

LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

National Report of Republic of Korea

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 Republic of Korea.

Introduction

Republic of Korea is located on the Korean peninsula surrounded by its neighbors; China to the West and Japan to the East. 63.7% of its land is mountainous and only 17% is arable land out of which 57.4% are rice paddy fields. Having a monsoon climate with four distinctive seasons, Korea was traditionally an agrarian society relying in general on rice farming.

Republic of Korea gained its independence from Japan in 1945 after the World War



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It but was divided at the 38th parallel into North and South. The division led to the Korean War in 1950 between North and South. The War ended in 1953, which solidified the South-North division.

When the country was liberated in 1945, around 70% of the population of South Korea were farmers. Since major factories and power plants were situated in the North, the South went through the extreme economic difficulties due to lack of electricity, soil fertilizers, and other essential requirements needed for normal life. Inflation soared due to cutoff of electric supply, lack of necessities, food shortage etc. Agricultural output decreased drastically due to cessation of fertilizer supply from the North.

Immediately after the establishment of the Korean national government in 1948, the government pursued the adoption of “Act on Agricultural Cooperatives”, but not successfully because of the disputes between various government institutions and authorities, such as the government and the National Assembly, different committees of the National Assembly, and between the different government ministries over numerous issues related to setting-up and operation of agricultural cooperatives.

The three year-long Korean War from 1950 to 1953 destroyed the entire country. Until the end of the 1950s, Korea, rural area, had been devastated with food shortage, low income, severe poverty and inflation from low agricultural output and associated debt increase. Impoverished agriculture and rural areas resulted in an urgent need for agricultural cooperatives. After a long struggle, the Agricultural Cooperatives Act and the Agricultural Bank Act were ratified by the National Assembly in 1957. But, the newly established agricultural cooperatives could not carry out business activities because of lack of funding, due to the conflict of interest between the National Agricultural Cooperatives Federation and the Agricultural Bank.

The military government which took power in May 1961 abolished the existing Agricultural Cooperatives Act and the Agricultural Bank Act and proclaimed in August 1961, the new Agricultural Cooperatives Act. The new Agricultural Cooperatives Act allowed agricultural cooperatives to operate both credit and economic businesses. In the same year, the government also established Small and Medium Enterprise Cooperatives Act and, one year later, Fisheries Cooperatives Act. Tobacco Producers Cooperatives Act was created in 1963, Credit Union Act in 1972, Forestry Cooperatives Act in 1980, Community Credit Cooperatives Act in 1982, and Consumer Cooperatives Act in 1999. These eight special cooperative laws were



enacted to serve industrial policy objectives in their respective sectors with a top-down approach. Different types of cooperatives established under different cooperative laws were under the authority of different ministries. In 2012, a general cooperative law (the Framework Act on Cooperatives) was established to provide legal recognition to self-help organizations excluded from the jurisdiction of existing eight special cooperative laws. All these laws have been amended over the years, adjusting to changes in the socioeconomic situation and the increased industrial structure of Korea, following the continued growth of Korea. For example, Agricultural Cooperatives Act has been amended more than 80 times and even the Framework Act on Cooperatives established in 2012 has been amended four times.

The purpose of this report is to examine cooperative laws in Korea in the present context, specially focusing on the Agricultural Cooperatives Act and the Framework Act on Cooperatives and, to a lesser extent, the Consumer Cooperatives Act, and to discuss their legal friendliness and obstacles. The Agricultural Cooperatives Act, the first cooperative law in Korea, served as a prototype for other special cooperative laws enacted at later stage. The Framework Act on Cooperatives changed the landscape of the cooperative movement in Korea. The Consumer Cooperatives Act which was modeled after Japanese Consumer Cooperatives Act has some different features from other special cooperative laws. Even if the other six special cooperative laws not to be covered in this report are, by and large, like the Agricultural Cooperatives Act, this report has clear limitation to show the overall picture of cooperative laws in Korea.

Chapter II provides an overview of the cooperative legal framework in Korea. Chapter III examines the important legal features of cooperative laws in Korea under the headings indicated below:

- Purposes of the Cooperative Laws
- Principles, Definitions, and Objectives
- Establishment
- Membership
- Governance
- Business Activities
- Capital and Financing
- Appropriation of Surplus
- Disposal of Residual Property

¹ The current Agricultural Cooperatives Act governs three types of primary cooperatives - district agricultural cooperatives, district livestock industry cooperatives, and cooperatives by item and by type of business - and the federation.



- Cooperation among Cooperatives
- Tax Treatment
- Promotion of Cooperatives by the Government

Chapter IV discusses cooperative friendliness and obstacles of cooperative laws in Korea and Chapter V makes a summary and a conclusion.

II. Overview of the Cooperative Legal Framework in Korea

The constitution of the Republic of Korea (No. 10, Oct. 29, 1987) does not explicitly mention the term ‘cooperative’, but Art. 123(5) of the constitution stipulates that “the State shall foster organizations founded on the spirit of self-help among farmers, fishers and business persons engaged in small and medium industry and shall guarantee their independent activities and development.” Art. 124 states that “the State shall guarantee the consumer protection movement intended to encourage sound consumption activities and improvement in the quality of products under the conditions as prescribed by Act.”

Under the constitutional notions, there are eight special laws and one general law (The Framework Act on Cooperatives) for cooperatives in Republic of Korea. Details of these cooperative laws are shown in the table 1.

Cooperative laws are special laws of the Civil Act. Art. 31 of The Civil Act (No. 14409, Dec. 26, 2016) stipulates that no juristic person can come into existence other than in accordance with the provisions of the Acts. A juristic person shall come into existence by making registration for incorporation (Art. 33).

All cooperative laws state that, except as otherwise provided for in cooperative laws, the provisions regarding legal entities of the Civil Act apply *mutatis mutandis* to cooperatives and federations of cooperatives. Regarding commercial activities of cooperatives, except as otherwise provided for in cooperative laws, the Commercial Act apply *mutatis mutandis* to cooperatives and federations of cooperatives.

The Monopoly Regulation and The Fair-Trade Act (No.15784, Sep. 18, 2018) does not apply to activities of a cooperative or federation of cooperatives except for the cases where competition is unfairly restricted in a specific business area, such as unfair trade practices (Art. 60).

Each cooperative law has a set of administrative legislation including Presidential



Decree, Ordinance of supervising ministry, Regulations and Rules for enforcement of the Act, and Articles of Association (bylaws) adopted by the cooperative members and registered under the Act.

