

# LEGAL FRAMEWORK ANALYSIS

## within the ICA-EU Partnership

### National Report: Bhutan

ICA - Asia and Pacific (ICA-AP) is the voice of cooperative enterprises in the Asia Pacific region. ICA-AP, as a regional office of the ICA, is also a co-signatory of a Framework Partnership Agreement signed between the International Cooperative Alliance and the European Commission in March 2016, which aims at strengthening the cooperative movement and its capacity to promote international development. This agreement underpins the ‘Cooperatives in Development’ program and includes knowledge building activities at the global (harmonized) and regional (decentralized) level.

The activities planned within the framework of the program include diverse research activities conducted at the global and regional level. The primary activities undertaken at the global level include a Legal Framework Analysis (A2.2), which is led in a coordinated way by all ICA offices. Within this framework, ICA-AP oversees implementing the research in the Asia and Pacific region. The study on legal frameworks under the Legal Framework Analysis (A2.2) will evaluate jurisdictions and policy regulations according to their enablement of cooperative development. The document will present recommendations for the next steps in renewing the legal frameworks and helping to shape the policy agendas in a targeted way in the different regions and countries. It will evaluate the cooperative legal framework in place with common indicators, delivering on a scale of how ‘cooperative-friendly’ the legislation in a country is. In the same context, this report deals with the Legal Framework Analysis of Bhutan.

## Introduction

The legal framework analysis of national cooperative laws in Bhutan was carried out by Legal Services of the Ministry of Agriculture and Forests, Bhutan. For this, the Legal Services of the Ministry conducted Regulatory Impact Assessment of the Co-operatives (Amendment) Act of Bhutan 2009, through structured questionnaires filled by relevant officials working in the Department of Agricultural Marketing and Cooperatives (DAMC), Bhutan. Additionally, to include the views of members of cooperatives, consultation meetings with representatives of selected farmer groups and cooperatives in Bhutan were also held.

The objectives for conducting legal framework analysis of national cooperative laws in Bhutan are threefold:



1. To acquire general knowledge of national legislations on cooperatives in ICA member countries, Bhutan being one of them.
2. To evaluate the scope for cooperatives in national cooperative legislations through structured questionnaires.
3. To provide appropriate recommendations for changes in the legal frameworks for cooperatives.

## National Cooperative Law of Bhutan

### General context

The Co-operatives (Amendment) Act of Bhutan, 2009 was enacted to facilitate the development of cooperatives as a sustainable pillar of growth within the private sector. It directs the Royal Government of Bhutan to promote cooperatives for the well-being of members and communities. Since then, cooperatives in Bhutan are promoted, organized and developed in harmony with the national policies practiced in accordance with the seven ICA cooperative principles. The Co-operatives (Amendment) Act of Bhutan, 2009 described in twelve chapters, provides enabling environment to individuals to form farmer groups or cooperatives, subject to the fulfilment of requirements prescribed in the Act. The Act also covers provisions for regular and financial management of cooperatives, types of cooperatives, registration procedures, governance, merger and dissolution of cooperatives. The Act clearly segregates between cooperatives from other business organizations. This segregation can be drawn from the definition of the cooperatives provided in the Act. As per the definition, cooperatives can be formed by voluntary association of person intended to realize their common economic needs and aspirations, which will be governed jointly by the members unlike in other business organizations, whose management is entrusted to few individuals in the organization.

Apart from this Co-operatives Act and its Rules, Bhutan does not have any other law regulating cooperatives.

### Specific elements of the cooperative law

#### a) Definition and objectives of cooperatives



The Co-operatives (Amendment) Act of Bhutan, 2009 defines a cooperative as, “an association of person united voluntarily to meet their common economic needs and aspirations through a jointly owned and effectively governed enterprise”<sup>1</sup>.

