

LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

National Report - Philippines

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 the Philippines.

1. Introduction

This report on the legal framework analysis on cooperative law in the Philippines is prepared by Mr. Cresente Paez, national expert appointed by the International Co-operative Alliance Asia and Pacific (ICA-AP). The process of preparing this report began with the completion of a standard questionnaire for the analysis of the legal framework.

In the ICA Blueprint for a Cooperative Decade of 2012, the legal framework is one of the five pillars to strengthen the cooperative model. In the Philippine context, the enabling environment is necessary to shape and protect the cooperatives, as defined by the internationally recognized cooperative principles and practices, and protect members and the public.

This author confined his analysis according to the sets of questionnaires, his experience as a legislator for twelve years, and cooperative leader for the last four decades. The report also includes the analysis shared by the National Confederation of Cooperatives (NATCCO) that helps contribute to the achievement of the three main interrelated objectives of the study, as follows:

- To acquire a general knowledge of the national cooperative legislation and its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinctions from other types of business organizations, notably the for-profit shareholder corporation;
- To evaluate whether the national legislation supports or hampers the development of cooperatives;
- To provide recommendations for eventual renewal of the legislative frameworks in place to understand what changes in the current legislation would be necessary to improve its degree of "cooperative friendliness," which is to say, to make the legislation more favorable to cooperatives, also in consideration of their specific identity.

Cooperative Law Selected for the Legal Framework Analysis

The Republic Act No. 9520, otherwise known as the "Philippine Code of 2008," has been selected for the study. Likewise, the place of national cooperative legislation in the hierarchy of legal forms rests on this national cooperative law. The 1987 Philippine Constitution recognizes the legitimacy of cooperatives and the cooperative movement in the Philippines.

2. Evolution and Growth

Early Beginnings: Cooperatives Before World War II

"Cooperativism" as an ideology of cooperation has already been embedded into the Filipino culture whose concept of mutual self-help of "Bayanihan" (cooperation) preceded the era of Spanish colonization of the Filipino people.

Dr. Jose P. Rizal, the national hero, is said to be the first organizer of an agricultural marketing cooperative in 1986 while in exile in Dapitan, Zamboanga del Norte. He got the idea of cooperatives during his travel to Europe.

The establishment of the first legally recognized cooperative was in 1908. Failures and successes have marked the cooperatives' evolution and growth in the Philippines. Despite the legislators' good intentions, the past cooperative laws had a significant influence on the cooperatives' sad state.

The Corporation Law of 1906 provided the legal framework for all private organizations, which included cooperatives. One of the first cooperatives in the country under this Corporation Law was a credit cooperative organized at the University of the Philippines at Los Banos, Laguna, in 1908.

However, the first law patterned after the Raiffeisen-type of credit union in Germany, the Rural Credit Cooperative Association Act (PA No. 2508), passed on February 15, 1915, paved the way for the first legally organized rural credit association in Cabanatuan, Nueva Ecija on October 19, 1916. The Bureau of Agriculture implemented the law after PA No. 2508 was amended in 1916 to transfer cooperatives' administration by the government from the Bureau of Commerce and Industry to the Bureau of Agriculture. With an appropriation of Php1 million for farmers' credit through rural cooperatives, the Bureau of Agriculture organized and registered 541 credit cooperatives in 42 provinces by 1926, including the formal registration of the UP Los Banos College Cooperative on October 20, 1916.

Given the mandate under the Rural Credit Cooperative Association Act, through the Bureau of Agriculture, the government played the role of both an "organizer and registrar" of rural credit cooperatives. The law itself hampered cooperatives' growth by not adhering to the principles of self-help, self-determination, and mutual self-help.

The second cooperative law was the Cooperative Marketing Act 3425. On December 9, 1927, Congress enacted this to provide incentives to the farmers to produce more by providing their products' marketing support. The idea was to encourage farmers to organize cooperative marketing associations supporting the rural credit cooperatives, which were then the farmers' financing arm. The said law encouraged the formation of state-initiated farmers' marketing cooperatives. It also enforced government control and intervention in operating cooperatives and vested the Bureau of Commerce and Industry to organize marketing cooperatives.

The third law that influenced cooperatives' growth was the Commonwealth Act No. 565, which created the National Trading Corporation (NTC) to supervise cooperatives and grant them a 5-year tax holiday on June 7, 1940. In 1941, the government created the National Cooperative Administration (NCA), which was mandated to assume the NTC's functions.

However, by 1939, of the 164 cooperative marketing societies, only 20% were active, as reported by the Bureau of Commerce and Industry.

Cooperatives During World War II

The Japanese army collaborated with the government to organize around 5,000 consumers and producers cooperatives from 1941 to 1945. The increase was 77% over the 570 rural cooperatives in 1939. Because of the severe food shortages in Manila and

other urban areas during the Japanese occupation, the government established these cooperatives. After the return of the Americans, however, all these Japanese-initiated cooperatives were dissolved (Sibal).

Rehabilitation Period after World War II

The government assisted the organization and reorganization of cooperatives during the rehabilitation period after the second world war. Among these laws that defined cooperatives' roles and functions to keep the end purpose given the government's effort during the reconstruction of the Philippine economy were the following:

- Commonwealth Act No. 713 of November 1, 1945, amended CA No. 565, which reviewed the National Cooperative Administration (NCA) with an appropriation of Php5 million for its operations. By January 2, 1946, cooperative societies estimated at 1,500 were organized even without cooperative education for relief and rehabilitation programs;
- The government abolished NCA on September 20, 1947, and created the Philippine Relief and Trade Rehabilitation Administration (PRATRA) to assume the merchandising function. Later, Executive Order No. 93 of October 4, 1947, transformed the NCA into the National Cooperatives and Small Business Corporation (NCSBC);
- The Cooperative Administration Office (CAO), otherwise known as Republic Act No. 364, was created on November 30, 1950, under the Department of Commerce and Industry and replaced the NCSBC; and
- The government created the Small Farmers Cooperative Loan fund or Republic Act No. 583 of 1950.