< Table 1 > Cooperative Laws in Korea

Types of Cooperatives	Competent Authorities	Legal Basis	Date of Approval	Date of Last Update
Agricultural cooperatives	Ministry of Agriculture, Food and Rural Affairs	Agricultural Cooperatives Act	Feb.14, 1957	Dec. 30, 2017
Fisheries cooperatives	Ministry of Oceans and Fisheries	Fisheries Cooperatives Act	Jan. 20, 1962	Dec. 11, 2018
Tobacco Producers Cooperatives	Ministry of Strategy and Finance	Tobacco Producers Cooperatives Act	May. 29, 1963	Mar. 2, 2016
Forestry Cooperatives	Korea Forestry Service	Forestry Cooperatives Act	Jan. 4, 1980	Jan. 8, 2019
Small and Medium Enterprise Cooperatives	Ministry of SMEs and Startups	Small and Medium Enterprise Cooperatives Act	Dec. 27, 1961	Dec. 31, 2018
Credit Unions	Financial Supervisory Commission	Credit Unions Act	Aug. 17, 1972	Jan. 15, 2019
Community Credit Cooperatives	Ministry of the Interior and Safety	Community Credit Cooperatives Act	Dec. 31, 1982	Dec. 26, 2017
Consumer Cooperatives	Fair Trade Commission	Consumer Cooperatives Act	Feb. 5, 1999	Dec. 31, 2018
Social Cooperatives	Ministry of Strategy and Finance	Framework Act on Cooperatives	Jan. 26, 2012	Aug. 9, 2017

* The Agricultural Cooperative Law enacted in 1957 was replaced by the new Agricultural Cooperative Act in 1961. Former agricultural cooperatives and the



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Agricultural Bank were merged into multipurpose agricultural cooperatives under this new Act.

Under the Framework Act on Cooperatives (hereinafter referred to as “the Framework Act”), two types of cooperatives can be formed – cooperatives in general and social cooperatives.

Article 13 of the Framework Act provides its legal relation to other special cooperative laws. The Framework Act does not apply to cooperatives formed under eight special cooperative laws (Art. 13(1)). But, as a general law for cooperatives, other statutes enacted or amended regarding the establishment and fostering of cooperatives shall conform to the purposes and principles of the Framework Act (Art. 13(2)). Nevertheless, it would be fair to say that the Framework Act supplements eight special cooperative laws rather than function as the common cooperative law governing all types of cooperatives in Korea.

Cooperatives by 8 special laws and social cooperatives by the Framework Act must get the permission from competent authorities to be established, but cooperatives in general by the Framework Act do not need permission from competent authorities to be formed.

With the simplified process of organizing a cooperative under Framework Act, numerous cooperatives in diverse fields, including those providing services in nursing, daycare, cleaning, and recycling, have been established. The number of cooperatives organized under the Framework Act is 15,233 as of March 31, 2019, including 1,337 social cooperatives which should get authorization from the Ministry of Strategy and Finance.

< Table 2 >

Number of Cooperatives Organized under the Framework Act as of March 31, 2019

	Primary Cooperatives	Federations	Total
Cooperatives	13,814	68	13,882
Social Cooperatives	1,337	14	1,351
Total	15,151	82	15,233

Source: <http://www.coop.go.kr>



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III. Legal Features of Cooperative Laws in Korea

1. Purposes of Cooperative Laws

Early Agricultural Cooperatives Acts established in 1957(No. 436) and in 1961(No. 670) provided that the purpose of the Act was to secure the balanced development of the national economy by increasing agricultural productivity and by enhancing the social and economic status of farmers through the autonomous cooperative organizations of farmers(Art.1). This provision indicates that the government considered cooperatives as an instrument to implement its national development policy, particularly the increase of agricultural production in the then agrarian society. Agriculture took up a huge portion of the Korean economy until the 1960s; 55.1% of the population was farmers, 56.7% employment occurred in agriculture, forestry, and fisheries, and 39.1% of GDP came from agriculture, forestry, and fisheries (See <Table 3>).

<Table 3> Korea's Economic Indices

Items	1960	1970	1990	2000	2010	2018
National GDP (billion USD)	2	8	279	562	1,094	1,620
GDP share of agriculture, forestry and fishery (%)	39.0	28.9	8.4	4.4	2.5	2.2
Population (1,000 persons)	24,989	31,435	43,890	45,985	47,991	51,826
Population share of farm, forestry and fishery households (%)	56.7	48.8	16.4	9.2	7.3	5.1
Share of agriculture, forest and fishery employees (%)	65.9	50.8	20.8	13.1	7.8	5.0
National Budget	n.a.	n.a.	3.9	7.4	149.5	379.3



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(billion USD)						
Agricultural budget share (%)	n.a.	n.a.	9.6	7.0	5.9	4.6

Source:

National and Agricultural GDP: <http://ecos.bok.or.kr>

Population and employees: <http://kosis.kr>, census of population, agriculture, fishery and forestry, the economically active population survey

National and Agricultural Budget, 2010, 2018: <http://www.openfiscaldata.go.kr>

The current Agricultural Cooperatives Act (No. 15337, 2017) does not include the words “increasing agricultural productivity” in its purpose and securing of the balanced development of the national economy is listed as one of the purposes of the Act rather than the ultimate purpose.

The Framework Act on Cooperatives was created when Korea became a highly developed industrial country whose GDP was ranked the 13th and the trade volume, the 7th, in the world. There were needs of newly emerging cooperatives which could not be met by existing cooperative laws because of their restrictive nature. The Act was expected to help boost Korea’s real economy, as it would encourage the establishment of small businesses and contribute to job creation (The Ministry of Strategy and Finance, 2012).

Article 1 of the Framework Act states that the purpose of the Act is to facilitate independent, self-supportive, and autonomous activities of cooperatives, thereby contributing to social integration and balanced development of the national economy by providing for basic matters regarding the establishment and operation of cooperatives.

2. Principles and Definitions

Eight special cooperative laws reflect ICA Co-operative Principles partly in several articles. For example, Agricultural Cooperatives Act includes ICA Co-operative Principles partly in the following articles.

