the case of credit co-operatives forming part of an institutional protection scheme in accordance with Article ten bis of this law, the operations performed with the central institution, the other credit co-operatives and other members of the institutional protection system shall not be considered in that percentage either.

1.5 Article five. Incorporation

1 Incorporation of a credit co-operative shall require prior authorisation from the Ministry of Economy and Finance. The incorporation application must be undersigned by a group of promoters, at least five of whom must be legal persons that have been pursuing their registered corporate object on an uninterrupted basis for at least two years prior to the incorporation date, or by fifty natural persons.

In order to incorporate a credit co-operative with the name Caja Rural, the promoter group must include at least an agrarian co-operative or fifty natural person farm owners amongst their members.

2 After authorisation is granted, the credit co-operative shall request to be registered in the relevant register of the Bank of Spain, submitting with such request a copy of the public deed of incorporation and of the articles of association. Similarly, after being registered in the Bank of Spain register, it must obtain registration in the Companies Registry and in the relevant register of co-operatives, whereupon it shall acquire its legal personality.

1.6 Article six. Share capital

1 The government of Spain, upon prior report from the Bank of Spain, shall establish the minimum amount of share capital of credit co-operatives according to their territorial scope and the total number of citizens in the towns included within that territory. It shall also determine the extent to which that capital must be paid in.

2 Credit co-operatives shall not operate outside their territorial limits, as defined in their articles of association, without having first modified the articles and increased their share capital to adjust it to the requisite level. This

restriction does not apply to the operations provided for in the last paragraph of article 4.2 and to those which are merely ancillary or instrumental to the corporate object.

1.7 Article seven. Member contributions

1 All members of a credit co-operative must possess at least one registered certificate of contribution. The articles of association shall determine the nominal value of these certificates, which shall not be less than ten thousand pesetas, and the minimum number of certificates that must be possessed by members, according to the legal nature and activity commitment assumed by the members, subject to the limits set forth in part 3 of this article. All certificates shall have the same nominal value.

2 Membership shall not be lost when, as a consequence of a financial reconstruction plan approved by the Credit Co-operative Deposit Guarantee Fund (Fondo de Garantía de Depósitos en Cooperativas de Crédito) or by application of the terms of the last paragraph of this article, the nominal value of contributions is annulled or reduced to below the minimum limit stipulated in the articles, on a general basis, without the member restoring the diminished part.

3 The total amount of contributions of each member shall not exceed 20 percent of the share capital in the case of a legal person and 2.5 percent in the case of a natural person.

In no event shall legal persons who do not hold status as a co-operative society possess more than 50 percent of the share capital.

4 The contributions shall be repaid to the members when the conditions stipulated by the regulations are met, subject in all cases to the authorisation of the Governing Board. In no event shall such refund be authorised when it results in insufficient coverage of the mandatory share capital, reserve or solvency ratio requirements.

The assets, including when the reimbursement has been rejected, will not be benefited from, and in particular, neither by order nor amount, in its provisions in the case of competition or liquidation of the cooperative, and the tendering of the fund, once the corporate debts have been paid in full, this must be done in proportion to the nominal value of the capital contributions subscribed by the partners

5 The limits mentioned in paragraph 3 shall not be taken into account in the event of a holding by whatever means in the share capital of a credit co-operative by the private guarantee fund constituted ex ante within the framework of an institutional protection scheme in accordance with Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

Likewise, the said limits shall not be taken into account when any of the measures provided for in Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms are adopted.

When the private guarantee fund is in the situation described in the first subparagraph, it must submit to the Banco de España for approval an action plan to ensure viability which includes specific measures to allow the divestment by the fund of its interest in the credit co-operative under appropriate conditions for all the institutions that form part of the institutional protection scheme.

6 The marketing to members or potential members, be they natural or legal persons, of credit cooperative share capital contributions will be subject to the provisions of this article and any laid down by the Banco de España in its circulars, including the following stipulations:

a When gathering information from a member or potential member for the purposes of assessing their suitability for the operation, institutions shall request specific information on their prior investment experience in share capital contributions and on the percentage of their total financial wealth represented by this type of asset, where applicable. The mere ownership of contributions to the capital of credit cooperatives acquired before the entry into force of this Law shall not by itself be deemed sufficient proof of the member's prior investment experience.