As mentioned earlier, the legislations were all designed to support cooperatives as either credit conduits, channels of relief operations, and government programs' trading conduits. CAO served as registrar and regulator for non-agricultural cooperatives such as credit unions and housing cooperatives.

However, many cooperatives established during this period had not been successful because they existed to help implement various government programs.

Communist Insurgency Era

At the height of the communist rebel insurgency, the government became active in organizing farmers' cooperatives to counter the move by the rebels to win the support of the rural masses.

In 1952, the Agricultural Credit and Cooperative Financing Administration (ACCFA), otherwise known as Republic Act 821, was established. The state-organized Farmers' Cooperative Marketing Associations (FACOMAs) and Producers Marketing Associations (PROCOMAs) by providing collateral-free loans funded by the United

States Agency for International Development (USAID). The state-initiated FACOMAs failed miserably due to corruption and incompetent management.

NGO-Initiated Cooperatives

In contrast, the NGO-initiated Raiffeisen-type cooperatives steadily grew. In 1957, the Philippine Non-agricultural Credit Act, otherwise known as Republic Act 2023, was implemented. The law defined credit unions' organization and functions and created the Cooperative Administration Office (CAO) as a registrar. Alongside R.A. 2023 was the issuance of the Roman Catholic Church of a resolution in 1957, calling for credit cooperatives' organization in parishes all over the country as part of their social action programs. This issuance complied with the Second Vatican Council. Aside from the Catholics, Protestants and Aglipayans continued to be active in organizing cooperatives. Many of the successful credit cooperatives known today were parish-based urban and rural cooperatives established in the 60s.

Martial Law Period

History repeated itself for the third time. The state-initiated cooperative development reached its height with the declaration of Martial Law through the issuance of Presidential Decree 175, whose aim was to re-invent cooperatives as a means to support the agrarian reform program of the government. The government organized Samahang Nayan at the village level, the primary cooperatives (Kilusang Bayan) at the municipal level, and the cooperative unions at the provincial, regional, and national levels. The government also compelled cooperatives to join provincial cooperative banks. At the national level, the Cooperative Insurance System of the Philippines (CISP), BangKOOP (federation of cooperative banks), and the Cooperative Union of the Philippines (CUP) were set up.

State-initiated cooperatives were all stories of failures before Martial Law and during Martial Law. Thousands of Samahang Nayan (village coops) were set up, but only a few remained and were transformed into multipurpose cooperatives. The cooperative union system from provincial to regional and national level had collapsed. The other super cooperative structures like the 'super-palengke' (national food market) did not succeed. Only the electric cooperatives survived, but many of them are still financially weak.

After Martial Law Period

A new constitution was crafted under the Cory Aquino administration. Avoiding the past mistake in organizing state-initiated cooperatives for political and anti-insurgency purposes, the 1987 Constitution provided for the promotion of growth and viability of cooperatives as instruments of equity, social justice, and economic development under the principles of subsidiarity and self-help. Under the said principles, the government recognized that cooperatives are self-governing entities that shall initiate

and regulate their affairs to include education, training, research, and other support services with government assistance.

The constitutional provision, as stated in Article XII, Section 15 of the 1987 Constitution were operationalized on March 10, 1990, with the enactment of R.A. No. 6938 (Cooperative Code of the Philippines) and R.A. No. 6939 (Cooperative Development Authority Act).

3. National Cooperative Law of the Philippines

General Context

Two existing laws regulate the Philippine's cooperatives: the Republic Act No. 9520, otherwise known as the "Philippine Cooperative Code of 2008" and the Republic Act No. 11364, or the Cooperative Development Authority Charter of 2019.

The 1987 Philippine Constitution provides the enactment of cooperative legislation. The Constitution mentions cooperatives five times. What is significant is Article 12 on *National Economic & Patrimony*, which states that all sectors of the economy and all country regions shall be given optimum opportunity to develop. Cooperatives and similar collective organizations shall be encouraged to broaden the base of their ownership. The Constitution mandates Congress to allow small-scale utilization of natural resources by cooperative fish farming, prioritizing subsistence fishers and fish workers in rivers, lakes, bays, and lagoons. In Article 12, cooperatives are encouraged to own and operate economic enterprises to promote distributive justice. The Constitution mandates Congress explicitly to create an agency to encourage cooperatives' viability and growth as instruments for social justice and economic development.

In Article 13 on *Social Justice & Human Rights*, particularly Section 5 of the Constitution states that the government shall recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services.

There are no special laws on types of cooperatives in the Philippines. And, there is no consensus within the cooperative sector for particular laws, except for the sector of the agricultural cooperatives who lobbied for a separate law on agricultural cooperatives. In the Philippine Cooperative Code of 2008, agricultural cooperatives are not mentioned as one type of cooperatives. However, invoking Article 23 (1) (u) of RA 9520 which states that "other types of cooperative as may be determined by the Authority," CDA issued MC 2015-05, or the Guidelines for the Registration of

Agriculture Cooperative dated September 16, 2015, pursuant to CDA Board Resolution No. 2015, s. 2015 dated August 18, 2015.

The purpose of the Circular is to provide for the orderly registration of proposed primary agriculture cooperative in compliance with the requirements as provided in RA 9520, its IRR, and other pertinent laws. It shall cover proposed primary agriculture cooperatives that will engage in raising, the culture of plants, animals for gainful objectives. Said Circular paved the way for the CDA to indicate “Agriculture Cooperative” in its statistical presentations.

There are other laws in the Philippines governing the existence of cooperatives such as cooperative banks, cooperative insurance societies, and public service cooperatives. These cooperatives are subject to the requirements and requisite authorization of their respective regulatory agencies such as the Bangko Sentral ng Pilipinas for cooperative banks, Insurance Commission for insurance cooperatives and Department of Energy for electric cooperatives, and other public cooperatives engaged in water service, housing, funeral, medical services, and transport.

The cooperative movement's consensus that one single law for cooperatives will help unify the fragmented cooperative sector and integrate all cooperatives types under one unified system and structure.