- 1) Voluntary and open membership: Art. 29(Withdrawal)
- 2) Democratic member control: Art. 26(Voting)
- 3) Member economic participation: Art. 21(Invest)
- 4) Autonomy and independence: Art. 9(Government’s cooperation)
- 5) Education, training and information: Art. 60(Member education)
- 6) Cooperation among cooperatives: Art. 10(Cooperation with other cooperatives)



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Agricultural Cooperatives Act does not have a legal provision about the 7th ICA principle - concern for community. But, Consumer Cooperatives Act enacted in 1999 after the 7th ICA principle had been introduced in 1995 contains “Contribution to Local Communities”(Art. 8) along with “Cooperation with other Cooperatives, etc.(Art. 10) and ”Joining“(Art. 14) reflecting the ICA principle of voluntary and open membership. Article 8 of the Consumer Cooperatives Act states that a cooperative or a federation of cooperatives shall endeavor to promote the sustainable development of local communities and the conservation of environment and natural ecosystem.

Contrary to earlier cooperative laws which include only a part of ICA principles, the Framework Act satisfies ICA recommended cooperative principles extensively. ICA principles are not explicitly referred to in the Framework Act, but all seven principles are contained throughout the Act as follows:

- 1) Voluntary and Open Membership: Art. 6 (Basic principles), Art. 24(1) (Withdrawals)
- 2) Democratic Member Control: Art. 23(Voting rights on resolution or election)
- 3) Member Economic Participation: Art. 22(Contribution and Liabilities)
- 4)Autonomy and Independence: Art. 10(Cooperation by central government and public organizations), Art. 111(Supervision)
- 5) Education, Training and Information: Art. 7(Responsibilities of cooperatives and federations of cooperatives), Art. 45(Business activities)
- 6) Cooperation among Cooperatives: Art. 8(Cooperation with other cooperatives or federations), Art. 45(Business activities)
- 7) Concern for Community: Art. 2(Definitions), Art. 45(Business activities)

The same is true in case of a definition of cooperative. Special cooperative laws including Agricultural Cooperatives Act do not have a specific legal provision precisely defining a cooperative. A cooperative is indirectly defined in the purpose of the Act. However, the Framework Act precisely defines cooperatives. Article 2 of the Framework Act stipulates that the term "cooperative" means “a business organization that intends to enhance its partners' rights and interests, thereby contributing to local communities by being engaged in the cooperative purchasing, production, sales, and provision of goods or services”. A social cooperative is defined as “a cooperative that carries out business activities related to the enhancement of rights, interests, and welfare of local residents or provides social services or jobs to disadvantaged people, among cooperatives under subparagraph 1, but that is not run for profit.”(Art. 2)



The main legal characteristics that distinguish cooperatives from other legal types of business organizations, notably the for-profit shareholder corporation are also prescribed in the Monopoly Regulation and Fair-Trade Act (Anti-trust law). Monopoly Regulation and Fair-Trade Act does not apply to cooperatives. In other words, collective cooperation of cooperative members or cooperatives is not considered as illegal collaborative act. Article 60 of this Act stipulates the following requirements in order to be exempted from the Act:

- a. It shall aim at mutual aid among small-sized enterprisers or consumers;
- b. It shall be established voluntarily, and its members may enter and withdraw voluntarily;
- c. Each member shall have an equal voting right;
- d. Where profits are distributed to members, the limit thereof shall be determined by the articles of incorporation.

The above legal requirements which can be considered the essential elements of the notion “cooperative” are prescribed in Art. 5 of Enforcement Decree of the Framework Act on Cooperatives (Presidential Decree No. 28211, July 26, 2017).

Article 5 of the Enforcement Decree provides basically the same requirements as prescribed in the anti-trust law, for a cooperative to be exempted from the anti-trust law according to Article 13(3) of the Framework Act as follows:

- a. Its objective shall be mutual assistance among small businesses or consumers;
- b. It may be established freely, and a member of a cooperative or social cooperative may join or withdraw from it at will;
- c. A member of a cooperative or social cooperative shall have an equal voting right;
- d. Where profits are distributed to a member of a cooperative or social cooperative, the limit thereof shall be prescribed by the articles of association.

3. Objectives of cooperatives

All cooperative laws including the Framework Act assign the precise purpose of establishment to a cooperative. Article 13 of the Agricultural Cooperatives Act stipulates that a district agricultural cooperative shall promote the agricultural productivity of its members, expand the sales of agricultural products produced by its members and promote well-functioning distribution for its members, and improve the economic, social and cultural status of members through providing technology, working capital, and information which its members need (Art. 13 “Objective”).



The Framework Act on Cooperatives also has a provision for objectives of establishment. It stipulates that each cooperative or social cooperative, or federation of cooperatives shall pursue the enhancement of welfare of its partners or members and mutual help/aid between members and shall meet economic, social, and cultural requests from members (Art. 5 “Objectives of Establishment”).

A social cooperative is a special type of cooperative pursuing social/community interests rather than its members’ own interests. ² In other words, a social cooperative can be said a cooperative organized to meet social requests from members in a broader sense. Each cooperative or social cooperative, federation of cooperatives shall carry out its activities actively for providing educational and training programs to its members, as well as information, in order to enhance rights and interests of its members (Art. 7 “Responsibilities of Cooperatives and Federations of Cooperatives”).

The objectives are implemented through transactions with the members as consumers, providers or workers of the cooperative enterprise. A cooperative should apply its best endeavors to serve its members in carrying out its business activities. No cooperative, federation of cooperatives, social cooperative, nor federation of social cooperatives shall conduct any business activity for speculative investment or shall be engaged in any business affair or activity only for interests of some of members (Art.6 “Basic principles”)

The Framework Act provides that if a member has not used the business of the cooperative for a period not less than the period specified in its articles of association, the cooperative may expel the member (Art. 25(1)).

Agricultural Cooperatives Act also prescribes the responsibility of members in Article 24(2) that members should participate in the operation of agricultural cooperatives and use the businesses such as shipment of agricultural products through agricultural cooperatives. Agricultural Cooperatives Act has a provision for an incentive system to promote the use of cooperative business. Article 24-2 of the Act provides a contract member system which offers various preferential treatments if a member makes a contract with the cooperative about the use of economic business and fulfills it.

Cooperative laws in Korea do not have any explicit legal provision that a

² For this reason, there is an opinion that social cooperatives should be separated from the Framework Act and should have their own law.



cooperative is obligated to transact with its members. Any cooperative organized under the Framework Act may allow a non-member to use its services to the extent that does not interrupt its members in using its business services, as prescribed by the articles of association (Art. 46, Art. 95). Agricultural Cooperatives Act has a similar provision allowing a non-member to use the business (Art. 58). The only cooperative law in Korea which does not allow non-member use in principle is the Consumer Cooperatives Act. Consumer Cooperatives Act does not allow non-member use except medical cooperatives (Art. 46). Like the case of the Japanese Consumer Cooperatives Act, legislators were concerned about opposition from independent retail stores in communities when the Consumer Cooperatives Act was enacted. Health and medical cooperatives may provide health and medical services to persons specified by Ordinance of the Prime Minister within the limit of 50/100 of total business services provided.