The Co-operatives (Amendment) Act provides five broad objectives<sup>2</sup> for the formation of cooperatives:

1. Provide or satisfy common economic needs of members and communities by engaging in any of the business activities in production, processing, manufacture, supply, marketing and financing;
2. Establish a strong, sustainable, human and physical resource base to ensure the provision of quality and timely goods and services to members and communities;
3. Promote educational and economic advancement of members and communities;
4. Inculcate among members the discipline of thrift and savings and the importance of building up capital savings for financial sustainability of cooperatives; and
5. Contribute to the development of agriculture, industry and service sector of the local economy.

Therefore, it is very clear that cooperatives in Bhutan are formed to satisfy common economic needs of members with an intent to provide quality and timely goods and services to communities.

## **b) Establishment, membership and governance of cooperatives**

The Co-operatives Rules and Regulation of Bhutan, 2010 provides that Head of DAMC, Ministry of Agriculture and Forests is the Registrar of Cooperatives<sup>3</sup>. Accordingly, the authority to grant a Certificate of Registration is vested with the National Co-operatives Registrar for all cooperatives formed under the Act<sup>4</sup>.

The Co-operatives (Amendment) Act provides for five types of cooperatives i.e. farmers’ group, primary cooperatives, federation of cooperatives, union of cooperatives and special types of cooperatives. Therefore, subject to the fulfilment of other requirements as prescribed in the Act

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<sup>1</sup> Article 2(1) of the Co-operatives (Amendment) Act of Bhutan, 2009

<sup>2</sup> Article 8 of the Co-operatives (Amendment) Act of Bhutan, 2009

<sup>3</sup> Chapter II, Section 5 of the Co-operatives Rules and Regulations, 2010

<sup>4</sup> Chapter IX Section 82 of the Co-operatives Rules and Regulations, 2010

and its Rules, the basic membership requirement for different types of cooperatives is as follows:

1. Farmer group: A minimum of three members from three different households who are determined to work for economic benefits<sup>5</sup>.
2. Primary cooperative: A minimum of 15 Bhutanese citizens from a minimum of 15 different households having common bond of interest<sup>6</sup>.
3. Federation of cooperatives: A minimum of five registered primary cooperatives from the same industry or those which are selling similar goods and services and are operating in the area of operation of the proposed federation<sup>7</sup>.
4. Union of cooperatives: A minimum of five federations and special types of cooperatives.

The Co-operatives (Amendment) Act provides for uniform structure of governance for both farmer groups and other types of cooperatives. The day to day functions in cooperatives are administered by Office Bearers (i.e. Chairperson, Secretary and Treasurer) elected by the Board of Directors. In the case of farmer groups, Office Bearers are elected directly by members during the General Assembly.

In a credit cooperative, the Office Bearers are supported by Finance and Audit Committee, Election Committee, Education and Training Committee; and Credit Committee.

In addition to Office Bearers, Board of Directors are elected in all types of cooperatives. Members elect the Board of Directors during the annual General Assembly. The Board of Directors, Chairperson, General Secretary, Treasurer and committee members perform general roles and responsibilities as required under the Co-operatives (Amendment) Act, Rules and By-laws of their respective farmers group or cooperatives.

### c) Cooperative financial structure and taxation

The Co-operatives (Amendment) Act provides for the management of capital money by farmer groups and cooperatives. Farmer groups and cooperatives derive their capital from the following sources<sup>8</sup>:

1. Members' share capital, as mandatory contribution by all members;

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<sup>5</sup> Section 195 of the Cooperatives Rules and Regulations, 2010

<sup>6</sup> Article 8 of the Co-operatives (Amendment) Act of Bhutan, 2009

<sup>7</sup> Article 9 of the Co-operatives (Amendment) Act of Bhutan, 2009

<sup>8</sup> Article 18 of Co-operatives (Amendment) Act of Bhutan, 2009



2. Loans and borrowing including deposits;
3. Revolving capital which consists of deferred payments of patronage refunds or interests of share capital; and
4. Subsidies, donations, legacies, grants, aids and such other assistance from any local or foreign institution, subject to approval from the Ministry of Finance.