While less regulation for cooperatives is preferred, there is a need to have an appropriate regulatory framework and an effective supervision mechanism for cooperatives, particularly the cooperative financing institutions, to prevent failure risks.

Article 4 of the Code of 2008 is explicit relative to the definition of the seven ICA principles of cooperative identity. The law mandates that every cooperative shall adhere to the conduct of its affairs following Filipino culture, good values, and experience, which include, but are not limited to, the ICA principles. It is worth mentioning the declaration of policy of the State which is to foster the creation and growth of cooperatives as a practical vehicle for promoting self-reliance and harnessing people power towards the attainment of economic development and social justice and encourage the private sector to undertake the actual formation and organization of cooperatives and create an atmosphere that is conducive to the growth and development of these cooperatives.

Article 2 of the Code ensures that the government provides technical assistance, financial assistance, and other services to enable said cooperatives to develop into viable and responsive economic enterprises and thereby bring about a robust cooperative movement that is free from any conditions that might infringe upon the autonomy or organizational integrity of cooperatives. In fact, the Philippine

cooperative movement with its national cooperative organizations, both secondary and tertiary, was formed by co-operators who believed that cooperative development was primarily in the hands of the private sector.

Furthermore, the cooperative leaders in the Philippines are explicitly aware of the State's recognition of the principle of subsidiarity under which the cooperative sector will initiate and regulate within its ranks the promotion and organization, training and research, audit, and support services relating to cooperatives with government assistance where necessary.

However, until today, the Cooperative Development Authority (CDA) has not issued any memorandum circular to provide guidelines for the federations to regulate its ranks and provide audit services to its members, including delegated supervision and inspection functions.

Existing Regulations

Regulation	Particular type or sector	Particular Elements to Note	Link to the full text
Republic Act No. 9520 (Philippine Cooperative Code of 2008)	All types except electric cooperatives registered with National Electrification Administration (NEA), and cooperatives doing banking, insurance, housing, and public utilities which are regulated to the extent of their functions as cooperatives	Registration and Regulation of Electric Cooperatives Pertaining to banking, insurance, housing, and public utilities	https://www.cda.gov.ph/resources/issuances/philippine-cooperative-code-of-2008/republic-act-9520

Republic Act No. 11364 (Cooperative Development Authority of 2019)	same as above	Same as above	https://www.officialgazette.gov.ph/downloads/2019/08aug/20190808-RA-11364-RRD.pdf
Republic Act No. 10744 (Credit Surety Fund Cooperative Act of 2015)	Credit Surety Fund Cooperative	Security for loans	http://www.philexport.ph/c/document_library/get_file?uuid=09f93787-of21-4940-8054-ae778cec22e1&groupId=127524
Republic Act No. 9510 (Credit Information System Act)	Cooperatives that have the authority to lend and/or perform micro-finance activities both to individuals and cooperative borrowers	CDA's MC No. 2019-01 requiring cooperatives to submit borrowers' basic credit data to the Credit Information Corporation (CIC)	https://www.officialgazette.gov.ph/2008/10/31/republic-act-no-9510/
The Labor Code of the Philippines Supreme Court Decision on the case of SSS v. ASIAPRO Cooperative	Labor and service-oriented cooperatives	Application of employer-employee relationship between labor and workers' cooperative and its members	https://lawphil.net/judjuris/juri2007/nov2007/gr_172101_2007.html
Revenue Memorandum Order 7-2020	All types of cooperatives	Pursuant to the TRAIN Law, the Bureau of Internal Revenue (BIR) is no longer required to secure authorization from the CDA for the	https://mass-specc.coop/download/rmo-no-7-2020/

		audit/investigation of cooperatives	
Tariff Commission, Executive Order 376 – Annex A	Agricultural cooperative and fishers' cooperative	Granting of tariff exemptions on the importation of agriculture and fisheries inputs, machinery and equipment	https://tariffcommission.gov.ph/eo-376-annex-a

4. Specific Elements of the Cooperative Law

Definition and Objectives of Cooperative

Article 3 of the Code defines the cooperative as "an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles."

This definition verily captures the nature and character of a cooperative, defined as "cooperatives are people-centered enterprises owned, controlled and run by and for their members to realize their common economic, social, and cultural needs and aspirations."

What is essential in the definition is that cooperatives create a situation that brings people together in a democratic and equal way, with the capital contribution to operate an enterprise that will serve the members. However, in many instances, cooperatives' creation is built around government programs that defeat the value of self-help – the very foundation of a successful cooperative organization.

In Article 6 and 7, the Code is so explicit about cooperatives' purposes and objectives that are not inconsistent with the definition of a cooperative mentioned earlier. However, the purposes and objectives are distinctly differentiated based on the requirements of the law. A cooperative may be organized and registered for any or all of the 14 purposes defined in the law. In the case of a credit cooperative, a single type cooperative may have only one or two purposes, such as encouraging thrift and savings mobilization among members and extending credit to the members for productive and provident purposes. In addition to savings and credit services, a

multipurpose cooperative may include the production and marketing of agricultural products as other purposes for organization and registration.

Regardless of the purposes for which a cooperative is organized and registered as defined in Article 6, the Code makes it explicit about a cooperative's objective. This is stated in Article 7, which says that "the primary objective of every cooperative is to help improve its members' quality of life." This objective is meant to promote better living conditions for the members. This provision of the law appears to be mandatory. For this reason, the Code, in Article 5, provides the conduct of a "social audit" on an annual basis to determine the extent by which the members' interests, needs, and aspirations are promoted, including assessment on the overall social impact and ethical performance of the cooperative.