4. Establishment

Under the Civil Act, a juristic person, whether it is profit or non-profit, can come into existence by making registration for incorporation (Art. 33, The Civil Act). Any type of cooperative should to be registered for establishment at the seat of the principal office of the juristic person. Each registry office has a register for cooperatives.

Cooperatives regulated under eight special cooperative laws must obtain authorization for establishment from their respective authorities. For example, in order to establish a district agricultural cooperative, minimum 20 or more promoters eligible for membership should prepare articles of incorporation, get the approval of it at the inaugural meeting and obtain the authorization from the Ministry of Agriculture, Forestry, Livestock and Food according to the Article 15 of Agricultural Cooperative Act.³ A standard form of articles of incorporation (model bylaws) is provided by the supervising ministry in all types of cooperatives in Korea.

Those who want to establish a consumer cooperative should get authorization from the Fair-Trade Commission before registration. The minimum number of promoters is 30 (Art. 21(1), Consumer Cooperatives Act) and the minimum number of members for establishment is 300 (Art. 4(1), Enforcement Decree of the Consumer Cooperatives Act)⁴

³ But, the minimum number of members for establishment is set much higher in the Enforcement Decree of the Agricultural Act - 300 to 1,000 members for a district agricultural cooperative, depending on area of operation, and 200 for a cooperative by item and by type of business (Art. 2).

⁴ In case of a medical cooperative, the minimum number of members for establishment is 500 (Art.



Legal requirements for establishment of two types of cooperatives under the Framework Act are different by type. In case of a social cooperative, authorization for establishment from the Ministry of Strategy and Finance is required (Art. 85, the Framework Act). but in case of other cooperatives, there is no need for authorization but reporting of the articles of association to the competent authority having jurisdiction over its principal place of business (Art. 15, The Framework Act).

Establishment procedures of each type of cooperatives under the Framework Act are as below:

< Cooperatives in general >

Preparation of articles of association (by at least 5 promoters) → inaugural meeting → reporting of the articles of association to the competent authorities → payment of contribution by members → registration of establishment with the registry office having jurisdiction over its principal place of business (Art. 15; Art. 19; Art. 61, the Framework Act)

< Social cooperatives >

Preparation of articles of association (by at least 5 promoters) → inaugural meeting → obtain authorization from the Minister of Strategy and Finance → payment of contribution by members → registration of establishment with the registry office having jurisdiction over its principal place of business (Art. 85; Art. 106, the Framework Act)

Unlike special cooperative laws, there is no provision regarding the minimum number of members for establishment in the Enforcement Decree of the Framework. Thus, it is considered that the minimum number of members for establishment is the same as the minimum number of promoters prescribed in the Framework Act.

Below are the matters which should be included in the articles of association of a cooperative or a social cooperative (Art. 16; Art. 86, The Framework Act):

- a. Objectives:
- b. Name and the principal place of business;

4(2), Enforcement Decree of the Consumer Cooperatives Act)



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- c. Qualification for members and proxies;
- d. Matters regarding admission to, and withdrawal and expulsion from, a cooperative;
- e. The value of a contribution unit, the method and timing of payment of contributions, and the limit on the number of contribution units per member;
- f. Matters regarding rights and obligations of members;
- g. Matters regarding the appropriation of a surplus and the disposition of deficits;
- h. Matters regarding the method of accumulating reserves and the use of reserves;
- i. Matters regarding the scope of business and accounting;
- j. Matters regarding organs and executive officers;
- k. Matters regarding the method of giving public notification;
- l. Matters regarding dissolution;
- m. Matters regarding the transfer of contributions;
- n. Other matters necessary for the operation of the general assembly and the board of directors.

The Framework Act provides that when the number of members falls below the minimum number during the existence of a cooperative, authorization for the establishment of the social cooperative is revoked because it violates the requirements for establishment (Art. 112 “Revocation of Authorization for establishment”). Agricultural Cooperatives Act or Consumer Cooperatives Act has a similar provision regarding the revocation of authorization (Art. 167, Agricultural Cooperatives Act; Art. 82, Consumer Cooperatives Act). However, in case of cooperatives in general organized under the Framework Act, there is no specific provision when the number of members falls below the minimum number.

5. Membership

Legal provisions regarding admission of new members, limitation of share contribution units, equal voting rights of members, and withdrawal of members are, by and large, same in all nine cooperative laws in Korea.

The Framework Act states that a cooperative should not reject a person's application for joining the cooperative as a member without a justifiable reason if the person is qualified for the membership (Art. 21). A member shall contribute at least one unit, as prescribed in the articles of association and the number of share contribution units per member should not exceed 30 percent of the total number of contribution units (Art. 22).

Each member has one vote on a resolution or election, regardless of the number of



his/her share contribution units (Art. 23(1)); Art. 91). If the number of contribution units per member or member cooperative of federation exceeds the limit on the number of contribution units, or if unequal voting rights on a resolution or election are granted to members, an administrative fine is imposed (Article 119 (2) “Administrative Fines”).

A member of a cooperative may withdraw from the cooperative by notifying the cooperative of his/her intention to withdraw (Art. 24). A member who withdraws (or expelled) from a cooperative or a social cooperative may claim for refund of his/her contribution in a way as stipulated by articles of association (Art. 26; Art. 89). But, if a cooperative is unable to fully repay its debts with its assets, it may claim a withdrawing member to pay his/her apportionment of deficits when it calculates the amount of the share that shall be refunded (Art. 27; Art. 90, the Framework Act).

Agricultural Cooperatives Act has a provision regarding associate members. A district agricultural cooperative may admit a local resident living in the area of operation as an associate member if he/she is appropriate to use cooperative businesses, as prescribed in the articles of association (Art. 20). In this case, the cooperative may request the associate member to pay admission fee and expenses.

The contents of legal provisions of Agricultural Cooperatives Act regarding joining (Art. 28(1)), contribution of one unit of share (Art. 28(3)), “one member, one vote” principle (Art. 26), and withdrawal (Art. 29, 31, 32) are the same as those of the Framework Act.

6. Governance

The governance system of a cooperative is composed of General Assembly, Board of Directors, and auditors.

In case of a district agricultural cooperative, a representative meeting can take the place of the General Assembly, as prescribed in articles of association. In this case all representatives must be members (Art. 42. Agricultural Cooperatives Act).