The Co-operatives (Amendment) Act does not provide for specific tax exemption to any farmer group or cooperatives in the country, since taxation is governed by tax laws in the country. However, all existing cooperatives in Bhutan are exempted from paying tax, as the Fiscal Incentives Tax of Bhutan, 2017 granted a 10-year tax holiday to businesses engaged in agriculture and renewable natural resources sector such as organic farming, biotechnology, fisheries, health food, api-culture, dairy, agro-processing, poultry, flori-culture, animal food and horticulture.

## **Degree of “cooperative friendliness” of the national legislation**

The Co-operatives (Amendment) Act of Bhutan, 2009 and its Rules is an enabling legislation and provides a conducive environment to people to form cooperatives and work towards realization of their common aspiration to become economically self-reliant. The law provides a level playing platform to all individuals to form cooperatives or farmer groups. The Co-operatives (Amendment) Act and its Rules are enacted based on the seven ICA cooperative principles and outlines salient features that are important for the development of cooperatives in Bhutan.

Provisions for mediation and conciliation, are one of the important features of the Act. This provision has provided an avenue for members of cooperatives or farmer groups to sort out and resolve issues internally, without having to seek judicial adjudication. Additionally, it allows two cooperatives or farmer groups to merge together and form a new cooperative or farmer group, to increase production capacity and overall performance of the business.

The allocation and distribution modality of net surplus is one of the salient features of the Act and has helped cooperatives and farmer groups for efficient and sustainable financial management.

Therefore, considering the aforementioned features of the Act, the Co-operatives (Amendment) Act of Bhutan is no doubt “cooperative friendly”.

## **Recommendations for the improvement of national legal framework**



The Regulatory Impact Assessment conducted by Legal Services revealed several issues that need to be incorporated in the Act. Some of the general recommendations made by respondents are as follows:

1. Streamline all farmer groups and cooperatives; and renewable natural resource sector and others under the scope of the Act.
2. Strengthen the power of implementing agency by having separate chapter on offence and penalty, for effective implementation of the Act.
3. Strengthen mechanisms within DAMC for grievance or dispute settlement to solve administrative issues of cooperatives.
4. Strengthen monitoring and evaluation mechanisms undertaken by DAMC; and move beyond compliance monitoring.
5. Allow the issuing of bonds, shares, and debentures to non-members; and expand investment in cooperatives through Foreign Direct Investment from other ICA member countries.

The respondents also noted specific limitations in the current Act and proposed specific recommendations which are as follows:

1. Extend application of the Act to those cooperatives whose activities are beyond the renewable natural resources sector.
2. Set legal sanctions for non-adherence to provisions of the Act and its Rules.
3. Outline clear procedures for the settlement of grievances or disputes through mediation, and without having to seek judicial adjudication.
4. Set strong monitoring and evaluation mechanisms.
5. Outline clear roles and responsibilities of the Registrar and DAMC.

## Conclusion

The Co-operatives (Amendment) Act of Bhutan, 2009 was enacted to facilitate the formation of farmer groups and cooperatives in the country. It is the only legal framework that recognizes farmer groups and cooperatives as legal entity. The implementation of this Act is supplemented by Co-operatives Rules and Regulations, 2010 which provide detailed procedural requirements for the formation, governance and management including financial management of farmer groups and cooperatives.

The cooperative law in Bhutan is enacted based on the internationally accepted seven principles of cooperatives, which were adopted by ICA for the betterment of cooperatives globally. The



current legislation is cooperative friendly and allows for the promotion and development of farmer groups and cooperatives in the country. However, the current legislation does have some issues raised by farmer groups and cooperative members and are being considered for revision by DAMC and Legal Services of the Ministry of Agriculture and Forests in the new Cooperative and Farmer Groups Bill, 2019.

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*The legal frameworks analysis is a tool developed under the ICA-EU Partnership #coops4dev. It is an overview of the national legal frameworks at the time of writing. The views expressed within this report are not necessarily those of the ICA, nor does a reference to any specific content constitute an explicit endorsement or recommendation by the ICA.*

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