Five provisions in the Code mandates cooperatives to strengthen member-promotion:

- Article 26 defines two kinds of members: regular members and associate members. A regular member is one who is entitled to all the rights and privileges of membership. An associate member has no right to vote nor be voted upon and shall be entitled only to such rights and privileges as the bylaws may provide. Furthermore, an associate member who meets regular membership requirements continues to patronize the cooperative for two years and signifies his/her intention to remain a member shall be considered a regular member.
- Article 29 defines the liability of members, which states that a member shall be liable for the cooperative's debts to the extent of his contribution to the cooperative's share capital.
- Article 60 states that a cooperative that does not transact with non-members or the general public shall not be subject to any taxes and fees imposed. And Article 61 provides tax exemption only to transactions with members and no tax exemption to transactions with non-members.
- Article 86 states that a patronage refund for non-member patron shall be set aside in a general fund and shall be allocated to individual non-member patrons-only upon request. The amount shall be credited to such a patron toward the payment of the minimum capital contribution for membership.
- Article 83 provides that a member shall have the right to examine the records required to be kept by the cooperative.

The Code is not compelling cooperatives to transact with their members and for members to transact with their cooperatives. In the case of savings and credit cooperatives, which only extend savings and credit services to members, the cooperatives must see that their services are better than their competitors. Otherwise, these cooperatives will cease to exist.

Therefore, it must clearly be understood that cooperatives exist to meet members' needs rather than deliver profits to outside investors and are, therefore, a form of

voluntary self-help by a community looking to address its problems in place of seeking broader public (state) support.

As mentioned earlier, the Code emphasized the needs, interests, and aspirations of the members, and no other objectives can be found to suit non-members or the community at large. However, the law allows cooperatives to transact business with non-members and the general public to support the interests of the members. For instance, an agricultural cooperative is permitted by law to sell fertilizer to both members and non-members. This is also true when this cooperative buys their products. Another example is a consumer cooperative that procures and distributes commodities both to members and non-members. The difference is that the members will receive patronage refunds and technical support from the cooperative.

The Code also allows particular types of cooperatives designed explicitly to pursue social/general/community interests. These cooperatives are (1) advocacy cooperative, which promotes and advocates cooperatives through education, training, and research, and (2) education cooperative, which is organized for owning and operating licensed educational institutions. This is also true for public service cooperatives.

It is also explicit in the Code that certain types of cooperatives are formed to serve their members only. These are credit cooperatives, housing cooperatives, and workers cooperatives.

The Code is clear that a cooperative is allowed to carry out only those economic activities defined in Article 6 relative to purposes, Article 7 relative to objectives, and Article 23 relative to cooperatives' types and categories. However, there is nothing in the Code that restricts cooperative activity to specific economic sectors. This means that a cooperative can carry out any economic activity. However, there are certain restrictions. For example, the Code excludes cooperative banks and cooperative insurance societies from undertaking multi-economic activities, which is not adherent to the general banking and insurance laws. Although, the Code is explicit about the definition of a multipurpose cooperative, which is one that combines two or more of the business activities of those different types of cooperatives mentioned in the Code, except for banking and insurance purposes.

The Code does not include any provisions that explicitly or implicitly restrict platform cooperative that establishes a [computing platform](#) and uses a website, mobile app, or a protocol to facilitate the sale of goods and services. For example, taxi drivers may form a cooperative to carry out IT-platform or mobile applications similar to UBER. It is defined in the Code that a cooperative is encouraged to utilize new technologies

Establishment, Cooperative Membership and Governance



The Cooperative Development Authority Charter of 2019 amending Republic Act 6939 was established to regulate and promote cooperatives and is primarily mandated to implement the Cooperative Code of 2008 or Republic Act 9520. As such, the Cooperative Development Authority (CDA) is primarily responsible for the institutional development and cooperatives' regulation through a partnership with the cooperative sectors and the academe.

The CDA is the only government agency authorized to register all cooperatives, including amendments to the Articles of Cooperation and Bylaws (ACBL), division, merger, and consolidation. Without the certificate of registration from the CDA, cooperatives cannot exist legally and are not allowed to operate.

The essential legal requirements for registering a cooperative are as follows:

1. Economic Survey
2. Articles of Cooperation and Bylaws
3. A surety bond of accountable officers
4. Treasurer's affidavit
5. Approved cooperative name reservation slip
6. Certificate of PMES

A primary cooperative can only be registered under Article 10 of the Code, which requires a minimum of 15 members. Article 67 of the Code indicates five grounds for dissolution or cancellation of registration of the cooperative, one of which is the failure to meet the cooperative's required minimum number of members.

The Code requires that a member of the primary cooperative must be a natural person who is a Filipino, of legal age (18 years old or above) and must have undergone a pre-membership education seminar. Third-party membership is not allowed under the Code. However, open-door policy for membership is encouraged, although it is not mandatory in the Code.

The Code, in Article 30, states that a member of a cooperative may, for any valid reason, withdraw his/her membership from the cooperative by giving a sixty (60) day notice to the board of directors. Subject to the bylaws of the cooperative, the withdrawing member shall be entitled to a refund of his/her share capital contribution and all other interests in the cooperative: Provided, that such a refund shall not be made if upon such payment the value of the assets of the cooperative would be less than the aggregate amount of its debts and liabilities exclusive of his/her share capital contribution.

The Code makes it very explicit that the voting power in the members' meeting is regulated according to Article 36, which states that each member of a primary

cooperative shall have only one (1) vote. In the case of members of secondary or tertiary cooperatives, they shall have one (1) basic vote and as many incentive votes as provided for in the bylaws but not to exceed five (5) votes. It further states that the votes cast by the delegates shall be deemed as votes cast by the members thereof.

The "one member, one vote" principle is expressly stated in Article 4, and therefore, members having equal voting rights are deemed mandatory in the primary cooperative.

The cooperative's internal structure or governance is expressly stated in Chapter 4 of the Code, which are defined from Article 32 to 50, as follows:

1. General Assembly: Composed of members who are entitled to vote under the articles of cooperation and bylaws of the cooperative, the General Assembly is the highest policy-making body. It has exclusive powers which cannot be delegated, as follows: (a) to determine and approve amendments to the articles of cooperation and bylaws; (b) to elect or appoint the members of the board of directors, and to remove them for cause, and (c) to approve developmental plans;
2. Board of Directors: Unless otherwise provided in the bylaws, the direction and management of a cooperative's affairs are vested in a board of directors. It is composed of not less than five or more than 15 members who will be elected by the general assembly for two years and shall hold office until their successors are duly elected and qualified, or until duly removed for cause. The board is responsible for strategic planning, direction-setting, and policy-formulation activities.