A district agricultural cooperative should have 7 to 25 directors and 2 auditors including Chairman. At least two thirds of directors must be members. A cooperative may have two standing directors including Chairman, but Agricultural Cooperative Act contains exceptional provisions for cooperatives whose business size such as assets is over the certain level prescribed in the Enforcement Decree of the Agricultural Cooperatives Act. The Chairman of this large-scale cooperative must



be non-standing, and the cooperative have one non-member standing director and one non-member standing auditor (Art. 45(1) ~ (4)). All the other directors or auditors who are not standing must be honorary (Art. 45(7)).

Agricultural Cooperatives Act introduced a provision to promote a woman director in 2016. Article 45(8) of the Act provides that a local cooperative shall endeavor to allocate at least one fifth of directors to women members and those cooperatives where more than 30% of the total members are women must have at least one woman director.

In case of the Framework Act, legal provisions regarding governance are different from the Agricultural Cooperatives Act. The governance system of cooperatives organized under the Framework Act is composed of General Assembly, Board of Directors, and auditors in principle, but those cooperatives whose number of members is fewer than 10 may choose not to organize the Board of Directors, following a resolution by a general meeting (Art. 32(5)). Also, a cooperative prescribed by Presidential Decree in consideration of the nature of its business, the composition of its members, etc. may choose not to have an auditor following a resolution by a general meeting (Act. 34(5)).

There is no legal provision in the Framework Act that directors and auditors may be non-members, but the model bylaws (articles of association) made by the Ministry of Strategy and Finance prescribes that non-members may be elected as directors within one fifth of the total number of directors and as auditors within a half of the total number of auditors, in accordance with the recommendation of the board (Art. 47, model bylaws for a cooperative; Art. 46, model bylaws for a social cooperative). The full number of directors and the method of electing directors and auditors shall be stipulated by articles of association (Art. 34, The Framework Act).

Article 29 of the Framework Act stipulates the matters subject to resolutions by General Assembly as indicated below:

- a. Amendment of articles of association;
- b. Establishment, amendment, or repeal of bylaws;
- c. Election and dismissal of executive officers;
- d. Approval of business plans and budgets;
- e. Approval of reports on settlement of accounts;
- f. Approval of audit reports;
- g. Merger, division, or dissolution of the cooperative, or temporary suspension of the cooperative business;
- h. Expulsion of members;



- i. Refund of contributions to members who secede from a cooperative (including persons dismissed from membership);
- j. Matters specified by articles of association as being subject to a resolution by the general meeting;
- k. Other matters that the president or the board of directors deems it necessary to bring to the general meeting for resolution.

The Board of Directors is comprised of the President and Directors. Matters subject to resolution by Board of Directors are as follows (Art. 33):

- a. Matters regarding property of the cooperative and the execution of business affairs;
- b. Convening of a general meeting and agenda items to be tabled before the general meeting;
- c. Establishment, amendment, or repeal of regulations;
- d. Preparation of proposed business plans and budgets;
- e. Matters specified as being subject to a resolution by the board of directors by a statute, or articles of association;
- f. Other important matters for the operation of the cooperative or matters brought by president for resolution.

A cooperative shall have at least three directors, including one president, and at least one auditor as its executive officers. If an executive officer inflicts any loss or injury on a cooperative by violating a statute, or any provision of articles of association or by neglecting his/her duties, he/she shall jointly and severally compensate the cooperative for such loss or injury. If an executive officer inflicts any loss or injury on a third party by neglecting his/her duties by an intentional act or by gross negligence, he/she shall jointly and severally compensate the third party for such loss or injury (Art. 39 “Duties and Liability of Executive Officers.”, the Framework Act).

7. Business Activities

Cooperatives established by eight special cooperative laws can be engaged in businesses specified in their respective laws. Agricultural Cooperatives, Fisheries Cooperatives, Forestry Cooperatives, Tobacco Producers’ Cooperatives, all are multi-purpose cooperatives. They can conduct banking and insurance businesses along with economic business in their industry. Small and Medium Enterprise Cooperatives are not allowed to do banking and insurance businesses but can carry out mutual-aid project for members. In case of consumer cooperatives, only consumer cooperative unions, not a primary cooperative, can engage in a mutual-



aid project.

On the contrary to special law cooperatives whose business activities are strictly restricted by relevant cooperative laws, a cooperative founded by the Framework Act can conduct business activities in any industry necessary for fulfilling its objectives of establishment prescribed in its articles of association. Only financial or insurance business is not allowed to be engaged in (Art. 45(3)).

A social cooperative is exceptional. Article 93(1) of the Framework Act stipulates business activities which each social cooperative can be engaged in as indicated below:

- a. Programs for contributing to the renewal of local communities, invigoration of the local economy, enhancement of rights, interests, and welfare of residents, and resolution of other problems that local communities face;
- b. Programs for providing the disadvantaged class with social services in the areas of welfare, medical service, or environment;
- c. Programs to provide jobs for the disadvantaged class
- d. Projects entrusted by the central government or a local government;
- e. Other projects contributing to the promotion of public service.

The main business prescribed in Art. 93(1) of the Act should be at least 40 percent of the total amount of the entire business of a cooperative (Art. 93(2)). In spite of Article 45(3) which does not allow cooperatives under the Framework Act to be engaged in any financial or insurance business, a social cooperative may lend small loans and provide mutual aid programs to members as its business activities in addition to its main business in order to enhance mutual welfare, provided that small loans should not exceed two-thirds of the total amount of paid-in contributions (Art. 94).

8. Capital and Financing

All cooperative laws in Korea stipulate that a member should contribute at least one share unit, as prescribed in articles of association, and limit the number of share contribution units per member. Article 22 of the Framework Act states that the number of contribution units per member shall not exceed 30% of the total number of contribution units. In case of Consumer Cooperatives Act, the maximum limit of shares per member is 20% of the total number of shares (Art. 15(2)). The Agricultural Cooperatives Act provides that a member should contribute share units not less than the number prescribed in the articles of association (Art. 21), but there is no



provision regarding the maximum limit of shares.

The capital of a cooperative or a social cooperative organized under the Framework Act is the total amount of contributions paid by the members (Art. 18(4); Article 87(4), The Framework Act has no legal provision allowing any cooperative to issue any financial instrument or to admit investor members.