Irrespective of whether or not the member or potential member reports prior experience in this type of asset, institutions shall ensure that they effectively understand the specific risks inherent in share capital contributions. In any event, the member or potential member shall be provided with a copy of the document setting out the assessment made.

b When share capital contributions to credit cooperatives are marketed, and in any case prior to their effective subscription, the members or potential members shall be informed of the key information relating to the credit cooperative in question, providing at least the following information:

- 1** Legal and trade name.
- 2** Banco de España registration number.
- 3** Registered office.
- 4** Share capital.
- 5** List of main members with share capital holdings of 10% or more.
- 6** Instructions on how to access information relating to the credit cooperative's functioning and activity.
- 7** The cooperative's membership, where applicable, of an institutional protection scheme and the implications thereof, in particular in terms of the central institution's powers, profit sharing, solidarity and mutual support.

c Institutions that market credit cooperative share capital contributions must provide members and potential members with a general description of the

nature of the share capital contributions in a manner that is clear, straightforward and avoids confusion, including the following aspects at least:

1 Declaration that the contributions comprise the credit cooperative's share capital – thus conferring membership on the subscriber and allowing them to participate in the corporate affairs of the cooperative –, providing a general description of the voting and economic rights granted thereby.

2 The framework for the transfer of contributions pursuant to applicable regulations and the credit cooperative's articles of association.

3 Any other circumstance laid down in the credit cooperative's articles of association and not stipulated in the foregoing paragraphs that is relevant to the member's or potential member's understanding of the characteristics and nature of the contributions.

d The institutions that market credit cooperative share capital contributions must provide members and potential members with a general description of the specific risks associated therewith, noting the following at least:

1 The payment of remuneration interest on capital contributions shall be contingent on the existence of sufficient net profit or sufficient unrestricted reserves.

2 The perpetual nature of the contributions.

3 The conditions for the reimbursement of contributions laid down in the credit cooperative's articles of association, along with the possibility of the governing board's unqualified refusal to provide said reimbursement.

4 The absence of a secondary market for trading share capital contributions, which, in addition to the stipulations of the above paragraphs, limits their liquidity.

5 There is no guarantee scheme and, in particular, the fact that there is no coverage from the Deposit Guarantee Scheme (Fondo de Garantía de Depósitos). The entirety of the investment made can be lost.

6 Contributions are subordinate to any potential debts owed by the credit cooperative in the event of its resolution, insolvency or winding-up.

In any case, the member or potential member must be warned of the market, liquidity and credit risk to contributions, such that capital invested may not be immediately or wholly recoverable.

e The information provided to members or potential members shall include wording that clearly states the differences between contributions and ordinary bank deposits in terms of returns, risk and liquidity, in line with the relevant terms laid down by the Banco de España in a circular.

f The information set out in previous points shall be provided sufficiently in advance of the subscription of contributions, whether offered by the institution or made at the behest of a member or potential member.

g The information referred to in this paragraph must be provided in a single document, either on paper or in another durable format, provided that, in the latter case, it meets the conditions set out in this Law's implementing regulations.

Institutions that have marketed credit cooperative share capital contributions must be able to demonstrate that the aforementioned information has been effectively delivered to members or potential members. To this end, if provided on paper, the institution shall obtain a copy of the document containing the information signed by the member or potential member. Otherwise, if delivered remotely in a durable format, the institution shall put the proper processes in place to demonstrate that the member or potential member has received and effectively accessed the information.

The supervision, inspection and penalty regime provided for in Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions shall apply, falling under the responsibility of the Banco de España.

7 For the purposes of this article, marketing of contributions is understood as the credit cooperative, or any person or institution acting on its behalf, raising new contributions by onboarding members or potential members. Marketing shall include both the onboarding of members or potential members by means of advertising as well as placing contributions individually, whether carried out via the branches or by agents of the credit cooperative. To this end, advertising is understood as any form of communication aimed at potential investors with the intention of directly or indirectly raising new contributions. In any case, it shall be understood as advertising when the means used to contact the public at large are telephone calls, home visits, personalised letters, emails or any other remote media as part of a publicity, marketing or promotional campaign.

8 The disclosure requirements during the suitability assessment of a member or potential member and the records inherent to these processes as they relate to share capital contributions to credit cooperatives shall be governed by the rules laid down by the Banco de España.