By resolving its board of directors, the cooperative may admit as director or committee member one appointed by any financing institution from which the cooperative received financial assistance solely to provide technical knowledge not available within its membership. Such a director or committee member need not be a cooperative member and shall have no powers, rights, or responsibilities except to provide technical assistance as required by the cooperative.

In Article 39, the Code prohibits a member of the board of directors from holding any other position directly involved in the day to day operation and management of the cooperative. Furthermore, any person engaged in a business similar to that of the cooperative or who in any way has a conflict of interest with it is disqualified from the election as a director of the said cooperative; and

3. Committees of Cooperatives: The bylaws may create an executive committee and provide the creation of an audit, election, mediation and conciliation, ethics, and such other committees as may be necessary for the conduct of the affairs of the cooperative. The general assembly shall elect the members of both the audit and election committees, and the board shall appoint the rest. The audit committee is directly accountable and responsible to the general assembly. It has the power and duty to continuously monitor the cooperative's management control system's adequacy and effectiveness and audit the performance of the cooperative and its various responsibility centers.

The Code is explicit about the liability of directors, officers, and committee members who willfully and knowingly vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee members, and other persons. They will be liable for damages and be accountable for double the profits, which otherwise would have accrued to the cooperative. The Code lists down the liability of directors, officers, and committee members, quorum requirements, and penalties for disloyalty, and procedures for the removal of an elected officer.

The Code leaves to the discretion of the general assembly to create an executive committee, and in some cooperatives in the Philippines, the position of the president/chairman is created as a full-time job. Furthermore, there is no restriction in the Code disallowing the general assembly to appoint a General Manager or appointing a General Manager as an ex-officio member of the board of directors. This is already practiced in some cooperatives in the Philippines.

Cooperative Financial Structure and Taxation

The Code in Article 14 requires that at least 25% of the authorized capital should be subscribed, and at least 25% of the total subscription should be paid, provided that in no case shall the paid-up share capital be less than P15,000. The Code makes it explicit by requiring the CDA to assess the required paid-up share capital periodically and increase it every five years when necessary upon consultation with the cooperative sector and the National Economic and Development Authority (NEDA).

Article 73 of the Code limits one member's capital holdings to no more than 10% of the cooperative's Share Capital.

The Code does not require any additional share capital contribution linked or made proportional to the volume of transactions with the cooperative. However, the Code is implicit about promoting members' internal capital build-up to demonstrate the importance of self-help and not to rely heavily on external financing. Likewise, as a

matter of cooperative policy, it is commonly practiced in the Philippines that a certain percentage of loans received by members is plowed back to the cooperative as a capital build-up program.

In Article 31 of the Code, it states that all sums, including share capital and refund of interests, computed in accordance with the bylaws to be due from a cooperative to a former member shall be paid to him either by the cooperative or by the approved transferee, as the case may be, in accordance with the Code. It further states in Article 69 that a cooperative shall only distribute its assets or properties upon lawful dissolution and after payment of all its debts and liabilities, except in the case of decrease of the share capital of the cooperative and as otherwise allowed by the Code. Any asset distributable to any creditor, shareholder, or member unknown or cannot be found shall be given to the federation or union to which the cooperative is affiliated.

Article 85 of the Code defines the Net Surplus and says it "shall not be construed as profit but as an excess of payments made by the members which shall be returned to them."

Article 86 lists down how the net surplus is to be distributed, as follows:

- 10% Reserve Fund (in the first five years of the co-op, this should not be less than 50%) to ensure the co-op's stability;
- 10% - Education & Training geared towards the growth of the cooperative movement;
- More than 3%+ - Community Development Fund for projects or activities benefiting the community where the cooperative operates;
- Less than 7% - Optional Fund for Land & Building;
- The remaining Net Surplus shall be made available to members in the form of interest on Share Capital and Patronage Refund; and
- Whatever remains will go to the Reserve Fund

The Code provides allocation for patronage refunds according to how much a member patronizes or avails of the cooperative's services and dividends according to share capital contribution. In the case of a member patron with paid-up share capital contribution, his proportionate amount of patronage refund shall be credited to his account until his share capital contribution has been fully paid.

In the case of a non-member patron, his proportionate amount of patronage refund shall be set aside in a general fund for such patrons and shall be allocated to individual non-member patrons-only upon request and evidence presentation of the amount of his patronage. The amount so allocated shall be credited to such patron toward the payment of the minimum capital contribution for membership. When a sum equal to this amount has accumulated at any time within a period

specified in the bylaws, such patron shall be deemed and become a cooperative member if he so agrees or requests and complies with the provisions of the bylaws for admissions to membership.

The Code further requires that if within any period specified in the bylaws, any subscriber who has not fully paid his subscribed share capital or any non-member patron who has accumulated the sum necessary for membership but who does not request nor agree to become a member or fails to comply with the provisions of the bylaws for admission to membership, the amount so accumulated or credited to their account together with any part of the general fund for non-member patrons shall be credited to the reserve fund or the education and training fund of the cooperative, at the option of the cooperative.

The Code provides cooperatives with various financial instruments such as members' share capital, loans, and borrowings, including deposits, revolving capital, which consists of the deferred payment of patronage refunds or interest on share capital, subsidies, donations, legacies, grants, aids, and other assistance. Moreover, the Code does not restrict any member to buy share capital as an "investor member" who does not participate in patronizing the services with the cooperative, as long as he does not own or hold more than 10% of the share capital of the cooperative. Article 75 of the Code requires cooperatives in their bylaws to provide a reasonable and realistic member capital build-up program to allow the continuing growth of the members' investment in their cooperative as their economic conditions continue to improve.

The Code is not clear about allowing cooperative to borrow money from its members. The term used as practiced in the Philippines is not "borrowing from members," generating investment from members. For example, it is permissible for a cooperative to issue time deposit and preferred share instruments to members to raise money, but not from non-members, except borrowings from financing institutions.