In case of a district agricultural cooperative, there are three kinds of capitals. Besides paid-in capital contributions, a district agricultural cooperative may demand members to contribute part or all their capital dividends or patronage refunds into their share capital, as prescribed in its Articles of Association (Art. 21-3; Art. 22). Also, a district agricultural cooperative as well as the National Federation may issue preferred shares which have preferential right to receive dividends to common shares but have no voting right (Art. 21-2; Art.147, Agricultural Cooperatives Act). The amount of one unit of preferred share should be the same as that of common share and the total amount of preferred shares should not exceed a half of total capital (Art. 147, Agricultural Cooperatives Act).

Associate membership provided in Art. 20 of the Agricultural Cooperatives Act are like investor members. A district agricultural cooperative may admit a person living in area of operation as an associate member if he/she is appropriate to use businesses of the cooperative. The cooperative may impose admission fee and expenses on associate members (Art. 20). Other special cooperative laws such as Fisheries Cooperatives Act, Forestry Cooperatives Act etc. also have a similar provision regarding associate members.

Under the Framework Act, a withdrawing member (including an expelled member) of a cooperative or a social cooperative may claim for refund of his/her share from the fiscal year immediately subsequent to the fiscal year in which he/she withdraws (including the time when expelled), as stipulated by articles of association. The share shall be determined based on assets and liabilities of the cooperative as of the fiscal year in which a member withdraws (Art. 26 and 89).

Agricultural Cooperatives Act provides the same legal right for the refund of share to a withdrawing member (including an expelled member) in Article 31 and Article 32.

9. Appropriation of Surplus

All cooperative laws in Korea have legal provisions regarding legal reserves and



voluntary reserves. However, the percentage of surplus which a cooperative must set aside as legal reserve is different according to the type of a cooperative.

Under the Framework Act, when a cooperative has a surplus after the settlement of accounts for a fiscal year, it should set aside not less than 10 percent of the surplus as a legal reserve until the amount reaches three times the total amount of contributions paid as at the end of the relevant fiscal year (Art. 50). In case of a social cooperative, the percentage is 30 percent (Art. 97).

There is no legal provision about distinction between profits from cooperative transactions with members and profits deriving from other sources (including from transactions with non-members) in the Framework Act or any other special cooperative laws.

A cooperative organized under the Framework Act except a social cooperative may distribute surplus to members, as stipulated by articles of association, only after appropriating the surplus for making up for the loss and then setting aside for legal reserve and voluntary reserve (Art. 51(2)). Distribution of surplus to members can be made according to the volume of transactions with the cooperative (patronage refund) or in proportion to the capital subscribed. When a cooperative distributes to members, the amount of patronage refund shall not be less than 50 percent of the total amount of dividends, and the dividends on paid-in contributions shall not exceed 10 percent of the paid-in contributions (Art. 51(3)).

A social cooperative is not allowed to distribute the surplus to members (Art. 98(2)). If there is surplus remaining after offsetting losses and then setting aside the legal reserve under Art. 97, the social cooperative must set aside it for voluntary reserve (Art. 98, The Framework Act).

In case of Agricultural Cooperatives Act, the appropriation of surplus should be made in the order of making up for losses, setting aside for legal reserve, carrying forward of surplus to the next period, setting aside for voluntary reserve, and then lastly distribution to members (Art. 68(2)).

If there is surplus remaining after making up for losses, the local agricultural cooperative, shall set aside not less than 10% of surplus for the legal reserve until the amount reaches three times of the net worth of the cooperative (Art. 67(1)). A local agricultural cooperative shall carry forward not less than 20% of surplus to the next fiscal year to spend for education and management support business activities (Art. 67(3)). It may set aside for voluntary reserve, as prescribed in the articles of



association (Art. 67(4)).

Distribution of surplus to members in agricultural cooperatives should be made in the order of patronage refund in proportion to members' transactions with the cooperative, dividends on paid-in capital within the limit prescribed in the articles of association, and then dividends to associate members in proportion to their transactions with the cooperative (Art.68(3)). A cooperative may demand members to contribute part or all of dividends on paid-in capital to their share capital (Art. 21-3). It also may demand members to transfer part or all of patronage refund to their share capital, as prescribed in the articles of association (Art. 22, Agricultural Cooperatives Act).

10. Disposal of Residual Property

Where a cooperative organized under the Framework Act is dissolved and residual property remains after the repayment of debts, the cooperative shall dispose of such property, as prescribed in the articles of association (Article 59 (1)). It means that residual assets are distributable to members according to the articles of association of a cooperative. The Framework Act also states that when a cooperative change its organization, it may donate its retained earnings accumulated as a reserve to the federation of cooperatives or another cooperative, as prescribed by the articles of association (Art. 59(2)).

In case of a social cooperative, residual property should not be distributed to members. When a social cooperative is dissolved, the ownership of the residual property left over after repaying debts and contributions shall be vested to any of the following persons in the manner stipulated by articles of association (Art. 104):

- a. The higher federation of social cooperatives;
- b. A social cooperative for similar purposes;
- c. A non-profit corporation or a public-service corporation;
- d. The National Treasury.

The Agricultural Cooperatives Act contains provisions regarding a liquidator and the duty of the liquidator but has no specific provision about how to distribute residual property when a cooperative is dissolved. Article 86 of Agricultural Cooperatives Act only states that residual property shall be disposed of as prescribed in the articles of incorporation unless stipulated in the law.

11. Cooperation among Cooperatives



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All cooperative laws in Korea has a legal provision about federal bodies to promote common interests of cooperatives.

The Framework Act stipulates that each cooperative, federation of cooperatives, social cooperative, or federation of social cooperatives shall endeavor to cooperate reciprocally with other cooperatives, cooperatives under other Acts, foreign cooperatives, and related international organizations, promote mutual understanding with them, and develop joint projects. When it is necessary to achieve this, a cooperative, federation of cooperatives, social cooperative, or federation of social cooperatives may organize and operate a council with other cooperatives or cooperatives or federations under other Acts (Art. 8).

Where cooperatives intend to establish a federation of cooperatives or a federation of social cooperatives, at least three cooperatives qualified for membership shall prepare the articles of association as promoters, and report the establishment of the Federation to the Minister of Strategy and Finance following a resolution at the inaugural general meeting (Art. 71).

The Agricultural Cooperatives Act provides in Art. 10 that primary cooperatives, the national federation, and the agricultural economic holding company and its subsidiaries should make an effort for the mutual cooperation, promotion of understanding, and development of joint undertaking with other cooperatives, joint corporations of cooperatives, cooperatives under other cooperative laws, and cooperative organizations in other countries.