9 The suitability assessment of a member or potential member shall not be obligatory for institutions marketing contributions as long as the nominal value of the contributions to which a member or potential member of a single credit cooperative can subscribe does not exceed € 2000. Institutions must not split up the subscription of contributions in order to circumvent compliance with this provision.

10 The supervisory and sanctioning powers in relation to the provisions laid in paragraphs 6 to 8 of this article lie with the Banco de España, in accordance

with Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions.

11 The payment for assets which cannot be reimbursed by the Governing Council shall bear no preference, neither by order nor amount, in terms of the payment of assets from the rest of the co-operative's assets.

1.8 Article eight. Results of the financial year

1 At the close of each financial year, the results shall be determined according to the principles and methods applicable in other credit institutions, without prejudice to the provisions of the Law on Taxation of Co-operatives.

2 Losses shall be covered with a charge to the co-operative's own funds and, where the latter are insufficient or where the share capital would be reduced to below the stipulated minimum, the co-operatives shall be wound up, unless the capital or funds are restored in sufficient measure.

2 bis. Losses may not be imputed to the capital stock as long as the cooperative has any kind of reserve funds, voluntary or obligatory, and, if imputed, it will be made equally affecting all contributions in proportion to their nominal value.

3 The profits shall be allocated to covering losses from previous years which could not be absorbed with a charge to own funds. The credit balance of the profit and loss account shall constitute the net surplus for the financial year and, after deducting the taxes payable and interest on capital paid in, subject to the limits set down in the legislation on co-operatives, the disposable surplus shall be applied: a) at least 20 percent to the allocation to the mandatory reserve; b) at least 10 percent to the allocation to the education and promotion fund; and c) the rest shall be available to the general assembly, which may distribute it as follows: refund to members, based on the criteria laid down in this respect in the articles of association, allocation to voluntary or comparable reserves, which may only be distributed upon prior authorisation from the supervisory authority, and, where application, to employee profit sharing schemes. All of this shall be construed without prejudice to compliance with the solvency ratio and to the legal rules applicable to the first three years of existence of a credit co-operative.

1.9 Article nine. Company bodies

1 The company bodies of credit co-operatives are the general assembly and the governing board.

2 Each member shall have one vote in the general assembly. Nevertheless, where so stipulated in the articles of association, the vote of members may be made proportional to their share capital, to the activity carried on or to the number of members of the associated co-operatives. In this case, the articles of association must set out clear criteria for the vote proportionality.

In all events, the limits indicated in article 7.3 shall apply to member votes.

3 Members may appoint other members as their proxies for general assembly meetings, subject to the following restrictions:

a The proxy appointment must be made in writing before the assembly meeting and specify the name of the proxy.

b The aggregate votes held by a member directly and as proxy shall not exceed the voting limits indicated in this Law.

4 Power to appoint, hire and remove the general manager shall rest with the governing board.

5 Governing board meetings shall be called by the chairman at his own initiative or at the request of at least two or more board members or of one general manager.

6 Members of the governing board may receive remuneration where so stipulated by the articles of association.

7 The management of credit co-operatives shall be performed by one or more general managers.

8 The following persons shall not be members of the governing board or general managers:

a Undischarged bankrupts or debtors subject to insolvency proceedings, persons legally incapacitated, sentenced under judgments including disqualification from holding public office, and those who have been sanctioned for serious violations of the law or company provisions, especially for property crimes, disqualified in a disciplinary proceeding from holding directorships or executive office in a credit institution.

b Directors, or board members, or senior officers of other credit institutions, except for those who have holdings in the share capital. Persons belonging to the board of directors of more than four credit institutions. For the purposes of computing these directorships, there shall not be included the seats held on boards of directors of credit institutions in which the interested person, his spouse, ancestors or offspring are owners, jointly or separately, of a number of share not less than the quotient yielded by dividing the share capital by the number of seats on the board of directors.

c Persons who for their own account or on behalf of other persons or undertakings have debts due and payable of any kind with the credit co-operative, or who during the discharge of their functions incur in breach of the obligations to the cooperative.

General managers shall not hold the same or equivalent office in another credit institution, co-operative or commercial company, nor the position of director, except as representative of the credit co-operative.