As indicated in the Code and the Implementing Rules and Regulations (IRR), any assets remaining after the payment of the cooperative's obligations to its creditors shall be distributed to the members in payment of their respective share capital. If the remaining asset is not sufficient to pay the members' full share capital contribution, the distribution shall be done in proportion to their share capital. Rule 9 of the IRR lists down the procedure's dissolution, expiration, or cooperative termination.

The Code does not mention a specific tax regime for cooperatives. Then, therefore, cooperatives are subject to the general tax regime applicable to all other business organizations. Because of this, tax agencies, both local and national, treat cooperatives the same with other business establishments without taking into account the unique legal nature of cooperatives, resulting in complexities of interpretation of the cooperative law on tax exemptions by implementing agencies.

The Code in Article 60 and 61 provide tax treatment of cooperatives and other exemptions and gives distinctions to tax privileges accorded to cooperatives in terms of transactions with members and non-members. The Code is very explicit in its language, saying that "cooperatives that do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws." It states further that cooperatives transacting business with both members and non-members shall not tax on their transactions with members. Concerning this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law and regulation to the contrary, such cooperatives dealing with non-members shall enjoy tax exemptions as provided by the Code concerning Article 61 from items 1 to 8.

Moreover, the Code in Article 62 provides cooperatives' privileges as described in items 1 to 13.

The law on tax exemptions and other privileges that cooperatives will enjoy is based on the premise that cooperatives are instruments of economic development and social justice, particularly those organized by society's disadvantaged sector.

The Code is very specific in the treatment of taxes of cooperatives dealing with non-members that shall enjoy tax exemptions based on accumulated reserves and undivided net savings of not more than ten million pesos. For those cooperatives with accumulated reserves and undivided net savings of more than ten million pesos shall pay taxes at the full rate: (a) income tax; (b) value-added tax; (c) all other taxes unless otherwise provided herein; and (d) donations to charitable institutions, etc.

The tax treatment provisions of the Code do not specify distinctions between profit and surplus and also distinctions between patronage refunds and dividends. However, the Code is careful in its language by not mentioning the term net profit but adopts the term net surplus or net savings. The Code is clear that only cooperatives doing business with non-members shall be taxed based on accumulated reserves and net savings of more than 10 million pesos.

The Code does not mention patronage refund and dividends relative to the tax treatment of cooperatives. However, the Code specifies the allocation of net surplus for patronage refund and dividends that are not subjected to tax, except that these are included for the individuals' income tax purposes.

The Code provides that the net surplus shall not be construed as profit but as an excess of payments made by the members for the loans borrowed, or the goods and services

availed by them from the cooperative or the difference of the rightful amount due to the members for their products sold or services rendered to the cooperative including other inflows of assets resulting from its other operating activities and which shall be deemed to have been returned to them if the same is distributed as prescribed. Therefore, allocations of the net surplus such as reserves, cooperative education & training fund, community development fund, optional fund, and patronage refund and dividends are not subject to tax.

Cooperative External Control

The government regulates the cooperative through its regulatory agency, the Cooperative Development Authority (CDA). While the cooperative is subject to public control, the State, as described in the Code, recognizes the principle of subsidiarity under which the cooperative sector will initiate and regulate within its ranks the promotion and organization, training and research, audit and support services relative to cooperatives with government assistance where necessary. This is what the NATCCO is advocating, although, at the moment, the CDA has not yet able to provide guidelines to federations for self-regulating their member cooperatives through supervision, examination, and auditing.

Cooperation Among Cooperatives

The Code makes it explicit the operationalization of the principle of cooperation among cooperatives through the formation of secondary and tertiary cooperatives. Article 24 of the Code defines the functions of a federation of cooperatives and its composition such as three or more primary cooperatives, doing the same line of business, organized at the municipal, provincial, city, special metropolitan political subdivision, or economic zones created by law, registered with the Authority to undertake business activities in support of its member-cooperatives.

The Code provides that the federation may carry on any enterprise authorized under Article 6 that complements but does not conflict, compete with, or supplant its members' business or economic activities. The federation is permitted by law to enter into joint ventures with national or international cooperatives of other countries to manufacture and sell products and services in the Philippines and abroad.

The Code itself is not clear about regulating the proliferation of federations and unions operating in the same line of activity in the same area. Moreover, the Code provides relatively complete cooperatives' options to federate in the province, region, and national. In the Philippines, there exist different types of federations of cooperatives in the financial/banking sector, the labor sector, the transport sector, and the electric sector. However, no provision in the Code integrates all these federations and unions into a single recognized apex body of cooperatives. Currently, the Philippine Cooperative Center (PCC) is lobbying with the CDA to give official recognition as the apex body of all cooperatives to represent the cooperative movement. There have

been series of forums of the cooperative leaders raising this issue in the Committee of Cooperatives Development in the Philippine Congress to develop guidelines on the recognition of an apex body for the PCC to be able to comply.

Degree of "Cooperative Friendliness" of the National Legislation

In general, the Philippines' cooperative sector is satisfied with the Philippine Cooperative Code of 2008 or R.A. 9520 and its companion law, R.A. 6939, an Act creating the Cooperative Development Authority. The President signed R.A. 113364, or the Cooperative Development Authority Charter 2019, on August 8, 2019. This law repeals R.A. 6939 to revise the CDA's charter passed in 1990. This new cooperative law responds to the cooperative sector's clamor to make the CDA more responsive to the sector's needs and further promote cooperative as a useful tool in achieving inclusive growth.