Where cooperatives intend to establish the national federation of agricultural cooperatives, at least fifteen cooperatives shall prepare the articles of association as promoters, and obtain the authorization of the Minister of Agriculture, Food and Rural Affairs following a resolution at the inaugural general meeting (Art. 121, Agricultural Cooperatives Act)

12. Tax Treatment

There is not any special taxation applicable only to cooperatives. Cooperatives are subject to the general taxation system. Also, Korean tax laws don't recognize "patronage refunds" as different from "dividends" and treat them differently, nor provide for tax exemption of profits allocated to legal reserves or non-distributable assets.

Cooperatives established by eight special cooperative laws get preferential taxation



treatment under the following provisions of the Restriction of Special Taxation Act:

- Preferential corporate tax rate on the income of a cooperative (Art. 72)
- Income deductions, etc. for mutual aid funds for small enterprises and micro enterprises (Art. 86-3)
- Exemption of income tax on dividend income distributed to members by cooperatives providing financial business(credit unions, agricultural cooperatives, fisheries cooperative, forestry cooperatives, tobacco producers' cooperatives, community credit cooperatives), not exceeding ten million won per person(Art. 88-5, Restriction of Special Taxation Act)

Despite of preferential taxation for cooperatives organized under 8 special cooperative laws, cooperatives organized under the Framework Act don't get any preferential tax treatment.

Besides preferential tax treatment under the Restriction of Special Taxation Act, cooperatives under eight special cooperative laws are exempted from public assessment of the central government or local governments (for example, Art. 8, Agricultural Cooperatives Act).

Among cooperative under the Framework Act, only social cooperatives are exempted from public assessment of the central government or local governments (Art. 99, the Framework Act)

13. Promotion of Cooperatives by the Government

In the past, the Korean government considered cooperatives as an instrument of bringing economic development. The government provided financial assistance and support to the cooperatives through preferential taxation and other means. The government contributed a lot to the quantitative growth of cooperative sectors in Korea, but its deep involvement in the operation of cooperatives harmed the basic character of cooperatives such as voluntary membership involvement.

The Framework Act made it clear that the Minister of Strategy and Finance, the supervising body of cooperatives under the Framework Act, shall respect the autonomy of cooperatives when supervising them(Art. 111) and the cooperation by the central government and public organizations should not encroach the autonomy of cooperatives(Art. 10(1))

The Framework Act has various legal measures to promote cooperatives:



The central government and public organizations should cooperate actively with cooperatives in their business activities, may subsidize them as necessary for their business, should hear opinions from cooperatives and endeavor to have their opinions reflected. They also may conduct exchange and cooperation activities with international organizations, foreign governments and institutions in connection with cooperatives (Art. 10, The Framework Act).

The Minister of Strategy and Finance, the competent authority for cooperatives under the Framework Act, may provide support, such as providing expert consultation and information in the fields of management, technology, tax affairs, labor affairs, accounting, etc., necessary for the establishment and operation of cooperatives (Art. 10-2), and may conduct education and training for the fostering of professional human resources, the improvement of ability of the members of a cooperative, etc. necessary for the establishment and operation of cooperatives (Art. 10-3, The Framework Act).

In accordance with Article 11 of the Framework, the Minister of Strategy and Finance should formulate a master plan for the promotion of autonomous activities of cooperatives every three years and establish the Council for Cooperative Policy Deliberation consisting of those with abundant knowledge of and extensive experience in cooperatives to deliberate on principal matters concerning policies on cooperatives.

In order to raise the awareness of cooperatives and encourage activities of cooperatives, the central government should designate the first Saturday of July each year as Cooperatives Day and should designate one week immediately before Cooperatives Day as Week of Cooperatives. The central government and each local government shall endeavor to hold events and conduct programs appropriate for the purposes of Cooperatives Day (Art. 12, The Framework Act).

Public institutions should make preferential purchase of goods or services produced by a social cooperative (Art. 95-2(1)). The head of a public institution should notify the Minister of Strategy and Finance of a purchase plan to increase the purchase of goods or services produced by a social cooperative and the results of the purchase of the preceding year (Art. 95-2(2), The Framework Act).

Besides preferential purchase by public institutions, social cooperatives may lend small loans and provide mutual aid programs to members as their business activities in addition to their main business and are exempted from charges of the central and local governments on their business and property (Art. 99, The Framework Act).



IV. Legal Friendliness and Obstacles

It is generally agreed that cooperative legislation of Republic of Korea is significantly friendly to cooperatives. Specially the Framework Act on Cooperatives established in 2012 complements existing eight special cooperative laws and contains many provisions supportive of cooperatives while respecting their autonomy.

However, cooperative scholars and practitioners point out some provisions which may hamper the development of cooperatives as below:

The Monopoly Regulation and Fair-Trade Act does not apply to activities of all types of cooperatives or federation of cooperatives organized under nine cooperative laws in Korea, unless those activities are unfair trade practices in a specific business area (Art. 13(3)). Article 5 of the Enforcement Decree of the Framework Act on Cooperatives even states the requirements for exemption as they are prescribed in the Article 13(3) of the Monopoly Regulation and Fair-Trade Act. Professor Jaeil Song, a cooperative law expert, points out that one of the requirements “mutual assistance among small businesses or consumers” may restrict cooperatives to develop into large-scale cooperatives which can be seen in many advanced countries. He says that the exemption provision of the anti-trust law for cooperatives should be changed so that cooperatives regardless of their business size may be exempted from the application of the anti-trust law like in the case of Capper-Volstead Act, the American anti-trust law. In the United States, cooperatives are exempted from the anti-trust law regardless of their business size, if only their ownership, decision control, and distribution of surplus are made in a cooperative manner. He says that large-scale cooperative enterprises such as Sunkist could emerge due to Capper-Volstead Act.

Many Korean cooperative scholars including Donyun Kim (2002), Hyoengsoo Jeon (2013), and Jaeil Song (2013) criticize the making of standard form of articles of association (model bylaws) of a cooperative by government ministries. Supervising ministries of nine cooperative laws make bylaws and announce it as the Notification of the Ministry for those who want to form a cooperative. When a cooperative organized under eight special cooperative laws wants to change its bylaws later, it must get the approval of the supervising Ministry. In case of cooperatives organized by the Framework, there is no such requirement for approval for the change of bylaws, even though model bylaws are made by the Ministry of Strategy and Finance. Cooperative scholars contend that model bylaws need to be made by a



federation of cooperatives rather than by competent authorities because bylaws are internal rules of a cooperative as an autonomous organization. The German Cooperative Act has a provision that ensures the autonomy of cooperative bylaws. In Japan, model bylaws for an agricultural cooperative are made by the federation of cooperatives.