9 The Bank of Spain shall maintain a register of credit co-operative senior officers in which there must be registered, prior to taking office, the persons elected or appointed to hold the position of board member or general manager in a credit cooperative. The Bank of Spain shall refuse registration when there is a conflict of interest under the applicable laws, in which event the election or appointment shall be null and void.

1.10 Article ten. Merger, spin-off and alteration of status

1 Prior administrative authorisation, along with a report of the Banco de España, shall be required in the event that a credit co-operative is involved in any merger, spin-off or alteration of status.

Should the institution resulting from the merger, spin-off or alteration of status be a credit co-operative, it shall apply to be registered in the relevant register of the Banco de España, without prejudice to any registration that may be necessary in the registers of regional governments with powers in this area under their Statutes of Autonomy, and comply with all the applicable rules and obligations relating to registration.

2 When a credit co-operative alters its status to that of another credit institution, the Statutory Reserve Fund of the former shall become part of the share capital of the institution resulting from the alteration of status.

This alteration of status shall not entail the loss of privileged tax status in the corporate income tax period in which the alteration of status of the institution takes place, in the terms established in Article 26 of the Consolidated Text of the Corporate Income Tax Law, approved by Royal Legislative Decree 4/2004 of 5 March 2004. During that tax period, that part, if any, of the Statutory Reserve Fund that has reduced the tax base in previous periods shall be included in the tax base relating to the co-operative or extra-co-operative results.

1.11 Article ten bis. Institutional protection schemes

Credit co-operatives may be included in a strengthened institutional protection scheme of the type envisaged in and governed by the fifth additional provision of Law 10/2014 of 26 June 2014 on the organisation, supervision and solvency of credit institutions, and may also form part of an institutional protection scheme as provided for in Article 113 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

1.12 Article eleven. Accounting

Credit co-operatives shall manage their accounting according to the rules established for credit institutions. The annual balance sheets and profit and loss account must be audited by the persons and with the requirements stipulated in Law 19/1988, of 12 July, on Account Audits.

1.13 Article twelve. Discipline and intervention

Law 26/1988, of 29 July, on the Discipline and Intervention of Credit Institutions shall apply to credit co-operatives.

2 ADDITIONAL PROVISION GRUPO ASOCIADO BANCO DE CRÉDITO AGRÍCOLA-CAJAS RURALES ASOCIADAS.

The Grupo Asociado Banco de Crédito Agrícola-Cajas Rurales Asociadas shall be incorporated by the Banco Crédito Agrícola and the cajas rurales (rural savings banks) that enter into the agreement with the same, with full contracting capacity in the pursuit of its purposes, and its governing bodies and operations shall be governed by the terms of that agreement.

3 TRANSITIONAL PROVISIONS

1 First. Credit co-operatives must adapt their articles of association to the provisions of this Law prior to 31 December 1993, without prejudice to their compliance with the mandatory provisions of the same and to such other dates as may be stipulated by regulation for attaining the own funds required under prudential rules, which shall take special account of credit co-operatives with a local scope of activity and domiciled in municipalities with less than 100,000 inhabitants.

2 Second. Promoters of credit co-operatives which at the effective date of this Law are awaiting resolution on their applications for authorisation shall have one year within which to adapt their applications to the provisions hereof.

3 FINAL PROVISIONS

1 First. The Spanish government may dictate, within the scope of its powers, all such provisions as may be required for application and implementation of this Law.

2 Second. Provision declared null by Spanish Constitutional Court on 6 May 1993.

4 REPEALING PROVISION

As from the effective date of this Law, there shall be repealed all provisions of equal or lower ranking opposed to the terms hereof. In particular, this Law repeals the sixth transitional provision of the General Law on Co-operatives and Royal Decree 2860/1978 of 3 November 1978 regulating credit cooperatives, as well as the following Royal Decrees and Ministerial Orders that supplement and implement those regulation:

- a** Royal Decree 1549/1979 of 29 June 1979.
- b** Ministerial Order of 26 February 1979.
- c** Ministerial Order of 30 June 1979.
- d** Ministerial Order of 9 January 1980.
- e** Ministerial Order of 12 May 1980.
- f** Ministerial Order of 2 July 1980.

- g** Ministerial Order of 31 July 1980.
- h** Ministerial Order of 4 October 1980.
- i** Ministerial Order of 29 October 1981.