Despite good intentions and the benefits from existing laws, the cooperative sector has enjoyed during the last two decades, there are many legal framework issues that the sector and the government need to address, as follows:

1. Auditing and examining cooperatives – there is nothing in the Code that prohibits cooperatives' federation from providing auditing services to member cooperatives. However, with the intense lobbying by the Philippine Independent Certified Public Accountants (PICPA) and invoking the standard practice of independent auditing profession as provided for in the Philippine Accountancy Act of 2004, the CDA is pressured not to issue guidelines on allowing federation of cooperatives to undertake auditing services. Moreover, it is not in the top agenda of CDA to delegate its function to supervise and examine primary cooperatives to the federation, although the Code puts value on the principle of subsidiarity;

It is proposed to adopt the German Cooperative Auditing System model that the State delegates its auditing and supervisory function to the cooperative federation (e.g., DGRV);

2. Budgetary provisions – the current enabling laws on cooperatives have no budgetary provisions on cooperative development. This is a reason why different types of cooperatives are in various stages of development. Since under the principle of subsidiarity, the initiative to develop the cooperative is vested on the private cooperative movement, the absence of financial support from the government accentuates cooperatives' uneven development across types. For instance, the agricultural cooperative sector is relatively underdeveloped due to the absence of active federations/unions of cooperatives in agriculture, which can provide

financial support to cooperatives and the absence of unified financial and technical supports from the government and develop cooperatives; and

3. Principle of subsidiarity – this principle has restricted the CDA to invoke its regulatory power to settle disputes among members, officers, directors, and committee members, thereby affecting the coop's delivery of services. However, the new law, R.A. 113364, rectifies this by providing that the CDA is now clothed with quasi-judicial powers to settle disputes. While the Code's writers intended for co-ops to be self-regulating (as Germany, Korea, and Canada), this has proven to be a double-edged sword that has weakened government regulation as CDA officials could be threatened.

Other legal issues affecting the growth of cooperatives are as follows:

1. Cooperatives are discouraged from allocating more of their net surplus for reserve funds to grow more significant due to the law's provision that cooperatives have to pay taxes for transactions with non-members when reserve funds are more than 10 million;

2. The step-in rights provisions of the National Electrification Administration Reform Act of 2013 over the operations of electric cooperatives have weakened the cooperative's foundation as an autonomous and democratic organization; and

3. Other government agencies often challenge the mandate of the CDA as the only government agency to promote cooperatives as enshrined in the Constitution. For instance, even the cooperatives have a Certificate of Compliance issued by the CDA to qualify for tax exemption purposes, the Bureau of Internal Revenue (BIR) puts almost zero value to it and will still ask cooperatives for numerous requirements so that cooperatives will have no other option but compelled to pay taxes. The two agencies are in conflict with their respective roles – one is for cooperative promotion, and the other is for cooperative demotion, which is known for being anti-cooperative. This is also true to the "not-so-good" relationship between the CDA and the National Electrification Administration (NEA) relative to their respective regulatory roles. One case in point is DANECO, wherein the NEA questions the authority of the CDA to register DANECO as a stock cooperative from a non-stock status. In fact, Article 132 of the Code states that the NEA shall no longer exercise regulatory or supervisory powers on electric cooperatives duly registered with the Authority;

The Philippine Cooperative Code of 2008 or Republic Act No. 9520 has its weaknesses, but it is generally hailed as a landmark piece of cooperative legislation by the cooperative sector and the legislators. The amended Code sought to modernize the law on cooperatives and attune its provisions to cooperatives' changing needs in the new environment.

Among its important features, the Code clarified the tax exemptions and privileges of cooperatives. The new Code spelled out in specific terms these exemptions and privileges, allowing little or no room for other interpretations of the tax treatment of cooperatives.

Provisions of the Code were made current to strengthen and ensure cooperative success in today's competitive and open environment. Among others, the Code tightened the requirements for coop registration, including making pre-membership education seminar (PMES) mandatory for new members; improved access of coops to support from National Government Agencies, Government-Owned and Controlled Corporations, and Government Financial Institutions; recognized the vast potential for cooperative association thus expanding the types of cooperatives defined in the Code; provided for the conversion of credit cooperative to financial service cooperative and afforded incentives to qualified financial service cooperatives; increased the vote requirement to amend cooperative bylaws and pass general assembly decisions; strengthened the Cooperative Development Authority's capacity to regulate; allowed the sector to regulate its ranks and set up its protection mechanisms such as deposit insurance system, cooperative stabilization fund and other such mechanisms such as the credit surety fund cooperative law.

The Code provided for the creation of a Joint Congressional Oversight Committee on Cooperatives (JCOCC) which 'shall review and approve the implementing rules and regulations of the Code and monitor its proper implementation.'

The Cooperative Development Authority formulated the implementing rules and regulations (IRR) of the Code in consultation with concerned government agencies and the cooperative sector. Being a comprehensive piece of legislation necessitating consultation with different agencies and branches of government, it took the CDA and concerned agencies almost a year to develop the required IRR.

The COOP-NATCCO Party List was a prime mover in the passage of the Code. Even before the Party participated in the first-ever Party List elections in 1998, initiatives had already been ongoing to review the Cooperative Code of the Philippines and come up with proposed amendments that would update and make the Code current, in coordination with the National Confederation of Cooperatives (NATCCO) and other cooperative organizations.

The promotion of cooperatives was made as a public function with the declared policy of the State to foster the creation and growth of cooperatives as a practical vehicle for promoting self-reliance, harnessing people power towards the attainment of economic development and social justice, encouraging the private sector to undertake the actual formation and organization of cooperatives and creating an atmosphere that is conducive to the growth and development of cooperatives.

Aside from tax exemption, Article 63 of the Code lists down the privileges of cooperatives registered with the CDA:

- Free use of safes in government offices
- Free use of available office space in government offices
- Avail of the franchise if they provide specialized services like ice plants, cold storage, electricity, transport, and similar services
- Preferential right to supply government institutions and agencies agricultural products (without bidding)
- Preferential allocation of fertilizers, seeds, and other farm inputs from appropriate government agencies
- Preferential treatment in the allocation of bottomries of commercial shipping vessels in the shipment of goods and products of services
- Preferential right in the management of public markets and/or lease of public market facilities
- Credit cooperatives are entitled to loans or credit lines, rediscounting of their loan notes with government banks

The existing legislation **is quite or rather significantly so friendly**. As there are also weaknesses in the Philippine Cooperative Laws, there is a need to continue improving the present versions to ensure that cooperative legislation will be more or excellently friendly to accelerate cooperative societies' development and enhance their competitiveness.