Many cooperatives organized under the Framework Act complain about the unfair treatment by other sources of law. Cooperatives are excluded by many laws providing a legal basis for government organizations to give a financial or non-financial support to small and medium companies because the form of business organization eligible for government support is confined to those companies organized by the Commercial Act. Cooperatives organized under the Framework Act are treated just like any other profit-making companies under the Commercial Act in taxation or other matters. Moreover, they get no preferential taxation by the Restriction of Special Taxation Act like cooperatives organized under eight special cooperative laws. A social cooperative which is explicitly stipulated in the Framework Act as being non-profit (Art. 2) is designated as an organization eligible to receive donations but is not included in the Restriction of Special Taxation Act as a cooperative getting preferential tax treatment, either. Unfair treatment of cooperatives by many laws related to government policy funds and other support programs puts cooperatives in disadvantageous position in a competitive market.

Another disadvantage of a cooperative for not being a corporation under the Commercial Act is when a corporation organized under the Commercial Act changes its organization to a social cooperative according to Article 105-2 of the Framework Act. In that case, the social cooperative changed from a corporation must pay a higher tax as if it is newly organized, compared to the case of an organizational change from one type to another between companies organized under the Commercial Act⁵.

In other case, a cooperative is treated the same as a corporation under the Commercial Act without its unique characteristics being considered. Local governments in capital regions of Korea impose higher property acquisition taxes and additional charges to a corporation to be established in the region in order to prevent being overcrowded. This provincial taxation rule is applied to a cooperative

⁵ The Commercial Act categorizes companies into five types- partnership companies, limited partnership companies, limited liability companies, stock companies, and limited companies (Art. 170).



or a social cooperative as well, even though a social cooperative is organized for public interests.

V. Summary and Conclusion

There are eight special cooperative laws and one general law (the Framework Act on Cooperative) under the authority of different ministries of the government in Korea. Starting with Agricultural Cooperative Act in 1957, eight special cooperative laws were enacted one after another with a top down approach by the government as an instrument to implement industrial policies. The Framework Act was established in 2012 to meet the needs for newly emerging cooperatives in the highly industrialized Korean society.

This report examines the provisions of two special cooperative laws (Agricultural Cooperative Act and the Consumer Cooperative Act) and the Framework Act on thirteen subject items, and discusses how friendly the cooperative legislation of Korea is to cooperatives and what are the legal obstacles or barriers which hamper the development of cooperatives.

ICA cooperative principles which form the basis for the legal framework of a cooperative are reflected in all cooperative laws in a greater or less degree, even though any of cooperative laws does not refer to ICA principles explicitly. In general, Korean cooperative laws reflect ICA cooperative principles as they were at the time of their enactment. The Agricultural Cooperative Act does not have a legal provision about the 7th ICA Principle “Concern for Community” which was introduced in 1995, while both the Consumer Cooperatives Act established in 1999 and the Framework Act in 2012 reflect the 7th Principle. The Framework Act contains all seven principles throughout the Act. Also, unlike special cooperative laws, the Framework Act clearly defines a cooperative and a social cooperative,

Open membership and voluntary withdrawal, limitation on share contribution units per member, equal voting rights of members, legal reserve, basic governance structure, and refund of share to a withdrawing member are common legal features of cooperative laws in Korea. Except for social cooperatives, all cooperative laws allow a cooperative to distribute surplus to members in capital dividends or patronage refund, or to distribute residual property to members when the cooperative is dissolved

Agricultural Cooperative Act, the first cooperative law in Korea, served as a prototype for other special cooperative laws enacted at a later stage. It has been



revised numerous times responding to the changes of the Korean society from an agrarian society to an industrial society and reacting to the changes in the progressing economic structure of Korea. The Agricultural Cooperative Act now allows the representative meeting instead of the general assembly, associate membership, non-member use of services, preferential shares, revolving shares (conversion of dividend/patronage refund into member shares), governance system requiring non-member director and non-member auditor depending on its size etc. Government control on agricultural cooperatives has been reduced over the years, but agricultural cooperatives are still considerably guided by Enforcement Decree and Enforcement Rules.

By and large, other special cooperative laws are like the Agricultural Cooperative Act, but the Consumer Cooperative Act is different. Unlike other special cooperative laws, it does not allow non-member use of services except for medical cooperatives. Also, consumer cooperatives are not allowed to be engaged in financial or insurance business under the law.

Compared to special cooperative laws, the Framework Act is less restrictive in establishment, business activities, governance etc. and respects the character of a cooperative as an autonomous self-help organization. Legal provisions of the Framework Act and its Enforcement Decree and Rules reflect the direction of legislation to minimize the government control and interference as much as possible while actively promoting autonomous activities of cooperatives. The Framework contains provisions to promote autonomous activities of cooperatives, including cooperation of central government, local governments, and public organizations, management support, educational and training support, formulation of a master plan for promotion every three years, establishment of the Council for Cooperative Policy Deliberation within the Ministry of Strategy and Finance, designation of Cooperatives Day and the Week of Cooperatives, etc. The Framework Act is rather strict in the establishment and operation of social cooperatives and does not allow distribution of its surplus or of its residual property to members, but at the same time, actively supports them through provisions regarding preferential purchase by public institutions, allowance of small loans to members and mutual aid programs, exemption from charges by central and local governments, etc.

There are some obstacles to the development of the cooperative movement such as the making of model by-laws by government authorities as well as some restrictive requirements to be exempted from the application of the anti-trust law, but it is generally agreed and accepted that the cooperative legal framework of



Korea is quite friendly to cooperatives, especially since the enactment of the Framework Act.

The establishment of the Framework Act was a breakthrough in the history of the cooperative movement in Korea by setting the open environment for organizing cooperatives. However, it is pointed out as one weakness that the Framework only compliments existing special cooperative laws rather than functions as the common law for all types of cooperatives. Coordination of special cooperative laws and the Framework Act into one organic cohesive system is a long-term task for the cooperative movement of Korea. In this regard, the cooperative legal system of France having both a general law and special laws may be worth of being studied.

Cooperatives are now disadvantaged by being excluded from the application of other economic laws which deal with financial and non-financial government support programs for small and medium corporations. Connecting the Framework Act to these other economic laws is a burning problem which should be settled for cooperatives to be competitive in the market. A group of cooperative researchers are now working on this task.

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