The Philippines' agricultural cooperative sector is the weakest subsector of the cooperative movement. The first cooperative legislation passed in 1916 was on rural credit, whose principal aim was to protect and develop the country's agricultural interest, and the cooperative marketing law passed in 1917 to help the farmers. Subsequent cooperative laws in the 70s during the martial law regime were designed to create and strengthen agricultural cooperatives, including Samahang Nayons (village-based pre-cooperatives) but the whole agri-based cooperative system of the country collapsed.

The agricultural cooperative law in Korea is an inspiring model. In the early 1960s, the realities of agrarian life were very harsh. Development efforts had to be efficiently organized with very limited resources. To optimize these resources, South Korea chose a multipurpose cooperative system to meet the diversity of needs of farmers, most of whom were living on small scale farms of only about 0.9 hectares on average. Their situation is similar to the Philippines. The National Agricultural Cooperative Federation (NACF) was built and structured according to the family farmers' realities supported by a separate cooperative law for agriculture. NACF, an umbrella organization of farm cooperatives, was launched and merged with the Agricultural Bank, which provided financial support to the various programs.

The NATCCO Network espouses the German, Canadian, and Korean models. The federations in these countries have the power to allow the opening of cooperatives and their branches, provide safety nets, enforce standards on cooperative products and services. The State's federations are empowered to play a self-regulatory role and provide fiscal budgets to support the promotion of cooperatives.

5. Recommendations for the Improvement of the National Legal Framework

The cooperatives in the Philippines are classified into four – micro, small, medium, and large. Micro is composed of cooperatives with assets three million pesos and below, then small is classified with 15 million pesos and below, medium is 100 million pesos and below, and large is 100 million pesos and above.

As of 2018, there are 11,138 reporting cooperatives (with mandatory reports) with combined members of 10.7 million, P429.7 billion assets, P18.6 billion net surplus, and 580.8 thousand employees.

However, Of the 11,138, 77.3% or 8,619, comprising 1.3 million members and P26.6 billion assets are micro and small cooperatives. The large and medium-size cooperatives are only 22.7% or 2,519 with combined members of 9.4 million and assets of P403.1 billion.

There is a compelling need to revisit the dual roles of CDA as a regulator and developer. The CDA has to focus its regulatory role to be more effective and to avoid conflicting roles. The developmental role should be the cooperative sector's function, particularly giving the task of capacity building to the federations. The government may provide funding support to federations for education, training, and technical assistance through its General Appropriations Act. The provisions in the Code on consolidation and merger of cooperatives should be strengthened. Cooperatives that have failed to grow and remain micro and small and cannot meet and comply with the performance standards set by the CDA after a certain number of years should be compelled to

consolidate or merge. Otherwise, these cooperatives will be delisted. The government will provide very attractive incentives to support such mergers and consolidations of weak cooperatives.

In the past six years, Philippine cooperative leaders have lobbied for:

- More programs for cooperatives from government agencies
- Retention of tax exemptions for cooperatives
- Higher budget allocation for the cooperative regulator – the Cooperative Development Authority
- A seat in the Cabinet of the President, which will mean the establishment of a Department of Cooperatives
- Automatic seats in the legislature
- Appointment of co-op leaders in key positions or Board seats in government institutions

There are changes needed in the existing cooperative laws such as:

- Registration of Electric Cooperatives with the CDA will mean they will become "true" cooperatives practicing member-ownership and control.
- Public Market Cooperatives should be allowed to own and operate their marketplace, which is frequently blocked by local governments since the market space rental is big business; and
- Housing Cooperatives should no longer be required to have a "license to sell" since, under a housing cooperative, the cooperative and not the dweller own the land.

6. Conclusions

The study's overall result establishes the claim that the 'Philippine Cooperative Code of 2008' is generally hailed as a landmark piece of cooperative legislation. The cooperatives are well-integrated into the legal environment of the Philippines. The paramount significance of cooperatives is enshrined in the country's highest law, the Philippine Constitution of 1987. In the national cooperative law, cooperatives are well-differentiated from other forms of business organizations, clearly categorized as primary, secondary, and tertiary organizations, and defined according to purposes for which they are established and how they are regulated.

The Cooperative Development Authority (CDA) is the registrar and regulator of all cooperatives in terms of governance, as defined in the national cooperative law. It also performs its promotional and developmental responsibilities related to the capacity development of cooperatives. However, the developmental role of CDA is premised as

external assistance only if and when needed by the cooperatives and according to the principle of subsidiarity.

The Cooperative Law is explicit that there is no room for a state-initiated cooperative, and as such, the development of the cooperatives is the primary responsibility of the private sector.

However, CDA believes that cooperative development is best done through public-private collaboration or the whole-of-nation/whole-of-government approach. The role of the government and the private sector is not one to the exclusion of the other but has to be that of a proper mix in different stages and levels, and even places, of development.

The present law is generally 'cooperative friendly.' Many cooperatives' challenges are in governance, professionalization, business development, and internal capitalization, which are common problems faced by the micro and small cooperatives.

While the Cooperative Law is generally supportive of cooperatives' growth and development, the bureaucratic red tape in government's execution of policies, and the lack of budget support from the National Economic Development Authority (NEDA) and the Department of Budget and Management (DBM), to capacitate CDA to fulfill its mandated functions as provided in the law is still hampering the cooperatives' long-term sustainability, particularly the 77.3% micro and small cooperatives.

The formulation of the 2018-2022 Philippine Cooperative Plan has been a product of consultative processes of the various stakeholders, involving the Cooperative Development Authority (CDA) which led the various government agencies with cooperative programs, the Philippine Congress Legislative Committees on Cooperatives Development, both the Senate and the House of Representatives, and the cooperative sector spearheaded by the Philippine Cooperative Center (PCC). Although cooperatives are independent organizations providing business services for the improvement of their members' livelihood and enterprises, cooperatives are viewed to be effective partners in the implementation of government programs for the benefits of the intended member-beneficiaries and the communities the cooperatives serve.

Published: November 2020

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.
